

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child[ren] and members of their [or his/her] 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.

Case No: SE20C00220

IN THE FAMILY COURT SITTING IN SHEFFIELD

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002

AND IN THE MATTER OF FRANK

Date: 6 November 2020

Before: HHJ Pemberton

Between:

Barnsley Metropolitan Borough Council

Applicant

And

AB

And

Respondents

CD

And

**The child
(by his children's Guardian)**

Kate Spence for the Applicant
Andrew Nixon for the 1st Respondent
Andrew Lord for the 2nd Respondent
Julie Amiss for the 3rd Respondent

Hearing dates: - 3rd and 6th November

JUDGMENT

1. This hearing has been listed to determine the future plans for Frank (not his real name) who was born in February 2020 and is now nine months old.
2. This is the LA application for a care and placement order in relation to Frank.

3. Frank's parents whom I shall refer to as the mother and the father in this judgment both oppose the Local Authority (LA) applications for their son.
4. The Children's Guardian fully supports the applications made by the LA.
5. I have read all of the documents filed in these proceedings which are contained in an electronic CaseLines bundle.
6. I have heard oral evidence from the independent social worker; the allocated social worker; the mother and the Children's Guardian and submissions on behalf of all parties.

Background

7. Given that the background is not actively challenged, I will set this out very briefly. The history to the proceedings is helpfully summarised in the LA opening for this hearing.
8. Both parents are vulnerable. Within these proceedings, Dr Laxton Kane has prepared a cognitive and capacity assessment of the mother. Her IQ is in the 60's, which suggests she has an extremely low range of intelligence. The mother has a significant cognitive impairment and experiences difficulties with processing, understanding and retaining information. The father's IQ has been previously assessed at 72 and he has been identified as having a borderline learning disability.
9. The parents have been in a relationship for many years and have been the subject of social care involvement for the majority of their relationship. The parents have three older children: L, Z and S. All three children were removed from the care of their parents and have subsequently been adopted.
10. The proceedings relating to L and Z concluded in 2014. As I understand it the children remained in their parents' care until the conclusion of those proceedings in January 2014. Despite a high level of support being provided, concerns continued throughout the proceedings relating to poor home conditions, a fraught relationship between the parents and the reluctance of the

parents to accept support from professionals. The LA's final statement highlighted the following important issues:

- The LA had persistent difficulties in persuading the family to engage in unannounced visits.
- The parents did not manage their finances appropriately.
- The LA received several reports of domestic violence and abuse between the parents
- The parents were unable to put aside their animosity towards one another to properly engage with professionals during meetings. The parents did offer to end their relationship and live separately if this would increase the likelihood of L and Z remaining in either of their care.
- L and Z were observed to be losing weight whilst in their parents' care, during the proceedings. Z suffered from anaemia, which was believed to be linked to poor diet.
- The parents were offered support in relation to making meals and achieving a healthy diet, a music group, Pathways and attendance with the children at the Children's centre to facilitate social interaction. Neither parent engaged with this support consistently.

11. The proceedings relating to S concluded in 2016. The parents continued to be in a relationship and concerns regarding domestic violence continued. The parents were regularly observed by the LA to be hostile to one another and the father was frequently observed to speak to the mother in an unkind and inappropriate manner.

12. A PAMS assessment was completed within those proceedings. This concluded that the parents' skills were below adequate in 87% of the domains assessed including feeding, health, parental responsiveness, promoting her development, providing appropriate guidance, promoting independence and ensuring safety.

13. The overall conclusions of that assessment and the social work assessment was that the parents were not able to meet S's needs

14. The father is recorded as having informed the Children's Guardian during S's proceedings that he and the mother do not require help with any aspect of their parenting. The parents had an extremely limited understanding of the concerns of professionals and struggled to follow advice from professionals.
15. S was made subject to a care and placement order in November 2016.
16. In June 2018, the father received a suspended sentence for assault against the mother. She reported that he had strangled her and beat her with fists and feet and held a knife to her head. She reported a history of physical abuse and a rape that had occurred three years previously.
17. A protection from harassment order was put in place for an unlimited time period with a condition that the father must not have any contact, either direct or indirect with the mother or attend the home address.
18. This order was undoubtedly breached as the mother became pregnant and the parents reported being in a relationship.
19. A referral was received from the community midwifery team in October 2019 to report that the mother was pregnant, and a pre-birth assessment was commenced. Unfortunately, the LA was unable to secure the engagement of the parents throughout the assessment and the conclusion of the assessment was therefore that it was unlikely that any changes had been made since the proceedings in respect of S had concluded. A decision was made to commence care proceedings upon Frank's birth.
20. Frank was made subject to an interim care order shortly after his birth and has remained in foster care since that time.

The evidence in relation to Frank

21. The LA planned to undertake a further PAMS assessment of both parents. A number of assessment sessions were missed for various reasons and the LA initially proposed no further assessment. However, on 4 June, I ordered that there should be an independent comprehensive risk and parenting assessment

report incorporating a PAM's assessment of the parents and this was completed by the ISW and is dated 14 July 2020.

22. The ISW's assessment and report is very full and thorough. She reaches very similar conclusions to the author of the previous assessment in respect of S

23. She notes some strengths in the parents' position: –

- i. Both parents described settled childhoods and happy family experiences.
- ii. The parents have a range of independent living skills and home conditions are clean and adequate.
- iii. The father has restricted his alcohol use to safe levels and has attended bereavement counselling.
- iv. The parents have some parenting skills and show warmth and affection towards Frank.

24. However, a number of vital vulnerabilities are identified within the assessment:

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- i. The mother has a learning disability which increases her vulnerability.
 - ii. She was the victim of a serious sexual assault at a young age.
 - iii. The father also experienced difficulties as an older child with peer and community rejection linked to his father's past.
 - iv. There has been a pattern of relationship conflict including violence and controlling behaviours.
 - v. The mother has been unable to keep herself safe.
 - vi. The parents have not been able to safely care for their older children exposing them to emotional harm and neglect.
 - vii. Parenting knowledge and skills are limited particularly with regards basic care, responsiveness and child development.

- viii. Previous engagement with professionals and support services has been unreliable and both parents lack insight into the concerns raised.
 - ix. There is limited wider family support available.
25. Within her overall analysis she recognises that the father has demonstrated some knowledge and skills and has better retention of task processes such as cleaning and sterilising of bottles. He believes that he has made changes since the previous proceedings including reducing his alcohol use and controlling his anger. However, he remains hostile towards professional involvement and allows his aggrieved feelings to preoccupy him.
26. She describes him as defensive rather than reflective. His ability to respond to Frank's needs is inconsistent and he has described difficulties in bonding with his children. He is unable to provide the level of skilled support and sensitivity required to jointly parent with the mother.
27. The mother is clear that she wants her children to be happy and safe but has limited parenting skills. She requires strategies and extensive support to enable her to apply the skills that she's learned, on a daily and consistent basis. Her ability to respond to Frank's changing developmental and emotional needs is poor.
28. The parents had long-standing difficulties that impact on their thinking, communication and emotional coping skills. Their relationship is long-term and is marked by patterns of abusive behaviour, including violence.
29. The ISW's recommendation is that alternative care is sought for Frank throughout his childhood.
30. The ISW has attended court to give evidence to me. She was a very impressive witness. I found her evidence to be internally consistent as well as consistent with and corroborative of the other evidence before me. The level of support she feels that these parents would need in order to care for Frank is significant and long-term. She was quite properly asked whether the parents would be able

to acquire the skills to enable them to care for Frank on a more independent basis moving forward. She was clear that this was very unlikely and that the level of support that the parents would need would be continuous and ongoing in the long term.

31. The allocated social worker has attended a court and given oral evidence to me. I have also considered the written evidence that she has filed.
32. Her conclusion, based on all of the evidence, is that Frank cannot be safeguarded in the care of his mother or father will be at risk of suffering significant harm should he be placed in the care of either or both.
33. She notes that the concerns in relation to the parents are long-standing and that the two PAMS assessments have reached very similar conclusions.
34. She has considered whether there is anybody else in Frank's family who is able to provide him with care throughout his childhood. In particular she has considered Frank's maternal aunt. Sadly, she did not feel in a position to offer to care for Frank due to her own family commitments.
35. The maternal grandmother was the subject of a viability assessment in previous proceedings which concluded negatively. She was the subject of an updated viability assessment within these proceedings which again concluded negatively and did not recommend placement of Frank with the maternal grandmother and her partner. That assessment was completed in February 2020 and has not been challenged. Nobody puts forward the maternal grandmother as an alternative carer at this final hearing.
36. Both parents have attended court and I have heard oral evidence from the mother. I commend her for the courage and dignity she showed in giving evidence.
37. I have taken into account all that each parent says in their statements.

38. Essentially the case of both parents is that they don't feel they've been given a fair opportunity. Frank's birth coincided with the beginning of the global pandemic and it this has meant that the parents contact has been restricted with some of the contact being via video rather than face-to-face. A number of both face-to-face and video contacts have been missed. The parents have had a number of health difficulties and have struggled with the video contact. I accept entirely that for any parent, seeing their new-born baby over a video link rather than face-to-face must be unbearably difficult. The father describes finding it not particularly engaging or satisfying for all concerned. He describes how these restrictions have impacted on his ability to become familiar with Frank and to develop their relationship.

39. The mother's position was similar when she gave her oral evidence to me. She told me that she believes the children should be brought up by their parents wherever possible. I agree with her. I remind myself of the what the Strasbourg court said in *Y v United Kingdom* (2012) 55 EHRR 33, [2012] 2 FLR 332, para 134:

“family ties may only be severed in very exceptional circumstances and ... everything must be done to preserve personal relations and, where appropriate, to ‘rebuild’ the family. *It is not enough to show that a child could be placed in a more beneficial environment for his upbringing.* However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained (emphasis added).”

40. I have also had very much in mind the wise words of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, para 50:

“society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent ... it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.”

41. Essentially the mother asked me to give her and the father a chance to show that they could meet Frank's needs.
42. Whilst I accept the difficulties, these parents have had opportunities to develop their relationship with their son and to demonstrate their commitment to HIM. They have not taken all of the opportunities offered. Mother has attended 16/24 direct family time sessions and 19/33 indirect "video" sessions. Father has attended 10 out of the 24 direct family time sessions and only eight out of the 33 video sessions. Whilst taking into account the difficulties faced by these parents due to the pandemic, I feel that these were opportunities that they parents could and should have taken. They were supported during the contacts by a family support worker. I was told at this final hearing that they felt unsure as to how to approach the video contacts. I am satisfied that advice and assistance was available to them as to how best to manage those video contacts.
43. The Guardian's final analysis refers to a failure by the parents to respond to her attempts to contact them. The Guardian notes the conclusions of the PAMS assessments with which she agrees.
44. In respect of the parents' inconsistent attendance to family time, the Guardian assesses this as a failure by the parents to demonstrate an ability to provide Frank with the security, emotional availability and consistency he requires.
45. The Guardian refers to her discussions with the father in which he was dismissive of professional concerns about his and the mother's ability to care for Frank and is critical that the focus of the assessments has been on past concerns rather than current lifestyle. The father had stated to her that he felt he would be able to develop a bond with Frank if Frank was placed in his care.
46. The Guardian concludes that Frank is vulnerable by the very virtue of his age and requires carers who will seek to place his needs as the paramount concern and ensure he is appropriately safeguarded. The parents have not demonstrated an ability to safeguard Frank or take appropriate steps to make sustained

changes to their lifestyle and parenting capacity. In her view, Frank would be at risk of significant harm and neglect if he returned to the care of either parent.

47. She confirmed this position in her oral evidence and cross-examination did not cause her to alter her views and recommendations. I accept the Guardian's analysis and reasoning.

48. I have considered all that these parents say in their statements and have considered in particular whether their challenge to the independent social work assessment fundamentally undermines that assessment or conclusions. I have also considered very carefully whether appropriate support services could be put in place to enable these parents to care for Frank.

49. Sadly, all of the evidence in respect of Frank reflects the evidence in respect of the three older children. These parents are unable to provide Frank with the level of care he receives either now or in the near future. The level of support that they would need in order to care for Frank or any child is far beyond what it would be reasonable to expect the LA to provide or what would be in Frank's best interests. This is not the parents' fault. I accept that they love Frank very much. However, I am satisfied that even with significant support and teaching, the parents would not be able to acquire the skills necessary to care for Frank during his childhood

Threshold

50. The LA has drafted a schedule of findings by which it asserts that the threshold criteria under S31(2) of the Children Act 1989 are satisfied. These are not challenged by the parents other than point E which asserts that Frank would be at risk of significant harm as a consequence the parents not being able to meet his needs and keep him safe without a high level of skilled, long-term professional support. The evidence that I have seen and heard satisfies me that that is a finding that I can and should make. I find that the threshold criteria are satisfied as drafted by the LA.

The legal principles

51. The finding that the threshold set by s.31(2) Children Act 1989 is satisfied is the gateway to the making of orders in respect of these children. Within the care proceedings, in determining the appropriate order the court must follow the approach set out in s.1 of the 1989 Act. The child's welfare is my paramount consideration. In determining what is in Frank's best welfare interests I have considered each of the factors set out in the welfare checklist in s.1(3).

52. As the plan for Frank is one of adoption, I have also considered the welfare checklist in S.1(4) of the 2002 Act. A number of the matters in S.1 (4) replicate the factors to which the court has already had regard under the CA 1989. However, there are two very important additional factors which I have also considered, these are: -

1. S1(4)(c) the likely effect on the child (throughout her life) of having ceased to be a member of the original family and become an adopted person; and
2. S.(1)(f) The relationship which the child has with relatives and with any other person in relation to whom the court considers the question to be relevant, including –
 - i. the likelihood of it continuing and the value to [the child] of it doing so
 - ii. the ability and willingness of any of [the child's] relatives to provide him with a secure environment in which he can develop and have his needs met
 - iii. the wishes and feelings of the relatives

53. Section 1(2) sets out the general principle that any delay in concluding proceedings such as these, is likely to prejudice the welfare of the child. Whilst I have not been specifically invited to address this, the thrust of the parents' case is that they should be given support and teaching to enable them to meet Frank's needs. This raises the real possibility of a delay in reaching final decisions whilst the impact of such support and teaching is necessary. I do not find that such

delay is justified given the very poor prognosis for the parents to be up to acquire and retain the knowledge and skills necessary to care for Frank.

54. In addition to those statutory provisions, I have also considered the Article 8 rights of these children and of their parents and have endeavoured to arrive at an outcome that is both proportionate and in their best welfare interests

55. As I hope it is clear from earlier parts of this judgement, the legal principles of application when the court is confronted with applications of this kind are well known to the court. Wherever possible, consistent with their welfare needs, children deserve an upbringing within their natural families. Care plans for adoption are very extreme and should only be approved when necessary for the protection of the children's interests, which means, "When nothing else will do," "when all else fails." Adoption "should only be contemplated as a last resort".

56. Before considering placing Frank elsewhere than with his parents, I confirm that I am satisfied that there is no practical way that the authorities or other agencies could provide the level of assistance and support which would allow Frank to be cared for by either or both of his parents. Even if such resources were available, the level of support and assistance and intrusion into day-to-day life would not be in Frank's best interests.

57. The choices for Frank in truth, are severely limited. He could be placed in his parents' care who in all probability will remain living together in the light of their lengthy relationship or Frank should be permitted now to be placed in a permanent, adoptive home.

58. The only other possibility is that Frank might be placed in long term foster care.

59. Long term foster care is an extraordinarily precarious legal framework for any child, particularly one as young as Frank. Foster placements, long or short term, do not provide legal security. They can and often do come to an end. Children in long term care may find themselves moved from one home to another sometimes for seemingly inexplicable reasons. Long term foster parents are not

expected to be fully committed to a child in the same way as adoptive parents. Most importantly of all, a long-term foster child does not have the same and enduring sense of belonging within a family as does a child who has been adopted. There is no way in which a long-term foster child can count on the permanency, predictability, and enduring quality of his placement as can a child who has been adopted.

60. If Frank were to be brought up by his parents, I have no doubt that he would be much loved by them and by the wider family. He would have the opportunity to grow up amongst people with whom he shares biological links and background.
61. However, the detailed assessment reports prepared in relation to Frank and his older siblings set out in clear detail the difficulties that his parents have had and are likely to have in meeting the needs of a young child. As I have already found, these difficulties are likely to cause Frank to suffer significant harm although I wish to make it clear that this would not be deliberate on the part of the parents.
62. The disadvantage of making a placement order is that Frank will be deprived of an upbringing within his natural family. It may be that in the future Frank will need some professional assistance to deal with issues of loss and identity if he is not to be brought up within his natural family. However, experience suggests that as long as the adoptive family deals openly and sensitively with those matters – and age appropriately as Frank grows – the potential for problems is markedly reduced, even eliminated.
63. The advantages of a placement order are many and obvious. Prospective adopters are required to submit themselves to a rigorous and very thorough assessment process over many months. Those who satisfy the selection criteria are ordinarily of the highest calibre. They may be confidently expected to provide extremely good parenting to any child who is matched with them in all areas of his development. They will protect the child from harm of whatever kind. The overwhelming probability is that they will be able to provide him with the priceless gift of a happy, secure, and stable childhood from which he will derive life-long advantages.

Overall conclusion

64. Adoption is not a panacea, but I am satisfied that both the guardian and the social worker have conducted a proper analysis of the realistic options. I accept them. I am entirely persuaded that the course suggested by the LA and supported by the Guardian is the one which best accords with Frank's welfare needs. I am also satisfied that this is a case in which it is right to find that adoption is necessary and that nothing short of that will do.
65. I therefore make a care order and approve the care plan. I dispense with the mother's and the father's consents to a placement order pursuant to s. 52(1) of the Adoption and Children Act 2002 on the basis that Frank's welfare (throughout his life) demands that I should do so.
66. I have considered the proposed contact arrangements for Frank also submissions made on behalf of the mother that Frank would benefit from more regular contact than that proposed by the LA. It is submitted that this would be of benefit to him for his life story work. The LA and the Guardian do not feel such a level is necessary. I am satisfied that the care plan properly balances the need for Frank to have sufficient opportunity to spend time with his parents for the purpose of his life story work and the need for him to settle and become a part of his adoptive family.
67. The country is currently in the midst of a global health pandemic and a national lockdown has been imposed. Decisions about face-to-face contact being made during a national lockdown create real practical difficulties for local authorities in managing such contact. The LA must make decisions on an individual basis, consistent with Frank's welfare. I know that what these parents wish to do is to be able to cuddle their son and have photos taken with him. There are obvious risks involved in this but also obvious advantages for both Frank and his parents. I leave it to the LA to determine how best to manage contact between now and a farewell visit to ensure that Frank has the very best information moving forward in respect of his parents and their commitments to him.

68. I hope that the parents request for some up-to-date photos of Frank can be agreed. I think it is a modest request which involves little risk and, in my view, would give the parents some comfort at this very difficult time.

69. I give leave for a copy of this judgement to be released to prospective adopters for Frank.