

Neutral Citation Number: [2023] EWFC 324 (B)  
Case No: SE22C50460

**IN THE FAMILY COURT AT SHEFFIELD**

Sheffield Designated Family Court  
48 West Bar,  
SHEFFIELD  
S3 8PH

Date: 18<sup>th</sup> July 2023

**Before :**

**H.H. Judge Marson**

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**Between :**

**CITY OF DONCASTER COUNCIL**

**Applicant**

**- and -**

**(1) THE MOTHER**

**(2) THE CHILD**

**Respondents**

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**Ms Wade** (instructed by the City of Doncaster Council) for the Applicant

**Mrs Duffy** for the First Respondent Mother

**Mr Reece** for the second Respondent Child

Hearing dates: 14.07.2023 and 18.07.2023  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on the 18<sup>th</sup> July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

**IMPORTANT NOTICE**

**This judgment was given in private. The court permits publication of this judgment on condition that (irrespective of what is contained in the judgment) in any published version of this judgment the anonymity of the child/ren and members of their family must be strictly preserved. All persons, including the parents, their legal representatives, legal bloggers and representatives of the media, must ensure that this condition is strictly complied with.**

**Failure to do so may be a contempt of court.**

**H.H. Judge Marson:**

- 1) The original version of this judgment included the names of the child, mother, other family members and all professionals involved with the family, and specific dates were identified. This version has been altered to preserve the privacy and anonymity of the family concerned.
- 2) The court is concerned with the welfare of a baby boy called 'C' who was born in December 2022 and is now 7 months old. 'C' has been represented at this hearing by Mr Reece who in turn takes his instructions from the Children's Guardian, Mrs Patricia Lewis.
- 3) 'C's mother is M. M has been represented at this hearing by Mrs Duffy and I may refer to M hereafter as 'the mother'.
- 4) 'C's father is unknown. The mother has suggested he may be a man called X but she has no contact details for him and does not know his date of birth. All attempts to trace anyone with that name using the usual Government Departments have been unsuccessful.

- 5) The local authority in this case is the City of Doncaster Council, it is represented in these proceedings by Ms Wade. I may refer to it hereafter as 'the local authority'.
- 6) At this final hearing the local authority seeks a final care order with a care plan of adoption for 'C' outside of his birth family. For this reason, the local authority has also issued an application for a placement order.
- 7) If a final care order is made, C's final care plan dated 5<sup>th</sup> May 2023 provides for a gradual reduction in contact between him and his mother. The mother's direct contact will be reduced to once every month until an adoptive placement is identified and thereafter, a farewell contact will take place. In the longer term it is proposed indirect letterbox contact takes place on a yearly basis.
- 8) The mother initially opposed the local authority's plan and at the IRH on the 23<sup>rd</sup> June 2023 sought a further opportunity to be assessed in respect of resuming the care of C in a residential unit. She issued an application to this effect which is before the court. Since that date the mother has been recalled to prison for breaching her licence conditions and at this final hearing she asks permission to withdraw her application for a residential assessment and accepts she is not currently in a position to care for her son, she advances no active opposition to care and placement orders being made.
- 9) Due to the mother's very recent recall to prison she was unable to participate in the hearing on the 14<sup>th</sup> July when oral submissions were made. Mrs Duffy made every effort in the limited time available to her to obtain a Production Order and it is unfortunate the prison had no availability to accommodate a video link due to the lateness of the request. When asked by the court

whether the mother sought any adjournment to enable her to attend, the court was informed the mother understood the need for a decision to be made for C and would wish for the hearing to proceed in her absence. The handing down of a written judgment was adjourned to today to enable the mother to participate in this part of the hearing.

10)The Children’s Guardian supports the local authority applications as set out above.

11)The issue for the court is to conduct a holistic evaluation of C’s welfare throughout his life and to determine whether he should be made the subject of a final care order and placement order which would have the effect of removing him permanently from his birth family, or whether there is a better, more realistic and proportionate option. The court does not simply rubber-stamp the applications because they are not actively opposed by any party, I must consider C’s welfare with the same degree of care and attention as I would for any child in his situation.

12)The parties should be aware that even where I do not expressly refer to any piece of written evidence, assessment or report, it has nevertheless now been read and taken into consideration. Furthermore, although this judgment is being written in sections, consideration of C’s welfare has been undertaken holistically.

### **Background**

13)The background facts which led to proceedings being issued and which underpin the statutory threshold criteria are set out below and were approved at the IRH on the 23<sup>rd</sup> June 2023.

- 14)The mother is in her 30's and C is not her first child. She has older children who reside with a family member. Those children were removed from the mother's care due to her mental health problems which were exacerbated by her illicit drug use.
- 15)In 2022, the mother was remanded into custody in [a prison] following her arrest for attempted robbery using a weapon. She was subsequently sentenced by the Sheffield Crown Court to a period of imprisonment and her first date for release was expected to be in June 2023.
- 16)It follows, at the time of C's birth in December 2022 the mother was serving this custodial sentence. Due to concerns surrounding her mental health she was being accommodated on a specific mental health wing within the prison. The mother was diagnosed with psychosis and was being prescribed Olanzapine.
- 17)Prior to being incarcerated in prison the mother was using heroin, ecstasy, crack cocaine and pregabalin in the community. She was also prescribed methadone to help her manage her addiction but failed to engage with drug treatment services consistently. The mother was open about her participation in the activities of a sex worker to fund her substance misuse and has been involved with sexual exploitation and prostitution since the age of 15.
- 18)The local authority carried out a pre-birth assessment. During this assessment the mother suggested a man named 'Y' may be C's father but as the mother and Y are persons of White British heritage and C is of dual black/white heritage, Y excluded himself as a potential father when he was contacted about this possibility and declined to engage with the local authority. The mother then suggested C's father was someone she had a 'one night stand with' and gave the name X as a possible putative father.

19) Even though the pre-birth assessment sessions were conducted within the prison environment, the mother presented as being under the influence during the initial session. It was during this session the mother had also pulled her hair out at the back of her head due to hearing voices telling her to do this.

20) The mother's history of using illicit substances is extensive. It is agreed she has been using illicit drugs since the age of 12 having started with cannabis and progressed to using heroin and crack cocaine by the age of 15. During the pre-birth assessment she told the social worker she has used drugs throughout her life to stop the voices which become more prominent when she is not using substances. Unfortunately, the auditory hallucinations are not prevented by her anti-psychotic medication.

21) Whilst in prison the mother made threats to harm herself and her unborn child. She was permitted to use a 'vape' at 12 noon every day and often made demands to use it earlier. When refused, the mother would threaten to harm her baby. In August 2022, when challenged by a Prison Officer for stealing items, the mother 'stormed back to her cell screaming and swearing' and began punching herself in the stomach. In September 2022, the mother self-harmed causing superficial cuts to her arms but a significant cut to her thumb due to destroying items in her room whilst continuing to make threats to 'punch the fuck out of my belly' if she was denied her vape.

22) The mother found it difficult to cope when her demands were not met immediately and her more challenging behaviours tended to manifest themselves more acutely when she became stressed. As caring for a baby is stressful and places huge demands upon the care-givers own needs and ability to prioritise those needs, the pre-birth assessment concluded this posed a further risk to her unborn child.

23)The mother's forensic history is also extensive. The information contained within the PNC documentation reveals the mother has 21 convictions which encompass 41 offences commencing in 2005 when she was a teenager. The attempted robbery offence which led to the mother being imprisoned at the time of C's birth was committed in June 2022 which also placed her in breach of a community order imposed in May 2022. Accordingly, there is a conviction of an offence whilst a community order is in force. In addition to the sentence of imprisonment, the Sheffield Crown Court imposed a restraining order for five years.

24)The attempted robbery offence, together with a previous conviction for 'threaten with a blade/sharply pointed article in a public place' in March 2021 which also resulted in a prison sentence, represent an escalation in the mother's offending history. In the March 2021 offence, the mother was suspected of shop lifting and produced a bread knife which she used to threaten shop staff when she was challenged by them. When arrested, the mother was in possession of two knives.

25)Sadly, the mother has experienced significant difficulties with her mental health. She has a diagnosis of schizophrenia and is currently prescribed Olanzapine. She struggles with auditory hallucinations which say nasty and distressing things to her, the voices generally speak about wanting to hurt children and she has reported she can hear children being raped. On one occasion she has acted upon the voices when she pulled out her hair from the back of her head as they instructed her to do prior to one of the pre-birth assessment sessions.

26)During the pre-birth assessment the mother shared information about the historic delusions she had experienced, these included when she was forced to marry an alien against her will in a forced wedding and had been raped by the alien. She had also told other inmates within the prison that she is an illegitimate child from

the Royal family and is entitled to inherit lots of money. More recently, the mother denies having reported being forced to marry an alien.

27) Due to the multiple risk factors set out above, the pre-birth assessment was negative in its outcome and concluded the mother was unlikely to be able to care for C safely. As it was apparent C would be born during the mother's prison term, consideration was given by the Prison staff as to whether C could be cared for by his mother in the mother and baby wing of the prison. From the assessment conducted by the prison, the mother was ineligible to do this.

28) This led to the local authority issuing these proceedings immediately following C's birth with an interim care plan for him to be placed in the care of a family member Z. Z had been assessed positively as a carer for him.

29) At a hearing before this court in December 2022, C was made the subject of an interim supervision order and child arrangements order and placed with Z for further assessment.

30) Regrettably, in the early part of 2023, Z suddenly and unexpectedly passed away and the local authority had to make an urgent application to the court regarding C's interim care arrangements. At a hearing in early 2023, this court made an interim care order and C was placed into local authority foster care where he remains.

31) During these proceedings the court directed a parenting assessment be undertaken of the Mother's ability to care for C in the longer term, and gathered information from the mother's Consultant Psychiatrist and the mother's Probation officer amongst others.



32)The consultant psychiatrist first had contact with the mother in October 2020 and has treated her during her various periods in custody in prison. He confirms the mother's diagnosis of paranoid schizophrenia and emotionally unstable personality disorder (EUPD) traits following on from an initial diagnosis of mental and behavioural disorder secondary to poly substance misuse. Even when well-treated she continues to voice psychotic beliefs but objectively does not present as distressed by this as she does when she is untreated.

33)The psychiatrist noted the mother's first recorded entry for expressing persecutory beliefs was in 2018 when she reported it had been happening for two years i.e. since 2016. The mother's medical records indicate a long history of illicit drug use with variable engagement with substance misuse services. The psychiatrist sets out the mother's unusual psychotic beliefs and delusions in his report, and identifies her sudden changes in mood for no apparent reason and her threats to harm herself and her unborn child as features usually seen in people with EUPD traits. Whilst acknowledging he has not observed the mother caring for C, he opines her mental health, her unpredictable presentation, her use of illicit substances and the associated distress which causes her to self-harm are all likely to impact on her ability to care for a child safely.

34)The mother was first released from prison in June 2023 and her Probation Officer has provided a brief report addressing the period between the mother's release up to the 29<sup>th</sup> June 2023. On the 22<sup>nd</sup> June 2023, the mother tested positive for cocaine use. On the 28<sup>th</sup> June the mother was 'alcohol tested and was not clean'. The mother has a condition of residence and curfew at 'B' House which she breached. Staff at 'B' House have expressed concerns about the mother's behaviour: she is spending time with other women who have tested positive for illicit drugs; the mother has received two warnings for her behaviour including one for taking too many tablets than have been prescribed and for having drug paraphernalia in her

bedroom; there are concerns about her attitude towards staff and on the 29<sup>th</sup> June she missed an appointment with drug support services in Leeds which is a requirement of her licence. It is these breaches which led to the mother being recalled to prison. A decision regarding when she will be released again is not expected for approximately 6 months. The probation officer is due to submit a report to the parole board by the end of July and if an oral hearing is required by the parole board this will take place in January or February 2024. The mother could find herself having to serve the full period of the sentence imposed upon her.

35)The parenting assessment of the mother is dated 6<sup>th</sup> March 2023 and is negative in its outcome. Whilst the mother had begun to achieve some improvement in her presentation and engagement with professionals within the prison environment, the social worker was very concerned she would not be able to sustain this once she was released and returned to the community. The local authority wished to see the mother achieve a period of stability and maintenance of positive change without the structure and boundaries of the prison environment. Self-evidently, those concerns have come to fruition with the mother being returned to prison for breaching her licence conditions within weeks of her release.

36)Having considered all of the above, the local authority has concluded the mother has made insufficient changes in her mental health, her lifestyle and illicit substance misuse, or her insight and ability to cooperate with professionals consistently. The local authority recommends C could not be safely rehabilitated to her care. The children's guardian agrees.

37)No party has required any witness to give the court any oral evidence, the court is invited to deal with this matter by way of consideration of the written evidence

filed and upon the oral submissions it has heard made on behalf of the parties by their legal representatives.

### **The Law**

38)The burden of proving any allegations is, in accordance with the guidance given by the Supreme Court in **Re B (Children)[2008] UKHL 35**, with the party making those allegations. In this case that is the local authority. The standard of proof required is the balance of probabilities and I have determined any factual disputes and reached my conclusions on that basis.

39)In this case the fact the section 31 threshold criteria is satisfied has never been actively challenged and as I have indicated I adopt those Findings which I approved at the IRH on the 23<sup>rd</sup> June. It is to the mother's credit that she has not, at any stage, denied the necessity of C being removed from her care.

40)Having established the threshold for making a public law order is satisfied the second question for the court to answer is what order, if any, should I make?

41)In answering that question, I apply well-established legal principles. I bear in mind the rights of the mother and C under Article 8 of the European Convention on Human Rights (ECHR) to respect for family and private life. The court should only make such order as the facts require, and only then in compliance with the principles of necessity and proportionality set out in Article 8(2) of the ECHR. Under section 1(1) of the Children Act 1989, C's welfare is my paramount consideration in the care proceedings. Under section 1(2), any delay in making decisions concerning his future is likely to prejudice his welfare. Section 1(3) provides a checklist of factors to be taken into account when determining where his welfare lies, and what order should be made.

42) I also bear in mind that adoption is an option of last resort requiring a high degree of justification, it should be made only in exceptional circumstances where nothing else will do to meet the welfare of the child in question.

43) On the application for a Placement Order, the court applies section 1 of the Adoption and Children Act 2002. On such an application, my paramount consideration is C's welfare throughout his life. Once again, I take into account the fact that delay in coming to a decision is likely to prejudice his welfare, and there is a checklist of factors to be taken into account in assessing his welfare, in this case set out in section 1(4) of the 2002 Act. In addition, both section 1(3)(g) of the 1989 Act and section 1(6) of the 2002 Act require the court to have regard to the range of orders available.

44) Under section 21(3) of the Adoption and Children Act 2002 a court may not make a placement order unless satisfied either that each parent with parental responsibility has consented to their child being placed for adoption or that his or her consent should be dispensed with. In this case, only the mother holds parental responsibility and she has not consented to the making of a placement order. Under section 52(1)(b) the court may dispense with a parent's consent if the welfare of the child requires their consent to be dispensed with.

45) These provisions have been subjected to analysis in a number of important decisions by the higher courts, and in particular by the Supreme Court in **Re B [2013] UKSC 33** and in a series of decisions in the Court of Appeal culminating in **re B-S [2013] EWCA Civ 1146** and **Re R [2014] EWCA Civ 1625**. I have had those decisions firmly in mind.

46) On the mother's behalf, Mrs Duffy informed the court she had spoken to the mother's probation officer regarding the reasons for the mother's recall to prison

and these include missing a curfew; testing positive for cocaine; failing to engage with the drug service, Forward Leeds; and spending time with other women who were using drugs. The residential units which the mother had intended to propose as potential assessors would not accept the mother due to her positive drug test and accordingly, the mother seeks to withdraw her application for a residential assessment as she is not in a position to participate in it and none is available to her. The mother is sorry for the situation C finds himself in and is keen to engage with any of the contact sessions which are available to her. The local authority intends to promote this by taking C to see his mother in prison, as they did before, in accordance with his final care plan.

### **Conclusion**

47) In conclusion, having conducted the holistic balancing exercise and having considered everything I have now read and listened to, I have been persuaded that making the care order sought by the local authority is necessary to protect and safeguard C's welfare and is a proportionate response to his situation. Accordingly, I make a final care order and approve his care plan of adoption. My reasons for doing so are set out below.

48) In respect of the mother's ability to care for C, I am persuaded by, and accept, the unchallenged evidence of the local authority and children's guardian. Their conclusions are unchallenged and consistent with the ongoing factual history for this mother.

49) The mother's problems are complex and multifaceted. She has longstanding mental health problems which impair her ability to care for any child and sadly, she addresses these problems maladaptively with the use of illicit substances to which she is addicted. Her misuse of substances fuels her criminal offending which in

turn causes her to lose her liberty repeatedly. There have been no changes in this regard during these proceedings and even after a lengthy period in prison over the course of the last year, the mother very quickly resumed her previous lifestyle upon her release in June.

50)I accept the unchallenged evidence and opinion of the social worker contained in her statements and assessment because it has been unchallenged and because it is consistent with the evidence from the consultant psychiatrist and the probation officer and is supported by the mother's recall to prison. The mother is currently unable to make or sustain any improvements without structure and boundaries being externally imposed upon her.

51)I have considered whether it is likely the mother would engage with professionals or services to improve her mental health and reduce her consumption of illicit drugs but the evidence indicates she has not been able to do this consistently at any point in her life to date. I have sympathy for her situation as it is miserable to have any form of addiction and no one chooses to be an addict. But she has now used illicit drugs regularly for over half of her life and was not motivated enough to engage with Forward Leeds upon her recent release from prison. She has experienced serious problems with her mental health for the past 7 years but continues to use maladaptive coping mechanisms which are likely to make it worse. Sadly, the mother's criminal offending associated with this means she is now likely to be in prison for the next 6 months at least. I am persuaded any changes she may now make in any of these areas are wholly outside C's timescales for finding a permanent home. He needs a decision to be made without further delay.

52)I have considered the mother's extensive forensic background and noted her lengthy history of breaching court orders imposed by the criminal courts which

were devised to manage risk. These include multiple convictions for failing to surrender to custody; breaching supervision orders; breaching conditional discharge orders; failing to comply with the requirements of community orders; and committing further offences whilst the subject of community orders. At the time of her most recent prison sentence her criminal offending was escalating and she has recently breached her licence conditions.

53) This forensic background persuades me the likelihood of the mother being able to adhere to any form of structure, support, supervision plan, contract of expectations or any order this court could impose to manage risk to C in the community is currently so remote it does not exist.

54) During the brief period the mother lived in the community following her release in June 2023, she participated in two contact sessions with C. During the first session she was unable to settle him and failed to engage with him, she left 30 minutes early to go to a fast food restaurant. During the second session she fell asleep for the last 30 minutes. This evidences the magnitude of the changes which the mother needs to make in terms of prioritising the needs of a child because she has struggled to sustain caring for C even within short, supported contact sessions.

55) Accordingly, I am persuaded C is likely to suffer significant harm in the care of his mother. His welfare is likely to be neglected, his development impaired and he is likely to experience significant emotional harm. There is no package of support which could be devised to ameliorate this risk posed by the mother in the short to medium term. For whatever reasons, and the most salient one may be the mother's mental health, she is not yet minded to address the difficulties in her life in a constructive way which reinforces my conclusion her behaviour is likely to be repeated to the detriment of C's welfare until she does.

56)I have considered whether there is any other person who could care for C. His maternal grandmother has indicated she is unable to care for him, and 'A' who is the daughter of Z is also unable to care for him due to her own pre-existing caring commitments. As there are no other family members who have come forward and been positively assessed, I am persuaded it is likely his need for stability and permanence can only be met in an alternative placement outside of his birth family.

57)I have considered C's needs which are set out in the evidence and unchallenged, and weighed the advantages and disadvantages of adoption as an option for C to meet his welfare throughout his life. This analysis is also set out in the guardian's report which I adopt.

58)C's child permanence report indicates he is of dual heritage and the colour photograph provided would support this conclusion. The mother has said C's birth father is a black male who was tall in height and of slim build. C is described as the happiest of babies, he is strong willed and loves cuddles, kisses and attention. He struggled with withdrawal symptoms from his mother's drug/methadone use during the first 6-12 weeks of his life but it does not appear to have affected his development thus far as he is meeting if not exceeding, his developmental milestones. In the longer term the impact of his mother's illicit drug/methadone use in early pregnancy is unknown but he currently has no health condition which is likely to impact adversely upon the likelihood of an adoptive family being found for him. Having experienced one change of primary carer when Z passed away and having spent the rest of his short life to date in foster care, he is in urgent need to be cared for by a permanent family who he may call his own.

59)C is too young to express his wishes and feelings or to understand the proposed plan of adoption. I accept the unchallenged evidence of the guardian that it is



likely C would wish for a birth family placement to grow up in if it could be a loving, secure and safe environment where he is protected from harm.

60)The immediate and obvious disadvantage of adoption would be the loss to C of his identity by ceasing to be a member of his birth family and becoming an adopted person. He is likely to lose the potential of any relationship with his maternal grandmother and older siblings as well as with his mother. However, C's need for a permanent family who he may call his own exceeds this disadvantage. I am persuaded the loss of any relationship with his birth family is a disadvantage which it is necessary to take and a more proportionate response is for C to maintain his link to his birth family by way of indirect letter box contact and a Life Story book.

61)No party has advocated for C to be placed in long term foster care but C should know this option was considered by the court and rejected as a realistic option for him. This is because in light of his age and his need for permanence it is likely such placement would not offer the same degree of durability and a right to family life to the same degree an adoptive placement would offer. A foster placement is more likely to break down because of the lengthy period for which it is going to be required and if this were to happen it would cause further harm to his welfare. As Mrs Lewis states in her report, "*Ideally, his next move should be his last move*".

62)For each of these reasons I approve the making of a final care order for C and approve his care plan of adoption. In doing so, I grant the mother permission to withdraw her application for a residential assessment for the reasons it is not necessary and would cause further delay which would prejudice C's welfare. I commend the mother for making the difficult decision not to pursue her application and offer my sympathy for the many challenges she faces in her life.

## Placement Application

- 63) I have read and considered the relevant documents in respect of the separate application for a placement order. The Children's Guardian supports the application. I have given specific consideration to the welfare checklist in section 1(4) of the Adoption and Children Act 2002 and the issues which are relevant.
- 64) I am satisfied that, on all the evidence before me, adoption is in the best interests of C. There is no other realistic option before the court. The mother has not given her unconditional consent and I must formally consider dispensing with her consent on the basis the welfare of C requires it. Having reached the conclusion that adoption is in his best interests in the care proceedings, it follows I must dispense with the mother's agreement to C being placed for adoption in accordance with section 52 of the Adoption and Children Act 2002 to implement that plan. Accordingly, I dispense with the mother's consent to placing C for adoption and I make a placement order authorising the local authority to place him for adoption with prospective adopters of its choice.
- 65) I direct the advocates to draft the order arising from this judgment and the approved Findings of Fact made in satisfaction of the threshold criteria on the 23<sup>rd</sup> June are to be incorporated into it.
- 66) In the event any party requires any further clarification or reasons in respect of any issue I reserve the right to provide the same once it has been brought to my attention. I remind the parties that any application for leave to appeal must be made within 21 days of the date of this judgment. In accordance with the judgment of **McFarlane LJ in Re H (Children) [2015] EWCA Civ 583**, the care and placement orders drawn by the court will have this reminder recorded on the face of the order.

**H.H. JUDGE D. MARSON**

**18<sup>th</sup> July 2023**

**Post script**

C was placed for adoption and whilst living in the community his mother met with the prospective adopters. It was a very positive meeting and she expressed her view she was happy she had met them and was reassured to know C would be well cared for and loved. In July 2024, C was made the subject of a final adoption order. Sadly, his mother was once again part of the prison population.