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Neutral Citation Number: [2020] EWHC 490 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/03/2020

COVENTRY CITY COUNCIL

Applicant

and

M

First Respondent

and

F

Second Respondent

and

J

(By his Children's Guardian)

Third Respondent

and

PGF and PGM

Fourth and Fifth Respondents

and

PA

Sixth Respondent

Re J (Care Proceedings: Placement in Bangladesh)

Nick Brown (instructed by **Keira Edwards, Coventry City Council**) for the **Local Authority**

Susan Todd (instructed by **John Hickey, Coventry Law Centre**) for the **1st Respondent**

William Baker (instructed by **Mamata Patel, Askews Legal LLP**) for the **2nd Respondent**

Martha Gray (instructed by **Debbie Jackson, Jackson West**) for the **3rd Respondent**

The 4th and 5th Respondents appeared in person

The 6th Respondent appeared in person

Hearing dates:
**11th - 12th September, 4th October, 4th - 5th November, 17th December 2019,
23rd January and 18th February 2020**

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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THE HONOURABLE MRS JUSTICE JUDD DBE

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.

The Hon Mrs Justice Judd :

Introduction

1. This judgment brings to a conclusion care proceedings about a little boy, J, who is three and a half years old.

Brief background

2. J's parents are Bangladeshi nationals, and he himself was born there in 2016. The family came over to the UK in 2017, as the mother was offered a place to study. In November 2018 J was found to have three sets of injuries on his body, on his left leg, his right leg and his back, consistent with burn marks from a heater in the home. Care proceedings were commenced, and independent medical experts were instructed. The parents have been represented by experienced barristers and solicitors all the way through these proceedings.

J's injuries

3. In June 2019, a fact finding hearing took place before His Honour Judge Cleary. He made findings that the burns were inflicted, caused by either the mother or the father holding J against the heater in the family home (in three different places). This judgment is an important one, and should be read in full alongside this document, because it sets out the circumstances in which this little boy came to be injured. It was not an accident, nor was it a consequence of neglect. Either the mother or father became frustrated with J on more than one occasion, and deliberately held him against the heater. This caused him serious pain, and injury. No doubt this was an extremely frightening event for J, and it is no way to treat a child. The case shows that one of the parents has a serious problem with their temper and that he or she poses a risk to J.
4. Another worrying thing about this case is that the parent who did not hurt J is not willing to tell the court what happened, and has chosen instead to protect their husband/wife rather than their son. They delayed in seeking medical treatment for him too.
5. I am setting this out clearly in the judgment so that all who read it understand that J would be at risk of harm, both physical and emotional, if he is returned to his parents, or if he is looked after by either of them unsupervised. Earlier in the case, it appeared

that some of the professionals in Bangladesh believed that the injuries were caused by accident or neglect, but this was not the case at all. If it had been, then J would not have been taken away. The medical evidence was very strong, and the judge was very clear in his conclusions.

6. Given that so little is understood about the circumstances in which one of the parents hurt J, it has not been possible for him go back to their care. He would be at too much risk of getting hurt again, maybe even more seriously. The focus, therefore, has turned to the question of whether he could be placed with the wider family, all of whom are living in Bangladesh.

Assessments of the wider family

7. Assessments of the paternal grandparents and the paternal aunt were completed, firstly by the local authority, and then by an independent social worker, Mr I. Mr. I is highly qualified and experienced as a social worker in this country, and he is also of Bangladeshi heritage and speaks Bengali. He visited the family members in Bangladesh, and was able to discuss the findings that had been made in the English court with them, and to assess their ability to provide safe care for J.
8. The assessments of grandparents and aunt were positive, and after some discussions between family members, it was decided that J's placement with the paternal aunt should be prioritised. She is married with a young son of her own, and the family live some distance from the paternal grandparents. By this time the mother, who was pregnant with her second child had returned to Bangladesh where she has been living with her own parents. The father remains here, although he is hoping to go back to Bangladesh in time. The mother gave birth to their second son in late 2019. Coventry City Council has alerted the authorities in Bangladesh to the child protection issues.
9. Although the mother and father have never been willing to accept that one of them inflicted injuries on J they have realistically accepted that the court will not sanction his going back to them. They have therefore supported the plan for him to be placed with the family, and in particular the paternal aunt.

Welfare assessment

10. I have read all the papers in the bundle presented to me, including the judgment of his Honour Judge Cleary, the social workers' statements, the assessments of the paternal family, and the reports from the lawyers in Bangladesh. It has never been necessary for me to hear oral evidence from the parents or other family members, but I heard oral evidence from a lawyer in Bangladesh, Mr L, by video link in November.
11. The assessment of the paternal aunt is extremely positive. She lives with her mother-in-law and son in a comfortable home in a district of Bangladesh. Her husband is away much of the time working abroad, but he provides the family with financial support. The aunt provides excellent care to her own child, and understands the need for J to have stability and security in a permanent home with her, and that any unsupervised contact between J and his parents would place him at risk.
12. I am in no doubt that it is in J's best interests to be placed within his wider family, so that he can grow up in the knowledge of his parents, grandparents, brother and cousins, and within his culture.

Arrangements

13. Once it became apparent that a placement in Bangladesh, subject to a suitable legal framework was a real possibility, the case was transferred to be heard by a High Court Judge. An expert in Bangadeshi family law, Mr. L was instructed, and he provided three reports for the court.
14. On 11th and 12th September 2019 the case came on for hearing before me. It was not without challenges, for the paternal grandparents, aunt, expert witness and interpreter all participated in the hearing via a video link, which did not work very well. The mother too was in Bangladesh, as she had returned there for the birth of the parties' second child. All were conscious that the family members had travelled a very long distance from their respective homes to Dhaka to participate in the video link. The sound quality was very poor for one reason or another, and as attempts went on to try and improve things, the day wore on, so that it was approximately 9pm in Bangladesh.

15. Despite all the difficulties, Mr. L was able to give evidence that day, and clearly recommended that the best mechanism for establishing J's placement in Bangladesh with his aunt was for the parties to obtain a Compromise Decree from the court there, which would lead to her appointment as his Guardian. The parties gave undertakings to do whatever they could to enable this process to go ahead.
16. As might be expected, this process took a little time. The case returned to court here on three further occasions. In November I ruled that the Compromise Decree should be obtained in advance of the aunt taking over J's care, and also that she should (if at all possible) come over here to meet him, get to know him again (and he her) before being placed in her care and returning to Bangladesh. I concluded that this plan would meet J's needs better than travelling to Bangladesh with social workers to meet his aunt for the first time since he lived there. This would be very strange for him. The parents completed notarized undertakings so that the decree could be obtained in Bangladesh.
17. The documentation was completed on 7th November 2019 and submitted to the Bangladeshi court. On 24th November the court gave judgment, and appointed the aunt J's guardian. This was exactly as had been hoped, so that this court could be satisfied that she would be responsible for his care and custody throughout his childhood.
18. There was one problem with the judgment from the Bangladeshi court, and that was that it also made an order for contact (of its own motion) providing for the parents to have contact twice a week supervised. As this had not been the parties' intention this was a matter of considerable concern to the local authority and Guardian, and also the court. This is a case where J is at risk from his parents, and he needs to be protected from them. It had been agreed that the parents should have contact only once a month, and that this contact would be supervised.
19. It appeared that the contact order had been made because the background had not been fully appreciated, and the twice weekly specification was in accordance with cultural norms. Enquiries were made by the local authority and guardian as to how this order might be varied, and they were advised that any application to vary the contact order should be made once J was living there with his aunt.

20. Bearing in mind that J had been living in foster care for over a year, and that further delay would be increasingly harmful to him, the local authority determined that they should press ahead with the plan for the aunt to travel to England. This decision was supported by the Guardian and the parents, and endorsed by the court. The parents have at all stages been prepared to declare and undertake that they will abide by the agreement they made at court on 5th November, that they will not seek contact more than once a month, supervised, with J. They have undertaken to cooperate in an application to allow the contact order to be varied accordingly.
21. With considerable assistance from the Foreign and Commonwealth Office, a visitor's visa was obtained for the aunt, and she arrived here on 3rd February. Since then she has spent time getting to know J again and he her. The meetings could not have gone better. I have read the reports of the independent social worker, Mr. I; and it has been a pleasure to do so. J and his aunt have 'hit it off' straight away. The aunt has engaged with him with sensitivity and skill, and he in turn has responded happily and with growing affection. The Skype meetings have obviously been an excellent preparation, but the truth is that things have gone better than anyone had dared to hope.
22. The paternal aunt has shown the greatest of commitment to her nephew. She has travelled a long way, and to a country which is very different to her own, and where she does not speak the language. She has attended several hearings, via the video link from Bangladesh (but she has still had to travel a long way). She has left her own young son in the care of his grandmother for two weeks. More than all of this, she has committed to caring for her nephew, a young boy who is not yet four, for the rest of his childhood. This is no small task, and everyone is extremely grateful to her.

Legal Framework

23. J has been the subject of an interim care order for over a year. Since the fact finding hearing the focus has been upon the viability of a family placement in Bangladesh and how this could be achieved, with a suitable legal framework there and here. For a while the best way forward appeared to be to make J a ward of court, as this status is well recognised in other parts of the world including Bangladesh.

24. Legal advice given and explained in more detail during the hearing in November last year clarified that a Compromise Decree could be obtained in Bangladesh with the agreement and cooperation of all the parties, appointing the paternal aunt J's guardian. This could be done in advance of J travelling over there so that his legal status could be guaranteed.
25. All the parties did everything they could to make this happen, with the assistance of lawyers appointed in Bangladesh. The Compromise Decree appointing the paternal aunt J's guardian was made. The only, and unexpected problem was that the court made a contact order which was not suitable in this particular case, and indeed if followed would put J at physical and emotional risk, and also have the potential to undermine his placement with his aunt. The contact order was made of the court's own motion, and I must stress, not at the request of the parents. Time has not permitted that part of the order to be varied before J leaves this jurisdiction, but the order that I have made in this case, which records that the agreement of all and judgment of this court is that contact should take place only once a month, supervised, is extremely clear, and so there should not be a difficulty in obtaining a variation to this order once he has arrived.
26. The legal framework in Bangladesh is vital, but so is the trust that the court, the local authority, Guardian, and the parents, vest in J's aunt. In the end it is she who is being trusted to take on his care for the remainder of his childhood. As every parent will know this is a huge, and richly rewarding undertaking and involves protection in every sense. Without this trust the legal framework would be worth very little.
27. As the Compromise Decree is now in place, there is no order that is needed in this jurisdiction once J leaves. The local authority invites me to approve the plan for J to leave the jurisdiction and the proposed placement under paragraph 19, Schedule 2 of the Children Act 1989 with the interim care order to expire upon his departure. All parties agree this approach as do I.
28. I have been very much assisted in this case by the hard work of all the professionals who have worked tirelessly to ensure that the placement in Bangladesh came to

fruition in a way that protects J. Although it is not possible for him to be brought up by his parents, he is within his family and culture, which is greatly to his benefit.