



Neutral Citation Number: [2019] EWFC 57

Case No: PO18C00626

IN THE FAMILY COURT
SITTING IN SOUTHAMPTON

The Courts of Justice
London Road
Southampton SO15 2XQ

Date: 19/09/2019

Before :

Mr Dermot Main-Thompson
Sitting as a Judge of the High Court

Between :

A Local Authority
- and -
R-B

Applicant
Respondent

R-B (A Child) (No 2)

Mr Andrew Bond (instructed by **Joy Miller**) for the **Applicant**
Ms Kate Mather (instructed by **BTK Solicitors**) for the **Respondent**

Hearing dates: 4th to 6th September 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
Recorder Main-Thompson

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Recorder Main-Thompson :

1. For the last three days I have been hearing a case about a little boy who is 15 months old known as J, represented by Caroline Hartley.
2. His mother is S, who will become an adult in another seven months but is currently still a minor. She has an intermediary and is represented by Kate Mather. Father has taken no part in these proceedings. He is 21 and his name is L, born on 23.5.1998
3. The LA have been ably and sensitively represented by Mr Andrew Bond.
4. The mother's family has been known to this LA for some years; Certainly since 2013 when S would have been 11 and in 2013 when an anonymous referral described the children as being feral, that is to say like wild animals. That was not the first referral concerning the household in which this mother grew up. She has two brothers who are now 14 and 12 or thereabouts. The decision has been taken by this LA to bring proceedings with a view to safeguarding the children still in the household and there is to be a contested hearing with this LA seeking their removal next week in Portsmouth.
5. I am not concerned with that case and am not concerned with those two boys. I am concerned with S's little boy J. However, this mother is a member of that household and the needs of this minor mother have to be considered. The Guardian and social services have heeded the concern I voiced in that regard and will be providing support and assistance to this mother. I am grateful for that. I am by no means convinced the mother would cope without such help.
6. The LA brought this case back on the 5th June 2018, within days of J's birth, the concerns arising because of the state of the household in which he was living – it may still be a chaotic and neglectful household. I do not propose at this point for me to go through the concerns of the LA which are set out in a threshold document - the basis on which the LA says it can lawfully interfere in this family. Although there are some challenges to the contents of that document, it is not in dispute that this is a case in which the threshold is crossed and there is no doubt about the lawfulness of the LA's involvement and intervention – which was inevitable in the prevailing circumstances - and it would be idle to pretend that the material before me fails to provide justification for the
7. What the LA ask me to do is make a care order and a placement order in respect of J so that they may share parental responsibility with a plan for him to be adopted by his present carer where he has been since January 2019. It is a serious interference in the mother's - S's- life as she and J have a right to family life and they have a right for him to be brought up by his mother if it is safe to do so.

8. The mother asks me to take steps which will allow J to be cared for by her. She asks for a direction that someone independent of the LA, an ISW called Lisa Ellis, to assess her parenting capacity. If that is positive she would want to bring J up herself.

9. An unusual aspect of this case is that there has been a previous 'final' hearing. The case having commenced in June 2018 it came before a learned judge in the early autumn of last year prior to listing a final hearing. The learned judge took the view that the case could be completed at that IRH and she granted the applications of the LA and

10. That happened on 28.9.2018.

11. Those orders were quashed by the Court of Appeal on a belated appeal by the mother nine months later on 2.7.2019

12. The Court of Appeal, as is clear from the decision of Baker LJ, were not happy with the procedure that was followed on 28.9.2018 by the allocated judge and instead made an interim care order and ordered a re-hearing.

This has been that re-hearing.

13. The basis on which the crossing of the threshold is accepted – and which I find - is not that J suffered significant harm at the hands of his loving mother, but on the basis of there being a risk of such significant harm which is largely attributable to the wholly inadequate parenting I have no doubt S experienced throughout her own childhood, which of course still endures. I have heard about the LA concerns at the time of the making of the application and have also had the benefit of not only considering the evidence of 2018 but updating evidence from the last few weeks in 2019.

14. I have had the considerable advantage of hearing from the authors of those documents, the mother and the Guardian. I have also heard submissions - final arguments very eruditely and ably expressed by Mr Bond, Miss Mather and Miss Hartley on behalf of J. Throughout this hearing the mother has had the great benefit of intermediaries to assist her and the court and Miss Mather: Sarah Draper on day 1. And Miss Siren on days 2 and 3

15. In her submissions to me Miss Mather has comprehensively set out the law which applies.

16. In a nutshell it is this:

My main concern is the welfare of J. Any decision I make has to have that as my number one consideration and I have that very much in mind. Secondly, I have to be satisfied that it is appropriate on the evidence to interfere in J's private life and I have to be satisfied that the conditions

are met - evidence upon which I am entitled to make the orders sought. His welfare must be secured and any intervention has to have proper grounds to justify it. I must have regard to the welfare checklist.

It has to be necessary for a care order to be made, the evidence being that J cannot go back to his mother. No other appropriate family members or alternative candidates are available.

In considering whether to make a placement order, I have to have regard to J's welfare throughout his life - I can only make such a draconian order if satisfied that such an order is the only one that will safeguard his welfare throughout his life. If I am so satisfied, I have to consider whether it is necessary to dispense with the consent of both these parents who resist adoption and placement for adoption. That is to say, to overrule the opposition of S and L

17. Miss Mather says I should decline to make the orders sought by the local authority with the Guardian's support and should continue with interim orders in this now very stale case. She argues that I cannot yet discount the mother; I cannot yet say nothing else (i.e. other than adoption) will do. So she asks for the instruction of an Independent Social Worker to have another look before I make a final decision.

18. The LA and CG oppose that application and submit that I should only accede to the order sought by the mother if I conclude there is a gap in the evidence and that there remained the possibility that J can remain in his family. Other parenting possibilities have been raised during the course of proceedings but no other person with the family's support has been identified. The choice is either mother taking on his care or his being placed outside the family.

19. I have heard the evidence advanced in support of the local authority's case which has very properly been thoroughly tested by Miss Mather. The evidence is compelling: the witnesses were sympathetic towards this mother – as am I – but I have no doubt at all that the orders sought are the only ones which will achieve the statutory aim of securing J's welfare throughout his minority and throughout his life. It gives me no pleasure to reach this conclusion as children should live with their families, if at all possible. That it is not possible in this case is something for which the mother cannot in any sense be blamed. I am satisfied that she was set an appalling example and so is ill-equipped to shoulder this responsibility at this stage in her life.

20. J's welfare requires that I make the orders sought by the LA with the CG support. I have no doubt that the only order that will ensure his welfare through his life is the placement sought. His current carers have proved themselves

extremely capable; they have met all his needs. He is thriving in the only consistent and wholly nurturing home he has known.

21 It gives me no pleasure to say to this very nice and very loving mother that this is my conclusion.

There is no basis upon which I can delay the decision in this case. There are no gaps in the evidence.

22. The witnesses for the LA were impressive, caring, balanced and have given a great deal of consideration to the right course for J.

23. The mother has not only behaved impeccably – I make no criticism at all of her behaviour - she has behaved with maturity and has made some concessions and she has some insight. She was articulate and made her position very clear and I quite understand why she presented the case that she did.

The fact of the matter is that J has not seen his mother since 17.12.2018 and today is the 6.9.2019. Previously the contact had been reduced to once per month from the previous situation when he saw her daily in several mother and baby foster placements.

I also make the point that in the early days of J's life the mother was doing well; the criticisms were few and far between and the LA was impressed. It looked as if it might be possible for him to be with his mother. Later, the professionals concluded that if he were to remain with his mother, there needed to be full time 24 hour supervision. My assessment of the evidence, including the circumstances of the termination of the placement is both that the professionals were right about the level of surveillance and that the placement had to end. This was a stressful and difficult time for the mother. She was very young, she had had no proper preparation for life, let alone motherhood, her experience of childhood was pretty dire, the engagement required was necessarily onerous, she had had no opportunity to acquire discipline or resilience. In those circumstances, of course her commitment wavered and crumbled

I did find the mother quite an impressive young lady: she gave her evidence confidently, she has a nice smile and her behavior was exemplary through the hearing. But the evidence of the professional witnesses is completely compelling and I have to prefer the evidence of those who saw her at other times when she did not prioritise her son's needs and did not respond appropriately to oft-repeated advice from different sources.

24. I am clear that the mother had incomplete grasp or recognition of her deficiencies as a parent to this little baby. I am sure there are things she has learnt but importantly, although I have huge sympathy with her, there were a

number of steps which she could and would have taken to assist her in this task. However, she did not take advantage of the advice she was given and show she was able to plan, to cope and make arrangements for her safely to care for him. So she receives great credit for some insight shown but the mother's position is very far from what would be necessary in order for me to agree to her application for an ISW. She has been given opportunities, which she failed to take.

I have to take into account the delay. J has not been in his mother's care for 12 months and not had contact since 7th December. The delay is no fault of hers but the fact is that he was placed with current carers as an adoptive placement on 22.2.19 and the evidence is that he is settled and developing and thriving there and the advice I have received from the professionals, which I accept, is that it would be detrimental for him to be introduced to his mother for contact in his present circumstances.

25. Miss Mather asks whether the plan advanced is fair if there is an opportunity for his mother to resume his care. I understand why she advances the point but of course my priority is J - I have no confidence that further delay and assessment would be fruitful. I do not find that there exists such an "opportunity". The time has passed. Sir James Munby identified in the case before him - Re S set out what is required to justify acceding to a request. For further assessment. No such justification arises on the facts as I find them.

26. My decision is that the grounds for the applications are well and truly made out and there is no ground established for the cross application. Accordingly the applications are granted and the cross-application dismissed.

FINAL THRESHOLD

- 1) The Local Authority seek to rely on the events occurring on or before 05/06/2018, that being the date on which it intervened to protect J (DOB: 29/05/2018). The Local Authority also seeks to rely on events occurring since that date which are capable of proving that state of affairs at the date of intervention. The Local Authority may amend the Threshold Criteria accordingly.
- 2) The Local Authority believe that the Child has suffered and is likely to suffer significant harm and that harm or likelihood of harm is attributable to the care likely to be given to him if the order is not made, not being what it would be reasonable to expect a parent to give.
- 3) The particulars of the significant harm suffered are as follows:-

a) The Child has been subject to a Child Protection Plan during the course of the Mother's pregnancy since 28/02/2018, during this time no attempts have been made to improve the home environment despite significant efforts made by the social worker allocated to the Mother and her siblings. The home is currently unsafe for the Child:

- i) The Mother continues to sleep on the sofa in the downstairs area of the home.
- ii) The home remains overcrowded.
- iii) There is a broken window in the upstairs bathroom.
- iv) There are two dogs which may pose a risk to a new born baby's safety. They are often muzzled or in cages. The Mother is of the view that these dogs do not pose a risk and that the younger of the two dogs is excitable but not dangerous.
- v) The Mother has identified the upstairs area of the home as unsuitable and would not allow the new Social Worker to visit that area of the home on 24/04/2018.
- vi) The Kitchen has broken cupboards, no handle on oven, oven encrusted with years of dirt and grease, no clear work tops, broken drawer fronts, dirty kitchen floor, dirty kitchen work tops, smells unhygienic. The Mother says that the flooring in the kitchen has now been changed.
- vii) The Sitting room carpet is very dirty, is cluttered, smells unhygienic. There is also a sofa bed and wardrobe in the sitting room making it more cluttered.
- viii) The Dining room smelt heavily of smoke due to individuals smoking in the property, the floor was dirty and smelt unhygienic.
- ix) In the bathroom the sink unit not plumbed in hence no water, the toilet is dirty and stained. The flooring has gone from bare brick to carpet (smelling strongly of urine) and partially fitted wooden flooring.
- x) The Garden is overgrown and mainly not useable.
- xi) The Lean to is very cluttered and difficult to move around in. Fridge freezer in this room as well as a washing machine. The family refused a social worker to check on this when exploring concerns as to whether the mother and her siblings were eating healthily.
- xii) The stairs are very steep and dangerous and the landing is very cluttered with baby items.

b) The Mother has identified that the child's maternal grandmother would be an integral part of caring for the child. This leaves the child at risk of neglect evidence by the fact that the Mother herself (and her siblings) have had the following history of Children's Services involvement:

- i) Currently subject to Child Protection Plan under the category of Neglect
- ii) 12/09/14 to 3/11/15 Child Protection Plan under the category of Neglect
- iii) 19/12/13 to 12/09/14 Child in Need
- iv) 13/09/14 to 5/12/14 Child In Need
- v) 6/12/14 to 6/05/15 Child In Need
- vi) 7/05/15 to 3/11/15 Child In Need

c) At issue the Mother lived with her younger siblings A and B who both attend specialised social schools. There are concerns that they are a risk to the child's safety evidenced by:

- i) The School have raised concerns regarding A's sexualised behaviour. B is also reported to display sexualised behaviours.
- ii) B swears often and can throw objects as well as be physically confrontational towards his mother (the maternal grandmother of the child).

iii) A has flicked a match at another child, however the Mother considers this to have occurred accidentally during play.

iv) Both A and B have been spoken to by the police about their behaviours. The Mother accepts that A and B could potentially be a risk to J and they are at times left unattended with J, however she suggests that they are normally caring towards him.

d) On 20 August 2018 the Local Authority took the decision to ensure that all of the Mother's care was supervised by the foster carers. There are concerns that there is at risk of physical harm or even death as evidenced by:

i. The Mother, after repeatedly being advised not to place muslin, comforter or blankets over J's face continued to do.

ii. Again against professional advice, the Mother continued to "prop feed" J placing on his back in the Moses basket and left him with a bottle in his mouth.

e) The Mother has failed to prioritise J's needs. The Mother has frequently left J in the full care of the Foster Carer. As evidenced by:

i. On 25.08.18, the Mother was absent from the placement from 3pm until and returned on 27.08.18 at 4.30pm.

ii. On 2nd Sep 2018 the mother left the placement at 0930 and did not return until 2000. On 04.09.18

iii. On 06.09.18 the Mother was absent from the placement from 9.30am to 8.45pm

iv. On 07.09.18 the Mother was absent from the placement from 8.45 am – 8.15pm

v. On 08.09.18 the Mother was absent from the placement from noon until 8.20pm

d) The Father reports to suffer from anxiety, depression and nightmares and has not put himself forward as a carer for the child due to these difficulties. Furthermore, The Father currently has no secure accommodation. The Father has missed numerous appointments with the social worker and has failed to attend contact with J since 19.07.18.