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NEWCASTLE UPON TYNE COUNTY COURT

Case No: NY13C00038

The Law Courts
Quayside
Newcastle-upon-Tyne
Tyne & Wear
NE1 3LA

24th February 2014

Before :

Her Honour Judge Hudson

Between :

Newcastle upon Tyne City Council

Applicant

- and -

RA (1)

MA ((2)

Respondents

The children (3)

(by their Children's Guardian, Aileen Firth)

Hearing dates: 17 – 21 February 2014

APPROVED JUDGMENT

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- 1 **Her Honour Judge Hudson :** These care proceedings concern two young girls, AIA born on 27th March 2009 (now nearly four years and eleven months) and ARA born on 13th September 2011 (aged two years and five months). They are the children of R and MA, who share parental responsibility for them. The care proceedings were issued on 5th June 2013 following extensive involvement of the local authority, Newcastle City Council, and health and other professionals in relation to the children's feeding, health and wellbeing in the care of their parents.
- 2 On 4th July 2013, following a contested interim hearing, the District Judge made interim care orders and approved an interim care plan of placement of the two girls in foster care. The children have since been placed together with local authority foster carers and have had supervised contact with their parents four times each week.
- 3 The District Judge also gave case management directions, including the instruction of Dr Kate Ward, a consultant paediatrician, to undertake a paediatric assessment of the children. The parents were directed at that hearing to identify any alternative carers, with further directions for a viability assessment of any such carers to be undertaken. The local authority duly assessed MAK (MA's sister) and her husband, MS. The assessment was completed on 28th August 2013 but did not support placement or further assessment. No further steps were taken by them in relation to this assessment.
- 4 The case was then timetabled to an issues resolution hearing in the week of 4th November 2013. It was then re-timetabled in October 2013, it appears to accommodate the delayed filing of Dr Ward's report. The case first came before me on 29th November 2013 for an issues resolution hearing, less than one week before the expiry of the twenty six week track which had been set for the case.
- 5 The local authority was seeking final care orders with care plans of adoption. The local authority had issued placement applications to be determined at the conclusion of the care proceedings. The position of the parents at that hearing was far from clear. Then, as throughout the local authority's involvement and now, the parents were presenting as a couple. In these circumstances it was troubling to find that the mother's case was that she conceded the threshold criteria were established and that she and the father could not care for the children. In contrast, the father was disputing the threshold criteria and proposing himself and his wife as joint carers. The children's guardian, Aileen Firth, had filed reports in the care and placement applications, indicating her support for the local authority's applications.
- 6 The parents were accompanied at that hearing by a maternal uncle and aunt of the mother, MY, and his wife, SA. They were putting themselves forward as carers for the children and seeking assessment. It appears that they had been unaware of the children's situation until early November 2013.
- 7 At the hearing before me on 29th November 2013, it was unclear, however, what they were proposing in terms of the care of the children and the involvement of the parents or otherwise in any such arrangement. At that stage they had only limited information about the children's history and their assessed needs.

- 8 The local authority was quite properly agreeing to undertake an assessment of MY and SA, in circumstances in which their plan for the children otherwise was placement of the children for adoption. I therefore gave directions for an agreed list of relevant reports to be disclosed to MY and his wife and timetabled the case to a final hearing on 17th February 2014.
- 9 In the light of the lack of clarity in relation to the parents position, both in relation to threshold and their proposals for the care of the children, I listed an adjourned issues resolution hearing on 20th December 2013, with a view to ensuring that there was as much clarity as could be achieved as to the issues to be determined at the final hearing. Position statements filed by the parents before the adjourned issues resolution hearing confirmed they each supported the plan for the children to be placed with the Ys
- 10 The mother's position statement (at A109) stated her acceptance that she and the father could not care for the children and her 'delight and relief', as she described it, that the Ys were putting themselves forward. The mother proposed that the children should move to the Ys, following which there would need to be a period for the children 'to transfer the good eating behaviour and to ensure that this is firmly in place before re-introducing her into the same household'. It was then her proposal that she would live with the Ys, but that the Ys would be the children's carers.
- 11 The father's position statement (at A113) confirmed this position - for the mother to move in once the children were ready and settled with the Ys and following guidance from professionals. He stated his intention to move in with the Ys once his business and home affairs were sorted in the North East of England and when the family were ready.
- 12 The parents each confirmed the threshold criteria were conceded, accepting the majority of the local authority's findings, both in relation to threshold and the further schedule of findings which the local authority had filed in relation to welfare. It was confirmed at that issues resolution and on behalf of the parents that Dr Ward was not required for cross examination, although further questions were to be put to her.
- 13 By an application dated 24th January 2014, however, the solicitor for the mother sought a direction for Dr Ward's attendance at the forthcoming final hearing. In the light of this a directions hearing took place before me on 6th February 2014.
- 14 In addition to the issue of Dr Ward's attendance or otherwise, a position statement which was filed by the children's guardian cast further doubt over the case which was being put by the family. The guardian's understanding was that the Ys were putting themselves forward as short term carers only, with a view to 'training' the mother to care for the children. The guardian recorded her account of meetings with the parents only a matter of days before her position statement was filed, in which she said they each were stating their wish to care for the children and that they envisaged that they would do so.
- 15 In the light of the continuing uncertainty about the case being put by the family, I directed that Dr Ward should give oral evidence if that could be achieved at such short

notice. I also directed further statements to be filed by the parents and by Mr and Mrs Y, if they wish to do so, to clarify the position if possible.

16 The mother's statement confirmed that she had told the children's guardian she wanted to care for the children, but accepted that that was not realistic and that she could not do so. Her position statement confirmed she supported the proposed placement with the Ys, although she intended to live with them and therefore separately from the father. The father's statement stated his position that the Ys would be the children's carers, but that he and his wife would want to live together and with the children.

17 A statement was filed from MY which stated that he and his wife would like the mother to learn from them, and that he envisaged that the parents may have more of a parental relationship in time. He said that he and his wife would care for the children so long as necessary. In his statement he agreed that the children may need a settling in period without their mother in the household. His statement recorded his position and that of the family: that it would not be culturally appropriate for them to care for the children without their mother being in the same household.

18 The case came before me for final hearing on 17th February 2014. At that hearing the mother was represented by Mr Gray for the first time; the father was represented by Miss Wood, as he had been at all of the hearings before me. Both parents were assisted throughout the hearing by interpreters. MY and SA were also present during the hearing. I was told at the outset that the family were putting forward a united case: that placement of the children should be with the Ys with the mother living in their home with them.

19 During the course of the hearing I heard evidence from Dr Kate Ward. I express particular thanks to her for making herself available at short notice and in what I know to be difficult circumstances. I heard evidence from two social workers, Melanie Kennedy, who was the allocated social worker for the girls until December 2013, and from Laura Sim, the currently allocated social worker who became involved in November 2013. I heard evidence from MY, from RA, MA and the children's guardian.

20 None of the other witnesses who had filed statements were required. SA was available to give evidence, but confirmed that she agreed with her husband's evidence. No-one required her to give oral evidence in those circumstances.

21 I heard the evidence and submissions over five days (apart from the time taken during my court list for other short appointments). I give judgment today, 24th February 2014, the next working day.

22 As I turn to the background of the proceedings I should record that this is not a case in which there are many significant factual disputes of relevance. Insofar as I make any findings of fact, it is for the party making an allegation to prove it, and I determine all factual disputes on the simple balance of probabilities.

23 The family are Pakistani Muslims. The mother is aged thirty six; the father aged thirty. He was previously married and lived with his first wife in the North East of

England. That marriage ended in divorce. He travelled to Pakistan for an arranged marriage with the mother in 2007. They came together to the United Kingdom in 2008. It is evident from the documentary evidence and from the oral evidence I heard from the parents, that they each have their own limitations. I will return to this issue shortly.

24 MY is sixty three; his wife, SA, is fifty seven. They live in Glasgow. MY is the most senior family member in the United Kingdom, and is therefore the head of the family in this country. He and his wife have successfully raised their own children and are now grandparents. MY is now retired from running a successful business in Glasgow, which he describes in his statement as being a general store.

25 AI was born on 27th March 2009 at thirty two weeks gestation, weighing only 1.18kg and therefore below the 0.4th centile. She remained in hospital until 13th May 2009. There were concerns about the family circumstances before her discharge from hospital, which resulted in a higher level of support and monitoring than usual following AI's discharge. This included the involvement of health and other professional supports. There were concerns in relation to AI's feeding and poor weight gain from an early stage. There were also concerns about her general development. The mother was considered to be suffering from depression. AI had a period of in-patient assessment following which she was discharged home with a nasogastric tube. The in-patient assessment identified further concerns about the parent's interaction with AI and their ability to care for and feed her. She was fed by a nasogastric tube for a period of months between July and November 2010.

26 The family then spent a period with extended family in Glasgow, returning to Newcastle after some time, following which concerns about AI's weight and development once again were apparent. The parenting assessment at C15 records the resources which were provided to the family at the time.

27 The view of the professionals at the time was that the parents were not complying with the advice that they were given. AI was losing weight. As a result, a referral from the consultant paediatrician to children's services led to an initial assessment in February 2011. That initial assessment led to a core assessment. The core assessment identified a lack of weight gain associated with feeding difficulties and a lack of routine or encouragement in feeding. The impact of the mother's mental health and her depression was also considered to be relevant. The core assessment led to a complex child in need plan. This did not achieve the desired progress, as a result of which a planning meeting was held and a strategy meeting convened on 31st May 2011. This in turn led to a section 47 enquiry and a child protection conference being convened.

28 The child protection conference took place on 21st June 2011, when AI was made subject to a child protection plan. This included a more significant role for workers from the charity Children North East (whose involvement had started in August 2010) to assist in developing appropriate meal time routines. A child protection review on 30th August 2011 continued the child protection plan in respect of AI and also made the then unborn baby subject to a child protection plan. AR was born on the following month/, on 13th September 2011.

- 29 Child protection reviews were held on 8th November 2011, 14th March 2012, 10th December 2012 and 20th May 2013. Support was provided to the family by a range of services: health visitor, growth and nutrition service, Children North East and social care. Nursery placements were also available for the children, together with weekly play sessions in their family home facilitated by a nursery nurse. This monitoring and support was not possible over a two month period between November 2011 and January 2012 when the family were in Pakistan.
- 30 The local authority was quite properly alive to questions about the parents functioning and the need to ensure that services provided to the family were appropriate, and that work undertaken was done in a way which gave the best prospect of success in terms of the parent's engagement and response to it. The local authority therefore instructed Dr Shawn Mosher, a clinical psychologist with a particular interest in learning disability and the parenting abilities of those with learning disabilities, to undertake an assessment of the parents and to advise in relation to the impact of their difficulties on their parenting and the supports which may improve their parenting.
- 31 Dr Mosher's report is dated 15th August 2012 (at E1). His conclusions are summarised at E3 paragraph 2 in the following terms:
Mr A may be clinically depressed as a consequence of his serious health problems. Mrs A has a history of recurrent depression. Although there is some low mood and anxiety now, this is not at clinically significant levels. Mr A has a mild degree of learning disability that will affect his ability to care for the children without support. Mrs A probably functions in the lower end of the low average range of cognitive ability. The parents would benefit from alterations to usual modes of information delivery, including more visual materials, reduced use of specialist language and offering opportunities for repetition. It would be best if workers assumed that both parties had a degree of learning disability. Mrs A's parenting ability significantly outstripped those of her husband notwithstanding his evident love for his daughters. Their respective parenting skills will probably be best manifested in the context of their marriage. Their abilities together are probably better than if they were apart.
That is dealt with further in paragraphs 8.21 to 8.23. Dr Mosher reported that the parents' understanding and acceptance of the local authority concerns is poor. That is dealt with further at paragraphs 8.24 to 8.26 in his report.
- 32 I am satisfied that the work which was undertaken following this assessment was done in accordance with the recommendations of Dr Mosher. The approach is set out in the parenting assessment at C20. Very considerable supports were provided by the local authority, which are set out at C20 to 21.
- 33 Dr Paula Drummond, consultant paediatrician, took over responsibility for AI's care in 2012. Despite the parents' accounts that AI was eating well, Dr Drummond had continuing concerns about her weight and developmental delay, which increased as time went on. Investigations excluded any underlying pathology causing her poor growth. A food diary indicated that, in fact, AI was chronically under nourished.
- 34 Melanie Kennedy was allocated as the social worker for the girls in October 2012. In her evidence she described her shock at AI's physical presentation when she first became involved. She said apart from the obvious concern in relation to her weight, AI appeared frail. She often had cracked lips and dark sunken eyes. During her visits

to the home, AI was lethargic, generally lying on the sofa with no energy and complaining of pains in her legs and arms. AR was seen to be very clingy and reluctant to engage.

35 The professional concern for the children's wellbeing was such that a series of meetings were held to consider the children's future. A professionals meeting took place on 8th March 2013, followed by a legal planning meeting on 11th March 2013. A pre-proceedings meeting was held in April 2013, followed by a Child Protection review on 20th May 2013.

36 It is clear from what I have said that the focus of the concern was on AI. The local authority's parenting assessment was completed in May 2013 and identified the following issues at C22-23, despite the supports which were then in place:

- AI's poor weight gain and associated poor physical health;
- The long term impact of AI's lack of nutritional intake will have upon her physical and developmental wellbeing;
- The parents' insight into their children's need and AI's special needs given her developmental delay;
- The validity of the information provided by the parents in terms of the quantities of food eaten by AI is questionable, but does not reflect her weight gain;
- Parents inappropriate methods used to feed AI;
- Parents' acceptance and understanding of the concern of professionals;
- Parents' ability to consistently and adequately follow the advice offered by professionals in terms of feeding and suggestions made by health professionals;
- Parents' ability to instil boundaries and exercise control over the children and their inability to follow professional's advice in relation to this;
- AR was observed to be eating less and could be picking up on AI's eating patterns;
- RA's anxieties and the impact this is having upon the children;

Given the extent of these concerns, a grave outcome was contemplated for AI if the necessary changes were not made. In the light of the lack of progress achieved during the two year period of involvement of the local authority, legal action was then considered necessary by all professionals involved in the care of the children.

37 The care proceedings were the issued with a plan of placement of AI in foster care. By the time of the interim care hearing, however, the local authority's concerns in relation to AR had increased, so that her removal was also proposed. The basis for this was set out in Melanie Kennedy's statement dated 25th June 2013. In summary, AR's weight and development was an increasing cause for concern, as was her presentation.

38 At the contested interim hearing, the District Judge heard evidence from Dr Drummond, the health visitor, Melanie Kennedy, Tracy Welsh (from Children North East), Barbara Kaur (from the Angelou Centre) and from the parents. The Angelou Centre has provided support to the parents since the proceedings commenced.

39 Following the making of interim care orders, AI and AR moved to the care of ST and TH, local authority foster carers of Pakistani Muslim heritage. The children have remained in their care since. Both AI and AR have made very good progress into all areas of their development since their placement in foster care. They nonetheless continue to present with developmental delay and are likely to need additional supports to reach their potential.

40 Following completion of the local authority parenting assessment, further parenting work has continued to be undertaken by Children North East with Bernadette Brown and with the assistance of the Angelou Centre with Barbara Kaur. Bernadette Brown was involved from May 2013 and has supervised contact since the children were accommodated. A statement was filed by the local authority by Bernadette Brown dated 8th November 2013 in which she recalls the warmth which is evident of contact between the children and their parents.

41 In her conclusion at C114-115, Bernadette Brown said as follows:

It is my professional opinion based on the work that I have completed with both parents to date, that both MA and RA have struggled to meet the physical, emotional and educational demands and needs of their children. However I have observed both parents showing a willingness and ability to make positive changes in respect of their children. Both parents interact with the children at an appropriate level most of the time, and they have worked hard to understand and meet the needs of their children prior and during contact. Therefore I recommend that within an intensive tailor package of support in place to meet the appropriate needs of the family then they could be reunited.

42 Dr Ward's assessment report was completed on 8th November 2013. It is a lengthy and detailed report in which she reviews the children's medical history in the context of their family circumstances. She also had the opportunity of seeing the children and examining them at the foster carer's home. From E103 she summarises the relevant medical history in relation to AI. At E112-114 she answers a series of questions in relation to AI's historical and current difficulties and her future care needs. At E115 she summarised her findings in relation to AI in the following terms:

AI is a small slim girl with a small head circumference. Review of her chronology reveals a history of severe failure to thrive. AI also has evidence of developmental delay. Whilst genetic factors and a history of prematurely and low birth weight are likely to have contributed to her small stature and developmental delay, environmental factors and parenting difficulties are more likely than not to have impacted on her feeding, faltering growth and development. AI is a girl who requires more than good enough care with consistent positive parenting and good levels of stimulation if she is to achieve her potential in terms of physical, emotional and cognitive developments.

43 In relation to AR, Dr Ward's review of her medical records is summarised from E133. She answers specific questions in relation to AR from E137-141. She identified AR as having insecure attachments. Her conclusions in relation to AR are summarised at E141 as follows:

AR has lived in an environment where her parents have struggled to provide consistent care and routines in terms of feeding, language and play skills. AR is a small child who displays some delay in her language and play skills. This may reflect multi-factorial issues such as genetic factors affecting growth and development but importantly also the environment in which she has lived. The

improvement in her development and self confidence and also an upturn in growth velocity support environmental factors as a cause of her difficulties. AR needs to live in an environment where there is consistency of care, routines and boundaries and a good level of stimulation. It is essential that carers are able to work in partnership with professionals to ensure that her needs are met.

- 44 Dr Ward addressed the further supports and care needs of the children. In the case of AI, she listed the resources she anticipated would be required at E115: a community paediatrician to monitor growth and development and to act as a co-ordinator of health input; a dietician to provide advice and support to carers in managing AI's nutritional needs and feeding; speech and language therapist providing monitoring; therapeutic input; advice to school and carers regarding communication skills, hearing and vision (recommending AI's hearing and vision are tested as deficits and sensory input can impact on cognitive and language development); treatment by a community dentist, as AI had evidence of dental caries and poor dental hygiene. She described dental caries as an infectious disease which reflects diet, dental hygiene and dental care. She considered that the involvement of CAMHS or the clinical psychology service maybe required in the future, with AI benefiting from therapeutic input to address her feeding difficulties and helping her to come to term with her life experiences.
- 45 In relation to AR, Dr Ward identified her care needs in a series of bullet points at E141: routine input from a general practitioner and dental services; assessment by an ENT surgeon in relation to nasal congestion; she, recommended testing of vision; she contemplated the prospect that a future involvement from the CAMHS team may be required in respect of her insecure attachments.
- 46 The local authority arranged a decision making conference on 12th November 2013. In the days before the meeting, the local authority was informed through Barbara Kaur of family members within the extended family in Glasgow who may be in a position to provide care for the children. These family members had not been identified by the parents earlier in the proceedings. Initial enquiries in relation to the mother's sister and her brother did not progress. On 11th November 2013, however, the social workers were contacted by MY, who had travelled to Newcastle with his son. At his request, a meeting took place that day between them and Melanie Kennedy and her team manager (Rachael Sinclair). During the meeting MY informed them that there were no family members who could care for the children but offered the family's support for placement with the parents, by visiting the children every two to three weeks from Glasgow.
- 47 MY was not present at the decision making conference on 12th November 2013, visiting only for the day on the 11th November 2013. A letter from him was, however, provided to the independent reviewing officer by Barbara Kaur, apparently at the end of the meeting, in which he offered two proposals: that the mother and children would live with the Ys for three months; and, secondly, the children would return to their parents, with extended family visiting at weekends.
- 48 The minutes of the decision making conference record the views of those present: that the parents were not able to meet the children's needs; there were not the supports or resources which could make up the shortcomings in parenting so that the children

would be cared for to a good enough standard; and that the proposals for family support would not provide the necessary care for the children to make up for the parents shortcomings. The meeting concluded that a plan of adoption should be pursued.

49 The local authority's final statement of Melanie Kennedy set out the local authority's reasoning. She also filed a balance sheet analysis of the placement options that had been considered by the local authority. She was the author of the final care plans.

50 By the time of the issues resolution hearing on 29th November 2013, the mother's solicitor had filed a statement from MY, asking that his family be assessed to care for the children. At the hearing the nature of the proposal was unclear as to the extent to which the Ys consider that the parents would be part of the children's care arrangements. It was therefore agreed between the parties and approved by me, that to allow the Ys a better understanding of the issues, the children's needs and identified difficulties of the parents, the reports of Dr Mosher, Dr Ward, and the children's guardian should be disclosed to them in advance of the assessment sessions which were to be undertaken by the social worker. The assessment sessions were planned over the following weeks to give the Ys time to assimilate the issues in the case, and the reports which had been made available to them.

51 The change in social work responsibility coincided with these events, as Melanie Kennedy had taken up a position as a team manager. Laura Sim had been involved from November 2013, co-working the case with Melanie Kennedy for the month before she took over responsibility. They both met the Ys at the issues resolution hearing on 29th November 2013. To accommodate the Ys' circumstances and to reflect the changing social work involvement, the local authority arranged the following sessions by way of assessment: a session on 11th December 2013 in Glasgow, undertaken by Laura Sim and the team manager Rachael Sinclair; a session on 7th January 2014 when the Ys came to Newcastle and had contact with the children and a further session with Laura Sim; and, finally, an assessment session on 14th January 2014 in Glasgow undertaken by Laura Sim and Melanie Kennedy. The children's guardian visited the Ys on 26th January 2014 in Glasgow.

52 The statement of Laura Sim dated 21st January 2014 contains the local authority's assessment of the Ys. The Ys successfully parented their own family, as well as running a successful business. They live clearly in comfortable surroundings in Glasgow.

53 Throughout the sessions the Ys proposed that they would have an advisory role as they described it in "training" the mother to care for the children. In the course of the meetings with the social workers, the Ys were clear that they did not see themselves providing sole care themselves, in the light of their age and circumstances.

54 The Ys offered a period of three to six months during which the mother would live with them and they would train her. They told the social workers that if she was not then able to care, the Ys would accept the position. The evidence of the social workers, which was not challenged, was that they encouraged and hoped the Ys would over time accept the need for greater involvement and offer themselves as long term carers for the children. In fact, the Ys reported this to the children's guardian

when she visited on 26th January 2014. At paragraph 13 of the guardian's position statement (at E158), she reported the Ys saying that they did not think it would work if they took the children themselves permanently, as the mother would wish to care for them herself, and she and her family would constantly be in communication with them or demanding to see the children.

55 It was within about a week of this that the guardian reported that the parents had each told her that they continued to see to care for the children. At the hearing before me on 6th January 2014, it was suggested that the guardian had misunderstood their position. The statements which were then filed confirmed the parents support for the Ys. Barbara Kaur had filed a statement on behalf of the mother, dated 12th December 2013, which supported placement of the children with the Ys. At C162 she recommended that the family be rehabilitated together in the Ys' property, 'only at a level that is right for the children so as not to be rushed so they do not have any decline'.

56 On the first day of the final hearing, the Ys proposed for the first time that they would offer long term care for the children. A statement from MY dated 17th February 2014 set out this position, which was apparently circulated to the parties on Friday 14th February 2014 by the mother's solicitor. It was clear from the representations that were made to me at the start of the hearing on 17th February 2014 that the local authority and children's guardian were still keen to explore precisely what the Ys were proposing, and whether the local authority and/or the guardian considered their offer of long term care an arrangement that could provide for the girls' future needs. I was very mindful of the finality and draconian nature of the order sought by the local authority and agreed to give time for the position to be clarified.

57 The position of the local authority and the children's guardian was that an arrangement whereby the mother was within the household (and therefore necessarily involved in the children's care) would not be acceptable, because of the impact of her presence on the children's development. The position of the Ys, as clarified and confirmed, was that they would only offer to care for the children with the mother in the household. They argued that that would be culturally appropriate, and she would also provide assistance with the household chores. In these circumstances it was clear that there was no consensus and the case commenced.

58 Laura Sim gave evidence first. Her evidence was not completed on the first day and so Dr Ward's evidence was interposed at the start of the second day. Laura Sim then completed her evidence followed by Melanie Kennedy. It is most appropriate in these circumstances to deal with the evidence of Dr Ward first. She emphasised the breadth of the issues involved in non-organic failure to thrive - apart from the provision of inadequate calories, the important psychological factors. She also highlighted the evidence of attachment difficulties between the children and their parents and the issues relating to the children's overall wellbeing. She described enormous efforts in the past to address the feeding difficulties and the limited progress made by the parents with the children. She stressed that the work undertaken by the foster carer to improve the children's eating patterns. She considered it probable that the parents' involvement in day to day care would lead to a recurrence of the previous behaviour. She described such feeding difficulties as an extremely complex issue. She said aversive patterns of feeding are one of the most difficult problems to deal with.

- 59 Dr Ward envisaged difficulties in managing the proposed arrangement of the mother living within the Y family. She did not consider the mother having a passive role to be realistic, in the light of the mother's own wish to parent. She further considered that, if it could be achieved, it would be confusing for the children to have their mother excluded from areas of their care in this way. She noted that the ages of the children are such that their own wish for interaction with their mother would make the situation unworkable. She said that the children have attachments to their parents, even if disordered, in contrast with the very limited relationship she understood them to have with the Ys.
- 60 Dr Ward was asked by Mr Gray (on behalf of the mother) about the likely success if the mother was out of the house for a period of months to allow the children to settle and establish themselves with the Ys. Dr Ward remained cautious and pessimistic. She said that the attachments to the Ys would still be likely to be tenuous at that stage. She was concerned about the impact on the children of re-introducing the mother and the risk that any progress would then falter.
- 61 Dr Ward agreed that the children had made good progress in foster care. She attributed it to the quality of care. She said that the progress in foster care indicated the multi-factorial nature of the difficulties and the importance of the children's environment in meeting their needs. She considered that long term high quality care would be needed by the children to maintain their positive progress.
- 62 Laura Sim and Melanie Kennedy both said that Dr Ward's evidence had strengthened their view that a placement of the children with the Ys whilst their mother was in the household would be unworkable and not in the children's best interests. Laura Sim gave evidence of AI's continuing anxiety about medical treatment and her need for reassurance that she is well. In contrast, Laura Sim said that the mother remains very anxious about AI's health and about feeding, which causes her to raise issues about AI's health and development. These children had a history of repeated and frequent attendance at the doctor while in the care of the parents, which has not been necessary since their accommodation.
- 63 Melanie Kennedy gave evidence of the change she has seen to the children since their accommodation. She said Dr Ward's evidence had emphasised the long journey to recovery for the children to overcome the inadequacies of the care by the parents in terms of their emotional and psychological harm as well as their physical harm. Despite the progress they have made, Melanie Kennedy said it would be naïve to say the children have overcome their early life experiences.
- 64 Both Laura Sim and Melanie Kennedy said they had hoped the Ys would accept the mother's limitations, but in their opinion the Ys do not grasp the extent of her difficulties. Melanie Kennedy said she felt that MY lacked depth and understanding of how the mother's limitations impacted on her parenting and her parenting responses. During her discussions with MY, he described the mother as bright, a good cook, and a good sewer.
- 65 Having heard this evidence, I was very interested to hear the evidence of MY and the parents to get an understanding of what they were each saying, against the

background of the confused and changing positions. As have all those who have had dealings with him in relation to this case, I found MY to be pleasant, co-operative and personable. I do not question his and his wife's parenting abilities and the care they have given to their children and grandchildren.

66 I found there to be a theme throughout MY's evidence of his confidence that RA would be in a position to resume the care of the children, and within a relatively short timescale. He spoke of the children growing and maturing like normal children and for their mother then to play a normal role. He said he thought with motherly and fatherly affection there "is absolutely no reason" why she would not get to a stage where she could look after the children herself. When asked about his proposal of three to six months he said "I am still of the opinion that these matters can resolve in about six months or so", although he added it could take longer than he originally thought.

67 MY did not envisage any difficulties within the household, either with the mother wanting a role she should not have, or with the children wanting their mother to be involved in such way. He explained the cultural requirement for their mother to be in the home as he said otherwise there would be talk in the community, that they had taken advantage of the mother and taken the children away from her. From the evidence that he gave, it was evidence that the Ys have had quite limited contact with the girls to date so that any relationship with them is tenuous at best at this stage.

68 MY was clear that his preference was for the mother to join their household at the same time as the children. The longest period he would contemplate for the children to be in their care without their mother was a few weeks only. MY was also clear in his evidence that he did not envisage the father living as part of his household.

69 When RA gave evidence she initially agreed with the response to the threshold findings when they were put to her in examination in chief, and her acceptance that she could not care for the children. She said she agreed to the Ys caring for the children, but saw her role as making meals for the children, but not otherwise undertaking the immediate caring task for them. Within a short time, however, her evidence changed, in that she said that she believes she is capable of caring for the children, but she is accepting the views of professionals that she isn't.

70 In cross examination, RA said the children's problems weren't anything to do with the way that she and MA cared for the children. She said she believes she is now able to care for them. She said that she hoped that she and MA would care for the children together in the future.

71 MA then gave evidence in chief very briefly. No party sought to cross examine him. The difficulties which were identified by Dr Mosher were evident from the brief evidence he gave. The parents remain committed to their relationship which appears to be mutually supportive as well as enduring.

72 The children's guardian's evidence was given following the evidence of the family members. She said she did not consider the plan of placement with the Ys with their mother to be workable. She said she was of this view in the light of Dr Ward's evidence about the children's needs and the evidence of the Ys and the parents of their

respective expectations of the arrangements, particularly in the light of the position they put forward up to the day of the final hearing.

73 There is no issue that the threshold criteria are established in this case. The local authority set out the findings it sought at the outset of the proceedings and a schedule at A6. Protective measures were instituted at the time the local authority issued proceedings. Those findings can be summarised as follows:

1. The mother and father's care of AI and her feeding resulted in AI failing to gain weight and having global developmental delay.
2. The mother and father were unable to implement the advice and support of professionals in managing the children's behaviours in relation to food.
3. The involvement of health and other professionals over years did not result in any consistent change.
4. The parents did not accept the concerns about the children's care and development.

74 The local authority set out the further findings it sought in relation to welfare in a schedule dated 9th December 2013 at A102 onwards. Significant concessions were made by each of the parents in relation to these matters. I consider that the following findings are properly made out on the evidence before the court:

1. At the time of her removal to foster care AI was chronically undernourished. Both AI and AR were developmentally delayed in all areas.
2. The children's physical, emotional, psychological and cognitive development was significantly impaired by the parenting afforded them.
3. The children made excellent progress after placement in foster care. AI's failure to thrive and the developmental delay in both girls were attributable to the parenting they received.
4. The parents failed to meet the emotional needs of the children. The children have attachment difficulties as a result.
5. Although the parents engaged with intensive and extensive professional supports in place for a number of years, they were unable to acknowledge concerns or address them. The parents continue to have limited understanding and insight into the harm the children have suffered and are still noted to be overly anxious around the children.
6. Intensive support was put in place to assist the parents. Despite this, the parents remained unable to meet the children's basic needs.
7. There are no further or additional supports which could assist in risk management or bring about a necessary change in the parents.
8. The children, in particular AI, have enhanced needs and require better than good enough parenting. The parents are unable to offer the necessary standard of parenting, namely consistent, positive, insightful parenting with appropriate levels of stimulation.
9. The parents have great love and affection for the children but sadly they remain unable to recognise or respond to the children's needs, promote their development and offer consistent care and nurturing.

- 75 I turn to my welfare analysis and the legal framework. In undertaking my welfare analysis I have had full regard to the recent case law relevant to the approach of the court in determining applications for placement orders. The judgment of the Supreme Court in *Re B (A Child) 2013 UKSC 33* is of central importance in providing guidance as to the correct approach of the court where it is asked to consider a care plan for permanent removal of a child from the birth family. The judgment given in June 2013 considered in detail the approach to the European Convention on Human Rights, Article 8 proportionality in a public law children case. The judgments of the Supreme Court Judges stress the significance of a decision of the court to remove a child from his or her birth family, and for the child to be placed for adoption against the wishes of the birth family.
- 76 The judgments emphasise that a care order and adoption is an extreme outcome and ‘a last resort’, in the words of Lord Neuberger. A care order cannot be made in such circumstances unless the order is proportionate, bearing in mind the requirements of Article 8. Lady Hale described the test for severing the relationship between parent and child as ‘very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child’s welfare, in short where nothing else will do’ - a test of necessity, therefore.
- 77 The welfare of the child is paramount but, as Lord Neuberger said at paragraph 77, the interests of a child self evidently require his or her relationship with her natural parents (and I include here the birth family generally) to be maintained unless no other course is possible in the child’s interest. He went on to say (at paragraph 104) that the interests of a child include being brought up by his/her natural family, ideally the natural parents, or at least one of them.
- 78 The Court of Appeal gave judgment in *Re G (A Child) 2013 EWCA Civ 965* the following month (on 30th July 2013). The judgment of Lord Justice McFarlane stressed the need for a proper, thorough and holistic evaluation of the placement options, giving full weight to the Article 8 rights. Such an approach requires the court to balance the pros and cons of the placement options in any case. He emphasised the need for substantive consideration of the Article 8 considerations in relation to the issues of permanent separation of a child from the birth family. He said ‘what is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options.
- 79 Where the court is considering a plan of adoption the evaluation must take place in the context of the welfare provisions of section 1(2) Adoption and Children Act 2002, whereby the child’s welfare throughout his or her life is the court’s paramount consideration. The welfare checklist in section 1(4) includes, of course, in section 1(4)(c), the likely effect on the child throughout his life of having ceased to be a member of the original family and become an adopted person.
- 80 Lord Justice McFarlane also referred to *Re B* and the repeated use in their Lordships judgments as phrases such as ‘high degree of justification’, ‘necessary’, ‘required’, ‘a very extreme thing’, ‘a last resort’ and ‘nothing else will do’. He said that, in the light of this ‘It is clear that the importance of a child either living with, or maintaining a relationship with, her parents and natural family have not been reduced’.

81 In *Re B-S (Children) [2013] EWCA Civ 1146* the President once again referred to the 'striking' language used by the Supreme Court in *Re B* as to the degree of necessity before a care plan for adoption is approved. In paragraph 18, by reference to Strasbourg Authority, he said that the family ties may only be severed in very exceptional circumstances; that everything must be done to preserve personal relationships and 'rebuild' the family; that it is not enough to show a child could be placed in a more beneficial environment for his upbringing. The President approved the global and holistic approach to the welfare evaluation. He stressed the need for proper evidence from the local authority and children's guardian, addressing all the realistic options within analysis of the arguments for and against each option. An adequately reasoned judgment is essential focusing on the factors in play in the particular case.

82 In *Re W (A Child) 2013 EWCA Civ 1227* Lord Justice Ryder emphasised the need for the court to consider the resources and supports that may be available to support a family placement. The court may require the local authority to provide evidence of such resources.

83 At paragraph 100 he said that the court is to undertake its evaluation to determine what is best for the child by reference to three questions:

1. What is the welfare analysis of each of the placement options available?
2. What is the welfare evaluation, that is the best option among those available? and
3. What orders are proportionate and necessary, if any?

84 Against this background, I turn to the placement options. The family proposal is for placement of the girls with the Ys with their mother in the household, effecting a de facto separation between the parents, although they would continue their relationship. The local authority plan is one of permanent placement of the girls together away from the birth family. The local authority proposes placement for adoption. Initial enquiries indicate three possible matches from nationwide enquiries, though only initial indications but without the legal security of placement orders (which often provide more legal security to stimulate a greater interest). The local authority is optimistic that an appropriate and suitable match would be identified for the children without significant delay. The local authority proposes a search for a prospective adoptive placement for the girls together for a period of nine months.

85 The local authority's care plan was revised during the course of the social work evidence. The local authority is not contemplating separation of the children now. In the event that no adoptive placement is identified within that time, the local authority would look to long term foster care. The current foster carers have very recently expressed some interest in caring for the children long term, but would not themselves consider adoption.

86 The welfare of AI and AR throughout their lives is my paramount consideration, in circumstances in which the court is to consider plans including placement for adoption. They are young girls of Pakistani Muslim heritage who lived with their parents until July 2013. They have a large extended family in the UK and Pakistan. The children are too young to express their wishes and feelings very clearly, particularly taking account of the developmental delay. Nonetheless they clearly have

warm relationships with their parents, although they have what is described as insecure attachments. The children were distressed when they were accommodated but settled without undue difficulty. The girls have maintained their relationship with their parents through contact four times each week.

- 87 Both girls have suffered significant harm in the care of their parents, not due to any lack of love or desire to care on the part of the parents, but as a result of their own difficulties and the limitations to their parenting capacity as a result. As a result of their experiences in the care of their parents, both children need a particularly high standard of consistent parenting throughout their childhood if they are to achieve their potential and avoid a regression from the positive progress they have made in foster care. They are particularly vulnerable as a result, and at risk of suffering further physical, emotional and psychological harm.
- 88 AI and AR have established relationships with their parents, which are described in warm terms. There is an obvious potential benefit in these relationships continuing, but also the risk of harm of a repetition of the circumstances when the children were in the care of their parents, when their care needs were not met to a significant degree.
- 89 The crucial question is the ability and willingness of the family to care for these girls, and whether such a placement can meet their needs. In assessing this, it is necessary to consider the children's needs and what the family placement is offering. The findings I have approved confirm the harm these girls experienced and its impact on their future care needs.
- 90 I accept the evidence of Dr Ward about the care AI and AR need to address the effects of the care they received before their accommodation. I am satisfied and find that they both need a high standard of consistent care by carers who accept and understand the impact of their parenting to date and are able to provide responsive care with insight into the girls' needs over time.
- 91 The Ys are capable parents who can meet the physical care needs of these children. The Ys are now saying they will care for AI and AR for as long as necessary. That is a very recent development. I was left unconvinced that this is a realistic proposal in circumstances in which I concluded that they simply do not foresee the need for such a long term option, and against the background of the views which they expressed consistently about the children's future placement with their mother until 17th February 2014 and about which MY also spoke in the course of his evidence.
- 92 The Ys will only contemplate the placement if the mother is part of their household. Mr Gray said in submissions that he had considered asking the court to give a further opportunity for reflection if I concluded that she could not be in the same household, but he was clear from his conversations with the Ys during the course of the week of the hearing, as well as from the evidence that MY gave, that their position in relation to this is final.
- 93 A placement with the Ys would provide the very significant benefit for these girls of a placement within their birth family, with experienced parents and grandparents. It would preserve their relationship with their parents and would allow them to have extensive contact with their mother, who would be living in the same household.

- 94 The evidence of the family about the arrangements within the household was unclear and at time contradictory about the role that the mother would have. The proposal that she is kept away from all childcare responsibilities is, in my judgment, unrealistic, not least because I concluded that neither she nor the family really consider it necessary.
- 95 The risk of the mother's continuing involvement is the potential impact on the children of her anxious and sadly inadequate parenting to date, and the very serious consequences it had for the children when in the care of their parents. I have to consider the extent to which that would be ameliorated by the modelling of parenting by the Ys, and the dilution of her influence by their presence.
- 96 If the children are not living with the birth family, there are two options which realistically are for consideration. The local authority's and the children's guardian's preferred option is adoption. The obvious disadvantage is the termination of legal and actual relationships with the birth family, which is also culturally unacceptable for the birth family. There is a risk of delay in identifying a placement and a risk of placement breakdown. The placement of these children will not be without its complexities. In addition to their care needs, there is a question of the extent to which the religious and cultural heritage can be matched. I note the local authority's optimism about a placement with Pakistani Muslim family if adoption is approved.
- 97 The advantage of an adoptive placement is that the girls would be placed with carers who would be assessed and matched to meet the needs of these two girls. I accept the local authority's evidence that the assessment of any match would be considered with great care. Adoption, if successful, would provide a secure family placement for the girls throughout their childhood and beyond.
- 98 The third option is long term foster care. There are advantages to long term foster care, if the children are not living with the birth family. It can allow the children to maintain some contact with the birth family. It is also more acceptable to the birth family, including in cultural terms. There is some prospect that the children may be able to stay with the same foster carers. The disadvantage of a placement in long term foster care relate to the children's continuing status as 'Looked After' children and also the uncertainties which are inherent in long term foster care. There is no guarantee that their current carers would continue to care for them.
- 99 Having weighed these options in the balance against the legal framework as I have set it out, and considering a plan of adoption as the option of last resort, I have reached the following conclusions. In the light of the harm the children have suffered, their parenting needs for the future require them to be protected from the adverse impact of the parenting they experienced from their mother and father. There is, in my judgment, a high probability that the mother's presence in the Ys' household would have a significant and adverse impact on the children's future, development and well being.
- 100 I do not consider that her role can realistically be curtailed in circumstances in which she doesn't want or see a need for it. I do not consider that the Ys understand or accept the need for it. In practical terms it is not, in my judgment, achievable living in

one household with children of this age. The risk of harm is of exposure to the anxious parenting which led to the children's physical, emotional and psychological needs being significantly compromised. The effects of their past parenting are such that the children's care needs are greater than would otherwise be the case. Whether or not the Ys accept this - which I doubt - these care needs cannot, in my judgment, be met in the environment they propose.

101 I have taken full account of the impact on these girls of a placement away from the birth family, whether by terminating their relationships through adoption or by the limitation in those relationships through long term foster care. I have also balanced the opposition of the birth family to placement for adoption against the children's need for security and permanence. I have concluded that the evidence of the local authority that adoption is achievable and realistic should be accepted. Having regard to the children's experiences to date and their future care needs, I have sadly concluded that security and permanence of an adoptive placement is the only realistic option. I have, I regret, concluded that nothing else will do. It is, in my judgment, both necessary and a proportionate response to the issues in the case.

102 I will, therefore, make a care order in respect of both AI and AR, approving the care plan of adoption, subject to an amendment of that care plan to reflect the revision of the local authority's planning set out during the course of the social work evidence in relation to the children's continuing placement together.

103 I propose then to deal with the placement application immediately. I have just made care orders in respect of these two young girls, AI and AR, approving the local authority's care plan of adoption. The judgment I have given sets out the basis upon which I have concluded that adoption is sadly the only realistic alternative for AI and AR, applying the section one welfare test in accordance with the 2002 Adoption and Children Act. The local authority invites the court to consider the placement applications and make placement orders to allow it to progress its planning for the children.

104 The local authority has filed placement applications, supported by a statement of facts and an Annex B report in each case. The children's guardian has filed a report supporting the applications for placement orders.

105 In the course of the judgment that I have given, I have addressed the areas of the welfare checklist in section 1(4) Adoption and Children Act 2002, which I consider to be particularly material. I have set out in that judgment what I consider to be the relevant factors balancing the children's welfare needs.

106 The parents of these children do not consent to the applications for placement orders. Quite understandably, they oppose the plan of adoption and they do not give their consent to the applications. In such circumstances I can only make placement orders if I dispense with their consent in accordance with section 52 of the 2002 Act on the basis that the children's welfare requires it. Article 8 rights are clearly engaged - there can be no greater interference with Article 8 rights than orders relating to adoption. For the reasons that I have set out in the judgment that I have given in the care applications, I have concluded that the plan of adoption is the only plan which

will meet the welfare interests of these children throughout their lives. I have made care orders approving the care plan of adoption in each case.

- 107 Having regard to the circumstances of these children there is, in my judgment, a need for the plans to be progressed without any delay and to maximise the pool of those who may put themselves forward as prospective adopters. The welfare of the children throughout their lives is my paramount consideration. I consider that the making of placement orders is the only order which will meet the welfare needs of the children in allowing the local authority to progress the plan of adoption.
- 108 I have taken account of the plan for contact, which is for the children to maintain contact with their birth family through indirect contact only. I have considered the circumstances in which the parents find themselves unable to consent to the plan for adoption in circumstances in which I have reached the conclusion that the plan of adoption is the only placement option which can meet these children's needs throughout their lives. I have reached the conclusion that the consent of the parents to the placement applications must be dispensed with on the basis that the welfare of each of the children requires it.
- 109 I therefore make a placement order in respect of each of the children, dispensing with parental consent. In respect of each of the applications I make a direction for public funding assessment as required.

End of Judgment

**We hereby certify that this judgment has been approved by Her Honour Judge Hudson.
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