

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/02/2017

Before :

MR JUSTICE KEEHAN

Between :

A Local Authority

Claimant

- and -

(1) J

Respondent

(2) Y

MS. CABEZA (instructed by Legal Department) appeared on behalf of the Claimant

FIRST RESPONDENT was not present and was not represented.

SECOND RESPONDENT appeared in Person.

MS. FRANKLIN appeared on behalf of the Children's Guardian.

Hearing dates: 31st January & 1st February

Judgment Approved

Mr. Justice Keehan :

INTRODUCTION

- 1 I am concerned with two children, P, who was born on 10th April 2009 and is seven years of age, and M, who was born on 26th March 2011 and is five years of age. Their mother is the first respondent, J. Their father is the second respondent, Y. He has appeared in person.
- 2 At this hearing, the Local Authority seeks a placement order in respect of both children. This application is opposed by the mother and the father, but is supported by the children's guardian.
- 3 The mother lives in Singapore with the parent's third child, a baby girl. The mother left the jurisdiction when 38 weeks pregnant in order to avoid the unborn child being removed into foster care at birth. Save for filing a witness statement dated 27th January 2017 and a closing statement dated

31st January 2017, she has played no role in these proceedings and has not attended court.

- 4 Applications for care orders and placement orders were listed before Her Honour Judge Evans-Gordon in February 2016. On 18th February, Her Honour Judge Evans-Gordon handed down judgment. She made care orders and placement orders in respect of both children and made findings of fact against the mother and the father.
- 5 On 27th October 2016, the Court of Appeal allowed the father's appeal against the making of placement orders. The court set aside these orders, restored the placement order proceedings and remitted them for rehearing.
- 6 It is important to note, that on the basis that the father did not pursue his appeal against the care orders, that appeal was dismissed and there being no challenge brought against the findings of fact made by the judge, they stand.
- 7 The father asserted during this hearing that his then barrister misrepresented his case to the Court of Appeal insofar as the father did wish to challenge the making of care orders and did not and does not accept the findings of fact made by Her Honour Judge Evans-Gordon. I told the father that these matters were for the Court of Appeal and not for this court to entertain and that I was bound by the order and judgment of the Court of Appeal.
- 8 In its judgment of 8th November 2016, the Court of Appeal explained that it allowed the appeal because the judge, at first instance, had failed to consider the option of long-term foster care when undertaking the welfare evaluation.
- 9 Further to opposing the placement application, the father made an oral application at the start of this hearing to discharge the care orders. I decided that I could only entertain that application on the basis that there had been a material change in the circumstances of the parents and/or of the children between the hearing before the Court of Appeal on 27th October to date.

BACKGROUND

- 10 The relevant chronology of events is set out in paras.3-17 of the judgment of King LJ which reads as follows:

"The mother and the father are both of south-Indian origin, although the mother also has a Singaporean identity card. The couple came to the United Kingdom in or around 2004. The mother entered the country legitimately but subsequently overstayed and there is no record at all of the father's entry into this country.

Applications made by the parents for leave to remain were refused in December 2013. The parents and their two young children, therefore, lived under the radar of the authorities and as a consequence of their illegal status, were not entitled to state benefits.

It appears that the father had, however, been in work and the children did not adversely come to the attention of social services until after the father lost his job in 2013.

Following his employment, the family survived on a bank loan but by April 2014, they were destitute. The family was referred to the Local Authority by the Children Society. By then, P was five and M was three.

The Local Authority carried out an initial assessment and the children were made subject to a child in need plan and financial support was provided to the family. Almost immediately, the parents were in conflict with the Local Authority, believing, as they did, that it was the Local Authority's responsibility wholly to provide for the family. The father's extreme behaviour was exhibited as early as 14th May 2014 when he threatened to jump into the river off a bridge together with the children if a new house and financial assistance to the level he sought was not provided.

Between the referral in April 2014 and August 2015, the Local Authority attempted to work with the parents. As at this stage there were no concerns about the parents' general abilities to provide the children with good enough care, and it was anticipated that a reasonable working relationship could be achieved. Not only did this prove not to be the case, but the parents used their children as a means to put pressure on the Local Authority to give them more money with wholly callous disregard for their emotional wellbeing.

The judge's judgment sets out the background and makes extensive findings of fact. The parents' strategies, amongst other things, included using the children directly to demand money, as well as keeping them off school and even hiding them in cupboards in order to prevent social workers from seeing or talking to the children. The most serious matter occurred in 2015 when the parents coached M to make, what are now accepted to be, wholly false allegations of physical and sexual abuse directed at the school and social workers. This, inevitably, resulted in a full investigation and the involvement of the police, including the arrangement of an intimate child protection medical for M, although the parents, in fact, failed to take her to the appointment.

The father maintained these very serious allegations at trial, although he now accepts the finding made by the judge that the allegations were wholly fabricated. Mr. Amin on behalf of the father in accepting this to be the case, says that the parents were motivated by a misguided notion that such allegations would help them to achieve their aim of somehow stopping the professionals at the children's school from asking about the welfare of the children.

By May 2015, there were, understandably, very serious concerns about the children. Not only were the social workers unable to see the children at home, but P's attendance at school was falling away, his behaviour was deteriorating, and M had been removed from nursery.

On 28th May 2015, the parents attempted to abscond to Glasgow, although when social services in Glasgow made it clear they would not be providing financial assistance, the family returned to Birmingham.

Care proceedings were finally issued on 12th August 2015 and an interim care order made, due to the risk of the family absconding, and on 18th August the children were removed from the parents' care.

The children were placed with a culturally appropriate foster carer with whom they have lived ever since and who has offered them a permanent home in the event that it is decided that the children's best interest lie in them remaining in long-term foster placement.

The Local Authority's view is that the children suffered significant emotional harm as a consequence of being made the puppets of, in particular the father, in his war of attrition with the

Local Authority. The Local Authority wished to facilitate regular contact, but as is often the case, asked the parents to sign a contact agreement whereby they would agree not to make inappropriate remarks about the professionals in front of the children, that they would not discuss the case with the children and would not speak to the children about returning home.

The parents refused then and have continued to refuse to sign such an agreement. Their position has been, to sign it would be a breach of their human right to free speech or freedom of expression. The trial judge was satisfied that not only had the father been given sensible and appropriate legal advice as to the importance of contact with the children by his own legal team but also that His Honour Judge Plunkett, who case-managed the case throughout, had implored the parents to sign the agreement to enable contact to take place.

The parents remained resolute and as a consequence, when the matter came on for trial in February 2016, these children, who had lived with their parents until the making of the interim care order, had had no contact, direct or indirect, for six months. When the matter came before this court, that period of time had extended to 14 months.

In a statement dated 29th June 2015, the then lead social worker, Mr. Birkenhead, put as the first realistic option for the future care of the children as being placed with the parents under a full care order, with the second realistic option being long-term foster care. Within that statement, he set out the advantages as he saw them to a long-term foster placement. He explained that efforts from the Local Authority would continue in seeking to engage the parents in a more positive and meaningful manner and should that be achieved, then consideration could again be given to the possibility of the children returning to the care of the parents.

What is clear from the evidence is that the Local Authority, for a significant period of time, had anticipated that the children would in due course be rehabilitated to the parents. To this end, they sought within the care proceedings various assessments, including a psychological assessment of the parents and a parenting assessment.

Not only had the parents declined to engage in any of the proposed assessments, but they had not engaged in any meetings or exchanges with any of the professionals, other than their own lawyers, since the proceedings were launched. Even to the extent of refusing to meet with the children's guardian.

During the course of the proceedings, the mother became pregnant with her third child. A child protection planning meeting was held on 13th October 2015 when it was decided that care proceedings would be issued with a view to removing the new born baby into foster care as soon as he or she was born.

On 14th November 2015, the mother left the United Kingdom for Singapore, where she has remained ever since. The Local Authority was not informed of her departure.

By the time of the issue resolution hearing on 1st February 2016, the father had dispensed with his legal team. The order that day records that the court strongly encouraged the father to seek the advice of a solicitor and barrister and that he could benefit from professional representation at the final hearing. The order also records the father stating that he does not wish to employ the services of a lawyer, as he does not trust them.

By the time the trial came on in February 2016, the father was representing himself and the mother was not present. At an early stage, the judge refused the father's application to call the children as witnesses and permission to appeal that decision was refused."

- 11 In relation to the findings of fact, these were further summarised by Black LJ in her judgment of 17th August 2016 when she gave the father permission to appeal. She noted:

"The judge made other findings about activities on the part of the parents which were equally inappropriate and which would have been harmful emotionally for the children. For example, the parents' embroiled their daughter in the making of false allegations of incidents of physical and sexual abuse at school in the spring of 2015. They had also failed to have contact with the children for the six months that followed, them having been taken into care in August 2015 because they had been unwilling to sign the working agreement the Local Authority required regulating how they conducted themselves in the contact sessions. The judge found that this would have left the children feeling abandoned.

A further example was that the parents influenced the children to view professionals, such as social workers and health visitors negatively, encouraged them not to engage with them and encouraged the boy to lie about the source of his knowledge in relation to financial affairs. The parents encouraged the children on the judge's findings to stay away from school and said that they would not be interviewed. The boy became distressed at school and his behaviour deteriorated.

Only the father gave evidence before the judge and as I have said, he was representing himself, having withdrawn his instructions from his lawyers, the mother was in Singapore where she had gone whilst she was pregnant, it seems, in order to avoid the baby being taken into Local Authority care here. The baby was born on 6th December 2015 and seems to be living with the mother in Singapore, the father would say, without any problems.

The judge concluded the parents had not been able to meet the emotional and developmental needs of the children over the period 2014/2015 and there was no recognition by them that there was anything wrong with their parenting or that they, the parent bore any responsibility for the situation in which the family found itself.

Looking at the material available to me, the picture is one of the parents entrenching themselves in battle with the Local Authority and failing to have regard to their children's interest as they drew them into this."

THE LAW

- 12 When considering the father's application for discharge of the care orders, I have regard to the provisions of s.1(1) of the Children Act, 1989 that the welfare and best interest of both children are the court's paramount consideration and to s.1(3) of the 1989 Act, the welfare checklist.
- 13 When considering the application for placement orders, I have had regard to s.1(2) of the Adoption and Children Act, 2002, the children's welfare throughout the whole of their respective lives being the court's paramount consideration, s.1(4) of the 2002 Act, the welfare checklist and s.52 of the 2002 Act whereby I may only dispense with the parents' consent to adoption of either child on the ground that the child's welfare requires me to do so.

- 14 Throughout, I have had regard to the Art.6 and Art.8 rights of the parents and of the children, but bear in mind that where there is a tension between the Art.8 rights of a parent on the one hand and the rights of a child on the other, the rights of the child prevail: *Yousef v The Netherlands* [2003] 1 FLR 210.
- 15 When undertaking the welfare evaluation of the various realistic options for the future care of these children, I have had regard to the decisions of the Court of Appeal in the following cases. *Re B-S (Children)* [2013] EWCA Civ 1146, *Re G (A Child)* [2013] EWCA Civ 965, *Re R (A Child)* [2014] EWCA Civ 1625 and *Re P (A child)* [2016] EWCA Civ 3.

EVIDENCE

- 16 I have read the bundle of evidence and, in particular, I read the statements from the father dated 26th January 2017, from the mother dated 27th January and the two closing statements from the parents, both dated 31st January.
- 17 The father did not wish to cross-examine the social worker, nor did counsel for the children's guardian, accordingly, she was not called. The father did cross-examine the children's guardian. In terms, the father put his case to the guardian, namely that neither he nor the mother had ever harmed the children and that he and the mother were loving and caring parents. He begged the guardian to change his recommendation and to agree to the children returning to the care of the parents.
- 18 The father gave evidence and was briefly cross-examined by counsel for the Local Authority. The following matters are perfectly clear from the father's statement and from his oral evidence; (a) he and his wife love P and M very deeply; (b) neither he nor his wife have ever caused any harm or suffering to the children; (c) the Local Authority wrongfully removed the children from their care and wrongfully now keeps them in foster care; (d) it is the Local Authority who have harmed and damaged the children by removing the children from the parents and by placing them in foster care; (e) the children will suffer damage and harm in the future by virtue of being in foster care and/or separated from their parents; (f) the findings of fact made by Her Honour Judge Evans-Gordon are wrong and the father does not and will not accept any of them; and (g) given that they are both loving and caring parents, there is nothing either of them need to do to change or to become better parents.

- 19 It is crystal clear that the beliefs, views and stance of the mother and of the father have not changed one jot since the hearing before Her Honour Judge Evans-Gordon in February last year or, indeed, since the commencement of these proceedings in August 2015. Furthermore, the father told me that if he were to have direct contact with the children, he would not hesitate to express his views to the children. Principally, that they had been wrongly removed from the care of the parents and that they would be returning to their care in the near future.
- 20 I am completely satisfied, so that I am sure, that if the children remain in long-term foster care and had contact with the father, he would be wholly incapable of supporting the children remaining in long-term foster care and would do everything to undermine the placement.

ANALYSIS

- 21 The Local Authority's plan for the children changed from one of long-term foster care in November 2015 to adoption in December 2015. The plan changed because the children were no longer exhibiting the challenging behaviours they had previously and a senior social worker was of the view that whilst the ages of the children might well make the identification of suitable adopters difficult, that should not preclude the children of being afforded the opportunity to be placed in a 'forever family'.
- 22 There are four options for the future care of the children; (a) a return the care of the parents; (b) a placement with the father's brother and his family; (c) to remain in foster care; or (d) to be placed for adoption.
- 23 In relation to all four options, there is no issue of separating P and M. The advantages of rehabilitation are that the children will be re-united with their parents and would be introduced to and live with their little sister. The parents' plan would be to return to live in India with the children. The disadvantage of this option is that the children, without any shadow of a doubt, would be at very real risk of suffering the same significant harm that they did when previously in the care of the parents.
- 24 The proposal of placing the children in the care of the father's brother and his family is not, in my judgment, a realistic option for two reasons. First, the father has failed and refused to cooperate with the social workers so as to allow any assessment to be undertaken of the paternal uncle and his family and second, more importantly, but in any event, I am satisfied that there is no prospect that the children would, in fact, be cared

for by the paternal uncle. The children would be given into the care of the parents. This proposal is simply and solely a rouse to achieve that outcome. Neither parent accepts that there are any deficits in their parenting or any reason why the children should live separately from them. The paternal uncle has sent a letter to the court in support of the father and the mother. There is no evidence before me that he accepts the parents have harmed the children. The evidence is all to the contrary.

- 25 The option of long-term foster care has the advantage of maintaining the status of the parents as the parents of the children, it leaves open the possibility of the parents and their young sister playing a role in the lives of the children, and the possibility of future rehabilitation.
- 26 Very sadly, on the evidence I have read and heard, there is, in my judgment, not the slightest chance of the parents changing their views or their stance now, nor in the foreseeable future. Accordingly, the prospects of direct contact being in the welfare best interest, still less rehabilitation, are so small as to be discounted.
- 27 The children may have to move to new foster carers. Their current foster carers have not been approved as long-term foster carers and would be unlikely to be approved in the immediate future because of a lack of key skills and/or training. It may be that if placement orders are made and a search for prospective adopters is ultimately unsuccessful, by that time the foster carers may have acquired the skills and undertaken the identified training that will lead to them to be approved as long-term foster carers for these children. The social worker and the guardian are agreed that if adopters cannot be found, this would be the best alternate plan for both children. As matters stand, however, there is a real chance that the children would have to move to a new foster home, which would be a singular disadvantage.
- 28 A placement for adoption would bring to the children a degree of stability, security and permanence that long-term foster care cannot achieve. The risk of a further move to different foster carers is ever-present and the children are subject to regular involvement with social workers and subject to statutory reviews throughout the remainder of their respective minorities. If placed for adoption, the children would secure a 'forever family' with all the emotional and psychological benefits such a placement can achieve.
- 29 The singular disadvantage is that adoption severs, throughout the whole of their lives, the relationship with the parents and with their little sister.

This is a most important factor to which I must and do give particular weight when undertaking the balancing exercise in respect of the realistic options.

- 30 I remind myself that adoption is only to be favoured by the court when nothing else will do in the welfare and best interest of the children. The children, at seven and five-years-of-age are at the upper-age range of children who can be placed for adoption successfully. The guardian is satisfied, however, that the stage of development of both of these children is such that they are able to make new and secure attachments to new carers. He shares the view of the senior social worker referred to earlier that although it may be difficult to secure adopters for the children, that should not preclude them from being afforded the opportunity of being placed for adoption. The search cannot, however, continue indefinitely.
- 31 The children do not understand the concept of a new family and when the guardian recently raised the subject with them, they were not distressed, but bemused. Unsurprisingly, given their ages, they expressed a preference to stay with their current carers.
- 32 Standing back, I must consider which of the three realistic options is in the welfare and best interest of the children and is a proportionate course to follow in all the circumstances of the case.
- 33 In light of the stance adopted by the parents which, in my judgment, there is little or no chance that that will change, at all, in the foreseeable future, I am in no doubt that the only option which is in the welfare best interest of both children is for them to be placed for adoption. If an adoptive placement proves impossible to identify within a reasonable period of time, then the next best option is for the children to remain in long-term foster care, preferably with their current carers, but that may not be possible.

CONCLUSION

- 34 There is no evidence that there has been any material change in the circumstances of the mother, the father or of the children: whether since the Court of Appeal order in October last year or going back to the hearing in February 2016 when the care orders were made. The evidence is to the contrary. In the premises, the father's application to discharge the care orders is dismissed.

- 35 I am satisfied that nothing else will do in the welfare best interest of the children, other than to be placed for adoption. The parents do not consent to the same. I have no doubt that, very sadly, they will be heartbroken at my decision. I am satisfied, for the reasons given, that the welfare of the children requires me to dispense with the parents' consent. Accordingly, I do dispense with the consent of the mother and of the father to P and M being adopted. I make a placement order in respect of both of them.
- 36 I have no power to, nor would I wish to place a limit on the time taken to search for prospective adopters. That is a matter solely for the Local Authority.
- 37 There must come a time though when it is not in the interest of the children to pursue a search, most especially in light of their ages. They will be the subject of a statutory review in March next and then again September. By that latter review, if prospective adopters have not, unfortunately, been found, I would have thought it in the best interests of the children for the Local Authority to reflect on the care plan and for the decision to be made to revert to a plan of long-term foster care. In that event, the Local Authority will apply to revoke the placement orders.