IN THE FAMILY COURT AT MILTON KEYNES COUNTY COURT

Case No: MI14C20016

Courtroom No.1
351 Silbury Boulevard
Witan Gate East
Central Milton Keynes
Buckinghamshire
MK9 2DT

Thursday, 21st August 2014

Before:
HIS HONOUR JUDGE HUGHES

B E T W E E N:

BUCKINGHAMSHIRE COUNTY COUNCIL

and

M
F

Transcript from a recording by Ubiqus
61 Southwark Street, London SE1 0HL
Tel: 020 7269 0370

MR MURRAY appeared on behalf of the Claimant
MR SHERIDAN appeared on behalf of M
MRS ABBOTT appeared on behalf of F
MR BROWN appeared on behalf of the Guardian

JUDGMENT

(For approval)HHJ HUGHES:

1. The court is concerned with E. She was born on 12 March 2014. She is now aged

five months or so. It is her welfare that is the court's paramount consideration and she has been represented in these proceedings through her guardian, Sylvia Baker, by Mr Brown, a solicitor.

2. M is the mother. She is represented in these proceedings by her counsel, Mr Sheridan. She has separated from the father and at the start of this hearing sought further assessment by an independent social worker of her ability to parent E alone. During the proceedings her position changed and she wrote a poignant letter to the court, which I rehearse later in this judgment.

3. F is E's father. He has parental responsibility for her. He is represented in these proceedings by his counsel, Mrs Abbott. He initially opposed the local authority applications for a care and placement order and sought the return of E to his care. Subsequently, he too revised his position to one of non-opposition to applications, but falling short of consent. I set out his position a little later also.

4. Mr Murray of counsel represents Buckinghamshire County Council in what is the final hearing in relation to the local authority's applications for a care and placement order.

5. E was born, as I have said, on 12 March 2014. The mother was born on the 19 January 1995 and is now aged 19. She is still a very young woman, notwithstanding all the things that have happened to her in her life, which I will come to presently. She is currently of no fixed abode and I believe the term is ' sofa surfing. ' The father was born on 20 August 1988 and he has passed his 24th birthday, it was in fact yesterday; I think he told us that in court when he also gave a very poignant verbal address to the court in circumstances which I will also come to presently. He has two children by a previous relationship: ZG, who was born on 26 December 2010; RG, born on 1 January 2012, and it has to be related that both those children were subject to care and placement orders during their separate proceedings on 4 October 2011 and 26 April 2012, respectively.

6. It also emerges, and I mention it only as a matter of completeness, that the mother has had a previous child named KJ, who was born on 1 December 2008 and adopted through a private

arrangement. I mention that because this very young woman has had two children so far in relation to her life.

7. I draw on the local authority's helpful Note so far as the background is concerned and I replicate some of the same in this judgment with some minor amendments and added observations of my own. It is of course something of an understatement to suggest that both parents have had difficult early lives. Those difficulties have had a profound impact upon them to this very day. They both have had particularly sad and troubled histories. What the local authority set out in their document is but a brief history, which does not claim to be exhaustive, but in my judgment highly indicative of the issues that these parents have sadly faced. It makes for sorry reading and the court cannot be failed to be moved by some of their individual troubling experiences which sadly have contributed to their circumstances today. They have been left, in my judgment, with severe limitations which clearly have been determinative factors in their future ability to parent.

8. I deal with the mother first. She was adopted when she was four. She has told the local authority about a previous child that I mentioned. Her own adoptive placement broke down in 2009 and the mother moved into a residential placement. There, she reports, she was groomed by another resident while in that residential placement and raped by several men who were later convicted of the crime. The mother purportedly spent the compensation money she had received on alcohol. It is by any yardstick an appalling event to have occurred in relation to her life and one which in my judgment will have undoubtedly affected her profoundly.

9. She now has a fractured relationship with her adoptive family. She does not speak to her adoptive mother but has spoken to her adoptive father on the telephone. She has reported that she has post-traumatic stress disorder, unsurprisingly I should say, and depression. She has also reported in the past having fantasies of killing the father in July 2013 and was worried about having bipolar affective disorder, although she did not seek assistance despite advice to do so.

10. Since separating from the father, she has now made allegations of domestic abuse in relation to him and more recently still, at the start of these proceedings, sexual violence of a serious nature. I should say that in relation to those allegations I make two observations: firstly, they are very similar in nature to some of the allegations made by the father's previous partner, Miss C, in relation to his conduct; secondly, I have not had to make findings in relation to those issues because the threshold by any yardstick is crossed so far as these proceedings are concerned and those allegations will take a considerable amount of time to deal with and the mother will need a considerable amount of support in relation to those issues, all of which fall well outside E's timescale and her overriding need for security of placement.

11. The father's background is no less troubling. He was taken into care at the age of five months and was seen by a clinical psychologist as early as three years old, and that was due to the disturbed behaviours he was displaying. At 12 he was expelled from school. It was a special school for children with emotional behavioural difficulties for violent and sexualised behaviours. He was sectioned under the Mental Health Act at the age of 15 and from then over the course of the next few years had a variety of mental health interventions.

12. I have mentioned that he has had two previous children; both have been subject to separate proceedings, and it is of significance in relation to those proceedings that the father's relationship with Miss C was characterised by instability and violence. There was a psychological assessment of the father by Dr Gray and, interestingly, that indicated the father did not have any learning disability and his cognitive abilities are within the average range, but perhaps more pertinently the assessment, the psychiatric assessment, of the father was carried out by Dr Friedman and Dr Lawrence. They concluded that the father posed a risk which is highest to those close to him from his aggressive behaviour, possible violence, emotional harm, proving inconsistent and mentally unstable. It was said that the father needed ongoing and likely long-term care and supervision of his treating psychiatrist and mental health team.

13. Incidentally, I record that I have looked in detail at Dr Friedman's report in those proceedings. It is dated 15 July and written at a time when the father was at a particularly low ebb. It catalogues in great detail his disturbed childhood and mental illness. Incidentally, I was very much affected when the father told me himself that his childhood was 'pretty crap'. It is a stark understatement . She reported that he was vulnerable to further break down, lacking emotional resilience. The most likely provisional diagnosis then was either bipolar affective disorder or schizoaffective disorder; in any event, a serious mental condition needing ongoing care and supervision and long-term care. Not the best qualifications for the inevitable stress and strains of parenthood in my judgment.

14. The father was arrested in the past for raping his previous partner, but it seems that no charges were brought, and there came a time when the mother was put on probation for an offence whereby she pretended to be Miss C and rang the police to drop the charges, and she received a 12-month suspended prison sentence for interfering with a witness, fabricating evidence and perverting the course of justice.

15. The parents' relationship has been a chequered one. The father spoke in his brief words to the court yesterday in rather glowing terms about his relationship with the mother and it seemed that he had nothing but good things to say about her, but the evidence perhaps indicates a slightly different picture. The relationship according to the mother lasted from April 2012 to 2014. When the mother was pregnant with E there were concerns that she was still smoking and drinking. She had a catheter fitted for a urinary infection but subsequently discharged herself and the father removed the catheter. She had, as we all know, a potentially fatal pulmonary embolism in her leg that travelled to her lungs but discharged herself against medical advice on 9 March 2014 and was found at the father's property and had to be persuaded to return to hospital on 11 March. It was also a matter of record that she missed antenatal appointments in relation to E.

16. E was on the local authority radar prior to her birth and she was made subject to a child protection plan on 9 January under the category of neglect. There had been domestic

violence in the relationship. The father denies this. He says that they were limited to arguments, but it is a matter of record that the mother fled to a refuge in July 2013, saying that the father was controlling. While there, she started a relationship with an ex-partner of another resident and moved to Scotland with him briefly.

17. She obtained within the ambit of these proceedings a non-molestation order on 16 August 2014. This was obtained without notice to the father but the father failed to attend the return date so the order was extended on the same terms. In the course of that application, she filed an affidavit and she stated, amongst other things, that the father would call her awful names, including cunt, spastic, slag and slut. There was physical abuse. She left him in June 2013 because of the abuse and was admitted to a refuge but returned to him after discovering she was pregnant. When pregnant, the father would hit her in the stomach, threatened to kick the child out of her and, furthermore, it appears to be the case that there was an argument in the week commencing 9 June when the father punched a hole in the door, slapped and hit the mother, grabbed a knife and said he would slit his throat if she left and threatened to kill her, and it seems also the mother alleges that the father threatened to kill her post-separation.

18. The mother now says in a statement filed after the commencement of proceedings that the father has raped her both orally and vaginally on numerous occasions during the relationship and the matter is now subject to a police investigation. It is important for me to note out of balance that the father entirely rejects that there has been domestic violence or sexual violence as alleged by the mother, although, as I have said, he accepts that there had been volatile arguments.

19. A range of concerns are set out in the final threshold document. I should record here that the threshold document in an amended form has been agreed by the parties with the father's reservations in relation to some of the matters recorded but by any measure the threshold is crossed and the parents, all credit to them, accept that it is crossed.

20. The concerns have included the parent's mental health, lack of engagement with therapy

and/or medication and, if there has been any engagement, it has not been consistent and the evidence appears to be that it has not been beneficial. The father's alcohol use: social work visits to the property indicated I think on one occasion, 21 February, a litre bottle of empty whiskey. The father does not accept he is an alcoholic but accepts he drinks socially occasionally. The state of the property, although there has been some improvement, but certainly the property was not fit to return a young child to it. Chaotic use of finances: the mother praying in aid on one occasion that she could not get to an antenatal appointment, but the couple had spent £520 on a PlayStation. Furthermore, what is identified I suppose which is at the heart of this case is the ability of the parents to meet E's needs and that s is the capacity issue which I come to deal with in greater detail later in this judgment and allegations of domestic violence.

21. Since separation, the mother's chaotic lifestyle has continued. I mention this not to cause her any concern or anxiety; she at least has the courage to sit and listen to the court's judgment and that requires an enormous amount of courage on her part for which I commend her, but, as she reported, being strangled by a stranger on 4 July; she has not attended all her medical appointments; she has turned up at Social Services office with other people whose families are known to the local authority. I pause there. Perhaps not the best companions in adversity. She has been on bail for kidnapping a person in care of the local authority. I know that mother denies that, saying that she was in the wrong place at the wrong time; and in short form also being homeless.

22. I should say this in positive terms: it seems now that the mother is, to her commendable credit, beginning to take a grip on various parts of her life and taking some of the help that has always been available to her and I commend her for that.

23. Proceedings started, and this is significant, following an application for an emergency protection order on 14 March. In other words, matters were so serious that the local authority deemed it necessary to remove the child shortly after birth, and matters proceeded thereafter in relation to the normal directions, the granting of an interim care order and

consequential case management directions.

24. I should perhaps mention this: there was an urgent hearing on 29 July, because on 15 July mother attended social care and informed the social worker that she did not think that the father was E's father. That necessitated DNA testing on an urgent basis to preserve this hearing and the relisting of the issues resolution hearing, but in any event the father was confirmed as E's father. On 12 August, as we know, she lodged her application for a six-week parenting assessment by an independent social worker. I have recorded that was no longer pursued and I have also recorded, I hope, that that was the right thing to do in all the circumstances and the mother's litigation starts in these proceedings is thoroughly commendable.

25. There have been no independent expert reports in these proceedings. I say that, I use the word expert in perhaps its narrow form, but there are expert reports from the previous proceedings and there are experts in the case. The experts in the case in my judgment are the social worker and the CATCH assessor. CATCH have provided a parenting assessment of the parents. The conclusion of that report was, sadly, E would be at risk of serious harm if she was returned to the care of both or either of her parents. Both parents disputed the conclusions of that CATCH assessment at the start of the hearing and it was necessary for me to hear evidence initially until the parties' litigation stance changed from Maggie Zakrewski[?] from CATCH. She conducted with her colleague a pre- and post-birth assessment. Her evidence was thorough and insightful. She recorded positives when they occurred. The parents were assessed together and as individuals and the appropriate learning tools were used so far as the mother is concerned.

26. The mother she described as vulnerable, naïve and emotionally immature. The father presented as having more insight but suffered high levels of anxiety and mental health difficulties. She proposed, and I agree with her, that E would be at risk of serious harm if reunited to the care of her parents, a view she stoutly maintained from the witness box, and I accepted her evidence. She also noted that parents only attended 36 out of the 62 hours of

the assessment, highly indicative in my judgment of their own particular difficulties. Significantly there was an occasion on the last session when the parents chose to go to the post office to pick up money rather than remain with E and left half an hour early. I also record for the sake of completeness that there were numerous examples of contact being late or being missed.

27. I should also record that I have read three statements from the social worker, as well as the care plan and the placement application report. The social worker comprises the bulk of her evidence, if I may say so, in her third statement of 11 July. I should say it is a particularly impressive piece of work, containing as it does a comprehensive analysis of the history, a *Re B-S (Children)* [2013] EWCA Civ 1146 analysis of competing placement options. The social worker says in terms:

> 'In light of the concerns identified regarding M and F's mental health problems, their relationship categorised by domestic violence; their lack of insight into the risks posed to E; their inability or unwillingness to work with social care beyond a superficial level or to take on board advice from professionals, the local authority considers that if E were returned to either parents' care, either separately or as a couple, then she would be at risk of suffering physical, developmental, emotional neglect and possible sexual harm.'

It is in my judgment a compelling indictment which I find to be fully made out based on the filed evidence in this case.

28. It is not necessary for me to set out in any detail the guardian's written evidence, save and except to say that by the time of this final hearing she had submitted two reports: one to deal with the care application and one to deal with the placement application. Both contain high levels of the required analysis and both set out her detailed reasons for her support for the local authority's applications. She carefully records, as indeed I do, the love that both parents have for E, but maintains that neither have the capacity as vulnerable adults to provide good enough care, and I accept her conclusions.

29. I spend a moment or two now in relation to the law. Just because this matter is not actively opposed any more, it is still necessary for me to discharge my duties as a judge, by placing the case in its legal context. I remind myself that Hale LJ, as she then was, said in *Re C and*

B (Children) (Care Order: Future Harm) [2000] 2 FCR 614, at paragraph 33:

> 'Under Article 8 of the Convention both the children and the parents have the right to respect for their family and private life. If the State has interfered with that there are three requirements. First, that it be in accordance with the law. Secondly, that it be for a legitimate aim (in this case of the protection of the welfare and interests of the children) and thirdly that "it is necessary in a democratic society".'

30. I have in mind that under normal circumstances the best person to bring up a child is a natural parent and the powerful remarks of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050 and the toleration that society must have to the very diverse standards of parenting, including 'the eccentric, the barely adequate and the inconsistent.' I also adopt the propositions advanced in *Re MA (Care: Threshold)* [2010] 1 FLR CA 433 that the significant harm that I should have regard to must be sufficiently high to justify the momentous step of taking children away from their parents and the risk must be an unacceptable one. In my judgment the risk is clearly an unacceptable one, as I hope this unfolding judgment has made it plain.

31. I also had in mind the more recent decision in *Re B-S (Children)* [2013] EWCA Civ 1146 and the guidance from the President in relation to a need for proper evidence to be before the court. In that judgment, Sir James Munby, President of the Family Division, at paragraph 22 made reference to the earlier Supreme Court decision in *Re B (A Child) (care Proceedings: Threshold Criteria)* [2013] UKSC 33 and he said:

> 'The language used in *Re B* is striking. Different words and phrases are used, but the message is clear. Orders contemplating non-consensual adoption – care orders with a plan for adoption, placement orders and adoption orders – are "a very extreme thing, a last resort", only to be made where "nothing else will do", where "no other course [is] possible in [the child's] interests", they are "the most extreme option", a "last resort – when all else fails", to be made "only in exceptional circumstances and where motivated by *overriding requirements* pertaining to the child's welfare, in short, where nothing else will do".'

I keep those judicial considerations firmly in mind. My judicial task is clear. Firstly, I must establish that there is proper evidence from the local authority and the children's guardian which addresses all the realistically possible options for the child and the necessary analysis. In my judgment that evidence is before the court and has arrived before the court by both

the combination of written and oral evidence and the expert evidence in the previous proceedings. In fact, so far as the balancing exercise is concerned, I need look no further than the excellent piece of work done by the social worker in her highly polished and professional last statement which is *Re B-S* compliant in every sense.

32. Having reviewed all the written and oral evidence in the case, it is then my task to ensure that the judgment grapples with the relevant factors and contains reasons. I have to undertake a global, holistic, multifaceted evaluation of this child's welfare, which considers all the negatives and positives. My task, and I make this clear, is made easier by the courageous position of the parents and their child-centred and dignified approach, but I hope no less a rigorous approach in relation to the matters upon which I satisfy myself. In other words, it is my duty still to look at the evidence, whatever their position may be.

33. I turn to the mother and I record for the purposes of this judgment that she is in court. She wrote a letter. I have little doubt that she was helped to do so by her very conscientious counsel, Mr Sheridan, and the fact that she was takes nothing away from it. I will read it out because I want it to be part of this judgment. It says in terms:

> 'I, M, having reflected on what is best for my daughter, E, have decided that she should not be moved from pillar to post like I suffered as a child. I am not yet in a position to offer her the care and support that she needs. Bearing those things in mind, I have decided to agree to the local authority's plans to place her within an adoptive family. I love my daughter and I hope she is safe and gets the right help she wants/needs.'

She has signed that statement and it is an important part of this child's history.

34. I turn to the father. Not only did the father write a letter, for which I thank him, his letter falls into two parts. The first part is a letter to the court, which comprises his written instructions. The second part is a letter to his daughter, which no doubt can be preserved for her and I hope the local authority will do that in relation to her life story work. It reads:

> 'I have thought long and hard about my daughter and her future. Whilst I would dearly love to parent my daughter to adulthood, I accept at this moment in time it is not possible so I have decided I will not oppose the application of the local authority, but I do not agree with it.'

Incidentally I make one or two comments in relation to the father's position. There is

absolutely no reason why he should agree to it. The mere fact that he is not opposing it does not take away one iota of his commendability. He, in his oral submission, which I know he found difficult to make, particularly as yesterday was his birthday, he said that he tried his best and he wanted his child to know that and I think this was the most significant thing about what he said: he said he wanted her to have a better childhood than he did and that is why I have taken some trouble in this judgment to rehearse some of the horrors of his childhood. The amended threshold document is before the court. I do not propose to tinker with it. It sets out various reservations of the father and it puts a balance on matters, but significantly, and this is the significant feature, both parents accept that the threshold is crossed and there is no need for me to involve myself any further so far as that is concerned.

35. I move on, threshold having been crossed, and in order to determine the nature of unopposed orders so far as the care order is concerned, I must keep as my compass the Welfare Checklist. I keep with that Checklist in mind that neither parent is capable of meeting this child's welfare needs and she risks serious harm and neglect. I remind the parents and everybody else that is the child's welfare that is my paramount consideration. In deciding whether to make a care order I have, as I have mentioned, focused on the welfare checklist.

36. Now, I do not wish to spend too much time in relation to this aspect, given the parents' position, but the finding I make is this: the risks are just too great that E's needs will not be met. She is a developing child and her parents have grave difficulties and there is an overwhelming risk that her needs will be neglected.

37. For the avoidance of doubt, I accept all of the evidence that I have either read or heard about the parents' lack of capacity to provide good enough care. The care plan I know is for adoption and I have of course considered the impact of Section 1.3(c) as to the likely effect on E in relation to any change of her circumstances, in this particular case, not being brought up by a natural parent, but of course that has to be balanced against the risk of harm that is identified in the statements from the Junior CATCH Team , the social worker, and

the guardian. I therefore approve the care plan and make the care order with a care plan for adoption and indirect letterbox contact.

38. I need to go on and consider the placement application. I need to do that separately. I do that against the consideration of the placement application report, together with the guardian's analysis, and her helpful addendum report, which addresses the Welfare Checklist under the 2002 Act. Once again, I have to keep that checklist firmly in mind. E has the need for stability throughout her childhood.

39. The risk of harm I have already identified. There are no other relatives able to care for this child. Of course I have allowed for the risk of emotional difficulties later in life when she may struggle for a sense of identity but I am fully persuaded that the present and future risks outweigh that consideration after having balanced it appropriately and, as I have said, the risks are just too great in returning E to either parent.

40. I cannot make a placement order without parental consent. To her enormous credit, the mother consents. That is a powerful message to her growing child who will look back and try to make sense of all this. The father cannot consent. He, emotionally, is unable to. That is a perfectly respectable position that is recognised by the courts. I have little doubt that both parents love E, whatever their identified shortcomings, and it is vital that this child is brought up in the knowledge that that is the case.

41. I read the statement of facts in support of an application to dispense with the father's consent on welfare grounds. I find the facts set out in that statement to be well established. There have unfortunately been years of chaotic lifestyle demonstrated in the parents' troubled lives. The prognosis for providing good enough care is very poor indeed and the evidence, sad to say, has always been overwhelming.

42. For all those reasons, I dispense with the father's consent and I should say that, again in relation to the issue of risk, so far as the father's recognition of the realities of the situation concerning E, the court finds that this is not only humbling but courageous. In all the circumstances, I make a placement order. In due course and time, E will know that her

parents wanted her, fought for her until this final hearing, when they have each made a brave decision. I am fully satisfied in making a placement order that nothing else will do.
