Neutral Citation Number: [2019] EWCA Civ 2209

Case No: B4/2019/2418

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM LEEDS COMBINED COURT CENTRE
Deputy Circuit Judge Hunt
LS19C00551

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/12/2019

Before:

THE MASTER OF THE ROLLS
LADY JUSTICE KING
and
MR JUSTICE LAVENDER

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Y (A CHILD)

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- -

Brett Davies (instructed by **The Council of The City of Wakefield**) for the **Appellant**
Sally Bradley (instructed by **Brighton & Hove City Council**) for the **Respondent**
Alex Taylor (instructed by **King Street Solicitors**) for the **Child (written submissions only)**

Hearing date: 28th November 2019

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Approved Judgment

Lady Justice King:

1. This is an appeal from an order made by Deputy Circuit Judge Hunt on 17 September 2019. The judge made an order pursuant to section 31(8)(b) Children Act 1989 ("s31(8)(b)") that Wakefield City Council ("Wakefield") were to be the designated local authority in relation to care proceedings concerning a child, Y, who is now 18 months old and presently living with foster carers in Wakefield.

2. On 13 August 2019, Wakefield issued care proceedings in relation to Y. The next day, 14 August 2019, HHJ Bartfield made an interim care order. The court approved Wakefield's care plan which was for the immediate removal of Y from the care of her mother. A subsequent dispute between Brighton and Hove City Council ("BHCC") and Wakefield, as to which authority should be the designated local authority, was heard on 17 September 2019 by DCJ Hunt.

3. The issue between the two local authorities relates to funding and not to the interim care plan for Y. The judge was told that, regardless of designation, Y would remain in foster care in Wakefield for the duration of the care proceedings and that Wakefield social workers would present the evidence at the final hearing. If designated, BHCC's role would be limited to funding some, or all, of the social work and other related costs.

4. Such disputes between local authorities consume both time and scarce financial resources, which are better spent on the child(ren) at the centre of the argument. Designation disputes are now only rarely brought before the courts following Thorpe LJ having said in strong terms in *Northampton CC v Islington Council* [1999] EWCA Civ 3031 that:

> "In my opinion the judge's function is to carry out a rapid and not over sophisticated review of the history to make a purely factual determination. It is a question of fact and not of discretion."

5. This was a sentiment rehearsed by Ward LJ 12 years later in *Re D (a child)* [2012] EWCA Civ 627:

> "The other aspect of the purpose to be served which I highlighted in the judgment of Thorpe L.J. at [18] above is that the sections must provide a simple mechanism to determine a question of administration. The enquiry outlined above is simple enough. The budgets of the Social Services departments are already stretched enough by meeting the cost of care that they should not be further depleted by squabbles of this kind: better remember that there are swings and roundabouts and you may win one today but you will certainly lose another tomorrow."

6. The present case has been brought before the courts because of a disagreement between the two local authorities as to how a local authority is to be designated, where a parent has moved from place to place with his or her child, never staying anywhere long enough to acquire ordinary residence.

Background

7. The mother has had a troubled childhood. In 2013 her first child was made the subject of care and placement orders to BHCC. Three years later in 2016, her second child went to live with his paternal grandparents in Pakistan upon the application of the London Borough of Redbridge. By 2018, the mother was living in Bolton and pregnant again. The local authority in Bolton assessed the mother and made a care plan which would mean the removal of the expected baby at birth. The threat of the removal of her baby provoked the mother to flee to the Republic of Ireland where Y was born in May 2018.

8. Following her birth, Y spent three months in foster care before being returned to her mother's care in July 2018. Within days, concerns were such that Y was voluntarily accommodated until a residential placement could be identified. Mother and child were reunited at a residential assessment centre in Northern Ireland as no placement was available in the Republic.

9. In February 2019, the mother was moved to the Mater Dei hostel in Belfast where she and Y lived, receiving supervision and support. This move marked the end of the involvement of the Republic of Ireland, and Belfast HSCT ("Belfast") took over management of the case. During the next few months, the mother regularly left the hostel and visited both London and Dublin but she always returned to the hostel. By June 2019, the mother was saying that she did not wish to remain in Belfast but wanted to move to London. Meanwhile, the social workers in Belfast were increasingly concerned about the mother's care of Y, and on 10 June 2019 she was placed on the Child Protection Register under the category of potential physical abuse, neglect and emotional abuse.

10. On 11 July 2019, the mother again left Belfast and after a brief stay in Kidderminster, arrived in Brighton on 16 July. The next day, BHCC became formally involved when a request came from Belfast to conduct a welfare check. A BHCC social worker, accompanied by the police, saw the mother at an address in Brighton on 18 July. Whilst the property in which she was living was not suitable in the long-term, and there was some cause for concern about the level of care Y was receiving, the mother showed the social worker her return ticket to Belfast for 24 July. The welfare concerns were not sufficient for BHCC to feel the need to take any immediate action, particularly given that she was to return to Northern Ireland within days.

11. Unbeknownst to Brighton, after 9 days in that city, the mother moved to London on 26 July and then on to Wakefield on 29 July 2019 where she remains. During this time, the mother maintained contact with her support worker at the hostel and a social worker. The sort of breakdown in communication that there may, or may not, have been in Belfast, as between those in contact with the mother and those managing the case, is unclear. However, it is clear that on 1 August 2019, Belfast requested the co-operation of BHCC in locating and securing the safety of Y through an Emergency Protection Order (EPO) together with a recovery order, the mother having failed to return to Belfast on her return ticket on 24 July.

12. By 2 August 2019, Belfast had drafted an application for an interim care order with a care plan for immediate removal. In an interim threshold document prepared in anticipation of proceedings, dated as early as 5 July 2019, and substantially repeated

within the social work statement in support of the application, Belfast listed a catalogue of serious welfare concerns in respect of the mother's care of Y, including that:

> "[the mother] has fled from Brighton to Bolton to Dublin to avoid social services intervention. Currently [the mother] is at large in the UK with [Y] and is indecisive as to whether she will return to Belfast or remain in the UK."

13. Belfast's application for a care order recorded that BHCC were in the process of lodging an application for an EPO, in order to ensure Y's safety in England "with a view that Belfast Trust make an application for an ICO in order to place Y in a foster placement in Belfast".

14. Therefore, it was, and is, abundantly clear that Belfast saw BHCC's role as limited to assisting them to find the mother, with a view to her and Y being returned to Belfast where care proceedings would take place.

15. To this end, on 5 August 2019, BHCC applied for, and obtained, an EPO on the understanding that Belfast would be issuing the care proceedings imminently. BHCC continued to try and find the mother in Brighton, visits were made daily to the address they had seen the mother at on 18 July.

16. On 8 August 2019, BHCC again went to the address in Brighton. The mother's sister was there, she rang the mother who spoke to the social worker and (albeit with some reluctance) gave her an address in Wakefield. The recovery order was executed that night at that address and Y was placed in foster care.

17. Although Y had been removed from the care of her mother pursuant to the order, those executing the EPO, who had arrived at the address in Wakefield unannounced, had seen Y at home with the mother and her boyfriend for over an hour before Y was removed. The social worker had no immediate concerns about Y's care, and checks on the boyfriend did not throw up anything that would justify interference on the part of social care.

18. The EPO having been executed, the matter came before HHJ Jakens the following day, for a pre-listed hearing of an application to extend the EPO; on the basis that the mother had not, as yet, been traced.

19. During the course of the proceedings, it became clear (and this is not disputed) that the mother had been in contact with Belfast on a number of occasions since she had left Brighton on 25 July and specifically, on 6 August, she had attempted to notify them of her address in Wakefield.

20. Given that there were no immediate welfare concerns, and now no perceived flight risk, and given that the mother had been in touch with Belfast throughout the period when she had been thought to have been missing, BHCC sought permission to withdraw their application for the extension of the EPO which had been made before it was known where the mother was living.

21. HHJ Jakens was in a difficult situation and she was rightly concerned about Y. The only proceedings were the proceedings which were apparently issued in Belfast, who

had questionable jurisdiction over the mother in this country and which had not been served upon her. The judge's concern was exacerbated by the fact that, in her view, Wakefield were being uncooperative. Whilst there was no longer evidence justifying the continued separation of mother and child under an EPO, it was undoubtedly a worrying situation and on the face of it there was no one to monitor this very young child.

22. HHJ Jakens adjourned the matter until later in the day and arranged representation for the mother who appeared over the telephone. The judge held in her judgment, and recorded as a recital to the order, the following:

> "AND UPON the court being satisfied that the mother did attempt to contact Belfast HSCT and notify them of her whereabouts in Wakefield on 6 August and is concerned that Belfast HSCT did not communicate that to Brighton and Hove Council City*(sic)*prior to the issue of the extension application."

23. The judge went on to make an order granting the application of BHCC to withdraw their application to extend the EPO, upon the mother giving undertakings to keep Belfast, and any allocated social worker from another local authority, informed of any change of address.

24. The judge reflected her concern for Y, and her disapprobation of what she regarded as Wakefield's failure to co-operate with BHCC, in a number of recitals to her order; and invited Wakefield now to liaise with BHCC as a matter of urgency. The judge also invited Belfast to liaise with Wakefield, and the local police to undertake daily checks "pending further actions by either Wakefield MDC or Children's Services of Belfast HSCT". HHJ Jakens, in addition, made a specific issue order requiring the mother to make contact with a named social worker in Wakefield at the earliest opportunity, which she did. Y returned to her mother's care later that day.

25. It is completely apparent from the transcript of this hearing and the judgment, that the judge regarded the key players in relation to the welfare of Y as being Belfast and Wakefield, and that the judge saw no continuing role for BHCC.

26. Having had an opportunity to read the transcript of the hearing, the judgment and the order, in my view, both the parties and the mother have cause to be grateful to HHJ Jakens. The judge went to endless time and trouble in order to achieve an outcome that would allow the mother and Y to be reunited, whilst ensuring the mother and Y were subject to the monitoring and support, which was clearly necessary in Y's interests.

27. Pursuant to HHJ Jakens' request, welfare checks were undertaken by Wakefield over the next four days. Whilst no specific concerns were noted on two of those days, on 9 August 2019 an inhaler was seen in the sitting room of the property where the mother was living; the mother said it was for Y's asthma. Belfast confirmed to Wakefield that Y does not suffer from asthma and told Wakefield that the presence of the inhaler confirmed historical concerns that the mother "over medicates" her children. On 12 August 2019, Y was seen to have a red mark on her eye said to have been caused when she hit her face on a table whilst unsupervised.

28. The same day, 12 August 2019, Wakefield held a strategy meeting. The actions noted on the minutes of the meeting were that there was to be contact with the Belfast legal department and Wakefield was to issue "an EPO without notice due to the mark under Y's eye" and to arrange a child protection medical.

29. The following day, 13 August 2019, Wakefield made an application for a care order. Wakefield now seek to distance themselves from that application by referring to themselves as having been the "local authority of the moment" when they issued the application. The application sets out that Y is subject to Child Protection measures in Belfast, and that Belfast had issued proceedings for an interim care order in Belfast. The application sought a "same day" hearing for the removal of Y from her mother on the basis that there were "reasonable grounds to think that the mother might evade services by leaving the area".

30. The local authority identified the relevant date for consideration of whether the threshold criteria was satisfied as that day, 13 August. The proposed threshold set out again the various welfare concerns as identified by Belfast over the past few months.

31. Wakefield notified BHCC that they had issued an application for an ICO and said that they had requested Belfast to be nominated as the designated authority. It is accepted that at that stage, Wakefield did not seek to suggest that BHCC should be the designated local authority, and it is further accepted that it came as a considerable, and unwelcome, surprise for BHCC to discover that Wakefield now sought their local authority to be the designated local authority in Wakefield's care proceedings. Mr Davies on behalf of Wakefield, told the court during his submissions, that once it became clear to Wakefield that Belfast could not be designated (as they are out of the jurisdiction) they were under a duty to seek to conserve funds and see if there was another more appropriate local authority than Wakefield to be the designated local authority.

32. The application for an interim care order was heard as a contested matter on 14 August 2019 before HHJ Bartfield. HHJ Bartfield made an interim care order on the basis of a care plan for the immediate separation of Y from her mother. Belfast's application for an interim care order, which had still not been served, was returned to Belfast by the court because orders had been made in Leeds.

33. It has been necessary to set out the above background in order to determine the issue at hand. The facts, as set out, represent only a tiny proportion of the information put before this court, which included documents from all three of the local authorities who had been involved. In addition, the parties to the appeal encouraged the court to look at local authority case notes; records that are only rarely seen, even in a fully contested care case. The court refused to admit them, the judge below (rightly) having been told that they were not necessary for the determination of the issue. This case is a prime example of the type of litigation Thorpe LJ and Ward LJ sought to discourage; spending many hours picking through the history of the case is, in my judgment, anything but a "rapid and not over sophisticated review of the history".

Designation of local authorities

34. S31(8) Children Act 1989 provides:

> "8. The local authority designated in a care order must be—

> (a) the authority within whose area the child is ordinarily resident; or
>
> (b) where the child does not reside in the area of a local authority, the authority within whose area any circumstances arose in consequence of which the order is being made."

35. The starting point for consideration as to which local authority should be designated is s31(8)(a). If a child is found to be ordinarily resident in an area, then that is the end of the matter and the local authority in that area will be the designated authority (see *Re S (A Child)* [2017] EWCA Civ 2695*)*.

36. The judge found that Y has no ordinary place of residence ([23]).

37. BHCC filed a Respondent's Notice in this appeal, saying that the judge had been wrong in determining that Y had no ordinary residence and that the mother (and therefore Y) were ordinarily resident in Wakefield. On behalf of BHCC, Ms Bradley realistically accepted in oral submissions that the question of ordinary residence is a question of fact and that, absent an error of law or the judge having reached a conclusion not open to any reasonable judge, this court will not interfere with such a finding.

38. In any event, the judge was, in my view, plainly right in his conclusion. At the date when Y was taken into care, the mother and Y were resident in Wakefield, having moved around between Belfast, Kidderminster, Brighton and London in the preceding few weeks. In my judgment, the judge was right to conclude that at the time the interim care order was made, Y was not ordinarily resident in any local authority area.

39. In those circumstance, the court must turn to s31(8)(b) and determine "the authority within whose area any circumstances arose in consequence of which the order is being made". In *Northampton CC v Islington Council* [1999] EWCA Civ 3031 *(Northampton)*, Thorpe LJ reviewed the various conflicting authorities in relation to the interpretation of s31(8)(b). He said:

> "I am convinced that section 31(8) was never intended to be a gateway to extensive judicial investigation of a number of relevant facts and circumstances as the prelude to the exercise of some discretionary choice. It was surely intended to be a simple test to enable the court to make a rapid designation of the authority upon which is to fall the administrative, professional and financial responsibility for implementing the care order and the care plan. Where the child has connections with more than one area ordinary residence determines on the basis that almost every child will have an ordinary residence, if not a presence, in some local authority area. In the rare case where a child lacks an ordinary residence in a local authority area the court designates the area in which occurred the events that carried the application over the section 31 threshold.

> "The circumstances to which the judge should have regard are the primary circumstances that carry the case over the section 31 threshold. That may be a positive act or series of acts, such as sexual or physical abuse. If there has been extensive abuse there will usually be an ultimate or an outstanding episode that triggered local authority intervention. The judge will have no difficulty in locating that event. In other cases the foundation for the care order may be negative conduct such as neglect, consistently poor parenting or a failure to provide emotional support. Even in chronic cases without any acute episode it will usually be simple enough for the judge to discern the place or, if more than one, the principal place at which the failure occurred. In my opinion the judge's function is to carry out a rapid and not over sophisticated review of the history to make a purely factual determination. It is a question of fact and not of discretion."

40. More recently, in *Re D (A Child)* [2012] EWCA Civ 627, [2012] 3 WLR 1468 Ward LJ said:

> "19. If one asks which local authority is to bear the burden of responsibility for implementing the care order and care plan, it seems to me that the answer is fairly obvious. For the section 31 threshold to be crossed the child must be suffering, or be likely to suffer, significant harm at the time the local authority initiated the procedure for the protection of the child concerned. Where the child is ordinarily living, or where the relevant threshold events take place, is the relevant *locus* which provides the best identification of a practical, temporal and physical connection between local authority and child. The burden of the eventual responsibility for implementing the care order should then fall on the local authority having that connection. The designation of the appropriate local authority under section 31(8) seeks to do just that.
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> 20. As I see it, sections 31(8)(a) and (b) are in harmony. Take section 31(8)(b) first. When the child – and this must mean the child who is the subject of the care order – does not reside (perhaps does not *ordinarily* reside per *Northamptonshire CC*) in the area of a local authority, the authority to be designated in the order is the authority within whose area any circumstance arose in consequence of which the order is being made. The temporal focus is on the time leading up to the issue of the proceedings. The factual focus is on the primary circumstances that carry the case over the section 31 threshold. The local authority where these events happen has the responsibility to take action and should be charged with the responsibility of providing the care that follows."

41. Since *Northamptonshire* and *Re D (A child),* where there has been a dispute between two local authorities as to which is to be the designated local authority, the "circumstances (which) arose in consequence of which the order is being made" under

CA 1989, s 31(8)(b) has been informed by reference to "the primary circumstances that carry the case over the s 31 threshold". Although perhaps more apposite on the facts of this case would be, also per Thorpe LJ, a consideration of the "ultimate or an outstanding episode that triggered local authority intervention".

The Judgment

42. The judge, having considered HHJ Bartfield's judgment and the chronology as a whole, concluded that it was difficult to ascribe the crossing of a threshold to any particular fact or set of facts, and that the "shortcomings" in the parenting of the mother, if proved, did not arise in any specific place. The judge went on to say that he agreed with HHJ Bartfield, that the factor which justified his determination that the threshold for removal was crossed, was the risk of further flight and the avoidance of proper monitoring and assessment and the deliberate avoidance of the proceedings ([29]). The judge said that it was Wakefield that had identified that as a risk which should lead to the making of an interim care order. "At the relevant time", the judge said, "the mother was living in Wakefield and the identified risk was a risk of further flight from Wakefield". He concluded that Wakefield was the appropriate authority, saying:

> "30. Accordingly, for those reasons, my judgment is that the place where the case was carried over the relevant threshold… was Wakefield – the place from which the child was at risk of being removed if her mother was to flee again. That was the basis of Judge Bartfield finding that the threshold justifying immediate removal was crossed."

Wakefield's Case

43. In challenging that factual determination, Mr Davies submits that the judge was in error in reaching the conclusion he did, and that there are four features which should have persuaded the judge that BHCC, and not Wakefield, was the appropriate designated authority:

    i) That the mother had had a previous child removed by BHCC. This, said Mr Davies, was an important feature showing a long-term connection by BHCC with the mother which was resumed when she came to Brighton in July 2019;

    ii) That the welfare visit carried out by BHCC on 18 July 2019 should have showed BHCC unequivocally that the mother could not provide adequate care for Y and BHCC, in fulfilling their statutory duties towards Y, should then have taken immediate action. Had they done so, Mr Davies submitted, the mother would not have been able to move to Wakefield;

    iii) This, says Mr Davies, ties in with, what he says, is a generally accepted premise: Mr Davies submits that where a person ("P") is subject to the involvement of a local authority ("Local Authority A") and moves to a different local authority ("Local Authority B") as a consequence of some action (or here, it is suggested, inaction) on the part of Local Authority A, Local Authority A remains responsible for any costs which arise in Local Authority B's area in relation to

P. Local Authority A cannot, Mr Davies says, seek to transfer the responsibility for costs referable to P which arise as a result of the move to Local Authority B. In support of this submission, Mr Davies relies upon *R on the application of the London Borough of Greenwich v Secretary of State for Health and the London Borough of Bexley* [2006] EWHC 2576 *("Greenwich")* to which I will return in due course;

iv) That the 'flight risk' crystallised on 24 July 2019 when the mother did not return to Northern Ireland on her return ticket. That, submits Mr Davies, is the date upon which "circumstances arose in consequence of which the order is being made" and at that time the mother was still in Brighton.

44. Ms Bradley submits on behalf of BHCC that the circumstances which arose which led to the making of the interim care order were Wakefield's concerns about the inhaler and the bruise which led directly to the issue of the care proceedings by Wakefield. Given the mother's history, the commencement of proceedings would inevitably have substantially heightened the flight risk over and above that which existed when HHJ Jakens made her order, on the basis of Y remaining with her mother without a court order but subject to undertakings.

Discussion

45. In my judgment, the mother's previous connection to BHCC was both too distant and too remote to do anything other than form a part of the overall chronology. The care proceedings in Brighton related to a child born in 2012. Since that time, the mother's second child was removed by Redbridge and the care plan providing for the removal of Y from her mother at birth, which led to the mother's flight to Dublin, was made by Bolton. Belfast had provided a residential assessment and it was Belfast who had placed Y on the equivalent of the child protection register.

46. The welfare visit conducted by a senior social worker and the police, on behalf of Belfast, on 18 July revealed no concerns which necessitated immediate safeguarding action. Whilst the environment was unsuitable for a young child for other than the short-term, Y was safe and well and the mother showed the social worker a return air ticket to return to Belfast on 24 July. There was no cause, therefore, for BHCC to believe there was an immediate flight risk. When it was believed that the mother had disappeared from the radar, BHCC was asked to obtain an EPO by Belfast, a request with which they co-operated fully, both in relation to obtaining the order and thereafter with its implementation.

47. Mr Davies' argument is that had BHCC, as he says they should have done, taken action on 18 July to have Y removed from her mother's care, then she would have remained in Brighton. BHCC cannot now, he submits, as a consequence of their failure to carry out their statutory duties, avoid being the designated local authority. The *Greenwich* case, he submits, is authority for that proposition.

48. *Greenwich* was a first instance Judicial Review case in the Administrative Court which is not binding on this court. In any event, with respect to Mr Davies, in my judgment the *Greenwich* case is of no assistance to him. In that case, Local Authority A, having been unable to identify a suitable placement locally, placed a woman who had lived in a residential placement and was ordinarily resident in their borough in the adjoining

local authority (Local Authority B). The woman in question was going to pass through the capital financial cap imminently and, as a result, the whole cost of her residential placement would fall onto a local authority. Local Authority A sought to place the burden of payment for the placement on Local Authority B.

49. Charles J held that Local Authority A remained liable for the residential home fees. The judge highlighted that looking at the relevant statutory powers (which have no application in the present case), local authorities have a duty towards persons who are ordinarily resident in their area, whereas they have only a power in relation to persons not ordinarily resident in their area. ([14]). Preservation of a duty is, Charles J said, a relevant factor to be taken into consideration when considering whether a person has ceased to become ordinarily resident in a local area which owed him a duty ([15]). This in turn impacts on liability to pay.

50. Mr Davies' argument, therefore, is essentially that BHCC owed a duty to the mother and Y, as they should have taken protective measures on 18 July 2019. It follows, he says, that upon the mother relocating to Wakefield, the duty owed by BHCC to the mother and Y had been preserved and liability for protective measures, now in the form of care proceedings, rested with BHCC.

51. With respect to Mr Davies, even if the same statutory code applied to the present proceedings, the two situations are not in my view comparable. This mother was not at any time ordinarily resident in Brighton and, far from being placed in Wakefield by BHCC, their involvement had been tangential at best, having been entirely conducted at the request and upon the instruction of Belfast.

52. This case in not, therefore, a *Greenwich* case. Mr Davies told the court that *Greenwich* is used as part of the Secretary of State for Health and Social Care's ordinary residence guidance under Care Act 2014 for local authorities who need to resolve issues of designation. If that is the case, I should make it clear that I am in no way seeking to undermine such guidance. I am not suggesting that, on a factual situation, which is genuinely analogous to the *Greenwich* case, and where a local authority places a child who is in their care and ordinarily resident in their area outside their local authority area, that the same *Greenwich* principles would not, or may not, apply.

53. Mr Davies finally argues that the 'flight risk' crystallised on 24 July 2019 when the mother failed to return to Ireland. That, he said, was when the circumstances arose in consequence of which the order was made and, as the mother did not leave Brighton until the following day, BHCC should be identified as the designated local authority.

54. In my judgment, this court cannot go behind the finding of HHJ Jakens, which was based in part upon texts she was shown, that the mother had been in contact with Belfast and had endeavoured to tell social care of her whereabouts at least on 6 August. HHJ Jakens' concern about Y was palpable but, on the evidence before her at that time, she made an order which allowed Y to return to her mother upon her undertakings to keep social services informed as to her whereabouts, and accordingly granted BHCC's application to withdraw the application to extend the EPO. On the facts at that time, the judge did not take the view that there was a flight risk, notwithstanding that the mother had not used her ticket to return to Ireland. The mother subsequently complied with her undertakings and remained at the address she had given to the court.

55. Things had moved on by the time the matter came before HHJ Bartfield on 14 August. The mother was once again under threat of losing her child as care proceedings had been issued by Wakefield. The judge heard the mother give oral evidence and disbelieved her on a number of issues, including her honesty in relation to when she had informed the authorities of her whereabouts. The judge, having seen and heard the mother cross examined, was entitled to conclude that the welfare issues raised by the local authority merited the making of an interim care order, and that he now had no doubt that, care proceedings having been issued, there was a flight risk.

56. Put in terms of the statute, the circumstances which arose in consequence of which the order was made were, therefore, the issue of the care proceedings following the strategy meeting of 12 August which, coupled with the history and the judge's assessment of the mother, led to the making of an interim care order with a care plan for the immediate removal of Y from the care of her mother.

57. In my judgment, that part of Thorpe LJ's judgment whereby he said that a local authority is identified by reference to the 'primary circumstances that carry the case over the s 31 threshold' does not, on its own, have a direct application in cases such as the present case where a parent, about whom there are concerns, leads what is, in effect, an itinerant lifestyle either by choice or to evade the social care authorities. It is necessary to read Thorpe LJ's observations as a whole, including his reference to "an ultimate or an outstanding episode that triggered local authority intervention". As the judge identified, it is difficult on the facts of this case to ascribe the crossing of the threshold to any particular fact or set of facts, although it will be recollected that Wakefield themselves had identified the date they issued care proceedings, 13 August, as the relevant date for the threshold criteria.

58. The difficulty in this case arose from the fact that the mother has moved from place to place and that the threshold could, no doubt, have been satisfied at any stage over many months. Whilst Belfast held the protective reins until August this year, in each of the mother's various staging posts following her departure from Northern Ireland, it could have been said that the combination of her instability, care of her child and her risky relationships with men meant that the threshold had been crossed. In those circumstances, the obvious candidate under s31(8)(b), as was recognised by Wakefield, would have been Belfast and not BHCC. Designation of Belfast is not, however, a possibility, as the Children Act 1989 contains no power to designate a local authority out of the jurisdiction. No doubt had it been a local authority in England and Wales who had played the role Belfast has played in the life of this child, there would have been no question that they would have been, without argument, the designated local authority.

59. In the present circumstances however, care proceedings have now been issued in this jurisdiction and there must be a designated local authority to take responsibility for them. The court must necessarily look again at the words of the statute and consider the area in which "any circumstances arose in consequence of which the order is being made".

60. The circumstances that arose, which led to HHJ Bartfield making the order in question was, as set out in Wakefield's own application, the recent welfare concerns that the strategy meeting had decided justified Y's removal into care. It was that immediate concern, together with the consequent flight risk, which meant that the order being

sought was not to be an interim care order with Y living with her mother subject to monitoring, but immediate removal to a foster placement. As HHJ Bartfield said in his sensible and careful judgment:

> "14. I have no doubt that with the proceedings underway as of today she does present a flight risk. That would mean that this child would yet again be at risk of the self-same factors identified in Belfast earlier this year…"

61. Where, as here, the matters of concern were capable of satisfying the threshold at any stage over a period of time, but attempts were being made to manage the case without resorting to care proceedings, then the relevant time will not be the time when, had a local authority chosen to issue proceedings, the section 31 threshold could first have been satisfied. Rather, it will be the time when, for whatever reason, a local authority determines that proceedings must now be initiated; in other words when "circumstances arose in consequence of which the order is being made".

62. Following the making of the interim care order, it was unfortunate that the case could not be listed again before HHJ Bartfield to decide who was to be the designated local authority. The matter therefore came before DCJ Hunt who, with his considerable experience, dealt with the application with economy, initially having heard submissions, by giving a concise and clear ruling with short reasons. He found that it was the flight risk which justified the making of the order made by HHJ Bartfield, and that the identified flight risk was from Wakefield. At the request of Wakefield, the judge later give a far fuller judgment in which he said:

> "28. What I have taken from all this and the chronology as a whole is that it is difficult to ascribe the crossing of a threshold to a particular fact or set of facts…
>
> "29. I agree entirely with Judge Bartfield that the factor which justified his determination that the threshold for removal was crossed was the risk of further flight, and the avoidance of proper monitoring and assessment of [Y]'s safety, and the deliberate avoidance of proceedings".

63. That, to borrow the words of Thorps LJ, was the "ultimate or an outstanding episode that triggered local authority intervention" and justified the judge's conclusion that Wakefield should properly be designated the appropriate local authority.

Conclusion

64. In my judgment therefore, the judge made no error of law in his application of the statute and he was entitled to reach the conclusion he did on the facts before him and accordingly, to designate Wakefield as the appropriate local authority. I would therefore, subject to my Lordships' views, dismiss the appeal.

65. Finally, whilst I am realistic about the difficult financial constraints under which local authorities operate, I would urge all local authorities to have in mind Ward LJ's

observations about 'swings and roundabouts' before embarking on disputes such as the present one. Wakefield, initially and correctly, had no sense that BHCC would be the appropriate authority to be designated. Unfortunately however, once it was clear that Belfast would not be the designated local authority, they seem to have felt obligated to find a way to avoid responsibility for the funding of Y's placement and of the care proceedings in relation to Y. The result was that costs were incurred in legal proceedings which would, almost certainly, have covered the expense of Y's foster care for many months.

Mr Justice Lavender:

66. I agree.

Sir Terence Etherton MR:

67. I also agree.