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Case No: CF23C50250

Cardiff Civil and Family Justice Centre

2 Park Street, Cardiff, CF10 1ET

Date: 29 February 2024

**IN THE FAMILY COURT SITTING AT CARDIFF**

**Before :**

**HIS HONOUR JUDGE MUZAFFER**

**Between :**

**VALE OF GLAMORGAN COUNCIL**

**Applicant**

**-and-**

**M**

**First Respondent**

**-and-**

**D**

**(A Child by her Children's Guardian)**

**Second Respondent**

**Miss Emma Knight for the Applicant**

**Mr. Eifion Wyn Williams for the First Respondent**

**Miss Tracey Rawlings for the Second Respondent**

**Judgment following hearing 29 February 2024**

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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.

## **His Honour Judge Muzaffer:**

### Introduction

1. I am concerned with D, a little girl now aged 8 months old. D is the much loved daughter of M. This short judgment comes at the end of care proceedings which for a time proceeded within the pilot of the Cardiff and Vale Family Drug and Alcohol Court (“FDAC”). I am going to refer to M by her first name in this judgment, as I did through each of the six non-lawyer reviews that I conducted during these proceedings.
2. The outcome, sadly, is that M cannot care for D, and she will be the subject of care and placement orders. I know this will devastate M, even if I am confident that, with a clean sober mind, she would understand. I have no doubt that M has always wanted what is best for D. I hope, in time, if she reads this, D will trust me in that. It is not a throw away comment intended to soften the blow; it is a statement of fact.

### Background

3. M is just 27 years old, but her life to date has been hard. She came to the attention of the LA when just 16 as her father had returned home drunk and assaulted her. It was around this time that M also became involved in an abusive relationship, and was introduced to alcohol, drugs, and criminality. Substance misuse then remained the constant in M’s life as it descended into chaos. Between 2010 and 2023, she received 25 convictions for 50 offences, and in 2021 she received a 12 month custodial sentence for assault.
4. At the time that M became pregnant, she was involved in two separate relationships, and it was initially not clear who D’s father was. I shall return to this in a moment, but for now I record that she experienced domestic violence at the hands of both men. Both were also known for their general criminality and substance abuse issues.
5. With that context in mind, it is easy to understand why M initially failed to respond to her pregnancy. She continued to drink and use drugs, including benzodiazepines, cannabis, cocaine, methadone, and methamphetamine. She failed to engage with safeguarding professionals, and missed antenatal appointments and scans. D was born 16 days prematurely, experienced significant symptoms of withdrawal, and required a course of morphine treatment given the extent of her discomfort. M was drunk whilst giving birth, and returned to her drinking the next day.
6. M agreed that D should be placed in foster care once ready for discharge from hospital, providing her consent pursuant to s.76 Social Service and Well-being (Wales) Act 2014. The Local Authority then issued its application for a care order on 19<sup>th</sup> June 2023, with an interim care order being made by consent at case management hearing on 27<sup>th</sup> June 2023.

7. By this point, the Local Authority had already highlighted M as being potentially suitable for FDAC, and she received a positive screening report that did not identify any clear or obvious reasons why it would not be possible to proceed to an initial assessment. The initial assessment was directed at the CMH, and is dated 19<sup>th</sup> July 2023. This recommended that M sign up to the Trial for Change, noting that she had found some stability since D's birth in a refuge, although also recording that M found it difficult to trust others, and that it would likely be a challenge for her to develop an open and trusting relationship with her keyworker.
8. The FDAC sign up took place at the FCMH on 21<sup>st</sup> July 2023, with fortnightly non-lawyer reviews ("NLRs") timetabled from 4<sup>th</sup> August. M's approach, supported by the FDAC team and other professionals, was self-imposed abstinence. It is impossible to underestimate the extent of this challenge given her longstanding dependency, but M attacked it with consistent determination notwithstanding her obvious vulnerabilities. She returned negative drug and alcohol tests, and engaged well with all professionals and the range of support on offer. She always attended contact, and took great delight in showing me photos of her caring for D. M also took an active role in D's medical treatment, which escalated in complexity further to D's diagnosis of craniosynostosis in October.
9. M visibly thrived in her work with the FDAC team. Her physical and emotional recovery from years of abuse was slow but evident fortnight to fortnight. Issues such as her time keeping and perhaps an over dependency on support workers were worked upon and improved, but it was her apparent willingness to start trusting professionals that felt like it could be a pivotal change. Sober, M appeared to have a new lease of life. She engaged in exercise, and I remember vividly the pride in her face when showing me a photograph of herself at the top of Pen y Fan at a NLR on 14<sup>th</sup> September 2023. Having the inclination to take herself climbing would have been unthinkable just months earlier, let alone also having the focus and ability to see it through. M saw this as the platform for a new start, and spoke enthusiastically about her plans to join her local gym and start learning karate.
10. After three months of abstinence, M smoked crack cocaine over the weekends of both 7<sup>th</sup> and 14<sup>th</sup> October. This was confirmed via testing before being volunteered by M, and M was initially evasive when the test results were put to her. That said, there was no rush to judgment at the next NLR on 20<sup>th</sup> October. All understood that this was part of the condition, with the attention on what had triggered her use on these occasions. The shame and disappointment felt by M was palpable, but she appeared motivated to ensure that these lapses would not define her within the process.
11. The FDAC team's parenting assessment dated 31<sup>st</sup> October 2023 recorded that M had made significant progress in starting to overcome the problems identified at the outset of the proceedings, but noted the recent lapses and M's initial reluctance to be open about her use prior to test results being received. The FDAC team concluded that further work and assessment was required before a final recommendation could be made, and endorsed an extension to the proceedings to allow this to happen.
12. Unfortunately, due to the Cardiff and Vale FDAC Pilot concluding on 30<sup>th</sup> November 2023, it was not possible for any further assessment to take place within the Trial for Change. Given the close working relationship that M had established with the FDAC

team, this was clearly regrettable to all. The Local Authority issued a C2 application for the court to consider an extension to the proceedings and to approve an addendum parenting assessment.

13. At the hearing of this application on 20<sup>th</sup> November 2023, M accepted that she had lapsed again by smoking crack cocaine over the weekends of 4<sup>th</sup> and 11<sup>th</sup> November. M had not been honest about this when spoken to by D's social worker in advance of the hearing. In the short time that they had left, the FDAC team were asked to complete an addendum report to address M's recent lapse and deterioration in engagement with professionals.
14. This report, dated 27<sup>th</sup> November, considered that there was now a considerable risk of M further lapsing, and evidence that M had regressed from the action to the preparation stage of the cycle of change. It identified that M had exhibited a pattern of avoidant behaviours, which was a significant barrier to her accessing help and support when needed. It concluded that the original recommendation required revision, with it being the FDAC team's view that M would not be able to effectively complete the work necessary to meet her own needs and D's needs even within an extended timetable to the proceedings.
15. The Local Authority subsequently took D's case to a legal gateway meeting on 28<sup>th</sup> November, which resulted in a change in the care plan to one of adoption. Unfortunately, it was not possible for this to be ratified by an Agency Decision Maker until a panel on 9<sup>th</sup> January, taking the matter beyond the 26 weeks. Given the change in circumstances necessitated a late change in plan, I was satisfied that this was unavoidable.
16. The timetable for final evidence was set and an IRH listed for 16<sup>th</sup> February 2024. I note with immense sadness that M's life has once again spiralled into devastating chaos in the intervening period. On the occasions that she has contacted the social worker, she has accepted continued use of crack cocaine, cannabis, and alcohol. She has refused to provide her current contact details, ceased engagement with drug support services, and has missed important appointments for her Buvidal injections. Her mental health has deteriorated significantly. The Local Authority has received PPNs suggesting that she has been the victim of domestic abuse, but also that she has stabbed a former partner on two separate occasions (no charges have been pressed). She has also been reported missing for periods of time.
17. In the circumstances, it is perhaps unsurprising, although no less tragic, that M has disengaged from D in recent months. She has failed to attend contact with this now being suspended, and sought no active engagement with the planned operation that D had in respect of the craniosynostosis on 29<sup>th</sup> January. I find it almost impossible to reconcile this behaviour with the M that I sat with during the NLRs. She doted on her daughter, and wanted to be at the centre of everything that happened to her.
18. M attended the IRH seemingly intoxicated. She confirmed that she wished to contest the Local Authority's applications, and sought an extension of time to file a witness statement. On the basis that I did not have the time to hear argument and deliver a judgment, the matter was listed for a short final hearing today.

19. M did not attend an appointment arranged to prepare her witness statement last week, and failed to return her solicitor's calls for an update. I still held out hope that M would attend this hearing to hear what I had to say, but she failed to do so.

#### Paternity

20. D's father is FC. Paternity was confirmed further to testing during the proceedings. He is one of the two men M was involved with prior to the birth of D. FC made an application for parental responsibility and was joined as a party to the proceedings by an order dated 11<sup>th</sup> October 2023. However, he then decided that he was not able to care for D himself, and sought to be discharged as a party by a C2 application dated 14<sup>th</sup> December. In this, he complained that the prospect of D being adopted was causing him emotional distress. Once it was confirmed that he had no alternative carers to put forward, I allowed the application. FC was not the subject of any assessment within the proceedings, and never met D. He is currently incarcerated with no confirmed release date. I note that he too has a significant history of criminality, domestic abuse, difficulties with his mental health, and substance dependency.

#### Positions and issues at the final hearing

21. The Local Authority seek a care and placement order on the basis of its final care plan dated 19<sup>th</sup> January 2024. This is supported by D's Children's Guardian.
22. Although she has not filed final evidence, it is known that the applications are opposed by M on the basis that D can be rehabilitated to her care, or alternatively that she should be allowed additional time to address her difficulties.
23. In terms of threshold, the Local Authority's final document effectively reflects the concessions made by M in her response to threshold dated 10<sup>th</sup> July 2023, in which the principle of threshold being met was not disputed. In the absence of clear instructions, Mr. Williams is unable to formally agree the final document on her behalf, but does not take any particular issue with the approach taken by the Local Authority.
24. It follows that the question for me to determine is the order that is in the D's best interests, and whether that order is necessary and proportionate to the problem.
25. No party sought to call oral evidence at the hearing and the matter was determined on brief submissions only.

#### Legal Framework - Welfare

26. If satisfied that the threshold conditions pursuant to s.31(2) Children Act 1989 are met, it is for me to assess the options and orders available for D's future care. In determining that issue, D's welfare is the court's paramount consideration pursuant to section 1(1) of the Children Act 1989. I also have regard to the provisions of the welfare checklist and the general principle that any delay in determining the question is likely to prejudice D's welfare.

27. In considering the Local Authority's care plan and its application for a placement order, the paramount consideration of the court must be D's welfare throughout her life, pursuant to section 1(2) of the Adoption and Children Act 2002. I also have regard to the further welfare checklist at section 1(4) of that Act.
28. M, FC and D's ECHR Article 8 rights to respect for family life are engaged in this matter. An order freeing D to be placed for adoption is clearly a gross interference with this right, and the court is only permitted to sanction such interference if it is necessary and proportionate in response to D's circumstances.
29. I have had regard to a number of decisions address the question of necessity and proportionality, including the matter of *Re B (Care Proceedings: Appeal)* [2013] UKSC 13 [2013] 2 FLR 1075 and *Re B-S (Children) (Adoption Order: Leave to Oppose)* [2013] EWCA Civ 1146, and *Re G (A Child) (Care Proceedings: Welfare Evaluation)* [2013] EWCA Civ 965, from which the following propositions can be derived:
- a. Adoption of a child against their parents' wishes should only be contemplated as a very extreme thing, a last resort – when all else fails.
  - b. The test for severing the relationship between parent and children is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short where nothing else will do.
  - c. The judicial exercise should not be a linear process whereby each option, other than the most draconian, is looked at in isolation and then rejected because of internal deficits that may be identified, with the result that, at the end of the line, the only option left standing is the most draconian and that is therefore chosen without any particular consideration of whether there are internal deficits within that option.
  - d. The judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare.
  - e. A balancing exercise is required in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options.
30. In the event that the court concludes that the placement order should be made, I then have to consider whether or not D's welfare requires the court to dispense with the consent of her mother to such an order, pursuant to section 52 of the Adoption and Children Act 2002. Again, I have regard section 1 of the Adoption and Children Act 2002 when determining the consent issue.

31. Section 32 of the Children Act 1989 is mandatory in requiring the Court to draw up a timetable with a view to disposing of the application without delay and in any event, within 26 weeks beginning on the day on which the application was issued. There is provision for a Court to extend the period “but only... if the Court considers that the extension is necessary to enable the Court to resolve the proceedings justly”.
32. By virtue of Section 32(7) when deciding whether to grant an extension it is to be noted that “extensions are not to be granted routinely and are to be seen as requiring specific justification”.
33. Per *Re S (Parenting Assessment)* (2014) 2 FLR 575, a court considering an extension at a final hearing in order to allow further time to evidence change will require some solid, evidenced based reason to believe that a parent is committed to:
  - a. making the necessary changes;
  - b. maintaining that commitment; and
  - c. making the necessary changes within the child’s timescale.

#### Evidence

34. I have considered the trial bundle including the exceptionally thorough final evidence of the social worker, and the equally detailed final analysis of the Children’s Guardian. I have also considered the various reports and assessments prepared by the FDAC team, including the minutes of each of the six NLRs. Whilst I take into account everything that I have read and heard, I shall only refer to that which is necessary to explain my decision.

#### Analysis - Threshold

35. I find that threshold is met in accordance with the Local Authority’s final document. The findings that I make include:
  - a. M and FC’ relationship was characterised by significant domestic abuse. M has also been engaged in several other abusive relationships.
  - b. M has a significant history of substance and alcohol misuse.
  - c. M has a history of failing to engage with professionals looking to support her.
  - d. D suffered physical harm in the period following her birth on account of her withdrawing from substances consumed by the mother during her pregnancy.
  - e. M and FC have an extensive history of criminality.

#### Analysis – Welfare

*D’s needs:*

36. D is a young baby who is progressing well in the care of her foster carers. She is reliant on safe adults to meet her basic needs, which include consistent, loving and attuned care and to be kept safe from harm as she grows up.
37. Having been placed in foster care for the first eight months of her life, what D now needs is permanence, stability, and security.
38. D received a diagnosis of Sagittal Craniosynostosis in October and required surgical intervention. This took place successfully on 25<sup>th</sup> January and D has recovered well. Her treating clinician does not consider that there will be any further consequences or restrictions on D as she grows, although she will be monitored with follow ups until she is aged 10.
39. D also has a diagnosis of a horizontal nystagmus, which is to be the subject of further ophthalmic investigation. It is anticipated that her eyesight will likely improve as she continues to develop.
40. Notwithstanding the harm caused to D by her mother's abuse of substances during pregnancy, D's health visitor is satisfied that she is making steady progress, albeit with slight delay.
41. D has enjoyed the time that she has spent with her mother in contact. It can be assumed that if she were able to express her own views, she would wish to grow up continuing to be a member of her birth family and maintaining a connection to her parents if it were safe for her to do so and if her parents were meeting her basic needs.
42. D may have additional needs in later life as a result of her being removed from her mother and placed in foster care. She may need some support to understand the reasons for this.

*Harm and Capacity to Parent:*

43. The harm that D is at risk of suffering is identified within the Local Authority's threshold document and the assessments of the social worker and Children's Guardian. The risk is multifaceted, including risk from domestic abuse, risk from substance misuse, and risk from a failure to engage openly and honestly with professionals.
44. The risk posed by any of these issues in isolation has the potential to be significant in terms of the harm that D might be exposed to, however, the combination of them together is overwhelming. D would be at significant risk of harm if returned to her mother, and it is difficult to see how that risk might be capable of management. Even if a safety plan was capable of being established, it would be wholly reliant on honesty to succeed, and there is evidence to show that M has found this a difficulty notwithstanding the intensively supportive environment of the FDAC process.



45. It may well be that the risk is capable of being reduced if M were to re-engage with support services such as Community Addictions Unit or the Vale Domestic Abuse Service. However, the evidence is that any meaningful risk reduction will not now take place within D's timescales. The trauma that explains much of M's difficulties is plainly deep seated and ingrained over many years. Her relapse since November shows that she is likely facing a long journey of establishing and maintaining change.
46. I note the evidence that M has been able to meet D's needs within contact. However, the fact that she can be loving and gentle within a contact setting does not lessen the risk to D. M's capacity to parent D is fatally compromised by the priority that she places on maintaining highly flawed relationships and her longstanding history of addiction. Whether she intends it or not, M coping strategies result in her putting her own needs above the needs of others, and this would include D.
47. I accept the evidence of the Local Authority, the FDAC team, and the Children's Guardian that the risks far outweigh any identified strengths in the potential for M to care for D.

*Likely effect on the child (throughout her life) of having ceased to be a member of the original family and to become an adopted person:*

48. Even if placed in a loving and stable placement, the making of a care order with a plan for adoption is likely to have a profound effect on D throughout her childhood and adulthood. She may experience emotional distress and a sense of abandonment in learning about her history and why she could not remain in her mother's care when she wished to care for her. Hopefully this would be mitigated with effective life story work, during which D would learn of her mother's love for her, and how she cared for her when she had the opportunity to do so.

*Range of Powers Available to the Court:*

49. My job is to consider and assess all the realistic options for D's future care.
50. Starting with M, D could be placed in her care under no order, or conceivably a care order. If D were to live with her mother, she would have the opportunity to grow up and live within her birth family and be cared for by a parent who I know loves her dearly. Her identity would be supported within her home environment, and she would have the opportunity to develop relationships with other family members, including her paternal half-siblings. D would have the sense of normality that comes with a child living with her birth parents.
51. However, plainly the success of this would depend on M's ability to offer D safe, consistent care, and to also work with the Local Authority and other professionals who might look to support that care. Sadly, the evidence shows that she would not currently be able to do this with any consistency or reliability. It is not clear how the identified risks could be managed, and there is no evidence that these might be capable of reduction in the immediate future.

52. In the absence of any alternative placements or carers, the other realistic option for D is that of a care and placement order on a plan of adoption. I say that, because it is not suggested by any party that it would be realistic for D to remain in long-term foster care in the event that the court concludes that she cannot be placed with her mother. Given her age, the well-known demerits of long-term foster care would be with D for a very long time. Those include keeping D the subject of Local Authority intervention until she is 18 and the potential changes in placement given the unstable nature of long term foster accommodation and the general lack of permanency.
53. Given her age, the only serious alternative option is adoption. All being well in an adoptive placement, D would be afforded stability and consistency of care and the opportunity to fulfil her potential within a secure environment. It would give her permanence and a nurturing family experience where her needs are met, and where she is protected from the types of risk posted by M and FC.
54. However, I do caution that. Plainly, I am aware that adoption is no panacea. Adoptions do break down with disastrous consequences, and there is obviously a finality to an adoptive placement, including the severing of relationships between the child and the birth family, which will inevitably carry with it a sense of loss in later life once the child learns more about its life story.
55. Finally, it would plainly be within my powers to adjourn matters and extend the proceedings pursuant to s.32. CA 1989. This is what M has previously suggested that she would like to happen if I do not consider that D can be placed in her care now.
56. For the reasons I have already set out, I do not consider that there is an evidential basis on which to conclude that M is currently actively making changes or is likely to make the necessary changes within the timescales in which D requires a decision to be made about her future. Further delay to these already extended proceedings would be contrary to D's welfare interests.

### Conclusions

57. Both the social worker and the Children's Guardian agree in their analysis of M and the needs of D. Both have formed their own independent view, with reference to a wealth of other material. I agree with their assessments. D would be placed at risk of significant harm if placed in the care of her mother, and there is no meaningful way to reduce that risk in the foreseeable future.
58. I thank M for committing to the FDAC process in the way that she did, with both dedication and dignity, but the reality is that her period of stability and abstinence was short lived. M continues to feel unsafe in relationships with professionals, and this manifests itself in avoidant behaviour. I hope that she will one day be able to reflect on the progress that she made when she started to allow herself to trust those wanting to work with her. Community support remains available, and her time sober gave clear insight into the type of person she has the potential to be.

59. D now needs a secure, stable, and permanent placement that will give her lifelong attachments and reliable relationships. I have assessed the positives and negatives of all the realistic options for D, and am satisfied in all the circumstances that her welfare requires the protection of a care order, and that she be placed for adoption. This is the course most likely to promote D's welfare throughout her life. I am satisfied that nothing short of adoption will do to meet her welfare needs, and that care and placement orders are a necessary and proportionate interference with the parents and D's Article 8 rights given the risks posed and her need for a permanent placement to be secured without further delay.
60. I adopt the same analysis when it comes to the question of whether D's welfare requires the court to dispense with the consent of her parents to the making of a placement order. It plainly does.
61. I have considered the proposals for contact in the Local Authority's final care plan both in the run up to any placement and post-adoption, and I approve the same.
62. I therefore making the following orders:
- a. A care order on the basis of the final care plan before the court.
  - b. An order dispensing with the consent of the parents to a placement order.
  - c. A placement order.

#### FDAC

63. The Cardiff and Vale FDAC Pilot, the only FDAC court to have ever operated in Wales, concluded as scheduled in November. It is a matter of obvious regret that funding could not be secured for the Pilot to be extended, as this had clear implications for families and professionals involved in cases still before the court. The reality is that a talented, committed team have now been disbanded, and it will be a question of starting from scratch should the go-ahead ever be given.
64. The Pilot has been the subject of a thorough and detailed evaluation report. Once finalised and published, I hope it is given the attention and scrutiny that it deserves by both those holding the purse strings and the wider public. There is now a wealth of positive evidence supporting the use of FDAC as an alternative form of care proceedings in the Family Court. Of course, there will still be cases in which reunification is not achieved, but this is just one of the outcomes that FDAC is able to work towards whilst remaining within the timescales for the child, and ought not to be regarded as the mark of success or failure.
65. Cases such as this demonstrate just how hard it is for parents to escape entrenched harmful patterns of behaviour. Although M was tasked with the considerable challenge of breaking a cycle that had started in her early teens, she was always treated as an individual and given a real chance to engage with targeted treatment and support. Had this been of benefit to M, it would have been of benefit to D. That must surely be the more humane and constructive way to conduct care proceedings of this type, even if the outcome here was not the one hoped for.

66. Finally, I wish to record my thanks to all the professionals who have assisted the court in this matter. All embraced the FDAC ethos and worked collaboratively throughout. In particular, M's FDAC key worker and D's social worker went above and beyond to try and provide a platform for M to care for D in the long term. I know that they share in the disappointment that it was not to be.

HHJ Adem Muzaffer  
29<sup>th</sup> February 2024