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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 child and members of his 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: SE19C00591

**IN THE MATTER OF THE CHILDREN ACT 1989**

**AND IN THE MATTER OF K AND L**

Date: 20.1.21

**Before :**

**HHJ Lynch**

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**Between :**

**Rotherham MBC**

**Applicant**

**- and -**

**M (1)**

**F (2)**

**The Children**

**(through their Children's Guardian) (3 & 4)**

**Respondents**

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**Marie Monnet for the Applicant**  
**James Gascoigne for the 1<sup>st</sup> Respondent**  
**Ellie Mills for the 2<sup>nd</sup> Respondent**  
**Sarah Peart for the Child**

Hearing date : 20 January 2021  
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**JUDGMENT**

## **Introduction**

1. This court case is about two little children, K and L. Their mother is M. The father of L is F. DNA testing in these proceedings showed he was not K's father but nonetheless that is very much how K sees him and F views himself as his father. M has one younger child, S, who does not live with her. He is the subject of separate court proceedings which were due to conclude two days ago, with a plan on the part of the local authority that he should be adopted, but the hearing had to be delayed.
2. The local authority began these care proceedings as long ago as March 2019, long before I became responsible for this case. The proceedings began following a long period of social care involvement with the children due to concerns around domestic violence within the family home, the parents' chaotic behaviour and parenting, concerns around drugs and alcohol misuse, and M's poor mental health. All of that local authority says impacted on the care of the children and exposed the children to significant harm. The matter was looked at very carefully within the local authority pre-proceeding systems but concerns escalated by February 2019 such that the children were not safe and hence these proceedings were issued. The children were made subject to interim care orders at the outset and were placed in foster care where they remained until last autumn.
3. During these proceedings both parents have been assessed by a social worker to see if they could bring up the children properly, meet all their needs and keep them safe. The outcome of those assessments was negative. The local authority came to the view that the children could not live with either parents and as a result its plan became one of the children being placed for adoption. At that point M put forward a family friend, C, to be assessed to care for the children. She was assessed positively and the children went to live with her on 23<sup>rd</sup> October 2020 to test the placement. No concerns have been reported since the children have been in the care of C. Today the local authority has asked me to make a special guardianship order confirming that placement. That plan is supported by F and the guardian and not opposed by M.

## **The Issues and the Evidence**

4. I know this case well having been responsible for it since June of last year. In preparing for today I have re-read the key parts of the evidence, particularly the assessments of the parents and of C, the local authority's final evidence, F's final statement and the guardian's report. Unfortunately M have not been

able to prepare a statement on her behalf as her solicitor was not able to reach her by phone until yesterday. As I have already said however, there is no opposition to the local authority's plans for these children. It was M who put forward C as a possible carer for the children and Mr Gascoigne tells me today that she is supportive of the children living with her.

5. Today was set up to be a final review hearing in relation to this case but on the basis final orders might be made if there was no opposition to the plans for the children. That is indeed the case and I said that I would finalise matters today. I have not heard any evidence but each of the lawyers has told me their client's position as to what they want me to do.
6. Looking at the situation when this case began, there were significant worries about both parents. The parents were misusing a number of different drugs and there was domestic violence in the family home. The local authority put in place a contract of expectations but that was not kept to, meaning the children were not safe. The parents were living a chaotic lifestyle and this was affecting the care of the children. Support was provided by the maternal family and a family friend but that simply led to M leaving the children with them for significant periods of time so she could continue to lead her life as she wished. Neither of the parents had engaged with agencies or services which could give them the support they need to end their drug use and make the necessary changes to their lifestyle to put the children's needs first.
7. The guardian comments in her report M in her own right appears to be a vulnerable young woman who has struggled to distance herself from relationships which are inappropriate, has achieved little consistent stability in terms of her own life, and lacks the ability to regulate her emotions make safe decisions for the sake of her children. M has had three relationships within which there is been domestic violence, the last one with the father of her last child being one with significant violence in it, and there is little evidence that she sees the need to change that.
8. The parents have been assessed in these proceedings although neither of them engaged properly in those assessments. Neither has consistently taken up contact with the children, again showing their inability to place the children's needs first. They have however been able to support the placement of the children with C and that does show an awareness that they are not in a position to care for the children and that they want what is best for their son and daughter. I should also record that M has not engaged in the court proceedings

regarding her younger child, has not been assessed and has not seen her son for some months. That in itself shows me that she has not been able to address the issues of concern in relation to her. F finds himself imprisoned at the present time, on remand for a serious offence, although he denies involvement in that offence.

9. The assessment of C is very positive. She is a family friend of M, in fact a friend of her mother. She is a woman who has brought up four children of her own who are now adults. She also took on the care of a stepson after her relationship with that boy's father ended and she has a special guardianship order for him. Her care of all of those children has been good. The report evidences her commitment to K and L, and the fact that she has cared for a stepson as well as she has demonstrates her ability to care for those who are not her blood relatives. She is understanding of the parents' difficulties and is committed to supporting safe contact. As she has a special guardianship order already, I can be confident that she understands what is involved, even though she has not chosen to become part of these proceedings or take up the offer of legal advice funded by the local authority. And of course C is already caring for the children. They moved to her care almost three months ago and I am told they are doing very well there. K is in school and has settled well there.
10. The local authority's plan is that the children should remain with C under a special guardianship order. Contact with each of their parents it is proposed could be monthly for three hours, supervised by C, together with other contact on special occasions. The local authority says there is no need for any orders about contact because C would very able to make arrangements with each of the parents and that would be the most normal situation for the children. F certainly in his final statement confirms he has a good relationship with her.
11. The plan for the children to stay with C under a special guardianship order is supported by F. In his final statement he says how pleased he is that the children have settled well with her and that this means they can stay within their extended family. He expresses how grateful he is to C for what she is doing. He is keen to take up contact with the children, by video link if necessary from the prison whilst he is there. He wants to be in a position to provide photos of himself for the children to go in their memory book. He asked his solicitor to make sure he was able to be part of today's hearing, even though that meant being on a videolink from prison, which shows he has been committed to this court process.

12. The guardian too support the plans for the children. She notes that neither of the parents is in a position at this time to care for the children, not having even reached the point of acknowledging their problems let alone taking steps to change those. She commends the parents for accepting that position and having supported the children moving to live with C. She observes that the children have developed a close relationship with C and, as she puts it, considers their place in her care as “home”. She too notes that C is already organising and managing contact arrangements and is confident in continuing to do this in the longer term. She agrees that no contact order is needed and that contact can be left to the discretion of C.
13. The guardian has considered whether a special guardianship order is required or whether any different order could secure the children’s home with C. She says it is important that C has the enhanced parental responsibility which goes with a special guardianship order. The parents’ role is maintained but she can give them the level of security essential for their long-term stability and overall well-being. She notes the making of a special guardianship order would not prevent either parent from applying to the court to have the children returned to their care if they are able to turn their lives around, but it should prevent any inappropriate applications which could disrupt the children. It is for that reason she supports the making of a special guardianship order.

### **Threshold**

14. The court has to consider what the situation was when these proceedings began and if the children were suffering or were at risk of suffering significant harm as a result of the parents’ care of them. This wording has been agreed by the local authority, F and the guardian. M’s solicitor has not been able to discuss it with her. I have read the evidence though and am satisfied that the facts agreed by the other three parties are borne out on the evidence filed. I therefore make those findings and they are set out at the end of this judgment.

### **My Decision**

15. I now turn to think about what orders if any are needed for K and L. Wherever possible, children should be brought up by their parents and if not by other members of their family. I know that the children and their parents, and indeed now C, have a right to a private family life. And when I make my decision, I must remember that the children’s welfare throughout their lives comes first in my thinking.

16. The only option I am being asked to consider today is that of children staying with C under a special guardianship order. I have however thought about whether that is the right order or whether I should instead make a child arrangements order. I have also thought about whether any orders are needed to ensure the children can spend time with their parents in a suitable way. In my head though I have gone through all the possible outcomes for the children and balanced up the pluses and minuses of each. When doing that, I have thought particularly about the list of factors in what is called ‘the welfare checklist’ as set out in the Children Act 1989.
17. Sadly, I am satisfied that neither of these children can live with either of their parents. The issues which led to the children being removed from the care of their parents has not gone away. These are young parents leading a particular lifestyle and it may be that changes in the future. Right now though the children would be at risk of significant harm were they to be in the care of either parent. Judges often hear from social workers about something called “the cycle of change”. The idea is that somebody has to start off by considering that may have a problem, then move on to decide to do something about it, then take some action, and then maintain the new position. People often fall out of the cycle and come back in. The problem in this case is neither parent is yet at the point of acknowledging they need to change anything so they are a long way from making that change happen. Parents who take drugs, who live a chaotic lifestyle, cannot give their children the care that is required, and that is the situation here. There is no support that can be put in place at the current time to change that as neither parent is taking that up in the past. Again it may change in the future, but the children cannot wait to have decisions made about where they are going to grow up.
18. These are young children who need grown-ups looking after them who can meet all of their needs. Looking at the ability of each of the adults involved in this case to care for the children, considering carefully the assessments of them, only C could do that. Given the situation each of the parents are in, I agree with the social worker and guardian that they should live with her under a special guardianship order. I also agree, from all I have read about C, that there is no need for any orders about contact. She can be trusted to make arrangements with M and F and to ensure that the arrangements which are agreed are ones which will keep the children safe whilst promoting a relationship with their mother and father.

19. So, looking at the options for K and L, I do agree that the right thing for him is for them is **to make a special guardianship order in favour of C**. That is the best outcome for the children and is a proportionate interference in their lives. I would very much want to thank her for her amazing commitment these two little children, enabling them to remain within their extended family and to grow up with the potential for a real relationship with their parents and extended family including the maternal great grandparents who are a very important part of the lives of these children.
20. There is one further direction I wish to make. I think it is hugely important for children who do not live with a parent that they have information available to them, through their carers, so they can make sense of their early life. This judgment, in setting out what I have read and heard in court today, gives at least a summary of that start. I propose therefore to order that **this judgment will be sent by HMCTS to C so that it is available to K and L when they are older. That however is on the basis that she should keep it private so apart from looking at it herself she may only show it to any medical or therapeutic staff working with the children or family.** I have written this judgment not for the benefit of the grown-ups but for the children and I wish to be sure it reaches them, along with later in life letters I have written for them.

THRESHOLD CRITERIA  
AS AGREED BY THE FATHER  
AND APPROVED BY THE COURT

The court is satisfied that at the time the applicant local authority commenced proceedings, K and L were suffering and were at risk of suffering significant harm and the harm and the likelihood of harm is attributable to the care likely to be given to them if an order were not made not being what it is reasonable to expect a parent to give them.

The categories of harm include physical harm and emotional harm and neglect, more particularly: -

1. The children were subject to child protection planning from 24 July 2018 following concerns of domestic violence within the family home, the parents'

chaotic behaviours and chaotic parenting. The matter progressed to the Public Law Outline stage in February 2019 where concerns escalated. A contract of expectations was put in place, however this was breached on a number of occasions and M was unable to keep the children safe. The parents have been unable to evidence or sustain any change throughout the PLO process and the current proceedings. The lack of change on the part of the parents put the children at risk of physical harm, emotional harm and neglect.

2. On 19<sup>th</sup> March 2019 social workers went to the family home on two occasions but were unable to gain access to the property. When they eventually managed to gain entry into the property M was seen in the property and her behaviour was erratic. An unknown male was present in the home, who was observed to be under the influence of substances and alcohol and was incoherent in his presentation. Drug and alcohol paraphernalia were seen in the home. Further males came to the property during the time the social worker was present and made threats to enter the home. The children were due to return home but the maternal grandfather agreed to keep the children overnight. Had the children returned home they would have been exposed to this chaotic environment.
3. The parents failed to protect the children from emotional harm and did not work openly and honestly with professionals. M breached the contract of expectations on a number of occasions. F failed to report concerns regarding M despite on 19.03.2019 telling workers that he had observed a group of males and females on CCTV footage going to the home and attempting to kick her door in. On 19.03.2019 the social worker observed footprints on the front door.
4. In November 2017 F was found to be driving dangerously with S in the car and was convicted of this offence. Probation deemed him to be medium risk to children. Should F be allowed to care for the children such action would place them at risk of physical harm.
5. The parents have a history of substance misuse. Hair strand testing completed during the proceedings concluded that M tested positive for 'crack' cocaine use, codeine, MDMA and a constituent of cannabis. F tested positive for cannabis, cocaine, MDMA use, codeine, dihydrocodeine and tramadol. Such



drug use places the children at risk of physical and emotional harm and neglect as the parents are unlikely to be able to adequately care for the children, if they are under the influence of substances.

6. M prioritised her needs above the needs of the children, leaving the children for long periods of time, sometimes spanning up to three days in the care of maternal great grandparents or a family friend at short notice whilst socialising and undertaking drinking and drug taking behaviours. The children were unsettled and living chaotic a life as a result of M's choices. This led the children to suffer harm and neglect.
7. M has unaddressed mental health needs which impact on her ability to safely parent the children and prioritise their needs.