

Neutral Citation Number: [2023] EWFC 201 (B)

Case No: ZW23C50081

IN THE FAMILY COURT AT WEST LONDON

West London Family Court
Gloucester House
Dukes Green Avenue
Feltham
TW14

Date: 15 November 2023

Before :

HIS HONOUR JUDGE WILLANS

Between :

THE LONDON BOROUGH OF EALING

Applicant

- and -

(1) The Mother

Respondents

(2) The Father

(3) The Child (a child by his Children's Guardian)

Matthew Burman (instructed by **Ealing Legal Department**) for the Applicant
Amanda Meusz (instructed by **Caveat Solicitors**) for the First Respondent
Mark Blundell (instructed by **Osborne Solicitors**) for the Second Respondent
Meena Fakhri (instructed by **National Legal Service**) for the Third Respondent

Hearing dates: 24-26 October 2023

JUDGMENT

His Honour Judge Willans:

Introductory Points

1. This reserved judgment is given following a three-day final hearing at the end of which the applicant, child's guardian and father all support the making of a final care order with respect to this 13-year old child, [] ("the child"). The child's mother opposes the same and seeks for him to be returned to her care as soon as she has obtained suitable housing for them both. In the interim she would agree a section 20 placement¹.
2. I heard live evidence from the allocated social worker, mother, father and guardian. The parents were assisted throughout by interpreters. This judgment will likely be published and so to preserve confidentiality I will refer to the parents using those labels, the child accordingly and to the country of origin of the parties as X and the country of current residence of the father as Y. X is a country in East Asia and Y is an East European country. Unfortunately day 1 of the hearing was required to update the parties on the guardian's final analysis. As a result of this the evidence was delayed and I was unable to provide a judgment within the hearing timetable.
3. I have had regard (whether I refer to it within this judgment) to the papers contained within the hearing bundle, the live evidence of all witnesses and the submissions made by counsel for each party. I also have regard to the limited additional documents provided in the course of the hearing.
4. The hearing was conducted on a wholly attended basis. I have had care of the case since a further case management hearing on 20 April 2023. Within the proceedings there has been parenting assessments undertaken with respect to both parents and wider family in X. The case has been extended outside of 26-weeks largely as a result of the need for the father to travel to this jurisdiction as part of the assessment process but also to enable a three-day final hearing. Judgment will be handed down in week 38. The full procedural history can be found in the hearing bundle.

The issues in the case / party positions

5. The applicant and father entered the case from a very different position to the one in which they ended the case. At outset both sought the making of a child arrangements order in favour of the father on the basis that the child would be placed into a boarding school environment living with the father either in this country, X or Y (or a combination of all) during school holiday breaks. This was to be supported by a supervision order. However, by the end of the case both the applicant and father had reached the view that the best outcome for the child was a care order on the understanding that the child's contact with his father would be generous. It is an unusual feature of this case that, by agreement, the child has spent time overseas with his father in the course of the proceedings - including in country X which is a Non-Hague Convention Country.
6. In changing position the father and applicant now agree with the child's guardian. The guardian took a different view to that of the applicant consequent upon the child's clearly stated and strong opposition to moving into a boarded environment. The guardian considered the child's welfare required appropriate allowance for his clear views given his age and level of understanding. I met with the child prior to Court on 23 October 2023 and a note of my meeting was provided to the parties. I refer to these views later.
7. The child's mother opposed a care plan. She wished for the child to return to her care as soon as is possible and once suitable accommodation is available to them both. She considered this outcome was consistent with the child's wishes and feelings. It is of

¹ Section 20 Children Act 1989

note the child came into care having lived his whole life in his mother's care. There was little if any residual dispute as to the contact plans that would be in effect were a care order made. It was agreed contact would be generous and liberal when compared to many cases in which a care order is made.

Legal Principles

8. My paramount consideration is the welfare interests of the child. In considering this I have regard to section 1(3) Children Act 1989 and to all the circumstances of the case. I presume it will be in the child's welfare interests to have a relationship with both parents so long as such is safe for him. The making of a care order requires the Court to find a legal threshold crossed under section 31 of the Children Act 1989. This is a test which requires the Court to find the child has (for the purposes of this case) suffered significant harm at a given date (typically the commencement date of the proceedings) or would be likely to suffer significant harm if an order were not made and that such harm is attributable to the care being given to the child not being that which a carer would be expected to provide to the child. Plainly the above requires a factual matrix to be agreed or found by the Court. In this case the threshold is not in dispute. However, I bear in mind that any factual disputes are resolved on the balance of probabilities with the burden of proving the allegation placed on the party making the allegation and with no burden of disproof. The legal finding that the threshold is crossed does not resolve the case. It simply opens up the potential for the Court to make public law orders either placing the child into the care of the applicant (care orders) or under the supervision of the applicant (supervision order). Whether to make any such order brings into focus the welfare of the child. It also requires the Court to have regard to the article 8 rights² of the family. This is the right to respect for private family life. The intervention of the state in family life is a significant step which can only be countenanced and approved by the Court where it is a proportionate response to the prevailing circumstances and is found to be reasonable, necessary and lawful. If the Court can find a lower form of intervention that will meet the circumstances of the case the Court must take that alternative route. At the outset of the case I was referred to the authority of **Re S (A Child) and Re W (A Child)(s 20 Accommodation) [2023] EWCA Civ 1**. This case makes clear the propriety of section 20 arrangements as a final outcome in care proceedings and disapproves any suggestion that section 20 arrangements can only be used as interim or short term holding measures. Ultimately this issue fell away in the course of the hearing.

Relevant Background

9. The parents met and married in this jurisdiction in 2008. Within the year the mother was pregnant with the child. The statement evidence suggests the relationship was poor from an early stage. In general terms the mother describes a situation of isolation and loneliness with the father spending time at work. She also details allegations of domestic violence. Early in the proceedings I considered whether these allegations should form any part of this process. It was agreed they did not need to be resolved given their historic nature and given the lack of contact and likely future contact between the parents. The allegations are denied. It seems the parents emotional relationship ended when the child was about 1-year of age. The mother highlights financial difficulties in the relationship. In 2012/13 the father moved to live and work in Y. In 2014 the mother and child temporarily moved to Y to share a home with the father but this broke down quickly with further allegations of domestic violence and the mother returned to this country alone. During this period the child was placed with paternal family in X. This lasted for about 5 ½ months during which time there was dispute between the parents as to whether the child should remain there or return to this country with his mother. Ultimately the mother appears to have surreptitiously removed the child using his UK passport. On return to this

² European Convention on Human Rights

country the mother was assisted by a leader within her church whilst she made housing applications and obtained accommodation for her and the child.

10. The mother complains of struggling on her own during this period with only episodic support from the father. His support is said to have ended in 2018 when he filed for divorce. The accommodation she obtained was far from ideal but she remained there with the child for 8 years until her eviction in early 2023. Over time the mother noted concerning behaviour on the part of the child. He was said to be challenging towards her and low in mood and angered quickly. In the period between 2015-2018 the father maintained contact with the child but this stopped in 2018 after the filing of the divorce. Between 2018-22 the father is said to have been absent from the child's life. In 2021 the child was taken to A&E as a result of his presentation. He was referred to mental health practitioners and reported suicidal thoughts. In 2022 the mother received an eviction notice and they were evicted in early 2023. This was incredibly stressful for the mother as she struggled to find replacement property. On eviction they were placed in a one-bedroom room in a hostel with shared facilities. At the time of the final hearing the mother remains within this placement but is due to be evicted from this as she has been deemed to be intentionally homeless having turned down an alternative housing offer. In February 2023 there was an incident which the mother puts down to a disagreement over internet usage by the child. In the course of the incident the child is said to have been verbally abusive to the mother and she admits 'slapping him in the mouth with the back of her hand'. It seems the child then made a call to the church leader, the police attended and the child was placed in police protection. On removal the child made clear he did not want to return and initially the mother agreed for him to be accommodated with the church leader.
11. In its initial statement the applicant notes the child being under a child protection plan since October 2022 due to concerns around physical chastisement, emotional abuse and difficulties in the relationship with his mother. Prior to this he had been on a child in need plan with similar concerns since December 2021. In February the child messaged the church leader about being hit and then was video messaging her when he could be seen to be hit with an object and with the mother's hands. The church leader attempted to pacify the mother but when this failed the police were called. Initially, the applicant planned to place the child into his father's care and he traveled to this country to collect the child. The plan was to take him to X. However, there was a dispute as to the child's passport and this was not possible. The initial statement details a history of physical and verbal abuse from the mother with the child explaining his low mood and suicidal thoughts as being linked to this abuse (not the home conditions as suggested by the mother). This is said to have continued despite earlier police involvement and the signing of a written agreement. Prior to the issue of proceedings the applicant had sought to work with the mother and offered various avenues of support, however the same were declined and it was felt the mother was unwilling to engage with the applicant. The mother offered a time limited s20 agreement. As a result an interim care order was sought and this was granted by the Lay Magistrates on 24 February 2023. For most of the proceedings the child was opposed to having any contact with this mother. Efforts were taken to re-establish the relationship and this appears to have had some success in the weeks prior to the final hearing. As noted above the child has re-established a relationship with his father and there has been both indirect and direct contact including periods of overnight care overseas in X.
12. Within the proceedings the father focused on evidence relating to proposed solutions for the child. He has denied the allegations made against him but not provided a full history of the parents relationship. He has however made it clear that he supports the reconciliation of the mother-child relationship and would support the applicant in its efforts in such regard. He expressed no fundamental issue with the child spending time with the mother if this was consistent with the child's wishes. He raised no concerns as to the improving situation in the relationship with mother as noted above. As noted above the key focus of the father has been on outcomes. He has initially suggested options of placement in either X or Y but readily accepted this would not

be possible given the child's opposition to being placed overseas. His alternative was a privately funded boarding school option for the child which he felt would be better than foster care. He held onto this option up to final hearing but ultimately did not pursue the same in the light of the child's wishes and feelings. Finally he raised whether the foster-care placement should be under a section 20 agreement rather than an order. Again on reflection he took the view an order would be required.

Evidence

13. I found the evidence of both parents at times difficult to follow. I did not assess them as being deliberately evasive in their evidence but even through interpreters they appeared to struggle to engage with the questioning. I suspect there may be language complications overlaid by the emotion of the situation because it is clear neither parent has cognitive issues.
14. The social worker explained why the applicant had come to conclude there was a need for an order rather than a section 20 outcome. She spoke in terms of the parents difficulty in communication exacerbated by the father (who would likely have a lives with order in his favour given the mother would not agree a section 20 position) being overseas and at times non-contactable. She confirmed the applicant kept open the possibility of a cultural placement but made it clear there was no actual need for a move at this time and the applicant would prioritise maintaining the child at the same school and continue to give weight to his views. She discussed the proposed way forward as to contact and the benefit of a contact working together agreement. She confirmed her understanding of the mother's housing position and the resources previously made available. She explained how the mother was unwilling to engage with support services provided in the pre-proceedings period. She was in no doubt the mother loves the child and noted significant recent progress but commented this was in the context of not living together. She accepted the issues with respect to housing but did not accept this was the exclusive issue. She could not accept a proposal of a return home without work being undertaken and change being shown. She explained how the applicant was ensuring safe unregulated contact by working with the child and foster carer. It was accepted this was not without problems.
15. The mother confirmed her view that the child wanted to live with her but this was not for the purpose of ensuring she obtained housing. She confirmed she would work with independent third parties but not with a social worker. My sense of the evidence was that this was not personal to the social worker but to the organisation. She felt the applicant was responsible for her housing situation. She made it clear she viewed the housing issue as the central cause of what had gone wrong although she also pointed to the breakdown of the marriage, being a single mother and the transition to secondary school. She accepted she had wrongly hit the child and been verbally abusive. She told me she had not 'discussed' her housing situation with the child but had 'informed' him about it. It was also clear she had in some way discussed the guardian's report with him. She explained she did not want to work with the applicant and explained a previous social worker had encouraged the child to 'test her'. She interpreted this entirely negatively and could not appreciate 'test' in this context might be a far more neutral encouragement to 'test out' the situation rather than to challenge it. She would not work with a psychologist provided by the applicant given her experience of having her views and intentions 'twisted over the years'. She would not accept help from the applicant even were the child placed with her. She explained how she had come off anti-depressants and felt this had worked for her. She accepted she had informed her GP of the same rather than been guided by the GP in such decision making. As to the child's stated wishes to remain in care she felt the guardian had 'changed his words deliberately' [in response to this the guardian provided a hand written letter from her meeting with the child confirming her account of the meeting]. She felt chastisement was still a reasonable action but that the child was now too big to be managed in this way. She confirmed she would likely agree to future travel to X.

16. The father explained how he had come to modify his position. At the time of his giving evidence he was still arguing for a section 20 agreement but it was clear he feelings were in flux. He respected the child's wishes. He could see he was torn between his parents and that this was emotionally damaging for him. He felt the child was now more emotionally settled away from his mother and the stresses of that situation. His attendance at school is 100% and he is understood to be active and popular with his friends at school. He confirmed his ability to openly communicate with the foster-carer and felt that together they could help the child. He could not communicate with the mother but they do have each other's email addresses. When he tries to communicate she returns to past issues. He has no problem with her seeing the child. He could see the mother was trying to improve things but it worried him she still saw chastisement as being OK. The father was questioned as to the financial support he had provided or not provided to the mother and child. He listed a series of significant payments he had made. It was clear from both parents that financial affairs between them had been finally resolved in X.
17. The guardian felt contact had developed with the mother from a position of initial opposition as the child had been given the space to re-evaluate the situation. It had been his choice to have contact and it was on his terms. He loves his mother but the attachment also includes a sense of worry and concern about her situation. He has said he has forgiven her for her behaviour. She agreed housing has been a material issue but that many families face this struggle. It is the response to this which is problematic in this case and the ability to respond to support offered. The mother does need the work offered otherwise there is a risk of repetition. She doubted the efficacy of the work undertaken voluntarily by the mother online. A placement with the mother would be the ideal but the mother won't work with professionals, won't accept support from professionals and does not trust the applicant. Her parenting comes with risks and even with support she needs to undertake work. It is for the mother not the child to make changes.

Analysis

18. I met with the child. He appeared somewhat shy but expressed himself in clear terms. He showed maturity as to the issues confronting the Court with respect to his future care. I do not agree with the mother that his expressions were clearly wishing to return to her care. He was very clear that he did not want to attend boarding school as proposed by his father. However, he also made clear a broad wish to remain where he is and to continue within his current schooling. When considering living with his mother he did reference returning to her care but this was expressly represented as being part of a scheme to enable her to achieve housing. It was clear to me the child found himself in a dilemma between his own wishes and his genuine wish to assist his mother. Having heard the evidence it is clear to me that within their unregulated contact the mother will have likely made clear (consciously or otherwise) her deep and current anxiety as to what her future housing will be. It is not at all surprising that this sensitive teenager will have shaped his views to partly meet his mother's own needs. Notwithstanding this the child expressed a concern/belief that were he in fact to return to his mother then the cycle of chastisement would recommence. I shortly return to whether this is a fair assessment. This is a child with age and understanding and whose views demand consideration without necessarily being determinative. I accept the evidence from the guardian, which has been gathered directly from the child, of his wish to remain where he is in foster care. This does not mean I simply follow this wish. Absent good reason this would be a disproportionate interference but it is an important ingredient in the decision I have to make.
19. The child's has needs common to all children of his age. Particular to him is a need now for consistent and predictable care on a safe basis. He requires carers who are themselves emotionally settled and able to regulate their own emotions. The child cannot afford a return to the period of unsettled care which proceeded his placement into care. I agree the housing issue will have been a very important factor in what went wrong in this case. It is clear the housing provided to the mother and child was

barely adequate. It is a very sad indictment of housing provision within this country that such is the state of the available housing stock for desperate families such as the child's. The short sighted failure to provide a basis level of good housing for families in need leads to greater and far more costly social problems that then require intervention and resolution. But this is not for with the Court or Children's Services to resolve. This family are far from alone in the situation they face and I have neither the power of the entitlement to promote their housing needs over others who share their plight and whose cases are not known to me. But I do not accept the housing issue was the sole cause of the issues in the case. As with many cases one finds a matrix of factors interacting and leading to the problem confronting the Court. Here the housing is likely overlaid by the issues concerning the mother's mental health and her related inability to manage her emotions in times of stress. A further factor has likely been her social isolation and financial struggles. In short the mother is vulnerable by reason of her poor mental health and financial difficulties and the housing problem has placed a further weight on her shoulders. I accept she does not analyse the case in this manner and sees the housing as being the only real issue which once resolved will resolve all concerns. I consider that this is a wish rather than a reality. In any event it is far from clear as to the future trajectory of her housing and there is no obvious basis on which to predict a positive resolution within the foreseeable future. My concern would be that the child would simply return to a placement in which the previous cycle recommenced. I consider the child has correctly identified this worry in his own evaluation of the circumstances. This would be profoundly damaging for him as it would lead to further instability and would endanger those aspects of stability he has achieved and which appear to have enabled him to make good progress. I would be concerned such instability would be associated with a marked downturn in his own mood and mental health and this would (at this stage in his development) have likely long term / life long implications.

20. As to his personal characteristics I am plainly mindful of both his age as a relevant factor and his ethnicity. I am in no doubt his culture and ethnicity will continue to be respected and promoted whatever outcome I reach. If with his mother this will be central to his daily life. If in care then he will retain a significant relationship with both parents and wider family. A marker of this is the provision by the mother of food to the child consistent with his cultural identity. It is also clear the current foster carer has an open and receptive relationship with both parents and this is a valuable ingredient in respecting the child's identity.
21. The key change in this case would be the impact (good or bad) on the child or return to his mother. As I have noted above this might lead to highly damaging consequences were it to fail. I am troubled by the following features which surround this option. First, it is not clear to me the mother has developed a good understanding of why it was that things developed as badly as they did prior to the child's placement in care. I consider she has sought an easy explanation around the housing issue rather than carrying out a more introspective assessment which would likely be more challenging for her but would be more valuable for the mother/child relationship. Finding easy answers does not always lead to stable outcomes and an easy answer would be prone to instability when stressors (outside of housing) reappeared. Second, the mother has frankly made it clear that she is unwilling to work with the applicant post proceedings. She looks to resolve her issues independently. Whilst I give her credit for the efforts she has made I am concerned that such self-help runs the risk of failing to entrench new and positive behaviour patterns. Online learning has a value and purpose but change is more likely to be found in a package of intense and direct work.
22. The risk of harm in this case has been identified within the agreed threshold document which I find established. I have elsewhere referenced it within this section and need not repeat it here.
23. The proceeding sections highlight concerns. But it should not be thought that both parents do not love their child very much or want the best for him. I do not think this is a case in which then mother is consciously understating the concerns. Having

listened to her evidence I find her to be deeply distressed by all that has come to pass and at this time incapable of reflecting fully on the causes of the same. The father has equally shown a commitment to the child during these proceedings and I am in now way critical of the proposals he has put forward. I do not agree the suggestion of boarding school indicates a lack of insight or understanding on his part. In my assessment this was a considered attempt on his part to find a child focused solution to the problems facing his family. In any event he has come to modify his position. It is a sad feature of this case that the parents readily accept there is little prospects of their adult relationship being repaired for the benefit of the child. I am confident they are sufficiently mature and intelligent to establish a co-operative and workable relationship around their child. He would benefit from he same as it would given him the sense of his parents working for the same purpose in his interest. Given the allegations this need not be a direct relationship but a simple structure based around indirect communication such as a family app would help immensely.

24. In general the court has a range of options spanning the spectrum from no order up to the most draconian option of absolute separation via adoption. In this case a variety of different options have been trailed before me but ultimately I am left with a binary decision between a care order and a return to the mother. I reject the suggestion (which is not formally argued) of placement under an enduring section 20. I consider the father was absolutely right to reflect on this as an option and reject the same. Listening to the evidence it was clear to see the impossible position this would place the applicant in were the same to be approved by the Court. It would be providing accommodation without any real control in circumstances in which the parents were in active disagreement, incapable of communicating and with the father out of the country. Added to this is the very real difficulty of the mother's opposition to social care and an unwillingness to work co-operatively with the applicant. The options remain those above and an order delineating the terms of placement is required.

Conclusions

25. In my judgment the child's welfare demands the making of a care order and for the applicant to provide a foster home to meet his needs. I endorse the arguments put forward as to the very real benefit of maintaining the current placement. It is working for the child and permits him to remain in schooling in an environment that has been shown to work for him. It is also a placement that permits a relatively open dialogue with both parents. I would struggle to see the circumstances in which this should be unsettled in pursuit of an ethnic match given the child's strong support for the placement and given his ongoing contact with his parents which fortifies his identity.
26. Sadly, I cannot support a return to the mother at this time. The risk is far too high of a repeat of the previous pattern of behaviour. Although I cannot predict the future I consider the mother would benefit from a package of direct work which helps her address her challenges. I accept an important aspect for her will be settled accommodation and recognise this remains unclear for the time being. My hope would be that she obtain housing within the short term and then uses the next year to re-set her emotional position whilst maintaining contact with the child. It may be that this permits a re-evaluation of her place as primary carer for the child. But only time will tell. At this time a combination of a lack of change and poor co-operation and openness leave me to conclude she cannot safely meet the child's day-to-day care needs.
27. In contrast placement in care offers the child security and stability. He is currently thriving in his placement and the challenges relating to his mental health appear to have largely abated. He has been able to establish a safe and positive relationship with both his parents from this position and it appears clear this is of value to him. Judged holistically it is the better option for the child and the one that fits with his welfare needs.

28. I am not required to rule on contact as it is agreed the child will maintain an open indirect dialogue with his father and the applicant is committed, as holders of parental responsibility, to an open attitude to extended periods with the father including overseas. In the case of the mother contact has developed in an organic manner. This is not ideal in that it leaves the child in a position of some pressure. It is clear the mother has shared with him more than is helpful about her housing plight (she admitted as much) but I sense the danger / impossibility of stricter control of contact has to be recognised and the child given some latitude to see his mother on his own terms. I suspect this will enable him to manage his own emotions in a more sustainable manner than were he to face limited time with her. He has shown a willingness to disengage entirely when the situation is intolerable and this should indicate to the mother the need to be child focused in her contact. Given his age, modern media and his travelling for school I consider it unrealistic to place strict boundaries on contact. I consider the far better course is a clear working agreement / plan in which the child and foster carer are the key parties. This child is able to understand why a plan may be helpful and it should be possible to construct an agreement which he can both understand and appreciate as to its purpose.
29. This is my conclusion. I do wish this family the best in the next passage of their lives. There is much potential and it would be very sad were this opportunity to be missed. I intend to construct a short letter to the child explaining my decision to help him understand my reasoning. I ask the mother to maintain focus and reconsider an open attitude to the applicant. In the case of the father the key feature is for him to maintain the commitment he has shown before this Court.
30. I will hand this judgment down on 15 November 2023 at 9.30 am at a remote hearing. I have already excused counsels' attendance so long as their respective client is represented at the hearing. Any corrections or requests for clarification should be sent to me by 4pm on 14 November 2023. Given this judgment will likely be published any views on the same / proposed modifications to preserve anonymity should be sent by the same time. I would like a draft order by the same time. I will then provide an anonymised copy of this judgment with letter for the child following the handing down.

His Honour Judge Willans