

IN THE FAMILY COURT

Before:

HHJ CRONIN

Between:

Gloucestershire County Council

Applicant

And

Mother

First Respondent

And

Father

Second Respondent

And

Child

Third Respondent

And

Foster Carers

Intervenors

Mr M Krumins, Counsel, instructed by Gloucestershire County Council, for the Applicant
Mr S Shepherd, Counsel, for the Mother
Ms E Roberts, Counsel, for the Father
Mr D Marusza, Counsel, for the Child through her Guardian
Miss R Scammell, solicitor, for the Intervenors

JUDGMENT

HHJ Cronin:

1. I made decisions last year about where the child concerned in this case should be placed but I was not able to make final orders because the legal framework supporting her placement could not be fixed until other decisions were made outside the jurisdiction of the Family Court. I have agreed with the Guardian's proposal that this judgment should be published and so it has been drafted with a view to anonymisation. The factual background and descriptions of the persons involved in the case is fully set out in the earlier judgment.
2. I am concerned with the welfare of a little girl of primary school age. Her relevant personal characteristics are that she has been in the care of a local authority for nearly two years, in the same placement, where she is seen to be recovering from the experiences that brought her into care which will have significantly impacted her emotionally, and therefore, impacted on all her needs.
3. The statutory scheme and best practice require decisions to be made about children as quickly as may be done properly because we all understand that living in circumstances of uncertainty is damaging. Nobody argues that this child can be returned to her parents' care. She is placed with an excellent foster family and she is doing very well in that placement. It is the Court's judgment that this placement should be permanent and that is the declared intention of Gloucestershire County Council and the recommendation of the Guardian. Her mother agrees with the Guardian at every point and the father is neutral about the nature of the legal framework and accepting of the decision about placement.

4. Concerns had been raised which required the court to hear evidence last summer about the safety of the placement. I gave a judgment dealing with this issue in which I recorded at paragraphs 21 and 22 what steps had been taken to investigate those concerns and recording that after I had heard that part of the evidence, and with the benefit of skilful legal advice, Gloucestershire County Council told me it no longer relied on that evidence and did not pursue any criticism of the foster family.
5. This was not the only issue: there was expert psychological advice that the child should stay in that placement but there was also a family placement available. Gloucestershire County Council preferred the family placement, the child's guardian advocated the foster placement on the basis of the advice of the jointly instructed child psychologist. I decided that the foster family was the right place for this child. We were not able to complete the proceedings because there were legal arguments about the nature of the orders to be made, some of which would only be available if there were particular outcomes to some processes taking place away from the Court. The case returned to me this week for decisions about the legal nature of the placement.
6. The foster family is willing to continue to care for the child for the rest of her minority. They want the placement to be under a care order in order for there to be the best possible access to support services. Gloucestershire County Council applies for a care order. The Guardian is clear that there should be a care order. The parents do not oppose it.

However, the foster family and the Guardian, supported by the mother and not opposed by the father, argued that there should also be a special guardianship order in addition to a care order. Gloucestershire County Council opposed that.

7. Perhaps if there had been agreement that both orders should be made matters would have gone no further, but as it was the foster family invited the court to make findings about Gloucestershire County Council's conduct, and they set these out supported by documentary exhibits in a detailed statement of evidence dated 9 February 2024. The foster family had been represented pro bono by an experienced solicitor who had been directed by the court to keep a record of costs and so there was also a live costs application before the court. Those findings, if made, would be relevant to the decision as to the adequacy of the care order without a special guardianship order.
8. At the hearing, and after some considerable negotiation at court, several matters were agreed. The court still had to make a decision about whether or not there should be a special guardianship order. The findings of fact are sought by the foster family were necessary to the assessment of the need for special guardianship order and the consideration of any restriction to be imposed on Gloucestershire County Council's right under a care order to move the child without reference to the court.
9. Gloucestershire County Council is a party to the proceedings and as a corporate body takes the benefit of any order made and has to implement its responsibilities in line with the judgment. Its officers and employees have to act accordingly.

Courts know that lay parties sometimes have difficulty in accepting the findings of the court, particularly when findings include criticisms of their behaviour or when the court refuses to make findings which they consider justified. However, it is incumbent on professionals and local authorities to accept and to work with decisions of the court

unless and until appealed or set aside. In particular, where a party to proceedings accepts in the course of a trial when it would be possible to continue to judgment that it cannot rely on (part of) its own evidence, it has to stand by that concession. Gloucestershire County Council has different parts. Relevantly here, the team supporting the foster family seem to have had difficulty accepting the court's findings even though the panel who approve the foster family reinstated them after they had been deregistered as foster parents. Examples are the team continuing to talk about the placement as conditional and unconfirmed, the repetition of the allegations that had been abandoned at court, the assertion within the team that the judge's decision was subject to an appeal, which it was not, and that it was inappropriate for the decision to have been communicated to the child before that appeal. Alarming for wider practice, social workers continued to refer to the evidence that had been abandoned in Court as "thorough and balanced."

10. The foster parents continued to experience (I might say suffer) treatment from their social workers as if the court had not made the findings and as if the view originally taken by the social work team had been upheld. They enumerated their concerns and asked the court to make six findings.

The last related to a child who is not subject to these proceedings and about whom I should not make decisions here. However, the others were supported by documentary evidence originating from Gloucestershire County Council itself in the form of minutes and records of discussions and decisions. It was hard to see how the facts could be disputed. I accept that the interpretation of the consequences and evaluation

of the impact of facts is a more subtle exercise and an individual who is embarrassed or who made a mistake or misjudgement because he or she was not able to be objective will often want to argue about that assessment: Gloucestershire County Council had to take advice.

11. In the event, Gloucestershire County Council was prepared to make significant concessions about the findings that were sought. These were relayed to me in the form of an email and are now expressed on the face of the order. They are as follows:

12. *1. X, previously placed with the foster carers, will be provided an explanation that removal was due to allegations made against the foster carers and that the child remained in their care due to a decision made by a Judge that this was best for the child. The social worker for X will have a discussion with the foster carers to develop a narrative to be provided to X that takes into consideration X's current views and understanding and needs, which will be included as part of X's life story work.*

13. *2. The allegation made, as recorded as substantiated, in respect of the child and the injury to her hand is retracted*

14. *3. The criticisms made by the Court in respect of the ISW report within the fostering investigation are accepted*

15. *4. The criticisms of Gloucestershire County Council made by the IRM process are accepted*

16. *5. Gloucestershire County Council will not use or rely upon the analysis or conclusion of the ISW report for any future investigations/allegations*
17. *6. The supervisory notes of three named workers are not agreed by the foster carers*
18. *7. Gloucestershire County Council will undertake a fresh investigation of the allegations in respect of XI by way of an independent social worker. The foster carers will have the opportunity to review the letter of instruction prior to the investigation starting. The investigation will consider two specified allegations.*
19. *8. The determination of the Court at recital 4 of the order dated 13th October 2024, namely “AND UPON the Court, having seen the minutes of the “Allegation meeting” before approving the order, observing that the Child Protection investigation in response to the bruise to the child’s hand was disproportionate, inappropriate and likely to have been emotionally abusive of the child and suggesting that the fostering team should pause for reflection in respect of the actions they have recently taken and the impact of them on the child and the foster carers”*
20. *9. As a result of the above matters, Gloucestershire County Council’s fostering investigation was flawed and did not weigh or balance the necessary information to make proportionate decisions*
21. Gloucestershire County Council went further and apologised to the foster family and confirmed that it would support the long-term placement of the child with the foster family. It agreed not to remove her from their care without bringing the matter back to court save in circumstances in which the police had exercised their protective powers. It agreed to pay the costs of the solicitor who has acted pro bono to the Access to Justice Foundation.

22. When a court makes a decision about a child, it takes into account all the circumstances and specifically the factors in the welfare checklist in section 1 of the Children Act 1989. Specific attention is drawn to the ability of relevant persons to meet the child's needs and that encompasses the actions of Gloucestershire County Council holding a care order.
23. There was no doubt that there should be a care order: a child in the care of Gloucestershire County Council has advantages in access to resources, to advice and guidance, to expert risk assessment, to funding necessary therapy and in access to education. It is also known, and there has been recent research published to the effect, that children who have been in care very often do less well than their peers in terms of their mental health and their academic achievement, their access to work and their general prosperity. In this case I was confident that those disadvantages would be entirely offset by the positive advantages of placement in this foster family.
24. The remaining issue for determination was whether or not there should be a special guardianship order alongside the care order. Such a combination of orders is rare: much more frequently, a special guardianship order is made at the conclusion of care proceedings to secure a child's placement without a care order being made.
25. Re F and G (Discharge of Special Guardianship Order) [2021] 2 FLR 1403 is the only fully reported decision on the overlap between a special guardianship order and a care order. The leading judgement is given by Baker LJ. That case concerns the refusal to discharge a special guardianship order that had been made at the same time as a care

order in earlier proceedings, in circumstances in which the children were no longer living with the special guardian, as opposed to the decision that I am asked to make, to grant a special guardianship order and then go on to make a care order. It contains reference to another short judgment which had not contained any analysis of the legal provisions. Baker LJ sets out the history of the development of special guardianship and the statutory provisions, and I acknowledge and adopt that part of the judgment. I cannot usefully add to the legal analysis.

26. The common arguments in support of special guardianship orders are that they ensure permanence and fix the priority of parental responsibility: permanence is intended to outlast childhood.

27. There is no doubt that a special guardianship order and a care order can coexist. However, a special guardianship order discharges an earlier care order (s91(5)(A)) and so to achieve both in one hearing I must be satisfied that I can make a special guardianship order before I make a care order: the core of Gloucestershire County Council's argument was that a care order meets the child's welfare needs but it could not be said that her needs would be met by making a special guardianship order alone.

28. As applicant in the original proceedings, Gloucestershire County Council presented its arguments in relation to the special guardianship order briefly before hearing the arguments in support of that application and had the opportunity to reply to them.

29. Gloucestershire County Council opposed the making of a special guardianship order. The special guardianship order is designed to achieve permanence without excluding the child's birth family but giving special guardians parental responsibility priority over the parents' parental responsibility: however, the parental responsibility held by Gloucestershire County Council under a care order overrides the parental responsibility of parents and special guardians.
30. Counsel for Gloucestershire County Council argued that making the order was unnecessary and I remind myself that I should not make any order unless it is better for the child that I make it. He submitted that the welfare analysis in this case brought us to the point at which there was no need for a further order.

He described the making of a special guardianship order alongside a care order as incongruous and pointed out to me that the parental responsibility provided by the special guardianship order would not override the local authority's parental responsibility under section 33(3) of the act. (That subsection makes it clear that a care order and a special guardianship order can be in force at the same time.) Counsel recognised that a supervision order is sometimes made when a special guardianship order is the final outcome on an application under section 31 but described this as very rare and asserted that the cases where a care order and special guardianship order are made at the same time are almost non-existent for the logical reason that a care order provides for all of the child's welfare needs, that being the reason for the PLWG view set out in paragraph 50 of Re F and G. He acknowledged that Gloucestershire County Council had to learn lessons from what had gone wrong in the case but

submitted that the child's social worker who gave evidence in the earlier part of the proceedings was driven by his professional judgement, obliquely telling me that there was no bad faith on the part of Gloucestershire County Council. In my judgment, the social worker struggled with the balance between what was objectively in the child's best interests and what was Gloucestershire County Council's case: I have recorded in my original judgment my admiration for the social worker's conduct and I continue to consider that he was required to present an argument for a decision made by his team which he may not have agreed with.

On instructions, Counsel told me that Gloucestershire County Council had not agreed the recitals in the order made in the order of 13th October: it may not have done, the recitals reflected the judgement of the court which was critical of the further actions of Gloucestershire County Council which had overreacted in its response to a minor injury to the child. It was clear that Gloucestershire County Council's view of its own conduct was that whatever mistakes had been made previously, they would not be repeated, whereas this later incident had demonstrated clearly that Gloucestershire County Council was so suspicious of the foster family that it could not act proportionately in response to a minor concern. In effect, Gloucestershire County Council's argument was that a special guardianship order added nothing to the provision for the child under a care order. I observe that neither does it seem to detract from Gloucestershire County Council's role.

31. The arguments in support of making a special guardianship order were principally advanced on behalf of the child. They came under three headings: the reality of the child's situation, the benefit to the child of living with carers whose parental responsibility took priority over the birth parents, and the attitude taken by Gloucestershire County Council throughout the proceedings. These were followed by the arguments on behalf of the interveners seeking to become special guardians, which were based on the extent of the commitment shown by the special guardians, the security that the order would provide for the child, and the recognition which it conferred on the foster parents.

32. The arguments on behalf of the parents were necessarily shorter, the father holding a neutral position but accepting submissions made on behalf of the mother and the mother stressing her support for the placement. Counsel for the mother helpfully referred to the case of F and G and distinguished it, slightly stealing the fire from the arguments put on behalf of the child.

33. What does a special guardianship order add to this care order? It adds the two factors for which it was designed, the expectation of permanence outlasting childhood and parental responsibility for the actual carers.

34. In this case, there was no doubt expressed by any of the parties about the strength of the relationship between the child and the foster parents: I have met the child and observed her relationship with one of them at close quarters and there is no doubt about the security of that relationship. The commitment of the foster carers to this

child throughout the challenges of the last year in which they have been heavily criticised and under scrutiny is impressive. The child's view of the foster parents and her understanding of her situation was assessed by her Guardian and reported in her final analysis: she wishes to remain in their care and in her portrayal of her family she places them and their dogs in her family and writes beside them, "I love them a lot." There is an established family life between the child and the foster parents, to her great benefit. This needs to be maintained: it would continue without a special guardianship order being made unless it were disrupted by a decision by Gloucestershire County Council to change the child's placement.

35. Gloucestershire County Council was invited to give an undertaking not to remove the child from her current placement. It declined to do so, and would only agree not to remove her unless the police were to exercise their protective powers. An agreement in this context is not enforceable and is only useful as an indication of a previously held position. A corporate body is able to give an undertaking and this local authority had offered undertakings at earlier stages in the proceedings when the child was subject to an interim care order. At that stage Gloucestershire County Council had intended to move the child to another placement despite the advice of the child psychologist to the effect that such a move would be damaging and against the recommendation of the child's guardian and the court had issued injunctions to ensure the continued placement. This unwillingness to give an undertaking contributes to the lack of confidence that the court has in Gloucestershire County Council's intentions. It might be open to the court to make an injunctive order to prevent removal, but this

would, at least at face value, be contrary to the prohibition on the court managing the care plan after a final order is made. A special guardianship order does not prevent the removal of a child who is at risk of significant harm, so it does not undermine the protection afforded to the child against failings by her carers or third parties but because it confers parental responsibility on the special guardians it protects the child against peremptory removal by giving the special guardians the right to apply to discharge the care order (s39(1)) and there is no inconsistency in several persons holding parental responsibility where statute establishes a clear hierarchy of those responsibilities.

36. Special guardians hold parental responsibility for so long as the order lasts, regardless of whether the child continues to live with them. This imposes a duty on Gloucestershire County Council to ascertain the wishes and feelings of the special guardians and give consideration to them before making any decision with respect to the child (s22(4)(c)). In this case, Gloucestershire County Council's attitude to the foster parents has been dismissive and critical, it has lacked respect for them as her carers. The child is likely to be subject to local authority responsibility for many years, during which time the personnel within the social work team will change: the belief within the team about the role and capabilities of the foster parents may be entrenched and passed on to new staff, or may simply be forgotten – whether it was supportive or negative. This duty should mitigate the risk that Gloucestershire County Council takes decisions without consulting the foster parents and without understanding their perspective as carers.

37. Applying the welfare checklist: the child's wishes and feelings are to be able to remain living in this family which she considers to be hers; all her physical emotional and educational needs, which are particular given the background of the proceedings, are being met by her foster parents rather than by the care order alone; the likely effect on her of any change in circumstances were she to be moved from this placement would be detrimental according to the opinion of the psychologist instructed in the case and would subject her to a risk of harm; her foster parents are better able than her birth parents, other family members and unidentified alternative foster parents to meet her needs.
38. Summarising the arguments advanced in support of giving the foster parents parental responsibility on the basis of the documents filed in the case, the evidence which I have heard, and the submissions made, I find as follows:
- i) as far as the child is concerned the foster parents have become her psychological parents: she and they have a real and lasting relationship that attracts the protection of article 8; her home is with them;
 - ii) there are practical advantages in the foster parents having parental responsibility in that they can override the birth parents should they seek to interfere with arrangements such as for holidays or contact with the wider family and it would be reasonable for Gloucestershire County Council to give more weight to their views than to the views of the parents in those contexts;
 - iii) if the foster parents hold parental responsibility the child is safeguarded against removal from their care by Gloucestershire County Council because they can apply to

the Court as of right;

iv) the foster parents are already exercising delegated responsibility in making arrangements with the paternal and maternal families for the child to spend time with them.

39. Special guardianship gives the foster parents a status which Gloucestershire County Council cannot afford them and which they hold and can show against the world. Although third parties to the main dispute and only interveners, they must also be entitled to have their status as the child's permanent carers recognised.

40. Gloucestershire County Council's opposition to the making of a special guardianship order is not based on any difficulty that they are willing to argue it creates for the social work task and it certainly does not incur any further expenditure or provision of resource by Gloucestershire County Council beyond what is required under the care order in any event. Gloucestershire County Council's plan had been at one stage to place the child with kinship carers and there was a recommendation that that would be under a special guardianship order.

41. I am entirely satisfied that the child's best interests are served by making the intervening foster parents her special guardians, and that such an order does not put any of the other parties at any disadvantage. It confirms the reality of her situation, it recognises the psychology of the relationship between the child and the special guardians and it provides a protection against the risk that Gloucestershire County Council may still have cautions about the practical arrangements for the child.

42. I was able at the conclusion of the hearing to express my gratitude to and admiration for the foster parents and to complement all the advocates for the able and helpful submissions which they had made with good grace even where the arguments were known not to be attractive.

HHJ Cronin 21.2.24