

NEUTRAL CITATION NUMBER [2014] EWHC 529 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
MILTON KEYNES DISTRICT REGISTRY

Case No: M12C10106

Court No: 2
351 Silbury Boulevard
Milton Keynes
Buckinghamshire
MK9 2DT

Wednesday, 22nd January 2014

Before:

MRS JUSTICE PAUFFLEY

Re: S (A child: Care order) [2014] EWHC 529 (Fam)

Anne-Marie Lucey for the local authority
Sharon Love for the mother
Amanda Meusz for the father
Catherine Piskolti for the guardian, Andrew Slade

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APPROVED JUDGMENT

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MRS JUSTICE PAUFFLEY:

Introduction and issue

1. This has been the final hearing of care proceedings relating to a 10-year-old, S, who was born on 24th September 2003. Her mother is in her mid-forties; she was born in January of 1968. Her father is in his mid-sixties, born in January of 1949.
2. Three options arise as to the way in which these proceedings might be finalised. The first two are proposed by S's parents though with different emphasis. In broad terms, they suggest further adjournment for assessment of S's mother, either in this country or in Pakistan, dependant upon the outcome of the mother's Visa applications. The third option, as suggested by the local authority and supported by the Guardian, is that final orders should be made on the basis that S would remain, as now, living with foster parents under a long-term arrangement.

S's early history

3. S was born in Pakistan. In 2006, when she was two and a half years old she came to this country with her mother, to visit her father.
4. The father is a long-term resident of the UK; he has lived here since 1963, when he was 10 years old. He was previously married. His marriage to S's mother, therefore, was his second marriage – a fact which has had a considerable impact upon immigration issues affecting in particular, S's mother.
5. In due course, the mother became pregnant with her second child, A, who was born in August of 2007. The mother's initial stay in the UK had been for six months; she was granted an extension for a further six months to allow for the birth of her second child. The mother then returned with A to Pakistan on 27th January 2008. In April of that year she was

refused a further Visa to travel here.

6. Thereafter, S remained living in England with her father. He looked after her on his own. The mother and A resided in Pakistan in a house which belongs to the father. More recently, or maybe for a long while - I know not, A and her mother have shared their home with the mother's brother. The reason for that, apparently, is that it would be difficult for a woman in Pakistan to live alone, particularly if she has a child.
7. In every year following the mother's return to Pakistan, it was part of the usual rhythm of the father's and S's lives that they would visit the mother and A in Pakistan, for a period of four weeks or so. At the end of each visit, they would return to the United Kingdom.
8. In April 2009, most unfortunately, the father began to suffer with serious ill health. There came a time, as is accepted, when he was unable to carry on looking after S.

Threshold criteria – reasons for reception in to care

9. This hearing has not focused upon the satisfaction or otherwise of the threshold criteria, the gateway through which the Court must pass in order make a public law order. That is because, as I understand it, at an earlier hearing Counsel agreed there was no requirement for the Court to resolve any issue in relation to threshold.
10. Mr Slade, S's guardian summarised the basis upon which the court could find the s.31 threshold criteria are established. He identifies that there was, unfortunately, poor school attendance which negatively impacted upon S's education. There were times, sad to say, when she was hungry because she had been inadequately fed. S required dental treatment indicating there had been poor dental care; and there were occasions when the condition of her school clothing fell below an acceptable standard. Therefore, in very broad terms, and without ascribing responsibility in the fullest sense to the father, because he was undoubtedly ill, S was neglected. She suffered significant harm. In April 2011 she was

received into voluntary care.

The period since April 2011

11. It is a tribute to the father that he has been supportive of the way in which S has been looked after by her foster parents. She has remained with them throughout – so for a period of almost two years, 20% of her childhood or thereabouts. She has been part of their family and, overall she has been doing well.
12. The local authority initiated proceedings on 27th September of 2012. Before doing so, a local authority social worker had a discussion, over the telephone, with S's mother. She was asked whether she would be able to look after S. Miss Newson, the allocated social worker, who gave evidence after Ms Farooqi -Thakrar, independent social worker, described two telephone conversations with the mother in her own language made possible by an Urdu-speaking social worker. The mother made clear she did not wish to assume responsibility for looking after S.
13. In evidence, Ms Farooqi - Thakrar, suggested there had been “a big misunderstanding” as between the mother and the local authority during the course of those telephone conversations in 2011 and 2012 suggesting there had been language difficulties.
14. The first telephone discussion was in April 2011. The exercise was repeated in October 2012 after proceedings had begun. On each occasion, the mother clearly said she was unable to care for her daughter in Pakistan. She gave reasons. She had no one to help her look after S and she had no money. She was asked about extended family members – aunts, uncles, brothers and sisters. She said there was no one. She went on to explain that she was struggling (financially) to provide her younger daughter A with food, clothing and education. She added, as I've already said, that she lived with her brother because in Pakistan women do not live alone.

15. That was the situation prior to and shortly after the inception of proceedings. The mother's attitude and commitment to S, as expressed during the course of those phone calls, may have some relevance to the decision as to whether there should be a further adjournment.
16. A series of orders have been made encouraging, so far as was proper, the immigration authorities to facilitate the mother's travel to this jurisdiction in order that she might participate in an assessment. The first such order was made as long ago as 4th October 2012 and repeated in November of that year. In May 2013, the local authority wrote to the Home Office supporting the mother's application for entry clearance. In October last year, again an order was made encouraging the immigration authorities to view the mother's application to travel here favourably. In the preambles to Judge Hughes' orders of 11th November and December there were similar exhortations – all designed to facilitate the mother's entry to the UK for assessment in relation to her ability to look after S.
17. The proceedings were listed for final hearing on 11th November 2013 before Judge Hughes. With considerable reluctance, he acceded to an application for an adjournment so as to give the mother yet another opportunity to secure a visa, travel to the UK and be assessed.

The mother's application

18. Miss Love has said, if I may say so, everything that could and should properly be said on behalf of her client in support of the adjournment application. She has two proposals – each involves adjournment for different forms of assessment. First, it is suggested that the proceedings should be delayed for a few months to enable the mother's application for entry clearance to be followed through to its logical conclusion so that there might be assessment of her in this jurisdiction. The secondary proposal, if I were not minded to approve the first, is that S should be permitted to travel to Pakistan for an assessment there.
19. The prelude to those applications is that, since the last hearing, the mother has received

notice she is not entitled to enter the UK as a visitor. The mother's legal team has sought expert advice from Miss Cronin, well known to these Courts as a specialist in the field of immigration.

20. Miss Cronin has provided very helpful written advice. The family immigration rules, she explains, were amended in July 2012. The new rules impose strict financial requirements. Miss Cronin observes that the parents would be unable to meet those financial requirements; a fact which is borne out by the entry clearance officer's adjudication. However, Miss Cronin advises that the mother's application was lodged before July 2012 and therefore falls to be decided under the old and more lenient rules. In Miss Cronin's opinion, providing the mother is able to show that her marriage to the father is valid (my emphasis) her appeal from the entry clearance officer's adjudication has merit.
21. Miss Cronin continues, 'She (the mother) would be well advised to obtain expert evidence from an academic or specialist lawyer who can provide an opinion as to the validity of Mr N's first and also their marriage.' Miss Cronin also gives an opinion as to the likely outcome of the mother's application for a visitor application.
22. Miss Cronin suggests it is difficult to predict the time required either for a review or fresh immigration decision. As this case demonstrates, delays are endemic in immigration decision-making. Miss Cronin believes that with prompting from the Court, and perhaps also a Member of Parliament, entry clearance managers are more likely to give the mother priority. Miss Cronin was reasonably confident of an outcome within as short a period as six weeks. But there is, in reality, no means of knowing how or when the mother's application for entry clearance will have been definitively resolved.
23. From S's perspective, I would observe that these proceedings have been ongoing for an unduly lengthy period.

Evidence in support of an adjournment

24. Ms Farooqi - Thakrar strongly supports the notions of adjournment either for the mother to be further assessed in this country, assuming a favourable outcome to her application for entry clearance; or for there to be a parenting assessment in Pakistan.
25. Indeed, as she further considered the two options during the course of her evidence, it seemed to me that Ms Farooqi - Thakrar tended to favour, and by some margin, the second option which would involve S in travelling to Pakistan. Ms Farooqi - Thakrar made clear that in her assessment, and she is very knowledgeable as to the difficulties there may be with immigration, this case is difficult. She said, 'I think you may well experience further difficulties in this country in relation to entry clearance because,' as she termed it, 'this has all become very messy.'
26. Ms Farooqi - Thakrar, believes that the better course would be for the Court to give permission for S to travel to Pakistan, perhaps at the time of the February half-term holiday. As Ms Farooqi - Thakrar explained, 'It would be a nice thing for her to go on holiday. She could stay with her Pakistani foster parents in Pakistan.' She would go, Ms Farooqi - Thakrar said, 'with her foster parents.' She continued that she believes it would be 'grossly unfair' to S if that form of assessment does not take place.
27. Underpinning all of Ms Farooqi - Thakrar's advice is her view that, as she said, the mother is an intelligent lady; she is warm and compassionate. A has a very secure attachment to her mother, says Ms Farooqi - Thakrar; and it is a sign of the mother's insight, she says, that she would like S to maintain her relationship with her current foster carers. Ms Farooqi - Thakrar's oft repeated theme was that she alone of anyone here has met the mother; that the anxieties of other professionals would be allayed if they, like her, had the opportunity to spend time with the mother; and, as she emphasised on a number of occasions, she has had

experience of 'this kind of thing' in other cases.

28. Ms Farooqi - Thakrar said this, 'The region that the mother is living in is incredibly beautiful, you know what I mean.... A number of children who've been through these processes have done very well.' Ms Farooqi - Thakrar places great emphasis on her experience of other cases and cites examples of other children and how well things have turned out for them. Thus, she believes the right course is to plan for S to relocate temporarily to Pakistan for the purposes of an assessment.

Welfare considerations

29. When considering the application to further adjourn the proceedings, S's welfare needs must take priority. Matters which might be advantageous to the mother and her younger daughter A are of lesser significance than S's best interests which are paramount.

Discussion

30. I have considered, but ultimately rejected the suggestion of an adjournment to allow the mother's application for entry clearance to take its course. The best estimate is that the process might be concluded within a couple of months from now. On the other hand, it may not – and there is no way of knowing whether ultimately the mother will be successful in securing a visa to travel to this country.
31. My reasons for refusing the application to adjourn are as follows. Since April 2011, when she was received into voluntary care, S has been waiting for a decision as to what the long term plan for her should be. The delay has not been at all beneficial; quite the reverse. Recent evidence, particularly since the November hearing, suggests that S has been extremely unsettled as a result of the continual uncertainty about the long term plans.
32. It had been thought, understandably, that a final conclusion might have been achieved in mid-November. That was not to be. In advance of that hearing, S had a discussion with an

advocate from NYAS. Most unfortunately, and quite wrongly, she was led to believe that a decision had been made at some stage during last autumn. As a result of being told that certain things would happen which did not come to fruition, S became distressed and her behaviour has deteriorated. In November, she told her foster mother that she wanted to kill herself after a visit from her guardian – who is, I would observe, a very empathic, wise and child-focused individual. That I believe epitomises the degree to which S has become anxious as the result of continuing uncertainty.

33. It cannot have assisted her at all that in December contact with her father was cancelled because he had gone to Pakistan. She did not know, in advance, that he would be missing visits with her. Apparently, he had to stay abroad for longer because of his own health needs. In the result, S was extremely distressed and ran away from her foster carer's home. She did not go far and was found in hiding. But that is another indication, to my mind, as to how unsettled S has become. Her foster mother reports that her behaviour has become increasingly difficult over recent months.
34. Miss Newson, S's social worker, suggests that beyond almost anything else S wants a final decision to be made about her long-term placement. The delay which would be the necessary consequence of any adjournment is a very significant contraindicating factor. Last November, Judge Hughes made clear how reluctant he was to adjourn the proceedings. Further delay, as I see it, would be wholly contrary to S's welfare interests.
35. There are other welfare factors which, in combination, impel me to seize the opportunity to make final orders.
36. S's wishes and feelings, given her age, could never be determinative of the outcome of this application. S would seem to be in a state of considerable conflict whenever she is asked about her views as to what should happen. She has made clear that she does not want to

live in Pakistan. It is plain that she loves her father very much. How could it be otherwise given the important part he has played in her life? She misses her mother which is poignant, I would observe, given that throughout her childhood, through no fault of her own, S has been separated from her mother.

37. Later on, no doubt, S will wish to understand why it was that her mother did not take her back to Pakistan in 2008. She will need to know why her parents decided it was best for her to live in the UK with her father whilst A lived with her mother in Pakistan. S will require an adequate explanation of the reasons for she did not grow up in the company of her mother and enjoying the company of her little sister. Those are issues about which, in due course, S will need explanations.
38. For now, I would observe that it is unsurprising that S is unable to be clear in relation to her wishes and feelings. I agree with Mr Slade, S's Guardian, when he suggests that most of what has been going on in connection with the proceedings is 'over S's head.' She is too young to understand all the complexities; she is certainly too young to give a considered view as to what might be best for her.
39. I turn to consider S's emotional needs and the impact upon her of events since April 2011. Her needs are very well described by Miss Newson. She describes that S, 'has not lived in Pakistan since she was two-and-a-half years old. She has not had any direct contact with her mother for over two years.' She, in Miss Newson's view, 'has experienced significant upheaval, loss and separation and that has had an impact on her behaviour and needs.' I entirely accept that analysis, supported as it is by Mr Slade.
40. The mother's ability to meet S's needs has not been fully or adequately assessed. The work done in Pakistan by Ms Farooqi - Thakrar suggests that all would be well and that the mother would be able to manage the task of looking after S without any difficulty.

41. I have cause to be extraordinarily doubtful as to whether, in fact, Ms Farooqi - Thakrar has any proper appreciation of S's complex needs. My sense is that Ms Farooqi - Thakrar, for whatever reason, has become the mother's strong supporter and favours any proposal which might lead to S living with her mother, regardless of the difficulties. Indeed, she was inclined to sweep aside the problems identified by the local authority and the guardian as being of very little consequence. A prime example was her all too ready assertion that there had been language difficulties when the mother had said over the telephone in 2011 and 2012 that she was not prepared to have S living with her in Pakistan. It seemed to me that Ms Farooqi - Thakrar's evidence was far from even handed and less than helpful.
42. S's strong emotional need is to be settled. Continued uncertainty of the kind suggested by Ms Farooqi - Thakrar would be profoundly damaging particularly given the considerable question mark which surrounds the mother's commitment.

An assessment in Pakistan?

43. The mother's secondary application is for S to travel to Pakistan so that the outstanding assessment of her capacity to look after her might be performed abroad.
44. This aspect of Ms Farooqi - Thakrar's recommendation seems to me to be extremely poorly thought through. There was a sense, as she gave her evidence, of her almost making it up as she went along. Ms Farooqi - Thakrar's suggestion was that S's foster parents would travel with her. She, Ms Farooqi - Thakrar, would also go to Pakistan and carry out assessment there of the mother and S together, envisaging I suppose a further instruction from the court. But she has no idea as to whether the foster parents would be willing to travel to Pakistan. They have not been asked. And she significantly underplays the legal impediments to such a trip.
45. Ms Farooqi - Thakrar, in my judgment, has altogether disregarded the obvious welfare

factors which militate against such an experiment. Her lack of balance, her strong support for the mother and her failure to properly consider, or consider at all, the obvious competing considerations – the history as it relates to the mother’s commitment, her lack of attachment to S, S’s emotional welfare – render her recommendation almost valueless.

46. S, in my judgment, is not emotionally resilient enough to undertake a holiday to Pakistan on the basis suggested by Ms Farooqi - Thakrar.
47. It is also of great significance, it seems to me, that S’s primary attachment is with her father – a further factor apparently ignored by Ms Farooqi - Thakrar. The father will not be going to Pakistan to live. He made that very clear. He will be remaining here to support the family. Thus, if S were to be living in Pakistan, she would be living thousands of miles from the one parent who is, without question of the greatest significance to her. He, alone, cared for her consistently from the time that she arrived in the UK when she was two-and-a-half until she went into care in April 2011.
48. It was a further defect in the evidence of Ms Farooqi - Thakrar that she had failed to consider S’s considerable behavioural difficulties. When asked about that aspect, she simply said, ‘Well, all of this will just disappear when S has been reunited with her mother and I’ve seen it happen in other cases.’ I am surprised, even amazed, that Ms Farooqi - Thakrar was prepared to make forecasts about what would happen in this case relying exclusively upon her experiences in other cases. I do not share her optimism. Moreover I consider such an experiment would be thoroughly risky and altogether ill-advised at this juncture.
49. The other reasons why I cannot accede to the suggestion that there should be an experimental visit to Pakistan are these. Firstly, the local authority would have no opportunity, in reality, to exercise parental responsibility for S if she were to travel to Pakistan which is not a signatory to the Hague Convention; and now that the Pakistan

Protocol has fallen into disuse, there would be no legal means of securing S's return to this jurisdiction if she were to be retained abroad by anyone. In so concluding, I should say I do not intend to infer bad faith on the part of the mother.

50. In addition, S herself is unprepared for a trip to Pakistan. If she were to go, inevitably, she would have anxieties and uncertainties about what the future might hold. It would be foolish in the extreme to believe that of necessity, the experiment with the mother would work. There are very many reasons to be cautious, even pessimistic.

Overall conclusion

51. My overall determination is that the local authority's application for a full care order predicated upon a care plan of continued placement with S's current foster parents must prevail. There comes a time when further inquiries, further delays for yet more or different assessments are no longer feasible. For S, that time is now long overdue. I am altogether persuaded that a full care order on the basis of S's continued placement is fully justified having regard to her welfare needs.
52. S is well settled within her foster family. Her foster parents have been meeting her needs in all areas and she is happy with them. They have been positively 'matched' with her as her long term family. There is no suggestion that she will live anywhere else. If I had one suggestion in relation to the future legal framework, it would be that her foster parents might give consideration to applying for a special guardianship order. However, that is for the future.

Arrangements for contact

53. I turn now to consider the arrangements for contact. At one time, the local authority had suggested that S's contact with her father should be significantly reduced from its current level, weekly, to six times a year. Mr Slade did not agree with that proposal. There has

been a revision of the local authority's position. Now it is suggested that the arrangement should be monthly contact between S and her father and Mr Slade agrees.

54. Mr N is strongly averse to that proposal. He is irritated and frustrated by the notion that he should see S less often than now. He believes he should see her really whenever it is convenient for her to see him – weekly at a minimum and more often if that could be arranged. The father clearly loves his daughter very much indeed and wishes to remain a constant part of her life. So what is the justification for any reduction? Miss Meusz submits there is none; and that there would not be any adverse impact upon S herself if the current level continues. She invites me, therefore, to reject that element of the local authority's care plan. If I were to follow Miss Meusz's submissions to their logical conclusion, I suppose the suggestion would be that a contact order should be made to reflect the father's ambitions.
55. To my mind, there has to be an outward manifestation, an obvious message for S herself, that after this important hearing the arrangements surrounding her relationship with her father will change. It would no longer be helpful to S to be seeing her father weekly. If she were to do so, she may well believe – whatever she is told by adults – that the time might come when, perhaps, she will be going back to live with him.
56. In S's interests there should be a noticeable indication that she will now be a part of her long-term foster parents' family; that they will be the people who will make decisions about all aspects of her day to day life, in conjunction with the local authority. To perpetuate the current contact arrangements would not be beneficial to S in my judgment; it would be confusing and troubling. She would not be clear about what is going to happen and why.
57. The father will continue to play a real part in his daughter's life. There will be telephone contact as the local authority suggests. For now, that cannot simply be when S picks up the

phone. There has to be a degree of restriction around telephone contact, again, so that the message for her is clear. Contact will be reviewed every six months as part of the Looked After Children arrangements. The father as well as the mother may make representations about the contact question. S herself will also have the opportunity to contribute to the consultation exercise in advance of LAC reviews.

58. In relation to S's contact with her mother, I fully support the suggested preamble to the orders, signifying for benefit of the immigration authorities firstly that there is still a need, if the mother can achieve entry clearance to this country, for her to be assessed; and secondly that it is in S's best interests for her to have face-to-face contact with her mother. I imagine, though I cannot be certain, that an order which explicitly emphasises the child's welfare need to see her mother face-to-face in this jurisdiction will have influence with the immigration authorities.
59. For the moment and until the mother arrives in the UK, the contact arrangements as set out within the local authority's final care plan seem to me to be child-focused, appropriate and to accord with S's welfare needs. She has mixed feelings about her mother which is not at all surprising in the circumstances. It would be very beneficial if S were able to continue her relationship with her mother by indirect means and, ultimately, for her to be able to see her mother in this jurisdiction.
60. For those reasons I make the final care order as sought. I approve the local authority's care plan; and will invite Counsel to cooperate in drawing up a series of preambles as the prelude to the orders made.
