



**Neutral Citation Number: [2019] EWHC 1807 (Fam)**

**Case No: NN17C00244**

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

**Tuesday, 16<sup>th</sup> April 2019**

**Before :**

**MR JUSTICE KEEHAN**

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**Between :**

**NORTHAMPTONSHIRE COUNTY COUNCIL**

**Applicant**

**- and -**

**AB**

**1<sup>st</sup> Respondent**

**-and-**

**CD**

**(a Child through his Children's Guardian)**

**2<sup>nd</sup> Respondent**

**MS BAZLEY QC and MS KRISH appeared for the Applicant**

**MS BRANNIGAN QC and MS METTAM appeared for the 1<sup>st</sup> Respondent**

**MR YEUNG appeared for the 2<sup>nd</sup> Respondent**

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**MR JUSTICE KEEHAN**

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.

**MR JUSTICE KEEHAN:**

Introduction

1. On 15<sup>th</sup> December 2017, a 2-year-old child, EF, was murdered by his father, Raphael Kennedy. On 30<sup>th</sup> October 2018, having been convicted of murder, Carr J sentenced him to life imprisonment with a minimum term of 24 years.
2. EF's mother is AB, she is 20 years old. She has two surviving children, CD, with whom I am concerned, who is 4 years of age, and GH, who is 3 months old. The fathers of CD and GH are unknown.
3. The local authority, Northamptonshire County Council, issued care proceedings in respect of CD on 18<sup>th</sup> December 2017 and in respect of GH in January 2019. This final welfare hearing in respect of CD is listed to determine whether I should make him the subject of a care order and a placement order, as sought by the local authority and supported by the Children's Guardian, or whether I should approve a care plan for CD to be placed in long-term foster care pending a possible future return to the care of his mother, as sought by the mother.
4. The mother was undergoing a parenting assessment with GH in a mother and baby foster placement. That placement came to an end in circumstances which I shall set out later in this judgment.

The Law

5. In respect of the application for a care order, my paramount consideration is the welfare best interests of CD under s1(1) the *Children Act* 1989. Because the care plan recommends CD being adopted, I have regard to the provisions

of s1(2) of the *Adoption and Children Act* 2002. I have regard to the provisions of the welfare checklist set out in s1(3) of the 1989 Act and those set out in s1(4) of the 2002 Act. I have particular regard to the paramountcy of CD's welfare best interests throughout the whole of his life. I may not make a placement order, in the absence of the mother's consent to the same, unless I am satisfied that CD's welfare requires me to dispense with her consent, s.52 of the 2002 Act.

6. I also of course have regard to the Article 6 and Article 8 rights of CD and of the mother and remind myself that where there is a tension between the Article 8 rights of a parent on the one hand and the child on the other, the rights of the child prevail: *Yousef v The Netherlands* [2003] 1FLR, 210.
7. I also take into account a number of authorities, to which I have been helpfully referred. The principle ones are as follows: *re W (A Child)* [2017] EWHC 829 Fam, the then President of the Family Division, Sir James Munby said as follows:

“There are many illustrations of this principle in the books: *J v C* is at one and the same time, the classic formulation and the classic application of the principle. I was also referred by Mr Feehan to some words of Lord Templeman in *re KD* where, shortly after the famous and much-quoted passage beginning, ‘The best person to bring up a child is the natural parent.’”

He went on to describe the particular circumstances of the child in that case. In *re W (A Child)* [2016] EWCA Civ 793, McFarlane LJ, giving the judgment of the court said at paragraph 71:

“The repeated reference to a ‘right’ for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such ‘right’ or presumption exists. The only ‘right’ is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any Art 8 rights which are engaged.”

8. In the case of *Re A and O* [2017] EWHC 1293, the then President of the Family Division said as follows:

“The task of the family court will be, a) to decide whether adoption is in the best interests of A and O, judged by the test in s1(2) of the 2002 Act, of the child’s welfare throughout his life, having regard to the various provisions in the welfare checklist in s1(4) of the 2002 Act and applying the principles explained in *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 and *Re W (A Child)* [2016] EWCA 6793; and, b) to decide whether the welfare of A and O requires their parents’ consent to be dispensed with in accordance with s52(1)(b) as that word was explained in *Re B, Placement Orders: Parental Consent* [2008] EWCA Civ 535, see also *Re W (A Child)* [2017] EWHC 829.”

9. In *YC v the United Kingdom* [2012] 55 EHRR 967 at paragraph 134, the European Court said as follows:

“Family ties may only be severed in very exceptional circumstances and everything must be done to preserve personal relations and, where

appropriate, to ‘rebuild’ the family...It is not enough to show that a child could be placed in a more beneficial environment for his upbringing.”

10. In *Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535, the Court of Appeal, considering the word ‘requires’ in s 52(1)(d) of the 2002 Act said:

“It has the connotation of the imperative, what is demanded than what is merely optional or reasonable or desirable.”

11. The stringency of the test to be applied when considering approving against parental consent a child being placed by adoption was underlined by the Supreme Court in *Re B (A Child) Care Proceedings: Threshold Criteria* [2013] UKSC 33 and by subsequent judgments of the Court of Appeal in *Re P (A Child)* [2013] EWCA Civ 963 and *Re G (A Child)* [2013] EWCA Civ 965. As the Supreme Court made plain in *Re B*, the test that must be applied is that nothing else will do in the welfare best interests of the child.
12. Finally, I have regard to what the then President said in *Re B-S (Children)* [2013] EWCA Civ 1146, namely that a court when considering making an adoption order must undertake a global and holistic assessment of all the realistic options and consider those against the test for proportionality and must not undertake a linear assessment.

### Background

13. The mother had a very chaotic and damaging childhood. It has left her an extremely vulnerable young woman. On 24<sup>th</sup> June 2014, CD was born. His father is not known.

14. On 25<sup>th</sup> November 2015, EF was born. The mother asserted that his father was JJ. He was not. Subsequent DNA testing established that Raphael Kennedy, with whom the mother said she had had a one-night stand, was EF's father. On 28<sup>th</sup> September 2017, the mother was made aware of those DNA test results. The very following day, 29<sup>th</sup> September, the mother introduced EF to his father. Thereafter on 3<sup>rd</sup> October, just a few days after, the mother permitted to the father to have overnight staying contact with EF. Notwithstanding that when she dropped EF off at the father's home, she saw what she knew to be drugs in the kitchen.
15. On 4<sup>th</sup> October 2017, EF was seen with bruising after contact with his father. No expert assistance or medical assessment was sought by the mother. On 19<sup>th</sup> October 2017, Raphael Kennedy was arrested by the police when EF was in his care. Some other person arranged for EF to be returned to his mother. Raphael Kennedy was held in police custody overnight and released the following day. Notwithstanding those events, he had overnight staying contact with EF on 21<sup>st</sup> October.
16. On 19<sup>th</sup> October 2017, a social worker spoke with the mother. Advice was given to ensure that EF was safe in the care of Raphael Kennedy. Advice was given that the mother should contact the police to obtain information about the criminal past of Raphael Kennedy. She did not. I note that the local authority acknowledge that they failed to undertake an assessment of EF and the mother and his father, as it had been determined at a meeting they should do. On 27<sup>th</sup> October 2017, EF returned home to his mother's care, after staying with his father, with a lump on his head. Once more, the mother took no action. On

14<sup>th</sup> December 2017, the mother refused to engage with the social worker in the assessment that was then being undertaken by the local authority of this family.

17. Very tragically, the mother took no action when Raphael Kennedy contacted her in the evening of 14<sup>th</sup> December to notify her that EF was ill. She was told by Mr Kennedy that EF kept going to get his coat and hat and put them on because he wanted to go home. The mother did nothing. She did not go around and collect him because she said the last text message she had received from Raphael Kennedy was that EF was asleep in bed.
18. The following day, Raphael Kennedy killed EF in a brutal attack. The sentencing remarks of Carr J make very harrowing reading at what this poor little boy suffered in a sustained attack over many hours at the hands of Raphael Kennedy.
19. Once the events of that day were known, CD was placed with foster carers initially under police protection. On 18<sup>th</sup> December 2017, the local authority issued these proceedings in respect of CD.
20. On 20<sup>th</sup> January 2019, GH was born. The father is, again, unknown. Various candidates have been put forward by the mother, testing has proved none of them are the father. It is, to say the least, regrettable, that notwithstanding EF's death and these proceedings, the mother continued her past conduct of having unprotected sex with a number of young men.
21. Throughout the proceedings, but particularly more latterly, the mother has been inconsistent in attending contact with CD. The great shame about that is

when the mother has attended contact, contact for mother and, most especially for CD, has been extremely positive. When she has not attended, that has caused CD very real upset and has been unsettling for him.

22. On 14<sup>th</sup> March this year, the local authority held a looked after children's review (LAC) which the mother attended. It was there that she learned that the plan of the local authority for CD was adoption. She asked to have a private word with the Independent Reviewing Officer and asked the Independent Reviewing Officer whether CD's current foster carers, with whom he had been placed since August of last year, and to whom he was very attached, would be prepared to adopt him. The mother asked that because, as she told me in evidence, she was extremely impressed with the care that these foster carers had given to CD and the commitment that they had shown to him.
23. It is unfortunate that after this very child-focused approach, what then followed exemplified the criticisms that are made of this mother. After the LAC review, she asked the social worker whether she could stay overnight with her mother and she also contacted the foster carers of GH for her permission. It was granted. It maybe that that night the mother did stay with her mother but, thereafter, as she told me in evidence, she used the money that her solicitors had provided her with to travel to London, for the purposes of this hearing, to check into a hotel in Northampton with two friends where they spent the entire weekend drinking. She made not a single enquiry of the foster carers as to how GH was faring without her.
24. On 18<sup>th</sup> March, the first day of this final hearing, the mother did not attend. She could not be traced. The following day, 19<sup>th</sup> March, she was found



through the efforts of both the local authority and the social workers and the mother's solicitors. It was later that day that the mother made the first telephone call to the foster carers to find out how GH was faring. I was told the foster carer had taken to placing one of the mother's jumpers on her shoulder to try and comfort the child in the absence of his mother.

25. On 20<sup>th</sup> March, the mother attended this court for the first time and gave evidence. The social worker also gave evidence and an issue arose as to whether the plan for adoption of CD was robust or whether there was an alternate course open, namely, whether the current foster carers would be able to look after CD on a long-term basis, whether as adopters or as special guardians or as long-term foster carers. Accordingly, I was invited to adjourn the hearing over to the Friday of that week to enable the social workers to speak with the foster carers. Unfortunately, the hearing on 22<sup>nd</sup> March had to be abandoned because of travel difficulties, to put it mildly, encountered by the social workers. Accordingly, the matter was set down today to complete the hearing.
26. The mother did not attend court today. She sent a text to the social workers complaining that she knew nothing about the hearing and had not been contacted by her solicitors. Ms Brannigan QC and Ms Mettam also received an email from the mother in which divers criticisms were made by the mother of her solicitors. It became apparent, when Ms Brannigan QC and Ms Mettam had had the opportunity to consider the email and text traffic passing between the mother and her solicitors, that the day before the mother had acknowledged receipt of an email and of a text in which details were given to

the mother by her solicitors of this hearing. What is more, last Friday, the social worker, transported the mother to contact with GH and during the course of that time, they talked about the fact of the hearing today and the mother told the social worker that she was going to attend.

27. In the premises, I am entirely satisfied that the mother was all too aware of this hearing and of her requirement to attend but she had chosen not to. I am extremely grateful to Ms Brannigan QC and to Ms Mettam who, in the light of the matters raised by the mother, have had to consider carefully their position but determined that the appropriate role for them was to remain in court to represent the mother but, in the absence of instructions, not to pursue or put a positive case. I am immensely grateful to both of them.
28. I heard today evidence from a number of social workers: First and foremost from Ms X, the then team manager of the safeguarding team, who accepted that, on the information that the local authority had, they ought to have launched a s.47 assessment, and accepted that, quite wrongly, the local authority had not pursued, in a timeous way, an assessment of the mother and of CD and of EF.
29. Mr Y, a former social worker to the family, gave evidence before me where, poignantly, he told me that CD had wanted him to tell the Judge to tell his mother off for not going to contact with him.
30. Ms Z, the current social worker, had commenced her evidence on 20<sup>th</sup> March, as I have already referred to and, during the course of cross-examination, had told me that it was too early to make a decision about CD's future care options, because there had been no discussion with the current foster carers in

respect of whether they would agree to become special guardians or adopt. It was, plainly, incredibly important for everyone to know what their position was so that a judgment could be made as to whether the balance fell in favour of CD remaining with his current foster carers under a special guardianship order, or that attempts should be made to place him for adoption.

31. Those enquiries were undertaken on Thursday 21<sup>st</sup> March and in the course of giving evidence again today, Ms Z told me that the foster carers, who are respectively 60 and 59, had decided that they would not put themselves forward as prospective adopters of CD, nor would they seek special guardianship orders, although they would be prepared to consider looking after him long-term if they were approved as long-term foster carers.

Unsurprisingly, the opinion of Ms Z, which was shared by the children's guardian, is that in light of their ages and given that CD is only 4 years of age, the prospect of them being approved as long-term foster carers was poor.

32. Mr W, an independent social worker appointed to undertake an assessment of the mother, filed a most helpful report and gave most helpful evidence. He told me that he did not doubt that the mother loved CD and had great affection for him, but that as a result of the damage that she herself had suffered as a child, she was not equipped to be a parent. Her defence mechanism was to deflect and to seek self-protection. She would not be able to ensure safety, stability or security for CD, were he to be returned to her care. He considered the question of whether the mother would be able to change or be assisted to make changes in her behaviour and in her parenting style.

33. Mr W was of the view that therapy was unlikely to be successful until the mother was in her early 30s when she would be able to have the necessary degree of reflection and reflective thought. He was of the view that once that therapy commenced, it would take up to 3 years before effective change could be made. He said that CBT could commence now but it would not deal with the mother's underlying problems. She operates, unfortunately, on a very selfish approach.
34. Finally, I turn to the mother's evidence: I regret to find that almost everything that the mother said in her evidence entirely supported the opinions and conclusions of Mr W. She most certainly approaches life and lives her life in a selfish way. I say all of that, having complete regard to the very damaging childhood she had and the vulnerable young woman that she is. There was a degree of insight shown briefly when she told me that she did not think she could cope well with looking after CD. She initially said that she did not think adoption was right for him but then she told me she would be happy if he could remain with his current foster carers and if they adopted him. In those circumstances, she said she would consent to him being adopted by them. She accepted that CD needed to be settled somewhere for the rest of his childhood.
35. In relation to EF, the mother was wholly defensive. She repeatedly sought to blame the local authority for their perceived failures. She failed at any time to recognise her own failings. She sought to excuse what she had and had not done. She accepted the manner in which she introduced EF to Raphael Kennedy and permitting him overnight contact was to leave him with a complete stranger. She could not explain why she had not contacted the police

for information about Raphael Kennedy. She accepted she had been told that she needed to ensure that EF was safe in the care of Raphael Kennedy, but that she had done nothing to protect her little boy. On at least two occasions, when faced with difficult questions, such as what steps had she taken, if any, to protect EF, she ran out of court. She did say that she wanted to resume the care of GH.

Analysis

36. I have no doubt that the mother loved EF and that she deeply loves CD and GH. I am in no doubt, as she did with GH in his early years, she was able to provide him with basic good enough care. I accept that she, as I have mentioned, is a vulnerable young woman and that her own chaotic and damaging childhood did nothing to prepare her to become a parent, but she is a parent.
37. I accept, without hesitation, the evidence of Mr W, supported as it is by the social worker and the children's guardian, that the mother does not have the skills to afford any child, let alone CD, with safety and security. She did not know that Raphael Kennedy would ultimately kill EF but she had numerous opportunities to take steps to protect him and keep him safe and she did not.
38. Her inconsistency in her attendance with contact with CD, knowing full well how much he wanted to see her and how upset he was when she did not attend, and which had no effect on her ability or willingness to regularly attend contact, further demonstrated her self-centred approach to life.

39. The fact that she had had two previous children, where she had not known, certainly in EF's case, until there was DNA testing, who was the father, did not stop her continuing in the same manner of behaviour as she had with both CD and EF in having unprotected sex with a number of different men, so that when GH was born, she had no idea who his father was.
40. Her behaviour in the approach to this hearing of abandoning GH and staying away from him in a hotel while she undertook binge drinking with friends, underlines, if it needs to be underlined, the selfish approach that this young mother has adopted. It may be excusable in some ways but it does not help her children and they are my priority.
41. As matters stand with this mother, I am satisfied that any child in her care would be in danger of suffering serious harm. Positive and sustained change is a very long way off and the mother, to date, has exhibited no willingness or ability to change. In the premises, I am entirely satisfied that rehabilitation, now or in the future, of CD to his mother's care is not a realistic option because he would be at risk of serious harm. Little CD needs unconditional love and unconditional commitment so that he may be cared for in a safe, secure and stable home. I am entirely satisfied the mother is not capable of undertaking that task. Accordingly, CD cannot be placed in his mother's care now or in the foreseeable future.
42. I have nothing but praise for the role undertaken by the current foster carers. They have shown themselves to be unconditionally committed to CD. He has responded by being totally committed to them and showing them very great love. This ability to attach to them so deeply and in so short a period, since

August of last year, speaks, a) of the very great qualities that these foster carers have, and, b) of CD's ability to form very deep and close attachments at this stage in his life.

43. I would be very grateful if my warm words about the foster carers were fed back to them.
44. I completely understand their decision, given their respective ages, and other family commitments, not to seek to adopt CD nor to seek to be assessed as special guardians for him. I accept the evidence of the social worker and the children's guardian that it is highly unlikely, however wonderful these foster carers are, that they would be approved as long-term foster carers for CD, given their ages and he is only 4.
45. The female foster carer has expressed a view, based on her experience as a foster carer in the past, that CD is eminently adoptable and, with the right support, would be able to move to a prospective adoptive family where he would settle and form secure attachments. The children's guardian told me that over the past 4 weeks, when CD has not had contact with his mother, he has been his most settled in all his time with these foster carers.
46. In light of the events of 15<sup>th</sup>-18<sup>th</sup> March, the local authority applied for a s34(4) order, granting them permission to refuse contact between CD and his mother. I was asked to continue that order on the basis that if the mother does not demonstrate commitment to contact with CD, it will be refused but if she does demonstrate commitment, and is prepared to travel to CD to have contact, contact with her once a month, reducing to a farewell contact, assuming the plan of the local authority to place CD for adoption is approved.

47. Making CD the subject of placement order and being placed for adoption has the advantage that he will have his forever family, a family where he feels entirely secure and where they are wholly committed to him. It has the very great considerable disadvantage of severing all legal ties between CD and not only his mother, but also his half-sibling, GH. I am reminded by Ms Brannigan QC that up until the age of 3, CD had been cared for by his mother and lived with his wider family and he had suffered the tragedy of the loss of his brother EF.
48. Long-term foster care has the advantage of keeping alive those familial links and of enabling ongoing contact to take place between CD and his mother and/or GH, but carries with it the significant disadvantage that a social worker and the local authority will be involved in CD's life throughout his minority and there will be the need for regular looked after children reviews, visits by social workers and permission sought if CD wished to stay overnight at a friend's home, for example.
49. Those being the only realistic options for CD, I have to balance one against the other. I may only determine the balance falls in favour of adoption if I am satisfied that it is justified, it is proportionate to the circumstances of the case and that no other step will meet CD's welfare needs throughout the whole of his life. The local authority propose that a search is made for an adoptive placement for CD for a period of 6 months, failing which the plan would revert to one of long-term foster care. The social worker, Ms Z, and the children's guardian, are clear that this is the plan which best meets and



promotes the welfare best interests of CD. It gives him the chance, that they say he deserves, for a forever family.

50. I entirely agree. I shared the concern as to whether adoption was the right order for CD, given the very impressive role that his current foster carers have played in his life, but, as I have said, I well understand the decisions they have reached and the views they have expressed. I am, therefore, entirely satisfied that it is in CD's welfare best interests that I give him the opportunity to be placed for adoption by making him the subject of a care order on a plan of adoption.
51. When considering making a placement order, I have well in mind to the provisions of s.52 of the 2002 Act. For the reasons I have given, I am entirely satisfied that CD's welfare best interests require me to dispense with the consent of the mother and I so dispense with it and make a placement order. I do so in the knowledge, that I rather suspect the mother herself recognised, that this would be the inevitable outcome of this case and might very well explain why she had chosen not to attend today.
52. I approve the plan of the local authority for ongoing contact between CD and his mother, but it must be on the basis that the mother demonstrates a clear commitment to attend and that she does attend the contact venue prior to CD being brought to the venue. The evidence was overwhelming as to the extreme distress and upset the child has been caused when he believed his mother was coming to see him and she did not turn up. In these circumstances, where I fear that the mother is not going to demonstrate that commitment, I consider it to be in CD's welfare best interests that I continue

the s34(4) order granting the local authority permission to refuse contact between CD and his mother.

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