

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for an anonymised version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of her family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Case No: LS19C00569 & LS30/20

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 L (A CHILD)

Date: 11.2.20

Before :

HHJ Lynch

Between :

A Local Authority

Applicant

- and -

X (A Mother) (1)

Y (A Father) (2)

L

(through her Children's Guardian) (3)

Respondents

Sharn Samra for the Applicant
Guy Swiffen for the 1st Respondent
Cathy Hodge for the 2nd Respondent
Deborah Hardy for the 3rd Respondent

Hearing dates: 10 February 2020

JUDGMENT

Introduction

1. This hearing has been about a baby girl, L, whose parents are X and Y. I shall call them the mother and father in this judgment, only to make it easier to dictate. Both parents have parental responsibility for L. The mother comes from the [country omitted], the father from [country omitted]. L is her mother's sixth child, her father's second. The mother's fifth child may have been the father's child, but there was never any DNA testing and she had mentioned another possible father so we cannot be certain. All of the mother's older children have been removed from her care, two in her home country, three here. The children here have been placed for adoption, the two elder in one placement together, the younger in a placement alone, and they have contact with each other. The local authority's plan, to which I shall return, is that L should be placed with the next oldest sibling to her, so all the children in the UK would be in touch with each other.
2. Due to the family history, L was placed in a foster placement as soon as she left hospital and she has lived there ever since under an interim care order. Time for the family to be together, supervised by the local authority, was arranged initially at quite a high rate but it reduced because they did not attend regularly. Sadly their commitment has waned over time. The mother last saw L in early December, the father in early January.
3. The local authority today ask that a final care order and a placement order are made, so that L can be placed for adoption alongside her brother. That application is supported by the children's guardian. The parents have not come to court today and have not seen their solicitors to prepare final statements telling me what they want to happen. The parents share an email address and everyone involved in this case has used that to try to contact them. An email came from that address a few days ago saying was to the effect that the mother was not happy with L being adopted but that is all we know. I have therefore been left today in the position of making final decisions for this little girl without any input from her parents.

The Parents' Non-attendance

4. As I said, the parents have not come to court today, and indeed have only come to one hearing before me during this case although they came to one early hearing before another judge. The local authority's plan became one of adoption towards the end of last year and an application was made to the court for a placement order to be made, permitting the local authority to place L for

adoption. The parents have not been in touch with their solicitors since the time that was issued and at today's hearing I was asked to say that they had been properly served with the papers by way of email. The one consistent way of communicating with the parents during these proceedings has been to a single email address they use. The parents have moved house and changed mobile phone number but this has always been understood to be their email address. The local authority therefore has sent the court papers, translated, to that email address on more than one occasion without any reply from the parents. At the same time they employed a process server who went to the parents' last address, to find they had left there and he has been unable to trace them. An attempt was made to get an up-to-date address for the mother from the criminal courts without success. Neither parent is now going to see L so it has not been possible to catch them on those occasions. The one successful contact with the parents was when the guardian emailed them. Some of her emails had been ignored but one produced a reply on 7 February. The wording of that email was "Hi [guardian's name] X my not happy with L going adoption". The guardian replied very clearly that the couple needed to come to this hearing and to contact their solicitors and the solicitor for L sent a similar email. They were warned that I would be asked to make the order that L could be adopted but nonetheless they have not come.

5. I am very conscious of the importance of parents being aware of adoption proceedings. The relevant rules are set out simply in a case of *Re T (A Child)* [2017] EWFC 19 and I acknowledge that a court must have proper evidence of attempts made at service before deciding if it should dispense with service of papers on parents in a case such as this. In fact I do not need to go that far as I am satisfied the parents are aware of this hearing and of the application for a placement order because of the documents which were emailed to them and their response to the guardian. **I therefore deem the parents to have been properly served with the placement order application.** As a result this hearing has continued in the absence of the parents who have chosen not to come to court.

The Issues and the Evidence

6. In preparing for this hearing I have read the papers provided to me in this matter. It is a case I know well as I have been responsible for it throughout its time in court. I have to decide today whether the local authority can prove that the threshold criteria were met when this case began, which requires me to

look at what the situation was at that time and whether L had suffered or is at risk of suffering significant harm as result of the care she had received would be likely to receive. The test is set out in s31 Children Act 1989. I have considered the written evidence of the local authority when deciding if the threshold criteria are met. The burden of proof lies with the local authority in showing that it is more likely than not that those things happened.

7. The local authority says that the mother is no more able to look after L than she was any of her older children. The details of her situation when the older girls were removed is set out in the threshold criteria which are at the end of this judgment. The local authority says that the mother continues to shoplift and indeed only at the end of last year was convicted of further offences. As result of that conviction she received a twelve month community order to engage with probation but has only attended one of the two appointments she has been given to date.
8. The mother has also been found to be using drugs, methamphetamine, something she denied. Test results from last year showed an extremely high level of methamphetamine use together with a positive result for cocaine, quite possibly from exposure to the drug through others using around her. The mother however denied using to the social worker until confronted with the test results. She then accepted some use but says it was at a lower level than the test results show and she could not explain the cocaine. She said that she would take help to stop using drugs but did not pursue a referral made to a local agency. Neither parent sees any issues with the mother using drugs. The father indeed suggested during an assessment session he thought it might make her a better parent.
9. There were concerns about the possibility that the father was using drugs as well and an order was made early in these proceedings for him to undergo hair strand testing. He has never cooperated with this. This was raised at the only court hearing he came to before me, back in October of last year. I warned him then that if he did not cooperate I might be asked to assume that he was hiding drug use and I made very clear to him how important it was that he cooperated. He has not done so and the local authority and guardian ask me to say that this means he is indeed using drugs. Given the very clear warning I gave to him and that fact that since then the test has not been carried out, I do draw this inference.

10. The social worker tried to do a parenting assessment but the parents missed a lot of the sessions. The social worker took the information the local authority had managed to get from the parents from before L's birth and put it with the little bit of extra information they had got from the assessment sessions the parents did attend, and used that to do the best they could to look at the parenting abilities of the mother and father. The local authority assessment concluded that there were still many areas where the parents showed they could not put a child first or meet its needs. When it was first learned last year that the mother was pregnant with L, late in her pregnancy and due to the police being involved due to a criminal matter, the conditions the parents were living at the time would not have been suitable for a child, not least because the accommodation was shared with others and drug paraphernalia was seen. The parents have since moved twice, once to a small bedsit and now to another address unknown to local authority, having left their previous property without paying the landlord what was due. They struggle financially. It seems the father works at times but his emotional health has been affected by these court proceedings and that may have had an effect on how much he has worked. The mother is not able to have any public funds in this country and seems to have shoplifted when she has needed money.
11. The fact that the parents have not turned up to meetings with the social worker or with the guardian is not a good sign. They have at times been hostile towards professionals. In the meetings they have not always been honest and at times have both given different explanations for issues such as not coming to see L. In contact they have not always taken advice from the person supervising the contact.
12. The guardian and the social worker say that L could not live safely with her parents, given how nothing has improved since the last child was removed from them. There are no people within the family who could care for her. The mother's family has been looked at previously without success and the father says there is nobody in his family who could care for L. As a result the local authority says the only option is for L to be placed for adoption. One real positive in their plan is that, provided this is approved by a matching panel, L will be placed with her older brother and will then have contact with their older siblings in this country who are also adopted. That will have the real benefit of making her part of her birth family in the only way that is possible. The social worker and guardian in their final documents for the court look at

the options for L and both reached the conclusion that, balancing all the positives and negatives of these, the right thing for her is for her to be adopted.

13. The guardian concluded in her report : “It is my view that [X] has been unable to make significant changes. The assessment of [Y] highlights concern in relation to his honesty, his willingness to provide evidence to assist the Court in making its decision, to seek help regarding his personal difficulties and a lack of commitment to his daughter. I have no doubt that [L’s] parents love her very much and are deeply upset at the situation they find themselves in. However, it is my view that the parents’ personal difficulties are such that they are unable to meet [L’s] needs.”

Threshold

14. I am asked by the local authority to adopt the findings made in the earlier court proceedings regarding the older siblings and in addition to make findings in respect of the parents in relation to L. The local authority says if I find those factual matters proved then I can be satisfied that the threshold criteria are met. Having looked at the written evidence, unchallenged as it is by the parents, I am satisfied that those facts are proved and that the threshold criteria are met; they are set out at the end of this judgment.

Decision

15. I now turn to consider what orders if any are in the best interests of L. I start very clearly from the position that, 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”.
16. 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 L,

taking into account the assistance and support which the authorities or others would offer.

17. In reaching my decision I have taken into account that L'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 of L 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 L's rights and be proportionate.
18. A placement order is sought by the local authority in respect of L. The court cannot make a placement order unless the parents have 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.
19. The question for me here is whether L could live safely with her parents and if not should she be adopted. I have to balance the pros and cons of each of the options for her. McFarlane LJ (as he then was) 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 I propose to consider the evidence in the light of those factors.
20. Were L to live with her parents she would indeed suffer harm as the older children did. Her mother has same problems she did then and she shows no willingness to deal with these, in particular her criminal behaviour and drug misuse. Neither parent seems to see this as a problem when bringing up a child. The parents continue to live a chaotic lifestyle, with various house moves including inappropriate accommodation. The father is struggling emotionally and has not taken advice to get medical help to deal with this. L's day to day needs would not be properly met in her parents' care and she is a young and vulnerable baby who requires everything to be done for her by those bringing her up. Living with them would have the great advantage of

keeping her cultural heritage alive and her language skills, both of which she would lose she were adopted. She will also lose her relationship with her parents, a very sad thing for any child.

21. Placement for adoption though would mean that L's needs would be met by her adopters. She would be living with her brother and in contact with two of her older siblings. There would be the potential for her suffering emotional harm through a sense of loss by being adopted, although that could be lessened or indeed avoided by good life story work being done with her by a social worker before she is placed and then by her adopters.
22. I have to think about what L would want but of course she is too young for us to ask her. I can only assume that she would want to grow up in her birth family if that were safe.
23. There will be change for L whichever decision I make because she will need to move from her current foster carers. Change cannot be avoided but harm as a result of change can be minimised by proper planning.
24. I am of course aware that making a decision that a child should be adopted interferes with her rights and her parents' rights to a family life together. Here though I am satisfied such a decision would be proportionate when I balance their competing rights.
25. In this case, having carried out the balancing exercise that I must, I am satisfied that there is no realistic prospect of L being returned safely to her parents' care, and that her needs for stability and permanence can only be met in an adoptive placement. I am satisfied that the local authority's final care plan for L is proportionate 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.** I am also satisfied that L's welfare requires me to dispense with the parents' consent to placing her for adoption, the word "require" here again having the Strasbourg meaning of necessary, "the connotation of the imperative". **I therefore make a placement order authorising the local authority to place L for adoption.**
26. There is one further direction I wish to make. 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, 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 L up. **I**

propose therefore to make a direction that this judgment must be released by the Local Authority to L's adopters so that it is available to her in future life; that release however is on the basis that it should not be disclosed beyond them or any medical or therapeutic staff working with the child or family. It is very important therefore that the judgment is passed on to the Adoption Team to give to them. I have written this not for the benefit of the adults but for L and wish to be sure it reaches her.

27. And I remind myself, judges are often told that a willingness by adoptive parents to talk about a child's birth history can show children that their adoptive parents understand and accept them and their birth families as part of who they are. It can help children feel that their identity with their adoptive parents and their birth identity are not separate but part of a whole. Children, we are told, may need explicit reminders that their adoptive families accept and embrace their histories as part of who they are now. They need to know that they can ask questions and talk about their birth family as part of coming to terms with what they have experienced. Obviously ultimately that is down to L's adopters; all I can do is pass on what I have been told.

28. Finally **the Local Authority should file its amended care plan in seven days.** I also make an order for **public funding assessment** for all the respondents in this matter.

THRESHOLD FINDINGS MADE BY THE COURT

At the time protective measures were taken L had suffered and was likely to suffer significant harm in the form of physical and emotional harm, and neglect, and that the harm or likelihood of harm was attributable to the care likely to be given to her if an order were not made, not being what it would be reasonable to expect a parent to give.

The following findings of fact are the proof of the above :

A. The following findings were made by the court on 21.12.17.

Neglect and emotional harm

1. Three of the children of X, namely R, S and T, were the subject of care and placement orders made by Leeds Family Court in 2017 and 2018. The Applicant relies upon the findings made in those proceedings with respect to S and R :

1.1 Neglect and emotional harm and failure to protect

1.1.1 X has repeatedly been caught shoplifting, resulting in her spending periods in police custody and so being unable to care for R and S.

1.1.2 X has taken the children with her when she had been shoplifting, placing them at risk of emotional harm.

1.1.3. On 8th December 2016 X was arrested and in police custody. During this period, the whereabouts of R were unknown as X denied to the police that she had a child this was neglecting R and a failure to protect her. Consequently, R was likely to suffer physical harm, emotional harm and neglect.

1.2. X's behaviour has been erratic and her lifestyle has been chaotic lifestyle arising out of the following:

1.2.1 X and the children have lived at 12 different addresses in the period
August 2014 to May 2017

1.2.2 X has not engaged fully with the Child Protection Plan first put in place
on 30th March 2016

1.3 X has neglected the health needs of the children:

1.3.1. On 30th January 2017, X attended A&E with R who was suspected of suffering a febrile convulsion. X attempted to leave hospital with R before she was seen by medical professionals

1.3.2 X failed to engage adequately with midwifery support until she was 33 weeks pregnant.

1.4 X has struggled to manage R's behaviours to impose boundaries and model appropriate behaviour and accepts that she has not always engaged with services and that there has been a lack of consistency for the children.

1.5. X has allowed different adults to parent the children. On 18th May 2017, X left R and S overnight in the care of two adults who had no relationship with the children. X was not contactable. On the afternoon of 19th May 2017 the police took the children into Police Protection as the police officer had reasonable cause to believe that the children would suffer significant harm if left in the home.

1.6. Physical and emotional harm

There has been domestic violence between X and Z in the presence of R including police call outs on 16th June 2016, 17th June 2016 and 22nd July 2016. In February 2017, X agreed to Z having no contact with R but he went into the family home in

March and April 2017, observed by CSWS and GRT. X therefore failed to take steps to protect herself and the children from him. R has suffered emotional harm by witnessing these disputes and both children were likely to suffer further such harm and physical harm by becoming involved in any domestic disputes

As a result of the above, at the relevant date, R and S were suffering and furthermore were likely to suffer significant harm in the form of physical harm, emotional harm and neglect.

B

2. As evidenced by the pre-birth assessment of 20 June 2019 concerning L, X has not achieved any significant change in her lifestyle and parenting skills since the orders were made for her elder children and as a result L is likely to suffer the same harm in her care as was found in relation to the elder children

3. X neglected the health of L, pre-birth, by failing to attend antenatal care until her first scan five days before L was born six weeks premature. It follows that it is likely that she will neglect L's health care now that she is born.

4. i. L has been exposed to substance abuse in the womb including as evidenced by;

a. a positive amphetamine test in March 2019 and

b. drug paraphernalia observed by the police and social workers on 14.06.19 at the home.

ii. Following L's birth X tested positive with regard to the use of methamphetamine in September 2019.

iii. L is likely to suffer significant neglect and emotional harm due to exposure to her mother's drug abuse including that her mother is likely as a result to be unavailable to meet L's needs, either financially or practically.

5. X and Y failed to engage in the PLO pre-proceedings process, nor fully engage with the pre-birth assessment. It is likely that they will continue not to work openly and honestly with professionals and this is likely to cause the child to suffer neglect and emotional harm in the light of the previous findings.

6. X neglects herself by having no identity documents and as a consequence there are barriers to her accessing services and benefits and she has no recourse to public funds. It follows that she is likely to neglect L's needs.

7. X has a long standing criminal history that includes burglary and robbery. Given that she has no recourse to public funds she is at risk of further offending and this is likely to cause her to neglect L.

As a result of the above, L is likely to suffer significant harm in the form of emotional harm and neglect.