Case No: LS23C50858
Neutral Citation Number: [2024] EWFC 345 (B)

IN THE LEEDS FAMILY COURT

1 Westgate, Leeds

Date: 29/10/2024

Before :

HER HONOUR JUDGE TROTTER-JACKSON

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Between :

Wakefield Metropolitan District Council	**Applicant**
- and –	
(1) A **(2) B** **X, Y, Z (through their Guardian)**	**Respondents**

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Ms Reed of counsel, for the Applicant
Mr Saunders, of counsel, for the First Respondent
Ms Noblet, of counsel, for the Second Respondent
Ms Phillips of counsel, for the Third - Fifth Respondent

Hearing dates: 23 – 25 September 2024, and 8 October 2024

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Approved Judgment

This judgment was handed down remotely at 14.30am on 25 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HER HONOUR JUDGE TROTTER-JACKSON

HER HONOUR JUDGE TROTTER-JACKSON:

1. In these proceedings, I am concerned with the remaining three children from a sibling group of six, namely X, aged 8 years old, Y, aged 4 years old, and Z, aged 2 years old. They are the children of the first and second Respondents, Ms A and Mr B. Y and Z have been in foster care with Mr and Mrs H since March 2024. The local authority are represented by Ms Reed of counsel, the mother (A) by Mr Saunders of counsel, the father (B) by Ms Noblet of counsel, and the children, through their guardian, by Ms Phillips of counsel.

Background:

2. This matter was listed for a final hearing, on 23 – 25 September 2024. There had been an issues resolution hearing on 29 August 2024 at which the possibility of Y and Z's foster carers stepping up as special guardians had been discussed. The parents indicated that, if that was a proposition supported by the local authority, they would not challenge final special guardianship orders. Accordingly, the timetable was extended and the matter listed for a final hearing, in order to allow a) expedited assessment of Mr and Mrs H as special guardians b) an application from them should the assessment be positive c) a contest should it not be, dealing with arrangements for all three subject children including proposed contact.

3. The expedited assessment took place and was overwhelmingly positive. However, the local authority would not agree appropriate financial support for the special guardians, initially contending their allowance should be a third of what they received as foster carers, and so no application for special guardianship orders was made. The local authority then contended that public law orders should be made in respect of Y and Z, with final care and placement orders sought.

4. Matters then moved on during day one of the final hearing. The local authority conceded that the adoption of the younger siblings was not in their best interests and so instead contended that long-term foster care, in the care of Mr and Mrs H was the appropriate way forward. The other parties disagreed, saying that public law orders were not necessary and that the local authority needed to reach agreement on the finances, in order to allow the special guardians to make their application.

5. The crux of that dispute was a financial one and one would be forgiven for finding the local authority stance difficult to understand. As independent foster carers, Mr and Mrs H have been paid £- a week to foster Y and Z. They accept that that will have to reduce and have indicated that they would accept a reduction to £- a week. This, they say, is to allow Mrs H to remain as a stay at home parent at least until Z goes to school in 2027.

6. The local authority refused to pay this; initially they offered Mr and Mrs H £- a week and then settled at a fee of £- a week. They were steadfast in their refusal to alter that position. Accordingly, Mr and Mrs H had not made an application for special guardianship orders, due to the financial impasse and their contention that they cannot be financially penalised for stepping up as special guardians.

7. Where matters became inexplicable was when the costs of each position were worked through. The local authority position cost over £657,000 MORE over the course of the children's minority, than the putative special guardians' proposal and required public law orders to imposed on the children, with all of the statutory responsibilities that that entailed. This was confirmed in a written statement by Ms Beresford and oral evidence from Ms Whitehouse.

8. On the third day of the final hearing, the Court asked counsel for the local authority to confirm their instructions because of concessions made by Ms Whitehouse in her evidence. Those concessions included the fact that public law orders were not necessary in respect of Y and Z, that Mr and Mrs H were the only feasible carers for the children due to the attachments formed, and that local authority finances were the only reason for the public law orders being sought, rather than the children's welfare. Counsel for the guardian had noted that this appeared to found a cast-iron case for judicial review against the local authority, on the basis of apparent Wednesbury unreasonableness, a concept which Ms Whitehouse appeared to be entirely unaware of.

9. Having taken instructions, counsel for the local authority indicated that agreed to fund the special guardians at the level that they had suggested until 2027, at which point Z will be in full-time education and matters will be reviewed and agreed on going forward. The local authority sought a week's grace to allow agreement to be reached with the putative special guardians, and an application to be made. The proceedings then came back before the Court on 8 October 2024, in order to be finalised in light of the many changes in the local authority's position.

10. It seemed to the Court that there was a real public interest point in the stance taken, for weeks, by the local authority, and by the approach of Ms Beresford and Ms Whitehouse in Court. This is a local authority who has exceeded their budget and yet tried, repeatedly, to force the Court to impose public law orders which were not required and pay almost three quarters of a million pounds more over the minority of these children than is required for their care. Accordingly, the parties' views as to a published judgment were canvassed. The local authority resisted the same, on the basis that they did not want a financial precedent set. The other parties either supported the publication of a judgment, or were neutral as to the same. The Court took the view that the judgment should be published but that the weekly figures involved should be redacted, with only the headline figures included.

The stance of the local authority:

11. In August, as outlined above, Y and Z's foster carers indicated that they wished to be considered as special guardians for the children. At this point, they had had full time care of the children for some five months, with all reports as to the care given being entirely positive. The local authority expedited that assessment, filing their special guardianship report on or around 16 September 2024. That assessment was overwhelmingly positive and I note that, when carrying out the balance planning and considering the need for care orders in respect of Y and Z, commented *"It is felt that this level of intervention is not required, and is intrusive into the rights of the children*

and the family". In its conclusion, the assessment concludes that Mr and Mrs H were *"very dedicated"* to the children, having a *"close and special relationship"* with them, resulting in a *"close bond"* which is evident to visiting professionals, with the children responding positively to the boundaries and care put in place by Mr and Mrs H.

12. Yet despite their own report accepting that care orders were not justified in respect of Y and Z, the local authority's position at the outset of the hearing was to seek final care and placement orders in respect of both children. Having then changed position and accepted that Mr and Mrs H were the appropriate carers for the younger children, the local authority contended that this care should be given under public law orders. However, this could not be confirmed as permanent until at least March 2025 because of the local authority's own internal policies and so the children would be denied permanence for another 6 months. When this was explored with the local authority, it became apparent that their sole justification for this stance was financial, because they felt that the special guardianship rates contended for by the carers were too high.

13. Matters were discussed directly with Ms Beresford in Court, albeit not on oath. She said that the local authority did not want to set a precedent for special guardianship rates. It was explained to her (repeatedly) that the family court was not a court of precedent and so no such precedent would be set or implied and that the Court was happy to make that explicit in a preamble to any order drawn. The local authority's own policy was brought to Ms Beresford's attention, which makes it clear that each case will be assessed on its own facts: section 14 of paragraph 2. Ms Beresford attempted to say that she was bound by the panel indication as to appropriate rates, until the local authority's own policy was again highlighted, which makes it clear that the "designated manager" (which is Ms Beresford) can approve finances without the assessment of a panel. Still, Ms Beresford refused to waiver, mulishly insisting that there was nothing further the local authority could do in terms of reaching agreement with the putative special guardians.

14. Ms Beresford proved quite unable to speak to the effect of the figures which each party was contending for. In those circumstances, the Court sought a sworn witness statement from Ms Beresford, overnight, as the head of service who had "signed off" the local authority's stance, setting out the financial implications of a) continued foster care with Mr and Mrs H and b) special guardianship with Mr and Mrs H.

15. The contents of that statement were, frankly, staggering. Ms Beresford confirmed that the local authority plan of long term fostering by Mr and Mrs H for Y and Z would cost them £1,322,880 over the children's minority. The option of special guardianship orders would cost them £665,600 over the children's minority. Despite the fact that the local authority conceded that public law orders were not required for these children (as per their special guardianship report), they were asking the Court to impose the same and to compel them to pay an **additional** £657,280 over the children's minority, that they did not need to pay were they to accept the H's special guardianship finances offer. Further, the statutory responsibilities associated with public law orders would require 44 working hours per annum - equivalent to over a working week spent on the children, from local authority social workers and staff members.

16. The Court, at this stage, became increasingly concerned by the stance that the local authority was taking. It appeared to be a stance based on a mentality akin to "computer says no". It did not appear to be a stance steered, in part or at all, by these children's

welfare. It did not appear to be a stance driven by common sense or by attempting to save money, as opposed to expend it. It did not appear to be stance informed by any analysis of the Children Act 1989.

17. Accordingly, the Court indicated that they wished to hear from the service director, who sat above Ms Beresford in the local authority hierarchy, Cheryl Whitehouse. She attended Court on day three of the final hearing and gave oral evidence.

18. However staggering Ms Beresford's witness statement figures had been, they paled into insignificance beside Ms Whitehouse's oral evidence. She insisted that she had a *"moral and legal responsibility"* to safeguard the local authority's budget but was quite incapable of explaining why imposing unnecessary public law orders and spending an additional £657,000 was the morally responsible thing to do. She contended that a previous panel had decided that the funding request of Mr and Mrs H was *"not reasonable"* yet was not aware of when that panel had taken place, who had been involved, what they had decided and the basis of that decision.

19. Ms Whitehouse then attempted to suggest that Mrs H's pregnancy, of which the local authority were aware during their special guardianship assessment, was the reason for seeking long-term foster care for Y and Z, and that the pregnancy would require further assessment. This had never been said by any of the social workers involved in the case, nor by the social worker who completed the special guardianship assessment, nor had it ever been raised by the local authority's counsel.

20. She accepted that public law orders were not required in respect of Y and Z's care. She accepted that the local authority in attempting to insist on the same were not putting the children's best interests, or their welfare, first. Despite that she said that she thought the local authority were being *"very reasonable"* in the finance offer they had made. Ms Whitehouse then said that she wanted to continue to attempt to reach agreement with Mr and Mrs H as to the finance package. However, she was clear that the local authority would not move from the figure offered and agreed that her definition of agreement in this case was Mr and Mrs H *"caving in"* to the local authority position. Clearly, no negotiation of substance or value was planned by Ms Whitehouse.

21. Ms Whitehouse accepted that the only impediment to special guardianship orders was the local authority's refusal to agree a financial package. She accepted that it would be difficult to place these children with better carers than Mr and Mrs H. She accepted that both she, and Ms Beresford, had the discretion to authorise payment of what Mr and Mrs H were asking for but that both would rather pay an additional and unnecessary £675,000 from the public purse than agree the putative special guardians' request. Ms Whitehouse accepted that this could be perceived as a *"completely incoherent approach to public finances"*.

22. Ms Whitehouse then attempted to suggest that if she agreed the request made by the putative special guardians she would be *"circumventing procedure and policy"* – but the local authority's own policy, making it clear that every case had to be dealt with on its own merits, was put to her and she was forced to agree that the exercise of her discretion would not be a circumventing of policy. She accepted that, contrary to earlier evidence about a panel being required to increase finance packages, Ms Beresford had increased the offer on day two of the hearing without a panel and it was within her gift

to agree to the putative special guardians' request. Ms Whitehouse steadfastly refused so to do. Ms Whitehouse accepted that, were her stance to come to the public's attention, it *"wouldn't look good"*. She accepted that the children's needs were not being met by her stance.

23. It is always a great pity when the majority of hard-working, child-centred local authority staff are tarred by the actions of a minority. All of the social workers on the ground in this case had worked hard for the subject children and had entirely prioritised those children's best interests and welfare.

24. Yet Ms Beresford and Ms Whitehouse displayed a total inability to do that. Their incoherence and recalcitrance in their written and oral evidence was astonishing to witness. The guardian described the position taken by the local authority as *"unsavoury, unsatisfactory and unfathomable"* and that is difficult to argue with. Ms Beresford and Ms Whitehouse wasted Court time and resources in their blinkered and obstinate pursuit of a stance which could never be justified when the children's welfare was considered or the merest modicum of common sense applied. It beggars belief that the local authority, who are over budget (perhaps unsurprisingly, in light of the attitudes displayed in this case) tried to railroad the Court and the parties into the imposition of unnecessary public law orders and spending £675,000 of public money, unnecessarily. Ms Beresford and Ms Whitehouse should spend some time reflecting on their lack of analysis and pragmatism and, perhaps most importantly, their wholesale failure to put the welfare of these children first.

25. At the conclusion of Ms Whitehouse's evidence, counsel for the guardian made it clear that she took the view Ms Whitehouse had displayed an intractability which amounted to Wednesbury unreasonableness. It is fair to say that this Court, although they would not have been seized of any application for judicial review, had a deal of sympathy with that position, as, it is suspected, would anyone who listened to Ms Whitehouse's evidence. Accordingly, the Court suggested that counsel for the local authority may wish to confirm their instructions with someone senior to Ms Whitehouse, in light of the potential consequences which were pending for the local authority. Having done that, the local authority changed their position once again, and now agreed to fund the special guardians at the level that they had suggested until 2027, at which point Z will be in full-time education and matters will be reviewed and agreed on going forward.

26. Accordingly, the matter was returned back to Court, for a fourth day of final hearing (all of which, lest one forgets, is funded by the public purse) for endorsement of the position now agreed between the parties and with Mr and Mrs H.

27. It has never been in doubt, in these proceedings, that Mr and Mrs H were the right carers for these children, in circumstances where their own parents were unable to care for them. They have displayed a commitment and an expertise in their care which is above and beyond that seen as a matter of course. They have developed an exceptional bond with these children and are committed to caring for them going forward.

28. The most cursory analysis of the welfare checklist supports the making of special guardianship orders. It is accepted that Y and Z cannot return to their parents' care and in those circumstances, were they mature enough to express their views, they would want the attuned, exceptional care that Mr and Mrs H have provided to them. Their

parents support this placement. It enables Y and Z to maintain contact with their siblings. It gives them permanence for the rest of their minority. The Court has no hesitation in endorsing placement with Mr and Mrs H, under special guardianship orders.

29. There was one further matter outstanding, and that is in respect of X's placement and her contact with her father. It is agreed among all of the parties that X should remain in long-term foster care. Again, her parents are not in a position to care for her and they accept that. There are no familial placements which are suitable. X is relatively settled in her placement, but has struggled in recent months with the fact that she is the only subject child in a sole placement; Y and Z have been placed together and three additional subject children, whose placement was ratified at an earlier hearing, have returned to a family placement. She is lonely and can present as dysregulated.

30. The local authority accept that the appropriate level of contact between X and her mother is fortnightly, in an attempt to help her settle into her longer term placement. The father asks for the same, but the local authority contend that the appropriate frequency of contact is monthly. The Court is asked to determine the same.

31. The local authority accept that X is struggling to settle and that one to one parental contact is helpful in attempting to ameliorate that. They are not able to point to any additional disruption or upset evidenced after father's contact with her. They accept that she feels isolated from her siblings and from family generally. I am told that, at times, X has sought more frequent contact with her father although she did not demur when told of the plan for monthly contact, as proposed by her care plan.

32. It seems to me, considering the welfare checklist, that X does not have a settled view on frequency of contact but does need regular parental contact to maintain her familial bonds. She is lonely and dysregulated, and the local authority have accepted that contact with her mother may assist with that. Her contact with her father has been consistent and of a good quality throughout these proceedings.

33. Accordingly, bearing in mind that X's welfare is my paramount consideration, I take the view that the appropriate starting point for family time between X and her father is fortnightly with the proviso that this will be kept under review. If it appears to get too much for her, or proves disruptive as opposed to settling, the local authority will look again at this arrangement and the father accepts that will be the case.