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IN THE FAMILY COURT AT NEWCASTLE
UPON TYNE
(Sitting at North Shields)

No. NE17C00806

Kings Court
Earl Grey Way
North Shields NE29 6AR

Wednesday, 7 March 2018

Before:

HIS HONOUR JUDGE SIMON WOOD

B E T W E E N :

A LOCAL AUTHORITY

Applicant

- and -

(1) M

(2) THE CHILD BY THE CHILDREN'S GUARDIAN

Respondent

MS H. THOMPSON, solicitor appeared on behalf of the Applicant.

THE FIRST RESPONDENT was not present and was not represented.

MS C. ANDERSON, solicitor appeared on behalf of the Second Respondent.

J U D G M E N T

JUDGE WOOD:

- 1 The court is concerned with the welfare of B, a boy who was born on [a date in] 2017. By an application dated 20 November, the local authority seeks a care order in respect of B and now presents to the court a plan of permanence by way of adoption to be secured via a placement order, a plan which is supported by B's children's guardian, C, but so far as the mother is concerned - although it is understood, as I will come to, that, in general terms, the order proposed causes her considerable distress - she has not engaged in these proceedings in any meaningful way in order to be able to ascertain what her preferred alternative would be. She is not present at this hearing and it is right to say that I should deal with this issue right at the outset, but do so by reference to the background.
- 2 The mother was born in December 1998, so she is 19-years' old. She was, in effect, born into care because her own mother was 15 when she was born and herself the subject of a care order. She was, throughout significant periods of her childhood, variously a looked after child, the subject of a child protection plan at birth, looked after from 1999 to 2006 and then again from 2012 to 2015. On any view, she has had an unenviable upbringing and is almost certainly a very vulnerable individual.
- 3 The local authority specifically became aware of her pregnancy on a referral from the midwife in May of 2017. Shortly before that, the mother had herself been the subject of a child concern notification from the police, where it was said that she was present at a location where crack cocaine was being exchanged for sexual favours. Very shortly after the local authority were notified of the pregnancy in May, the first of a number of police child concern notifications came that indicated concerns about antisocial behaviour; the issue of her drinking, particularly since she was pregnant; altercations that she had had with adult males and a lifestyle that was wholly incompatible, first of all, with being pregnant and then, subsequently, caring for a child. In July she was admitted to hospital with a suspected seizure which was thought to be attributable to the use of illicit substances. Later that month she was arrested for an assault and was, in fact, detained briefly under the Mental Health Act, leaving hospital against advice.
- 4 Thus, it was that at an initial child protection conference convened on 15 August, a child protection plan was formulated for her unborn baby under the category of neglect. At that stage she identified the father of her unborn baby as a man called PF. PF, in fact, made himself available to this court once B was born, attended with his mother and was very keen to play a role in B's life, if it was established that he is B's father. In fact, DNA testing confirmed that he is not B's father and so he has disappeared, entirely appropriately, from the picture as a consequence.
- 5 Concerns continued throughout the pregnancy after the making of the child protection plan. Police reports of the mother being found, for example, in [a local town] under the influence of drink and substances, being observed with a significant known male offender. Her own mother reported that she was self harming. As recently as 11 October, before B was born, she was found sleeping rough in the centre of [a local city]. A child concern notification on 19 October from the police expressed their concern that she was at risk of giving birth to her baby on the streets of [a local city]. In the event, fortunately, that did not happen. B was born on 18 November and the local authority, in issuing, set out the grounds under s.31 of the Children Act that reflect some of the concerns to which I have mentioned and I will come back to them in due course.

- 6 Since the time that B was born, her engagement has been almost non-existent. She did instruct a solicitor for the initial application for an interim care order and attended that hearing represented by counsel who, on her behalf, represented that she accepted that she was not in a position to care for B at that stage and that she would consent to the making of an interim care order on that basis. She indicated through counsel that she had sought a referral to address her substance misuse and she indicated that she was committed to improving her lifestyle so that at some point in the future she could be able to meet B's needs. The issue of B's contact was discussed. It was offered at that stage four times a week at the outset. There was a discussion at court about how she would be able to travel from wherever she happened to be at any one time to contact and appropriate arrangements were made. She advanced her own mother as an alternative carer for B and that was duly followed up, as I will come to in due course.
- 7 That said, as early as 6 December, contact had been reduced by the local authority to twice a week because the mother was not attending it. Her solicitor was without instructions. The last contact had taken place the week before on 27 November 2017. That was, in fact, the last time that she saw B. Because of her failure to engage with contact, the local authority put in place a provision whereby she was required to confirm on the day of contact that she would attend so that B, a small baby, should not be taken from his foster placement to a contact venue unnecessarily. She subsequently either failed to make the appropriate contact with the local authority - and so, for example, turned up at contact on 5 January of this year without having given notice - or, on other occasions, having given notice, either did not turn up, or last did on 8 December under the influence of either alcohol or some other substance and so was in no state to see B. The long and short of it is that notwithstanding the availability of really generous contact to secure her engagement, she has not done so and has not seen B, as I say, since 27 November.
- 8 The local authority equally was anxious to carry out a parenting assessment of the mother and despite her being advised of that and arrangements being put in place for her to engage, quite simply, she has not done so. There is no parenting assessment, unusually, in a case of this sort, because she has simply not engaged. There has been fleeting contact from time to time with the local authority as the chronology and social work evidence points to. Specifically of relevance to the issue of her involvement in these proceedings, on 23 January there was a telephone call between the mother and the allocated social worker, SW. It coincided with a probation appointment that she had attended. The specific purpose of the call was to obtain further information about the potential identity of B's father. In the course of it, she was advised of the hearing on 6 March 2018 and she confirmed that she was aware of it and she had spoken to her solicitor about that. I think there is a real issue as to whether she had, in fact, spoken to her solicitor because Mrs Susan Johnson, who is an extremely experienced senior practitioner in this region, has not been able to make any contact with her client since the making of the interim care order back in November. Be that as it may, she plainly was made aware of the hearing at that stage and whether that was from the letter which Mrs Johnston sent to her confirming details of this hearing - to an address where she is registered as living, but only fleetingly visits - is not known, but that may be the explanation as to how she was aware of the hearing when SW spoke to her on 23 January.
- 9 The matter was timetabled to an issues resolution hearing yesterday, 6 March. It was indicated, as it is indicated in all cases, that if at all possible the court will make a final order at the issues resolutions hearing if it can do so and that the parties should be prepared for that to happen. M did not attend. There was information that she had been in contact with the emergency duty team over the course of the previous weekend seemingly about some crisis that had arisen over the course of the weekend, complaining apparently about neck

pain and there was some encouragement for her to go to emergency accommodation, which she refused and the police were involved. She was, in fact, able to be contacted yesterday. There was a telephone conversation between SW and then subsequently Mrs Johnson. She was very distressed on being told about the hearing and its nature. She indicated that it was quite impossible for her to attend court yesterday, but indicated that she would do so today. Although the case was listed for 10 o'clock and was not called until 11 o'clock, she has not attended and all efforts to contact her again today have failed with her telephone going straight to voicemail. For the sake of completeness, the social worker, having been able to make contact with her by telephone yesterday, sent her a text yesterday afternoon to confirm this hearing today. She had confirmed her ability to get to the court at North Shields. She knew where it was. Despite that, as I say, she is not here.

- 10 Now, I have taken some time to outline the position as to why the mother is not present today because, unusually, I am being asked by the local authority, supported by the children's guardian, to finalise these proceedings today, notwithstanding her non attendance. I should also have added her indication that she wished to dismiss her solicitor over the telephone yesterday. The circumstances of her non attendance are, it is suggested and the court agrees, entirely consistent with her lifestyle, with her complete inability to engage with her son through entirely appropriate contact that has been offered and facilitated by the local authority since the time of his birth, and through her complete inability to engage with the local authority in respect of a parenting assessment. Everything that is known about her current lifestyle which is nomadic (she only periodically visits an address to which she is registered in [another local town] and is at times reported as living with a man called BF who himself is known to the authorities and the police), she is wanted by the police who cannot find her in respect of outstanding criminal matters - all of these factors point to complete disengagement with this process. Whether that is through an inability on her part to participate or a conscious effort, perhaps, at the end of the day, is not going to assist for the court to reach any conclusion. She has simply not engaged and, set against that, is a small boy who has, to all intents and purposes, been abandoned by his mother, who is now coming up 4 months of age and who urgently needs his future to be determined.
- 11 Parliament has legislated that decisions for children should be made within 26 weeks of an application being made. It is particularly important for new born babies that they should reach their permanent placement as soon as possible so that they can make appropriate attachments and have their needs met. There is nothing about the conduct of this mother, really, from any moment after 27 November when she last attended contact when he was 9-days' old, to indicate that she is in a position to meet B's needs at all. There is no sign of any corner being turned. The aspirations that she advanced through counsel at the interim care hearing remain that and not acted upon and, for all of those reasons, it seems to the court that given that B's welfare has to be at the centre of the court's determination, that dictates that a decision is made for him sooner rather than later.
- 12 The alternative is an adjournment and the question that has to be asked is what would an adjournment look like in this case? It is unclear where the mother is. She appears to flit from place to place and does not regularly make herself available to be contacted by the authorities. As I speak, no-one knows where she is. There is a history of non-engagement with not just social work professionals, but with her own solicitor who was well placed to advise her and guide her through this process. She has not engaged with that. There is absolutely no reason to believe that she will do so in the future. There is really nothing to indicate that if more time is allowed, that her behaviour will, in any way, change from that which I have described. The court took the step of adjourning the issues resolution hearing yesterday to today to afford her the opportunity to attend. She has not done so. In the circumstances of the case, the court is satisfied that B's welfare demands that a decision be

made in respect of him today and, accordingly, the court proposes to proceed without her involvement.

- 13 I have, in summarising why the mother is not here and why the court is unusually prepared to deal with the matter notwithstanding her absence, really touched upon the many issues on which the local authority rely in support of the proposition that threshold here is effortlessly met. It was, in effect, accepted that the mother was in no position to care for a child at the time that the interim care order was made because of her lifestyle and the local authority rely specifically on a number of factors which, it seems to the court on the evidence it has read both from the social worker and from disclosure documents, are fully evidenced within the papers.
- 14 Care proceedings involve consideration of two questions. Focusing on the first question at the present time, namely, at the date when protective measures were taken when these proceedings were started shortly after B's birth, was there a likelihood that he would have suffered harm had he been placed in his mother's care? The court is quite satisfied that there was an extreme likelihood of him suffering significant harm arising from neglect and the specific factors that would point to that are:
- (i) the mother's lack of any fixed abode, which extends at times to her being found sleeping rough in the centre of [a local city], as occurred on the notification of the police on 11 October 2017. There have been subsequent examples since;
 - (ii) Secondly, this mother has a history of the misuse of substances, both alcohol and drugs. She had accepted consuming up to a litre of alcohol and 5 litres of cider a day. In October 2017 she tested positive for benzodiazepines, cannabis and olanzapine and also regularly using the drug "spice". That not only placed B at risk of harm before he was born, but it is a factor that has continued and would expose him to the risk of harm where he is in her care;
 - (iii) Thirdly, M has on many occasions been found in an intoxicated state or suffering from seizures during her pregnancy and I gave an example of a seizure when she was hospitalised on 3 July. She was under the influence of alcohol or a substance on 8 December preventing contact from going ahead. Indeed, yesterday it was thought she was under the influence of something when she was spoken to;
 - (iv) Next, the local authority assert that this mother failed to ensure that the health needs of B were met. She did not engage with any antenatal services. Certainly, her lifestyle since B was born would engender no confidence that she would have been able to access appropriate health services for him subsequently.
 - (v) She is described as unable to meet her own needs when seen often dirty and unkempt; unwilling to access suitable accommodation or other assistance that is offered to her; is described as unable to keep herself safe; placing herself in dangerous and risky situations. That has, in turn, resulted in her socialisation with adults with a known criminal history. I gave the example of the child concern notification on 4 April and there have been subsequent examples. She is currently wanted by the police.
 - (vi) She has failed to engage with professionals, both before birth and subsequently and whether this is a conscious decision or part of a deep seated problem matters not, but the outcome is that she has placed her own needs before those of her son and has demonstrated by her behaviour, both before his birth and subsequently, that she is unable to meet his needs.

She is, I am afraid, a vulnerable, almost certainly damaged, individual. The threshold is, in those circumstances, effortlessly traversed and I am quite satisfied in the circumstances that the gateway to the making of a public law order is thereby opened.

- 15 Now, of course, that brings the court to the second question which it has to determine: namely, what order should it make? The assessment of the mother has not been possible and therefore there is really no material before the court to indicate whether she has any of the skills that would be required to care for a vulnerable baby were it to be placed in her care. As I have indicated, her lifestyle would contraindicate her being able to do so. She advanced her mother as an alternative carer for B and her mother engaged with the process. However a viability assessment which was conducted unfortunately met with a negative outcome. I do not think it is necessary to go into the details any further because having been given notice of the ability to challenge that assessment, the grandmother declined to do so, albeit, to her credit, she has remained engaged with the local authority, was anxious to correct some factual information which she maintained was wrong and has expressed her willingness to cooperate with the provision of life story work so that in due course B can have as much information as possible about his maternal family, at least. There is, therefore, no other family member who can care for B and, thus, the local authority maintain that in those circumstances, the only order that meets B's needs to secure his welfare for the long term is placement permanently with an adoptive carer and seeks, therefore, a placement order in that regard.
- 16 I think it is perhaps convenient to say something about the law before I just analyse the evidence which has been put before the court in support of that care plan. In considering the question as to what order the court should make, the court applies well established legal principles. I bear in mind the rights of the mother and B under Article 8 of the European Convention to respect for family and private life. Under s.1 of the Children Act, B's welfare is the court's paramount consideration in care proceedings. Under s.1(2), delay in making decisions regarding his future is likely to prejudice his welfare. Subsection 3 provides a checklist of factors to be taken into account when determining where B's welfare lies and what order should be made. In this case the particularly important elements are his needs, the capacity of his mother to meet them and any harm that B is at risk of suffering. On an application for a placement order, the court applies s.1 of the Adoption and Children Act 2002. On such an application, the court's paramount consideration is B's welfare throughout his life. Delay, likewise, is another factor that is likely to prejudice his welfare. There is a checklist of factors to be taken into account set out in subsection 4, the important factors here being B's needs; the likely effect on B throughout his life of having ceased to be a member of his birth family and becoming an adopted person; his background; any harm he is at risk of suffering; his relationship with birth relative and, in particular, his mother and the value of that relationship continuing and his mother's ability and willingness to provide him with a secure environment and meet his needs.
- 17 The court may not make a placement order unless satisfied that the mother has consented to the child being placed for adoption, or that her consent should be dispensed with. The court may dispense, however, with her consent if the welfare of B requires the consent to be dispensed with. These statutory provisions have been the subject to analysis in a number of important decisions by a higher court, particularly by the Supreme Court in *Re B (A Child)* [2013] UKSC 33 in 2013 and then in the subsequent Court of Appeal decisions culminating in *Re B-S (Children)* [2013] EWCA Civ 1146. In *Re B*, the Supreme Court reiterated that the test for severing a relationship between parent and child is very strict so that it should only occur - to use the words of Baroness Hale: "In exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do."
- 18 Lord Neuberger, in the same case, observed that making a child subject to a care order with a plan for adoption should be a last resort where no other course was possible in that child's interests. That interpretation was emphasised by the President in *Re B-S* when he observed

that the statutory language imposed a stringent test and said that what had to be shown was that the child's welfare required that parental consent to adoption be dispensed with. The President identified two essential things required when a court is being asked to approve a care plan for adoption: first of all, the need for proper evidence, both from the local authority and the children's guardian, addressing all the options realistically possible and containing an analysis of the arguments for and against each; and secondly, the provision by the court of an adequately reasoned judgment which balances the alternatives in a global and holistic manner before deciding which of the options best meets the duty to afford paramount consideration to the child's welfare.

- 19 In this case, SW, in his final evidence, having chronicled the history to which I have referred and carried out his own *BS* analysis, has concluded that there is no possibility of placement of B within the care of his mother for the reasons that I have identified and her complete failure to engage. He has pointed to the negative assessment of the maternal grandmother and her partner, which has not been the subject of any further challenge. He notes the inability of the local authority to identify B's father and thereby engage any paternal family and, in the circumstances, concludes that there is no alternative to the plan which is identified. There is no realistic alternative.
- 20 B's guardian, in a thoughtful and helpful analysis, notes that, whilst the mother initially presented as motivated to engage, the history has demonstrated the complete opposite with total disengagement to the extent of not even acknowledging who B's father may be. The analysis that she made of parenting capacity really echoes exactly that which the local authority have identified. In her child impact analysis, she notes the serious concern that there was for B's very survival during the course of her pregnancy. He is now obviously safe in foster care and is a baby who has developed a very strong bond with his foster carer, presenting as entirely secure, settled, thriving with good routines and meeting his developmental milestones. He has only been denied the opportunity to form an attachment with his mother because she has only visited him successfully on one occasion. In the circumstances, the guardian concludes, as does the local authority, that she is unable to identify any plan other than adoption that will meet his needs for a safe and secure upbringing in due course.
- 21 It is perhaps unusual that the court is faced with such a stark plan, but it is driven to the situation that there is no alternative that is available to it. In the circumstances, the court has therefore reached the conclusion that there is in this case only one realistic plan - that is, the plan that has been identified by the local authority and that, in the circumstances, it must be granted the order which it seeks. The court reminds itself that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, rebuild the family. The court is also mindful of the fact that it is insufficient for it to be demonstrated that B could be placed in a more beneficial environment for his upbringing. This is a case where, sadly, the maintenance of family ties would be likely to harm B's health and development and, as the Strasbourg Court said in *Y v The United Kingdom*, in such circumstances the parent is not entitled under Article 8 to insist that such ties be maintained. This is, I am afraid, one of those exceptional cases where the court is satisfied that B's welfare can only be met by granting the local authority the order it seeks on the basis that the court is satisfied that B's welfare demands it and the consent of the mother to the making of a placement order is dispensed with and so, the court makes a care order and a placement order.
- 22 There is little that can be said by way of consolation to B's mother were she here to hear it. All the court can say is that it is very clear to it that she has had a profoundly disadvantaged start to life herself and that I very much hope that this opportunity that is afforded to B will

indeed enable him to meet whatever potential he has in a safe and secure environment and, that, if that aspiration is achieved, that in the long run will be some consolation to her.

- 23 The order, therefore, is a care order on the threshold findings advanced by the local authority being proved to its satisfaction and a placement order on court dispensing with the mother's consent.
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CERTIFICATE

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