

Case No: YO16C00415

IN THE FAMILY COURT AT YORK

Piccadilly House
55 Piccadilly
York
YO1 9WL

Friday, 27 January 2017

BEFORE:

HER HONOUR JUDGE FINNERTY

BETWEEN:

A Local Authority
-v-
Mother
Father
The Children

MR SIMON WILKINSON appeared on behalf of the local authority
MS HECKINBOTTOM appeared on behalf of the children through their Guardian
The mother and father appeared in person

JUDGMENT NUMBER 2

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(Official Shorthand Writers to the Court)

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

1. JUDGE FINNERTY: This is an application by the Father, for discharge of care orders which I made on 8 March 2016 in respect of his three children, Child A born in 2003, Child B, born in 2005, and Child C, born in 2008.
2. The care plans which were approved by the court were for placement in foster care with direct contact for the father of six times a year and once every two weeks for the mother, with telephone contact in the intervening week.
3. The father's application is supported by the mother of the children.
4. The applications are opposed by the Local Authority, and by the guardian for the children. Both parents appear as litigants in person, the mother having the assistance of an interpreter. The local authority is represented by Mr Wilkinson of counsel, and the guardian by Ms Heckinbottom.
5. During the care proceedings, the united parental stance was that the statutory threshold criteria pursuant to section 31 of the Children Act 1989, could not be established. However, if established, a proper application of the welfare checklist, set out in section 1(3) of the Children Act 1989, should lead the court to order the rehabilitation of the children to the care of the mother. At that time, the father was on remand charged with intimidation of a social worker. He was acquitted of that charge. The united parental stance before the court today is that the children should be rehabilitated to the sole care of the father.
6. A transcript of the judgment delivered on 8 March 2016 is essential reading to understand the context of this judgment. In essence, the court found that the father's violence and unpleasant behaviour towards the mother, his lifestyle and his volatility, constituted a significant risk of emotional harm towards the children from which the mother could not protect them because of her fear of the father, which itself impeded her ability to prioritise the children's welfare. Those findings were not appealed.
7. The father is clear that he does not accept the findings made by this Court, but he understands that he cannot go behind them within these proceedings. The father is also

very unhappy about the way he has been treated by a whole raft of professionals, including the police, children's social care and the guardian. He has made numerous complaints against various professionals. However, he understands that this court is an inappropriate venue for investigating any of those complaints which are peripheral to the issues which must be determined to decide his application justly.

8. I remind myself of the law. The welfare of these children is my paramount consideration and in assessing their welfare, I must have regard to the criteria set out in section 1(3) of the Children Act 1989.
9. In essence, the father's case is that the children are suffering harm in the care of the local authority, which wholly outweighs any risk of harm to them, should they be placed in his care. The father explored in detail all aspects of the harm which he identified as having been suffered by his children in foster care. These included the following. (1) The foster placement is neither culturally nor religiously appropriate. The children are not provided with Halal food. (2) An older looked after male in the foster placement aged 17 is a bad example to the children. He bullies the boys, he spends time alone with Child B and was rough with Child C, ripping his underpants when giving what was referred to in evidence as "a wedgy". (3) Child B found a knife in her bedroom at the home of the respite foster carer. (4) On one occasion Child B was wandering the streets alone and in distress. (5) Child B has started stealing since admitted into foster care. (6) The key social worker is strict with the children. (7) The children are forbidden from speaking to their parents about matters of concern. (8) Social workers and the independent reviewing officer behave inappropriately and impolitely towards the parents. (9) There is a failure by the professionals to share important information with the parents.
10. The father pursued these issues in his careful detailed cross examination of the key social worker and the guardian. These are my findings in relation to those matters.
11. Allegation one: the father does not describe himself as being either a religious or a traditional Muslim man. He does not follow a strict Halal diet. He told me that he is happy to eat at McDonald's or KFC or to buy steak pies from Greggs. The evidence

from the parents is that the mother is religious and raised her children as Muslims. However, in a letter filed in the first set of proceedings, the mother had described herself as a 'westernised Asian. That letter is one of the documents annexed to the first judgement. The foster carers are not Muslim. However, the evidence from the Local Authority, which I accept, is that the foster carers are interested in the Muslim culture and religion, have specifically taken advice about it and have provided the children with a Halal or vegetarian diet. Recently, the children have declined to eat Halal food.

12. Allegation two; The local authority has carried out work with the young man in the placement to discuss the concerns raised about him by the father. The evidence of the Local Authority, which I accept, is that he no longer spends time alone with Child B, and the evidence from the Guardian, which I accept, is that there is, in fact, a very good relationship between him and the boys and that the so-called "wedgy" incident was rough play on the trampoline.
13. In contact between the father and the children in September 2016, the following is recorded, which supports the evidence from the Guardian, "Dad asked about rough play and whether wedgies were still happening. Kids explained they were just playing. It was a game."
14. Third Allegation; It is common ground that Child B did find a knife in her bedroom at the home of the respite foster carer. This was investigated by the local authority. On the evidence, there is no clarity about the circumstances which led to the knife being in that room. The respite foster carers have been instructed to be more vigilant in the future.
15. Fourth Allegation; The evidence of the Local Authority which I accept is that Child B was taken to guides and dropped off. Having been dropped off, she found that guides had been cancelled. She walked to a friend's home from where she was collected. The contact notes from the father's contact with the children in September 2016 support that evidence. The following is recorded, "Child B said she was dropped off at Guides and no-one knew it was cancelled. Dad said she should have walked straight home. Child B said it was a 20 mile walk. I (a reference to the contact supervisor) told dad it was

about a half mile walk. Child B spoke about getting dropped off and went to her mate's house. “

16. Fifth Allegation; It is common ground that Child B has been involved in stealing, both from a shop and from the foster home. She has been admonished about this by her parents, by the local authority and by her foster carers.
17. Sixth Allegation; there is evidence that the children have told their father in contact that the key Social Worker, Hannah George, is strict and that they do not like her. However, I accept the evidence of Ms George, that when she visits the children, they respond to her very well. Judicial experience informs that children often say different things to different people on the basis that they think they are saying what the recipient wants to hear.
18. Seventh Allegation; I am satisfied from the evidence from the contact recordings that the children have not been shut down from speaking to their parents.
19. Eighth Allegation; I accept that it is the father's perception that the independent reviewing officer, Debbie Trevitt, behaved inappropriately and impolitely towards the parents in a LAC review. This father chooses to record most of his conversations with professionals. At his request, we listened to a tape recording of the LAC review. The father submitted that recording illustrated his complaints about the independent reviewing officer. In my judgment it did not. The tape recording demonstrated how difficult it was for Ms Trevitt to manage the review at which the parents were obviously very upset and emotional. The independent reviewing officer was neither inappropriate nor impolite.
20. Ninth Allegation; I accept that the perception of the parents is that the professionals fail to share important information with them about the children. On a human level, I can understand how frustrating it must be for them when professionals do not have the time to focus all their attention upon these children but must also focus upon the other children for whom they have professional responsibilities. However, I am not satisfied

on the evidence that there has been a failure to share important information with the parents.

21. My findings in respect of the risks raised by the father of the children remaining in foster care have to be balanced against the findings which were made in the judgement of the 8th March 2016 about the risks presented by the father.
22. In addition, I have firmly in my mind other submissions made by the father. He is now at liberty and able to offer the children a home in the accommodation in Town 2 with which they are familiar. He has the financial resources to maintain them. The children would return to a family member. Although separated from the mother, he would ensure that the children maintain a relationship with her through contact.
23. I also have in mind what is set out in paragraph 77 of my first judgement that long-term foster care **per se** presents risks to children. All those issues must be weighed into the balance.
24. I refer to the welfare checklist. The children's voice in the proceedings is heard through their guardian. The guardian met with the children in January 2017. They were aware that an application for a discharge of the care order had been made. They were unclear as to whether this was a joint application by the parents. The guardian told them that the application was for them to live with their father in his sole care at the family home. I read from paragraph 22 of the guardian's report:

"All three children were clearly shocked by this, expressed concern for their mother's safety but also were worried about how their father would be able to look after them. They talked about him sleeping a lot, not taking them to school and, more worryingly, all three were clear that they would be worried that he would not let them see their mother. Child C wanted to see me twice, but also wanted one of the foster carers there on each occasion. Child C is usually a happy and cheerful boy. He was quiet and clearly worried. He shook his head when I asked him about going to live with his father and repeated his concerns

about not being able to see his mother, although he could not give me reasons for this. When Child C was not present, the foster carers told me he had begun to chew his jumper sleeve at school again since he became aware of the application and woke up several times crying in the night after his mother told him. It is clear Child C is worried and distressed by this application. He sought physical comfort from both foster carers whilst I was talking with him.

Child B presented as confident and happy to express her views. I explained to her that when we last met, she had always said she wanted to go home and that included to both her parents, so I needed to understand why her views had changed. Child B said she would be concerned to go to her father's sole care as he could be unkind, had mental health issues which he should have seen the doctor for but he did not go. Might take them away and they would not see their mother again. She said that she was worried her father would not be able to care for them and that he used to lose his temper and try to grab them all by the neck and threaten to push them out of the window. Their mother tried to stop him and calm things down, but if she was not there, Child B said she would be worried.

Child B was aware her father would have to know her thoughts and said she was not worried about this as long as contact was supervised. Child B told me she had been very upset when her mother had told them about her father's application and had talked to her foster carer that night. She was aware her disclosures had been shared with her father and told me that when she was in town with her friends just after this and bumped into her mother and father who were together, Child B said they talked to her in Asian and she could not really follow what they were saying but thinks they were telling her not to say anything or telling her she was lying.

Child A has improved in confidence and was able to talk about things calmly, although he is clearly very unsettled by the application. Child A said, 'Oh no, it's all starting again', and put his head in his hands. Child A had believed that the application was to return to his father but that his mother would be there. He said he has always been closer to his mother than his father and felt his father would not support him or understand his feelings. He feels his father wants him to be a manly character who is tough and does not show feelings. Child A said that during contact his father mainly talks to Child C and that his role is to be the person who fetches things, helps Child C and tidies up. His father never asks him about school or his out of school sports, even though he has been picked for the basketball team at school. He said he used to be able to talk to his father about sports, but not much else."

25. When I look at section 1(3)(a) of the welfare checklist, the ascertainable wishes and feelings of the children considered in the light of their ages and understanding, I am satisfied and find that not one of these children wish to return to live in the sole care of their father.
26. Why should that be? It is clear on the evidence that Child A and Child B have memories of their experiences when they were living in the same household as him. What was that like? I start from the threshold findings made by the court in March 2016 and read from B43 of the bundle:

"As in September 2015, the children were suffering or were likely to suffer significant harm attributable to the care given to or likely to be given to the children that care not being what it would be reasonable to expect a parent to give to the children. The following facts are found proved.

(1) There have been numerous incidents of domestic violence and domestic abuse between the first and second respondent over a number

of years which place the children at risk of emotional and physical harm. Father has been the perpetrator of that abuse. The incidents include the following: frequent arguments between the parents in the presence of the children; father threatening to kill mother; father breaking or causing a significant injury to mother's nose; father stamping on mother's stomach causing her to suffer a miscarriage; father assaulting mother on other occasions, one of these assaults caused bruising to mother's face and eyes; father controlling of mother in all aspects of her life, including socially, emotionally and financially and controlling of the children.

(2) Father has used the children to monitor mother's movements and telephone. This is likely to cause them emotional harm.

(3) The domestic violence and abuse detrimentally affected the first respondent causing her to feel frightened, unsafe and have nightmares. She has presented as highly anxious and agitated. This is likely to have impacted upon her care of the children.

(4) The children have been exposed to father's anger and mood swings which is likely to cause them emotional harm.

27. In addition, since residing in foster care, Child B has spoken about matters which were not before the court in March. I read from one of the statements of the key Social Worker, D35:

"In April 2016, Child B made comments to the foster carers about hearing her dad talking to X on the phone about mau. She asked her aunt about this. Her aunt told her it was a drink, however she found out it was another name for cannabis and before her father was arrested for this last year, he had been growing cannabis for a very long time, even when they were in Town 1.

28. In April 2016, Child B spoke to her foster carer. The following is taken from the written recordings completed by the foster carer:

"One night dad came home drunk and told mum to get him something to eat. Then he spilt it all over the floor. Child B was in the next door with the boys. She heard noise and went out to see dad. He was sitting on the carpet, mum standing up nearby, her lip was bleeding. He told mum to bring the scissors which she did dressmaking with. They had long silver bits. Child B is sitting between dad's open legs. She is showing me whilst speaking and dad then puts the open blades across her throat, showing me with her hands, blades open wide and on her throat V-shaped. She was so frightened and thought she was going to die, sobbing she didn't know why. Then dad threw the scissors. They went through the open door."

29. A recording was provided by the foster carer relating to a conversation with Child B in May 2016.

"Tells me again about the incident with dad and the scissors. She says he came in drunk and was shouting and came in her room, sat on the bed and wet himself. Then on the rug he got mum to bring the scissors and he put them to her throat. She was sobbing and said she could feel the V bit at her throat and thought she was going to die. Dad threw the scissors through the open door. I asked what did mum do. She got the scissors for him and was too frightened. He left the house and went to his brothers. Child B recorded as sobbing a lot. Mum told me next time he does that call the police. I asked why didn't mum. She's too frightened.

She spoke to Auntie and X and his brother, dad and his friend and talking about buds and how many callers on phone, how much they wanted. She told me her aunt's children knew about the cannabis and

when they needed to move it from the attack, cousin used to take them out while they loaded the van.

30. In November 2016, there are further recordings of conversations with Child B;

"I don't want to go home and you need to tell them that, but I don't want to upset mum because she will give me that look at contact."

"The letters to the Law Society I wrote because I'm neater than Child A, dad told Child A what to write then I wrote it out twice and then posted it. The second letter was written by my cousin on the computer because they didn't want me to read it. The letter came the day we went home from Town 2. The neighbour paid for the taxi. Dad told Child A to throw the key in next door's bin, which he did. It wasn't a home. Dad grew cannabis in the attic. Once when he was there with mum, he grabbed her by the neck, lifted her to the roof bit and threw her. Mum was bleeding. When Child A tried to help mum, dad picked Child A and Child C up by their necks and threw them against the wall. He threw mum down the stairs and her eyes and mouth was bleeding. Once he even got a pan of hot water and threw it over her arm. She still has the scars. He used to pick me up and throw me on the sofa. He used to put scissors on my neck. Not one day passed without him hitting or hurting us. Even on our birthdays. Later he would say, 'Don't cry. I'll give you money.'"

31. Child B was reluctant for the information to be shared with her parents In December 2016, she explained that when she was six or seven, "I told the police that dad was in Town 3 in hospital. We had been told not to say anything and mum didn't but I did. Dad got arrested by the police and when he came back home, he didn't speak to me for two months."

32. I make it clear that I make no findings as to whether any of the new matters are evidence-based. However, throughout Child B has been described as a "daddy's girl". If the father is correct and the new matters raised by Child B are lies, the father would have to demonstrate an ability to understand Child B's emotional needs and to improve their relationship. I doubt very much whether this father has the insight and empathy to be capable of doing that.
33. As I found in my earlier judgment, this mother is a very significant person in the lives of these children. Prior to their removal into foster care, she was their primary carer. There is a lack of clarity about the parental relationship and her role in the lives on these children should the application be granted.
34. In the March proceedings, the parents presented as having separated. However, when the father was released from prison, he returned to his property which is held in his sole name. The mother was also living there. As is clear from my earlier judgment, this father is far from monogamous and, following his release, he was involved in a relationship with another woman in X County whom he impregnated, this at a time when the mother and father were living in the same property. In her statement at D24, the mother states that she moved out of the father's property in November 2016. His evidence to the court was that she was only there for a couple of weeks following his release from prison. On that issue, I prefer the evidence of the mother. Why did she move out in November 2016? I do not know, but I note that her move coincided with this application being issued by the father.
35. The mother's position before the court is that she is residing with a friend at an undisclosed address. However, it is clear from the guardian's evidence, which I accept, that when she met with the children in January 2017, they were unclear about whether their parents were still living together.
36. Other than to say that there is a lack of clarity, I make no findings as to the status of the parental relationship. However, the mother told the guardian that she would like to see the children every day, and the father told the court that he would facilitate contact between the children and their mother.

37. In my judgment, the father is incapable of meeting the needs of the children without significant input from the mother. If I were to grant the father's application, I would be exposing these children to all the unmanageable risks presented by the father which were identified in the March judgment. Findings which are not accepted by either parent.
38. In conclusion, these children are in a placement which does not match their religion or their culture and the father has raised a number of other issues which I have addressed in this judgment. Long term foster care carries with it a risk of instability for children. However, these children are fortunate in that they been in the same foster placement since they came into care and it is likely that it will be approved as a long term placement for them should the court continue the Care orders. I accept the evidence of the guardian that the children have a good relationship with everyone who lives in that foster placement, that they are settled, that they are doing well at school, that they are physically thriving and have developed friendship groups.
39. The children do not want to live with their father. There is no evidence of any solidity that he could meet their holistic needs without a significant contribution from the mother. I repeat, if I were to grant the father's application, I would be returning these children to the unacceptable situation from which I removed them.
40. Thus, carrying out the requisite balance of harm exercise, I am perfectly satisfied and find that the welfare of these children requires me to refuse the father's application which I have concluded is totally without merit.
41. I refuse the application and I make an order for public funding in respect of the costs of the guardian.

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