

IN THE FAMILY COURT SITTING AT LIVERPOOL

Neutral citation: [2024] EWFC 43 (B)

Case number: LV22C50510

IN THE MATTER OF THE CHILDREN ACT 1989

BEFORE HIS HONOUR JUDGE GREENSMITH

12 to 16 and 22 February 2024

BETWEEN

THE LOCAL AUTHORITY

-and-

B & ANOR

MR SZCZESNIAK appeared on behalf of the Applicant
MS MILES appeared on behalf of the First Respondent
MS COX appeared on behalf of the Second Respondent
MS HUGHES appeared on behalf of the Guardian

JUDGMENT

1. The court is concerned with the welfare of A, born [redacted]. The date of this hearing A is three years and three months old.
2. The Applicant is [local authority]. The child's mother is B and his father is C.
3. The application was made by the local authority on 11 August 2022 and comes to court for final hearing. The local authority seeks a care order for A. The care plan of the local authority is that he should remain living with his paternal grandparents on the basis that they are approved as foster carers. The local authority has provided the court with a detailed care plan the essential elements of which are:
 - a. *Ultimately the local authority would consider the option of rehabilitation to the mother's care subject to her:*

- b. *completing successfully the recommending therapy by D for a period of 12 to 24 months;*
 - c. *maintaining abstinence from cannabis;*
 - d. *and it being in A's overall welfare interests at that time.*
 - i. *Mother's contact to take place weekly, supervised in the community*
 - ii. *Father's contact to be subject to a risk assessment*
 - iii. *Statutory visits every 6 weeks*
4. It is the mother's case that A should be returned to her care. The mother says that she would abide by any court order which the court deems to serve A's best interests.
5. A's father is currently in prison and acknowledges that he is unable to offer to care for A. The relationship between the parents broke down at the end of 2022 and the court is satisfied that there is no longer an ongoing relationship between them.
6. In order for the court to be satisfied that the care order can be made the court must be satisfied that that the child concerned is suffering, or is likely to suffer, significant harm; and that the harm, or likelihood of harm, is attributable to the care given to the child, 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 [CA 1989 s31]
7. The threshold for making an order is agreed by the parties save for the father. The mother has given clear evidence in support of her allegations against the father that comprise the threshold. The father has chosen not to be present at the final hearing. I accept the mother's evidence and find the threshold proved as drafted. The threshold for making a care order is therefore established. A copy of the threshold will be annexed to this judgment.
8. In considering whether it serves the child's welfare, this being the court's paramount consideration, to make an order the court must have regard to the checklist set out on s1(3) of the 1989 Act.
9. Whilst the local authority is not seeking a care order to be made with a care plan that A lives at home with his mother, I note the mother would accept this. For the sake of

completeness, I refer to current guidance of the Public Law Working Group endorsed in the judgment of The President in Re JW [2023] EWCA Civ 944 confirming that care orders at home cannot be made save in most exceptional circumstances.

10. The local authority does not support the making of a Supervision Order to enable A to return home and no-one has suggested it might. To enable the court to consider a supervision order a support plan would be required; one has not been provided. This is not a criticism as I cannot image how a plan might be drafted that would provide the level of care and protection for A, as will be seen from my analysis of risk set out below.

The Mother

11. Shortly after the commencement of proceedings the mother was the subject of a psychological cognitive assessment carried out by E, dated 5 September 2022. E confirmed that the mother despite having a full-scale IQ of between 68 and 77, has sufficient capacity to conduct the proceedings.
12. Within the report E highlights that the mother has had involvement from mental health services from around the age of 14 which he says included periods of inpatient stay due to difficulties with her mood and risk-taking behaviours such as self-harm. The mother's mental health difficulties go back further in that she was prescribed melatonin from the age of 12 together with antidepressants.
13. The mother self-reports that she started to use cannabis at the age of 14 and continued to do so until October 2023, which was during the course of these proceedings.
14. During the proceedings the mother has been the subject of a full psychological assessment carried out by D. D filed an initial report dated 25 April 2023 and answers to questions on 12 June 2023. F's evidence has not been challenged by any of the parties; she has not attended court to give oral evidence. D summarises her conclusions by saying that the mother described to her the history of adverse and traumatic childhood experiences which she says are likely to be predisposed to

psychological and interpersonal difficulties. It is reported that the mother has described development within a frightening and unpredictable environment due to high expressed parental emotion, exposure to domestic violence and sexual abuse, characteristics of insecure attachment with her mother, low self-worth associated with her physical health condition and internalising blame and responsibility for abusive parental interactions. In D's opinion the mother's pattern of difficulties and symptoms are consistent with complex post-traumatic stress disorder which is developed due to cumulative traumatic experiences occurring within relationships during childhood. The mother's medical records indicate that her difficulties have historically been understood within the context of an emotionally unstable personality disorder. D is of the opinion that the mother is susceptible to forming future unhealthy relationship patterns and re-engaging in previous relationships.

15. On the question of parenting ability D says that the mother's instability in mood, trauma related thoughts, depressed mood and alterations in arousal and reactivity will have a significant impact upon her capacity to be consistently emotionally responsive and attuned to the needs of her child; as such his experience of being parented will be variable and unpredictable.
16. On a positive note, D is satisfied that the mother is motivated to address her problems. However, the nature of her difficulties is complex and enduring. This is indicated by the fact that despite multiple therapeutic and medical interventions the mother continues to experience significant difficulties in emotional regulation, trauma symptoms and her relationship with food. D says that whilst the mother may be motivated to change, emotional stresses and triggers are likely to continue to impact upon her level of emotional stability.
17. During the course of the final hearing the mother has stated that she has accessed therapeutic support and has been engaged in cognitive behaviour therapy and talking therapy. I am entirely satisfied that the mother is committed to her own self-improvement and has done everything she can to secure the therapy, she has been able to access, to improve her ability to parent.

18. Regarding the mother's therapeutic support to date D says that the therapeutic interventions which are being focused on the symptoms of emotional dysregulation, improving distress tolerance and interpersonal functioning appear to have understandably had limited effect. It is D's view that processing of multiple traumatic experiences underlying the mother's psychological difficulties may provide an alternative therapeutic approach. D goes on to recommend that the mother is referred to step four mental health services who she says are able to work with individuals with complex psychological and mental health needs and to offer trauma focused intervention such as eye movement desensitisation and reprocessing therapy (EMDR) as well as a psychiatric medication review.

19. Crucially within the report of D she says the following:

EMDR is a trauma focused intervention and as such it can in the first instance increase levels of emotional instability prior to improvements. As such I would recommend that this work is completed prior to A being returned to his mother's care as it may result in his experience of greater instability and inconsistency due to B's need to rely on others to care for him whilst she is experiencing emotional instability.

20. It is a tenet of the local authority's case, which is fully endorsed by the Guardian, that it is this advice of D that necessarily precludes the return of A to her care until the mother has engaged in and benefited from this further therapy.

21. Following the initial report of D, she was asked to provide further details of appropriate therapy. D confirms that the type of therapy needed by the mother is likely to be accessible via NHS secondary care or step four level services via a GP referral. Whilst the therapy is available to be funded privately, D says that it is preferable for the mother to access therapy within the NHS as this will provide her with a multidisciplinary team who can also consider her medication needs.

22. The mother has confirmed that she wishes very much to engage in further therapy and an NHS referral has been secured to take place in March of this year. It is hoped that the referral will result in speedy implementation of therapy via the NHS. In the event that there is any undue delay in the therapy being provided through the NHS services

the local authority has confirmed that it will refer the mother's case internally to be resourced on a private basis.

23. During the hearing there was consideration as to whether the local authority has delayed unnecessarily the mother receiving the therapy she needs. Having considered this carefully, in my judgment the local authority should not be criticised in the overall manner of its approach. I acknowledge that the procedure by the local authority to obtain funding was not followed through, as it might have been, even if the request for authority had been diligently made it is by no means certain that it would have been appropriate for the therapy to have started any sooner than is now possible.
24. It is a key element of this case that the mother has had a high dependency on cannabis for a very long time and has only very recently managed to stop using. The mother stopped using cannabis in October 2023 and we are, therefore, still in a delicate stage where a return to using is very possible. This is particularly so because of the mother's currently highly stressful situation and the use of cannabis to relieve stress in the past.
25. When asked whether the mother needed to be abstinent from all drugs prior to engaging in EMDR D says that it would be important the mother is not under the influence of illicit substances during therapy sessions and that the mother would require drug and alcohol service support in place if she were to engage in therapy whilst not fully abstinent. It is not suggested that the mother needs to be fully abstinent before commencing the therapy, however on the evidence available regarding drug use, and looking at all the surrounding factors of this case it is the court's position that decisions taken by the local authority were open to the local authority to make.
26. The mother's parenting was originally assessed by F, an independent social worker. In addition to the original report of F, dated 19 December 2022, the court also has an addendum to the report dated 10 May 2023. F also attended court to give evidence and to be cross examined. It is fair and indeed essential to record that neither the local

authority nor the independent social worker has expressed any concern for the mother's ability to provide for A's basic care needs. In the words of F:

B demonstrated in this assessment and in supervised contact sessions which the lead social worker H has shared with me, that B can meet A's basic needs. It is the contribution of other aspects of her life that appear to compromise her ability to consistently implement what she knows into her care of A consistently without significant levels of professional support and intervention.

27. Any reading of the social worker's evidence results in a conclusion that the social worker had grave concerns regarding the mother's mental and emotional difficulties and has focused her conclusions on these rather than the mother's basic parenting abilities. The independent social worker has been criticised within the final hearing for not spending sufficient time with the mother to assess her properly and for not visiting the mother when she carried out her addendum assessment. The court does not agree with these criticisms. It is the court's view that F to her credit, focused very quickly on the key issues of this case and highlighted the need to address these before the mother's parenting ability could properly be assessed. In paragraph 17 of F's report she says:

Due to the complexity of B's mental and emotional difficulties, a full psychological assessment of B would be extremely beneficial to inform the court regarding B psychological functioning and the impact of the same upon her parenting capacity.

28. Following receipt of the report an application was made for the psychological assessment which, of course, was agreed to by the court at the time and upon receipt of the report F was instructed to revisit her conclusions with the benefit of D's report. There is further criticism made by the mother that F filed her addendum without further visiting the mother. In evidence F says that she was instructed to consider the matter as a paper exercise and was informed that attending the mother was not important, she says that had she not been instructed to carry out a paper review she would have gone and seen her.

29. In my judgment, having regard to F's initial concerns which were fully endorsed by the report of D it was entirely reasonable for F to be instructed to carry out a report on paper and also entirely reasonable for F not to question those instructions and to provide the addendum report as she did. I found both the original report and the addendum to be extremely helpful. F's oral evidence was straightforward and professional and the court is grateful to F for her insightfulness in recognising the key issue of this case and the inevitable effect this will have on the ability to return A to his mother's care.
30. A copy of this judgment should be provided to F.
31. I note the mother's position that she has not been fully assessed as a carer for A and/or she has been assessed the assessments are out of date and incomplete. The evidence of D that it will be unsafe to return A to the mother's care unless the mother has received the therapy that she needs, has benefited from it and then been assessed further, is accepted by the court.
32. The court does have sympathy with the mother's position stated clearly by Miss Miles that the mother is entitled to feel that essential elements are lacking in the assessment of her parenting. The reports upon which the local authority relies are out of date: they inaccurately present the true position regarding the mother's housing and her prospects for being rehoused in suitable accommodation in the event that the mother were to resume care of A; they predate the mother's abstinence from cannabis; they fail properly or at all to take into account the mother's self-arranged therapy; they fail to have proper regard to the mother's and the father's relationship terminating. I am sure that these deficiencies will have caused a vulnerable mother to lack faith in the process. I can assure the mother that none of the factors I just mentioned override the opinion of D.
33. Without needing to go into great detail it is true to say that the relationship between the mother and the grandparents has been extremely difficult. Unusually, in a case of this type, it has been the mother's position up until recently that if the court was of the view that A could not return to her care, she would rather A be placed in foster care with strangers. Such are the difficulties between the mother and the grandparents that

the grandparents have stated quite clearly that in their view a care order is necessary to secure the placement of A with them as they require the ongoing and proactive involvement of the local authority. The mother finds it very difficult to communicate with the grandparents. Contact is supervised by the local authority and it is anticipated it will be for the foreseeable future.

34. There are green shoots in that the mother has indicated a willingness to engage in mediation, if possible, but there are no guarantees that such a process will alleviate the situation. The grandparents have had no direct involvement in these proceedings and the court is entirely reliant upon the local authority and the Guardian for its information regarding the grandparents' position. At the close of evidence but before submissions the court raised a concern regarding the grandparents possible future intentions. This concern is set in the context that up until the issue of proceedings A had frequently been staying with his grandparents as the mother was effectively using their care as a form of respite provision. Indeed, in her statement dated 5 September 2022 the mother said:

“In the first instance I would like A to return home to me. In the event that he cannot return home to me, I would like him to remain in the care of his paternal grandparents.”

35. On 18 July 2023 the local authority filed a statement in which it was confirmed that by that stage the local authority's plan for A was stated as placement with a view of supporting the grandparents, *“To apply for a special guardianship order within 12 months.”*

36. Putting the court's concern as succinctly as possible it was that the grandparents, who have expressed no desire to apply for special guardianship order may be advised or persuaded by the local authority to do so. Whilst at any time in the future it *may* serve A's welfare to be subject of an SGO the thought of the grandparents making an application timed to be within the first few months of the mother's focused therapy was of some real concern. I expressed my concern to counsel and asked them to make representations as to whether the court should further consider the possibility of making an order under section 91(14) and s91A. I was persuaded not to pursue this possibility further following the local authority re wording it's care plan (as set out

above) and the mother informing the court that she did not wish for the grandparents to become formally involved in these proceedings as their doing so would probably have a detrimental effect on her mental health.

Analysis

37. The options available for A are quite limited. If the court were to make no order at all it would leave A in a highly vulnerable position of being in the care of his grandparents who would hold no parental responsibility for him. It would mean, however, that the mother will be able to force the grandparents to relinquish care of A and to attempt to care for him herself.

38. Any order which resulted in A being returned to his mother's care at the present time would in my judgement subject A to an untenable level of risk. The dilemma for the mother is that if she does not receive the therapy that she so clearly needs her ability to care for A will be significantly compromised. If the mother does receive the therapy, her abilities to care will similarly be compromised because she will be undergoing a major piece of work designed to help people relive the trauma and reprocess its effect on them to enable them to overcome the symptoms of PTSD. The advantage of course would be that A would be able to be brought up for some time at least by his mother with all the benefits that brings. This is not a small advantage in this case because not only does the mother have all the basic skills to care for A she is completely devoted to him and has demonstrated to anybody who has witnessed her care the highest level of understanding and empathy.

39. Allowing A to remain in the care of his grandparents will mean that A will continue to receive loving and stable care. A will continue to have regular contact with his mother. A will not have the constant and daily support of his mother's care and love, but he will have regular contact with her. Continuity and stability for a child is essential for their welfare. The grandparents would be caring for A under a care order which would mean that they themselves will not have parental responsibility however they will have the legal obligations to care for a child living with them. A will be constantly the subject of local authority involvement which means he will have more

restrictions placed on him than a child who is not in care and he will notice this more as he gets older.

40. Being subject to a care order A would have the support of the local authority to maintain his mother's involvement. The local authority would be under a statutory duty to promote contact. There is an assurance from the local authority that they will keep contact constantly under review and the court accepts the local authority's integrity in this respect.
41. The current arrangements continuing will mean that the mother is able to undergo the level of psychotherapy that is needed and there is every reason to believe that this will take place. The success of the therapy is not, of course, guaranteed. It must be noted that the mother has made enormous strides towards improving her position. Not only has the mother self referred to early stages therapy she is to be highly commended for stopping using cannabis. There is a real optimism that provided the mother engages in such therapy as is required and continues to refrain from using cannabis there is a real possibility that A could return to her care in the not-too-distant future.

The welfare checklist

42. A is 3 years old. He is too young to express his wishes and feelings. He has a close bond with his mother. He will ask his grandfather to contact his mother for him when he wants to tell her something or show her something. It is reasonable to assume that if he were to express his wishes he would like to be brought up by his mother if that was possible. When impossible he would want to be kept safe.
43. A has the same emotional and educational needs as any other healthy 3-year-old. He has been living with his grandparents since 11 August 2022. Prior to that, he was frequently left with them by his mother to care for him at times she experienced difficulty doing so. He is very settled with his grandparents. A change in his care arrangement would have a significant effect upon him and could only be countenanced if it was clear that it would serve his welfare needs.

44. A has been exposed to inappropriate parenting in the care of his parents and latterly by his mother. This will have had an emotional detrimental effect upon him, and he must be protected from this in the future.
45. Neither parent has the ability to provide safe live-with care for A at this time. The father is incarcerated. The mother needs to undergo therapy which will render her likely to be highly vulnerable to emotional instability; this will compromise her ability to care fully for A on her own. It will in all probability set the mother up to fail. The mother's current accommodation is unsuitable to care for A as it is too small and is shared with her friend who has her own mental health challenges. I am satisfied that if the court were to place A in the care of the mother, she would very quickly secure suitable accommodation. In the meantime, the court would urge the mother to take up the offer of single accommodation so she can demonstrate her ability to care for her own needs without the support of her friend.
46. I have considered all the options available to the court and explained my analysis above. For the foreseeable future I am satisfied that it serves the welfare of A for a care order to be made.

Contact

47. Since A was placed with his grandparents, he has had contact with his mother three times every week. All the evidence shows that this contact has been an excellent standard and that A has continued to enjoy the contact very much. The local authority's position is that contact should be reduced to once a week. I endorse Miss Miles submission that the case of the local authority lacks analysis. The Guardian supports the local authority on the basis that the current level of contact will probably lead to instability in the placement. The Guardian emphasises the difficult relationship between the mother and the grandparents and the fact that as A grows older there will be more calls on his time. Further the Guardian's concern that once the mother starts therapy the quality of contact may suffer for the reasons set out above supporting her lack of endorsement for return of A to the mother's care.

48. Having considered further the report of D I note that whilst she highlights the prejudicial effect the therapy is likely to have on the mother's ability to care for A she does not give any opinion on contact.
49. I have particular regard to the care plan of the local authority. This is not a case where a child needs to be weaned from his mother's influence moving forward without his mother's involvement at all or very little involvement will be less painful. This is a case where the local authority is adopting a plan which incorporates within it an intention to work towards rehabilitation.
50. I further note that the current regime of contact has worked successfully and for the entire period that A has been in his grandparents' care. I will of course be making a care order which will require the local authority to maintain its efforts to ensure contact continues successfully.
51. I can see no reason to change the current arrangements of contact. The mother's precise requirements for therapy have not been finally determined and its provision is uncertain. In the event that the local authority seeks to reduce contact during therapy I would expect it to firstly obtain a formal opinion from either D or the therapy provider as to the efficacy of contact continuing at the current rate and as part of the opinion to ask how the local authority might increase its level of support to ensure the contact is safe for A. In my original draft (as circulated to counsel), I indicated that the final order would incorporate a provision for contact taking place three times each week.
52. Before formally handing this judgment down, I circulated a draft copy to all counsel. My draft suggested that the level of contact may be incorporated into the final order. I invited counsel to point out to me any "*glaring errors/omissions*". The advocates met in advance of the handing down; I am pleased to note the meeting was highly productive. I am extremely grateful to counsel for following the guidance of Baker LJ in *Re YM (Care Proceedings) (Clarification of reasons) (2024) EWCA Civ 71.*

“Requests for clarification should not be sent in separately by the parties but rather in a single document compiled by one of the advocates. If necessary,

there should be an advocates meeting to compile the document. Save in exceptional circumstances, there should never be repeated requests for clarification.” (para 90]

53. Following the guidance counsel sent me a Joint Request for Clarification in which the following points were respectfully and helpfully made:

“All advocates have discussed the matter and consider it necessary to invite the Court to provide clarification in relation to the issue of contact. The Court accepted the integrity of the local authority in regard to keeping contact under review, see paragraph 40. At paragraph 51 the Court stated the current level of contact of three times per week would be “ incorporated into my order“. In closing submissions and because the making of a care order was being considered the Court was invited to consider the contact arrangements in accordance with s.34(11) Children Act 1989. No party made submissions upon nor invited, the Court to make a contact order in accordance with s.34(5) Children Act 1989.

All advocates are in agreement and invite the court to consider the following steps as appropriate in order to deal with the issue of contact in this matter (see Re T-S Children [2019] EWCA Civ 742)):

- (a) In the event the Court does not approve the contact plan as set out by the Local Authority the appropriate and proper approach is to invite the Local Authority to reconsider the care plan and consider amending it in line with the observations of the Court*
- (b) If the LA amend the contact plan and all parties are in agreement the Court then considers the amended care plan*
- (c) If the LA do not amend the contact plan and there is no agreement the Court then considers whether an order is necessary*
- (d) In the event the Court considers the possibility of making an order where there has been no application by any party (as in this case), each party should be invited to make representations before the Court finally determines whether an order should be made*

(e) If an order is to be made the Court should provide reasons.

- 1. The conclusion of the Court is clear that contact should remain at three times per week and that the Court therefore does not approve the care plan of the LA to reduce contact to once a week.*
- 2. Counsel for the LA has taken instructions and confirmed that the LA will amend their care plan for contact to take place three times a week.*
- 3. The Court is therefore invited to consider whether that amended care plan is approved. The Guardian is in agreement with the amended care plan. The amended care plan is in accordance with what the Mother invited the Court to do.*
- 4. If the Court is not satisfied with the amended care plan and is considering making an order pursuant to s.34(5) Children Act 1989 which provides for an order to be made without any application then the Court is invited to list the matter to hear submissions from all the parties with regard to the making of an order prior to doing so.”*

54. In court, and before finalising my judgment, I was able to confirm that I entirely agreed with counsel’s approach regarding inviting the local authority to amend its care plan. I repeat my gratitude to counsel for what I considered to be an exemplary implementation of the guidance in Re YM.