Neutral Citation Number: [2024] EWFC 15

Case No: MB22C50555

IN THE MIDDLESBROUGH FAMILY COURT

Date: 2 February 2024

Before:

Mr Justice Poole

- -

Between:

A FATHER	**Applicant**
- and -	
(1) MIDDLESBROUGH COUNCIL **(2) A MOTHER** **(3) and (4) X AND Y** **(5) V (BY HER CHILDREN'S GUARDIAN)** **(6) Z**	**Respondents**

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Dr Umila Roy (instructed by Freer Askew Bunting) for the **Applicant**
Henry Trory (instructed by Middlesbrough Council) for the **First Respondent**
Jennie Smith (instructed by TBI Law) for the **Second Respondent**
Scott Smith (instructed by Kathy Webb and Co.) for the **Third and Fourth Respondents**
Julianne Askins (Appleby Hope and Matthes Solicitors) for the **Fifth Respondent**
The **Sixth Respondent** in person

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Hearing dates: 6th to 8th and 18th December 2023

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JUDGMENT

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Poole:

1. V is five years old. She has been the subject of three sets of public law proceedings. In 2020, Middlesbrough Council issued care proceedings in respect of V and her younger sister W after V fell twenty feet from a window and fractured her left femur when in the care of her mother, ("the mother"). During the proceedings V went to live with her father ("the father") and at the final hearing the court approved a plan for V to live with him whilst W remained with the mother. In or about late Summer 2021, V and the father moved in to live with her paternal grandmother, X, and her husband Y (I shall refer to them as the paternal grandparents) but in November 2021 the father moved out after disagreements with Y. The Local Authority was not aware of these developments at the time but later conducted an assessment of the paternal grandparents' ability to care for V which was negative. The Local Authority gave notice of removal of V from their care. The father issued an application to discharge the care order. The final order in those proceedings, made on 29 June 2022, was for V to remain in the care of the parental grandparents.

2. In or about September 2022, the Local Authority completed a Special Guardianship assessment of the paternal grandparents, authored by RT, Social Worker, which was negative, and once again indicated an intention to remove V from their care. Again, the father applied to discharge the care order. The Local Authority sought interim removal but shortly before the hearing of that application listed on 6 January 2023, withdrew that application. The Local Authority do however maintain that V should be removed from the paternal grandparents' care and seek approval of their care plan to place V in long term foster care. A single, female, foster carer who lives with a dependant child who has Downs Syndrome but does not have high level needs, has been identified and now approved. She lives in the area. Plans for V to spend family time variously with her mother, father, sister, and paternal grandparents once a month, and with her paternal step aunt once every two months, have been put forward, with review of those family time arrangements within about four months, and continuing at regular reviews thereafter. The updated final care plan is dated 31 October 2023.

3. The paternal grandparents oppose the plan and contend that V should remain in their care. The mother does not agree to the Local Authority's plan and supports V remaining with the paternal grandparents. She opposes a reduction in V's family time with her and W (currently once a fortnight). The father also supports V remaining with the paternal grandparents. He has withdrawn his application to discharge the care order and for an injunction. At the outset of this hearing I made Z, V's paternal step aunt (Y's daughter) a party to the proceedings. Her position is that she supports the paternal grandparents continuing to care for V but if the court does not approve that arrangement, she puts herself forward as a family carer for V, to be supported by the paternal grandparents. The mother does not support Z as an alternative family carer but the father does support that proposal in the event that the paternal grandparents are not considered suitable. The Children's Guardian supports the Local Authority plan.

4. I have heard oral evidence from RT, social worker who has been involved with the family since January 2021, Clarie Graham, Independent Social Worker (ISW), who has conducted an assessment of Z's suitability to be a family carer for V which was negative, from, X, Y, and Z, from Clarie Selwood, ISW, who had conducted a assessment of the paternal grandparents as carers for V which was negative, and from the Guardian, Angela Carter. I have been provided with a large bundle of documents

running to over 900 pages which includes a number of assessments: a paediatric assessment by Dr Rahman, Consultant Paediatrician, Ms Selwood's assessment, Cognitive assessments of X and Y by Kristy Lowe, Psychologist, Ms Graham's assessment, and an SGO assessment by RT; a statement from V's school, hair strand testing reports in respect of Y, a safeguarding medical report of Dr Joshi from July 2023, parenting assessments of the mother and father, both negative, analyses by the Children's Guardian, statements, plans, and minutes of meetings. It also includes papers from the earlier proceedings.

5. The Local Authority have produced a schedule of welfare findings which they invite the court to make:

> 1. The Paternal Grandparents have been subject to negative assessments by the Social Worker and Independent Social Worker. The assessments conclude they are unable to meet the child's complex needs to a satisfactory standard with concerns around exposure to adult conflict, poor care giving, neglect, verbal aggression and failure to follow health professionals guidance in respect of the child's diet
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> 2. Z has been subject to a negative assessment by an Independent Social Worker. The assessment concludes that whilst she has many of the requisite skills necessary and could meet the child's basic needs in the short term, this is complicated and compromised by the difficult family dynamic that is evident between Z and the Paternal Grandparents. Z would be reliant upon the Paternal Grandparents for support and the level of conflict that was evident during the assessment raises concerns in respect of Z's ability to manage this without impacting upon her own emotional wellbeing.
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> 3. The Mother and her partner were subject to a negative assessment. The assessment recommends the child is not placed in their care. The Mother does not seek to challenge the outcome of her assessment.
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> 4. The Father accepts he is not in a position to care at this time.
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> 5. The child has suffered a number of injuries whilst in the care of the Paternal Grandparents. The Paternal Grandparents have failed to report all incidents to the Social Worker in accordance with the Safety Plan.
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> 6. The child was subject to a Paediatric Assessment and Dr Rahman concludes there does not appear to be any underlying medical problem that may be making the child prone to gain excessive body weight. V's obesity is due to her eating habits rather than a specific medical reason. Dietary management is likely to be a long term activity and to achieve sustained improvements it is important that her carers understand the importance of managing her diet appropriately.

6. The Local Authority have withdrawn the second sentence of paragraph 5 of the schedule. Paragraphs 3 and 4 of the schedule of welfare finding are not disputed. The focus is on paragraphs 1, 2, the first sentence of 5, and 6. The fact that negative assessments have been made as referred to as paragraphs 1 and 2 is not disputed, but the justification for the conclusions reached is contested.

7. In effect, all parties proceed on the basis that the Court should consider three realistic options for V's future care under a care order.

   i) V should remain living under the care of X and Y;

   ii) V should live under the care of Z, supported by X, Y and possibly other family members;

   iii) V should be placed in long-term foster care.

   Option (iii) would involve the removal of V from her family. V is under a care order and has already been removed from her parents into the care of her paternal grandparents. Nevertheless, in my judgment, it is appropriate to adopt the approach that, whilst my paramount consideration is V's best interests, I should only approve the removal of V from the family if that meets the test of necessity.

8. In *Re DE (A child)* [2014] EWFC 6, Baker J considered a case where the parents sought an injunction to prevent removal of a child in care who had remained under their care.

> "[33] … the decision of the Supreme Court in Re B [2013] UKSC 33 and the series of cases decided in the Court of Appeal in 2013 leading to the decision in Re B-S (Children) [2013] EWCA Civ 1146 have changed the landscape for decision-making about children who are the subject of care proceedings. It is now clear, in the words of Baroness Hale of Richmond in Re B, supra, at paragraph 215, that:
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> "…an order compulsorily severing the ties between a child and her parents can only be made if 'justified by an overriding requirement pertaining to the child's best interests'. In other words the test is one of necessity. Nothing else will do."
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> Any local authority and court making decisions about the long term future of children must therefore address all the options which are realistically possible and analyse the arguments for and against each option before coming to a decision: Re B-S, supra.
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> [34] To my mind, where a care order has been granted on the basis of a care plan providing that the child should remain at home, a local authority considering changing the plan and removing the child permanently from the family is obliged in law to follow the same approach. It must have regard to the fact that

> permanent placement outside the family is to be preferred only as a last resort where nothing else will do. Before making its decision, it must rigorously analyse all the realistic options, considering the arguments for and against each option. This is an essential process, not only as a matter of good practice, but also because the local authority will inevitably have to demonstrate its analysis in any court proceedings that follow the change of care plan, either on an application for the discharge of the care order or an application for placement order under the Adoption and Children Act 2002."

Here, if V is placed in long term foster care, there will be no application to discharge the care order, nor any application under the 2002 Act. Here, the family carers are the paternal grandparents not the parents. However, I adopt the same principles articulated by Baker J in *Re DE*. Having regard to the Article 8 rights of the child and family members, having V's best interests as my paramount consideration, can I be satisfied that as a last resort it is necessary to remove her from family care. If the court considers that it would be in V's best interests to remain in the care of her paternal grandparents or with Z, the Local Authority will not seek to remove her from their care but cannot guarantee that there will not be a decision to remove her in the future if the circumstances compelled such a decision. If the court approves the updated final care plan as a last resort and as being necessary in V's best interests, then the Local Authority will place V with the approved long term foster carer. The Local Authority's view is that transfer to foster care should be immediate because the family will not work positively to ensure a phased transfer.

9. V's welfare is my paramount consideration and I have regard to the welfare checklist within s1(3) of the Children Act 1989. I remind myself of the no order principle by which the court must only make an order for a child if this is better than not making an order, s1(5) Children Act 1989. Although in the present case I am concerned with grand-parental care rather than parental care, I proceed on the basis that children are best brought up by their families, unless they are at risk of significant harm. No-one pretends that V is receiving ideal care from her grand-parents but Hedley J held in *Re L (care: threshold criteria* [2007] 1 FLR 2050, para 50,:

> "…society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others will flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done."

10. This being the third set of care proceedings involving V, I need not rehearse the full background. I shall begin by considering V herself – her characteristics, her relationships, and her needs. I shall then consider the evidence of the capabilities of the

paternal grandparents and of Z of meeting V's needs. I shall assess the benefits and disbenefits of the Local Authority's care plan. Finally, weighing all the evidence I shall reach a conclusion as to what is in V's best interests.

V

11. As the Guardian summarises, V "has experienced significant physical, emotional, psychological harm, and neglect during her most formative years." She was removed from her mother's care due to multiple factors which were significantly harmful to her. She lived with her father but he moved about a great deal and then left her in the care of the paternal grandparents. V has been living with them now for about two and a half years. For two years, after the father's departure, they have been her sole carers. She is a very affectionate girl who enjoys cuddles. She likes to be involved in adult conversations.

12. V's school provided an initial statement after V had been in reception for most of her first term (November 2022). It is a troubling report about V showing challenging behaviour including physical aggression to other children, and an oppositional attitude to staff. She had been toilet trained in nursery (the nursery linked to the school) but had been incontinent upon returning in September 2022. She had sat in her own faeces on one occasion, and on another had stood in the middle of the classroom and cocked her leg to urinate liberally over the floor. N could not use cutlery to eat her food at school and required support to learn to do so. The report continues,

> "V has cognitive difficulties which mean she is working significantly below her age-appropriate stage of learning. She is very clumsy and struggles to sit down or get up from the floor independently. Her continued weight gain, despite a referral to a dietician, inhibits movement and this has been the focus of a great number of professionals' concerns and conversations with carers. V does not access physical development activities appropriately and struggles in PE. In addition to her physical difficulties, V struggles to learn within the Reception classroom."

It was noted that the school had a generally positive relationship with X whom it described as V's main carer, but less so with Y. There was also concern about a number of others who were involved in dropping V off and picking her up from school including A who is Y's son and was then a teenager. V's attendance was at about 94%.

13. In a second report, dated April 2023, the school reported marked progress in most fields – continence, use of cutlery, respecting social boundaries, and physical movement. She was still having difficulties with learning. It was noted that her clothes were sometimes ill-fitting. Her attendance had dropped to about 92% but she had had a period off school and had some medical appointments to attend.

14. In the most recent evidence from the school, in November 2023, V's attendance was again about 92% and it was noted that she was often late arriving at school and was

missing too much learning time. More specific evidence was forthcoming during the hearing – there have been 15 "lates" this term and 6 "unauthorised absence lates". It appears that V has missed one day due to sickness. Four late attendances after 0930 were unexplained, one was explained as "running late". She has also missed time from school due to a doctor's appointment and an optician's appointment. V benefits from teaching assistance and, as I understand it, small group learning, but it is recognised that she has cognitive difficulties. Her continence had improved albeit she still has accidents at school about once a week. However, her clothes have been noted to smell strongly of urine even though she had not wet herself at school. Her clothes are sometimes ill-fitting. Engagement of her carers is described as "satisfactory". As to her mobility and weight,

> "V still has problems with mobility which are not developmental. At school's suggestion, she attended a gymnastics group in the local community, and we are told by carers that she enjoys swimming. However, she is overweight and this limits some activities she can do. For example, she finds it difficult to sit down on the floor and particularly to raise herself off the floor again from a sitting position. Her balance has been noted by her class teacher as poor, for example, she is unable to walk across a bench beam in PE, which is a common PE activity for children of her age. V has been referred to Occupational Therapy by [the school] with the intention of addressing her gross motor development."

15. Dr Rahman's paediatric report is from March 2023. He noted that V was extremely obese on the 100th centile. This was not, in his opinion, due to any underlying medical condition, but due to her eating too much. He stated that, "It appears that her grandparents are trying to comply with the advice provided by the dietitians. However, in children whose eating habits are geared towards excessive eating it is not easy to lose weight." V benefited from the support of a Health Visitor from birth and that involvement continued for much longer than would ordinarily be the case. Until the age of one she was not overweight but her weight rose dramatically from the 9th to the 98th centile between the ages of one and about 18 months. A dietician became involved and recorded V's weight and BMI both of which steadily rose even from the high values at 18 months. V has been referred to the 'complications of excess weight' service. Between March and November 2023 the service reports that V's weight has increased by about one kilogram and her BMI has been roughly static. The service reports,

> "X is trying hard to implement the advice of the dietitian e.g., with traffic light system and using distraction techniques. She actively seeks advice and updates about V and is open to working with psychology to look at attachment. All of V's appointments are attended by X, or Z if X is unable to make them, Y does not tend to join appointments which may be of benefit to ensure V was supported by all in the home, especially the psychology appointments. X brings V to the activities she says she is going to. V is very quiet and can be reserved at times, often not

> speaking much. V will be with our service for a further 6 months of care."

16. As the evidence, including the documents referred to above, makes clear, V has very particular needs arising from her troubling experiences during her formative years. She has difficulties with learning the cause of which may well be congenital. There is concern that she might have ADHD but there has been no diagnosis. Similarly there is no diagnosis of Autistic Spectrum Disorder. She is extremely obese, has been for over three years, and if that continues she will be at significant risk of serious physical health problems. She continues to have difficulties with continence. As she grows and develops more self-awareness, it is likely that she will present even more challenges to those caring for her and giving her support. She is at considerable risk of becoming isolated at school, even ostracised, because of her appearance and behaviour. Her mental and emotional health may very well suffer due to a number of the factors to which I have referred. V needs stability and affection within a loving family environment, but she also needs structure, clear boundaries, and active, consistent, and skilled nurturing and diet management to give her the best chance of reaching good physical and mental health in her later childhood and young adulthood.

The Paternal Grandparents

17. As X gave her oral evidence it was apparent that she sometimes struggled to articulate her thoughts and to think through the consequences of actions. Dr Lowe's assessment was that she is in the borderline range on assessment of her full IQ. We took breaks to ensure she did not become too fatigued and Counsel tried to use simple language in their questioning of her. She did not require an intermediary or other particular assistance to give her best evidence. She was clearly sincere and lacked the guile necessary to try to mislead the court with any degree of sophistication. She told the court that she had been a "soft touch" in her relationship with V for the first year or so after she came to live at the paternal grandparents' home but, she assured me, she had learned to be firmer, to find ways of laying down rules for V. For example, she now uses a "thinking step" for V where she will sit for five minutes to calm down when she misbehaves. X told me that they keep shoes on the stairs and if V throws them off the steps as she sits down, she will tell her that she has to pick them up and put them back when she has finished her thinking time, and that is what she makes her do. I found this to be a genuine description of one aspect of how X seeks now to parent V. X clearly loves V very much and all accounts are that V has a close bond with X. X told me that in the week of the hearing, on their way to school, V had said to her that she was her best friend and that she loves her. I accept the truth of that account.

18. X told the court of the steps she has taken to try to control V's eating and weight gain, to improve her continence, and to get her to school on time. I have no doubt that X and Y have not been as successful in these projects as they should have been. With respect to her, X appears to me to lack imagination and initiative. Once she has been told to adopt a particular, concrete, strategy such as using buying foods according to the traffic light system (green for low calories for example) or a portion plate (which provides an easy to follow guide to suitable portion sizes) she will try to adopt it – she will

understand how to comply with the advice and she will seem to follow it. If she is told more vaguely to control portion sizes (as was the recorded advice of the Health Visitor and a Dietician in mid 2022 for example), she struggles to find ways to implement the advice. She needs very clear, concrete guidance about what to do.

19. X had difficulty articulating why reducing weight, controlling continence, and getting V to school on time every day, was important. She tended to see it in terms of her "keeping" V, that is that if she did these things it would be more likely that she could continue to have V live with her. She did not appear to have very much understanding at all of why these steps were necessary for the benefit of V herself. Whilst it might be easy to criticise her for putting her own wishes and feelings over V's needs, I do take into account her difficulty with formulating and expressing her thoughts, in particular ideas of any complexity. I have no doubt that she wants what is best for V - her heart is certainly in the right place. I did find however that she was somewhat defensive and did not fully appreciate the significant concerns for V's health and welfare arising from her weight, behaviour, educational needs, and her presentation in terms of clothing and smell, as well as her continence. Her explanations of why X has been late for school, wears ill-fitting clothes, and has been found to smell strongly of urine, were inadequate. Nor did she did not display any real appreciation of the degree of harm that V's obesity is causing her and is liable to cause her if it continues. It has taken a great deal of professional support to persuade X to adopt the few measures she has taken to improve V's eating habits, but she did not give me any confidence that she will sustain those measures let alone build on them to make substantial improvements for V in the longer term.

20. Y is a much more combative individual. He takes some pride in speaking his mind. This has led him into arguments with other family members, including the father, and Z, and with some professionals. Although he has not obstructed the involvement of professionals, he has at times been dismissive of important professional advice. Y operates a mobile snack van and so there is a substantial amount of snack food and drink in the house.

21. Of note, he seemed not to have concerns over V's weight, saying that she could run and play like any other child. Also, he was too dismissive of her continence problems. He has spoken inappropriately in front of V on a visit by the guardian, Ms Carter, saying that they did not want V to go into a foster home whilst V was sitting on his knee. There is some evidence that in the past his anger has got the better of him and he has lashed out, but I am quite satisfied, as is the social worker RT, that there has been no domestic abuse within his relationship with X, a relationship which has been ongoing now for over a decade.

22. There was one aspect of Y's evidence that troubled me as not being fully open and truthful. As recorded at paragraph 2.3 of RT's social work statement of 31 October 2023, Y told her that Z "shouts at" V, and that V is wary of her. In oral evidence he tried to say that he was referring to an isolated incident when Z raised her voice to V, but I do not accept that. I am sure that he told RT that this was a feature of Z's relations with V. That is not to say that he was telling the truth to RT – indeed I find that he was exaggerating at the time because he was angry that Z had put herself forward as a kinship carer in competition, as he saw it, with him and X. He frankly accepted that he had been angry with Z at the time and had later calmed down when he understood that she was only putting herself forward as an alternate carer if the court considered that

the paternal grandparents were not suitable. He had exaggerated at the time and in his oral evidence he misled the court when trying to minimise what he had said to RT. He ought to have been more frank generally about what he had said to RT and that part of his oral evidence did not do him credit. Generally, he was not evasive in his answers and he was indeed plain-speaking but he was clearly very sceptical about professionals' concerns about V's health and welfare. He seemed to think that she had very few problems at all and that the worries expressed by others were overblown. In that respect he has a very unrealistic view of V's needs. The evidence suggests that he has had little involvement with V's school and with professionals. That absence of involvement adds to the impression that he thinks that the concerns about V are exaggerated.

Z

23. Z is a qualified social worker. Presently she works as an in-home carer. She works 48 hours a week and told the court that this could be arranged as a single 48 hour shift, two 24 hour shifts or four 12 hour shifts, or some other flexible arrangement. On the longer shifts she would be a sleeping carer at a client's home. She impressed me as having insight into V's problems and needs. It is clear that she understands the need for structure and boundaries. Naturally, the imposition of boundaries can cause V to view her differently from a grandparent who gives in to V's desires, for example, for food. It is troubling that Y has seen this as a negative feature of Z's relationship with V. As she gave her oral evidence, it was clear that Z was in a difficult position: she understands what V needs but did not want to be openly critical of her father and X. My clear impression was that this reticence was not born of fear of Y, certainly not of X, but of a desire to maintain good relations with them conscious as she was of Y's firm views and X's strong wish to remain as V's main carer.

24. Were Z to become V's main carer she would have to navigate some very difficult issues within the family: (i) V will doubtless want to continue to live with X and Y rather than with Z; (ii) X and Y would want V to live with them rather than with Z, but would be relied upon to help Z when she were working; (iii) the mother does not support Z as V's carer.

25. In her report on Z as a potential carer for V, Clare Graham, Independent Childcare Consultant advised,

> "Undoubtedly there are significant strengths to Z's application. However, I am concerned that the dynamic within V's wider family makes it likely that a placement with Z would be unsuccessful. Z struggles significantly when there is any sense of conflict or disagreement, this is likely linked to the loyalty she feels to her father and stepmother and proposing that she cares for V has placed her in direct conflict with them. This was evident when arrangements were made for family time during the assessment, this resulted in a heated discussion between Z and Y, the outcome of which was that V's family time was cancelled and this impacted on Z's mood.
>
> Z is reflective enough to recognise that her relationship with her dad and stepmother has been compromised by her proposing that she cares for V, and this has placed a significant strain on her

> emotional wellbeing, to the degree that she is concerned that assuming the role as V’s main carer risks compromising her own mental wellbeing and in turn would impact on the stability and consistency V would be provided. This is not a position Z is willing to place either herself or V in. Therefore, I do not recommend that Z is approved as a long-term carer for V at this time.”

26. An incident which Ms Graham regarded as important to her overall assessment is described later in her report:

> “I have not had the opportunity to observe Z with V, this was planned for 15 October, however just prior to the planned family time Z made the decision that this could not go ahead. There had been a disagreement between X, Y, and Z when she asked that V’s school book was sent with her so she could do some reading. Y had refused to send it and advised Z to just sit on her phone like she always did. Z became very overwhelmed and cancelled the family time. Z was very emotional during discussion about this and advised that she wasn’t willing to put herself and V in the position where they conflicted with X and Y, irrespective of what that meant for V’s care plan.”

27. Z maintains that she does in fact wish to care for V. She said that she regrets her reaction to her father’s behaviour on the day of the planned observations. She told me that she takes anti-depressants and feels that her mental health is stable. She did not accept that she has a tendency to overreact to small conflicts. Ms Graham was clear in her own oral evidence that Z had become very emotional in response to this incident and that this gave rise to serious concern that her commitment to any placement would break when under pressure within the family.

Professional Witnesses

28. I found all the professional witnesses, RT, Ms Selwood and Mr Graham to be careful and thoughtful. I accept that their opinions are genuinely held and are based on consideration of the relevant evidence. I respect their professionalism and that they have had much more involvement with the family than a Judge can enjoy at a short hearing. However, I did find that cross-examination of RT by Mr Smith for the paternal grandparents exposed a somewhat unfair approach to some of the evidence about them. For example, her negative SGO assessment refers to the issue of domestic violence by detailing historic matters and stating that she only has X and Y’s word for there being no current issues in that regard. In fact, there is no evidence at all of any domestic abuse in their relationship but her written report leaves “hanging” the insinuation that there may be some ongoing abuse. Likewise, discussion of clutter within their home deflects from her important conclusion that the house is hygienic and suitable for housing V. Despite this aspect of her evidence I have no doubt that her overall assessment is based

on considerable experience of this family, genuine attempts to keep V within the family and to support X and Y to that end, and to do what is in V's best interests.

29. In February and March 2023, Ms Selwood saw the paternal grandparents for a total of about seven hours in their home. She alerted those who led her instruction to her concerns about X and Y's cognitive abilities:

> "X has told me she went to a non-mainstream school due to her learning needs and behavioural difficulties. Y said he is dyslexic and neither can read the court papers properly and rely on Y's daughter Z to help them. X's memory is quite poor and I am concerned that she struggles to understand the issues with V's weight and that this is because the information may not be presented to her in a way she can understand, in line with her learning needs. I am concerned that this has not been picked up by the LA before in previous assessments. They did say that RT, the allocated SW comes out to go through information with them as they don't always understand it. X also doesn't always understand what is said in meetings."

In April 2023 Ms Selwood contacted RT,

> "X and Y told me they did attend a parenting course, but if they have cognitive difficulties, this may not have been at the right level. I feel that they should be allocated a Family Support Worker to assist them with behavioural support in the home, they are both willing to engage with this. This would be around Y raising his voice and V not listening to X"

30. As a result cognitive assessments of each were undertaken by Dr Lowe, Psychologist. Y's full scale IQ was in the low average range, X's in the borderline range.

31. Ms Selwood then completed her assessment in July 2023 having seen X and Y for a further two hours or so and having spoken to RT and V's school. She concluded that although she thought there had been small gains at the time of her initial report in March 2023, those gains had not been sustained. She concluded,

> "I am of the opinion that X and Y are unable to meet V's needs. I am very concerned about her weight, her development and her behaviour. The recent child protection investigation has increased my concerns. I feel that both X and Y lead very unhealthy lifestyles and have significant health problems of their own. I am of the opinion that X has very limited parenting ability and is unable to put in place appropriate boundaries and guidance. I feel that Y uses authoritarian methods of discipline and that neither are able to meet V's needs, which are complex."

> …
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> I do not feel that X and Y are open and honest in respect of V’s care and this makes it very difficult to assess her level of functioning. Y in particular, has a derogatory opinion of professionals and this is shared by X, who masks it to a greater extent.
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> …
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> I feel that although they have made short term changes, they are unable to sustain them and I feel that they do not accept the significance of the concerns. Quite simply, V’s weight could be life limiting and lead to illness and disability. They have not been able to work with professionals in order to address these issues and my opinion is both that they have no intention of doing so and also do not share the concerns.
>
> I am of the opinion that V is subject to neglect in all areas of her development. This has the potential to significantly impact upon her life opportunities. It may be the case that there is an underlying learning need, or organic causation, however, if this is the case, she will require an even better level of care. As it is, I feel that X and Y are unable to meet her needs. This has been evident over the amount of time that she has been placed with them. I feel that she should be removed from their care and am very concerned about the long summer holiday period, particularly as she regresses when she is not at school”

32. In her oral evidence, Ms Selwood accepted positive factors of the paternal grandparent’s care of V – the close bond and affection between them. She emphasised that she had recognised and acted upon concerns about X and Y’s cognitive difficulties and the need to give advice to them in unambiguous terms. However, she said that upon spending more time with them it became apparent to her that they were not capable of sustained effort to improve V’s weight or continence, or to give her and her behaviour the high level of attention required in order to prevent V from suffering significant harm as she develops. She was also shown a statement produced by RT during the hearing explaining the provision of a Resource Worker in August to October this year. Curiously, no party had sought to adduce evidence from the resource worker. It was accepted however that they had worked with the family in their home to try to support their parenting of V.

33. Ms Selwood struck me as thorough in her assessment and balanced in her judgments. I found her to be a wholly reliable witness whose opinion should carry significant weight.

34. I have referred to Ms Graham’s evidence earlier in this judgment. I found her to be a reasonable and measured witness who had weighed the advantages and risks involved in placing V with Z. Her view of the family members with whom she had dealings accorded with my own.

35. The Guardian, Ms Carter, supports the Local Authority's care plan. Her oral evidence surprised me a little by reason of the force with which she sought to impress upon the court her support for V being removed from her family's care. She said that she had longed to avoid that conclusion and almost blamed herself for having supported investigation into the validity of Z becoming V's carer – she had promoted that but had been crestfallen when Y had reacted so negatively to it. She told the court that having seen all the efforts made to improve X and Y's parenting of V come to naught, she was sure it was time for V to be cared for by a long term foster carer. She told the court that when she had first met V, at X and Y's home, it was mid-morning and V was eating a large sausage roll and a doughnut. After all the professional advice and support she was dismayed this summer to visit the family and find V eating a candy lollipop "the size of a new born baby's head". Although not the subject of any written evidence, she told me she had recently seen V with X and Y in the supermarket and was very disappointed to see that V's clothes were much too small for her and that consequently she was baring flesh. She told me that she had repeatedly seen V in ill-fitting clothing.

36. Ms Carter's strong opposition to V continuing to be cared for within the family deserves considerable respect by the Court given her long involvement in this case and her attempts to keep V within the family. Her decision to support the Local Authority's proposal for long term foster care was clearly carefully thought through.

Conclusions

37. It is very important to note that when V came to live with the paternal grandparents in or about the late summer of 2021 she had suffered a traumatic period during her first two to three years of life. She had been exposed to violence, neglect, drug taking by her carers, and had suffered serious injury after an alarming fall from a window. She had very little language and she exhibited challenging behaviour. She was already extremely obese. Having suffered trauma as a young child and separation from her mother, it would be unfair to attribute all her problems since coming under the care of X and Y to their care, when very clearly she was likely to demonstrate the consequences of her early life trauma as she developed under whoever's care she fell. The Health Visitor's statement shows that the trajectory of V's weight gain was alarming before she came to live in X and Y's home and was at the 98th centile for her age in January 2021. Furthermore, V has difficulties with learning requiring a Statement of Special Educational Needs which, as I understand it, cannot be attributed, at least not significantly, to her grandparental care. She manifests behavioural problems which may be attributable to attachment difficulties. There is no expert evidence on the cause of her incontinence but some of the incidents of incontinence suggest a behavioural cause that may well be rooted in her early life experiences.

38. Accordingly, it is too simplistic to point to V's many problems and contend that since she has been in the care of X and Y for over two years, their care of her must have been inadequate. Closer scrutiny of the evidence is required.

39. V is extremely obese. I have evidence from the Health Visitor relating to the time when the paternal grandparents have cared for V (the Health Visitor having been involved before V lived with them, but then continuing her involvement after September 2021) and the Dietician (from her involvement from the summer of 2022) and more recently

the complications of excess weight team. By the time of Dr Rahman's involvement, V's weight had become even more excessive than when V came under the care of her paternal grandparents. The trajectory was very worrying. Over the past year or so, her weight has stabilised. I understand that typically a girl of V's age will be expected to gain two to three kilograms a year. In the last eight months she has gained one kilogram but her weight has gone up and down a little and the overall the impression is of her weight being generally stable. Her BMI has also remained fairly stable at about 24. This is much too high, but it has not gone up now for a long time. Again, I understand that a child's BMI will generally increase as they age, albeit not by much each year at V's age. I accept the evidence from X that V now goes swimming once a week, and to a dance/gym session once a week. She plays in the garden and she tries to play with other children although she sometimes struggles to get up off the ground because of her weight. All accounts are that she is looking healthier than she did, say, a year ago. Nevertheless, the fact that she has not lost weight indicates that she is still eating far too much food (there being no underlying medical condition to explain her obesity). The paternal grandparents have benefited from advice from a Health Visitor, Dietician, a resource worker, and the excess weight team, but have not managed to reduce V's weight – she remains extremely obese and there has been no substantial overall improvement in the two and a half years in their care.

40. V's school reports that by November 2023 she had made good progress with toileting in year 1. Considering the evidence as a whole I conclude that it has been the efforts of those at V's school that have brought about the improvement in continence. X and Y's evidence about managing V's continence was confused and I was not at all persuaded that they have applied a structured regime to toilet training. There is no doubt that during school holidays in the past V's faecal incontinence has regressed whereas when at school she was improved. The evidence does not point to a regression during the last long vacation, in 2023, but overall I am sure that X and Y have not brought about significant improvement in V's continence, it is the school's efforts that have done so.

41. There is no direct evidence that at this point V is isolated from her peers, picked on by them, or is unable to make friends: the reports are largely silent on this aspect of her school life, but the school has highlighted some issues with V's relations with other pupils when speaking to Ms Selwood in the past. V is only functioning academically at the level of a child about one year behind her school year. I do not understand her to have been kept down a year, as was suggested in cross-examination, but rather to be continuing in her age appropriate year, but needing a teaching assistant and other support to try to help her to make progress so that she functions at a level suitable for year 1.

42. There are disappointing aspects of recent paternal grandparental care. V has been repeatedly late to school this term. I accept that sometimes she has missed school for a medical appointment, but X and Y frankly accepted that sometimes they and V have overslept. They have now purchased an alarm clock which is designed for deaf people. Y has some hearing problems. X may do also but she has not had her hearing tested. Whatever the problems with not hearing an alarm clock, it is really not excusable to deprive V of time at school because of oversleeping. For that to happen more than once should be a source of embarrassment to them as V's carers, in particular given that V needs all the educational support she can get, but at court they did not display any

insight into the seriousness or consequences of their failures to ensure V is at school on time.

43. There is also evidence from the school that on occasions V has smelled strongly of urine. I accept X's evidence that she does the laundry daily but clearly the steps taken to clean V up after she has wet the bed or had an accident out of bed are insufficient since she has attended school smelling strongly of urine. They should be doing much more to ensure that V is clean and does not smell. Similarly, they should take more care over V's clothing which is sometimes ill-fitting. Ms Selwood had very serious concerns about V's clothing – being much too small for her, and sometimes dirty – and it is disappointing that V is continuing sometimes to wear clothing that does not fit her. There is no evidence that V has been the subject of teasing or rejection by other children on these or other grounds but there is a grave danger that she could be in the future if significant improvements in her care are not made.

44. Some concerns have been raised about bruising or other minor injuries to V, in particular a series of injuries in June to July 2023 and a more recent episode of bruising to her outer thigh and hip. I have the benefit of medical evidence from Dr Joshi as well as the ISW, Claire Selwood, and from RT. I think I can deal with these shortly: there is no suggestion that the grandparents are responsible for having caused the injuries. The accounts given by them and V herself are, I accept, consistent with the injuries suffered. V is an active girl who is noted to be clumsy. Some injuries were caused by pinching by Y's son, A, a teenager. V is prone to pinch others too. A has moved out of the house as a result, at a cost to him. X and Y prioritised V's needs over A when they acted in that way. Whilst it is natural to focus on the supervision given to V in her home, given these incidents of bruising and other minor injuries, there do not seem to me to be a worryingly disproportionate number of injuries so as to indicate a failure of supervision and care within the home. However, I did note that Y expressed remorse that A had suffered as a result of having to be removed from the home. Once again he did not demonstrate insight into why that had been necessary in order to protect V.

45. It is right to note that X and Y have not always kept to all appointments or always fully engaged with professionals, but they have generally been open and co-operative; they have not hidden from monitoring. X in particular has tried to comply with professional advice. However, I noted that in the oral evidence of both X and Y, their instinctive response to any criticism was to be very defensive. Y in particular tended to be dismissive of all concerns raised. X showed a little more self-awareness, accepting that she had been too "soft" on V, but assuring the court that she had learned to be firmer when fixing routines and setting boundaries. The evidence suggests that whilst X has learned some of the language of good parenting, she has not consistently adopted the behaviours urged upon her by professionals.

46. It is pertinent to look at V's position a year or so ago, and compare it with her position now. When that is done, I conclude that (i) she has maintained greater stability in her family life (but that is measured against a very poor previous level of stability) and she is living in a loving and caring environment, (ii) her faecal continence is much improved but she still has frequent faecal and urinary incontinence problems; and (iii) the trajectory of her weight gain has been arrested and stabilised but there has been no weight loss which is what V needs to experience for her physical and emotional health. V is sometimes dressed in ill-fitting clothes and has sometimes smelled strongly of urine, her school attendance record is not as it should be and within the home she does

not receive consistent and focused attention and care. The ongoing issues have to be viewed in the context that (i) V has high level needs due to her vulnerability and the various problems which beset her development and welfare, (ii) X and Y have had a considerable amount of professional support; (iii) X and Y have known that they are being observed and assessed – they would be expected to be doing everything they can over the past year or so to improve V's welfare.

47. I have to consider the alternative family care, namely that V lives with Z, her paternal aunt. Z has been assessed negatively by Ms Graham. Her primary concerns are that (i) Z works 48 hours a week (2 x 24 hour shifts) and would need the support of the paternal grandparents when she was unable to care for V which would create difficulties given the dynamics of their relationships; (ii) Z is not resilient in the face of conflict with Y and X – Y in particular – and was seen to respond very emotionally and to be unable to cope with a rather minor disagreement with Y about a bringing a book with V when Z was to spend time with her. This episode was troubling for the prospect of Z becoming V's main carer because she simply said she could not deal with the situation and "walked away" from it. Ms Graham doubted that she would be able to cope with more serious disagreements, for example about how V was being fed or cared for.

48. I must also take into account that long term foster care is not a guaranteed panacea for V. I have been advised that a highly regarded foster carer is available for V, that she is experienced in caring for children with additional needs, and that she lives in the area, so that contact with the family could continue, albeit at a reduced level compared with the present time V spends with family members. The separation of V from her natural family is likely to cause her distress and risks creating additional long term psychological problems for her arising out of broken attachments. There is a risk that the foster placement will itself breakdown and that V may be moved to a new placement, perhaps even that there will be further changes of placement thereafter. Nevertheless, an experienced foster carer is capable of providing V with stability and security, and is likely to be able effectively to meet V's additional needs, addressing her weight, continence, school attendance, clothing and hygiene.

49. I must consider the welfare checklist. There have been no discussions with V about her preferences, it being considered that it would be contrary to her best interests to address the possible changes with her. Indeed, the Local Authority's view is that if there is to be a change of placement it should happen immediately and without a transition period because they are not confident that X and Y would be compliant with a prolonged handover of care. I proceed on the basis that V would prefer to remain living with X and Y but, at her age, she does not have sufficient maturity to weigh up her own best interests. She remains at a young age and her sense of identity is strongly tied up with living within her natural family. She has a close emotional bond with X and an emotional bond with Y.

50. I have referred to V's physical, emotional and educational needs. Her physical and educational needs are not being adequately met at present. Her emotional need for a strong emotional bond within her natural family is being met, but her emotional need for structure and boundaries is not being adequately met. Her physical need is for her diet to be adequately managed and for her to lose weight but that need is not being met. A change in placement, whether to live with Z or to move to long term foster care, is likely to cause V distress. I am very concerned that the dynamics within the family are such that the distress caused to V during a transfer to Z's care, and the effect on relations

between Z and Y in particular, and the lack of support for the transfer from the mother, will combine to render transfer to Z's care very unstable and likely to fail in the short term. I think it to be unlikely that X and Y would support Z in her care of V, but rather that they would, inadvertently or otherwise, undermine it. A transfer to a foster carer, with the marked change of care out of the family that would result, would be more likely to bring about a more sustainable change, albeit at the cost of much less time with the family.

51. If V were to continue under the care of X and Y, then in my judgment it is likely that she will continue to be excessively obese and to have problems with continence and hygiene, and school attendance. She will not receive the educational support at home that she would greatly benefit from, particularly over the next year or so when she has a chance to make some educational progress if she is given consistent, active educational support. If it were possible for V to be cared for by Z, and for that placement to be stable and supported by X and Y, then I accept that Z would understand the need to provide more educational support for V, to provide her with structure, and to impose appropriate boundaries. She fully understands the need for V to lose weight and to attend school and be supported in her education, eating habits and hygiene, when at home. To that extent Z is capable of meeting V's needs if placement with her would be resilient and stable. For the reasons given earlier in this judgment I am satisfied that X and Y are not capable of meeting V's physical and educational needs, and some of her emotional needs. Even when under scrutiny and when given a great deal of support, they have failed to bring about positive changes for V in terms of her diet and weight or clothing. They have failed to ensure she attends school consistently on time. The school has been primarily responsible for recent improvements in V's continence, but X and Y allow V to attend school strongly smelling of urine.

52. I have taken into account X and Y's low cognitive abilities. The support they need involves concrete advice, not the transmission of abstract ideas. However, I was struck by the evidence of the Guardian, Ms Carter, who has worked a long time with this family and who has, I am satisfied, assured herself that the support offered to X and Y has been understood and meaningful. She and others have tried very hard to make this placement work in V's best interests because they recognise that the ideal resolution would be for V to remain with X and Y if only they could meet her needs at a level that could be considered adequate. No-one is interested in social engineering in this case. No-one wants to break up this family if it is at all possible. Yet all professionals have agreed that X and Y cannot meet V's needs and that she will continue to suffer harm if she remains in their care. The harm is not of the kind it was before she came under their care, but it is harm nevertheless, and harm that is serious.

53. The seriousness of the harm to which V is exposed should not be underestimated. Her weight is so excessive that she is at significant risk of long term physical complications, even early death. Having listened very carefully to X and Y give evidence I am sure that they have no real insight into the danger to which V is exposed whilst she remains excessively obese. They have made only marginal changes to her diet and exercise and activity when she requires substantial change. Those substantial changes will be difficult to manage, but there is no prospect of them being achieved under the care of X and Y. If V were underweight to an equivalent extent there would be no doubt at all that those caring for her had lost control over her weight and physical health to a dangerous degree. Whilst there is a danger in drawing too close a parallel with V's case,

I have no hesitation in concluding that X and Y have indeed lost control over V's health and physical wellbeing and that as a result V 's physical health, and her emotional health, are at serious risk. They are not capable of protecting her health even when given considerable support.

54. The strong conclusions reached by the independent social workers and the Guardian, as well as the views of the social worker, RT, deserve respect for the reasons I have given. The court must reach its own, independent view but those carefully reasoned opinions from experienced professionals who collectively have spent a great deal of time with this family, carry considerable weight.

55. Having regard to the welfare findings the Local Authority have invited the court to make, I conclude that paragraphs 1 and 2 are made out and that the conclusions reached by the respective ISWs are justified and properly reached. Paragraphs 3 and 4 are not disputed. The first sentence of paragraph 5 is factually accurate but those injuries do not give rise to significant concern. Paragraph 6 is, I find, established and fairly sets out the position in relation to V's weight and diet. There is no underlying physical cause for her excessive obesity which is, I find, due to her eating habits.

56. I have considered the elements of the welfare checklist and now I stand back and consider V's best interests taking into account all the evidence before me. I ask myself whether it is necessary to remove V from her family care because nothing else will do. The decision I am asked to make is not easy but I have concluded that V's best interests lie in her being placed in long term foster care as proposed by the Local Authority and that it is necessary for her to be removed from her family care. I conclude that X and Y are not capable of meeting her needs and that if V were to continue in their care for any longer, her development will be impaired and she will be at significant risk of suffering serious harm.

57. The possibility of V being placed with Z has been the subject of much anxious consideration, but I have concluded that the placement would not be stable and would be likely to fail in the short term due to the family dynamics and Z's inability emotionally to cope with the strains within the family. She would not be supported by the mother and she would not, in my judgment, have real support from X and Y. X and Y would, I find, find it impossible to give their full and unconditional support to Z were she to be V's main carer. They would not agree with the approach to V's care that Z ought to give to her. They would undermine efforts to set boundaries and structures for V when she was in their care for two days or so a week. Z would be reliant on X and Y because of her work commitments but that division of time would be likely to contribute to strains within the family that would result in the failure of the placement with Z.

58. Mention was made at the hearing of alternative support care were V to live with Z, but I have no evidence of who would provide that care, how capable they would be of providing suitable care, their relationship with V or any other relevant matters. A decision needs to be made now as to V's future care and in my judgment the only realistic support Z could receive would be from X and Y. For the reasons given, that arrangement would be likely to fail in the short term, as Ms Graham suggests.

59. I have concluded that placement with Z is likely to break down in the short term. Weighing all the options, I have determined that as a last resort V should be placed in long term foster care. I make this determination with a heavy heart because X and Y

love V and she loves them. They provided a home for her when she needed it two and a half years ago. They have made attempts to meet her needs and are not intentionally neglectful of those needs. I also commend Z for offering to care for V but in my judgment that option is not sustainable. Placement in long term foster care is the only option that can meet her particular needs now and in the future and it is in V's best interests.

60. In reaching the conclusion that the Local Authority's proposed placement is in V's best interests, I have taken into account the proposals regarding contact. It is important that the foster placement is given the best chance to succeed. To support the placement, V will need time with her parents (and her sister who still lives with her mother), X and Y, and Z. But too much family time will undermine the opportunity to lay down a strong foundation for the foster placement. There will be some very problematic times ahead when V's eating patterns are changes. The danger of family members undermining those attempts during family time must be guarded against. I take into account the extent of the changes that the proposed arrangements will cause for V who is living with X and Y, and the current contact arrangements under which V sees her parents more often than is proposed, but it seems to me that the future arrangements that best meet V's best interests are:

    i) Monthly contact with her mother and sister, and monthly contact with her father: such contact as is currently supervised should continue to be supervised unless and until the Local Authority consider it appropriate to move to unsupervised contact. If the father is agreeable, contact with X and Y could take place at the same time as contact with him, on every other occasion.

    ii) Monthly contact with X and Y which should be supervised: the frequency and need for supervision to be subject to later review.

    iii) Time every two months with Z, which may be unsupervised.

    These arrangements will require constant monitoring and review in the future.

61. I endorse the plan for a swift change of placement as being likely to cause the least harm to V and as being in her best interests. A drawn out transfer is likely to add to her difficulties by placing a greater emotional strain on all involved with consequential detriment to her well being. However, an appropriate level of preparation and notice is clearly required.

62. I shall consider the parties' views on the appropriate wording of an order to reflect this judgment.