

Warning

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Ref. BS20C01855

IN THE FAMILY COURT AT BRISTOL

9th DECEMBER 2021

Before:

HIS HONOUR JUDGE WILDBLOOD QC

BETWEEN:

GLOUCESTERSHIRE COUNTY COUNCIL

Applicant

-and-

The mother

First Respondent

-and-

The father

Second Respondent

-and-

The child

By a guardian, Ms Sue Lee

Third Respondent

JUDGMENT

Re GCC (A child: Adoption with contact)

MR D O'BRIEN appeared on behalf of the Applicant

MR H JONES of Humfrys Symonds appeared on behalf of the First Respondent

MS L REED appeared on behalf of the Second Respondent, instructed by WSP Solicitors

MS M GALLAGHER appeared on behalf of the Third Respondent, instructed by Daniel
Woodman Solicitors

JUDGE WILDBLOOD QC:

1. This is an extemporaneous judgment. It is a case where the local authority seeks care and placement orders. The father seeks a parental responsibility order and a parentage order. There is agreement that if a placement order is made, there will be a reduced level of contact by which contact will reduce to a fortnightly arrangement until the child concerned is placed with prospective adopters and that post-adoption, there would be direct contact once a year for both parents and indirect contact twice a year. That contact is agreed if the orders sought by the local authority are made. It is agreed that that level of contact would be recorded in the care plan, rather than being a matter that is ordered by the court.
2. As to the other aspects of the case, the mother has not given her formal consent to the making of a placement order but has stated that she agrees with it. The father wishes the court to reach its own conclusions on the local authority's applications, but does not seek to argue against them. All parties accept that the orders for parental responsibility and parentage, as sought by the father, should be made.
3. I have given this judgment in anonymised form. The parties wish it to be published. It is an example of the sort of case that frequently comes before the Family Court, but it is also an example of a case where there is agreement for post-adoption contact if a placement order is made.
4. The child concerned in this case is at an age where the child will soon be referred to as a toddler. This is the first child of both parents. Since 12 April 2021, the child has lived with the same foster carers. Contact has taken place for each of the parents for one hour, twice a week. As to the parents, the mother is in her late teens. The father is in his 30s. They are no longer in a relationship together.
5. Before dealing with any further detail of the case, I want to record the position concerning parental responsibility for the father and the making of a parentage order. Concerning parental responsibility, I have to consider whether such an order is in accordance with the paramount welfare of the child and by case law, I have to consider the father's connection with the child, his attachment to the child and his reasons for applying for the order under section 4 of the Children Act 1989.

6. As the brief details of the case will reveal subsequently in this judgment, it is plain that the father satisfies those three factors and that it is in the overall paramount interests of this child for a parental responsibility order to be made. It will be important in the future for the child to know that the father has been fully recognised in his role as father. The making of a parental responsibility order will also confer a status on this father within the application for a placement order and imposes continuing duties towards him if the adoption process comes forward.
7. In relation to the application for a parentage order, that arises within the context of section 55A of the Family Law Act 1986. It is necessary to make specific reference to subsections 1, 3, 4 and 7 of that section. They state as follows, one: “Subject to the following provisions of this section, any person may apply to the High Court or the Family Court for a declaration as to whether or not a person named in the application is or was the parent of another person so named.”
8. By subsection 3, it is provided that: “Except in a case falling within subsection 4 below, the court shall refuse to hear an application under subsection 1 above unless it considers that the applicant has a sufficient personal interest in the determination of the application.”
9. Subsection 4 states: “The accepted cases where the declaration sought is as to whether or not (a) the applicant is the parent of the named person, (b) a named person is the parent of the applicant or (c) a named person is the other parent of a named child of the applicant.”
10. Subsection 7 provides: “Where a declaration is made by a court on an application under subsection 1 above, the prescribed officer of the court shall notify the Registrar General in such a manner and within such period as may be prescribed of the making of that declaration.”
11. The rules governing such an application are found within the Family Procedure Rules 2010 and the relevant rule for these purposes is rule 8.22 of those rules. Rule 8.22(2) states: “A court officer must send a copy of the declaration of parentage and the

application to the Registrar General within 21 days, beginning with the date on which the declaration was made.”

12. It is then necessary to turn to section 14A of the Births and Deaths Registration Act 1953. That provides as follows:

“(1) Where in the case of a person whose birth is being registered in England and Wales, (a) the Registrar General receives by virtue of section 55A(7) or 56(4) of the Family Law Act 1986, a notification of the making of a declaration of parentage in respect of that person and (b) it appears to him the birth of that person should be reregistered, he shall authorise the registration of that person’s birth and the reregistration will be effective in such a manner and at such a place as may be prescribed.”

13. The child is named as a person within the application. The father is the applicant and is therefore a parent of a named person who falls within section 55A(4)(a) of the Act. In relation to the merits, Ms Lucy Reed, who appears as the counsel for the father submits as follows: *“(a) DNA testing proves the fact of parentage. (b) The father has sufficient interest. (c) There is no welfare reason to refuse the application. The applications both have important potential welfare benefits for the child in terms of the child’s identity.”* Ms Reed argues that an order would then give discretion to the Registrar to amend the register when the Registrar thinks it should be reregistered, but there is no reason to think that that discretion would or should not be exercised in this case.
14. I asked Ms Reed to help me as to what additional benefit would be conferred by a parentage order as above a parental responsibility order. Ms Reed states, and the other parties accept, that it is, as Ms Reed put it, a belt and braces approach, to make sure that every angle is covered. But also, it is argued that the amendment of the birth certificate following the declaration is an important step in relation to the child’s future so that matters should be properly and fully recorded that this father is the father of the child.
15. I accept those arguments and make the parental responsibility order and the parentage order that is sought. I need to emphasise, however, the importance that any reregistration in relation to this child is not delayed. It would be quite wrong to see any adoption process delayed whilst the reregistration process works its way through the system. So, I ask that the reregistration process should move swiftly and I agree with Ms Reed and the other parties that there is no perceivable reason why the register should not be amended in accordance with the statutory provisions that I have stated.

16. In relation to the proposal that this child should be placed for adoption with the continuing contact to the parents, the local authority has produced evidence that I would like to cite at this stage of the judgment. In a position statement, the local authority states this:

“The team manager has been informed that during the adoption process, all adopters are encouraged to accept contact. If the court were to make a placement order, only prospective adopters who support contact will be approached. Post-adoption, the expected level of contact would be one direct contact per parent per year, two indirect.”
17. There is also a statement from the team manager of Adoption West, which includes this passage: *“A search performed on 7 December 2021 reveals the pool of potential adopters to be 788. The pool of potential adopters if direct contact is stipulated is 291, on which 34 are within agency.”*
18. Let me now say more about the details of the case. The local authority is Gloucestershire County Council. It issued these proceedings for a care order on 5 October 2020. Having issued that application, it then issued a subsequent application for a placement order. The child’s guardian is Ms Sue Lee. She has been involved throughout these proceedings and has written a detailed final analysis, which is dated 2 December 2021. It gives very careful consideration to the applications before the court and supports the local authority in those applications.
19. Referring briefly to the chronology of the child’s care arrangements, within a few days of the child’s birth, the mother and child were placed together in a residential centre. After about a month, the mother and child moved to another centre for the purposes of assessment. Shortly after the mother and child moved there, the father joined them. After about three months, the mother left the assessment centre to live in semi-independent accommodation that is provided for adults with mental health difficulties. She still lives there for three days per week, apparently with her current partner. At that stage, the child remained at the assessment centre with the father.
20. After two months, that arrangement broke down and the child moved into foster care. The father had been asked to leave the assessment centre for reasons that I do not need to go into in this judgment. Those reasons are all recorded in the very full documentation

that I have read. Since the child moved into foster care, it is said that the child has been thriving. The child will have to move to other carers if the orders sought are made.

21. Turning to the mother. The mother had a very difficult childhood and spent time herself in foster care as a teenager. There were very many placement breakdowns and she experienced considerable difficulties, including becoming involved in drug use. Her mental health became poor and she spent time in a psychiatric hospital. She has been diagnosed as suffering from complex post-traumatic stress disorder and a disorganised attachment disorder. She has a history of self-harming. It is said that when her mood is low, she becomes unmotivated and disengages.
22. There has been a full psychological assessment of the mother by an experienced psychologist. In relation to her cognitive function, it is said that her level of cognitive functioning is unlikely to fall below the low average range with some facets of her cognitive functioning, specifically her memory and reading ability and possibly her non-verbal skills being somewhat superior to this. Thereafter, there was a full psychological assessment of the mother and that concluded that the mother would struggle to provide good enough parenting to a child.
23. Turning to the father, he lives in independent shared accommodation and is in employment. He has a learning disability and is said to have a range of difficulties in relation to the parenting of a child. Those are all set out in the documents that I have read. As a child, he attended a special needs school. The conclusion of a psychologist was that although the father might be able to meet the child's needs in a highly supervised setting, he would not be able to do so otherwise. There is a very full report from the assessment centre about the difficulties that arose there in relation to the father. That led to a further professional assessment of the father and also to a parenting assessment by an independent social worker using what is called the Parenting Assessment Manual software first devised by Dr Sue McGaw.
24. Finally in relation to the father, there was a report dated 30 November 2021 by a Mr Tomasz Wierzbicki. He is an independent childcare consultant who assessed the father as to whether he might be supported in caring for the child as part of an 'in the home assessment'. The conclusion of the report by Mr Wierzbicki was negative.

25. Turning to the legal considerations, the first question that I have to ask is whether the threshold criteria in section 31(2) of the Children Act 1989 are fulfilled. All parties accept and I find that the criteria in that subsection are fulfilled on the basis that as of 5 October 2020, when protective measures were first taken in relation to the child, the child was likely to suffer significant emotional harm.
26. The threshold criteria having been crossed, I now have to consider Article 8 of the European Convention on Human Rights, sections 52(1)(B) of the Adoption and Children Act 2002 and section 1 of the same Act. Of course, there are other ancillary statutory provisions that a court must apply. Further, there is case law that must be considered.
27. Under Article 8 of the European Convention on Human Rights, a local authority must demonstrate, in proceedings of this nature, that the orders that it seeks are: i) necessary to protect the welfare, rights and freedoms of the child; ii) proportionate to the proven circumstances of the case and iii) legal.
28. Legality in this case is satisfied if the orders are made in accordance with the statutory provisions of the Adoption and Children Act 2002, which are compliant with the Convention. As to case law, I only intend to refer to the Supreme Court decision of *Re B* [2013] UKSC 33. Orders of the nature as sought by the local authority should only be made as a last resort, where the local authority has demonstrated in the proven circumstances of the given case that no other orders compatible with the welfare of the child can be made.
29. In my opinion, the jurisprudence from case law might be condensed into a single sentence. Nature of law and common sense require it to be recognised that the best place for a child to live is with a natural parent, unless proven and proportionate in necessity otherwise demands.
30. Under section 21(3) of the Adoption and Children Act 2002, it is provided that:

“The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied (a) the parent or guardian has consented to the child being placed for adoption, with any prospective adopters who may be chosen by the local

authority and has not withdrawn the consent or (b) that the parents or guardians' consent should be dispensed with.”

31. Under section 52(1)(b) of the 2002 Act, it is provided that: “The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption unless the court is satisfied that the welfare of the child requires the consent to be dispensed with.”
32. In the case of *Re P (Placement Orders: Parental Consent)* [2008] 2 FLR 625, the word “requires” was stated by the former President, Sir Nicholas Wall to have a connotation of the imperative. That is what is demanded rather than what is merely optional or reasonable or desirable.
33. The analysis of the child’s welfare has to be conducted by reference to section 1 of the Adoption and Children Act 2002. By section 1(2) of the Act, the paramount consideration of the court must be the child’s welfare throughout the child’s life. In considering the welfare of the child, the court must consider the welfare checklist, section 1(4) the 2002 Act and must weigh up the pros and cons of each realistic option for the child in a holistic, rather than linear evaluation.
34. What are the realistic options in this case? The mother accepts that the orders the local authority seeks will be made and that she is not in a position to care for the child herself. Like the father, she wishes to emphasise her love for the child and the depth of distress that it causes her that matters have reached this stage.
35. The father wishes to emphasise that he would very much wish to care for the child and asks the court to reach its own conclusions on whether he might be able to care for the child. He recognises, as I have said, that the court is highly likely to conclude that he cannot and does not actively oppose the conclusion.
36. I wish to emphasise that it is no fault of these parents that it is suggested that they cannot care for their child, and the positions in which they both find themselves must attract the greatest degree of sympathy and compassion. This is a truly heart-breaking position for both of these parents to find themselves in. They both say with total sincerity that they

accept their wish that the child may have a happy and fulfilled life in the future if the way ahead is through adoption.

37. I am going to turn very briefly to the welfare checklist in section 1(4). In my opinion, all of the evidence demonstrates very clearly that despite his wishes, the father would not be able to meet the needs of the child. If the child is placed for adoption following the making of a placement order, there is every reason to think that the child's needs will be met. That is the only way in which this child will know a secure childhood and be able to develop through that childhood into an adulthood where the child will know that the emotional support and devotion that is necessary will have been provided.
38. I turn to the effect on the child of having ceased to be a member of the original family and to become an adopted person. The child will lose the benefit of living within the natural family, which in all other circumstances will be a place where the child should grow up. But in these circumstances, the likely effect on the child of becoming adopted will be the child will have a satisfactory childhood, which would otherwise be denied.
39. The child is still young and there is clear research that placements for adoption at this stage of a child's development only very rarely break down. And so, if a placement order is to be made, now is the time for that to occur. The child has a background where, in my opinion, every conceivable effort has been made to find a way in which the parents might care for the child but sadly, it has not been possible to find a way through that. If the child were to live with either of the parents, there is no doubt that the child would not be cared for adequately and would suffer significant emotional harm.
40. This is a child who has loving parents who want to care for the child. But despite their wishes and feelings towards the child, the parents simply cannot care for the child. I therefore turn back to section 52(1)(b) of the 2002 Act. I dispense with the consent of both parents to the placement of the child for adoption and I consider the child's welfare renders it imperative that I do so. On a welfare basis, I make a placement order and as is necessary, I make an underlying care order. I have already recorded that I made the order sought by the father concerning parental responsibility and parentage. I approve the arrangements for contact.
