

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2014

Before :

THE HONOURABLE MR JUSTICE KEEHAN

Between :

The London Borough of Croydon

Applicant

and

BU (1)
G (Through her children's guardian) (2)

Respondents

PA (3)

BA (4)

SW (5)

Mr C Archer (instructed by **The London Borough of Croydon**) for the **Applicant**

Mr J Rosenblatt (instructed by **Hayes Law**) for the **First Respondent**

Mrs J Venters QC (instructed by **Venters Solicitors**) for the **Second Respondent**

Mr J Wilkinson (instructed by **GT Stewart**) for the **Third Respondent**

The **Fourth Respondent** appearing in person

The **Fifth Respondent** appearing in person

Hearing dates: 17 – 21 March 2014

Judgment

THE HONOURABLE MR JUSTICE KEEHAN

The judge gives leave for this judgment to be reported in this anonymised form. Pseudonyms have been used for all of the relevant names of people, places and companies.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by his or her true name or actual location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Mr Justice Keehan :

Introduction

1. On 20 December 2012 RS was brutally and violently killed by her husband BS. He stabbed her more than 50 times. On 3 February 2014 he pleaded guilty to manslaughter on the ground of diminished responsibility. He was sentenced to life imprisonment with a minimum tariff of 10 years and 8 months.
2. The dreadful tragedy was compounded by the awful fact that their daughter, G, was not only present when her mother was killed, but she suffered injuries inflicted by her father as she bravely sought to protect her mother. She was found by the emergency services in the same room as her mother's dead body. G was covered in blood.
3. G was born on 18 September 2006; she is just 7 years of age. She has suffered a horrendous trauma and the severe loss of her beloved mother.
4. On hearing of her father's conviction and sentence of imprisonment she wrote a 'thank you letter' to the judge who presided over the criminal proceedings.
5. One has the greatest sympathy for all the members of this family who have struggled to come to terms with their grief and the loss of a much loved mother, daughter, niece and aunt in such violent and tragic circumstances.

The proceedings

6. Initially G was cared for by her maternal aunt A. The time came, however, when the aunt's own grief reaction to the death of her sister proved too much for her to continue to care for G. The maternal grandfather, PA, sought to support his daughter in caring for G and for a short period she lived with him.
7. Since 23 May 2013 G has lived with foster carers.
8. On 25 February 2013 the local authority issued an application for a care order in respect of G. The local authority's final care plan provides for G to remain in long term foster care with her current foster carers. The children's guardian supports that plan.
9. Three members of the maternal family are parties to these proceedings. I joined the maternal grandfather and his former wife, referred to as the maternal step grandmother, BA, on 3 October 2013. I rejected the maternal grandmother's, SW, application for party status and her application for leave to apply for a residence order or a special guardianship order.
10. On 31 January 2014 the Court of Appeal granted the maternal grandmother's appeal against my ruling to the extent that she was joined as a party and was permitted to be heard on the issue of contact and to oppose the applications of the maternal grandfather and of the maternal step grandmother to care for G in the long term.

11. Initially the maternal grandfather sought to care for G under the auspices of a special guardianship order. As the outset of this hearing I was told that, having considered all of the evidence and in particular G's strongly voiced wish to remain living with her foster carers, he no longer pursued that application.
12. I well understand that was an immensely difficult decision for him to make and that it was done with a heavy heart, nevertheless he is to be commended for reaching a decision which he believes to be in the best interests of G.
13. The maternal step grandmother initially did not seek to care for G for wholly understandable reasons. She wished for G to be cared for by a member of the maternal family and strongly opposed G remaining in long term foster care. The maternal step grandmother, at the outset of this hearing wanted the maternal grandfather to care for G. That changed overnight having listened to the maternal grandfather's evidence to a proposal that she and her sister care for G. By the end of her evidence, however, she agreed that if the court found that G's genuine wishes were to remain with her foster carers, it was in her best interests to remain in foster care.
14. Thus there is no member of the family who now puts themselves forward as a long term carer for her. I note the Court of Appeal did not permit the maternal grandmother to pursue her application to care for G.
15. The maternal grandmother is limited to raising issues about contact and to oppose applications by the maternal grandfather and the maternal step grandmother to care for G. Neither now pursues such applications. Accordingly the maternal grandmother is restricted to the issue of contact.

Issues

16. There are two broad issues for the court to determine:
 - a) Whether it is in G's welfare best interests to remain in long term foster care subject to a care order in favour of the applicant local authority; and
 - b) What contact should be afforded to the maternal grandfather, maternal step grandmother and maternal grandmother – to include duration and frequency, the issue of supervision and overnight/holiday contact.
17. The three grandparents currently have contact at least monthly with G. It lasts 2 hours for each of them and is supervised. The maternal grandfather attends contact at the same session as his daughter A and her daughter L.
18. The social worker has spoken with G about which family members she would wish to have contact with and the frequency of the same. In accordance with her wishes and supported by the recommendations of the children's guardian, the social worker proposes in the final care plan that:
 - a) A, L and the maternal aunt K, should have contact with G on a monthly basis which will be supervised; and

- b) The three maternal grandparents should have separate supervised contact bi-monthly albeit that the local authority is content for the maternal grandfather to attend his contact with A, L and K.
19. The maternal grandmother and maternal step grandmother oppose the proposed reduction in their contact and seek contact with G, at least, once per month. The maternal grandfather, by the end of the hearing accepted the local authority's plan.

Law

20. Throughout my consideration of this case I have borne in mind that my paramount concern is the welfare best interests of G: s1 (1) Children Act 1989.
21. I have had full regard to each of those matters set out in the 'welfare checklist' in s1 (3) Children Act 1989.
22. Further, I have taken full account of the respective Article 6 and Article 8 rights of G and of each of the family members before the court. I bear in mind, however, that where there is a conflict or tension between the Article 8 rights of the child and of any adult family member, the rights of the child prevail: *Yousef v The Netherlands* [2003] 1 FLR 210.
23. I have regard to the general principle that wherever possible it is in the welfare best interests of a child to be cared for by her natural parents or her natural family.

Background

24. I have referred to the dreadful events which led to the commencement of these proceedings. I can deal with the background history fairly briefly.
25. The maternal grandmother and maternal grandfather married in 1984. They separated in 1987; the separation was acrimonious as was the dispute between them in respect of the arrangements for their two daughters. The maternal grandfather commenced wardship proceedings in 1991 seeking care and control of the two girls.
26. The final hearing was heard by HHJ Butter sitting as a judge of the High Court. He gave judgment on 3 December 1991. Care and control of the children was transferred to the maternal grandfather. By this time he had been in a relationship with the maternal step grandmother for some 4 years. They had married in September 1991 and were divorced in September 2003.
27. During the course of his judgment HHJ Butter considered the divers allegations of sexual and physical abuse of the children which the maternal grandmother had made against the maternal grandfather. They ranged over a period of three years. The judge found none of them to be proved; he went so far as to find that sexual abuse had not taken place. The maternal grandmother takes issue with many of the findings made in that judgment. She has not successfully appealed that judgment. Accordingly she and I are bound by it.
28. The judge found the standard of care afforded to the children by the maternal grandmother to be poor. He observed that 'to some extent she seems to me to live in a

world of fantasy'. He spoke of the high level of animosity between the maternal grandmother and the maternal step grandmother.

29. The animosity between the maternal grandmother, on the one hand, and the maternal grandfather and maternal step grandmother on the other has persisted, indeed, worsened over the last 23 years. In about 2001 RS returned to live with her mother because, the maternal grandmother alleges, of the abuse she suffered at the hands of the maternal grandfather.
30. Despite RS returning to live with the maternal grandmother it appears she enjoyed a good relationship with the maternal grandfather and the maternal step grandmother, certainly after the birth of G. The maternal grandmother asserts, and I accept, that she was closely involved in the care of G and cared for her when her mother was working.
31. Unfortunately the maternal grandmother has for many years, and remains, estranged from her other daughter, A. A enjoys a close relationship with the maternal grandfather and the maternal step grandmother.
32. The bitterness, antipathy and animosity between the maternal grandmother and the maternal step grandmother is graphically revealed in the statements filed by each of them. As at the wardship hearing 22 years ago, there was a high level of hostility displayed between the maternal grandmother and maternal step grandmother at this hearing.

Evidence

33. I have read the statements filed by the parties, the expert reports and miscellaneous emails and other documents handed up to me during the course of this hearing.
34. I have, of course, read the judgment of HHJ Butter.
35. I heard evidence from the social worker, Dionne Sang, the independent social worker, Helena Ware, the maternal grandfather, the maternal step grandmother, the maternal grandmother and the children's guardian. Although the father had attended various directions hearings by video link from prison, he chose not to attend this hearing. He was, however, represented by counsel.
36. Dr Harris-Hendricks, a renowned expert in cases where one parent kills another, provided one substantive report and a short addendum. She was not called to give evidence. She diagnosed G as suffering from Post Traumatic Stress Disorder and observed:

"(She) is vulnerable to depressive illness in adolescence because of so early a bereavement"

"The most critical issue is that G requires legally secure, long-term parenting...the prognosis is favourable provided in the first instance that she is legally secure in long-term substitute care and then that a package of education and therapeutic help is in place". [E51, 54 and 56]

37. Mrs Ware undertook an assessment of the family members, save for the maternal grandmother, as potential carers for G. She observed that:

“ [G] needs an emotionally stable and emotionally neutral environment that can support her and help her come to terms with the loss of her mother and father, past events when she lived with both parents and was possibly exposed to some sexual abuse as well as understanding the incarceration of her father. I do not consider that any of the extended family members could offer G the care she needs at present or are viable carers for her as they would struggle to manage their own feelings and distress as well as supporting G....”

“They do not understand that it will take more than their love for G and their wish to look after her if she is not to be seriously affected by the tragic events of 20 December 2012” [E90-92]

38. She concluded:

“G’s needs are emotional needs are very complex given all of her experiences. She needs to be placed with carers that are not only caring but can remain emotionally neutral so that they can support G’s emotional and therapeutic needs now and in the future.

Unfortunately, I do not believe that any family members that I have assessed are able to offer G the care she needs and should not be further assessed.” [E95]

39. I was extremely impressed with social worker, Ms Sang and her evidence. Whilst it may be right to criticise the local authority for failing to offer appropriate support to A when she was caring for G, as alleged by the maternal step grandmother, none of that criticism can apply to this social worker. It is clear to me that she has an excellent relationship with G. She has thought very carefully about the child’s needs and has her welfare best interests at the fore of her planning in this case. She recognises the huge importance of the family for G and the need to keep the issue of contact under regular review.

40. I am grateful to her for securing the Head of Children’s Services agreement to fund G’s future therapy with Assist. She readily accepted my suggestion that the local authority should notify the family members in writing of issues and matters to be raised at future LAC Reviews and to invite their comments and views in writing on any issue relating to G.

41. Ms Sang told me that G is very well settled with her current carers and is extremely well supported by them and by her school. The foster carers have a number of animals at their home who G greatly enjoys feeding and spending time with. She is learning to ride a horse. I am told and accept that these activities have an important therapeutic benefit for G.

42. G told the social worker, as she told her guardian, that she wants to remain with her current foster carers “until I am grown up”.

43. She is a child who very much wants to please her carers and her family members. Thus it must have been very difficult to say what contact she wanted with her family and with whom. She is very close to Aunt A and her daughter L, who is a similar age. G would like to see them and her great aunt, K, on a monthly basis. She told Ms Sang that she wished to see her maternal grandfather, maternal grandmother and maternal

step grandmother each once every two months. G told her guardian that she would like to have L to come for 'sleepovers'.

44. I have a report from Assist who provide therapeutic work and support to G. She has developed a good relationship with her therapist, Cate Masheder, and has engaged well with therapy. It is plain from the report provided by Assist that G is entering a particularly difficult and intense phase in the therapy. She has spoken of her mother's death, her father's role in that, how he had hurt her and of witnessing her father raping her mother.
45. The therapist is of the view that the foster carers are very attuned to G's needs. She concludes that her best interests would be served by remaining where she is and that contact with her father, at this time, whether direct or indirect would be harmful to and frightening for her.
46. The social worker and the children's guardian agree.
47. The children's guardian concludes in her final report that:

"Understandably the family may wish to have more contact with G and want to remain very involved in her life; they love her very much and wish to protect her after such a life changing trauma. However G's paramount needs now are for consistency of care, stability and security and to support her through the difficult therapy she is engaging well with."
48. When the guardian last visited G on 11 March 2014, G gave her a letter which she had written and a drawing which she had made that she wanted to be given to me. All parties have both the letter and the drawing. In her letter she told me she wanted to live with her foster carers and did not want to live with her maternal grandfather or maternal step grandmother. There was no reference to the maternal grandmother.
49. An issue has arisen about the provenance of this letter and this drawing. The guardian told me that the therapist supported the foster carers to help G write the letter and the male foster carer helped G with her spelling.
50. The maternal step grandmother asserted in evidence, on the basis of the most tenuous reasons, that the female foster carer wrote the letter and the wishes and feelings expressed in it are hers and not G's. She said the drawing was made under the direction of the female foster carer.
51. The maternal step grandmother told me that the foster carer told lies, that G does not want to stay with these foster carers and that G would have included her mother, father and L in any drawing. In fact G did include her mother. Further she alleges that G could not have written the letter because she cannot spell the step grandmother's name correctly as she has done in this letter.
52. I entirely reject those allegations. I am wholly satisfied that G wrote that letter and made the drawing of her own volition for the following reasons:

- a) Her wishes and feelings as expressed in that letter are wholly at one with the consistent views she has expressed to the various professionals involved with her;
 - b) I accept that the male foster carer assisted G with her spelling;
 - c) The notion that the foster carer would forge a letter from G is totally inconsistent with the care, support and time she has devoted to this vulnerable little girl.
53. I turn to consider the evidence of the grandparents. I have great sympathy for each of them. They are each grieving the death of RS and the loss from the family of G. They are struggling to come to terms with the tragic events of December 2012. In so doing they have great difficulty, most especially the maternal grandmother and the maternal step grandmother, in controlling the very raw and intense emotions resulting from the events that have befallen this family over very many years and this litigation.
54. I do not wish to add to the burden borne by any of them. Accordingly, I propose, as I indicated during the course of closing submissions yesterday, to confine myself to make only those findings which are essential for the purposes of the decisions I have to make and to do so in relatively short form. If any party subsequently wishes me to elaborate on my reasons, I will do so.
55. The maternal grandmother and maternal step grandmother both appeared in person. They were ineligible for public funding; that is the regrettable consequence of recent amendments to the Legal Aid Agency's eligibility criteria. In such a tragic and difficult case both would have merited and benefitted from legal representation. That said, both are forceful characters and, I am satisfied, both have made their views abundantly clear to me.
56. The maternal grandfather has listened and considered the written and oral evidence with great care. His proposals and views on the local authority's care plan have changed and developed over the course of this hearing. By closing submissions his position was that:
- a) Although he would dearly love to care for his granddaughter, he recognised and accepted that it was in G's best interests to remain with her current foster carers on a plan of long term foster care;
 - b) He maintains the hope that there may come a time in the future when G could return to live with a family member;
 - c) He accepted that in G's best interests his supervised contact should be reduced to bi-monthly; and
 - d) That it would not be in her best interests at this time for her to go on a proposed foreign holiday with himself, great aunt K, A and L.
57. The maternal grandfather is to be commended for the stance he has now taken. I accept these were painful decisions for him to take. It is a testament to his great love for G that he has put her best interests first and foremost.

58. The maternal step grandmother could not bring herself to agree to a reduction in her contact to bi-monthly. She feared such a level of contact would adversely affect her relationship with G. She is keen that in the future she could have contact with G in her own home.
59. The level of hostility between the maternal step grandmother and the maternal grandmother was clear and evident in their respective written evidence, in their oral evidence and in their conduct of this hearing. Such hostility and animosity has subsisted for the last 25 years or so. Sadly I foresee no change in that very poor relationship in either the short or long term.
60. I am in no doubt that if that animosity were to be conveyed to G whether directly or indirectly, or she were otherwise to become aware of it, it would be potentially extremely damaging to and destabilising for her.
61. The maternal step grandmother, as I have described in paragraph 50 and 51 above, holds very strong negative views about the current foster carers. Those views were, by way of example only, frequently expressed in her oral evidence and in an email sent to the parties' lawyers on 1 March this year. I am satisfied that those views are totally without any foundation. I unhesitatingly reject each of them.
62. I am at a loss to understand why, in the face of overwhelming evidence of the wonderful care these foster carers give to G and her deep desire to live with them, that the maternal step grandmother has formed and expresses those views. I am in no doubt that it would be extremely damaging for G were she to learn of the same.
63. The maternal grandmother's animosity towards the maternal grandfather and the maternal step grandmother is as great today as it was 20 odd years ago. It is in my judgment all consuming. A consistent feature of her written and oral evidence was an almost paranoid view that she has been sidelined and pushed out of G's life by the paternal family, by the local authority and by all professionals involved with G.
64. Time and time again during this hearing the maternal grandmother started a question or submission referring to G but very quickly she reverted to her own feelings of being excluded and/or dealing with events of long ago - in particular the judgment of HHJ Butter.
65. In fairness to her, by the close of the hearing she accepted that it was in G's best interests to remain with her current foster carers. She could not resist, however, bemoaning the fact that the Court of Appeal had, wrongly in her view, refused to permit her to seek to apply for the care of G at this hearing.
66. Like the maternal step grandmother she could not accept the proposed reduction in her contact from monthly to bi-monthly. She resents the fact that, as she saw it, the number of members of the paternal family who are to have contact results in a reduction of the frequency of her contact. I gained the sense that she would prefer that she should have one half of the contact visits to G and the other half should be shared between the paternal family.
67. In taking that view and approach I regret the maternal grandmother does not accept that the contact regime proposed is in accordance with G's wishes. Moreover it is

evident that on this issue the maternal grandmother is neither considering nor putting first G's welfare best interests.

68. I regret I must deal with a factual issue which has arisen between the maternal grandmother and the guardian. The guardian told me in evidence that at the maternal grandmother's last contact with G on 16 March the maternal grandmother said to G that "it would be nice if you come to visit me and stay overnight". When G did not respond the maternal grandmother is reported to have said "I would like to spend more time with you".
69. The maternal grandmother totally denied any such conversation had taken place. When I asked her whether she was saying the guardian was lying, she said the guardian must have misconstrued some part of the conversation. The guardian was clear that that was the conversation she heard and there was no room for her to have misconstrued what the grandmother said.
70. I accept the evidence of the guardian. I cannot see any reason for her to lie in her evidence nor any basis on which she may have misconstrued what the maternal grandmother said.
71. I am fortified in reaching that conclusion by reason of the maternal grandmother's lack of insight into what may or may not be appropriate to be said to G or otherwise conveyed to her. During the course of the hearing the maternal grandmother told me that she had written in a card to G that she and her granddad "did not get on". The maternal grandmother could not accept that was a wholly inappropriate message to send to this traumatised and vulnerable little girl. Sadly she had no insight to the potential adverse effect on G. Her explanation was self centred and not child focussed; she had wanted, she said, to explain to her why she had not seen her for so long. (Contact between the maternal grandmother and G did not commence, after these proceedings were started, until October last year).

Analysis

72. In all of the circumstances of this case I am satisfied that the threshold criteria of s 31(2) Children Act 1989, as contended by the local authority, are satisfied.
73. On the basis of all of the evidence I have read and heard I am completely satisfied that G's real and genuine wish is to continue living with her current foster carers until she, as she put it, is "grown up". This is a consistent view which she has expressed to her social worker, her therapist and her guardian.
74. On the basis of that finding no party opposes G remaining in long term foster care subject to a care order in favour of this local authority. I am in no doubt that that plan is in G's welfare best interests.
75. The consensus of expert and professional opinion is that the father should not have contact with G, directly or indirectly, unless and until the experts and professionals involved with her conclude that it would be in her welfare best interests and would be compatible with her then therapeutic needs.

76. For understandable reasons, Mr Rosenblatt on behalf of the father, was not able to take father's instructions on this issue. I propose that the above paragraph should appear as a recital to my order. Furthermore, it is in my judgment in G's best interests for the court to make a s34 (4) no contact order in respect of the father. Such an order removes the statutory duty of the local authority to promote contact between father and daughter. It does not, however, prevent the local authority and the father agreeing, at an appropriate juncture, for contact in some form to take place.
77. G wishes to see A, L and K on a monthly basis and to see her three grandparents separately on a bi-monthly basis. This regime would result in G having contact with family members 5 times every 2 months. If I were to accede to the maternal grandmother's and maternal step grandmother's wish for monthly contact, then G would have contact with one or more family members every week.
78. The evidence of the social worker and the guardian is that would be far too much and overbearing for G when the plan is for her to be in long term foster care. I unhesitatingly accept that professional opinion. I accept that G's family are hugely important to her and that ongoing contact is in her best interests. I am in no doubt, however, that monthly contact for the grandparents or even just the maternal grandmother and maternal step grandmother would be too much for G. She is very anxious about the outcome of this hearing. She needs time to be reassured that she will be staying with her current foster carers. She needs time to live and settle into her own routine and activities with her foster carers and with her friends.
79. Importantly I attach considerable weight in coming to this decision on the delicate and intense phase that G is entering in her therapy. Any changes in the contact regime must be taken at her pace and be in her best interests.
80. I understand why the maternal grandmother and maternal step grandmother wish to see her more often. In my judgment their wishes and feelings must come second to the welfare best interests of the child. Given G's vulnerability it is right that a cautious and prudent approach is taken to the frequency of contact. I am in no doubt that this social worker and this local authority will keep the issue of family contact under regular review. I am satisfied that they will act and make decisions with her best interests well in mind.
81. The grandparents have raised the issue of the need for contact to be supervised, most especially the maternal grandmother. I understand their concern. I am not in the slightest doubt, however, that for the foreseeable future, at least, all familial contact must be supervised for the following reasons:
- a) For the reasons already given, G is very vulnerable and any risk that she could be destabilised or her placement undermined by inappropriate things being said or conveyed to her must be avoided;
 - b) The strong feelings of animosity between family members is so ingrained I have no confidence that absent supervision, whether intentionally or otherwise, those feelings would be conveyed to G;
 - c) The maternal step grandmother harbours such strong feelings against the foster carers that supervision is essential; and

- d) The maternal grandmother so lacks insight into G's needs that I have no confidence that absent supervision inappropriate things would be said to G (eg the conversation reported by the guardian of 11 March and the card).

Conclusion

82. I approve the revised amended final care plan. I approve the regime of contact proposed by the local authority and endorsed by the children's guardian.
83. I am pleased the local authority proposes to enter into contact agreements with each of the adult family members having contact with G. The draft agreement makes clear the parameters of contact and the basis upon which any changes to contact will be made.
84. I make a care order in respect of G in favour of the local authority. I will make a s 34 (4) no contact order in respect of the father.
85. The local authority was right in my judgment not to seek a s 91(14) order against any of the grandparents. The grounds for such a Draconian order are not satisfied on the facts of this case. I agree the appropriate way forward is that any future applications in this matter are reserved to me.
86. I agree with the local authority's proposal to disclose limited but relevant documents, including this judgment, to the foster carers.
87. I wish to express my thanks to the professionals in this case for the assistance they have given me. I also wish to extend my thanks to counsel and to the litigants in person for their assistance in this sad and complex case.
88. I very much hope that all will, at least, attempt to work to achieve the goal of assisting G to overcome the grave tragedy she has suffered and to enable her to lead a happy, settled, fulfilling and successful life.