IN THE FAMILY COURT
Sitting at the Royal Courts of Justice

No. ZW17C00477

[2019] EWFC 49 (Fam)

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 1 March 2019

Before:

MRS JUSTICE THEIS

(**In Private)**

B E T W E E N :

LR Applicant

- and -

(1) A Local Authority
(2) Mother
(3) Father
(4) THE CHILD BY THE CHILDREN'S GUARDIAN Respondents

MR F. WILKINSON, appeared on behalf of the Local Authority.

MR J. DEGUN, appeared on behalf of the mother.

MR J. EVANS, appeared on behalf of the father.

MR H. RAWCLIFFE, appeared on behalf of the Children's Guardian.

MISS D. FOTTRELL Q.C. and MR T. WILSON, appeared on behalf of LR.

J U D G M E N T

MRS JUSTICE THEIS:

Introduction

1. The court is concerned with applications relating to R, nearly 2. The applicants in the care proceedings are the local authority, who seek care orders. The respondents are R's mother and father. R is a party to the proceedings and represented through a children's guardian.

2. The court is concerned with an application by R's current foster carer, LR. She is not a party to the proceedings, but wishes to be considered as a prospective adoptive placement for R. LR's application is for the court to exercise its discretion to terminate the appointment of the current children's guardian. It is accepted LR can make the application as rule 16.25 Family Procedure Rules 2010 (FPR 2010) does not restrict such an application being made to a party in the main application.

3. LR's application is resisted on behalf of the children's guardian. The mother, father and the local authority are neutral.

Legal Framework

4. There is no issue between the parties as to the applicable legal principles. They are eloquently set out by Mr Justice MacDonald in the case of *QS v RS (No 2) (Application to Terminate Appointment of Guardian)* [2016] EWHC 1443 (Fam), at para.30, which provides as follows:

> *"Overall, it would appear that whilst the court's discretion to terminate the appointment of a children's guardian under FPR 2010 rule 16.25(1)(b) is a full one, it is nonetheless a discretion that should be exercised sparingly, taking into account the imperative of the overriding objective in FPR 2010 rule 1.1 to deal with the case justly having regard to the welfare issues involved. Within this context, where the grounds*

relied on in support of an application to terminate the appointment of the children's guardian concern the methodology adopted by the guardian, the court may terminate the appointment where the guardian acts manifestly contrary to the child's best interests or, but only in very rare circumstances, where the guardian has engaged in conduct that the court would ordinarily be invited simply to take into account when deciding whether to accept or reject the guardian's evidence or recommendations."

Relevant background

5. The relevant history of this matter can be summarised as follows. R's mother is from Poland and her father from Romania

6. R's mother has three older children: W, 15; K, 13; and O, 9. W has a different father than K and O. They were born in Poland. The mother came to work here after their birth, she was joined by her children sometime later.

7. The local authority social services department became involved with the family in 2016, at a time when the mother was pregnant with R and living with the father. In 2017, W, the mother's oldest child, was taken into police protection due to concerns regarding the mother's care of her and possible sexual risk to W. At that time the mother signed a s.20 agreement for W and agreed to the other conditions sought by the local authority. In fact, W absconded from the placement she had and returned to her mother's care. The local authority conducted a s.47 investigation, the result of which was to recommend that W and R should be subject to child protection plans and K and O to child in need plans. Sadly, W continued to abscond from home and was then placed in a therapeutic residential placement following which she revealed the extent of sexual contact she had with a number of men.

8. The local authority issued care proceedings on 27 September 2017. An interim care order was made in relation to W and interim supervision orders in relating to the three younger children. W absconded and in October was placed in secure accommodation. In late October, the mother removed K and O from their school. The local authority became concerned as to their whereabouts and, as a result, sought and obtained orders to enable the police to secure the return of the children. Unfortunately, the two older children, K and O, had already been taken out of the jurisdiction by the maternal grandmother on 30 November 2017. R had not been removed as she did not have a passport and was recovered from an address in West London. She was placed with LR, where she remains. The local authority sought orders under the Hague Convention for the return of K and O, who had been taken to Poland. In June 2018, they were returned to this jurisdiction.

9. Following further assessments, the local authority care plan on 9 April 2018 was to seek full care orders in relation to the three older children - W, K and O - for W to be placed in a residential placement and for K and O to be placed with long term foster carers. For R, the plan was to place her for adoption and in support of that, the local authority issued an application under s.21 of the Adoption and Children Act 2002 seeking a placement order. In their statement dated 22 April, the local authority's evidence set out that R would stay with LR until a suitable adoptive placement was found.

10. On 11 June, just prior to the final hearing, the guardian's report was filed. It recommended that W should remain in the residential placement under a care order and that both K and O should remain with long term foster parents under a care order. She supported R being placed for adoption, which, at that time, was understood to be being placed with a family that had not yet been identified. No consideration was given in that report, as I understand it, to any placement of the children in Poland.

11. The seven day hearing started before HHJ Rowe Q.C. on 18 June 2018. It was a combined threshold and welfare hearing. On 27 June (the penultimate date of the final hearing) the local authority filed a statement from the family finding team about the steps that had been taken by the local authority to search for and/or secure an adoptive placement for R. It reported that LR had expressed an interest to adopt R. The guardian gave evidence the following day, on 28 June 2018. At the end of the hearing on 28 June, the judge made directions relating to questions addressed to the Polish Central Authority and written closing submissions, with the intention of giving judgment on 2 August.

12. In her judgment on 2 August the judge concluded the threshold criteria were satisfied and then went on to consider welfare and what orders should be made. At that stage she indicated it was not her understanding that K, O or R could stay in their current placements. She expressly stated at para.126 that R must move. No-one corrected that, even when she asked at the end of giving that judgment whether there were any errors or omissions. At this stage, the judge indicated she could not make final decisions because she had insufficient evidence regarding the position in Poland. She adjourned the matter to 20 September. At the adjourned hearing evidence had been obtained as to the availability of foster placements in Poland near to where the extended family lived, although it was indicated in that information that R, because of her young age, would be placed separately from her older half siblings.

13. The statement from the team manager dated 19 September 2018 was filed the day before the adjourned hearing on 20 September. It identified the five realistic options for placement of the children. The first was for all children to remain in the UK in their current placements with R being placed for adoption. The second was K and O to go to foster care in Poland and W and R to remain in the UK with the girls being placed for adoption. The third was for all four children to be placed in foster care in Poland. The fourth was for W to remain in

the United Kingdom subject to a care order and for the three younger children to be placed in foster care in Poland. The fifth was for R to be placed for adoption here with the other three children being placed in foster care in Poland. The statement had a full analysis of the pros and cons of these options, including if R remained here that she may not have to move because LR had put herself forward as a prospective adoptive placement for her.

14. The local authority concluded it supported option one; that all children would remain in this jurisdiction. No evidence was given at the hearing on 20 September. The parents strongly supported all four children being placed in Poland. The guardian (who had not provided a supplemental report, nor carried out any further enquiries of her own) supported W remaining here in her current placement and the three younger children being placed in Poland. This change was set out in a position statement dated 18 September. There was no further position statement on behalf of the guardian following the receipt of the local authority evidence on 19 September.

15. At the conclusion of the hearing on 20 September, the judge indicated that she would adopt option four, which was that W would remain the United Kingdom subject to a care order and the three younger children would be placed in foster care in Poland. Directions were made for the local authority to file an amended care plan and a skeleton argument regarding the legal framework for the children to move to Poland. Judgment was reserved until 18 October.

16. Following that decision (as set out in the helpful chronology produced on behalf of the guardian for this hearing) there was some communication between LR and the guardian. On 21 September there was a telephone call between them. LR had left a message on the guardian's phone. Given the distressed nature of the message, the guardian returned the call,

although it was a non-working day for her. There is a summary of the call in the chronology.

17. It is noted that LR explained she felt no consideration had been given to R's relationship with her foster family. Also, LR indicated she wanted to speak to the judge directly in order that the judge could change her mind. The guardian explained that that was not easy. The judge had made her decision after careful consideration. The guardian provided the name of the judge and advised the foster carer to write a letter to the judge and that she may wish to discuss the matter further with her link worker, so the letter could be sent via the local authority lawyer. In her own summary of that discussion, the guardian notes as follows:

> *"Understandably, the foster carer was very distressed and upset. At times she was shouting at me, reinforcing that the wrong decision had been made. While I appreciated that the foster carer perceives R as a significant permanent member of her family, she was unable to identify or acknowledge the potential impact on R of not being a member of her birth family."*

18. On 25 September the foster carer spoke to somebody called Melinda Castle, who I am told is the service manager in CAFCASS for the guardian. Again, there is a summary of the conversation taken from the case file recording and the bullet points raise the following matters:

> *"Raised guardian not visited. Explained, given workload. Not the expectation that the guardian would visit babies, toddlers at the foster home, especially if no concerns about care provided."*

"Advised that would have been helpful if guardian had spoken to foster carer during the proceedings."

"The foster carer felt the guardian and the judge had not fully considered the impact of removing R from her care."

"It was confirmed that the foster carer did not want to make a formal complaint. She wanted to try encouraging someone to pursue her views and put her concerns before the judge."

There is then a summary prepared by the guardian, proposing a three-way meeting with the local authority, IRO and social worker. The child's solicitor followed up with an email to the local authority's solicitor dated 27 September 2018.

19. I understand neither the judge nor the Court of Appeal knew of these discussions that had taken place following the hearing on 20 September. This information was first provided just prior to this hearing.

20. Returning to the chronology, W had become distressed about the prospect of separation from her half siblings. Consequently final care orders were made on 8 October in relation to the younger three children on the basis of the care plan for them to move to Poland and then, subsequently, a care order was made on 5 November 2018 relating to W on the basis that W would be going to Poland as well.

21. On 5 November 2018, LR's solicitors wrote to the local authority asking them to reconsider their position regarding R or apply for leave to appeal. The local authority refused with the result that LR made her own application to the judge on 4 December 2018, whereby she

refused LR's application for permission to appeal. That decision was made without knowledge of the telephone conversations that took place on 21 September and 25 September. The judge directed a time limited stay which enabled an appeal notice to be lodged with the Court of Appeal. Moylan LJ gave directions listing the hearing on 30 January 2019 and extended the stay.

22. The appeal hearing took place on 30 January 2019, with judgment given on 31 January 2019 (*LR v A Local Authority and Others* [2019] EWCA Civ 528). By that stage, W, K and O had all moved to Poland, R remained with LR, whom she had been living with since November 2017. The appeal was allowed. The matter was remitted for directions the following week, on 8 February, and is listed for substantive hearing in late May. At the hearing on 8 February, LR attended through legal representatives and indicated she was going to make this application to terminate the appointment of the guardian. I gave directions for the matter to be listed today to enable full instructions to be able to be taken from the guardian who, by then, was unaware of the application. As directed, LR filed a statement in support of her application.

23. Part of the rationale for allowing the appeal involved some criticism of the steps that had been taken by the guardian. Those are set out in the judgment of Baker LJ [61 - 66]:

"61. I have considerable sympathy with the judge. Given the care she evidently devoted to this difficult case, and the thorough way in which she crafted her judgment dated 2 August, it is obvious from her assertion that "R must move" that she was unaware of the fact that that the local authority was contemplating that the child would remain with LR. Although there was evidence about this in ZC's statement, it clearly did not feature prominently in the local authority's presentation at the hearing in July. There is no reference to it in the social worker's statement or the care plan, nor is it mentioned in the guardian's analysis. The closing submissions filed by the local authority deal predominantly with the issues of threshold. The relatively brief submissions concerning welfare options do not allude to the possibility of R remaining in her current placement. It is to my mind surprising that counsel for the local authority did not apparently correct the judge's error at the conclusion of her judgment.

62. By the adjourned hearing on 20 September, however, the judge did have a clear and detailed analysis from the team manager which included an assessment of the possibility of LR adopting R and the advantages of that option. Although the second judgment of 18 October referred to the fact that the local authority plan was for R to be adopted by her current carer, it did not take into account the specific circumstances of her current placement, the strengths of that placement, the fact that R would avoid any move at all if she remained where she currently is, and the security of that placement.

63. How did it come about that this senior judge with her great experience of cases of this type omitted this important information? We were not supplied with much information about the hearing on 20 September. None of the advocates who appeared on that occasion were before us on this appeal. It may be that the lack of continuity of counsel was a contributing factor. I also note the judge listed the case at 10am at Barnet, whereas the earlier hearing had taken place at West London. I have the impression that this was a relatively short hearing held before her day's list.

64. I am for my part concerned that the guardian did not file a supplemental analysis, given the fundamental change in her position between the start of the hearing in June and the adjourned hearing in September. In her report dated 11 June, she had recommended that R be adopted in this country with no contact with her half-siblings and family members. Her report included an assessment of the factors in the welfare checklist and an "early permanence analysis" in which she considered the advantages and disadvantages of the various options for the children. Under the heading "adoption", she wrote: "Placement for adoption would sever the tie between R and her birth family. It could provide a stable family life throughout the remaining of her minority and beyond." At that stage, the guardian was unaware that LR had put herself forward as a prospective adopter. So far as the other children were concerned, the recommendation in the guardian's written analysis was that all three should be placed under full care orders, with W remaining in the residential unit and K and O placed in long-term foster care. At no point in her report did the guardian address the possibility of placement in Poland for any of the children.

65. By the time of the adjourned hearing in September, however, the guardian's position had changed. She was now recommending that the three younger children should be placed in foster care in Poland. Despite these important developments, she did not prepare an addendum analysis of the advantages and disadvantages of the options for the children, which were completely different from those identified in her report. This morning, we received a copy of written submissions made by counsel on behalf of the guardian dated 18 September which informed the court that the guardian had changed her mind and was now supporting placement of the three younger children in Poland, with W to move there once her therapeutic work was completed. In the document, counsel sets out the advantages for R perceived by the guardian in the proposed move to Poland. He did not, however, address any disadvantages. The document added that the guardian had not seen the amended care plans and reserved the right to amend her recommendations once they had been received. It is plain, therefore, that this document was filed before the guardian had read the team manager's statement dated the following day. I am concerned that the guardian reached a definitive recommendation before she had seen the local authority evidence. I am also concerned that nowhere in this position statement, nor in any other document filed on behalf of the guardian, was there any reference to the possibility of R being adopted by LR. Indeed, the document, in summarising the judgment of 2 August, repeated without comment the error that "R must move".

66. I am, of course, well aware of the great pressures on all professionals working in this field. I am sure this very experienced guardian, like all of her colleagues, has a heavy case

load. But I regret to say that there was a failure to comply with the guidance given by this Court on many occasions, most prominently in Re B-S but also on many other occasions. Specifically, in Plymouth CC v G (Children) [2010] EWCA Civ 1271, Black LJ, as she then was, (in a passage cited and approved in Re B-S) stressed that

> *"the court requires not only a list of the factors that are relevant to the central decision but also a narrative account of how they fit together, including an analysis of the pros and cons of the various orders that might realistically be under consideration given the circumstances of the children, and a fully reasoned recommendation."*

With respect, I consider it was incumbent on the guardian in this case to provide the judge with an analysis of the value to R of remaining in LR's care and of the advantages and disadvantages of the proposals that R be adopted by LR and the proposal that she be placed in foster care in Poland. I can find no evidence that any such analysis was provided."

24. It is clear from that judgment the Court of Appeal accepted there had been a significant oversight that had led to the judge falling into error. There had been a failure by the guardian to weigh the realistic options against each other and identify which served the best interests of this child, as against the interests of the sibling group. She had failed to consider the child's attachment to her current carer with whom she had been since November 2017, and the benefits of family life with her current carer as against a childhood in a residential home with intermittent contact to her siblings.

Submissions

25. The court has been assisted in the difficult decision it has to make by the high quality of the written submissions on behalf of the parties, in particular those on behalf of LR and the guardian. LR made clear this is not an application made without careful thought. She has been a foster carer for six years and accepts that criticism of professionals, which includes foster carers, is part of the forensic process that takes place in this type of application. But what is said here is that the criticism made goes to the heart of the role that is undertaken by the guardian and so enables the court to consider the unusual and exceptional step it is being asked to take; namely, to terminate the appointment of the current guardian.

26. Miss Fottrell Q. C. and Mr Wilson, on behalf of LR, highlight the history. In June 2018, the guardian's report was filed supporting a plan for R's adoption here with no continuing contact with the birth family. The evidence from the family finder filed on the penultimate day of the hearing made clear that LR had indicated that she was wanting to be considered herself and that was going to trigger an assessment process of her. That was a significant development which had taken place prior to the guardian giving evidence.

27. The case was adjourned from June until August for the reasons set out above. During that period the guardian took no further steps to investigate herself and/or assess the option of R being adopted by her current carer, LR. As I understand it, she did not contact LR, did not speak to any assessor who had been allocated to undertake an assessment, or consider independently the relationship LR had with R.

28. Miss Fottrell submits the Court of Appeal is critical of the guardian for the change of position between June and August and then September, without there being a proper *B-S* analysis underpinning that change. In June her recommendations were for R to be subject to an adoptive placement (then thought to be away from LR with no continuing contact with the birth family), yet by September she was supporting a placement of R in Poland on the basis of R's relationship with her half siblings. What was missing was any analysis or balancing of LR's request to be assessed as a placement and LR's relationship with R. Some concern was expressed by the Court of Appeal that the guardian's position was reached prior to seeing the local authority's evidence in September and the Court of Appeal was critical of the failure to factor in at all LR's position in relation to R.

29. In her oral submissions Miss Fottrell highlights an additional concern, which is the contrasting position between what was said on behalf of the guardian in the Court of Appeal and what is being said to the court today. The note of submissions made on behalf of the

guardian during the appeal hearing on 30 January include that the guardian gave instructions to counsel who appeared in October which amounted to a *B-S* analysis. When pressed further by both Baker and King LJJ, the note records Baker LJ asking, "Did that include analysis of advantages and disadvantages of R remaining with LR?" The response was "[She] wanted to look at Poland and the child being adopted". King LJ "What does that mean?" eliciting the response "Looked at possible placement with LR, not with a view of remaining, and came down on side of R going to Poland". King LJ observes, "We have nothing to know how that was done." Baker LJ the asked "Re looking at the realistic options for a child, is there any record of the guardian's analysis of advantages and disadvantages?" The response was, "No there isn't, reason there is not, of course, will see first analysis. She understood didn't consider assessment of LR".

30. In the submissions for this hearing, it has been accepted that there was no *B-S* analysis in relation to the change of position for the September and October hearings. What Miss Fottrell says is that this raises further concerns about the conflicting position of the guardian.

31. In her statement filed since the last hearing, LR states that it is of note that the guardian has only had two phone calls with her (29 November 2017 and in September 2018) and had only seen R once, which was in the context of a family contact. According to LR, she says the guardian in her conversations appeared to infer to LR that she would support her appeal, but at the hearing in January it was opposed on behalf of the guardian, both in terms of the substantive appeal, but also taking some procedural points in relation to the appeal being out of time.

32. The local authority, the mother and the father maintained their neutral position regarding this application.

33. Mr Rawcliffe, in his helpful written and oral submissions, on behalf of the guardian confirmed he was counsel at the hearing in June but was unable to attend the hearing in August because he was part heard, and in September because he was on leave, and then resumed conduct of the proceedings in October. He accepts that there may have been some confusion caused as a result of the change in counsel, but says the court was aware of his position when fixing dates.

34. In the written submissions he notes the guardian realistically accepts a number of matters. Firstly, that she did not refer to or consider the possibility of R being adopted by LR. Secondly, that she did not file a supplemental analysis either in August, September or even October. It is said, rightly, that there was no direction for one, but it is also rightly recognised that no direction was sought for one to be filed. Thirdly, the guardian's position statement on 18 September 2019 was prior to the local authority's evidence and it is accepted that no adjournment was sought having received that evidence late, or further time to be able to file an analysis. Fourthly, it is accepted on behalf of the guardian that she should have spoken to LR prior to the final hearing once her position became known to the guardian - namely, on the penultimate day of the June hearing. Fifthly, it said on behalf of the guardian that she is accepting of the criticisms that have been made and has reflected on them.

35. Mr Rawcliffe accepts a combination of factors have resulted in the guardian not undertaking the analysis that she should have done. He submits that there is no evidence of bias. He says the guardian understands why LR has felt the need to make this application and if the application is refused, it is noted that the recommendation following her further enquiries may support R's continued placement with LR.

36. Mr Rawcliffe set out in his written and oral submissions how the guardian proposes to proceed if the application is not successful and what she would do by way of further enquiries. She would be content to have meetings with LR and LR's link worker and consider the adoption assessment. Mr Rawcliffe submits that the guardian's wider knowledge of the case and, in particular, her dealings with the older children and the parents, would be of specific benefit to this case where the court would be considering the welfare criteria in s.1(4) Adoption and Children Act 2002, including matters such as R's relationship with relatives. He submits this guardian has experience over the last 15 months of the parents and the older children which would be of benefit to retain.

Discussion and Decision

37. It is perhaps important when considering what the court's decision should be in this case to look at the obligations imposed on those who represent a child in certain specified proceedings, as these are (s 41 (6) Children Act 1989). The guardian is required to safeguard the interests of the child in the manner prescribed by the rules under s.41(2)(b). The relevant rules are set out in Practice Direction 16A Part 3 entitled "Children's Guardian Appointed under Rule 16.3", with a subheading, "How the children's guardian exercises duties - investigations and appointment of solicitor". At para.6.1 provides as follows:

> *"The children's guardian must make such investigations as are necessary to carry out the children's guardian's duties and must, in particular: (a) contact or seek to interview such persons as the children's guardian thinks appropriate or as the court directs; and (b) obtain such professional assistance as is available which the children's guardian thinks appropriate or which the court directs be obtained."*

It then goes on to set out the appointment of a solicitor etc. The rules are clear that the obligations on the guardian are as set out under s.41(2)(b):

> *"...to safeguard the interests of the child."*

The rules provide the wide discretion for the guardian to make such investigation as are necessary to carry out those duties and, in particular, contact or seek to interview such persons as the guardian thinks appropriate, or - and I emphasise the *or* - as the court directs.

38. It goes without saying these are important obligations that require active investigation and assessment by the guardian before conducting a *B-S* analysis and reaching a conclusion as to what is recommended to the court. These proceedings concern an application by the State to remove children from the care of their birth parents. The Article 6 and 8 rights of the adults and children are engaged and require the court to undertake a careful balancing exercise in determining what order should be made. That can only be done having considered all the evidence, including, importantly, the views on behalf of the guardian who is tasked by the primary legislation to safeguard the interests of the child in the manner prescribed by such rules in the way I have set out. The child is a party to the proceedings for a reason; so, their position can be properly protected and, in appropriate circumstances, seek directions from the court and make applications, for example, an application for an expert under Part 25 FPR 2010. It is not a passive role, just receiving requests or directions from others. The need for the guardian to undertake a proactive role in appropriate cases is wholly in accordance with the rules and their obligation to 'safeguard the interest of the child'.

39. I accept an application to discharge a guardian is unusual and should only be granted in exceptional circumstances following careful consideration by the court. No party suggests LR's application is made other than in good faith. Having considered the submissions I

have reached the conclusion that this application should be granted for the following reasons.

40. First, while accepting this was a complex case with many competing considerations, that fact alone does not remove from the children's guardian the obligations I have set out in s.41 CA 1989 and PD 16A FPR 2010. An explanation may be due to the lack of continuity of representation and other commitments, but the responsibilities imposed on the guardian remain the same.

41. Secondly, Mr Rawcliffe places emphasis on the fact that there is no criticism made of the analysis undertaken in June 2018, but that, if I may say so, misses the point. The history shows that in June 2018, the guardian's recommendation was for R to be adopted with no continuing contact with her birth family. That position changed dramatically to recommending placement of R in a foster placement in the same country as her siblings in Poland on the basis, it was said, of the importance of maintaining the relationship with the birth family. On any view, that was a significant change in recommendation. There were, in my judgment, at least three missed opportunities, to give any explanation for that change: firstly, on 2 August; secondly, on 18 September; and thirdly, on 20 September after the local authority's evidence had been received. It has been accepted practice for some time the need for a full *B-S* analysis prior to any decision being made, not just from the local authority, but also from the guardian who has such an important position to safeguard the welfare of the child. This was not done and, in my judgment, amounts to an abdication of the responsibility on the s guardian as outlined in s.41 and PD 16A.

42. The third matter I have carefully weighed in the balance is the knowledge this guardian has of the background of this case. Whilst important it would, in my judgment, be available from other sources, such as the local authority. In any event, the facts in this case are largely

self-evident in terms of the amount of face-to-face contact time there has been between the children, as between themselves and with the parents.

43. Fourthly, in a case where there have been delays in deciding R's future, it is important those involved in R's life now have confidence in the reports the court is going to be asked to consider and, potentially, rely on in reaching a decision. That is confidence in their conclusions and preparation. It is of note looking at the plans put before this court in relation to this guardian going forward, there is a potential defensive element in them, for example suggesting somebody else should be present when LR is seen by the guardian. That, in my judgment, adds another layer of complication that needs to be factored in.

44. Fifthly, the failure to provide the analysis that was required on 2 August, 20 September and 18 October was, in my judgment, contrary to R's interests. It is in the exceptional circumstances this case presents, that I grant the application. I am satisfied that in granting the application this will not result in additional delay and it will benefit R in that matters will be looked at afresh without the burden of the failings and criticisms made by the Court of Appeal at the hearing in January and endorsed by this court today.

45. For these reasons, the application made by LR for termination of the appointment of the children's guardian is granted.

CERTIFICATE

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