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**IN THE FAMILY COURT SITTING AT BIRMINGHAM**

Birmingham Civil and Family Justice Centre  
Priory Courts  
33 Bull Street  
Birmingham  
B4 6DS

Date: Monday, 26<sup>th</sup> April 2021

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**Before:**

**THE HONOURABLE MRS JUSTICE KNOWLES**

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**Between:**

**A COUNTY COUNCIL**

**Applicant**

**- and -**

**(1) A MOTHER**

**Respondents**

**(2) & (3) AB AND CD**

**(By their Children's Guardian)**

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*Re AB and CD (Threshold Criteria: Murder Investigation)*

**MS NICOLA BROWN** (instructed by **A County Council**) appeared for the **Applicant**  
**MR NICK BROWN** (instructed by **Smith Partnership**) appeared for the **First Respondent**  
**MR MATTHEW MAYNARD** (instructed by **AH Childcare**) appeared for the **Children's Guardian**

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**Approved Judgment**

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## **THE HONOURABLE MRS JUSTICE KNOWLES:**

1. I am concerned today at an Issues Resolution Hearing with two young people. A, a boy aged 17 years and 5 months who is no longer a looked after young person because he is living with his mother. Being over the age of 17 years, he is also not a young person over whom I have any jurisdiction to make a public law order. The other young person with whom I am concerned is C, born on 4 April 2006. She is now just 15 years old.
2. The local authority brought care proceedings arising from the following background facts. On 14 September 2020, the children's father was taken to hospital gravely ill. He had a large blood clot in his stomach and was experiencing extensive internal bleeding. Very sadly, he died on 17 September 2020 and the post-mortem has been inconclusive. Regrettably, on 17 September, the children's mother was arrested in connection with father's hospitalisation, some hours prior to his death. That followed an allegation being made by a member of the paternal family that the mother had suggested she could poison someone with an untraceable powder. The children were accommodated on 17 September 2020 in connection with police powers. An emergency protection order was made on 18 September 2020 and an interim care order on 24 September 2020. The police investigation into the father's death has been ongoing and, at the previous hearing before me in January, the police were still in the process of examining items seized from the family home. That examination is now complete. Those items are non-suspicious.
3. Both A and C returned to the care of their mother, I having approved that course in January 2021. Today, the mother is, of course, a respondent to these proceedings as are both young people. The local authority seeks a six-month supervision order with respect to C. That is tentatively supported by the children's guardian on the basis that this court is satisfied that the threshold criteria in s.31(2) of the Children Act 1989 are made out. I should say that, since the children returned to their mother's care in January 2021, there have been no concerns about the mother's parenting. She has worked extremely well with the local authority. Additionally, there are no concerns in relation to C from her school.
4. It is clear that the fallout from the events of last September have had a very serious impact on the family. They now seek to move away from the local area because of a backlash by paternal family members. The criminal investigation into the father's death has yet to conclude. As I understand it from the local authority, further routine toxicological evidence is going to be available in about four weeks' time and the post-mortem is likely to be finalised in about four weeks thereafter, so in about eight weeks' time. The police have, however, indicated that though that material remains outstanding, the likelihood of any prosecution of the mother in connection with the death of her husband and the children's father is low.
5. The issue which concerns the court this morning is whether threshold criteria are made out. Without that, I have no jurisdiction to make the supervision order sought by the local authority and supported by the children's guardian. The local authority position is that, on the relevant date, that being 17 September 2020, the date on which the mother was arrested and the children were accommodated, the children were likely to suffer significant emotional harm by virtue of the mother being suspected of

the unlawful killing of the father and, additionally, because there was no one able to exercise parental responsibility for the children.

6. The local authority acknowledges that being arrested for a crime would not ordinarily cross the threshold set out in the Act but assert that the particular crime of which the mother is accused is fundamentally different from other crimes and that an arrest for the murder of a spouse carries a real risk of emotional harm to the children and also causes stigma within the community which, again, impacts on the children's well-being. The local authority says that the real risk of harm in this case:

“...derives from the fact of the arrest, the circumstances giving rise to it, and the continued investigation by the police.”
7. However, the local authority acknowledges that, seven months after the father's death, the police have confirmed that really the only evidence against the mother is the allegation made by the paternal family member to which I have already referred. The local authority's position statement goes on to suggest that whether reasonable grounds exist to suspect that the mother killed the father is not a matter for the court or the local authority to dwell upon as the accumulation and analysis of evidence is a matter for the police and Crown Prosecution Service.
8. In opposition to those submissions, the mother through Mr Brown asserts that the mother is essentially the victim of a false allegation and that the pain of the emotional harm which C has suffered is not attributable to shortcomings in her parenting, and points me to the authority of *Re A (A Child)* [2015] EWFC 11, a decision by the then President Sir James Munby, in particular to [7] - [17]. Mr Brown, to supplement his position statement, says that, whilst it is accepted that the fact of the mother's arrest and the suspicion that she may have been involved in the unlawful killing of her husband could ground the exercise of the court's jurisdiction in making an interim care order, that suspicion cannot ground the making of a final supervision order or any form of final public law order with respect to these young people.
9. The concession, Mr Brown says, that the local authority gave or made in its position statement, namely that being arrested for a crime would not ordinarily cross threshold, is fatal, to the local authority's case because the local authority cannot prove the attributable link set out in statute, namely that the want of care is attributable to the parent's behaviour being unreasonable.
10. The children's guardian recognises the difficulties as far as threshold is concerned and, if I may say so, and I hope Mr Maynard accepts this characterisation of his position, somewhat sits on the fence in relation to that.
11. Looking at the issue of threshold, first of all, I remind myself that it is fundamental that the local authority needs to prove its case by means of evidence and to establish that the facts justify a finding, on the balance of probabilities, that the child with whom I am concerned, namely C, is suffering or was likely to suffer significant emotional harm at the relevant date. The words of statute are clear. If I am satisfied that the child was suffering or was likely to suffer significant harm at the relevant date, that harm must be attributable to care given to the child or likely to be given to him not being what it would be reasonable to expect a parent to give to him.

12. In this case, the local authority has failed to produce any evidence which demonstrates that the emotional harm suffered by C is attributable to a want of care by her mother. For it to satisfy the attributable condition set out in statute, the local authority would, in my view, have to prove something adverse about the mother's behaviour and, in these particular circumstances, it would have to prove that she was responsible, on the balance of probabilities, for the death of C's father. The local authority has, as I note, and as it states in its position statement, never sought to assert that the mother has killed the father and does not seek to do so now.
13. In my view, the presently available evidence cannot support a conclusion, on the balance of probabilities, that the mother's behaviour was adverse. I say that in the full knowledge that the police investigation is incomplete but such evidence as there is points to the children being well parented by their mother prior to the father's death and, in fact, other than an allegation made by a member of the paternal family, there is presently an absence of evidence implicating the mother in the father's death. I reject the local authority's suggestion that the analysis of evidence in this case is a matter for the police and not for the local authority and for the court. It is for the local authority to prove its case. I note the social worker's final evidence which states it is unlikely:

“...that the mother will face any charges in connection with the death of the father.”
14. I have had firmly in mind whether, given the presently active police investigation, I should adjourn this case until such investigation is complete but no party asks me to do so, and I have concluded that further delay in coming to decisions about long-term welfare is disadvantageous to C. She is a young person of 15 years who needs these proceedings resolved today.
15. I am also mindful of the wise words of Baroness Hale in the case of in *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, quoted by the then President in *Re A*:

“We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs.”
16. That statement by Baroness Hale, of course, underlines that which I have already pointed to in my analysis of the threshold in this case, namely that it is for parental bad behaviours to be demonstrated and for there to be a causative link between those behaviours and the harm experienced by the children with whom the court is concerned. I agree with Baroness Hale's words which properly demarcate the state's responsibilities with respect to the interference in family life which public law proceedings represent. Thus, standing back, on balance and on the evidence before me today, I am satisfied that the local authority has failed to make good its case that the threshold criteria were crossed at the relevant date.

17. Having so determined, I turn now to the plans for the children. I am grateful to Ms Brown for confirming that, whatever my decision is on the threshold grounds, that the local authority would offer the assistance described in its supervision plan under the auspices that C is a child in need. I am grateful for that assistance. There is, of course, in the evidence, no suggestion that the mother or, indeed, C would not cooperate with the local authority's plan. The assistance by the local authority seems to me to be founded not only in providing support to C, to her brother, and also to the mother whilst the police investigation is ongoing but more acutely to assisting the mother and both children to relocate to another area of the country. That is likely to be a relatively slow process given the difficulties that there are with the mother's benefit and immigration status, as yet unresolved and unlikely to be resolved within what would have been the lifetime of any supervision order which the local authority was inviting me to make, namely six months.
18. I hope that the local authority will be in a position to support the mother's continued care of the children and to provide assistance and support to her in the immigration determination which requires to be made by the Secretary of State for the Home Department. That is not something in which this court can interfere, but I hope the local authority would be able to support the mother's application on the basis that she is the only person who has parental responsibility for C and certainly for A, although I note A will be 18 in November of this year.
19. I conclude by saying this. I wish both young people well. This has been an extraordinarily difficult time for them and for their family, and I hope that the police investigation is brought to a conclusion as soon as possible. I wish both them and their mother the best for the future.
20. That is my decision.

#### Postscript

The police investigation has concluded following a narrative verdict by the coroner that the father died of multiple organ failure by an unknown cause.

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**(This judgment has been approved by the Judge.)**