



IMPORTANT NOTICE

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.

Neutral citation number: [2022] EWFC 72

Case No: ZE21P00991

IN THE FAMILY COURT AT EAST LONDON

6th and 7th Floor
11 Westferry Circus
London
E14 4HD

Date: 11 March 2022

Before:

HER HONOUR JUDGE REARDON

Between:

M
- and -
MGM
A local authority

Applicant

Respondents

Ms Schon for the Applicant
Ms Logan for the First Respondent
Mr Burman for the Local Authority

Hearing date: 21 February 2022

JUDGMENT

HER HONOUR JUDGE MADELEINE REARDON :

Introduction

1. This is my judgment on an application under CA 1989, s14D for leave to discharge a special guardianship order. The child who is the subject of the proceedings is T, a boy aged 5. The applicant is his mother ('M'). The respondents are the special guardian, who is T's maternal grandmother ('MGM'), and the local authority, the special guardianship order having been made at the conclusion of care proceedings in 2017.
2. M also makes an application for contact with T. Supervised contact was taking place regularly until December 2021 when it broke down. M does not need leave to apply for contact (CA 1989, s10(7A)), and so these proceedings will continue in some form regardless of my decision on the leave application.
3. T himself is not currently a party to these proceedings. It is not clear to me whether FPR 2010, r.12.3 requires the child to be a respondent to an application for leave to discharge (as distinct from an application to discharge once leave is granted). In the present case I am satisfied that it is not necessary for T to be made a party, and a guardian appointed for him, prior to the issue of leave being determined: I have sufficient information from the local authority and the other parties to be able to determine the leave application, and an independent overview of T's welfare is not necessary at this stage. The position will, of course, be different if leave is granted.
4. T's father ('F') has not played any significant role in his life and did not engage with the care proceedings, although he was notified of them. He has a significant criminal history and was in custody at the time of the final hearing. In M's application it was stated that he does not have parental responsibility for T. During the course of preparing this judgment I received an email from M's solicitors to say that was an error and F is in fact named on T's birth certificate, although M has no contact details for him. In the circumstances I am satisfied that it is appropriate to deal with this application without making further efforts to locate F at this stage, but his position will clearly need to be re-considered when the matter returns for directions.

Brief background

5. For the purposes of this judgment it is only necessary to give an overview of the background to the application.
6. M had a troubled childhood. She exhibited behavioural problems at school from a very early age and by the age of eight had been permanently excluded from two primary schools. She then attended a specialist school for children with social and behavioural needs, and subsequently a pupil referral unit from the age of 14.
7. M's parents are separated and she grew up with her mother, MGM. She has two older siblings, neither of whom experienced any similar difficulties in their childhood or adolescence.
8. During M's childhood there was some limited involvement by the local authority. In 2006 when she was seven years old M made an allegation against MGM of physical abuse; this was investigated but not substantiated. In 2007 an initial child protection conference was convened and M was placed on a child in need plan. In 2014 when M was displaying behaviour problems as a teenager the family was referred to Families First under the Early Help framework.
9. T was born when M was 16 years old. At the time M was living at home with MGM and her older sister. A pre-birth assessment indicated that M would be able to care for T with support from MGM.

10. In December 2016 there was an incident when T, then aged 3 months, sustained serious injuries while in M's care, in an accident due to a lack of supervision. As a result the local authority issued care proceedings and an interim care order was made. T was discharged from hospital after about three weeks and placed in foster care.
11. A number of assessments were carried out during the proceedings, including a parenting assessment of M and special guardianship assessments of MGM and M's older sister, T's maternal aunt.
12. The conclusions of the parenting assessment, on which the local authority's final care plan was based, were that M was not in a position to provide long-term care for T due to her immaturity and risky behaviours: she could not meet T's basic needs without considerable support, and was struggling to manage her own care independently.
13. Both special guardianship assessments were positive. The local authority's final care plan was that a special guardianship order should be made in favour of MGM, on the basis that M would move out of the family home.
14. M's position throughout the proceedings was that she wished to care for her son but if that was not possible she would support MGM as a carer.
15. In June 2017 a special guardianship order was made in favour of MGM together with a 6-month supervision order. M's position as recorded on the order was that she '[does] not actively oppose' the orders made. In accordance with the care plan, M moved out of MGM's home and into semi-independent accommodation, supported by the Leaving Care team.
16. M's contact with T was initially arranged directly between the family. In September 2020, after difficulties arose between M and MGM, the local authority agreed to offer a contact centre place for a time-limited period to allow the parties to reach an agreement about contact arrangements. The local authority offered to facilitate discussions between M and MGM but M refused to engage. In December 2021 the local authority ceased funding the contact centre place.
17. In December 2020 M made a report to the police alleging that she had been physically, sexually and emotionally abused by MGM during her childhood. The police carried out an investigation which was closed in June 2021. The local authority carried out an assessment and concluded that T was not at risk of harm in MGM's care.

The leave application

18. M's application was issued in May 2021. There was then considerable delay within the court, for which I have apologised to the parties, before a first hearing was listed on 8 November 2021. At that hearing I directed the parties to file evidence and skeleton arguments, made provision for disclosure of the papers from the care proceedings, and listed the leave application for hearing on 21 February 2022.
19. In her C1 application form M set out the change in her own circumstances on which she relied in support of her application. She said that she had matured significantly since the care proceedings and was now working and living independently. She had ended her relationship with T's father shortly after the care proceedings concluded, and was now single and focusing on building her own career.
20. In her application M also alleged that she had been subjected to physical, emotional and sexual abuse from MGM during her childhood, and raised concerns that T was also experiencing abuse: in a C1A form filed with her application she alleged that she had seen bruising on T's body during contact, which she believed had been caused by MGM.

21. M's explanation for not raising the allegations of abuse in the 2017 care proceedings was that MGM had told her that if she did so, T would be adopted.
22. MGM and the LA oppose M's application. It is the view of the LA, which continues to provide support to M, that there has not been a significant change in her circumstances since the 2017 order was made. The LA is of the view that T is thriving and well-cared for in MGM's home and that he is not at risk of abuse.
23. MGM denies the allegations against her.

The legal framework

24. This is not a straightforward application in terms of the law. M makes serious allegations against MGM which were not raised, and therefore not determined, in the care proceedings which led to the special guardianship order being made.
25. The applicable statutory provisions are set out in CA 1989, s 14D. As a parent of T, M must obtain the leave of the court before making an application to discharge a special guardianship order: s14D(3). The court may not grant leave 'unless satisfied that there has been a significant change in circumstances since the making of the special guardianship order': s14D(5).
26. The most recent Court of Appeal authority on applications for leave to discharge a special guardianship order, which summarises previous authority and clarifies the approach, is *Re M (Special Guardianship Order: Leave to Apply to Discharge)* [2021] 3 WLF 1203, [2021] EWCA Civ 442. In *Re M* the Court of Appeal held as follows:
 - a. An application relating to a special guardianship order is an attempt to disturb what is intended to be a long-term status, and so the inclusion of the word 'significant' is s14D(5) has meaning and is not a drafting error (notwithstanding its omission from the equivalent provision in ACA 2002, s24(3)).
 - b. The word 'significant' means 'considerable, noteworthy or important.. it does not mean trivial or unimportant, and neither does it mean exceptional, immense, or insurmountable'. When assessing change, it will be important to establish the 'baseline facts' that led to the making of the original order.
 - c. If the applicant cannot establish that there has been a significant change in circumstances, the application will fail.
 - d. If the s14D(5) requirement is met, the court should consider whether the applicant has a 'real prospect' of success; the degree of any change in circumstances is likely to be intertwined with the prospects of success, in that the greater the prospects of success, the more cogent the welfare arguments must be if leave is to be refused.
 - e. At the leave stage, the welfare of the child is important but not paramount. The effect on the child's welfare at this stage means the effect of the application to discharge the special guardianship order being heard or not heard; the question of whether it is in the child's interests for the order to be discharged only arises if leave is granted, at which point welfare is paramount.
 - f. At the leave stage, the court is evaluating information that will usually be incomplete and will not be in a position to make findings of fact. The applicant must therefore provide credible evidence in support of his or her case, and the court's task is to make a fair and realistic assessment of that evidence.
27. At the hearing on 8 November 2021 I directed the parties to include in their skeleton arguments for this hearing the approach which they argued that the court should take to the fresh allegations made by M against MGM.

28. M's case is that if the court finds the s14D(5) requirement to be met (as she says it is), the allegations she has made are a significant factor pointing towards granting leave. She points to the Court of Appeal's guidance in *Re M* (paragraph 52(8)) to the effect that the court must look at welfare 'in the round' when considering prospects of success, and says that there is a real need in this case for the allegations to be investigated and determined by the court.
29. Although M's primary case in support of a significant change in circumstances is based on changes she herself has made, it was suggested on her behalf in oral submissions that the allegations M makes against MGM could also be seen as a 'change in circumstances'.
30. The local authority and MGM say that the allegations should carry little or no weight in the court's consideration of the leave application. Their case is that there has not been a significant change in circumstances and so the door to a wider consideration of welfare has not been opened. If I were to decide that the s14D(5) requirement of a significant change in circumstances was met, the allegations do not justify the grant of leave because they have already been fully investigated by both the police and the local authority and a further investigation by the court is not necessary.
31. M has not applied to set aside the special guardianship order under MFPA 1984, s31F(6). Mr Burman on behalf of the local authority refers briefly to the possibility of such an application in his skeleton argument but points out that this is not a case where the fresh evidence has come to light after the order was made: M could have raised the allegations within the care proceedings but did not do so, and a substantial amount of time has elapsed since then. He suggests therefore that any such application would stand little chance of success.

The new allegations

32. In her witness statement M provides further detail of the abuse she says she suffered during her childhood. She alleges physical, emotional and sexual abuse perpetrated directly by MGM. She also alleges that MGM facilitated sexual abuse that was perpetrated by men invited to the family home.
33. The following information is available from the local authority and police records:
 - a. In 2006 M made an allegation of physical abuse against MGM, which was investigated and found to be unsubstantiated.
 - b. In 2007 M's school raised concerns about M's '*inappropriate behaviour towards male staff and male children*' and noted that her drawings were sexualised. The school said that the relationship between MGM and the school was difficult and that M had failed to take up services in the past. A local authority case note around the same time includes a note, '*initial thoughts are that [MGM] is abusing [M] and this abuse may include sexual abuse.*' A case note in 2008 suggests that videos watched by M's older sister might provide an explanation for the sexualised drawings.
 - c. In July 2010 the police were called to the family home when M had locked MGM out. On arrival M told the police that MGM had sexually abused her. When the police sought to explore this allegation M said that she had made it up because she was angry and MGM would not let her go out with her friends.
 - d. In November 2011 M was taken to hospital after falling from a second floor window ledge. This led to a police referral and an assessment by the local authority. Neighbours of the family said that M was in the habit of sitting on the window sill. M told the police that she had been sitting on the sill despite being told not to, and had twisted and fallen.
34. In the 2017 proceedings M was asked about her childhood experiences by an adult psychiatrist who assessed her mental health and an independent social worker who carried out the parenting

assessment. Both experts reported that M was very difficult to engage and that eliciting information from her was difficult. The independent social worker recorded that M 'denied any significant events in her childhood, or periods of abuse.' The experts were of course informed of the local authority's involvement with M during her childhood and the reasons for this, although it does not seem that they had access to the detailed records which would have revealed the fact that there had been concerns about sexual abuse.

35. M reported her allegations to the police on 9 December 2020. She participated in a video-recorded interview, a detailed summary of which is in the police records. It is not necessary to set out M's allegations in full in this judgment. They include an allegation of direct sexual abuse against MGM, and an allegation that MGM facilitated sexual abuse of M perpetrated by unknown men who were invited to the home. M also alleged that MGM had perpetrated physical and emotional abuse towards her, and that her siblings had done the same.
36. MGM was interviewed with a solicitor and denied the allegations. M's older sister gave a statement to the police in which she said that M's allegations were false; she said that there was no abuse in the home and denied that any man had come to the home after her parents separated. M's sister told the police that she believed that M had made the allegations up in order to achieve the outcome she wanted (T's return to her care).
37. It is clear from the police records that the police were aware of the reports that M had presented at school with sexualised behaviour in 2007. It is also apparent that the police conducted a thorough review of relevant documentation, including the Family Law Act papers, M's medical records and police and social services records. The strengths and weaknesses of the case are summarised in a document dated 1 June 2021 which sets out the reasoning behind the police decision to take no further action on the basis that there was insufficient evidence to support a conviction.
38. M's allegations in December 2020 also triggered a s47 investigation by the local authority into T's circumstances, and a subsequent Child and Family Assessment. The social worker who carried out the assessment spoke to the school and the family GP and undertook direct work with T himself. No concerns were expressed by any agency. The conclusion of the assessment was that T was 'happy, healthy and thriving with [MGM]. T shared a close bond with his grandmother, and he did not look fearful or timid around her'.
39. In May 2021 M made a referral to the local authority saying that she was concerned about bruising to T which she said she had observed during contact. The local authority checked the contact records and spoke to T's school. M's allegations were not consistent with the observations of professionals, including the contact supervisors.
40. There are undoubtedly issues with M's credibility. I take into account the fact that victims of abuse, particularly childhood sexual abuse, often struggle to give a consistent account of what has happened to them because of the impact trauma has on memory. However M's allegations of bruising to T are not supported by other evidence and there is a strong suggestion that these have, at the very least, been exaggerated. I note also that the account M gave to the police in 2021 of the disputes around contact in 2018 differs significantly from the account she gave at the time that these events occurred.
41. M first made her allegations in late 2020, a couple of months after she had requested a copy of her social work file in which the school's observations of sexualised behaviour were recorded. The local authority is concerned that this discovery, in combination with the escalating tensions around T's placement with MGM, led to M's allegations. On the other hand, it is not unusual in cases of sexual abuse for allegations to be made many years after the abuse took place. M has given what could be a plausible explanation for her failure to raise the allegations in 2017, namely that

MGM told her that if she said anything about her experiences as a child the likely outcome for T would be adoption.

42. Both of M's older siblings were interviewed as part of the special guardianship assessments that took place in 2017. Both gave what appears to be a full and detailed account of their childhoods and said that there was no abuse in the home. M's sister gave the same account to the police in 2021. Neither of M's siblings has experienced the difficulties that M has had. M's older sister, who is now in her 30s, is a speech and language assistant in a school and might be expected therefore to have a reasonable awareness of safeguarding issues.
43. It is obviously not possible to make findings as to the truth or otherwise of M's allegations without hearing evidence. There is some evidence in the local authority records that suggests that M may have experienced trauma, including sexual harm, as a young child. This evidence is potentially supportive of her case. However there is also evidence upon which MGM will be able to rely which suggests that M's account is unreliable and that the allegations are untrue.

M's case as to a significant change in her own circumstances

44. The primary issue in the 2017 proceedings was M's ability to provide for T's needs, including his basic care needs, and to keep him safe. As the final orders were unopposed there is no written or transcribed judgment. The agreed threshold document and the assessments carried out within those proceedings together establish a 'baseline' for my evaluation of M's case that she has achieved significant change.
45. M's case as to her change of circumstances is set out in her witness statement. She accepts that in the 2017 proceedings she was not in a position to care for T. She says that since 2017 she has achieved change as follows:
 - a. She has sought therapeutic support; in 2021 she was diagnosed with complex PTSD and prescribed medication to improve her mood and sleep.
 - b. Her living arrangements are stable: she lives in rented accommodation and has applied for housing through the local authority. She is able to care for herself and manage a household budget.
 - c. She has qualified as an Eyelash Technician and has registered as a sole trader with HMRC. She intends to start a business selling eyelash extension courses online and to that end has completed a course in International Business and the Prince's Trust Enterprise Programme.
 - d. She has undertaken several parenting courses, including the Parents Together Online Parenting Course, a Knowledge Door course in child psychology, and a Safeguarding Children course.
 - e. She has ended her relationship with T's father and now has no communication with him.
 - f. She has consistently attended contact and the notes filed by the local authority indicate that she has a warm and affectionate relationship with T and that he enjoys his time with her.
46. M concludes:

"In previous proceedings, the main concern of professionals was neglectful parenting. However, I do genuinely feel that I have grown as a person and matured significantly. I feel that I am now in a position to offer [T] the love and care he deserves, and I feel that the contact reports are a good reflection of the care that I would be able to offer to T."
47. The evidence filed by the local authority on this issue is primarily contained in a statement from the Team Manager of the Leaving Care Team which continues to provide support to M. There is

also relevant information in the police records as to events since the 2017 proceedings. The local authority relies on the following evidence:

- a. In 2018 there were two incidents when the police were called to MGM's home because M had removed T without MGM's agreement. On both occasions T was returned after the police intervened.
 - b. There is a police record in June 2019 of a 'possible altercation' at M's residence during which she sustained a laceration to her hand which she said was caused by a knife.
 - c. In January 2020 M was banned from BARTS sexual health clinic for aggressive behaviour and assaulting a patient.
 - d. In October 2020 M made an application for a non-molestation order against MGM. At some point, I am not sure when, the application was dismissed.
 - e. Prior to these proceedings being issued, the Leaving Care team had expressed concern about M's mental health. A referral was made to Prevent in 2020 or 2021 raising a concern that M was at risk of becoming radicalised.
 - f. M's engagement with the Leaving Care Team has been poor. She has not permitted her Personal Advisor to visit her at home for the past 8 months and her engagement with support is intermittent and only on her own terms.
 - g. Two of M's placements have broken down because of disputes with other residents.
 - h. M's accommodation, and all bills and charges, is still fully funded by the Leaving Care Service. The local authority has asked her (along with its policy in respect of care leavers) to apply for Housing Benefit in order to take on responsibility for the tenancy herself but M delayed in doing so for many months and the application has still not gone through; as a result M is one of only a few young adults in the service for whom the local authority still pays full rent and charges on their accommodation. MGM says that she herself continued to support M financially until M broke off contact with her in August 2020.
 - i. The landlord and neighbours have raised complaints about the condition of M's property (particularly management of waste and loud noise at night); these issues have continued since this application was issued.
 - j. Contact between M and MGM broke down after the local authority ceased funding it in December 2021. The local authority has attempted to assist M and MGM in setting up contact arrangements outside the contact centre, but this has not been possible because M is 'not speaking' to MGM at present and has effectively refused to engage with this process.
48. The local authority's (and MGM's) case therefore is that while M has taken some limited steps in recent months to improve her circumstances (and in particular to move towards finding employment), she is still a long way from being able to manage to live independently and care for herself, let alone for T.
49. I appreciate that M may dispute some of what is contained in the local authority and police records, and there is a possibility that not all of the reports are accurate. My task at this stage is to undertake a fair and realistic assessment of the evidence, recognising that it is as yet untested.
50. The fact that M has ended her relationship with T's father, assuming as I do for present purposes that this is the case, is undoubtedly a change in her circumstances. The risk posed by T's father was highlighted in the parenting assessment (with which he did not engage), although it was far from being the sole issue of concern and he does not feature at all in the agreed final threshold document.
51. The steps that M has taken to obtain therapeutic support for herself are an indication that she has developed some insight into her difficulties. Her efforts to improve her parenting, albeit all quite recent, indicate that she is motivated to achieve change. MGM raises a concern that M's

engagement with mental health services may indicate a level of vulnerability and that may be right, although the evidence on this issue is limited. If the application were to proceed it is likely that a psychological report would be necessary.

52. However overall the evidence strongly suggests that M has not yet achieved stability in terms of her own accommodation, finances or self-care. She continues to be substantially dependent on the local authority for practical and financial support. The reports of aggressive and volatile behaviour and disputes with neighbours and other residents in her accommodation are recent. M's immaturity and the difficulties she experienced in providing safe and stable care for T were the primary reason why the proceedings concluded with a special guardianship order in favour of MGM.
53. In the local authority's account of M's response to its recent attempts to work with the family to set up contact, there are echoes of the parenting assessment in 2017 in which it is recorded that M and F were 'ignoring' each other. The independent social worker commented then that M's attitude to relationships appeared naïve and immature.
54. I conclude that M is still quite a long way from being able to demonstrate a significant change in her own circumstances since the special guardianship order was made.

Discussion

55. I have evaluated the evidence in respect of a change of circumstances 'on the ground' and concluded that any changes M has achieved in her own lifestyle and circumstances do not amount to a significant change in circumstances for the purposes of CA 1989, s14D(5).
56. The suggestion was made on behalf of M during the course of oral submissions that the emergence of the new allegations against MGM may itself amount to a significant change in circumstances.
57. The Court of Appeal has held in the context of an application for permission to oppose an adoption application¹ that the 'change of circumstances' required by ACA 2002, s47(7) 'can embrace a wide range of different factual situations [and]... does not relate a change to the circumstances of the parents'. I see no reason why the approach should be any different in special guardianship cases. The requirement for a 'significant change in circumstances' should, in my judgement, be construed broadly.
58. That said, in my view it is difficult to characterise the emergence of fresh allegations in this case as a change in circumstances. The alleged events took place long before the care proceedings; the allegations were of course known to M in 2017 when the special guardianship order was made; and the evidence on which M now relies in support of her allegations, namely the school records from 2006, were available to the local authority during those proceedings.
59. I conclude therefore that there has not been a significant change in circumstances and that the requirements of CA 1989, s14D(5) are not met.
60. It follows that there is, strictly speaking, no need to go on to consider the second stage of the leave application, namely whether M's application stands a real prospect of success (and the very fact that there has been no significant change in circumstances means of course that an application to discharge the special guardianship order would be highly unlikely to succeed). For completeness however, it is appropriate to record my doubts, even if M had achieved much greater change, that her application would stand a real prospect of success. T is a five-year-old child who has lived with MGM (and his aunt) since he was a young baby. His relationship with M

¹ Re P [2007] EWCA Civ 616

is important to him but he has not spent significant time with her and his primary attachment must be with MGM. It is difficult to see how, if the special guardianship order were discharged, M could meet his obvious need for an ongoing and meaningful relationship with his grandmother and aunt in circumstances where she currently has no communication with either of them at all.

61. M's argument, based on the observations of the Court of Appeal in paragraph 52(8) of *Re M*, that it is appropriate to grant leave in this case in order to permit a full and thorough investigation of the allegations M makes against MGM, carries much less weight in the circumstances of this case than it might have done had there been no investigation into the allegations by the police or the local authority, or had the investigations been less thorough.
62. I turn finally to the suggestion – raised for the purposes of rebuttal by the local authority, and without a formal application having been made by M – that the new allegations might justify revisiting the factual basis on which the special guardianship order was made, on the basis of the line of authority summarised by Peter Jackson LJ in *Re E (Children: Reopening Findings of Fact)* [2019] EWCA Civ 1447. This point was not fully argued before me, there being no application before me to set aside the order, but I would tend to agree with the local authority that the fact that the allegations are based not on evidence that has come to light after the trial but on matters known to M at the time when the special guardianship order was made, together with the length of time that has elapsed since the order, mean that the balance would be likely to fall down in favour of finality.
63. I therefore refuse the application for leave to discharge the special guardianship order.

The contact application

64. M's application for a s8 contact order is not subject to the 'leave' restriction which applies to an application to discharge a special guardianship order. In *Re M* the Court of Appeal observed that such applications should not be considered an abuse of process as a matter of principle, but that in suitable cases it may be appropriate for such applications, if unmeritorious, to be summarily dismissed.
65. It is not suggested by either MGM or the local authority that this application is unmeritorious and I am satisfied that is not the case: contact has broken down despite evidence in the contact notes filed by the local authority that it was of good quality and beneficial to T. There is therefore a need for the issue of contact to be reviewed by the court.
66. However, the current position seems to be that MGM is willing to facilitate contact, and the local authority is prepared to assist, but M will not engage in discussions to enable progress to be made. While I understand that M's feelings towards MGM are complex, and that she has made allegations against MGM which will not now be determined by a court, the reality of this case is that the only way in which T's important relationship with his mother can be maintained is if M engages with MGM to the limited extent which will be necessary to set up stable contact arrangements. The local authority's offer to facilitate discussions around contact is almost certainly the best way of ensuring that contact resumes as soon as possible. M must bear in mind that if she declines to take up that offer it may be more difficult for the court to put in place appropriate contact arrangements, and it will certainly take much longer.

