

Summary of the Judgment of Her Honour Judge Sapnara on 16th February 2018.

Background

The court gave judgment on 16th February 2018 following a 10 day final hearing in care proceedings instituted by the London Borough of Tower Hamlets ('the local authority') pursuant to s.31 of the Children Act 1989 and in respect of the subject child AB ('the child') who was aged 6 at the time of the final hearing. The Court read extensive bundles of written material/evidence and also heard the oral evidence of fifteen live witnesses which included expert, professional (social workers and police) and lay witnesses. The child's mother is CD ('the mother'). She had the benefit of leading and junior counsel representation at this hearing. The child's putative father is believed to be GH ('the putative father'). He was not named on the child's birth certificate and he had never been married to the mother. Therefore he did not have parental responsibility for the child.

The child spent time in the care of two different foster carers before moving to live with her maternal grandmother ('the maternal grandmother'), with the support of her maternal aunt ('the maternal aunt'), towards the end of the summer of 2017. The child remained there at the time of the final hearing under an interim care order. Therefore, the local authority continued to share parental responsibility with the mother. The grandmother, the child and the maternal aunt lived together in the mother's flat in London which the mother vacated to enable them all to live there. This had been the child's home prior to removal and it was obviously therefore an environment with which the child was familiar. There was no dispute in this case that the child had a very warm and loving relationship with the maternal grandmother and the maternal aunt and that she was very familiar with them.

The putative father is a Russian national. He did not play any part in the proceedings. The mother in her oral evidence, towards the end of the hearing, maintained that she had not had any contact with the putative father since 2013 and she said that she had been unable to provide any contact details for him. Therefore, he was not formally served with notice of the proceedings. He did not attend any hearing and was not represented. He did not seek to make any application to be joined to the proceedings or to be assessed as a carer for the child, nor to have any contact with the child. He filed no evidence. He remained in Russia as far as the court could ascertain. Whilst he had played no formal role the court was satisfied that it was quite apparent that he was aware of the proceedings and that he had been a significant presence on the periphery of the case.

The local authority's care plan recommended the placement of the child with the maternal grandmother under a legal framework which is the nearest equivalent to a special guardianship order as exists in the maternal grandmother's country of origin which is a Muslim majority country. The local authority proposed in its care plan that there should be direct contact between the mother and the child four times a year, following the recommendations of the court appointed Children's Guardian. It also proposed that there be Skype contact between the child and the father.

The local authority's position was supported by the court appointed Children's Guardian. The maternal grandmother was not represented in the proceedings but her position was advanced by the local authority with whom she was *ad idem*.

The local authority invited the court to find that the threshold for the making of final orders was crossed as at the relevant date of 2nd March 2017. The local authority asserted that as at that date the child had suffered, and was likely to suffer, significant harm and that such harm was attributable to the care given to the child, or likely to be given to her, if an order were not made, not being what it would be reasonable to expect her parents to give her. The broad areas of the local authority's concerns were the mother's excessive consumption of alcohol, neglect of the child's needs and the child suffering emotional harm due to her mother's drug use and excessive use of alcohol.

The mother opposed the local authority's applications. She did not accept that the threshold criteria had been crossed on the facts of the case and disputed all the findings sought by the local authority. She sought the immediate return of the child to her care. Initially her position had been that she wanted the maternal grandmother and the maternal aunt to support her caring for the child in the UK. The maternal grandmother and the maternal aunt did not wish to do that and sought to return to their country of origin with the child as quickly as possible. By the time the mother came to give her oral evidence, she clarified that she was not opposed to a placement with the maternal grandmother in her country of origin in principle but only in the event that the child was not returned to her care. The mother was born and brought up in that country. Both the mother and the child have previously resided there and they each hold dual nationality passports for that country and also for the UK.

The mother contended that the child had not suffered, nor was she at risk of suffering, significant harm owing to the care she had received from the mother. She stated that she had addressed her alcohol and drug misuse and believed that the child's welfare would be best met by

a return to the mother's care and that the mother would be marginalised in her child's life to the child's detriment if the child went to live with the maternal grandmother in her country of origin. Therefore, the mother sought the immediate return of the child to her care.

The mother's case was that her relationship with her daughter was good whilst the child was in foster care and that in fact there was only a negative change when the child went to live with maternal grandmother. It formed no part of the mother's case that the child would not be loved and well cared for by the maternal grandmother, nor that the child's needs would not be met by the maternal grandmother.

The maternal grandparents are Muslim. The maternal family members are educated and of a relatively affluent professional background. The maternal grandmother chose to take an oath on the Qur'an before giving oral evidence. The grandparents say that they do not attend Mosque but they do pray at home. No issue has been raised about the grandmother's ability to meet the child's religious needs. The mother's primary concern is that if the child were to live with the grandparents, her contact with the child would be at risk. The mother identifies as Christian. There is some evidence that the putative father is also of Christian belief and that he was concerned about the child with regard to her religious needs when she was in foster care.

The child was born in the UK but had also spent a lot of time with her maternal grandparents in their country of origin. Prior to coming to the UK in January 2017 the mother and child had been involved in extensive international travels and spent time in various countries. However the chronology of the movement of the mother and child across international borders and the reasons for doing so and the times that they did so was complicated and difficult for the court to establish. The local authority contends that between 2013 and 2017 the child spent significant periods of time travelling abroad with the mother and was cared for at other times by the maternal grandparents. The mother disputed some of the details in relation to this and maintained that at all times she was the child's primary carer.

In January 2017 the mother travelled to the UK with the child. On the morning of 2nd March 2017 the child was removed from the mother's care under a police protection order following the mother's arrest for being drunk in charge of a child in a bar in a hotel near the mother's home. As a consequence, the local authority was required to find an emergency foster placement for the child. The child was made subject to an emergency protection order on 3rd March 2017. An interim care order was made on 10th March 2017 by a judge of the East London Family Court.

Once removed from the mother's care the child was placed in a foster placement by the local authority. That decision, together with the second move of placement to another foster care placement, has been the subject of intense media coverage and there has been a significant media presence at various hearings of this matter. The nature of those placements and the child's experiences and treatment within them together with the circumstances of the mother's arrest have generated significant press interest in, and reporting of, the case. Both foster carers were Muslim. Some of the concerns about the foster carers and their ability to meet the child's religious, cultural and linguistic needs, as reported in the press, had been either raised by the mother prior to the media reports or otherwise later adopted by her. The mother, her friends and a contact supervisor have been identified in the press as the source of the media reports. On the Guardian's behalf, in particular, concern was expressed about the mother's insight into the child's needs in engaging in this conduct. There has been some evidence at this hearing that the concerns about those needs being met by the foster carers may have come from the father also.

The court made a case management order at an earlier stage of the proceedings allowing the local authority to release an alternative narrative to the matters that had been reported in the press and to place those in the public domain by 1st November 2017. There had been an internal inquiry by the local authority on the issues raised in the press and it was the local authority's conclusion that much of that reporting particularly as to the issues arising from the child's foster placements, had been inaccurate, distorted and unfair.

At the hearing on 2nd October 2017, as at previous hearings, journalists from a number of news outlets were present; their presence was not opposed by any party. The Times Newspaper Ltd was present and represented by counsel. At that hearing, and each subsequent hearing, the court's case management orders recorded as follows:

AND UPON the Court reaffirming the importance of the press reporting in accordance with the established guidance and to do so with skill and proper judgment so as not to undermine the welfare of the child, either through direct identification or jigsaw identification.

No accredited member of the press attended at the final hearing. The court indicated that it had been informed by the Child's Guardian that when the child was moved from her second foster placement to be placed in the care of the maternal grandmother at the end of August 2017 that, very sadly, this had to be undertaken with police presence and assistance, because of the numbers of press in attendance at the foster carer's address. The child did not have the opportunity to have a

proper goodbye with her carers. It would have been entirely in her best interests to do so. If all that is correct, and the court had no reason to conclude otherwise, the court could not see how such circumstances could be regarded as being in the child's best interests. As observed by the Child's Guardian, most unfortunately and through no fault or choice of her own, details of the child's private life are in the public domain and will continue to exist online well into the future.

In August 2013 the mother pleaded guilty to an earlier offence of battery against a security officer at a London casino after she had been drinking.

In July 2017, the mother was convicted at a Magistrates' Court of being drunk in charge of a child on 2nd March 2017. However, in October 2017 the mother's appeal against such conviction was allowed at the Crown Court.

The court's threshold findings

The court found that at the relevant date of 2nd March 2017 (being the day the child was removed by the police using their protection powers), pursuant to s.31(2) of the children Act 1989, the child had suffered and was likely to suffer significant harm and that the harm suffered or likely to be suffered is attributable to the care given her or likely to be given to her if an order was not made, not being what it would be reasonable to expect her parents to give to her.

The court made the following specific findings as sought by the local authority:

1

On 2.03.2017 the child was at risk of suffering the neglect of her basic care needs and emotional harm due to her mother's excessive consumption of alcohol for the following reasons:

2

On the morning of 02.03.2017 the mother had been drinking with a male friend throughout the night since 01.03.2017 in the bar of a hotel whilst the child was in the mother's care. Furthermore, the court found that the mother had knowingly presented misleading evidence, including the evidence of an expert toxicologist, in support of her appeal in the Crown Court. This expert reported without knowledge of the results of the mother's hair strand tests which showed positive for cocaine and chronic

and excessive use of alcohol by the mother for the highly relevant period of September 2016- May 2017

3

The hotel staff called the police because they were concerned about the mother's behaviour.

4

The police attended the hotel bar and observed that the mother and her friend were both highly intoxicated.

5

The mother's friend was so intoxicated that, when he was asked to stand up by the police, he fell over.

6

The child was removed by the police using their powers of protection.

7

The mother was arrested and released the following day on 03.03.2017.

8

On 03.03.2017 the mother attended the local authority's offices to meet with members of the social work team and smelt strongly of alcohol.

9

The mother's intoxicated state impaired her ability to safeguard and meet the child's care needs, placing the child at risk of neglect and physical harm.

10

It would also have been emotionally troubling for the child to witness this intoxicated behaviour of her mother and the mother's friend.

11

The child was at risk of suffering the further neglect of her basic care needs and emotional harm due to her mother's drug use and excessive consumption of alcohol for the following reasons:

- *the incident on 02.03.2017 is the second time such an incident has been reported. On 24.09.2012 the Foreign Office received a referral from the duty manager of a hotel in Bulgaria expressing concerns about the mother’s wellbeing. The duty manager reported that he suspected that the mother may be on drugs or alcohol and that the hotel room was not particularly fit for a young child.*

- *the mother has pleaded guilty to the charge of driving a motor vehicle with excessive alcohol on 2 separate occasions; 16.03.08 and 24.04.09. This indicates that she makes poor decisions when she consumes alcohol.*

- *the mother tested positive for cocaethylene, a cocaine metabolite that was detected during the period from September 2016 to March 2017. The presence of the metabolite indicates the combined use of cocaine with alcohol.*

- *hair strand test results dated 07.04.2017 shows the mother engaged in the excessive chronic consumption of alcohol equivalent to a bottle of wine per day.*

- *liver Function and CDT Blood Tests carried out in respect of the mother on 13.04.2017 indicated a "recent excessive alcohol intake".*

- *a SCRAM bracelet detected the consumption of alcohol between the 13.05.2017 to 14.05.2017, within 3 days of the bracelet being fitted.*

12

The mother’s chronic and problematic use of alcohol coupled with her minimisation of such concerns gives rise to a risk of emotional harm by reason of the child being exposed to the mother’s alcohol use. It also gives rise to risks of domestic violence which seem to be linked to the mother’s drinking.

13

The mother’s use of alcohol amounted to a sustained pattern of problematic drinking rather than a one off incident of such problematic drinking on 1st – 2nd March 2017.

14

The mother and the putative father appeared to remain in an enmeshed relationship which appears to include a degree of financial control of the mother by putative father.

15

The relationship between the mother and putative father had been characterised by incidents of domestic violence (some very serious) over a number of years such that if she and the putative father were together and the child were to be present there would be a real risk that the child may get caught up in the domestic violence and might be at risk of suffering physical and emotional harm which might be significant in its nature.

16

That in the period between April 2012 and December 2016, while the child was primarily cared for by the maternal grandmother, she also spent significant periods of time with her mother and that during those periods of time the child and the mother visited the father on a number of occasions and the child was otherwise exposed to disruption arising out of the mother's lifestyle which included changes of carers, different partners with whom the mother formed intense relationships very quickly and other changes in her life. Were the child to be returned to the care of the mother there would be a risk that such pattern would continue.

The court's welfare findings.

The court had no doubt that the mother had taken the course she had in these proceedings, driven by the natural desire to be reunited with her daughter. On a subjective analysis she genuinely believes that the child will be better off in her care. Sadly, in the court's judgement that motivation was also tinged with a degree of wounded pride. The mother's position was not borne out on an objective assessment of the evidence and in light of the court's threshold findings.

The court concluded that the grandmother loves her daughter and is committed to her. It is likely that the maternal family have felt frustrated, disappointed and saddened by the mother's conduct at times in the past, but the court was struck by what it perceived to be a depth of love for the mother and the child and a commitment to them by the grandmother and maternal family over the years despite the cost to them at times.

The child had experienced the grandmother as primary carer on many occasions and for lengthy periods. It is clear that the grandmother understands the importance of the mother to the child and the court was satisfied that the grandmother was not seeking to supplant the mother as the child calls her own mother 'mummy'. The court could see no basis

for concluding that the grandmother would deny contact or excise the mother or the putative father from the child's life. The court was further satisfied that the maternal aunt would protect the child's interests.

A placement away from the mother would significantly reduce the current levels of contact between the child and her mother. The child may well suffer emotional harm as a result, but the court was satisfied that this was likely to be in the short term and would be ameliorated by the quality of the care she would receive from the grandmother and the ongoing contact she would have with the mother.

Addressing the welfare checklist in s.1 of the Children Act 1989 the court concluded that the mother's capacity to provide adequate and appropriate care for the child long term is severely compromised and the child would be placed at risk of significant harm if returned to her care. The child's welfare requires that the court override the fact that the mother did not consent to the orders proposed by the local authority. The court further concluded that there was no level of realistic support which could be put in place continuously to manage the risks identified by the court.

The court was satisfied that the child's global needs would be met by the maternal grandparents. The child loved her grandmother and was well attached to her. The child would be returning to a familiar carer and a familiar environment.

Orders.

The court approved the placement of the child with the maternal grandparents pursuant to a Special Guardianship Order made in the UK on 16th February 2018. The court directed that the maternal family should obtain from the family court in their country of origin, orders mirroring the orders of the UK courts.

The court further directed that:

- neither the mother nor the putative father (who the mother has stated is the father of the child) should remove the child from the care and control of the maternal grandparents.
- the putative father shall not have any face to face contact with child (save through Skype calls involving his own mother which are to be supervised by the maternal grandmother).
- the mother's contact to the child shall be supervised by the maternal grandmother or the maternal grandfather, shall take place only at the

home of the maternal grandparents 4 times per year (for 2 or 3 consecutive days on each occasion of contact) and shall not include the mother staying overnight with the child.