Case No: LS16C00579

IN THE FAMILY COURT SITTING IN LEEDS

IN THE MATTER OF THE CHILDREN ACT 1989 AND THE ADOPTION AND CHILDREN ACT 2002

AND IN THE MATTER OF B, A CHILD

Date: 11.11.16

Before :

HHJ Lynch

- -

Between :

Leeds City Council **Applicant**

- and -

The mother (1)

The father (2)

The Child (3)

Respondents

- -

- -

Sara Anning for the Applicant
The First Respondent mother represented herself
The 2nd Respondent father was represented by the 1st Respondent
Clare Garnham for the Child

Hearing date: 11 November 2016

- -

JUDGMENT

Introduction

1. In these proceedings I am concerned with a three month old baby. She is the child of the mother and the father who share parental responsibility for her. This little girl, who I shall refer to in this judgment just by the initial B, has two older sisters and two older half siblings, a sister on her mother's side and a brother on her father's. B has never been named by her parents, in the same way they chose not to name her older sisters, so the local authority has registered her birth just with her surname but having chosen a first name for her to use on a day to day basis. B's heritage is not White British though I give no more details here to minimise the possibility of the family being identified. Throughout this case the parents have taken up contact with B three times a week and that contact has been positive.
2. B's older sisters have both been made the subjects of final care and placement orders; the oldest girl has been adopted and the middle girl is placed for adoption alongside her sister. The reason for making the care and placement orders was the sexual risk the father posed to those girls and the mother's inability to protect from that risk. B's older half-sister, J, the mother's eldest daughter, was removed from the care of her mother and stepfather after disclosing her stepfather had indecently assaulted her.
3. The parents failed to engage fully in either the proceedings regarding J or those regarding the older girls, despite great efforts being made by the Court to engage them, and I shall return to what happened in those proceedings later in this judgment.
4. The local authority's application for a care order in respect of B was issued on 8 August 2016. The first hearing was scheduled for a date which clashed with an application the parents were making in the Court of Appeal and was rescheduled to 7 September. At that hearing the case was timetabled through to today's hearing, including listing an issues resolution hearing last week. The parents did not attend the first hearing, they say because they were not made aware of the change of date although court records show they were served at the address they have given to service. The parents sought leave to appeal the case management decision but that application was refused as being totally without merit on 2 November. In the interim I had made an order indicating to the parents they were very welcome to attend the issues resolution hearing and say what they wanted the court to do or file a position statement in advance or even to seek an earlier review hearing.

5. The parents did file a document in advance of the issues resolution hearing, saying that they wished the local authority to provide for the court record details of the change of circumstances which it required and expert evidence to prove that this baby would be at risk of suffering physical or emotional harm by way of sexual abuse. I clarified these requirements with the mother at the issues resolution hearing. I explained that my understanding of the local authority position, subsequently confirmed by Ms Anning, was that the change of circumstances the local authority required was a change in attitude by the parents to the findings which had been made in the first proceedings regarding J. In terms of the requirement for expert evidence, I explained to the mother that expert evidence could only be filed with the court's permission after an application had been made in the proper form. The court would have to be satisfied that such evidence was necessary. I could not immediately see that any such evidence would be necessary, given the earlier findings which have not been appealed or reopened and the evidence produced by the local authority and guardian of the lack of any change in the parents' approach to those findings.
6. I should record that within these proceedings, the mother has attended court hearings, other than the first one where she says she was not made aware of a change of date. The father has not attended any hearings, being represented today by his wife. The parents have not engaged with any assessment with the social worker, nor have they met the guardian although the mother has spoken to her once by phone.

Background

7. The background as I set it out here is taken in part from a judgment I gave on 6 July of this year relating to matters under the Adoption and Children Act 2002 in relation to the older two girls.
8. There are three sets of related proceedings which are of relevance to the matters I have to determine today. The first relates to the mother's oldest child, J. Back in December 2013 J made allegations of sexual assault against the father which led to care proceedings being issued. A finding of fact hearing took place before HHJ Anderson in March 2014, which the mother chose not to attend. The judge did her best to engage the mother, adjourning the case to the following day, but she still did not attend. The judge was aware the mother did not accept there was any proof of sexual abuse and was concerned that the evidence should be tested. At the Court's request, all

relevant witnesses were called and the child's solicitor ensured that their evidence was tested. The Court watched a DVD of the child's ABE interview conducted by the police. The Court considered written evidence from the mother within that hearing. At the conclusion of that hearing the Court made findings that J had suffered significant physical and emotional harm due to sexual assaults perpetrated by her stepfather and her mother's failure to protect her. The Court said that the mother on hearing her allegations from J herself should have asked her husband to leave the home. Neither of the parents have ever sought leave to reopen those findings since they were made nor did they seek to appeal them either in or out of time.

9. The mother then gave birth to the couple's first daughter and, given the findings made in J's proceedings, care proceedings were begun. This second set of proceedings ended on 25 February 2015 with the making of a care and placement order, the inevitable consequence of the findings which had been made in respect of J and the parents' non-acceptance of those findings. The parents initially engaged in those proceedings but had disengaged by the end. The parents sought leave to appeal those final orders, that application being dismissed by King LJ on 27 March 2015 on the basis it was totally without merit; no oral application being allowed.
10. The third set of related proceedings were the care and placement proceedings regarding the second girl. The parents took no part in those proceedings at all, remaining as I understood it of the view that the findings should not have been made. On 13 November 2015 I therefore made a care and placement order in relation to that girl unopposed by the parents.
11. There is one other court case of particular relevance to the matters I have to consider today and that is the criminal trial of the father in relation to the charges of sexual assault against J. That matter was heard and determined late in 2015 and the father was acquitted of all charges.
12. The parents have never accepted that the Court should have removed their two daughters from their care and have taken every step they felt they could to oppose this. After the acquittal, there was correspondence between them and the local authority ultimately leading to the parents in April 2016 issuing an application for permission to oppose the adoption of the oldest girl, basing their application on the father's acquittal.
13. The parents then on 25 April 2016 issued an application in the Queen's Bench Division of the High Court for an injunction, seeking to prevent the

local authority from taking any steps in respect of adoption for the girls, asserting that the local authority's actions were in breach of their rights under the ECHR. That application was heard on 1 June 2016 and was summarily dismissed, the court concluding that it had no jurisdiction to make such an injunction.

14. The local authority then issued an application for permission to place the second girl for adoption so that the Court could consider plans for both girls. That led to the parents making an application for permission to apply to revoke the placement order in respect of the second girl. I heard those proceedings on 6 July 2016 and refused both of the parents' applications on the basis they did not meet the relevant legal test of there having been a change in circumstances since the placement orders were made. I permitted the local authority to place the second child in her adoptive placement alongside her older sister. The parents sought permission to appeal my decision, the application being refused on paper but they then sought an oral hearing. The application for permission to appeal was subsequently refused at the oral hearing. Since then I have made an adoption order in relation to the oldest girl and I am told that the second girl has been placed for adoption.

The Issues and the Evidence

15. In preparing for this hearing I have read the bundle of papers provided to me in this matter and I have heard submissions from the legal representatives of the local authority, the mother, and those representing B. The mother has represented herself and her husband very ably in these proceedings. On occasions I have raised with her the fact that I felt she would benefit from having legal assistance, it being a challenge for any parent to understand the intricacies of the law in relation to the areas which I have to consider. The mother has been very clear that she feels well able to deal with this matter herself, although she has taken some legal advice I understand outside court. She told me at the issues resolution hearing she did not feel the Court should keep raising it with her and I mention it here simply as a matter of record.

THE LOCAL AUTHORITY'S CASE AND THE GUARDIAN'S

16. The local authority invites me to make care and placement orders in respect of B, saying those orders would be in her best interests, and the guardian supports those applications.

17. The situation as the local authority sees it is the same as it was for the older girls. The local authority submits that the factual matrix remains the same, that the findings made by HHJ Anderson have not been repealed or reopened, and the situation remains that the parents do not accept the findings. That then has to be the factual context for decisions regarding B.
18. The local authority's case is that, given the findings made in J's proceedings, if B was placed in the care of her parents she would be at risk of significant sexual and emotional harm. Given the parents' lack of co-operation, the social worker has been unable to carry out any assessment as to how the risks the parents present in light of the findings could be managed. Consequently the local authority cannot recommend placement with the parents. The social worker said there was no support the local authority could offer to diminish the risks there would be were B to be placed in the care of her parents, short of oversight twenty-four hours a day. She considered the possibility of just the mother caring, but the fact that the mother would not accept the findings made in relation to her husband in the previous proceedings and the findings that she had not protected J from significant harm meant she would not be able to protect B, the same as the position was for the older girls. And of course the reality is the parents still live together as a couple.
19. The local authority has written to family members of whom they are aware to see if they would want to be assessed to care for B, letters which are contained in the court bundle, but with no response. The mother has declined to put forward any family members, saying that her view is that B should be back in her care and that of the father. The social worker therefore concludes that adoption is the best outcome for B, acknowledging that this means severing B from her birth family, but saying this was necessary to give her the opportunity of having a permanent family which she deserved.
20. The plan for B is that she would remain in her current foster placement whilst the local authority looks for an adoptive placement. The possibility of her being placed with her older sisters has been considered but is not possible. B's contact with her parents would gradually reduce to monthly contact and thereafter remain monthly until a placement is identified. Annual indirect contact is proposed with the parents by way of the letterbox system. The plan is for indirect contact with J through the letterbox system as a minimum and hopefully direct contact with the two older girls.

21. The guardian supports the applications by the local authority for both care and placement orders and I have considered her report carefully. The parents have not been willing to meet with her although the mother did make contact with the guardian to explain her reasoning. She says that the mother has made it clear that she does not see any purpose in meeting with social workers to engage in any assessment due to the differing standpoints in relation to risk.
22. The guardian expresses concern at the view of the parents that nothing of concern has happened, that view if anything strengthening as a result of the criminal acquittal, and also the mother believing that her eldest daughter has to some extent retracted her allegations in a conversation with the mother, information contained in a document put before the Court of Appeal. The guardian also notes the positives in terms of the contact between B and her parents and the quality of contact, as well as the fact that they communicate regularly with her foster carer.
23. In her report the guardian analyses the options available for B and concludes that adoption would be the best outcome in terms of meeting all her needs including the need to be kept safe. Her view is the same as the local authority, that B would be at risk of significant harm if placed in the care of her parents given the findings previously made, and that there is no package which could be put in place to protect B were she in the care of her parents. The guardian in her report looks at the welfare checklist as set out in the Adoption and Children Act 2002 and concludes that it would be in B's best interests for care and placement orders to be made, allowing her to be placed for adoption. The guardian also supports the local authority's plans for future contact, both with the parents and with B's siblings.

THE PARENTS' CASE

24. Neither of the parents has filed a statement in these proceedings but the mother has attended court today to explain the position she and her husband take. She filed a document for the issues resolution hearing, as I have already identified, and she filed a skeleton argument for today's hearing.
25. The focus for the parents remains the injustice of the findings made by HHJ Anderson back in March 2014. The parents say they do not accept as valid the findings that the father was found to have sexually assaulted J and that the mother had been found to have failed to protect her daughter. The

parents say there was a lack of evidence to support that decision, although of course they chose not to attend the hearing when that evidence was given.

26. The mother in her skeleton argument focuses on the fact that there has not been a transcribed approved judgment prepared since that fact find hearing. The parents say that without a transcript of the judgment this Court cannot rely on those findings. They say it is a violation of court rules and even fraudulent to use what they describe as "a draft judgement made by the Local Authority" (which I take to mean the approved note prepared by counsel who attended that hearing and contained in the bundle) when making such serious decisions as those which I have to make today. They conclude their skeleton argument by saying that this Court must be satisfied that court rules and/or the Children Act 1989 were adhered to by the previous judge who made the findings and by the local authority.

Threshold

27. Turning to the threshold which has to be met for the making of a care order, what is required is set out in section 31 Children Act 1989. That section says that a court may only make a care order if it is satisfied that the child concerned is suffering, or is likely to suffer, significant harm, and that the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him.

28. I have looked carefully at the schedule of findings made by the judge who dealt with J's proceedings. This document has been available to this Court since the first hearing I conducted in respect of the oldest of the three children of this couple. I have therefore always known what it was that that Court found had happened. HHJ Anderson found that J had suffered significant physical and emotional harm by way of sexual assaults which had occurred on more than one occasion. The assaults involved the father touching her body in numerous places, both intimate and non-intimate. The mother had failed to protect J from the risk of further significant harm, and/or had failed to prioritise her needs thereby causing emotional harm, by refusing to separate from the father and indeed resuming care of the child along with the father when she was meant to be living with the paternal grandfather. The court found that J would be at risk of suffering further significant harm in her mother's care due to the parents' ongoing relationship

and the mother's history of refusing to engage with professionals in respect of child protection matters.

29. I cannot disregard the findings made in the proceedings regarding J, just as I could not when dealing with the proceedings regarding B's older siblings. The parents chose not to play any part in that hearing, despite the Court's efforts to engage them, and the Court ultimately tested out the evidence for itself in the absence of the parents. The parents say that there was no evidence to support the judge's decision. I have throughout these proceedings and the previous ones I have dealt with had available to me a note agreed by the advocates who attended the hearing as to what the judge said in court. As I have explained today to the mother, it is not the case that a transcript is obtained from every single hearing in these courts. A transcript is only obtained if an application is made to HMCTS. At the issues resolution hearing I became aware that the parents had sought a transcript of the judgment but the problems seemed to have arisen because the recording could not be located. I caused further enquiries to be made which ultimately resulted in the recording being located and I approved a transcript of the judgment being prepared on an expedited basis to be available to the parents for this hearing. That transcript has now been approved by HHJ Anderson. Today the mother, having seen the transcript, has indicated that she does not accept the evidence as recited by the judge in her judgment and believes there should be, at public expense, a transcript of the entire hearing to assist her in any appeal. It is my view that this is not required, that what the Court of Appeal would require is a transcript of the judgment, which is now available to the parents and has been obtained at public expense. **I am not therefore willing to order a transcript of the whole hearing at public expense. If the parents wish to make that application to HHJ Anderson they can, or they can seek a transcript of all of the evidence at their own expense.** The parents complain that a transcript of the judgment has not been available to them sooner but I am not in a position to address that. I do not know when they first made application to HMCTS for a transcript or what difficulties there have been prior to my becoming aware of the situation last week.

30. The reality for me today though is that the parents have not sought to appeal or reopen the findings of HHJ Anderson since they were made and therefore those findings stand for the purposes of what I have to decide today. The fact

of the father's acquittal, as I have said before, does not affect the findings as the family and criminal courts operate to different burdens of proof. I accept the local authority's argument that the findings form part of the factual matrix against which backdrop I make my decision regarding B. I do not accept the mother's argument that this Court needed a transcript of her judgment or of the evidence heard before making decisions regarding any of the girls. What mattered for my purposes was the findings which were made by HHJ Anderson and those have been available to me in formal approved form since the first hearing in which I was involved. A transcript of the judgment merely puts flesh on the bones of those findings. And in light of those findings I am satisfied that B would be at risk of sexual harm from the father were she to be placed in the care of either of the parents.

31. It remains the case that neither of the parents accept the risk of sexual harm from the father. Their relationship and their support of each other has been prioritised over the needs of the child, the mother choosing to remain in a relationship with her husband despite the findings. I am satisfied the mother given her expressed views would not be able to protect the child from the risk of sexual harm perpetrated by the father.
32. I therefore make the following findings as sought by the local authority:
    a. The father presents a risk of significant physical and emotional harm by way of sexual abuse to B.
    b. Neither the mother nor father accept that the father presents any risk of harm to B.
    c. Neither the mother nor father will protect B from the risk of sexual harm presented by the father.
    d. The parents will prioritise their relationship and their own beliefs over the protection of B.
    e. B is therefore likely to suffer significant physical and emotional harm in the care of her parents together or separately. That harm would be caused by sexual assault perpetrated by the father and the inability of the mother to protect against such sexual assault.

Decision

33. I now turn to consider what orders if any are in the best interests of B throughout her life. Wherever possible children should be brought up by their natural parents and if not by other members of their family. The state should not interfere in family life so as to separate children from their

families unless it has been demonstrated to be both necessary and proportionate and that no other less radical form of order would achieve the essential aim of promoting their welfare. In Re B [2013] UKSC 33 the Supreme Court emphasised this, reminding us such orders are "very extreme", and should only be made when "necessary" for the protection of the child's interests, "when nothing else will do". The court "must never lose sight of the fact that (the child's) interests include being brought up by her natural family, ideally her parents, or at least one of them" and adoption "should only be contemplated as a last resort".

34. I have looked again at the words of the President in Re B-S (Children) [2013] EWCA Civ 1146 as well as the judgments in Re B (above) and reminded myself of the importance of addressing my mind to all the options for this child, taking into account the assistance and support which the authorities or others would offer.

35. In reaching my decision I have taken into account that B's welfare throughout her life is my paramount consideration and also the need to make the least interventionist order possible. I have to consider the Article 8 rights of the adults and the child as any decision I make today will inevitably involve an interference with the right to respect to family life. I am very conscious that any orders I go on to make must be in accordance with law, necessary for the protection of the child's rights and be proportionate.

36. A placement order is sought by the local authority in respect of B. The court cannot make a placement order unless the parent has consented or the court is satisfied that the parents' consent should be dispensed with. A court cannot dispense with a parent's consent unless either the parent cannot be found, or lacks capacity to give consent, or the welfare of the child "requires" consent to be dispensed with. In that context I am conscious that "requires" means what is demanded rather than what is merely optional.

37. I have to ask myself whether B should be rehabilitated to the parents' care (with or without statutory orders) or whether she should be adopted. Given her age I do not see long-term foster care as an option, and I have in mind the comments of Black J (as she then was) in Re V [2013] EWCA Civ 913, in particular paragraph 96, when one looks at what both types of placement would offer by way of security. With children as young as here I accept the social worker's view that the child should not be placed in long-term foster

care and that her need for a permanent secure home would best be met by an adoptive placement if she cannot return to the care of her parents.

38. When looking at the options being presented to me I have to balance the pros and cons of each. McFarlane LJ in Re G [2013] EWCA Civ 965 said "What is required is a balancing exercise 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." In addressing this task I have considered all the points in the welfare checklists contained in both the Children Act 1989 and the Adoption and Children Act 2002 and propose to consider the evidence in the light of the most important of those factors and looking at the two realistic options which are presented to me.
39. I will look first at the prospect of B being placed with her parents. B has all the usual needs of any young baby, to have all her physical and emotional needs met including of course being kept safe from harm. My findings as set out above make it self-evident that she would be at risk of significant harm if returned to the care of either or both of her parents. The parents continue to say there is no risk of harm to B from either of them, so I cannot see any work that could be done with the parents or support that could be put in place to reduce this risk.
40. I accept that during contact the parents have been able to meet her physical needs but more than that is needed. She has a need to be kept safe from both physical and emotional harm, and given the findings I have made I am satisfied neither of her parents can meet this need. I am conscious B is not a White British child and she has particular cultural needs as a result of that. Her parents would of course be able to meet those needs if they were caring for her.
41. If B is placed with adopters, I am satisfied that through the process of selection and training the person or persons identified will be able to meet her general needs. I cannot be confident that an adopter could meet her cultural needs directly, not knowing with whom she will be placed, but I know the local authority will endeavour to achieve this.
42. If an adoption order is made clearly there will be an effect on B throughout her life of having ceased to be a member of her original family and of becoming an adopted person. She will not be able to have any meaningful relationship with her parents although the local authority will be trying to

identify a placement which means she will be able to have contact with her older sisters, direct contact with her two full siblings and indirect contact with her older half-sister. B will grow up knowing she has been adopted in the way the adopted children now do. She will have a life story book available to her to help her understanding her background. I acknowledge there is the potential for being adopted to have an impact on her emotional wellbeing but then the local authority will ensure good preparation is done in advance of her being placed.

43. Whether she is adopted or is placed with her parents, B will have to face change as she will move from her foster carers. Again, I know the local authority will prepare her well for that, given that change cannot be avoided.

44. So, I have to look at the options before me balancing the pros and cons of them. In carrying out that exercise I realise that in effect I am carrying out exactly the same exercise that I did in respect of both of the older girls. In respect of the oldest of these three siblings what I said in my judgment is still relevant: "If A is placed with her parents she would have the benefit of growing up in her birth family, with no issues around her identity and with people who have a strong sense of their relationship to her. However, I am clear she would not be safe from harm. I have no sense whatsoever that the parents see any need to change or to address issues which have been evident before the court in these proceedings and the previous ones regarding her sister. Alternatively, I approve the local authority's care plan of adoption. As the guardian says, that would offer her the opportunity to be part of an enduring family unit and live within a settled and stable environment where she is free from harm, without any ongoing statutory input. Whilst acknowledging that adoption means a severing of ties of relationships with birth family, I am satisfied that here the advantages of adoption outweigh the disadvantages and also outweigh the positives of placement within the birth family."

45. Very sadly, with the legal and practical situation exactly the same as when I concluded each of the proceedings regarding her older sisters, I remain of the view that this little girl cannot be placed with her parents for exactly the same reasons that I made that decision for her two older girls. B would not be the safe in the care of her parents, she cannot be allowed to drift in foster care, and she needs a permanent stable home which can only be provided through adoption. I am satisfied that the local authority's final care plan for

B is a proportionate interference in her family life and, in the context of both s1(1) Children Act 1989 and s1(2) Adoption and Children Act 2002, in her best welfare interests. **I therefore make a care order.** Further, having concluded that **B's welfare requires me to dispense with the parents' consent to placing her for adoption**, the word "require" here havin-g the Strasbourg meaning of necessary, "the connotation of the imperative", **I make a placement order** authorising the local authority to place B for adoption.

Further directions

46. There is one matter I wish to address by way of wording which is a standard direction for me. I think it is hugely important for children who are adopted that they have information available to them, through their adoptive parents, so they can make sense of their early life. This judgment, in setting out what I have read and heard in court, gives at least a summary of that start. Whilst it will be placed in an anonymised form in the public domain it is important that it is easily available to those who will be bringing B up. I propose therefore to **make a direction that this judgment must be released by the Local Authority to B's adopters** so that it is available to her in future life.
47. Finally, I also make orders **reserving future applications in relation to this child to myself, discharging the order that was made on 7 September preventing the issue of a passport for the child,** and for **public funding assessment for the child's legal costs** in this matter.
48. I am sure the parents do not need me to tell them this, but if they wish to make any application for leave to appeal my decision (as opposed to any application to the Court of Appeal regarding HHJ Anderson's decision) then it has to be issued within twenty-one days of the making of this order.