



IN THE CENTRAL FAMILY COURT

First Avenue House

42-49 High Holborn

London

Neutral Citation Number: [2024] EWFC 404 (B)

Case Name:

London Borough of Hackney v SF, TM and Ors (Adoption: Separation of siblings)

Before HER HONOUR JUDGE ROBERTSON

IN THE MATTER OF

The London Borough of Hackney (applicant)

-v-

SF (First Respondent mother)

TM (Second Respondent father)

C1 and C2 (Third and Fourth Respondents, by their children's Guardian Rose-Marie Bennett-Nfonsam)

Ifeoma Obioha appeared on behalf of the Applicant

Estelle Lear appeared on behalf of the First Respondent

The Second Respondent was in person

Lucy Cheetham appeared on behalf of the Third Respondent

Also present were CA and KA, foster carers and prospective Special Guardians. They were not parties but attended throughout and were represented by Eve Robinson.

JUDGMENT: 13 December 2024

DATE WARNING: This judgment was delivered in private. The judge has given leave for this 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 children and members of their 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.

Parties and applications

1. I am dealing with applications in relation to two children. The first is an application for care and placement orders in relation to C1, who was born on 19 March 2024 and so who is now 9 months old. He is currently in foster care under an Interim Care Order. The second is in relation to C2 who was born on 30 January 2023 and who will be 2 in just over a month. He has been in a separate foster placement since May 2023, and was made subject to care and placement orders in April this year. The application relating to C2 is to discharge those care and placement orders, and to replace them with a Special Guardianship order in favour of his current foster carers.
2. The mother of both children is SF and she has been represented by Estelle Lear of counsel.
3. The father of both boys is TM. Through his own choice he played no part in the original proceedings in relation to C2. In C1's proceedings he attended a hearing on 28 March 2024 and confirmed he wished to be a party and said he was not putting himself forward to care for C1 and would not be instructing solicitors. He has not submitted a response to threshold, or a witness statement. Both he and the mother attended on the first day, but when I ruled the mother out as not being a realistic

option in this case, both left court immediately and did not come back. The mother's counsel was not able to contact her again until the end of that day when submissions were finished. She was able to tell her the date and time when judgment would be given, but despite that, the mother did not attend for judgment.

4. The Local Authority is the London Borough of Hackney and they have been represented by Ifeoma Obioha.
5. The children's Guardian is Rose-Marie Bennet-Nfonsam represented by Lucy Cheetham of counsel.
6. CA and KA are C2's foster carers, and his prospective special guardians. They are not parties, but have been represented at this hearing by Eve Robinson of Counsel.

Background

7. The background to the case is that there have been longstanding concerns about the mother's drug use, her mental health and domestic abuse. Her oldest child was removed from her care and now lives with her father. The mother's second child is C2, and as I have already alluded to, I made care and placement orders in relation to him in April this year. He has been in foster care ever since awaiting placement, and in particular waiting to see whether he would find permanence with his younger brother C1.
8. Within C2's proceedings the mother and C2 began a residential assessment, but it was terminated when the residential unit wrote that they were alarmed and deeply concerned about the mother's handling of the baby and the resentment and anger she openly displayed towards him. I made findings that the mother was dealing drugs during her time in the unit and I did not believe her claims that positive drug tests were a result of passive ingestion. I found that in April 2024 the mother was at risk of relapsing into using cocaine and heroin, and that if she did her parenting would be adversely affected and could cause her to neglect or harm C2. I also found that there was a risk she would prioritise her relationship with the father, TM, and that if there were tensions in the relationship she might project those on to C2. I found a further risk arising out of the mother's own unresolved traumas and depression. She is a

vulnerable mother, having suffered abuse in her earlier life and having suffered bereavement of her father and auntie who were the only supportive, stable figures in her life.

9. At the start of this hearing she asked to be considered as a carer for C1. I gave an oral judgment ruling her out on the grounds that she was not a realistic option because:
 - a. Despite her protestations of abstinence at the hearing in April, she had returned positive drug tests for Cannabis, Cocaine, Methadone and Heroin as recently as July 2024;
 - b. She had not been attending contact regularly having missed sessions on 6, 9, 12 and 30 September and 2, 4, 21 and 28 October and also 20 November;
 - c. She chose not to engage with her parenting assessment;
 - d. She had not been in communication with her legal team for over a month and had not been answering their calls or giving them any instructions;
 - e. She had not filed a final witness statement for this hearing; and
 - f. There was no evidence she had addressed any of the risks identified in my judgment given in April 2024, in particular no evidence she had addressed her unresolved traumas or depression, or her drug use, or her housing instability.
10. All the risks identified in C2's proceedings remain risks in C1's proceedings, and it was not realistic for her to be a carer for C1.

Positions of the parties

11. Everyone agrees that CA and KA have given very high quality care to C2 and that after arriving with them as a very disturbed and unsettled baby, he was now really thriving in their care. At the time of the final hearing in his proceedings CA and KA were not in a position to commit to caring for him in the long term. But in the months since then they have been able to commit, and they have undergone a Special Guardianship assessment which is positive. They now want to keep C2 with them, because, they say, they are the only family he knows.
12. The issue before me, therefore, is a narrow one. I must decide whether it is better for C2 and C1 to be placed together in an adoptive placement, or whether C2 should stay

in the family he is currently embedded in, with C1 being adopted on his own. The issue is one of a balance of harm, and I have dealt with it on submissions from the parties. The Local Authority say I should prioritise the sibling relationship and place the brothers together in an adoptive placement. The other parties all support the alternative of C2 staying where he is, and C1 being adopted, with contact between the two brothers to maintain their relationship.

This hearing

I have had 3 days to consider this matter. It has not taken all that time, and I have not been pressurised. I heard submissions and ruled out the mother on the first day. The second day I had time for reflection and I am giving this judgment on day three.

Threshold

13. I must begin by considering whether the Threshold for making public law orders under s 31(2) of the Children Act 1989 is crossed. The Local Authority plead their case on the basis of risk of neglect, long-standing and problematic substance misuse and domestic abuse. The mother responded to the initial threshold disputing much of it and disputing that threshold was crossed. It is not necessary for me to make findings on the disputed areas, because I find threshold crossed on the following basis, which is either undisputed or the subject of findings in my previous judgment:

- a. The mother was found to have long-standing and problematic drug use in April 2024. There is no evidence that that has changed, and such evidence as there is points in the other direction, being a positive drugs test in July 2024 relating to the preceding months, and being positive for cannabis, cocaine, methadone and heroin
- b. The mother used drugs for 7 months when pregnant with C1. She tested positive for methadone, cocaine and heroin in January 2024 and at the start of February 2024, and reported ongoing cocaine use on 23rd February 2024. This caused either significant harm or risk of significant harm to the unborn baby. I have already made findings rejecting the mother's case that the test was due to passive ingestion of the drugs.

- c. The mother has accepted that there was a domestic abuse incident with the father in December 2023. The father was arrested. The mother was pregnant with C1 at the time. The mother was not able to protect the unborn C1 from that assault, and thus exposed him to risk of significant harm in utero.

The Law

14. The children's welfare is my paramount consideration, and I must consider the welfare checklist from both the Children Act and the Adoption and Children Act, as I am asked to make both a Special Guardianship Order and care and placement orders.
15. In considering whether to make a final care order I must undertake a global holistic assessment of all the realistic options as set out in *Re B-S (Children)* [2013] EWCA Civ 1146.
16. I must also consider Article 6 and Article 8 of the ECHR. Any order that I make must be necessary and proportionate, and I must not make any order unless I consider that doing so is better for the child than making no order at all.
17. I have also in mind that the separation of a parent from their child is at the extreme end of the powers of this court, and I must only make orders which achieve that when all the other options have been explored, and where nothing else will do.

Welfare analysis

18. The only realistic options for these boys are adoptive placement together or adoptive placement for C1 and a Special Guardianship Order for C2 to remain with his current carers. I propose to look at the advantages and disadvantages of each of these, applying the welfare checklists as I go.

Advantages of adoptive placement together

19. The main advantage is obvious. Each brother would have a full sibling to grow up with. They would have a good chance of developing a strong sibling bond, it would help their sense of identity and give them a solid base to grow from. The sibling

relationship is lifelong and one of the most profound we have. In addition, they would be in an adoptive placement where they would be claimed by a family as their own, they would be loved and cherished, and they would be free of state intervention. The family-finding evidence is that it is likely they could be placed within 9 months, and the adoptive carers would be carefully chosen, matched and trained and there is every reason to think they would meet the boys' needs. These are very significant advantages indeed.

Disadvantages of adoptive placement together

20. The main disadvantage would be a disadvantage to C2. He has lived in his current placement since he was 4 months' old. He is now nearly two. The foster family he lives with have another child who is 5 years old and who is himself the subject of a special guardianship order. The evidence is that C2 is wholly embedded in that family: it is the only family he knows, he considers his foster carers as his "mummy" and "daddy" and to all intents and purposes views his foster-brother as his brother. The Guardian has observed them interacting as brothers, with C2 keen to do what the older child was doing. If C2 were to be removed from that to go to live with his brother C1, he would lose all that. In truth, it would feel like losing his entire world. He does know his brother through monthly contact sessions with him. The together and apart assessment shows that there is some sharing and kindness between them, and they have been seen to hug and kiss each other at their carer's behest, but they do not live together, they never have lived together and they can not therefore be emotionally bound up with each other at this stage. If C2 were placed in an adoptive placement with C1, C1's presence would no doubt help him, but it would not in my judgement assuage the loss for C2 of what he thinks of as his entire family.

21. I ask myself whether this sense of loss for C2 would be transient or long-lasting. Almost always when the court makes care or placement orders, children have to move from placements where they are settled. I ask myself whether this is any different. I come to the conclusion that it is different. It has lasted for a significant duration, indeed for 19 of the 23 months C2 has been alive. It has taken place at a formative stage when C2 has been developing a consciousness of himself and where he belongs in relation to those around him. The interactions between him and his foster-sibling are described by the Guardian as special. And the fact that the foster carers are now

seeking to overturn the existing placement order is evidence that they have in an emotional sense claimed C2 as their own. Their commitment to him is not doubted. Because of all this, if he were to be moved, whilst I am sure that he would settle, and grow to love his new family, it seems to me likely that the loss could be life-long and may have lasting consequences for his personal development. How would he ever trust that that new family wouldn't be taken from him too? Would he have trouble trusting relationships as an adult, and could that cause difficulties for him as he seeks to establish himself in life? I do not have evidence to answer those questions, but it seems to me that there is at least a risk that such problems would arise. That view appears to me to be endorsed by the Guardian who has said that she considers removing C2 from his current placement would cause him significant emotional harm.

22. In addition, there are disadvantages inherent in all adoptive placements. The placement may take a long time to be found. In this case we are told that 9 months is realistic but that is just to identify the placement. It would take longer to match, and to move. That is a long time for these boys to wait, at their young age and stage of development. And the question arises, what happens to C2 in the interim? If he stays with his foster family, the bonds will deepen, and the loss of that family will be even deeper and likely to cause even greater trauma. If he moves to an interim foster carer in order to prevent that happening, he will suffer the loss of all he knows and then a further disruption when he moves to his final placement. Neither of these is an attractive option for C2.
23. In an adoptive placement it has traditionally been difficult to maintain relationships with the birth family. I recognise that the world is changing in that regard and there may be more direct contact between birth parents and adopted children in the future, but that is a work in progress. The legal relationship between the boys and their birth family would be severed, and the boys would both have to struggle with the issues of identity and self which often arise.
24. Whilst every effort would be made to find them a cultural match, it may not be exact, and their cultural and heritage needs may not be met.

25. For C1, for whom adoption is the only realistic option, these disadvantages will apply come what may. All I can do is ensure that I am satisfied that the advantages outweigh these disadvantages for him before I approve a placement order. But for C2, there is another option.

Advantages of placing separately under a Care and Placement Order (C1) and an SGO (C2)

26. For C1, it is hard to see that there are any advantages to placing him on his own rather than placing him with his brother. He may be placed a little sooner. He may benefit from more focussed adult attention, which he will need because he too will be moving from the home which he knows and trusts to be with strangers. If C2 were to move with him, because of his older age and level of understanding he may struggle with the move more than C1, to an extent which could divert attention from C1 and there is a risk C1's needs may be overshadowed. These are disadvantages to C1 in having C2 with him, but they are to an extent speculative and on balance, it is likely it would be better for C1 to have C2 with him than not.

27. For C2, the case is different. The advantage of being placed separately is that he would not suffer the trauma of the loss of the family he is embedded in. He would carry on living with the people he calls "mummy" and "daddy" and the older child he views as his sibling. His carers have shown that they can meet his needs to a high level. When he arrived in their care at the end of the unsuccessful residential assessment with the mother, he was reported to be stiff, defensive, and distressed. He is now relaxed, happy and thriving and his carers have achieved that transformation. If he stays where he is, there is every reason to suppose that he would continue to thrive.

28. In terms of his identity and heritage needs, his current carers are an extraordinarily good cultural match for him, both of them coming from the island which the boys' mother comes from. There is also the advantage that his legal relationship with his birth family would not be severed. That in itself could help him with questions of identity as he grows. But it is also the case that the foster carers are willing to

facilitate contact with the birth family to a high level. They are willing to arrange contact between the brothers at a level of once a month, or whatever C1's adopters are willing to do, and they have a track record of facilitating contact with their older child's birth mother. C2 would thus be able to grow up in the family he feels at home in whilst maintaining his links with his birth family, and knowing that that is part of who he is too.

Disadvantages of placing separately under a Care and Placement Order (C1) and an SGO (C2)

29. The main disadvantage of placing the boys separately is of course that they would lose the chance to grow up together as full siblings. That life-long relationship and bond would not be the same. If they are placed separately, one or both boys may in later years question why the adults making decisions for them parted them, when they could have been with each other, and it may cause them to be angry and feel deprived of an opportunity. This, though, is not so stark as it could be, given the possibility that they will still grow up knowing each other as brothers, and having regular contact. They should still have the opportunity to develop their relationship, albeit that it is not the same.

30. The disadvantage of this option to C1 is perhaps greater than it is to C2 because it will mean C1 will go to an adoptive placement on his own, with no-one to share that journey with. There is also the possibility that C2 would be seeing his mother whilst C1's adoptive carers did not want to facilitate that relationship, and that could cause tension between the boys. That, though is something to be thought about at the time adopters are matched, and I will say more about that later.

Analysis

31. The boys are too young to articulate their wishes and feelings. No doubt they would wish to stay with their current carers who provide them with stability and who meet their current needs. Neither child is presenting with special needs at present but both have the potential to develop special needs as they grow older, due to exposure to

drugs in utero. The current foster carers are well aware of this and accepting of it. Potential adopters would need to be too.

32. I must think about the relationship the boys have with their parents. The contact notes show that when the mother, in particular, attends contact the relationship is warm and playful. She is attentive and clearly loves her boys. The children enjoy seeing her. That relationship is more likely to be maintained for C2 if he is under a special guardianship order than an adoptive order, although some contact is possible under an adoption order. It is clearly a valuable relationship to both boys and whatever order is made, the care plan must allow for it to continue in one form or another, albeit that any contact, direct or indirect, may have to be subject to regular risk assessment in relation to the parents' drug use and mental health.

Decision

33. In making my decision, the biggest two factors are the opportunity for the boys to grow up together on the one hand, and the harm to C2 of removing him from his current carers on the other. It seems to me that the harm of placing the boys separately can be mitigated by regular contact and openness and life story work. There is no reason why they should not grow up knowing each other and valuing each other as brothers, providing the right adopter is found. The harm caused by the trauma of removing C2 from his foster family, however, is not so easy to mitigate. The guardian has described that harm as significant and I agree. If he were removed from the place where he was healed of his distress, where he found peace, where he found love, where he found a family, I am not sure he would ever be the same again. I therefore conclude that the balance of harm lies in favour of placing the boys separately.

Range of powers

34. The other options in this case are clearly inappropriate – no party argues that C1 should go into long term foster care in order to facilitate contact with his brother. I agree that would be inappropriate at his age, when he needs a forever family and not

the instability inherent in long term foster placements. There is therefore only one realistic set of orders I can make for him, and they are care and placement orders. I make those orders and I dispense with the consent of the parents on the basis that C1's welfare requires it.

35. For C2, it is necessary to discharge the care and placement orders. It is a quirk of this case that no formal application has been made in that regard. Under s39 of the Children Act 1989 an application can be made to discharge the order by any person with parental responsibility for the child, the child himself or the local authority designated in the order. The issue arose at the directions hearing in C1's case on 9 October 2024, when directions were being made for this final hearing for C1. The court was told at that hearing that the foster carers wished to put themselves forward as permanent carers but it was not known whether their assessment would be positive. The court directed that if any application was made in that regard it would have to be heard at the same time as the final hearing in C1's application because of the impact it would have on the final care plan for C1. The court directed that any application for a Special Guardianship Order in relation to C2 should be made by 22 November, and that any such application would be consolidated with C1's application. Permission was given to the foster carers to file a statement in the consolidated proceedings. No direction was made at that time for any party to file an application to discharge the care order.
36. The situation we are now in is that all parties are on notice of the foster carer's wish to discharge the care order, all parties have had their statement and all parties were aware that the issue was to be dealt with at this hearing. They have all had the opportunity to be heard on the subject. All have been represented except TM who declined representation. The parties who would have been respondents to any application to discharge the care order are the same as the parties who have appeared at this hearing. Now that it has come to light that no application to discharge has been made, it would in my view be disproportionate and contrary to the children's welfare to adjourn to allow the application to be made and to follow the pathway for that application. I do not consider that the lack of the formal application has resulted in unfairness to any party. No party appeared to notice that no formal application had been made. All appeared to assume that one had been made. I therefore propose to

deal with the matter in this way: I shall ask the Local Authority to undertake to make the relevant application within 7 days, so that the formality is complied with. I deal with the application today by saying that I do find there is a significant change of circumstances since the care and placement orders were made, and that change is that the foster carers wish to commit to C2 as his permanent carers and have obtained a positive special guardianship assessment, and the support of the Guardian. I have conducted a welfare analysis and concluded it is in the children's best interests overall (even taking into account the position of C1) for the care and placement orders to be discharged, and for a special guardianship order to be made in favour of CA and KA.

37. I note a further quirk, that because of the unorthodox route this case has taken the Guardian has not officially been reappointed for C2. She was, however, his guardian in previous proceedings, and she has met him and his foster carers. Her welfare analysis covers both children, and I am satisfied she has given me a sufficient basis upon which to make my orders. If any party considers that this way of proceeding is unfair, they are asked to tell me at this hearing. [Note: no party did so].
38. The Local Authority has filed a Special Guardian Support Plan. With some clarifications and amendments it is capable of being finalised satisfactorily this afternoon and I will ensure that that is done before parties leave court.
39. Those then are the orders that I make. I am satisfied that they are necessary and proportionate to the risks, and that the interference in the Article 8 rights of the children and their parents is justified.
40. I said I would return to the issue of contact. The President has said that it is good practice to include a recital incorporating the court's view on post-adoption contact. This is my view, and it should be put into a recital. This is a case in which post-adoption contact between C2 and C1 is very important. When matching adopters to C1, adopters should be found who are willing to facilitate regular sibling contact (say once a month, although that is a guideline and nothing more), and who live near enough to C2 to make that possible. The adopters should also be open to direct contact with the parents from time to time, subject to risk assessments at the time of the contact. This will need to be written into the care plan or support plan, and the

Local Authority post adoption team will need to assist in facilitating these contacts if necessary.