

**MISS RECORDER HENLEY**

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.

**Before:**

**MISS RECORDER HENLEY**

**IN THE FAMILY COURT**

**Case No. NE17C00680**

**SITTING AT NEWCASTLE UPON TYNE**

**In the matter of the Children Act 1989**

**Date: 17/08/2018**

**In the matter of**

**T ([on a date in] 2016)**

**BETWEEN:**

**LA**

**Applicant**

**-and-**

**(1) M**

**(2) F**

**(3) PGPS**

**(4) THE CHILD**

**(A Minor acting through his Children's Guardian, Claire-Louise Goudie)**

**Respondents**

## JUDGMENT

---

### Representation

Applicant – Mr O’Sullivan (Counsel)

Respondent Mother – Miss Sweeting (Counsel)

Respondent Father – Mr Gilbert (Counsel)

Respondent Paternal Grandparents – Mr Rowlands (Counsel)

Respondent Child – Miss Wood (Counsel)

### Introduction

1. This is an application for Care and Placement Orders brought by LA, (LA)
2. The Court is concerned with T (born [on a date in] 2016) now aged 2 years old.
3. The Mother is M (born [on a date in] 1994) aged 23 years old.
4. The Father is F (born [on a date in] 1991) aged 26 years old.
5. The Third and Fourth Respondents are PGPs, T’s Paternal Grandparents.
6. The child is represented by his Children’s Guardian, Claire-Louise Goudie.
7. These proceedings were issued on 25<sup>th</sup> September 2017, the 26 week timetable for this case expired on 23<sup>rd</sup> March 2018.
8. T is placed in local authority foster care, pursuant to an Interim Care Order, first granted on 16<sup>th</sup> October 2017.

9. This matter comes before the Court for final hearing this week, (in the week commencing Monday 13<sup>th</sup> August 2018) with a time estimate of 5 days.
  
10. This matter first came before me for an IRH on Monday 6<sup>th</sup> August 2018 when the Children's Guardian was yet to file her final report but was able to indicate that, subject to further enquiries, she may not be in support of the LA's care plan of adoption for T and that she may be supportive of a placement with PGP's. She was able to indicate that she did not support T returning to the care of the parents. Having read the papers in the case, I was of the view that one of the key pieces of information I needed to be able to assess PGP's ability to care for T in the long term appeared to be missing – namely medical information about PGF's health, in particular with regards to his diagnosis of Huntingdon's Disease. This was one of the primary concerns of the LA, who concluded that due to this diagnosis, as well as a number of other concerns, PGPs would not be able to safely care for T until he reached majority. I directed that PGF's treating Consultant, Dr K, file a report setting out the likely symptomology and progression of the disease with a likely timescale for this prognosis so that I could assess PGF's prospects of being able to provide good enough care to T throughout his minority and potentially during the progression of the disease, what his own care needs may be and what the impact of his symptoms may be upon T as a child living in a household with PGF.
  
11. I directed that the report be filed by 4pm on Thursday 9<sup>th</sup> August 2018 and listed an adjourned IRH before me on Friday 10<sup>th</sup> August 2018. I also directed that statements be filed from T's IRO and the ADM, seeking confirmation that they had read the updated evidence and inviting them to confirm whether they still supported the LA's care plan. Those statements were filed on time and confirmed that they did. CG's Report is dated 8<sup>th</sup> August 2018. Within her report she indicates that a placement with PGPs should be tested out, subject to further medical evidence being received. Dr K coincidentally reviewed PGF on Thursday 9<sup>th</sup> August 2018 and provided his report on Friday 10<sup>th</sup> August 2018.

Unfortunately this report was received after the IRH had taken place but I was informed later that day, that having reflected upon CG's report and Dr K's report, the LA was now in agreement that a placement with PGPs should be tested out in these proceedings.

12. I accordingly acceded to a request to stand the matter down until what would have been Day 3 of the hearing to allow for the production and circulation of documents by the LA, on the basis that Mrs Fairburn, if required, could attend Court towards the latter part of the week.
13. Matters have happily proceeded by agreement this week and so I was in a position to accede to a further request to stand the matter down until what would have been day 5 (today) to allow for the circulation of an interim care plan and written agreement. Both of which I have now read.

### Background

14. The family became known to the LA in January 2016 as a result of a referral from midwifery services during M's pregnancy with T. Concerns leading to the referral were that the parents were residing in homeless accommodation, M had been working as an exotic dancer and was alleging that she had been sexually exploited through her work, M's history of alleging that she had been physically and sexually abused as a child and the risks that members of her family may pose, domestic abuse in the parents' relationship, poor parental mental health and what was perceived to be a lack of familial support available to the couple.
15. T was made the subject of a Child Protection Plan under the category of Neglect as an unborn child. This plan continued following his birth, whilst the parents were assessed. He remained placed in their care during that time. On 15<sup>th</sup> May 2017 the Child Protection Plan was discontinued and T was dealt with on a Child In Need basis following positive improvements made by the parents.

16. In August 2017 a s.47 Investigation was launched following the discovery of bruising to T's face and head. The outcome of this investigation was that child protection procedures were required to safeguard T on the basis that the LA considered that he was being neglected in the care of the parents. T was initially placed with PGPs on a temporary basis on 29<sup>th</sup> August 2017, but was then removed to LA foster care on 4<sup>th</sup> September 2017.
17. T was once again made the subject of a Child Protection Plan under the category of Neglect on 21<sup>st</sup> September 2017 following the parents' indicating their intention to withdraw consent to the voluntary accommodation of T.
18. These proceedings were issued on 25<sup>th</sup> September 2017. T has remained accommodated in LA foster care for the duration of these proceedings.
19. On 14<sup>th</sup> October 2017, T was presented to hospital and transferred to the Freeman Hospital in Newcastle, due to an abnormally fast heart rhythm leading to heart failure. His working diagnosis is that he has an abnormal heart rhythm called idiopathic right ventricular outflow tract ventricular tachycardia. This is most probably a condition that he was born with but which remained asymptomatic until shortly prior to this hospital admission. This condition rendered T critically ill at the outset of these proceedings. The condition is now well managed through the provision of medical therapy and T remains under the care of the Freeman Hospital as an outpatient. T is likely to have a good quality of life provided that his additional health needs are met to a good enough standard, which will require particular vigilance on the part of his carers.

### Threshold Criteria

20. The threshold criteria for the making of interim public law orders pursuant to s.38 Children Act 1989 have already been established and an Interim Care Order is already in place.

### Evidence

21. During this hearing, I have heard from the legal representatives on behalf of each party. I have read the bundle of documents filed for this hearing. It has not been necessary for me to hear any oral evidence in this matter and no party has requested that I do so.

### Interim Care Plan

22. The interim care plan is dated 15<sup>th</sup> August 2018. It proposes that PGPs be assessed as prospective Special Guardians for T and that a placement in their care be tested out under the auspices of an Interim Care Order. It proposes a phased introduction to their care, with him being placed in their full time care on 24<sup>th</sup> September 2018 following them attending a medical appointment with his treating Consultant. It is proposed that the parents' contact will remain at its current level of twice per week during this period of time, supervised by the local authority.

### Legal Framework in respect of welfare decisions

23. I remind myself that the child's welfare is my paramount consideration. That is section 1(1) of the Children Act 1989. In considering what orders to make I have regard to the Welfare Check List found in section 1(3) of the 1989 Act.

24. In relation to the threshold criteria of section 31(2) Children Act 1989 I have regard to whether I am satisfied that the child has suffered or is at risk of suffering significant harm.

25. When considering which orders if any are in the best interests of the child I start very clearly from the position that, wherever possible, children should be brought up by their natural parents and if not by other members of their family. The state should not interfere in family life so as to separate children from their families unless it has been demonstrated to be both necessary and proportionate and that no other less radical form of order would achieve the essential aim of promoting their welfare.
26. In the recently decided case of *Re P-S* [2018] EWCA Civ 1407 a Court of Appeal decision in which Ryder LJ and the then President gave authoritative guidance highlighting the need for trial judges to ensure that they have all the available evidence they need to make final concluded decisions, which may if necessary require an extension of the time table of a case beyond its 26 week track.
27. From paragraph 52, Ryder LJ addresses applications for Special Guardianship orders in the context of procedural fairness.

The Court of Appeal was clear (paragraph 54): "*The residual power in the court to consider making a special guardianship order of its own motion in section 14A(6)(b) of the Act should not be the normal or default process because it avoids the protections that I have just referred to*". The 'protections' referred to are discussed at paragraphs 52 and 53.

Ryder LJ went on to note:

28. "*That is not to say that circumstances will not arise where that residual process is in the interests of the child and the court is able to have regard to the protections in sections 14 and 10 in its decision making, but it should not be the normal process. Not only does it tend to avoid the protections in the statutory scheme but it tends to avoid good planning by the local authority and the court which will include identifying the status of the prospective special guardians, how they will*

*achieve effective access to justice and such case management directions as will provide fairness to all parties by notice of the proceedings, the disclosure of evidence and the ability to take advice."*

29. In his separate judgment, the then President of the Family Division considered cases where the prospective special guardian is identified late in the day. What then is the court to do? The then President's answer is to apply the principles in *Re S*.

*First "the first question is whether the proposed special guardian is a 'runner'". This appraisal must be "evidence based, with a solid foundation, not driven by sentiment or ... hope." However, "it need not necessarily be too lengthy or too searching at this stage; what is sometimes referred to as a viability assessment or something similar may well suffice. If the proposed special guardian is ruled out at this stage, then so be it. If not, the judge will need to consider carefully what further steps need to be taken, in all the circumstances of the particular case, before the court can be satisfied that the proposed SGO should indeed be made."*

*Then the Court must turn its mind to "what further assessment, addressing which issues, is necessary to enable the judge to come to a properly informed conclusion? How long will the necessary assessment take – something on which the professional opinion of the proposed assessor is likely to be of crucial importance? If the child has never lived with, or has only a tenuous relationship with, the proposed special guardian, what steps need to be taken and over what period to test the proposed placement? These are some of the questions the judge may need to have answered; no doubt there will be others."*

*"If the answer to these questions demonstrates that the process cannot be completed justly, fairly and in a manner compatible with the child's welfare within 26 weeks, then time must be extended. There can be – there must be – no question*



*of abbreviating what is necessary in terms of fair process, and necessary to achieve the proper evaluation and furthering of the child's welfare".*

### Positions of the parties

30. All parties agree that this matter needs to be adjourned to test out a placement of T with PGPs and for the completion of a Special Guardianship Assessment of PGPs.
31. The local authority, having reflected on matters now proposes that the testing out process is undertaken under the auspices of an Interim Care Order but had initially considered that the Court could discharge the ICO and substitute it for a time limited CAO and ISO. I disagree.
32. The Mother agrees to the testing out period and has been able to indicate that if the further assessments of PGPs are positive, she would agree to T being placed with them. She will only seek to resurrect her claim to care for T should the LA put forward an adoption plan for him. She agrees to the continuation of the ICO on the basis of the proposed interim care plan.
33. The Father's position is identical to the Mother's,
34. The Children's Guardian supports the interim care plan and the testing out of the placement under an Interim Care Order and agrees with the interim care plan.

### Welfare analysis

35. On Monday of this week, I made clear that full and proper consideration needed to be given to PGPs being made Special Guardians for T following a testing out period. The Court does not have the benefit of a Special Guardianship

Assessment of them, or a support plan and the required health assessment and DBS checks have not been completed. In light of the expressed concerns of the LA the latter two requirements are more than mere procedural requirements in this case.

36. The LA is agreeable to the testing out of a placement with PGPs but does not at this stage resile from its concerns or seek to withdraw its application for a placement order. The testing out stage is therefore a crucial aspect of the case not only practically for T but also forensically. It is an opportunity for PGPs to demonstrate that they are able to meet his basic care needs now and into the future safely and to a good enough standard commensurate with his needs. Those needs are enhanced as far as his health is concerned in light of his medical diagnosis. Similarly the Guardian's recommendation is for a testing out period, not for final orders to be made at this juncture.

37. The parents, sensibly and realistically have been able to indicate that should further assessments of PGPs prove positive they will support this placement and not seek to compete with it, but if the care plan reverts to adoption, they will for understandable reasons, seek to challenge that and would seek a return of T to their care. I commend them for reaching this no doubt difficult decision but give that position my approval. Any family placement has the best prospect of success if both of T's parents are willing and able to give it their full support.

38. I do however consider, that given the somewhat turbulent history in so far as family relations are concerned, it is necessary for the Court to consider whether an SGO is the most appropriate long term order to make in securing any placement of T with PGPs in the long term and the required evidence to make such an order is not available at this stage. T has never lived with PGPs and his health needs require PGPs to undergo some additional training, all of which means that it is appropriate and in T's best interests for the placement to be tested. The Court is also presently lacking a proper assessment of the assistance that can be offered to

the PGPs from their other adult children, both in terms of caring for them in the event of ill health, in assisting to care for T and if necessary, in providing a contingency plan in the worst case scenario that PGPs were unable to care for him in the future by reason of ill health, for example. That information is all information that is required before final decisions can be taken.

39. I also bear in mind that if these public law proceedings were to conclude now, it may well be that each of the parents and PGPs would be appearing without the benefit of legal representation and advice in any subsequent private law application for an SGO, and T would not have the benefit of his Guardian to represent his interests, unless specifically appointed and would lose her oversight of the matter during the assessment process, if that process is to commence straight away as it should. I do not consider that that would give the family and most importantly T the proper protection of their Article 6 ECHR Rights that they are entitled to.

40. For all of these reasons I am satisfied that it is necessary to extend these, already lengthy proceedings, to allow for a testing out period and for the assessments that I have alluded to be carried out. The matter will need to be reallocated to give it judicial continuity and be time tabled through to an IRH.

41. I indicated on Monday that I consider that the testing out of a placement with PGPs should take place under an Interim Care Order. The LA needs to manage the transition of T from foster care to the care of PGPs and cannot expect to do so without sharing Parental Responsibility with the parents. It will need to continue to manage the parents' contact arrangements and it is unfair and unrealistic to simply expect PGPs to share PR equally with the parents and take over responsibility for these matters immediately, especially in circumstances in which it is not anticipated that T will be in their care for another 5 weeks. To that end I am pleased that the LA, having reflected on matters, now accept that the correct legal framework is an Interim Care Order rather than the time limited Child

Arrangements Order and Interim Supervision Order that its initial documents filed this week suggest.

42. 10 weeks to complete a Special Guardianship Report in circumstances in which a full ISW report is available at first blush seems like a long time, however, T's placement in PGP's care will not become a full time one for another five weeks and that is because all parties accept the need for PGPs to meet with his treating Consultant prior to assuming full time care so that his health needs can be fully understood and that they are as alert as they should be to the early signs and symptoms of any deterioration in his condition which could require prompt medical attention. The very earliest that such an appointment can take place is 17<sup>th</sup> September 2018. Accordingly for the first five weeks of a Special Guardianship Assessment, T will not be in the full time care of PGPs. I am therefore satisfied that a 10 week period to complete this assessment, allowing time to test out the placement is reasonable and necessary in all the circumstances. The remainder of the timetable proposed and agreed by the parties follows the filing of this assessment within the shortest possible time frame and therefore I approve that timetable and extend the timetable for the conclusion of these proceedings to the IRH hearing. I am satisfied that it is necessary to do so in the interests of justice. I will reallocate this matter to HHJ S Wood, approve the agreed time table for the filing of final evidence and list the matter before him for an IRH when hopefully the matter can conclude.