

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.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE FAMILY COURT

(Sitting at East London)

[2023] EWFC 288 (B)

No. ZE22C00001

6th and 7th Floors
11 Westferry Circus
London
E14 4HD

Wednesday, 19 April 2023

Before:

HER HONOUR JUDGE SUH

(In Private)

B E T W E E N :

LONDON BOROUGH OF REDBRIDGE

Applicant

- and -

(1) The mother

(2) The father

Respondents

MS S BARBER (instructed by the Legal Department of the local authority) appeared on behalf of the Applicant.

MS BEER (instructed by Copperstone Solicitors) appeared on behalf of the First Respondent.

MR K GEDAL (Instructed by Caroline Flaherty Solicitors) appeared on behalf of the Second Respondent.

MS S WHITTAM (Instructed by Russell-Cooke Solicitors) appeared on behalf of the Guardian.

J U D G M E N T

JUDGE SUH:

1 Today I am concerned with J, born on [redacted], and his younger sister K, born on [redacted]. Their mother is in court, as is their father. The paternity testing of September 2022 confirmed that he is the children's father. At present the children live with their paternal grandmother, and they have been with her since 19 August 2022 under an interim care order.

Background

2 This is an application by the local authority dated 1 January 2022 for a care order and an interim care order, and the father's application of 17 April 2023 for parental responsibility. This matter was listed to be heard on 18, 19, 20 and 21 April 2023. It has concluded today with the parties either agreeing or, in the mother's case not opposing, a care order for the children.

3 By way of proceedings and the background that has brought us here, I will explain how we got to this point. The children have an older brother called [redacted]. He was born in [redacted] and he was subject to two sets of care proceedings: 2015-2016 and then 2017-2018. Those proceedings concluded with him living with his paternal family under a special guardianship order dated 20 March 2018.

4 This is the second set of proceedings for J. Another local authority brought proceedings and he was made subject to a supervision order on 1 April 2019, and he was on a child protection plan from 26 October 2020 under the category of neglect. The family then moved to Redbridge in January 2021, and from 22 January 2021 he was on the Child Protection Register with Redbridge under the category of emotional harm.

5 By way of background from May to September 2021 the mother went overseas and the children were with their paternal grandmother.

Procedural history

6 The proceedings here started in January 2022 and HHJ Staite was the case management judge who started oversight of this case. She adjourned an application for an interim care order on 19 January 2022 but said that the children should stay with their mum. There should be a working together agreement. Judge Coupland heard the matter on 25 January 2022 and he described this as a finely balanced case, and made an interim supervision order. Judge Staite heard the matter on 4 March 2022 and made a directions order for Dr Parsons and Ms McCann to help the court with their expertise. Final evidence was filed on 21 July 2022 and at that stage the local authority was seeking a 12 month supervision order. The matter came before HHJ Staite for an early final hearing on 10 August 2022. On that occasion the father had been located and he came to court and sought to be joined as a party to proceedings. The judge ordered DNA testing and a risk assessment.

7 The matter was timetabled through to an early final hearing but on 24 August 2022 the local authority made an application to share parental responsibility for the children because their mother had left the UK to go to overseas and as of 21 August 2022 there was nobody in the UK to exercise parental responsibility for the children. So the originally timetabled IRH (issues resolution hearing, early final hearing) before Her Honour in September 2022 was vacated, and there was an interim care order hearing instead on 13 September 2022 at which an interim care order was made. In October 2022 the mother returned to the UK, and I heard

the matter for the first time on 12 October 2022. I timetabled the case forward to an issues resolution hearing and listed a contested interim care order hearing. At the contested interim care order hearing on 4 November 2022, I made an interim care order and I also asked the local authority to consider privately funding CBT for the mother.

- 8 The issues resolution hearing in January 2023 could not be effective because the mother was overseas and she stayed there until April 2023, having left in January 2023. On 21 February 2023, I heard a hearing here in court and the mother was not present or in the country at that stage.

Analysis

- 9 The matter then came to this final hearing. I have read the bundle, the care plans which have been updated, the working together agreements, which the grandmother and the father have signed, and I have heard submissions from the parties. I have received an agreed threshold document, and that document sets out why the social workers were so worried that they came to court in the first place. I think that is a fair reflection of the evidence in the bundle before me, and it also is reflective of the gravity of the evidence in the bundle. I find that the threshold for making a public law order is made out.

Welfare

- 10 I remind myself of the “no delay” principle and the “no order” principle that I should not make an order for these children unless it is better than making no order at all. I remind myself that their welfare is my paramount consideration, and I look at all the circumstances in the case, including their wishes and feelings. Both children have said, when they have gone to contact with their mum, that they would like to go home with her, and that is reflected in the final social work statement. Both children have told the guardian that seeing their mum was good. Both children spoke positively of their grandmother to the social worker when she met them, and both children have enjoyed seeing their father and call him “dad”.
- 11 When it comes to what the children want, they are probably too young to be able to put into words that no doubt they would want people who love them, who put them first, who are consistent and responsive to their needs. It is clear that they love their mum and dad and grandmother, from what I have read in this case.
- 12 I look at their physical, emotional and educational needs. J started Reception in September 2022. His start of school, I think, was a little delayed because his mother had not registered him. She had expressed the desire to Home School him. The guardian, the independent social worker and the local authority were concerned with this idea, thinking that it would not give teachers and professionals an overview of his progress and could be seen as keeping professional involvement in the family’s life at bay.
- 13 J started school and is doing well. I have seen in the statements, particularly the first social work statement, that his speech was not developing maybe as quickly as people might have hoped, and I have seen that there have been improvements in time with his speech. For example, the social worker noted improvement when he stayed with his grandmother, and the independent social worker, Ms McCann, also heard from the nursery that his speech improved when he was living with his mum. However, the important thing is that whoever he lives with, they will need to keep an eye on how his speech progresses and whether he needs any further speech or language assistance. I notice that that is set out expressly in the care plan.

- 14 The mother told Dr Parsons that J might have autism, but I find no evidence for this in the bundle. I have read that J told his grandmother that he was stupid, and I think he needs support to grow in confidence and fulfil his academic potential. He needs consistent school attendance and adults who keep an eye on what he needs educationally.
- 15 I look at the children's emotional needs, and it is clear that they need predictable and responsive care. J's behaviour at contact seems to me to have become more difficult over time when he sees his mother, and he has been distressed at times. Those behaviours are not observed on the evidence before me in school or when he is with his grandmother. He has also been bedwetting. That could be a sign that he is emotionally unsettled. Dr Parsons has looked at the impact of their mother's behaviour on the children emotionally. He says that the mother continues to make choices without considering the implication of those choices upon herself and her children, and her choices are driven entirely from the perspective of meeting her needs at the time she makes the choices. He thinks she has a severely insecure adult attachment style which poses a long-term risk of emotional harm to the children. She is likely to be highly emotionally inconsistent as a parent who might respond to the child in different ways at different times. Emotionally what the children need is consistent responsive care. The evidence before me suggests that the mother struggles to provide this.
- 16 I look at the likely effect on the children of any change of circumstance. They have been in and out of their mother's care and stability is important. They have had social workers involved throughout their lives. If they were to be removed from their grandmother's care, that would be a big change for them. I know that if they stay with their grandmother, she is looking at moving schools for J because it is a long way to travel, and that is another change for him to get used to. They have a new sibling coming too in the near future. That is another big change for them both to get used to.
- 17 So, what these children need, I think, is for the number of changes in their lives to be kept to a minimum. They both need that stability, reliability and consistency of adults meeting their needs in their life.
- 18 When I look at their age, sex and background and any other relevant characteristics, I have already mentioned their older sibling, the new younger sibling on the way. They are and mixed heritage, and because their parents and extended families come from different backgrounds, it is really important that they have a strong relationship with both their mother and their father because this is an important part of them exploring their identity.
- 19 I think it is also important, and maybe this could be added to the care plan, that in due course they are offered life story work – some way of understanding what has brought them to be living with their grandmother so that they understand their story, their history and can work through that in an age-appropriate way.
- 20 When I look at any harm that they have suffered or are at risk of suffering, I have already referred to the very serious matters set out and agreed in the threshold document. It seems to me that the mother's inconsistent parenting style poses the risk of future harm to the children, and Dr Parsons' report captures this. He says:

“It remains my opinion that [the mother] is likely to be a highly emotionally inconsistent parent who will respond to the children's behaviour in different ways on different occasions. This is internally driven due to her own difficulty. But from a child's perspective such inconsistent behaviour will be inexplicable and this itself poses a

significant risk of emotional harm, both in the short, medium and long-term. Her attachment structure also poses a long-term risk of emotional harm to the children.”

- 21 The mother has, if you like, been in the children’s life and then gone overseas for three separate periods. The guardian has thought about the impact of this on the children, and puts it very well. She says:
- “I recently asked his grandmother, ‘What happened with mum? Where’s she gone?’ and when told ‘I don’t know’ he responded. ‘I’ll see her when I see her then.’”
- 22 The guardian thinks that this must be very confusing and unsettling for the children, to go from seeing their mum three times a week to not at all, with no preparation or explanation. She says that the children’s young ages and lack of emotional intelligence makes it difficult for them to articulate and express any negative feelings, and it is likely you will see concerns with their behaviour. They are likely to feel a sense of abandonment and rejection from their mother which will cause emotional harm. So, it is important, she says, that the children have consistent predictable contact with their mother, and that she prioritises meeting their needs when contact is arranged.
- 23 The children have been living with their grandmother since August last year, and I have no evidence before me that suggests that they have come to harm in her care. There is a strong theme in the evidence that she has been meeting their needs.
- 24 The mother points to domestic abuse which she suffered from the father, which is clearly set out as an agreed fact in the threshold document. She says this is a reason to deny his application to grant parental responsibility. Let me make it very clear, that domestic abuse is an incredibly serious thing, both, of course, from the perspective of the mother, but also in law, under the Domestic Abuse Act 2022, it is very clear that children are treated in law as victims of domestic abuse which goes on between the adults in their lives – whether they see it or not. So, in no way do I minimise the gravity of domestic abusive behaviour or the impact on it, both on adults and children. Domestic abuse is accepted, to the father’s credit, in the threshold document, but his witness statement maybe does not show a developed understanding of the impact of his actions on the mother or indeed the children.
- 25 His application for parental responsibility was made late in the day. I do not criticise him for that, but it means that there has not been time to gather any evidence that might be particularly relevant to that application. The mother has expressed concerns that the father might use parental responsibility to exert control over her, but I have not seen within these proceedings a dynamic of control between the parents. The court is very aware that there can be a pattern of control in parties who have been in a relationship, but I have not seen evidence in these proceedings of that becoming manifest.
- 26 The local authority will have parental responsibility for these children, and so of course that minimises any risk that one parent could use their parental responsibility as a weapon or a lever against the other. In my view, the father should be offered and signposted to work or courses that might help him reflect on how he has treated the mother and to ensure that he treats her, future partners, and indeed his own mother with respect, courtesy and consideration. It is important that he models respectful relationships so the children can see that for themselves, because they will begin to learn from their parents’ relationships how you behave towards other people. I would suggest that this might be noted on the face of

the order or in the care plan as something that could helpfully be offered to the father to reflect on.

- 27 It is also important, in my view, that he is offered some parenting work as is clearly recommended in some of the papers and the contact notes to help him be hands-on with the children when he sees them, set clear boundaries and to support his mother's care of them by being consistent in the way that they are disciplined and treated by the adults in their life.
- 28 I look at how capable each parent is of meeting the children's needs. The father does not put himself forward to care for the children. The mother very much wants to care for them in the future, and has made that clear. It is important, therefore, to note that there have been some very positive things that I have read about her in the evidence. Dr Parsons noted an improvement in her ability to mentalise things between when he first saw her in 2018 and in 2022, albeit that was a limited improvement, but it shows some ability to change and grow. She has been very attentive with them. When she sees them in contact, she reads books to them and she has an understanding, says, Ms McCann, of her responsibilities as a parent and she has a better understanding, thought the independent social worker, of how to make safe and appropriate decisions for the children. She has been observed in contact to deal with the children's negative behaviour (acting up) in appropriate ways. She has provided meals and she can meet their basic care needs. She has been seen to have a close relationship with the children, and they seek her out when they are upset. She encourages age appropriate toys and books, and encourages them to sit down and eat at the table in contact.
- 29 It is clear that some periods in their mother's care have led to an improvement for both children's speech. When the children were under an interim supervision order, at one stage the local authority wanted to conclude proceedings and said that the children could stay with their mother under a supervision order. So, there clearly are good things in her parenting. She took the children to nursery three times a week; they were clean and appropriately dressed.
- 30 However, she has a pattern of travelling overseas without the children: May to September 2021, August to October 2022, January 2023 to April 2023. That leads Dr Parsons to conclude that the mother continues to present as narcissistic, ego-centred and ill-considered in her choices, without fully thinking through the implications for herself and her children. This has the potential to cause emotional harm and emotional neglect. She remains, thinks Dr Parsons, an individual who is entirely motivated by a desire to satisfy her own needs, and this will feature in her future decision-making process, and therefore remains a significant and enduring on-going risk of emotional harm and emotional neglect to any child in her care. He has advised repeatedly that she should benefit from CBT work which would need to take place over a period of a year. But he also takes the view that there is a significant risk that such an intervention may fail. It may not work. I would encourage the mother to follow up the referrals she has made through the NHS. It is important, if CBT is to be helpful for her, that she buys into that; she has a sense of ownership of it, but should it not be available on the NHS to her, I would ask the local authority to make an application to the funding panel to see if they may be able to help her with it.
- 31 I look at the parents' ability to meet the children's needs and whether that is impacted by drug or alcohol use. The mother's testing revealed no use of illegal drugs or chronic excessive alcohol from August 2022 until November 2022. The father's hair strand test reported at 15 November 2022 indicated a high use of cannabis use in August to November 2022, a high level of cocaine use during that period and dihydrocodeine, low level, from October to November 2022. There was no evidence of chronic excessive alcohol use during that testing period. It is common sense that when a parent is using drugs, they are less

available to the children in their care, even during periods of contact, and it also means that they have less money to put forward to the children's welfare if they are spending it on other things.

- 32 By way of update, the mother is now 33 weeks' pregnant. She does not have a settled or stable place to live and her tenancy was revoked, she says, when she was overseas.
- 33 When I look at how able she is to meet the children's needs, it is fair to say that the social work records reveal a difficult relationship between her and the social workers. The social work evidence in its final form records that she has been confrontational with professionals at contact at times and that sometimes she does not respond properly to email correspondence; and the social worker does not have a clear understanding of her plans and intentions. The mother's perception is very different and she is clearly of the view that she has not received the support that she feels she needed and wanted.
- 34 Whoever is right, it seems to me that the relationship between the mother and the professionals has been strained and difficult at times which would make it harder for them to work together if the children were to be placed in her care.
- 35 When I look at the grandmother, it is clearly somebody who has been involved in the children's life all the way through, and before the children lived with her they were regularly in her care. She has had day-to-day practical care of the children since August last year, and has supported their needs. She used to work in a nursery. She has had children, of course, of her own and she has been observed in meeting the children's needs. She has supported J's speech development, made sure he got the art therapy at school that he needs, and made sure that the children always attended contact with their parents. She was seen by the Special Guardianship Assessor to be engaging with the children in imaginative play, supporting their learning by practising letters, numbers and reading. She has a box full of games, toys and resources to stimulate them. "It is very clear to me...", the assessor says,
- "... that the grandmother has a very close relationship with both her grandchildren and they are extremely comfortable in her presence, and in the [redacted name] house in general. I have no concerns with her ability to support them and with support of the rest of the household and with the extended family, she will do a good job in caring for K and J on a long-term basis."
- 36 There are a few minor concerns that have been raised during the process. I understand that the house has been decluttered and some carpentry work has been arranged (maybe it has already been done) to try and sort out the bedding situation.
- 37 Mr [redacted] who, of course, is grandmother's partner has not formally engaged by wanting to be assessed himself, but he is there in the background offering support to her.
- 38 There has been a lack of clarity about the extent to which the children have seen their father outside the confines of supervised contact. In the initial assessment the grandmother told the assessor that she was seeing the father with the children at family events. He does pass by to drop off gifts, she says. She told the guardian that he rarely attended the family home and did not attend when the children were there. But in the addendum assessment she told Ms Williams that the contact with the father was sporadic and she did not disclose it because the father and mother and she were all aware it was happening.

- 39 I think that this has now been really clearly addressed in the Working Together agreement which I understand the parties have signed at court. That, of course, will be kept under review but it sets out very clearly the boundaries of how the children see their dad, and sets out the open and transparent way everybody needs to work together to make that happen.
- 40 I note in passing that [redacted] was also assessed in these proceedings, but not positively so – her own son being known to Children’s Services.
- 41 When I look at the range of powers that are open to the court and the range of orders that I could make, the care order is the only realistic option I have been presented with. The grandmother would like the practical and financial support that this offers, but does not rule out asking the local authority to support her in a special guardianship application in the future. Of course, a care order gives the children stability. Anybody coming back to court would need to persuade the court it would be in the children’s best interests to discharge that order. It gives the local authority and M the mother parental responsibility for the children. It means the grandmother will have a supervising social worker. She will have foster care training and a buddy, if she wants one, and a network of foster carer support. The children, of course, would have leave and care entitlement and all the support as looked after children. It will be the local authority’s duty to make sure that they have reasonable contact with their parents.
- 42 Redbridge accept designation as the local authority for this care order. I think that should be clearly recorded on the face of the order, that that is the position they accept or continue until the children are 18, as I have been told, although physically the children live in another borough.
- 43 I note that when the local authority has parental responsibility they are corporate parents involved in the children’s lives, and that has its down sides. It means that social workers are making decisions for these children, but I am very pleased to see the revised care plan delegates those daily decisions about health, education and welfare for the children to the grandmother so that she will be able to, on the ground, make those practical decisions for both her grandchildren.
- 44 I think this care order is the only realistic option, and it is necessary and proportionate to the risks that I have identified to the children’s welfare in this judgment. I remind myself that it is the duty of the local authority, as I have already said, to allow the children reasonable contact with their parents. They propose four-weekly contact with both the children’s mother and father, and a gradual reintroduction of the mother into the children’s lives with the hope that they will have reached face-to-face contact before the baby is born. They also ask for fortnightly remote contact between the children and their mother.
- 45 The father accepts this structure but the mother would like fortnightly contact. She points to the good quality contact that I can clearly read about in the contact notes. For example, she is able to settle and comfort the children and stimulate them. She says she needs more contact. The children live with the paternal family and the maternal family must not be overlooked. She is committed to improving her relationship with the children and rebuilding trust, and thinks that the more frequent the contact, the more helpful it will be. The children’s guardian accepts that the children have seen their mother and had a largely positive time with her, but they have had a gap in not seeing their mother for a significant period of time.
- 46 In my view, the reintroduction of the children to their mother needs to be very carefully managed. There needs to be a period of building up that relationship between the mum and

the children, and communicating (all parties) with the local authority to make sure that contact happens; to monitor the children's emotional response to it, and to make sure it is calibrated around their welfare needs. They will have a new siblings – another period of change – and although they have been at their grandmother's for a while now, we need to build their lives there with the grandmother on a firm foundation. If the children saw their mother more often than four-weekly, it would mean that they would have contact with one parent or another for three out of four weeks each month. I think there is a need for them to know that staying with the grandmother now is permanent; that she is in charge; and that they need four-weekly contact with each parent face-to-face to help them settle, process their time with the grandmother and bond with her and her family as their new settled base.

- 47 I have an application from the father for parental responsibility. It is not clear from the application which statutory framework I was being asked to look at. I have looked at both the Family Law Act, section 55A and section 4 of the Children Act 1989. So, under section 55A of the Family Law Act 1986 I can make a declaration of parentage, and I am satisfied that the father is domiciled in England and Wales, and that he has a sufficient personal interest to make the application. Such an application, if granted, does not automatically confer parental responsibility. The birth may need to be re-registered by notifying the Registrar General of any declaration of parentage order.
- 48 I have also looked at section 4 of the Children Act. That is a different statutory framework under which parental responsibility can be granted to a parent. Under that provision I look at the children's welfare and I have considered already in the welfare checklist relevant factors, but I also ask the following questions: Is the father committed to the children? I can see that he has only missed one contact session due to public transport strikes; that he has engaged with these proceedings since August 2022; that he has agreed with the evidence of the local authority and supports their recommendations, which are in the children's best welfare interests.
- 49 I look at the children's attachment to their father. I have read the contact notes that I have got. J says, when he saw his dad on 21 November 2022, "I miss you, dad." And words such as the father being "comfortable", "relaxed" and "at ease" at used to describe his relationship with the children. On 5 December K seemed clingy and attached to dad, according to my interpretation of that contact note. It is fair to say that there is a theme in the contact notes that the father can be a bit laid back and does not put clear boundaries in place, but I have already suggested that some parenting courses might be recommended to him to deal with that. I can see, therefore, that the children know who their father is and responds to him as their father.
- 50 I look at his motivation for making the application. The mother has already, in submission through Ms Beer, expressed reservations about what is motivating him, but it could also be that he has a sincere desire to be part of his children's lives, and indeed the children will be living with his mother. He is very much part of their wider family and their understanding of who they are.
- 51 It is regrettable that the application was made late in the day without time for evidence to be specifically filed on this point, but I think I need to deal with this now because asking the parties to come back in a few years' time for the father to demonstrate a track record of commitment to the children adds delay to the issue. Here everybody is in court. They are represented by expert family lawyers. They have had legal advice, and if the parties came back another day they may not get legal aid or representation, and my have to represent themselves.

- 52 Looking at all of those factors through the lens of the children's welfare and the welfare checklist, I conclude that it is in the children's best welfare interests for their father to have parental responsibility, and the emphasis in my view is on responsibility; that actually that comes with the expectation of his commitment to them continuing; that he is a key part of their identity and their heritage and the family within which they are going to be cared in the long term. Parental responsibility is not a reward and the withholding of it is not a punishment. I look at what is best for the children. It seems to me that he should exercise parental responsibility – of course, the local authority having that oversight of how that works on the ground.
- 53 I heard that the mother will use her best endeavours to send the local authority the children's red books and passports by 26 April, and I will reflect in the order, when I send it, those parts of my judgment that I think particularly need to be carried forward so we do not lose those things that I have recommended the children or their parents might benefit from.
- 54 I make a care order and I approve the care plan. I want to, in closing the case, thank the local authority for their very careful consideration of what is best for the children, and their willingness to work with both their parents and the grandmother to support them in having a consistent and stable future. I am particularly grateful for them making sure that we have a clear Working Together Agreement and a revised care plan that puts things on a firm foundation and means that the court can leave things for these children, I hope, in the best possible way.
- 55 I want to thank all the representatives for working so hard outside court and the immense assistance they have given me in drafting documents and making submissions. Each of them has spoken very clearly in their client's interests, and made the very best points to help the court understand what is best for these two children. I think it is right to thank the guardian (who is not on the link) but who is actually overseas and has committed to coming to this final hearing. I think that means working through the night where the Guardian is at the moment, and has kept a very close eye on what is best for the children, and really helped me to see through their eyes how things look.
-

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by Opus 2 International Limited
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge.