

Sessions House
Lancaster Road
Preston

Friday, 20th November 2015

Before:

MR JUSTICE NEWTON

In the matter of:

Re: H (CHILDREN)

Counsel for the Local Authority:

MISS MOODY

Counsel for the Respondent Mother:

MISS KOROL

Solicitor for the Children's Guardian:

MISS BRIDSON

JUDGMENT APPROVED BY THE COURT

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APPROVED JUDGMENT

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THE HONOURABLE MR JUSTICE NEWTON:

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1. The court is concerned with an application concerning two boys, whom I shall refer to as 'F' and 'G'. They were born respectively on 6th June 2010 and 5th July 2011, so they are approaching 5½ and 4½.

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2. I have been particularly concerned about this case in almost every respect. It is an object lesson in how not to pursue a care case. Almost no lessons seem to have been learned from the comprehensive enquiry and report of David Norgrove, nor of the subsequent far reaching reforms pioneered and spearheaded by the President consequent to his recommendations. Equally, it seems to me that, whilst possibly a part of the message in *Re: B (A Child) (Care Proceedings) [2013] UKSC 33* and *Re: B-S (Adoption) [2013] EWCA Civ 1146* appears to have been adopted, it has, in effect, been applied in a most remarkably maladroit fashion. None of the learning from those important cases, and those that follow them, has been absorbed.

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3. The decision in this case is a difficult one. It requires a choice to be made between two potential carers: one, a family member almost unknown to the children; and the other, foster carers and potential adopters with whom the boys have a strong and beneficial attachment. So, weighing the relevant factors and weight in relation to the issues of family and status quo are live issues for the court. It has been a difficult decision, but one in which I have reached a clear and unequivocal decision. So that I put everybody out of their misery, I have decided to make a further interim care order. I shall direct the boys remain with their foster carers, I shall direct that they are assisted in pursuing an application for permanency.

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4. These boys are the children of the mother and father, who were born respectively in October 1980 and July 1974. The mother has a number of other children. A, B, and C, born respectively in 1998, 2000, and 2001. All have been the subject of proceedings: A lives with his mother pursuant to a supervision order made on 22nd April 2015; B lives with the paternal grandparents under a child arrangements order and the father; and C, also subject of a full care order made on 23rd June 2015, lives with the maternal grandmother. Additionally, there are children D and E who were born in 2008. They live with their father pursuant to a child arrangements order made in Blackburn County Court. There are therefore three groups of children all born to the mother by three different fathers.

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5. The local authority, Blackpool Borough Council, represented by Ms Moody, made an application in relation to five of the children on 5th November 2014. The final and comparatively recent care plan is that F and G should be placed with a paternal aunt and uncle in France. In fact, the aunt is no blood relative, but is the sister of the father of A, B, and C. There is, I am told, a very recent care plan that I have yet to see, but the underlying issues are the same. The local authority's plan therefore is for placement of F and G with a family member but not a blood relative. The case is now at week 54.

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6. The mother, represented by Ms Korol, accepts the threshold triggers. She does not support the local authority's plan. She has felt, with justification, that she has been very largely abandoned and ignored by the local authority to which, in some parts, she

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bears responsibility, but they have an overriding statutory responsibility to continue to review and properly assess the possibilities available for the children. At the start of the hearing, she conceded that she was not in a position to care for her sons, but supported Mr and Mrs T, as I shall call them, the foster carers in whose care the children have been placed since July 2014.

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7. The father has played no part in the proceedings, nor, so far as I could tell, any recent part in the boys' lives.

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8. F and G have benefited from a most experienced guardian Mr Barrett, through Ms Bridson. He has had the very great advantage of being involved with this family before in earlier proceedings in 2011. He of course has also been concerned in these proceedings in relation, as I understand it, to all the children. His work and analysis is a shining example of what a guardian and CAFCASS can bring to a case, his care and analysis being a model of its kind, it has been invaluable. He sets out carefully balanced, rational reasons supporting why it is that he has come to the conclusion, which on a superficial assessment might seem perhaps surprising, that F and G should stay with their foster carers. However, on any analysis, it is easy once one looks at the detail to see why he comes to that conclusion. His contribution has been assisted significantly by the very focused and helpful approach of the children's solicitor, Ms Bridson.

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9. The case was listed for a final hearing before me on 14th October for two days. The position at that point was that it seemed to me that the boys had suffered significant and culpable delay at the hands of the local authority. The issue of proceedings themselves were delayed. I do not know how many times the court has to stress how wrong it is for children to be accommodated under section 20 effectively unmonitored while the local authority sorts itself out awaiting the Court timetable (and as recently reiterated again by the President in *N (children) Adoption 2015* EWCA Civ 1112). It is particularly pertinent in this case since, as will become clear later, they have had previously ongoing and considerable involvement in the lives of these children.

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10. Sadly, even after the issuing of proceedings, there has been a lack of momentum let alone coherent analysis, planning or focus. It became perfectly evident to me, both in October and today, that there was an overwhelming need to hear evidence. This hearing has, I think, been the fifth attempt at a final hearing. The treatment of the boys and the plan for them has been chaotic. There has been no proper concentration on what, after all, should be the primary focus of this, like every case, which is the welfare of F and G. In the event, it has had the effect of effectively placing two extremely well qualified and sincere potential carers against each other. It is very unfortunate. They have both been treated poorly, indeed I am sorry to say even shabbily. I have gained no sense that either of them have been treated openly or fairly.

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11. It is perfectly obvious that both the couples are thoroughly and well-motivated decent people, both endeavouring to do their very best for these boys. However, effectively, the conduct of the authority has been almost to have the effect of pitting them one against the other. In no circumstances could that be appropriate. It is to the court repugnant that it should have been so, it could so easily and should have been avoided. The fact that they have taken, both of them, such a dignified and constructive stance has made all the difference to what otherwise could have been really a most unfortunate hearing.

The Background

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12. The mother had an impoverished childhood. She commenced a relationship with the father of the three older children when she was young. Her early behaviours reflected her own childhood. She has been a victim of domestic violence, it frequently involved alcohol. She, herself, has been involved in criminal offences, serious criminal offences, and over an eleven year period, there have been some 15 or 16, so far as I can tell, recorded incidents of domestic violence involving each of the three fathers. The children have witnessed extreme and uncontrolled behaviours from the adults and others, as I say, exacerbated by alcohol and on occasion drugs. The children have lived in poor conditions. They have frequently been left unsupervised, often for days on end. They have been spared nothing by their parents, and their mother in particular, even, I am sorry to say, when removed from her care.

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13. The mother has been unable to provide a regular and consistent home for the children. Whilst the children obviously love their mother, their relationship with her has, at times, been predictable. They have from time to time been sad, loving, angry or rejected, but they are above all things loyal to their mother. It is a very great credit to the mother as she has got older that she has at last been able to put more order in her life. It has been very much to her advantage but, more particularly, it has been an enormous advantage to the children themselves in that they now have a more normal and predictable relationship with their mother.

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14. It is perhaps surprising, with the benefit of hindsight, reviewing the documents that the family did not come to the attention of the local authority until 2009. In any event, by October 2012, there were safeguarding plans and all seven children were accommodated for a short period in September and October 2012. The home circumstances thereafter improved and the multiagency support which had been provided to the mother and children ended in April 2014, but the improvement was sadly short lived. By 30th May 2014, the home conditions were again on the slide. It is said that both the mother and the father were drunk, there were inexplicably long periods of absence and A, who himself is a child, not for the first time I suspect, doing the very best that he could, cared for his younger siblings, it seems for several days at a time. F and G were accommodated on 4th June 2014 and subsequently placed with Mr and Mrs T. As I have discovered, there was a significant delay, nearly five months, before proceedings were issued.

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15. Even within the proceedings there was also a marked lassitude. I have already commented upon how it appears that the widespread reforms that were implemented nationally by the President do not appear to have reached Blackpool. The first case management order was made on 24th November 2014 in relation to all five children. The case was timetabled, to IRH, on 14th April 2015, the final hearing on 30th April. By the IRH on 14th April, basic steps had not been taken by the authority. The now current social worker was then very new; having only been appointed a couple of weeks before. The case had obviously drifted. The case was adjourned for another final hearing listed for 23rd June but that hearing was also aborted because it was said that the aunt and the uncle, having previously withdrawn from any further assessment, had now confirmed that they did in fact now wish to care for F and G. So, the case was adjourned again to 7th July, and then ultimately to a final hearing on 10th August, at which point the hearing, again, was adjourned and transferred to the Care Centre in Preston for a hearing on 14th October before me.

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- A 16. At the hearing on 10th August 2015, the guardian highlighted the extensive deficiencies in the local authority's plan (and had done so many times before that), but seemingly to no avail. When it came before me on 14th October, it was self-evident that there was no real evaluation of the alternatives available to the boys, I adjourned the case for that very specific reason. Perhaps I should not have been surprised that, when this case started on Monday this week, that what I had specifically ordered was still absent, there was still no proper evaluation of the alternatives. I had expected there to be a proper consultation including the guardian and no doubt Mr and Mrs T, but which simply had not occurred. Sadly, what has taken place in the proceedings is mirrored by what took place so far as the local authority itself was concerned, and, on the ground for the all important children and adults, it should come as no surprise that that was so.
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- C 17. The case planning after the issue of proceedings appears to have been totally chaotic. On 2nd April, the plan appeared to be, that because of the long and good relationship with the siblings, that there should be a long-term fostering arrangement for F and G. The 2nd April was three days after the current social worker had been appointed. However, within the papers, a statement filed on 14th April suggested that the local authority would, in fact, be applying for a placement order; that is to say leading to adoption by strangers, the plan was that the matter would be placed before the agency decision maker on 15th May.
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- E 18. Contemporaneously with that, Mr and Mrs T say that they had a conversation with the social worker, then in place for four weeks, on 28th April. The Social Worker asked them whether they had considered taking the boys on a long-term fostering basis, but she needed to know their decision "within the next 24 hours" because the next court hearing was on 30th April, and she would need to put in her report. She told them at the time that the plan was to start parallel planning with a view to adoption as all family options had been looked at and ruled out.
- F 19. Some sort of "care planning meeting" seems to have occurred on 24th April. On the note on the file of the same date that Mr and Mrs T recalled the conversation which I have described, it is said that the plan was for adoption still. On 10th June, the case should have gone by then to the agency decision maker, but that was postponed until 19th June. However, on 17th June, the plan had changed again, this time in pursuit of a placement with the aunt and uncle in France. That appears to have been preceded by a visit from the social worker and someone from the adoption services, apparently starting the parallel planning, to Mr and Mrs T's home where they were asked whether or not they would consider taking out a special guardianship application. Mr and Mrs T were told that they needed an immediate answer as they were in a rush to complete reports for the next hearing.
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- H 20. At no time in fact has there been any regard to the court timetable, less still court orders. Some provisions were complied with, some not. It was as if the court procedures simply were not occurring at all. It was apparently an inconvenience to the way in which the case was being so-called managed by the authority. It is breathtaking. I suspect in fact it is a combination of incompetence and some arrogance or indifference. It is one of the worst examples I have encountered now for some decades.

The Hearing

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21. The hearing has taken five days. I have heard evidence from the social worker, allocated on 31st March; the mother; the paternal uncle on behalf of the uncle and aunt in France; Mrs T, the foster carer on behalf of she and her husband; and the guardian. I, of course, have read the bundle and a number of supplementary documents. The live evidence has been determinative in my decision. This is an extemporary judgment.

The Law

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22. There is no dispute about the legal principles which I must apply. It is not disputed that the threshold triggers are established as sought under section 31 of the Children Act 1989 and I so find. The hearing inevitably has concentrated on the future of F and G and what orders should be made. I apply, of course, the welfare checklist in relation to them, their welfare being my paramount consideration. I apply the principles enunciated in *Re: B (A Child) (Care Proceedings) [2013] UKSC 33* and *Re: B-S (Adoption) [2013] EWCA Civ 1146*, both prominent in determination of this difficult case. I bear in mind, but only by way perhaps of background, *YC v UK [2012] 55 EHRR 33*.

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“Everything must be done to preserve personal relationships and, where appropriate, rebuild the family. There is not enough to show the child could be placed in a more beneficial environment for his upbringing where the maintenance of family ties would harm a child’s health and development the parent is not entitled under Article 8 to insist that such ties should be maintained.”

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There are strongly concomitant principles which apply to this case.

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23. In *Re: B-S* at paragraph 34 and following, the President identified two essential things which were required when the court was asked, and in that case, to approve a care plan for adoption or make a non-consensual placement order, but the principles apply to every case:

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“First, there must be proper evidence both from the local authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option.”

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24. At paragraph 36, the President affirmed and endorsed the observations of Lady Justice Black in *Plymouth CC v G (children) [2010] EWCA Civ 1271* paragraph 47:

“The court requires not only a list of the factors that are relevant to the central decision but also a narrative account of how they fit together, including an analysis of the pros and cons of the various orders that might realistically be under consideration given the circumstances of the children, and a fully reasoned recommendation.”

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25. The second thing identified by the President as essential is an adequately reasoned judgment. In this context, he cited and approved the observations of Lord Justice McFarlane in *Re: G (A Child) [2013] EWCA Civ 965*:

“In most child care cases a choice will fall to be made between two or more options. The judicial exercise should not be a linear process

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whereby each option, other than the most draconian, is looked at in isolation and then rejected because of internal deficits that may be identified, with the result that, at the end of the line, the only option left standing is the most draconian and that is therefore chosen without any particular consideration of whether there are internal deficits within that option.

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The linear approach ... is not apt where the judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare."

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26. It has been suggested in some quarters that this line of recent authority represents a radical change, but I do not read it in that way. The Court of Appeal is simply emphasising the need for a rigorous analysis, a comparison of the realistic options for the child's future having regard to the advantages and disadvantages of each option. It has led, it seems, to some really quite surprising choices so far as local authorities are concerned, and indeed some tribunals, chasing, as it seems to me, distant relatives by descent almost to the extreme of finding a fifth cousin second removed, the object being that there should be a familial placement. However, the priority should surely be a realistic evaluation of weighing those family members who are reasonably close to the child or children and their relationship and weighing that option with any other option that there may be available to the children. It has led, it seems to me, to courts taking quite unnecessary time and making cases quite unnecessarily difficult in cases being adjourned when the realistic options are obvious.

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27. In this case, of course, what the authority in fact has done is to back one horse and pursued it without ever looking, let alone considering any other options. Whilst I am told that there is an analysis in tabular form looking at the different options, though in fact I have never seen it, nonetheless it is self-evident that such a comparison for the court is completely worthless if there has not been some sensible and proper discussion and subsequent analysis with, for example as in this case, Mr and Mrs T as to their position and, in fact, going to the real heart of the issue, the effect of change on these two boys if they are removed from the care of Mr and Mrs T.

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28. What the cases made clear the authority should identify the realistic options and submit a thorough analysis, not in a confused over intellectual way but practically weighing up the advantages and disadvantages for each option. In some cases it is can be helpful to set out a balance sheet, setting out the pros and cons, but it is not required in every case and sometimes setting the matter out in weighted tabular form, for and against every conceivable option, can be unhelpful. Such a course sometimes obscures rather than enlightens the process of reasoning.

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29. The reasonably realistic choices in this case are self-evidently between the aunt and the uncle on the one hand and Mr and Mrs T on the other because the mother now accepts that she is not in a position currently or in the foreseeable future to provide a home for these children. I have been referred to and apply *Re: M'P-P (Children) (Adoption Proceedings: Value to be Placed on Status Quo) [2015] EWCA Civ 584* and, in coming to my conclusions, I have scrupulously applied the welfare checklist and, in particular, section 1(3)(c) of the Children Act 1989.

The Evidence

The Social Worker Evidence

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30. The social worker had a bruising time in the witness box. It was not, as I think she herself would accept and appreciate, the high point of the case. In a very real sense, she has been hung out to dry by her authority which seems to me a most unhappy start to her young professional career. For much of the time of her tenure of this case she has had no assistance or real oversight by her superiors, and no real help or sensible advice. She has done the best she can and has, from time to time, muddled along. She knew when she took over the case that there was already a difficult relationship because of the local authority's total lack of activity between the authority and Mr and Mrs T. She had the opportunity of doing something about that. No doubt, I suspect because of the case load which was placed upon on her, and the general disorganisation in this case, which may or may not be reflected, I do not know in others, she has found it difficult to properly deal with the issues in this case. She has, in addition, I think been plagued by ill-health. Even now, she has had less than a year, I think, experience as a social worker and I am sorry that it is one that has not been a very fulfilling one as far as she is concerned. This is a case which required social work at a high level because the choices are difficult and the dynamics of this family are not easy to manage and to put into proper order.

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31. Ultimately, the local authority's approach has become quite dogmatic. Its approach has been described aptly, as ideological. There has, in fact, been no weighing, no balancing of the different "pros and cons" on any basis, let alone welfare. There has been no robust analysis. Even now, the Authority has failed to do what I specifically requested a month ago when the case was yet again adjourned. I did not have any preconception at all as to what was likely to happen. Indeed, if anything, possibly, I favoured the course adopted by the local authority, but I took the view that the court required to have not just the assessment of the aunt and uncle, but what would happen consequent to the placement, what would happen if the placement for whatever reason went wrong, and in real sense, I expect a proper evaluation of the alternatives. Perhaps it is unsurprising having regard to the volley of complaints, both from the guardian and the independent reviewing officer, now over several months, that there is still no real analysis in place those observations started in June, possibly even earlier, and have continued to the present day. What I was looking for was a straightforward welfare analysis of the advantages and disadvantages and to say in very blunt terms, what the effect would be on these two boys if, for example, I removed them from the care of Mr and Mrs T. How would they be affected by it?

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32. I am not at all sure that the head-on pursuit by the Authority of this one horse race is not in fact as it appears to be, based at least in part on a misunderstanding of *Re: B* and *Re: B-S*. I do not know whether it was motivated by a misplaced ideology. There have been, however, aspects of the case which have caused very considerable and disquiet.

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33. It is said that unfair, even disingenuous pressure was brought to bear on the aunt and the uncle, it being suggested that the placement with Mr and Mrs T was in fact unstable and in the process of breaking down. That was not something which was accepted by the uncle in evidence, but it clearly can be inferred from other recordings which I have seen. In fact, the uncle said and reaffirmed in the witness box that his overriding view was that if the boys were settled and thriving in the care that they were receiving, that they should stay where they were. That evidence was uncontroversial and seemed to be a consistent theme that leads to my very particular criticism of the

- A local authority disregarding those observations, they effectively set up these two couples, quite wrongly, against each other. There should have been some sensible and constructive and mature discussions. That is what social work is about.
- B 34. There are other aspects which illustrate not just a closed mind but reprehensible conduct. By way of example only, it was apparently suggested by a local authority employee that the school the boys attend should not write a supporting letter supporting Mr and Mrs T, and that in fact the school had been actively discouraged by a social worker from doing so. It is not suggested that the responsibility for that lies with this social worker, but I require the authority to find out which social worker it was. It gives an idea of the extraordinary lengths which the local authority appears to be prepared to take in order, apparently, to pursue its own case. It is the stuff of disciplinary hearings. It is completely inappropriate. It is unfair and unjust. Many of those difficulties have been compounded by the inexperience of the social worker.
- C 35. There had been discussion of the value, or otherwise, of long-term fostering and of an application for adoption by Mr and Mrs T, but there has been no real appreciation of their position. As I commented in October, I suspected, but did not know, that Mr and Mrs T's position might be significantly more sophisticated than was then being reported to me by the authority. Indeed, that is precisely what has proven to be the case. Their caution, even reticence, has been entirely child-focused in that they have wished to fully understand what the options are, the meaning of adoption, or indeed any other course of permanence, and how it would affect them, the children, and indeed the children's wider family. How can they be criticised for that? It seems to me that is an entirely child-centred approach to what is actually quite a difficult issue. Nowhere is that reflected anywhere in the local authority's evidence.
- D 36. I am mystified as to why nobody has bothered to sit down from the local authority and discuss these really significant issues with Mr and Mrs T properly. I am particularly dismayed since it is obvious that the two boys have a strong and meaningful emotional relationship with Mr and Mrs T. They are their primary carers. They view them as their parents. They love each other. It is them that they look to. Surely any social worker with any common sense would have arranged at least some discussion. In fact, neither Mr and Mrs T nor the boys have received any social work at all. The boys appear to have been abandoned to Mr and Mrs T's care by the Authority. There has been no work done with them in any sense. As a result, the boys have no idea why they are where they are, and no-one has looked at it, in any sense, in the preceding 17 months, except some very minimal life story work. I was shown two scrapbooks the day before yesterday which are, if I may say so, are startling in their brevity. There are a couple of photographs and nothing else.
- E 37. I am concerned about the circumstances in which the enquiries were made in France, but I do not propose to give any ruling about it. In any event no thought appears to have been given to the context of a move to France. There is no real evaluation of the (dis)advantages of the continuation of the relationship with the mother and with their siblings, which is said to be strong. Nor of the strongly and rather cogently expressed views of A, who sets out his thoughts at E58 in the guardian's report. They are impressive, they deserve some weight in the balance of this case.
- F 38. I have absolutely no doubt that the environment provided in France is idyllic, certainly to adults, and very probably idyllic as far as children are concerned, but the boys are
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unintegrated in that community and culture. Not just would there be the severing of their bond with their carers, but they would be placed with people who, in reality they do not know, and there are no sensible support plans either to make the transition flow properly or, to support and pick up the pieces if things go wrong. There is in addition the strong family tie which is now supportive. So, in a real sense, the thought process is linear; it is simply one a one-horse race. It is the complete opposite to what the Court demands, an inclusive and informed consideration. The Authority has simply ignored any other possibility which is, after all, why I adjourned the case in October to look at all the realistic options.

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39. The relationship between Mr and Mrs T and the local authority is poor, for which the local authority bears all the responsibility. This social worker, as I have said, had the opportunity of establishing a better relationship with them in April of this year, but completely failed to do so. By August she was even talking about having an “issues meeting” but even that never occurred and nothing happened. The authority have, in effect, done their level best to marginalise and criticise two carers who actually have got the best interests of these boys at their centre. Their integrity is without question. They have been dealt with unfairly, and have been toyed with, and set up in the most deplorable fashion. The same can be said too for the aunt and uncle.

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The Evidence of the Mother

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40. The value of the boys being able to retain a relationship with their mother was immediately obvious when she gave evidence which was moderate and realistic. The mother has had many considerable difficulties in her life, but she told me that she has never had a conversation with any of the social worker to discuss the various options. From the outset, she was effectively written off. She told me rather poignantly that she had not had the opportunity to give her best. In fact, she had not had any advantage, but the adjournment did give me the opportunity of there being some proper enquiry into the mother and where she is now. Ultimately, that assessment did not support the mother in her application, but it does record the very significant progress which she has made and which I earnestly hope will continue.

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41. Of course, unsurprisingly, she still entertains the hope, that one day she may be able to care for her children, but she must understand that that is really most unlikely. Decisions need to be made today which are effective for the rest of the children’s minority, even perhaps beyond. The mother in evidence was asked to deal with really quite complicated questions about adoption which no-one had previously discussed with her. I thought that she dealt with those rather difficult issues really rather well. She articulated in a very persuasive way, for example, why she did not wish the boys to go to France, not just that it is a foreign culture, a different country, and a different language, all the practical things that one could predict, nor indeed by the fact that she really did not know the aunt and the uncle. However, the mother, who is not a social worker, who has got no training in social work, but who is a human being and whose views should be listened to, was very anxious that the boys were settled and obviously thriving where they were. Surely, that is the question which needs proper evaluation. She supported care by Mr and Mrs T. It may be to some extent because she had hoped that it would, of course, enable her to continue a relationship with the boys (or even regain their care), but her cohesive and impressive views were reflected by those of the guardian and indeed of A, to which I have already referred. The mother identified the very essence of this case and the essence is the strong bond that those children, the two

A of them, each have with their siblings, the relationship that they have with their mother, and the central issue, as I say, of their relationship with Mr and Mrs T. Does that mean that they can safely move on transferring that bond, or stay where they are?

The Evidence of the Uncle

B 42. I heard from the uncle on behalf of he and his wife, and from the foster mother, Mrs T, on behalf of she and her husband. It is self-evident that all four adults are strongly motivated, intelligent, articulate, emotionally attuned and economically secure adults. I am completely confident that either would be extremely capable parents, indeed as both of them have already amply demonstrated. The uncle has his own four now adult children and a number of grandchildren, I think five. Mrs T has demonstrated without any criticism exemplary care of F and G over the preceding 18 months. As adults and as carers there is nothing really to choose between them. The pressure on both, which C as I have already commented, could so and should have been easily avoided, was painfully obvious when they were giving evidence.

D 43. I found the uncle to be an extremely impressive witness. He lives in very desirable, indeed many would say idyllic, circumstances in France, retaining property here too. He has a lovely home, set in some 45 acres or more. I thought he was a very intuitive man, plain speaking, realistic in almost every regard of the difficulties or possible problems that F and G might face if they moved to live with he and he wife. He is strongly committed to the wider family, as his relationship with B and C in particular demonstrates. For historical reasons, he has no relationship with the mother or A, or importantly F and G, and has only, through no fault of actually anybody's, met them on a few occasions, I think, in August and more recently in October.

E The Evidence of the Foster Carer

F 44. Mrs T was equally impressive. She spoke warmly of F and G. That warmth and the strength of their reciprocal love and relationship was evident in her evidence. She has been in the most difficult position, effectively abandoned by the local authority to care for two boys who certainly, initially, showed quite considerable upset and disturbance with minimal input or oversight. Despite repeated requests made throughout her care of these boys, and indeed as I understand it by the independent reviewing officer and, more recently, the guardian, even the most basic social work, which should have been done with the boys at the outset and continuing, has never occurred. More recently she has additionally had to cope with the Authority's hostility. I endorse entirely her justifiable frustration which no doubt she and her husband have felt. It has led to a gradual deterioration in the relationship with the local authority for which, as I have already said, they the local authority is completely responsible.

G 45. So far as that was concerned, she was pushed in cross-examination, since it is really the only complaint against Mr and Mrs T, that they were not committed to permanence as far as the boys were concerned, but that was so plainly not true. She dealt with it, H seemed to me, in a very articulate way, illustrating considerable wisdom, why it was that they had hesitated. She has no understanding of the legal implications both for them, the boys or the wider family. Why should she, she is not a lawyer? She is rightly and correctly cautious about that course. It is one, however, that I would wish them to consider because I think that they should.

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46. When she said, not in answer to any particular question, that she would never give up on the boys, it seemed to me that that that was the bedrock which ought to have been recorded within the papers. She is also prepared to contemplate and support, as the history has demonstrated, the relationships which are important to the boys, their siblings and their mother. She has demonstrated a commitment and has sustained it over a significant period even when there have been difficulties.

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The Evidence of the Guardian

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47. Mr Barrett confirmed his many advices and reports before the court. He is, in fact, a most experienced guardian having been involved in such roles for over 30 years. He spoke of his great and most surprising difficult in discharging his role as guardian for F and G. The local authority appeared to be reluctant, indeed frankly hostile and obstructive, in enabling him to inspect even the local authority documents on the file. He has not been invited to many reviews and meetings. He has not had the courtesy of discussion or consultation. He has not been involved by the Authority, but when he has endeavoured to flag up obvious and serious deficiencies, they have been, so far as I can tell, comprehensively ignored. I accept that evidence because as is evident from what I have said already, the authority has for example routinely ignored the provisions of the court orders at whim. They have made important decisions without regard to the court in any shape or form.

D

48. The making of important decisions was something which he endeavoured to have conversations about. He has identified the occasions, for example (conversations were had with Mr and Mrs T on 28th April and subsequently 4th June), when the care plan appeared to be made up effectively on the back of an envelope. There has been no contingency plan and indeed nothing really has changed over several months. The guardian's evidence reflected his balanced and more recent reports which I adopt and I rely upon in their entirety.

E

Conclusions

F

49. The analysis, such as it is, of the authority is deeply flawed since it has backed one horse to the determined exclusion of all others. It has not had any regard to the other alternatives, in fact now only one alternative. Even now I have not been privy even to the analysis of "the pros and cons" which apparently has been drawn up, just as even now, I still do not have the benefit of a current care plan. The essential question is to weigh from each of F and G's paramount perspectives their welfare and the checklist in section 1(3). I do not for a moment doubt that either the aunt and uncle, or Mr and Mrs T, are more than capable of providing loving and supportive care, enabling these boys to grow into fully fledged and balanced adults. The question is which is better placed from a welfare perspective?

G

H

50. The local authority has paid no regard at all to the impact of severing the relationship with Mr and Mrs T, let alone how and to what degree it might affect each boy and how that might be ameliorated. How would F and G feel? What would be their understanding? What would be the effect upon them of severing their relationship from their primary caregiver, the adults with whom they have strong and a beneficial attachment? How could they be sensibly prepared for such a move to France and, indeed, whether their strong attachment to Mr and Mrs T could be transferred to different carers? The balance required sensitive and lengthy discussions with Mr and Mrs T and others involved in the case.

A

51. What about the practical arrangements? The effect on both these young boys? It is, after all, evident that one of them already needs speech therapy. They would be dealing with a foreign language and different physical circumstances. What support might they receive once they were there, during the transition, and beyond? I do not know. The local authority has had no regard either to the context of change, that is to say in a practical sense – environmental, cultural, language nor, it seems to me, either legal the complexities, nor least jurisdiction and international cooperation which has not been properly addressed and upon which I make no finding or ruling. I do not think that I have ever encountered such poor planning from a local authority it affronts almost every principle of common sense and good professional practice.

B

52. Self-evidently, both couples are well able to provide committed and genuine care to a high standard. The real and central question surely is the likely effect of change in the circumstances for each of them. The strong and positive attachment (which is identified in the evidence of Mr and Mrs T and the guardian) that each has to the people that they view, having regard to their ages as the only meaningful carers that they have had is central especially since they had such impoverished care before. Surely the starting point, and the one that bears the greatest weight is the relationship which they have at the present time with their present carers. They have no relationship in any meaningful sense with the aunt and uncle at all.

C

D

53. So, the context of change, both practically and in every other sense, is overwhelmingly eclipsed by the context of losing the comfort, support, and reassurance that they gain not just from the strength of their relationship with their brothers and sisters and their mother, but the overriding strength and the effect of breaking that strong indeed, bluntly, primary attachment they have with Mr and Mrs T.

E

54. The guardian maintains that that will be leave them disorientated, frightened, and confused. I accept that evidence. I have no analysis from the Authority. In my view, they will feel lonely, deserted and desolate whatever the aunt and uncle endeavour to put in their place to ameliorate that distress. They will lose the only two people that they view as their mother and father and they will lose much of their sibling relationships. All too that is familiar in a physical sense – routine, school, friends, family, environment – and where any sense of immediate support which is currently, available will be lost. To suggest that that in some way could be compensated by contact through technology seems to me demonstrate a marked lack of understanding of human relationships.

F

G

55. I have no doubt that the aunt and uncle would be well qualified to use their skills as experienced parents to try and ameliorate the very severe distress of the boys for a while, but it seems to me they would likely be in isolation, with two distressed and probably disturbed boys. The services that might be available to them are, to me at least, unknown.

H

56. What would be the effect if for F and G the primary attachment figures Mr and Mrs T dropped out of their lives effectively completely and, to a lesser extent, their siblings and their mother? I contrast that with the immense and incalculable value of the relationship with Mr and Mrs T confirming section 1(3)(c), bearing in mind, that is to say, that there is no change. The answer looked at in that way is absolutely plain.

57. Everyone has a right to family life. Of course there are wider family carers available, but I must balance those factors with the very strong and compelling factor of their real

A

relationship with their carers and family. When analysed in that way, I must conclude that I am completely sure, that F and G must stay with Mr and Mrs T.

B

58. I am deeply troubled with the circumstances underpinning this hearing. I make an interim care order. I expect the local authority to place before the court a care plan which reflects a joint approach, a consensus with all those involved in this case. That means a mature discussion with Mr and Mrs T. That means that I require to know what social work is, in fact, going to be done by this authority with these boys. It needs now to probably be done by an independent social worker. I require Mr and Mrs T to be given the benefit of legal advice so that they can decide how best to pursue permanence including a possible application for adoption, which is what they would wish and what I would also urge.

C

59. It may be there needs to be more than one meeting, but they shall occur. I will list this case in three weeks' time in London on 11th December. If the care plan is agreed, then there need be no appearance before me in London. If it is not, then clearly there will have to be a hearing. I hope very much that it will not be necessary.

D

60. I require to see detailed arrangements in the care plan as to the way in which their future can be secured with Mr and Mrs T. I order a transcript of this judgment to be sought by the local authority, the expense of which will be divided between the three parties, the mother, the guardian, and the local authority. Are any other directions sought?

[Judgment ends]

E

(End of judgment)

(Further discussions followed)

F

G

H