

This judgment was handed down 10.00am on 22 August 2024 and by circulation to the parties or their representatives by e-mail.

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IN THE FAMILY COURT AT OXFORD AND IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF [JAMIE]

Neutral Citation Number: [2024] EWFC 268 (B)

Date: 22 August 2024

Before: HHJ Vincent

Between:

OXFORDSHIRE COUNTY COUNCIL

Local authority

and

M

Mother

and

F

Father

and

JAMIE

(acting by his children's guardian MARIA KIRNIG)

Child

Kelly Wise instructed by Oxfordshire County Council
Anne Davies of Reeds solicitors for the mother
Elisabeth Hudson instructed by Wilsons Solicitors, for the father
Mary Ann Edwards, of TV Edwards, solicitors, for the guardian

Hearing dates: 19, 20 and 22 August 2024

Approved Judgment

Short judgment

Jamie is a happy, healthy baby, with a big smile. He loves music and having cuddles.

M and F

M and F love Jamie. They would love him to come home to them. They want to look after him.

It was hard for M and F to leave home and go to [residential placement]. They did it for Jamie. They were brave to go there. They wanted to learn how to take good care of Jamie. They listened to the staff. They did their best.

Babies need someone to be checking on them all the time. Babies need to be held gently. A person caring for a baby needs to learn all the different signs the baby makes. Sometimes a baby might cry because they are hungry, or make a different cry and wriggle if they need their nappy changed. A baby might rub their eyes if they are tired. The carer needs to learn the different signs so they can give their baby what they need.

A carer also needs to plan ahead. This means thinking about what their baby needs before the baby has started crying or showing other signs to say what they need. If the carers have planned ahead, they can give their baby what he needs straight away.

F and M tried hard, but they were not able to look after Jamie by themselves. They were not always able to pay him attention when he needed it. They did not find it easy to work out what he needed. Sometimes they did not hold him gently.

This is why the time at [residential placement] came to an end after three weeks.

M and F have showed their love for Jamie by going to all the contact sessions. They have learned a lot about how to take care of him, like how to play with him, how to settle him to sleep, and how to change his nappies.

But M and F still need adults to tell them how to take care of Jamie. They need adults with them to remind them about the things they have learned and to make sure that Jamie is safe. They have not learned how to plan ahead for Jamie. That means thinking about what Jamie might need, even if he doesn't show them a sign. If they could plan ahead they would bring food to contact, or toys for Jamie to play with.

Planning ahead also means thinking about the plan for Jamie. Like if Jamie came home, where would he sleep? Or who would look after Jamie when M and F are at college?

M and F are both doing really well at college. It would be hard to go to college and also have the responsibility of looking after a baby.

These are the reasons that M and F are not able to look after Jamie by themselves.

MGM and PGF

MGM and PGF love M and F. They love Jamie. They want to help F and M. They would like Jamie to come and live with them.

MGM and PGF have F, M, [and their children A, B and C] to look after. PGF has a job with [redacted]. These are the main

reasons that MGM and PGF cannot give M and F the help they need to look after Jamie.

I have decided that Jamie cannot go and live with M and F at MGM and PGF's home.

[Jamie's foster carers]

[Jamie's foster carers] love Jamie. They can keep him safe and look after him. Jamie is happy and settled living with [his foster carers]. They would like him to stay with them and be a part of their family.

It is best for Jamie if he stays with [his foster carers].

Although Jamie will be living with [his foster carers], M and F will always be Jamie's mum and dad. They will love him for his whole life.

[Jamie's foster carers] will arrange Facetime calls every month. F and M will see Jamie five times a year. [Jamie's foster carers] will let them know if something important happens to Jamie. They will send photos of Jamie to M and F.

HHJ Vincent
22 August 2024
Family Court, Oxford

Long judgment

The parties and their positions

1. The local authority has applied to the Court for a care order for Jamie, who is one year and five months old.
2. Jamie's mum is M. M was 19 in February. Jamie's dad is F. He has just turned 17. M has been assessed to be in the extremely low range of cognitive functioning. F also has been assessed to have low cognitive ability. They have both been helped by intermediaries at Court.
3. M and F have been living in the same house since September 2016 because F's dad PGF is in a relationship with M's mum MGM. Another of PGF's sons, [child A], 15, also lives in the household, as do the two children that PGF and MGM have together, [child B] (7), and [child C] (5).
4. F and M were having a relationship in secret for three or four years. The relationship became sexual. This led to M becoming pregnant with Jamie. When Jamie was born, M had turned 18 the previous month. F was still 15.
5. The local authority issued its application on 26 March 2023. M, F and Jamie moved to [residential placement]. They were supposed to stay there for twelve weeks so that they could receive intensive support to learn how to care for Jamie, and at the same time an assessment of their parenting capacity would be carried out.
6. In the event, the placement came to an end after three weeks. This was because the staff at [residential placement] reported that M and F were not able to meet Jamie's basic needs on their own. Both M and F were finding it difficult to be away from home. The staff asked F to leave because sometimes he was getting angry. Even after that short time, it was clear that there was no prospect of the assessment being positive.
7. I was the judge who ordered (on 2 May 2023) that the assessment at [residential placement] should stop. Jamie went to live with his foster carers [names redacted], and M and F returned home.
8. It has taken a further fifteen months for these proceedings to end. There were delays in the assessment of PGF and MGM due to the assessor going on maternity leave and a new social worker being assigned. It was ordered that family members abroad should be assessed as potential carers. The family members who were assessed were F's grandparents who live in [Country B],

and a paternal cousin, [name redacted], who lived in [Country A]. These assessments took a very long time to conclude. In the end, [paternal cousin] withdrew from the process. F's grandparents were negatively assessed, and did not seek to challenge that assessment. Finally, in January, F's mother [name redacted] was assessed, but this also resulted in a negative conclusion. She lives in [Country B]. She has not seen her sons [F] and [child A] since they moved to England with their father in November 2015.

9. The local authority was going to ADM to consider a care plan for adoption. However, in February 2024, having heard this, [Jamie's foster carers] told the local authority that they would like to care for Jamie in the long-term. There was a further delay while the local authority carried out an assessment of them as prospective special guardians for Jamie. That assessment was positive.
10. So it is that the local authority asks the Court to endorse a plan for Jamie to remain in the care of his foster carers, [names redacted], and for them to be appointed to be his special guardians.
11. M and F love Jamie and want him to come home. They say they can look after him, with the support of PGF and MGM. They say they have not been given a fair chance to prove that they could look after Jamie, and that they have grown up and learned a lot over the past year about how to look after him.
12. If Jamie cannot live with them, then M and F would like him to stay with [his foster carers]. They would like to see him as often as they can.
13. Jamie's guardian Maria Kirnig supports the local authority's care plan.

The law

14. I must first consider whether the threshold for making any orders as set out at section 31 of the Children Act 1989 is crossed.
15. In this case the parties have agreed that the section 31 test is met. The agreed threshold document is annexed to the judgment. At the time protective measures were taken, Jamie was at risk of physical and emotional harm as a result of the parenting he would be likely to receive from M and F if no order were made.
16. Having established that threshold is crossed, the Court then goes on to consider what orders should be made, having regard to all the circumstances of the case and with particular reference to the factors set out at section 1(3) of the Children Act 1989.

17. In reaching my decision Jamie's welfare is paramount and his welfare has been at the forefront of my mind throughout this hearing. The court should not make any orders unless it is satisfied that it is both necessary and proportionate to secure Jamie's welfare. I have regard in particular to the case of Re B [2013] UKSC 33, in which Baroness Hale said at paragraph 198 of Re B:

'Intervention in the family must be proportionate, but the aim should be to reunite the family where the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and ending the relationship between the child and their family is only justified by the overriding necessity of the interests of the child.'

Evidence

18. I have read all the documents in the bundle. This includes professional assessments, witness statements, case notes, and contact logs.
19. At the final hearing I heard brief evidence from the social work team manager, from the authors of some of the various initial viability and parenting assessments, then from F, his dad PGF and the guardian. I have read all the documents in the bundle which include statements from all parties, reports and assessments and the contact records.
20. M had filed a witness statement. Following discussion, it was agreed that she would not give oral evidence.
21. The local authority has done all it reasonably could to find a way for Jamie to be raised within his birth family.

M and F

22. It was brave of M and F to go to [residential placement]. They both tried their best to care for Jamie and to follow the advice and guidance of the staff there. It is understandable that M and F felt disappointed that the assessment came to an end after three weeks, when they thought it was going to be for twelve weeks.
23. But it became clear very quickly that it was not safe for them to care for Jamie on their own. They needed someone with them all the time. The report from [residential placement] explains clearly all the reasons that they considered it was not viable for the assessment to continue. The report they prepared is

detailed, gives a thorough report of all the concerns they had, supported by specific examples drawn from their own records.

24. The authors of the report are fair to M and F and identified positives where they saw them. However, the ultimate conclusion was that F and M would not be able to care for Jamie unless they had a very high level of support from staff:

‘What we have evidenced, is that [M] and [F] are able to provide gentle care for Jamie when they are fully focused on his care as a priority, however when they lose focus or become distracted by each other or their own needs, they require staff intervention and guidance to refocus their attention.’

25. The staff were ‘significantly concerned’ that M and F did not know how to handle Jamie safely, and even after they were shown how to do this, they might not remember or be distracted the next time. This meant that it was not safe for them to look after Jamie unless a member of staff was there all the time.

26. The local authority’s PAMS parenting assessment of M and F is a comprehensive and balanced document. The original plan was for it to be a joint report from [KR], the PAMS assessor, and Jamie’s social worker, but in the end the social worker did not contribute to the initial assessment. Nonetheless, [KR’s] report shows sensitivity to M and F’s particular needs, and covers thoroughly, carefully and at their own pace, all relevant matters. In her formulation/analysis section, she identifies some positives, but then sets out a weighty list of concerns and worries, all of which have been clearly evidenced. Her choice of phrasing in the recommendations section which then follows is perhaps unhelpful, because she says:

‘I am unclear if M and F can provide good enough care for Jamie either by themselves or supported by their parents. Whilst all these concerns remain, I am unsure whether any meaningful change could happen in timescales that would be in Jamie’s best interests. This alone may cause stress, worry and potential harm, both physically and emotionally to Jamie whilst their abilities to provide good enough care to him with or without their family’s support is tried and assessed.’

27. Taking the report as a whole, and having heard evidence from [KR], it is clear to me that in saying ‘I am unclear if’, or ‘I am unsure whether’, she was not intending to say that she was as yet undecided, and considered further assessment was needed. Rather, she was conveying that she herself could not conceive of a way that the difficulties could be overcome.

28. [KR] does then set out a long list of interventions that would be required if it was decided that Jamie could return to M and F's care. Looking at the whole of her report, and from the evidence she gave, it is plain that she was not suggesting that Jamie should be returned home in the interim. She does not suggest that any form of further assessment was required before she could reach a conclusion.
29. In any event, there has now been an addendum parenting assessment, which takes into account all the updated evidence, and particularly has regard to the contact records from the time that M and F have spent with Jamie.
30. I have read and considered both M and F's witness statements, and I listened carefully to F's evidence in Court.
31. There is no doubt that M and F love Jamie. They want him to be brought up in their own family. It was not easy for them to go to [residential placement], but they did it for Jamie. They have engaged well with social workers. They have gone to the contact sessions twice a week and they have tried hard to follow the advice and guidance they have been given. There are lots of examples of times when they have shown Jamie love and affection, have sung to him, and played with him. They have learned a lot of skills about how to look after a baby, how to feed him, how to change him, and hold him safely.
32. However, the list of concerns is long. The overwhelming weight of the evidence is that F and M would not be able to look after Jamie on their own. They would need constant supervision. It is not reasonable to expect the local authority to provide the level of support and supervision that would be required. It would be difficult for Jamie to grow up in an environment where he was not able to fully trust his mother and father to keep him safe, and there were constantly other adults present to prompt them, guide them and act to protect Jamie.
33. M and F had local authority involvement in their lives as children and both have experienced periods of self-harming, low mood and difficulty at times to care for themselves. When they are experiencing these difficulties, it is hard for them to focus on Jamie and to put his welfare before their own needs.
34. M and F do not have a good understanding of what Jamie's needs are now as a baby, nor what they would be throughout his childhood. They have got some ideas from the things they have been taught over the last year or so, like how to spot if Jamie might be tired or hungry, or how to play with him, but they are completely dependent on other people to tell them what to do to take care of Jamie. And even then, they are not always able to put it into practice. Although they would be willing to accept support, and have always tried hard

to listen and accept advice, they do not really understand why they need help. M said in her statement that she does not think she needs her time with Jamie to be supervised.

35. M and F are not able to plan ahead for Jamie. The contact logs show that they tend to do things with Jamie that they have done before, like play music or sing to him, or respond in other ways that they have been taught. They have not shown any ability to think in advance about what he might need, or to lead him in any activity. They have not brought food or clothes or birthday presents to contact.
36. Similarly, they do not have any clear plans for what life might be like if Jamie were to return home. M and F are apparently still in a relationship and share a room at their parents' house, they did not seem to have any idea that they might be caring for Jamie together. F started college in September 2023 and is doing really well with a wood-working course. He expects that while he is at college that either M or PGF or MGM would be able to care for Jamie. But M is just finishing her own transition to work course, and plans next year to be in a work placement two or three days a week and college for one day a week. In her witness statement, she said she thought it would be her parents who could look after Jamie if she was not there, not F. She said, *'I don't know what F could do to help. He doesn't talk to me about his plans. I think he will be at college as well.'*
37. When F gave evidence to me, he did not seem to have any idea of how he and M would manage looking after Jamie every day. He thought either M or PGF and MGM would look after Jamie when he was at college.
38. In the home at the moment, F and M share one bedroom, PGF and MGM the second, [child A] is in the third, and [child B and child C] are in the fourth. Jamie could be in a cot in the same room as his parents, but there would come a time when he needed his own space. F and M both rely a lot on their parents for support. M has talked to her social worker about the idea of moving into supported living, but she recognises herself that wouldn't be right for her at the moment.

PGF and MGM

39. The initial viability assessment of PGF and MGM is a lengthy and detailed document. It was a joint document prepared by KM, who works in the local authority's team that assesses kinship carers, and CT, who was Jamie's social worker at the time. The report was prepared after a full review of the local authority's records, and a lengthy discussions with both PGF and MGM. The

outcome of the assessment is negative. The conclusions are well-reasoned and supported by a large body of evidence.

40. For this reason, the local authority did not go on to do a full assessment of PGF and MGM as potential carers for Jamie. However, because the local authority is separately involved with the family as a result of [children A, B and C] being on child in need plans, a full PAMS assessment of PGF and MGM was carried out. That report has been disclosed into these proceedings, and is dated 17 July 2023. There is a long list of concerns, summarised as follows:

- PGF and MGM have a long history of local authority involvement that has resulted in all the children in the household being subject to child protection planning. There have been some improvements, but some fundamental concerns remain;
- It is of concern that MGM and PGF did not know that M and F were having a sexual relationship. PGF and MGM have not shown any insight into the concerns professionals have about how this relationship was allowed to happen, nor into the difficulties that M and F would be certain to experience as parents to Jamie;
- There have been consistent worries about the tidiness and hygiene of the property. The home conditions have repeatedly been described as cluttered and unclean including the presence of cat faeces and urine in the home. There are improvements, but these improvements are not always sustained. There have been concerns about neglect of the children's basic needs;
- In 2012 M reported that her maternal grandfather had sexually abused her. Safety plans were put in place but MGM later allowed M to stay with her grandfather, and even now, he remains someone who visits the house regularly and who she relies upon heavily for support with childcare. MGM was not able to see how M may have been affected by the decisions she made about this;
- Issues over PGF using a belt to chastise F and [child A], and continuing to do so even after having been spoken to about this by social services;
- MGM suffering episodes of poor mental health over the years which have at times led to her being physically or verbally abusive to PGF in the presence of the children. [child A] and F said that on another occasion MGM attacked the boys, and that [child B and child C] were there. MGM denies this happened;

- Failure to identify M's vulnerabilities to exploitation and to take steps to protect her;
 - Failure to protect others from risk of harm from M. There is a report of M holding a knife to [child C's] throat in January 2022. A safety plan for M to be supervised around her younger siblings was proposed but MGM felt judged and said she could not monitor M all day long. On another occasion, M accidentally killed a kitten by squeezing it too hard;
 - Poor supervision of the children. There was an incident in October 2022 when three-year-old [child C] left the house and was found running in a main road having taken sweets from a Tesco. He was returned home by a member of the public. MGM did not notice that he had gone missing.
41. MGM did not file a statement or come to the final hearing. PGF did, and gave oral evidence. He would like Jamie to come home, and he says that he and MGM would support F and M. However, despite his best intentions, it was clear to me that he does not have any real understanding of the very high level of support that F and M would need in order to make sure that Jamie was safe. He was vague about how he and MGM would be able to support F and M, given their other responsibilities, which include the need to take care of their other children, his job, and MGM's own need for support with her mental health.
42. PGF and MGM have been invited to spend time with Jamie in contact every month, but in fact have only gone to two contacts. PGF thought they might have bought Jamie a toy for his birthday, but was unsure what it was. There are no records of PGF or MGM bringing toys. They have not thought to support F or M to bring anything with them to contact, such as clothes, food, or activities to do with him. Neither M, F or the PGF and MGM have given cards or presents to Jamie for his first birthday.
43. Even M recognises that if Jamie was at home with her, it might be difficult to manage with her little brother. She says that she does worry that it might be difficult to keep Jamie safe from [child C] whose behaviour is difficult to manage. She says, *'it is a lot for mum and dad to deal with and I want what is best for Jamie.'*

[Jamie's foster carers]

44. The assessment of [Jamie's foster carers] as potential special guardians was carried out by MT and JW. Jamie is thriving in their care. He is a happy, healthy, relaxed baby who has formed a close relationship to [his foster carers] and their other children. They have a busy household. They have three

children under ten together. [Female foster carer] is mother to three adult children still living at home, and two more adult children living independently. [Her] first husband, and the father of all five adult children, died in 2009.

45. [Jamie's foster carers] have a loving, close and mutually supportive relationship. They are working well in partnership to provide for and support all the children in their care, while at the same time holding down paid jobs, and living a full and active life. Everyone in the house loves Jamie. There is always someone there to give him cuddles and play with him. [Jamie's foster carers] have had other foster children before Jamie. [Female foster carer] has a lifetime's experience of being a foster carer. Her own mother was a foster carer, and she herself has been a foster carer throughout her adult life. While Jamie has been in their care, [she] has made sure to get to know M and F, to chat to them at contact, give them updates about Jamie. She has given them presents for them to give Jamie and has given mother's day and father's day cards to M and F from Jamie.
46. [Jamie's foster carers] are well able to meet all Jamie's needs throughout his childhood, and are fully committed to him.

Conclusions

47. I have had regard to all the evidence I have heard and read.
48. Ms P has been the social work team manager throughout proceedings and it was she who prepared the final statement and gave evidence in Court. The local authority has exhaustively explored all options for Jamie and carried out full and thorough assessments.
49. Maria Kirnig has been Jamie's guardian throughout the proceedings. She has reviewed all the evidence carefully. Ms Kirnig was in Court throughout the final hearing and listened attentively to the evidence of all the witnesses, following which she gave evidence herself. Her analysis is thorough, well-balanced and fair and she explained clearly why she supports the local authority's care plan.
50. I have had regard to each of the factors on the welfare checklist.
51. The overwhelming weight of the evidence shows that, sadly, M and F would not be able to keep Jamie safe and meet his daily needs, either now or throughout his childhood. MGM and PGF are not in a position to provide the support that M and F would need.
52. There are no other family members who can care for Jamie.

53. While they would love to care for Jamie themselves, both M and F have recognised that [Jamie's foster carers] love Jamie and will be able to take care of him.
54. Ultimately, placement with [Jamie's foster carers] does represent the only realistic option for Jamie. He has lived with them since he was only a few weeks old, and formed strong bonds to them and their other children. They will be able to promote his relationships with his birth family through contact and regular updates.
55. I am satisfied that Jamie's welfare needs throughout his childhood will best be met by the making of special guardianship orders to [his foster carers]. This order will provide Jamie with security and stability and ensure that he continues to thrive in their care.
56. There is no formal application for a contact order before the Court. On behalf of F, Ms Hudson invited the court to make a contact order to ensure a minimum of monthly contact. I do not consider it appropriate to make such an order where (i) there is clear evidence that [Jamie's foster carers] are committed to and are well able to promote contact regularly, flexibly and in accordance with Jamie's best interests; and (ii) they have not had the opportunity to take advice or make representations to the Court about the need or otherwise of a contact order. There have however been useful discussions between [Jamie's foster carers] and the parties about contact. The local authority's proposal is that F and M see Jamie five times a year. On top of that [Jamie's foster carers] have agreed to arrange for Facetime contact once a month, and to send updates to M and F regularly, for example if Jamie meets a particular milestone or there is a celebration.

**Her Honour Judge Joanna Vincent
Family Court at Oxford**

22 August 2024

Annex 1: agreed threshold document

IN THE FAMILY COURT SITTING AT OXFORD

CASE NUMBER: OX23C50019

IN THE MATTER OF S.31 OF THE CHILDREN ACT 1989

AND

IN THE MATTER OF JAMIE

BETWEEN:

OXFORDSHIRE COUNTY COUNCIL

Applicant

-and-

M

1st Respondent

-and-

F

2nd Respondent

-and-

JAMIE

(through his Child's Guardian)

3rd Respondent

AGREED FINAL THRESHOLD DOCUMENT

The Local Authority contends that as at the relevant date, namely 24th March 2023, the child, Jamie, was suffering or was likely to suffer significant harm; and that the harm, or the likelihood of harm, was attributable to the care given to him, or likely to be given to him if the Order were not made, not being what it would be reasonable to expect a parent to give to him.

The Local Authority asserts that the harm suffered, or likely to be suffered, by the child is in the categories of physical harm, emotional harm and neglect. In satisfaction of the threshold test the Local Authority rely on the following evidence to establish its case:

1. M has ASD and ADHD and needs help to understand things. She cannot always remember what she has been told, for example when she was told by the Family Nurse not to let a baby sleep with her because it was dangerous (C6). Although M cannot help not being able to understand or being able to follow advice, it is likely that M will find it difficult to remember how to do things for Jamie (A39; C266).
2. M and F are young and need a lot of support to care for Jamie. At the relevant date, M and on occasions, F were not able to stay focused on a task and got

distracted from Jamie's needs (C79; C168; C218; C256; C391; F180).

3. When M and on occasions, F became sad or upset, they were not able to deal with these feelings well and on those occasions, this impacted on their care of Jamie (C78-79).
4. M and F live at home with their parents. The home has at times been messy and unclean (C29; C79).
5. In February 2022 M put a knife to her then 4 year old sibling's throat. If something like this happened when Jamie was present, it would be dangerous for him and he could get hurt (C3).

Oxfordshire County Council

Dated: 20 August 2024