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Neutral Citation Number: [2023] EWFC 63 (B)

IN THE FAMILY COURT
SITTING AT BIRMINGHAM

Case No: BM21C00140

Birmingham Civil Justice Centre
33 Bull Street
Birmingham
B4 6DS

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

Y (a child) DOB 2013
H (a child) DOB 2012

Date: 27 February 2023

Before:

HER HONOUR JUDGE CARTER

Counsel for the Local Authority: Miss Collinson, leading Miss Campbell
Counsel for the Mother: Mr Abberley, leading Mr Legg.
Counsel for the Children: Mr Rogers

JUDGMENT

Introduction:

1. In this case I am concerned with two children H and Y. H was born in 2012, and therefore is aged 10. Y was born in 2013, and therefore is aged 9.

Parties and their positions:

2. The mother of both girls is M. H and Y's fathers have played no role in these lengthy proceedings, although they have notice in relation to them and had every opportunity to do.
3. The application before the court is for care orders in respect of H and Y.
4. The mother opposes the application for a care order in respect of H. She seeks to continue caring for her. In relation to Y she accepts that although she would very much want her to be returned to live with her, given her lack of acceptance of the court's findings in relation to Y's care, and M's own difficulties, that is not an application she is able to pursue.
5. The guardian supports the applications made by the local authority.

History:

6. There is some history to this case, and this judgment must be read in conjunction with the judgment I handed down on the 15th August 2022. That also sets out the history of this matter up until that point.
7. Since that judgment was handed down, directions were given. They included by consent an agreement for the mother to be further assessed by a psychologist, and for her to prepare a psychological report and risk assessment. It was also agreed that an independent social worker would carry out a parenting assessment using the PAM's model for the ability of the mother to care for the children.
8. I have also had to determine difficulties in the placement in relation to Y, which has eventually resulted in her being in a foster placement at some distance away.

9. The mother filed a response to the judgment on 30 August 2022, in which she sets out that she disagrees with many of the findings.

10. The psychological report was filed on 7 November 2022, and the parenting assessment was filed on 12 January 2023. That report was filed slightly late as there had been some missed appointments, but the local authority filed their final evidence on 25 January 2023, and the mother filed her final evidence on 7 February 2023. The original guardian has most unfortunately been signed off sick, and has not returned to work, but I am grateful to both the management at Cafcass, and the new guardian who within a very short space of time was able to get to grips with this matter, undertake a significant number of visits, and then to file her report just before the hearing commenced.

Threshold.

11. The threshold in relation to both children was amply crossed by the findings made previously in this matter.

12. However, if the threshold is met that of course is just a gateway through which the whole range of orders under the Children Act becomes available to the court. In determining whether in this case I should make a care order, if any order, I must assess the totality of the evidence as to whether it would be right for H to be cared for by her mother.

Evidence:

13. The evidence is set out within the court bundle, which has been substantially reduced from the bundle for the finding of fact hearing, but still amounts to some 1800 pages. I have read all the papers. I heard evidence over 4 days. I heard from the forensic psychologist, the independent social worker, the currently allocated social worker, the mother, and the guardian.

14. Turning then to the evidence in relation to the issues in the case:

The mother's response to the finding of fact judgment.

15. Unsurprisingly, the mother sets out that she found the judgment in relation to the finding of fact hearing overwhelming. Inevitably, it was a lengthy and detailed judgment given the breadth and depth of the matters that were explored in that hearing.

16. In addition, many of the findings I made will have been very challenging for the mother to try and accept and understand, and partly that is due to her cognitive abilities. Another part is that mother is, as I set out on a number of occasions, utterly convinced that she is right, she knows the best thing to do for her daughters. The judgment is therefore very challenging for her.
17. The psychologist spent some time going through important aspects of the finding of fact judgment, and the mothers responses and sets out that even when challenged she maintains her stance that much of the judgment is incorrect, and that her actions were right and reasonable. Furthermore, the mother when asked about a number of specific findings and whether she would act differently in the future is clear that she would not.
18. The mother makes it clear that if Y were to be returned to her care, she would wish to continue to care for her in very much the same way, including performing a number of the medical procedures upon her that I found were both unnecessary, intrusive, and painful for Y. When the mother gave evidence in this hearing, she confirmed that is the case. In the mother's statement she sets out her wish to be able to work with medical professionals involved with Y, but nothing appears to have changed. On a number of occasions she directly disagrees with clear findings made after hearing extensive and in reality, utterly overwhelming evidence. In her oral evidence she discussed how she would still want to check Y's blood sugar levels, and retain a machine to do that. She repeated that she thought that if Y was 'pushed too far', in what she did she may regress, and although the mother was reminded that the evidence was clear that did not happen, and there was a specific finding made in relation to that, she carried on in her view. She told the independent social worker that she would continue to use eg the hoists and lifts for Y, and not allow her to climb the stairs, although Y now climbs the stairs herself daily with no problems in her foster placement.
19. Another of the problems is illustrated by way of an example in the independent social work report. The mother carried Y into the contact room when she was being observed, and set her down. At the end of the contact Y got up and walked out of the contact room, clearly to the surprise of the independent social worker. When she challenged the mother as to why she had carried Y, the mother then denied that she had carried Y into the room. In her oral evidence the mother accepted that she had indeed carried Y into the room, but now said that this was because Y was very tired. This neatly illustrates another of the significant difficulties in the mother being able to appropriately meet both children's needs, as her version of events frequently changes, and does not reflect the reality of the situation.

20. The mother does say that she wants her family back together, and she wants to work with everyone for that to happen. She understandably sets out that she wants both children to be happy, and to thrive in life and to have the best experiences.

The mother's overall ability to meet the needs of H and Y.

21. I am conscious that when Y was in the mother's care, she required very extensive amounts of the mother's time. She is a child who needs to be constantly watched, and indeed certainly when she was younger, she had a number of life-threatening incidents. It is inevitable therefore, that H at times had her needs not met as fully as they might have been had the mother not been extremely busy caring for Y. I bear that in mind and the very significant pressures upon the mother over a period of years in relation to the matters I set out in this judgment.
22. The court now has the benefit of an extremely thorough parenting assessment carried out by the independent social worker. I have reminded myself of the parenting assessment carried out by the previous social worker employed by the local authority in 2017.
23. Within the 2017 report there is a list set out of the 'main issues' that concerned that social worker. It is notable that many of those issues set out in list form there echo the concerns now. They include concerns of the mother not being able to listen to medical professionals, issues with health which had not been substantiated by other professionals, the mother putting trust in new friends quickly which could pose a risk to the children, the mother reporting difficulties with her medical conditions, concerns about the consistency of the home conditions, the mother not being able to consistently use parenting strategies she has been taught, and that her mental health appears to impact upon her parenting.
24. The formulation of that assessment set out that the mother was struggling to manage the parenting of both children. Many of the matters that caused concern in relation to that parenting assessment have now been dealt with within my previous judgment. In relation to the mother's ability to provide good enough parenting, that report sets out the number of times that the mother has attended parenting courses, and yet also sets out the difficulties that the mother experienced in parenting H.
25. On internal page 28 of that report from 2017 the following paragraph appears:

“My professional opinion is that both children are at risk of significant harm due to the inconsistency in the care that is provided to them. [Y] is at risk of significant harm due to the occasions that medical advice is not sought in a timely way which puts her at higher risk of seizure.

[M]'s behaviour does not help with discharges and she often contradicts herself by saying the hospital neglect [Y] but refuses to take [Y] home. [Y] is impacted upon by this as she is not receiving consistent care that promotes her physical and emotional development. It is unlikely that there will be any vast change in [M]'s behaviours until she accesses appropriate mental health assessment.

[H] is at risk of significant harm due to [M]'s lack of knowledge about the risks posed to [H] by people [M] trusts to look after her. [H] is also at risk due to the lack of consistency in the parenting that is provided to her which means her emotional needs are not being fully and consistently met".

26. It can be seen that that mirrors almost entirely the continued concerns in relation to H.
27. The formulation of that social worker in 2017 was that both children were at risk of significant harm due to the care being provided to them. In particular in relation to H, that report sets out that the mother's lack of knowledge about the risks posed to H by people that the mother trusted to look after her posed a risk to her. The report also set out that H was at risk due to the lack of consistency in the parenting that was provided to her, which meant her emotional needs are not being fully and consistently met.
28. Care proceedings were not commenced at that time, but the local authority have worked with the mother since that point.
29. The independent social work report filed recently in this matter deals with the mother's ability to care for both children, and concludes that it would not be safe for her to care for either or both of the children. The independent social worker specifically confirmed, that even if the mother accepted Y would not return to her care, she still recommended that H was removed from the mother's care.
30. She also at paragraph 4 of her report sets out a list of issues, in which she repeated many of those from the 2017 report, and then has added further issues and difficulties.
31. That is a lengthy and thorough report, which reaches extremely clear recommendations. Although the independent social worker was carefully cross-examined on behalf of the mother, she did not change her views in relation to any aspect of it.

H and Y's Health needs.

32. My previous judgment has made it clear that the mother has not been able to manage Y's health needs, and indeed has caused her significant harm. The mother accepts by her stance about

caring for Y that she is not able to meet Y's overall health needs, although if challenged about many of them as set out above she would struggle to accept individual matters.

33. H has far fewer health needs. She does however have a diagnosis of coeliac disease. It is most concerning that there have recently been a number of missed appointments in relation to that, when it is very important she is seen by a dietician. The mother was asked about this in her evidence, as there had been two missed appointments, and a 3rd appointment booked for 14 February 2023. Although we had started to hear evidence on 13 February, it had been known for many months that the Court was not sitting on 14 February. When the mother was asked about this in cross examination she said she had cancelled that appointment because of the court hearing. She was challenged that it had been known ever since this hearing was booked that the Court was not sitting on that date. She then changed her evidence to suggest that she had a different appointment and was attending at the dentist on an emergency basis.
34. The reality is that this type of evidence very clearly mirrored much of her evidence given previously at the finding of fact hearing. Mother's evidence would often change when she was challenged, and she had no real explanation as to why she had not been able to prioritise matters such as that appointment for H. This is simply a continuation of the pattern of her parenting.

Assistance offered to the mother in relation to her parenting.

35. One of the matters that I must obviously consider carefully, particularly given the difficulties that the mother has with her cognitive functioning, is the extent to which she has been assisted by the local authority and other agencies in relation to her parenting.
36. In the parenting assessment that was carried out in 2017, it is clearly set out that at that point the mother has done a number of courses such as the Triple P parenting course. She has subsequently repeated more courses. The independent social work assessment carried out for this hearing makes it clear that the mother can demonstrate a great deal of knowledge in respect of parenting domains, but she does not put that knowledge into practice to the detriment of the children.
37. At paragraph 13.12 of the independent social work assessment she sets out as follows:

“[M] has completed a significant amount of teaching programmes and received a significant amount of support and advice in respect of her parenting and how to care for her children. Yet despite the levels of support [M] still believes she requires further and additional teaching.

[M] throughout the assessment has been able to demonstrate she has gained some knowledge from these programmes, yet the changes have not been seen and are minimal. [M] will say it is because she is not able to remember all the advice and learning and whilst this may be true in some areas that would not explain why she has the knowledge. [M] does not appear to consistently follow through with the teaching she has learnt and struggles to transfer the teaching into practice. Unfortunately, [M] also believes that [H]'s behavioural difficulties are more organic and that it is [H] that needs to change not how [M] reacts to [H]'s behaviours. [M] struggles to appreciate how [H]'s lived experiences have a significant impact on her behaviours and emotional wellbeing. [H] has suffered from at least seven of the top ten adverse childhood experiences and she is only ten years of age. Despite the teaching programmes [M] has had she is still exposing her daughter to adverse childhood experiences which will have a significant detriment to [H] as an adult"

38. Sadly, the evidence in relation to the impact upon H is simply overwhelming. She is clearly an extremely confused and distressed little girl. The mother's own oral evidence in the hearing is that H is shouting and screaming and kicking at her mother every day. The mother said that H was 'always screaming and shouting at me, kicking the doors, and throwing things and she can bruise me as well'. The mother asserts that H also screams in her sleep.
39. Despite all the work and assistance offered to the mother and the involvement of social care for many years, the picture now in relation to H is extremely worrying. The mother still asserts that many of the problems lie with H, and not with her own parenting. In her oral evidence she said that she had done the Triple P parenting course three times, and said it did not work. She said that H is very 'disobedient' and does not like listening to any instructions. She said nothing she tries has any effect. She accepted this appeared to be an endless treadmill, and when she was asked what would bring it to an end she responded 'I don't know, I have done everything I can do'. The mother was then asked about the impact upon H of going into foster care, and it was suggested to her that that was the necessary change. She responded that she did not know what would happen if H had some time away from her and then said 'I would like to think she will spiral out of control, she feels safe and happy with me'. Whilst I accept the mother does not actually wish H any harm, that was illustrative of the mothers thinking.
40. It is a notable and unusual feature of this case, that when the guardian spoke to H about the possibility of her going to live in foster care, the guardian's overall conclusion was that H was

expressing 'relief and happiness that her safety and care is now being considered'. Although H had told the guardian she loved her mummy, and that she wanted her mummy to stay with her forever, she had engaged excitedly in discussions about how foster care would work, and when she returned to her school class she told them all about it with a smile on her face.

The mother's ability to understand risk, and protect the children.

41. As I have set out above, the mother's ability to understand risky relationships has been an ongoing difficulty. H has been particularly affected by this. She has told professionals that she has recollections of seeing her mother having a chair thrown at her by one of her previous boyfriends, she has witnessed physical violence perpetrated by her mother's partner on multiple occasions and has been hit once before by one of her mother's partners.
42. The mother currently has a partner, D. This has been a turbulent relationship, and at times the mother has made significant allegations against him.
43. At the prehearing review of this case, on 30th January 2023 it was suggested that I should adjourn hearing this welfare hearing to allow there to be an assessment of the mother's ability to care for H and Y with D supporting her as a full time member of the household. The mother's current view in relation to this relationship in her statement and her oral evidence is that D is a support to her, that he has a good relationship with Y.
44. The history of the problems in this relationship are fully set out within the independent social work report. The mother has regularly told professionals, that D 'triggers' her PTSD, by which she appears to be referring to him flirting with other women causing her distress.
45. The mother described at length to the psychologist in the matter how D was not faithful to her, but also told the independent social worker that he had a good relationship with H. H has told professionals that she goes upstairs and locks herself in her room when her mother and D are arguing. On 23 November 2022 the police were called after neighbours heard shouting and screaming at the mother's property. H told the police that she likes her mother's boyfriend, but that he and her mother argue and fight a lot, and she has to take herself upstairs and close herself in her room whilst they argue and fight. H also told the police that she has nightmares most nights and she wakes up screaming.
46. More concerningly, mother described to the independent social worker that she and D and H went to London to see the musical 'Frozen'. She told the independent social worker that D became sexually aroused and had an erection during the performance, and that they then had a

significant argument and the independent social worker stated that mother had said to her that they ended up leaving the performance early and it spoiled the day. In her evidence when the mother was asked about this, she then suggested that in fact D was not aroused by watching that children's musical, but was aroused when she put her hand upon his crotch area during the performance to check if he was aroused. This was not a version that she had given to the independent social worker, but the mother appeared to consider that her second version was more acceptable.

47. It was subsequent to that event, that it was suggested to the court that this case should be adjourned to enable D to be assessed as a carer for H with the mother.
48. In her oral evidence, the mother told the court that she had been attending Relate sessions with D, and was hopeful in relation to their relationship.

Mothers' mental health and the impact of that on her ability to care for the children.

49. The mother accepts that she has for many years struggled with poor mental health, which has impacted upon her, and her ability to provide care for the children. She accepts that she has unresolved trauma, and that she needs substantial therapy. She would wish to undergo that therapy with H remaining in her care.
50. The psychologist sets out a summary at the beginning of her evidence in relation to the mother. That records a wide range of aspects of the mother's functioning and presentation which impacted upon her ability to meet her children's needs. The psychologist set out that the mother has unresolved attachment issues, she is preoccupied and hypervigilant in respect of some reported traumas, but dismissive of others. Her attachment profile would predict an increased risk of mental health problems, and personality dysfunction. The psychologist sets out that in her view these factors have a significant impact on the mother's ability to form and maintain healthy interpersonal relationships, on her parenting capacity, and on her ability to identify risk and respond appropriately to that.
51. The psychologist had previously in her report of 19th July 2021 set out the mother's limitation in various areas of functioning, and she confirmed within this report that it appeared the mother still struggled to process and retain information. Although the mother can repeat parts of what she has learnt on some courses, the way she puts that across caused the psychologist to believe that the mother had a partial understanding of what she had been taught, and cannot necessarily apply that learning consistently, and transfer knowledge and skills from one situation to another.

Although the psychologist discusses the mother's cognitive profile, she goes on to say that the cognitive profile does not fully explain the mother's cognitive rigidity when it comes to her outright refusal to accept alternative opinions when those conflict with her own beliefs.

52. The mother has been diagnosed with PTSD, linked primarily to incidents of domestic violence. Although the mother asserts that behaviour within relationships can lead to her being "triggered" in relation to that, the psychologist was clear that in fact what the mother appeared to be referring to was behaviour that made her fear that a partner was interested in other women. The psychologist describes this as a preoccupying theme, linked to insecurity of the mother.
53. The psychologist accepts that the enormity of the task of caring for Y will almost certainly have been traumatising, and will have impacted upon the mother's mental health.
54. The psychologist is clear that whilst there are a variety of possible explanations for the mother's behaviour, and the findings that the court has made, these matters are less relevant than an understanding of the impact on both of the children of the misrepresentation of health issues, and the reality of the resistance to change by the mother which suggests ongoing risk.
55. This aspect was illustrated by the fact that the independent social worker set out on a number of occasions that the mother had told her that she herself had a diagnosis of difficulties with her thyroid. Evidence has been produced that the mother has no diagnosis of that. The independent social worker was cross examined that the mother had not told her that, and she was incorrect when she had reported that on a number of occasions in her report. It was suggested to her that the mother was describing H as having thyroid difficulties. The evidence of the independent social worker however was entirely clear and consistent that the mother had been telling her that she, the mother, also had such problems, particularly as she had discussed that it might be hereditary. This is a very typical type of information given by the mother to people, which often consists of exaggerations and untruths. I was quite satisfied that the independent social worker was accurate when she said the mother told her this, and the mother has now had to backtrack upon being presented with the evidence that it is not true. The report of the psychologist sets out many other examples in relation to this, and there are a number in the previous judgment.
56. The mother does have diagnoses of PTSD, depression and anxiety. She has been categorised as having an enduring non-psychotic disorder. The psychologist reports that it appears both children have experienced some positive and very loving parenting from their mother, and sets out the efforts that the mother has made to meet her children's needs in terms of courses and interventions. Mother has also in the past engaged with therapy with the mental health team, but

nonetheless the mother has struggled to meet the needs of her daughters on a consistent basis, and to work well with professionals.

57. More recently since Y has been out of her care, the mother accepted to the psychologist that H caused extreme levels of parenting stress, and suggested that the majority of the problems lie in H's traits and behaviours.

58. In her summary of the mothers overall presentation, at para 450 the psychologist reports:

“ [M] presents with a complex profile in which she reports such high levels of psychopathology that it is difficult to identify those aspects of her functioning that create the most difficulty for her. Many problems (including medical and mental health issues) are reported to the extent that it is difficult to understand how she could function on a day to day basis. At the same time, other aspects of functioning appear to be minimised somewhat. When gently challenged about possible exaggeration and over-reporting of problems, [M] was resolute that she was being entirely truthful and that self report was an accurate representation of her thoughts, feelings, behaviour and experiences”

59. In her summary of conclusions the psychologist sets out that:

“In my opinion, [M] poses an unacceptable risk to [H], given the history, the findings and [M] understanding of and response to these findings. I have very significant concerns about the impact that her psychological problems, poor coping and problem-solving skills, and her preoccupation with her relationship needs will continue to have on parenting capacity. I am concerned that she does not currently have the personal or social resources to make significant improvements within the timescales of the children”

60. The psychologist goes on to conclude that the prognosis for therapy is guarded, and the mother has so far benefitted little from the interventions and support she has currently had.

61. She was asked having read the updating document's whether they had changed her view at all when she gave her oral evidence. She said that if anything her concerns had been raised further by those documents.

62. She was asked whether the mother might be able to undertake some work whilst H remained in her care, but she confirmed as set out in her report that although the mother said that she was keen to work on her difficulties, she thought it was extremely unlikely the mother would be able

to engage. She accepted it might be possible to see whether mother was engaging after three or four months, but was clear it would not be safe for H to remain in her care during that time.

Positives of the mother's care of both children:

63. Whilst often simply repeated by rote in these type of judgments, it is important to set out that I am quite clear that the mother genuinely loves both of these children very much. When analysing her care of them over many years, it is very important to be aware of how difficult it will have been caring for Y, and the pressures and strains, whilst also trying to care for H.
64. It is quite apparent the mother has tried her best. She has tried to understand all of the medical terms, but it appears to be part of her functioning that she is simply unable to truly grasp the issues, and unable to flex and adapt in the way necessary when caring for someone whose needs are as complex as Y's. Her difficulties also mean she cannot parent H to the necessary standard.
65. I accept that there were some aspects of findings sought within the finding of fact hearing, where the mother was able to reflect and accept some of the difficulties.
66. In general, she is able to keep her home at an acceptable standard. While she does struggle with food and nutrition, the children were fed.
67. The mother has always been willing to do courses, and she will always meet with professionals, even if she does not agree with them.
68. It is an interesting aspect of this case that when her parenting is assessed by way of parenting domains, she is able to set out acceptable answers in relation to many of those aspects, although sadly she struggles to then put those into effect.

The Legal principles.

69. In considering my welfare findings in this case I remind myself of the burden of proof. It is for the person making the allegation or assertion to prove that allegation or assertion. In this case, that burden falls on the Local Authority.
70. I remind myself of the standard of proof. Baroness Hale in *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 3 [2009] AC 11 made plain that, in relation to the applicable standard of proof:

“I would...announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less.”

71. In determining whether the Local Authority has satisfied the burden upon it, the court must bear in mind the wider context of the evidence, *Re U (Serious Injury: Standard of Proof)*; *Re B* [2004] 2 FLR 263. In *Re B (Threshold Criteria: Fabricated Illness)* [2002] EWHC 20 (Fam), [2004] 2 FLR 200 it was held that:

“Judges... are guided by many things, including the inherent probabilities, any contemporaneous documentation or records, any circumstantial evidence tending to support one account rather than the other and their overall impression of the characters and motivation of the witnesses.”

72. And in *Re T* [2004] EWCA Civ 558 the then President of the Family Division Butler-Sloss LJ stated:-

“Evidence cannot be evaluated and assessed in separate compartments. A Judge in these difficult cases must have regard to the relevance of each piece of evidence to the other and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the Local Authority has been made out to the appropriate standard of proof.”

73. She went on to say that each piece of evidence has to be weighed against the others and that the court should revisit the strands as it seeks to determine, where possible, a coherent picture, consistent with the totality of the evidence.

74. Therefore, in consideration of the jurisprudence, it is abundantly clear that the court must consider the wide canvas of evidence and place into context each element of that evidence judged against the rest.

75. I also remind myself of the direction given that is commonly referred to as a Lucas Direction that a lie told by a witness can only strengthen or support evidence against that witness if I am satisfied that the lie was deliberate, that it relates to a material issue, and that there is no innocent explanation for it, as sometimes people lie for reasons that they do not wish to disclose. The Court should first determine if the witness has deliberately lied. Then, if such a finding is made, consider why the person lied. *R v Lucas* [1981] QB 720.

76. In relation to expert evidence a witness provides an opinion to the court, they do not determine the case.

“The expert advises but the Judge decides. The Judge decides on the evidence. If there is nothing before the court, no facts or no circumstances shown to the court which throw doubt on the expert evidence, then, if that is all with which the court is left, the court must accept it. There is, however, no rule that the Judge suspends judicial belief simply because the evidence is given by an expert.” *Re B (Care: Expert Witnesses)* [1996] 1 FLR 667, per Ward LJ.

77. I shall turn to the statutory framework below, but in looking at these options I consider the relevant law laid down by the case of *Re BS (Children)* [2013] EWCA Civ 1146, and surrounding case law. I bear in mind that the child’s interests are paramount, and that they will ordinarily include being brought up by the child’s natural family unless the overriding requirement of the child’s welfare makes that not possible. Also that I must consider all reasonable options before coming to a decision, and then that in considering all the options I must take into account the assistance and support that the local authority could offer.

78. I bear in mind also the clear need for the least interventionist approach, and, as set out within *Re B (A Child) (Care Proceedings Threshold Criteria)* [2013] UKSC 33, that the aim should be to reunite the family when circumstances permit that. I bear firmly in mind there is a need a need to scrutinise the local authority very carefully and their plan to see whether the other options open to the court better meet the needs of the child.

79. I also bear in mind that in *F (a child) (placement order: proportionality)* [2018] EWCA Civ 2761, Lord Justice Jackson said:

“ In these circumstances, close attention needed to be paid to the nature and extent of the risks. As foreshadowed at the start of this judgment, there must be (to borrow a phrase from a different context) an intense focus on the *type of risk* that is involved, *how likely* it is to happen, and what the *likely consequences* might then be. Only by carrying out this exercise is it possible to know what weight to give to the risks before setting them alongside other relevant factors. So, for example, the risk of further physical harm to a child who has been severely injured by a denying parent is likely to be a factor of predominant weight. By contrast, to borrow from the evidence in this case, where a mother who untruthfully denies drinking goes to a park at night to drink alone, leaving her baby with its grandmother, the court will view that risk with a sense of proportion.

80. In considering the application before me, I must have regard to the Article 6 and Article 8 rights of all those concerned under the European Convention of Human Rights. I must be satisfied that any interference with the Article 8 rights of the parties is in accordance with the law, necessary in a democratic society and proportionate. In the event that the Article 8 rights of the parent conflict with the Article 8 rights of the child, then it is the child's rights that must be given priority. I bear firmly in mind that a care order represents a drastic curtailment of the rights of the mother and her wishes under Article 8 of the European Convention on Human Rights and Fundamental Freedoms, which can only be justified by pressing concern for the children's welfare.
81. In considering the application for a care order, the welfare of the children is my paramount consideration. I have given particular attention to the matters contained in the welfare checklist at **s1 (3) of the Children Act 1989**. I have considered the no order principle (that is, whether it is better for the child to make no order at all) and as stated above, I bear fully in mind the principle that, wherever possible, the court should avoid delay in determining the future of a child.

Options available to the court;

82. The court effectively has before it two realistic options.
83. The mother seeks for the court to allow H to remain in her care and would agree to any order to allow that to happen. The local authority and the guardian contend that H should be removed into foster care.
84. I shall then place these matters within the context of the welfare checklist.

(a)the ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding);

- i. Y is unable to articulate her views. There can be no doubt however that she would wish all her needs to be met, particularly her medical needs so that she is safe, and can make as much progress in her life as possible. She appears to have settled very well in her new foster placement, and it is to the mother's credit that she has been able to accept that Y appears to be happy and thriving.

- ii. H is a very confused little girl. This is amply illustrated in what she tells the guardian about how she loves her mother, and wants to stay with her, and yet appears to be genuinely excited and relieved by the prospect of going to live in foster care. H of course has a relatively clear idea of what foster care would look like, having seen her sister in two different placements.
- iii. I have set out above some of what H told the guardian.

(b) their physical, emotional and educational needs;

- i. It is accepted that Y has very particular needs. The mother is not able to meet her needs and keep her safe.
- ii. H has an extremely worrying presentation, which has continued to deteriorate even since Y has not been in her mother's care. Her behaviour is significantly worse whilst in the care of her mother, than when she is at school.
- iii. The reality is that all of the evidence demonstrates that H's challenging behaviour is a result of learned behaviour, and the result of her exposure to damaging experiences in her mother's care, and emotional harm.
- iv. H has a particular desire for adult attention, and it is clear and extremely worrying that at her age she is vulnerable to risky adults.

(c) the likely effect on them of any change in his circumstances;

- i. In my view, despite what H has told the guardian, it is likely that H will be confused and upset and unsettled if she is placed into foster care. She is in many ways close to her mother.
- ii. However it is also apparent that H has a desperate need for some calm and secure parenting.
- iii. I am quite satisfied that living with the mother as H currently does is confusing and distressing for her. Whilst a removal to foster care will cause significant upset for her, she is in desperate need of calm, attuned and therapeutic parenting. Given the description of her distress on a frequent basis at the moment whilst living with her mother, I am entirely satisfied that such a change will over time, result in her being far happier, and she will be able to develop and grow appropriately with her mental and physical needs met.

(d) Their age, sex, background and any characteristics of theirs which the court considers relevant;

- i. As I have set out above, as a result of the childhood she has had, H's needs have often been secondary to the far higher level of need of her sister Y.
- ii. She is however still a very young child, and at a critical point as she moves forward into her teenage years. Given what he has witnessed in terms of domestic abuse, and her mother's behaviour, she is at significant risk both of being very vulnerable herself, and of not having calm and attuned parenting, to enable her to be able to undertake that in due course when she is an adult or experience of healthy secure relationships.

(e) any harm which they have suffered or are at risk of suffering;

- i. I have set this out at length above.
- ii. The mother is not able to provide a safe, or secure childhood to H. Whilst H has not suffered to the extent that Y has, in a physical way, she has still suffered from her mother's erratic behaviour, and failure to meet her physical and emotional needs.

(f) How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

- i. Again, I have set this out in full above.

(g) the range of powers available to the court under this Act in the proceedings in question.

- i. I have set out above the different options available to the court. The mother is willing to do any further courses or work that would assist her, but cannot say what effect it may have. She does suggest that H could remain her care pursuant to a care order, and does suggest that she could be given further help and assistance.
- ii. The mother herself however also accept that she doesn't know what else she could do to parent H in a better way.

Conclusion:

85. I have already made very substantial findings in relation to the mother's inability to meet the needs of Y. I have been careful in this judgment, not to simply conclude from that that mother is not able to safely care for H during her childhood. H has very different needs to Y, and I am mindful that H has remained in her mother's care until this point.
86. I have balanced that H has expressed that she would like to stay with her mother and she loves her. There are positive aspects about her being able to attend school, and have some of her basic needs met.
87. The evidence however is simply overwhelming that the mother is not able properly to meet H's needs currently, and that no protective or supportive options could be put into place to enable her to be able to do that. I accept the evidence of the independent social worker, and the psychologist which in both instances was both extremely clear and accurate. I accept the welfare analysis of the social worker and the guardian. H's welfare needs are overwhelming at the moment and she needs proper attuned parenting from a carer able to place H's needs as their paramount consideration.
88. I recognise that in making this decision, I am separating H from her mother and this is a significant interference with her right to family life. But it is necessary and proportionate in light of the findings that I have made. H needs a decision now.
89. Therefore, for all of the reasons above, I make the care order sought by the Local Authority and I approve the care plan for H to move to live in foster care.
90. Contact will have to be kept under review. Whilst it took some time to be clear in relation to the proposals for contact, what is set out in the amended care plans appears entirely appropriate. Although I heard quite a large amount of evidence about contact no one has asked me to make any orders pursuant to s34 of the Children Act 1989.
91. I make no order as to costs, save for detailed public funding assessment of the publicly funded parties.

END OF JUDGMENT