



Neutral Citation Number: [2021] EWCA Civ 499

B4/2021/0611

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM LIVERPOOL FAMILY COURT
HHJ Greensmith
Case No: LV20C02350

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/04/2021

Before :

LORD JUSTICE PETER JACKSON
and
LORD JUSTICE EDIS

Re P (a Child) (Interim Separation)

Mr Shaun Spencer (instructed by **Warrington Borough Council**) for the **Appellant**
Mr Daniel Reilly (instructed by **Watsons Solicitors**) for the **First Respondent Mother**
Mr Stephen Mallinson (instructed by **Nyland & Beattie Solicitors**) for the **Second Respondent Father**
Mrs Ruth Scarisbrick (of **Bell Lamb & Joynson Solicitors**) for the **Third Respondent Child**

Hearing date: 6th April 2021

Approved Judgments

Lord Justice Peter Jackson:

1. We heard this appeal, which concerns the separation of a mother and baby, as a matter of urgency today. During the remote hearing it became clear that the appeal was not opposed and we informed the parties that it would be allowed; these are my reasons.
2. The child, C, was born in August 2020. He became the subject of an interim care order in the week of his birth, and he and his mother were placed in a mother and baby foster placement. This broke down within days and the court approved a plan for C to be placed in foster care. However, in mid-October he was reunited with his mother in a residential assessment unit ('the Unit'). When approving this step, the court required there to be CCTV monitoring.
3. After 12 weeks of assessment, a parenting assessment was completed by the residential Unit on 11 January 2021 using a PAMS assessment method. The report noted that the mother had made progress at first, but it had not been consistently sustained:

“It is expected that during the latter stages of the assessment M would function with minimal support, including CCTV being removed and having unlimited supervised time out. However, towards the final stage of the assessment staff intervention appears to have increased; staff on a frequent, almost daily, basis have had to attend the apartment to prompt M to meet C’s basic care needs. Due to the concerns present within the 12 weeks of the assessment, M has not been granted any unsupervised time out; it has therefore been difficult to assess M’s independent abilities within the community.”

The report also referred to occasions when the mother displayed verbally threatening behaviour that required the staff to remove C from her care. Its conclusion was that C could not return to the community with his mother.

4. After C’s birth, the mother had begun a relationship with a Mr. T. In March 2021, it was agreed that he should join her in the unit, and the court ordered it to assess whether he could compensate for the identified deficits in her parenting and whether they were able to prioritise the care of C over their own relationship. An interim report was to be filed on 4 May 2021. Mr T moved into the Unit on 22 March.
5. Unfortunately, matters further deteriorated during the following week. The Unit reported a number of incidents when the mother failed to meet basic care needs, verbally abused the child and staff, threatened staff and engaged in self-harming and volatile behaviour. C was removed from his mother and cared for by staff on the nights of 26 and 29 March. On 30 March, the mother demanded C’s return to her care and, when this was refused, there was an incident in which she attempted to harm herself and assaulted Mr T when he tried to restrain her. As a result the Unit gave notice to terminate the placement because it could no longer ensure the safety of the child, family and staff. On the same day, the local authority issued an urgent application for permission to remove C from his mother and place him in foster care. The application was accompanied by a statement of the social worker and records from the Unit. It was supported by the Independent Reporting Officer and the Children's Guardian.

6. On Wednesday 31 March at noon, the matter came before His Honour Judge Greensmith ('the Judge'), who is not the allocated judge. He refused the local authority's application that day and listed the case for the next day at 3 p.m. He directed the local authority to file a position statement by 10 a.m. regarding the support that could be put in place to keep the mother and child from being separated.
7. The local authority filed and served the position statement as directed. It discounted placement in another mother and baby foster placement on the basis of the previous failed attempt and the risks arising from recent events. As to placement at another residential unit, a search of 29 providers had been undertaken. Four had replied, and none were willing or able to accept the family immediately. Those that indicated that they might be able to accommodate the family in the future stated that they would need more information in order to make an informed decision. The local authority did not support this option. Finally, consideration was given to a placement in the mother's own two-bedroom flat with CCTV monitoring, or with social workers living in, both of which were discounted on grounds of risk and practicality.
8. On Thursday 1 April, the case was heard at 3pm. Immediately before the hearing, the local authority received a further response from a service provider that indicated that it could put together a support package for home supervision and was identifying staff, but that it required more information to complete a support plan and risk assessment.
9. The Judge heard submissions from the parties and gave an ex tempore judgment. He referred to the decision of this court in *Re C* [2019] EWCA Civ 1998. He continued, according to the note of judgment:

"C has been placed in his M's care since birth one way or another. C is now 9 months old. Separating child from his M's care would be traumatic both for M and child.

M is a person with significant mental health difficulties, difficulties which need support, and this is a person who needs nurturing rather than criticising. The current placement has acted in the court's view in a manner which needs serious consideration as to whether it was reached proportionately as a provider of professional services... M has behaved in the way that she has for a considerable period of time. The unit knew what the M's mental health was and it knows what her limitations are. If it is the case that the M's behaviour has deteriorated since Mr T has joined the placement then the simple answer to that would be for Mr T to leave the placement and not the M. I and the court would be very disappointed if this provider was to refuse to continue to provide care for the M and Mr T and C before this matter can next come before the court. If the provider will not accommodate C and his mother and Mr T and Mr T's presence is by no means secure then I consider that it is a reasonable step for the LA to take to provide support for the M in her home and to provide any furniture or basic needs that she requires to secure that placement. The cost has been brought to the court's attention of £8000. The court expects the LA to take this on a short term basis possible week to week. The court has to consider whether it is a reasonable alternative and in my view it is.

I turn now to separation as fundamental issue: court does not have the evidence to enable it to make a decision in an informed way as to whether separation as a fundamental issue is necessary. It has not been adjudicated on judicially and it needs to be adjudicated upon judicially ... The judge who next hears this needs to be equipped with that information. I am not approving the LA's plan of removal and I have made it plain why."

The Judge gave directions for the matter to return for a one-hour hearing before another judge on Friday 9 April.

10. The local authority issued an application for permission to appeal and this was heard at a remote hearing out of hours by My Lord, Lord Justice Edis, on the evening of Thursday 1 April. Having heard from the parties, he granted permission to appeal and listed the appeal for hearing today. In the interim, permission was granted for C to be placed in foster care. Contact has taken place on all but one day since then.
11. On behalf of the local authority, Mr Shaun Spencer submitted that the Judge failed to engage with the situation on the ground. There were sound reasons why C's immediate needs could not be met by any of the alternative arrangements. The last-minute information from the potential provider was no more than an expression of interest and the Judge was wrong to treat it as a realistic alternative to separation. The only actually available option was for C to be placed in foster care until the matter could return to court for a considered hearing. These submissions, fully developed in writing, were supported by the father and the Children's Guardian.
12. In response, Mr Daniel Reilly, informed the court that the mother had reflected carefully on C's position and had come to the conclusion that it would not be in his interests for her to oppose the appeal. What she described as 'the workings-out' meant that the Judge's decision was not appropriate for C, although it had been made in the right spirit. She wanted the best outcome for C and had co-operated with the move into foster care and with supervised contact.
13. It is unnecessary to say more about the background. The appeal concerns a specific short-term decision and this court has no view about the longer-term decisions that must be made.
14. Coming then to a conclusion, it is in my view understandable that the Judge should have been concerned about the importance of C's placement with his mother and the possible long-term consequences of him being separated from her. However, it was necessary to take a practical view of the situation. In the light of the evidence of recent events, which the Judge accepted for the purpose of his decision, the Unit had reached the view that the placement could not safely continue. There was no proper basis on which the court could doubt that assessment by professionals who had been monitoring the situation for over 5 months, and it would not have been right to have put pressure on them to continue the placement. That left four other theoretical possibilities. For C to be placed with his mother in the community unsupervised is, at least at this stage, impossible. An alternative residential placement, if that was thought appropriate, would inevitably take time to arrange. 24-hour CCTV monitoring in the mother's own flat would not be a suitable response, not least because it would offer even less protection than a residential unit. The only

remaining option was for the local authority to set up full-time live-in supervision in the mother's small flat. That again is a completely exceptional measure, but even if it was appropriate at the level of principle, it would take time to implement. The judge approached the matter as if it could be put in place immediately, and in that respect he fell into error.

15. The obvious, and in my view only, solution to the position as it existed on the afternoon of the hearing, which as it happens preceded a bank holiday weekend, was for the court to approve the local authority's plan for separation. That is the position that was achieved as a result of My Lord's order, and it will now continue until a full hearing can take place in the Family Court. The hearing next Friday will, at the invitation of the parties, be retained so that the court can then give considered directions for a swift and effective decision to be taken at the earliest date thereafter, if possible by the allocated judge. In the meantime, the appeal is allowed and C will remain in foster care with frequent contact with his mother.

Lord Justice Edis

16. I agree.
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