



Neutral Citation Number: [2020] EWFC 25

Case No: NN19COOO49

THE FAMILY COURT

Nottingham Civil Justice Centre
60 Canal Street
Nottingham
NG1 7EJ

Date: 02/04/2020

Before :

MR JUSTICE MOSTYN

Between :

N (A local authority)

- and -

RK

- and -

MB

- and -

EK

(by her guardian KS)

Applicant

1st Respondent

2nd Respondent

3rd Respondent

Abimbola Badejo (Counsel) (instructed by Shamima Ali (Solicitor) of LGGS Law Limited) for the Applicant

Helen Sampson (Counsel) (instructed by Charlotte Rogers (Solicitor) of Northants Family Law Group) for the 1st Respondent Mother

Margaret Styles (Counsel) (instructed by Ben Harling (Solicitor) of Borneo Martell Turner Coulston LLP) for the 2nd Respondent Father

David Sharp (Counsel) (instructed by Brona Saigal (solicitor) of PS Law LLP) for the Child's Guardian

Hearing dates: 23-27 March 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MOSTYN

This judgment was delivered in private. This anonymised version may be published but the identity of the child or any anonymised person may not be revealed. Breach of this restriction will amount to a contempt of court.

Mr Justice Mostyn:

1. I have to decide the future of EK who was born on 22 April 2019. She is therefore not yet one year of age. The local authority says that the only solution for her that will do is that there be a final care order and that she be placed for adoption. The mother, RK does not oppose a care order but argues that she and EK should be set on a path of rehabilitation. Essentially, she argues for one more chance to show that she is fit to care for her daughter. The father, MB, in substance argues for the same thing. He says that the proceedings should be adjourned for him to be further assessed to see if he is fit to raise his daughter.
2. To make the order sought by the local authority, severing the bond between parent and child, is a momentous thing. It has been said that with the abolition of capital punishment it is arguably the most serious order that a judge in this country can make. The child will grow to adulthood in a completely different family to that which nature had intended. The child will grow with a completely different set of values and experiences to that originally anticipated. It is because of the momentous nature of the decision that the law, both domestic and from Strasbourg, insists that the powers cannot be exercised until there has been proved past serious harm, or the risk of future serious harm. Even then, the powers cannot be exercised in the manner claimed unless the child's welfare demands such a solution and where no other solution can be found consistent with the child's welfare. This much is clear from *Re B* [2013] 1 WLR 1911, a decision of the Supreme Court, where Lady Hale stated at [198]:

"Nevertheless, it is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by *overriding requirements* pertaining to the child's welfare, in short, where nothing else will do." (her emphasis)
3. In order for these powers to be exercised there must be a full inquisitorial forensic enquiry in court. It is one of the crowning glories of our legal system that the state continues to provide non-means tested, non-merit-based legal aid to parents who are facing removal of their children so that the case of the organs of the state can be fully forensically tested and state officials are held to account. That has happened in this case. The state officials involved, namely the social worker NQ and the Guardian KS, have been fully held to account and have been subjected to rigorous, albeit fair, cross-examination by counsel for the parents.
4. In this case there is no dispute that the primary statutory threshold of past, or the risk of future, significant harm has been met. The dispute centres around the welfare analysis. Essentially, the parents argue that the end of the road has not been reached and that they should be afforded, as I have said, the opportunity to show that they are fit to raise their daughter.
5. This case was listed for five days from Monday, 23 March 2020. The first day was a reading day. It was listed in the midst of the national COVID-19 medical emergency. The Prime Minister made the national lockdown announcement on the evening of Monday, 23 March 2020. However, by then I had already directed that the case would be heard by Skype for Business. I am very grateful to the solicitor for the local authority, Shamima Ali for setting up and testing the remote hearing which proceeded well. I am

equally grateful to all the other lawyers for their diligent cooperation with the process. There were a few hitches, which I think were all referable to one of the locations having a poor Internet signal. However, the problems were all overcome. I heard evidence from five witnesses, one of whom was in Scotland. I had an excellent e-bundle which contained all relevant documents. Counsel were all able to make their submissions without a hitch. This is the second case in consecutive weeks which I have heard in this way. Plainly, for as long as this emergency continues this will be the only way in which the majority of cases can be heard. It is reassuring that notwithstanding the national shutdown the wheels of justice have been enabled to turn.

6. The mother was born on 4 June 1994. She is 25 years old. Her entire existence has been deeply troubled. She was the second child of her parents. She has an older and younger brother. When aged five her mother abandoned the home. In 2001 the family became known to the local authority owing to concerns of neglect, supervision and safety. At age 14 she and her younger brother were removed under an interim care order; that order was made final in 2009. A psychological assessment made within those proceedings concluded that the mother suffered from an autistic spectrum disorder and Asperger's syndrome, although a later assessment withdrew the latter diagnosis.
7. In November 2011 mother discovered that she was pregnant, by a boy called MG, who was also in care. On 3 January 2012 her son E was born. The mother was only 17. Initially, E was cared for by the mother's own foster carer. However, in August 2013 the mother left her foster placement and went to live with her own mother taking E with her. E was removed and placed back with the mother's original foster carer.
8. In March 2014 the mother and E were moved to a mother and baby foster placement. From there they moved to independent accommodation in August 2014.
9. In early 2015 the mother formed her relationship with MB who I shall refer to as the father throughout this judgment notwithstanding that he is not, of course, E's father. Plainly, they were infatuated by each other, but the relationship was flawed, and deeply toxic, from the very start. In March 2015 E was placed first in police protection and then in foster care as a result of concerns about the conflicted nature of the relationship between the mother and the father. In July 2015 the mother announced that she was pregnant with the father's child. In October 2015 the mother informed the local authority that she was no longer in a relationship with the father. However, their mutual attraction was overpowering, and their relationship has continued certainly until last year. It could be argued that even now it is not finally extinguished.
10. Following a contested final hearing on 5 February 2016 care and placement orders were made in respect of E. An adoption order was later made in respect of E on 9 June 2017.
11. On 4 March 2016 the parents' daughter R was born. On 7 March 2016 the local authority initiated care proceedings in relation to R and an interim care order was granted. She was placed in foster care.
12. In the care proceedings concerning R it was the stance of each of the parents that their relationship was over. However, this was not true. By November 2016 the mother was living with the father, although her excuse was that she had no choice as she had been thrown out of her home by her mother with whom she had been staying. On 1 February

2017 R was made the subject of care and placement orders. On 14 April 2017 R joined her half-brother E at his adoptive family.

13. The mother and father jointly applied for leave to oppose the making of an adoption order in respect of R. This application was refused by District Judge Smith on 19 February 2018. She did not agree that there had been any material change of circumstances shown by the parents. The adoption order was duly made. I note that while the adoptive parents of E and R would not be willing to accept yet another child, they would, if EK were adopted, and subject of course to the consent of EK's adoptive parents, be happy to allow contact between the siblings. This is an advantage which is material to my decision.
14. The mother and father continued to live with each other in a seriously conflicted and toxic relationship. I will have more to say about this later. In August 2018 the mother fell pregnant with EK. MB, of course, was the father.
15. At this point I go back in time to say something about the father's background.
16. He was born on 27 September 1995 and is now therefore aged 24. He has an older sister, G. His parents split up in 1999. The father did not have much to do with his own father, L, who remarried a lady called J who had a child called T.
17. It is clear that the father finds it virtually impossible to maintain long-term stable relationships. I do not attempt any kind of amateur psychological assessment as to the root cause of this syndrome. Plainly, he is highly controlling, and as the independent social worker LS stated, he is deeply needy. It is also not disputed that the father is beset by mental health problems, although he claims to have these under control at the present time by the use of medication. He was admitted to hospital suffering from mental health crises in August, September and November 2019.
18. However, quite apart from the tumultuous, conflicted and deeply toxic relationship which he and the mother maintained I refer to the following indisputable facts:
 - i) Following his mother's death, the father initially went to stay with his maternal grandmother. That placement did not last and soon the father went to stay with his maternal aunt and her husband.
 - ii) He stayed with them for about 18 months, but the relationship broke down completely and he moved to X Town to live with his father L and his wife J. That placement also lasted about 18 months but was riven by conflict and arguments. Following an altercation when the police were called the father went to live with his paternal grandmother JB.
 - iii) That relationship in turn broke down and JB peremptorily ordered the father out of her house. He faced sleeping on the streets.
 - iv) His relationship with his stepbrother T completely broke down following a row about a laptop which led to T accusing the father of sexually molesting him. That allegation was not pursued.

- v) Notwithstanding that he advanced his sister G as a member of a support network he could rely on, it is clear that he has a deeply conflicted relationship with her also. She had a baby five months ago. The father has never met the baby. A few days ago, G turned down a request by the father for a loan of money. The father's response, and I am satisfied that it was a vindictive response, was to report G to social services for overfeeding her daughter.
19. The parents were living together in 2018 and in the following year up until the birth of EK. Such is the father's need to control the mother that he installed CCTV in their dwelling so he could monitor her, he suspecting her of infidelity. His explanation to me that he did so in order to identify an abusive neighbour who was damaging his property (which neighbour was an uncle of the mother) is completely implausible given that he placed cameras all over the interior of the property. On 19 November 2018 the father reported the mother to the police as being missing. On the police locating her wandering the streets of the local town the father refused to allow the mother back into their dwelling. Between December 2018 and February 2019 there were no fewer than 15 police callouts to the parents' dwelling. On one such occasion father called the police because the mother had refused to go out for a walk with him. He seemed to believe that this was a perfectly reasonable thing to do and could not recognise that this was a grossly irresponsible waste of police time. On 26 March 2019, the father reported that the mother was packing her belongings and was leaving him. She was, of course, then eight months pregnant.
20. It is not disputed by the father that during the course of their relationship he has from time to time meted out to her serious physical violence, although no party sought to prove (and the father vigorously denies that there has been any) physical violence since before the conclusion of the proceedings for R. The mother told me that if her proposal were rejected, she would nonetheless strongly oppose EK being raised by the father.
21. As stated above, EK was born on 22 April 2019. Care proceedings were commenced the following day. On 26 April 2019 an interim care order was made on the basis that the mother and EK would move to a mother and baby foster placement. Later, the mother and EK were moved to supported accommodation. This was on the strict understanding that the mother would keep the baby away from the father. However, on 16 August 2019 EK was removed from her mother's care following receipt of evidence that the parents were in contact with one another.
22. In September 2019 the mother signed an agreement with the local authority. Among other things, this provided that she would not take EK to stay anywhere overnight without the agreement of the local authority. Further, it was provided that the father's contact would be strictly confined to a contact centre, and that the mother would make the child available for such contact.
23. At about that time the mother engaged in some truly reckless behaviour. Via social media she solicited an intimate relationship and formed one with a man called A. This quickly led to sexual relations which took place on at least three occasions (although my suspicion is that it happened far more often than that) when full unprotected intercourse took place. It is agreed that A comprehensively deceived the mother. He maintained that he was a single person whose prior relationship had broken down; he did not reveal that he was living with his partner D and that she was recently pregnant. Manifestly the mother had recklessly fallen under the spell of another abusive man. In

order to conduct the relationship, the mother took EK to the home of A and D and stayed there overnight in clear breach of the written agreement. It is clear to me that the care of this tiny baby took second place to the pursuit by the mother of this reckless relationship. It is noteworthy that even now the mother is living at the home of A and D. Although she denies that it is in some form of ménage à trois it is clear that the whole arrangement is distinctly unhealthy and risky. It is also noteworthy that one of the children of D has been removed in care proceedings.

24. EK has suffered from eczema from birth. During this period of reckless conduct by the mother it is clear that she grossly neglected EK's health. I quote from the fifth witness statement of the social worker NQ dated 29 November 2019:

“On the 26th November 2019, Mother arrived for Father's contact around 40 minutes earlier; mother requested that she leave EK at the centre at that time. It was reported that EK was unkempt and had a foul smell to her and had extremely poor deterioration of her skin. Her eczema was so severe that when her clothes were removed her skin was falling on the floor, areas were bleeding whereby blood was dripping on the floor. Photos of EK's presentation are exhibited to this statement under “NQ-EX1”.

25. The photographs are sobering and show an extremely serious dermatological problem which the mother must have noticed and which she chose to ignore.
26. On 29 November 2019 the court ordered that EK be separated from her mother. She was placed with foster carers in whose care she has thrived. Her eczema problem is now completely under control.
27. Since then the father has been confined to one supervised contact session a week; the mother to two such sessions. It is not disputed that they have conducted themselves appropriately and responsibly during such sessions. Generally speaking, these have been positive experiences for all concerned. But as has been pointed out by the local authority, such positive experiences within the context of strictly supervised time-limited contact sessions are a far cry from caring for a baby unsupervised around the clock.
28. The parental capacity assessment made by the social worker NQ of each of these parents is that neither has the capacity to raise EK safely. The father felt that the assessment process was not fair and sought an independent assessment, which the court granted. Therefore, the independent social worker LS was instructed. She did an in-depth analysis of the father but reached exactly the same conclusion as NQ.
29. I heard evidence from the following witnesses remotely via Skype:
- i) LS, independent social worker;
 - ii) NQ, allocated local authority social worker;
 - iii) the mother;

- iv) the father (assisted by an intermediary); and
- v) the Guardian, KS.

I allowed each to give evidence-in-chief and each was fully and rigorously cross-examined.

30. I asked each of the professional witnesses whether they remained satisfied that in respect of the proposal of the local authority nothing else would do. I reminded them of the momentous and irrevocable nature of the proposal. Each was categorical that nothing else would do. Indeed, KS stated that, as the evidence from the parents unfolded, her conviction of the rightness of the local authority's proposal was increasingly fortified.
31. The cross-examination of the parents was conducted sensitively. Cross-examination is the gold standard for determining the truth or otherwise of contested facts, and for getting to the heart of the issues at large. My overwhelming feeling on watching the mother being cross-examined was one of sympathy for her. Fate has dealt her a cruel hand in her existence up to this point. However, these feelings of sympathy must not be allowed to overreach my duty to promote the welfare of EK or to hold the mother to account for the consequences of her actions. The mother had really no explanation as to why in September and October 2019, when she knew she was under the spotlight, she chose to embark on the utterly reckless course of conduct involving her triangular relationship with A and D. Nor did she have any explanation as to why her new infatuation with these people led her so seriously to neglect the health of EK.
32. Having heard the mother give evidence I completely agree with NQ and KS that it is impossible to conclude that the mother will ever be able safely to raise EK and that the idea of giving her a second chance would be quite futile.
33. So far as the father is concerned it is noteworthy that he has not solely cared for any child at any time for any even as much as a day. I record his efforts in accessing a number of courses to seek to improve his ability to parent. It is clear to me, however, that his needy, controlling and solitary character traits, which I have referenced above, are now as much in full force as they ever were. Again, I completely agree with NQ and KS, who are in this regard amply backed up by LS, that there is no prospect of this father ever demonstrating that he could solely safely raise EK. Again, an experimental adjournment would be an exercise in futility.
34. In my judgment as it is inconceivable that either of these parents could ever be trusted safely to bring up EK.
35. If I were to imagine one of these parents bringing up EK then it would inevitably mean that the other parent should have contact. This would significantly increase the risk of rekindling the relationship between them. I am not at all satisfied that their mutual infatuation has been staunched. This is an additional element of risk which cannot be countenanced.
36. For these reasons I adopt and approve the local authority's proposal. I make a final care order and a placement order. I am satisfied that the welfare of EK requires the consent

of the parents to placement for adoption to be dispensed with. I approve the tapering contact proposal set out in the care plan.

37. Miss Styles cautions me to be wary of what she would describe as a removal mindset on the part of the local authority. I can see the logic of the argument that the mother having previously lost two children to care and placement there would be a virtual presumption that the same process should be adopted in relation to EK. However, I do not think that that has been the mindset of the local authority. Following EK's birth every effort was made to see mother and baby could function together but each such attempt failed.
38. I recognise that the existing national medical emergency may well mean that there will be a delay in matching EK with proposed adopters. That is not a reason for delaying implementation of the proposal. And it is not a reason for adopting a futile experimental adjournment.
39. I record that the parents made it absolutely clear that they each wished above anything to be able to retain care of EK, and that they both loved her very much. Unfortunately, this is not possible.
40. That concludes this judgment.
