[2010] EWCC 31 (Fam)

In the County Court

Before:
District Judge X

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Between:

A Local Authority	Applicant
And	
A Mother	1st Respondent
And	
A Father	2nd Respondent

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Hearing dates:

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Judgement

Application

1. This case concerns a little boy of twelve months. An application (made on 8/6/09) by a Local Authority sought a final care order in a contested hearing before me on 14, 17 & 18 June 2010; it was coupled with an application (made on 6/4/10) for a placement order.

2. I explained at the start of the hearing that, as I am required to create an anonymised judgment for publication on the website (pursuant to the current Pilot Scheme), I would not deliver a detailed judgment at the conclusion of submissions on the third day; I was willing to give a decision and brief explanation immediately to be followed by reasons given later in writing; but, in the event, the parents explained via their lawyers that they were unable to face the distress of hearing the various submissions and decision, and did not attend on the final day. I therefore volunteered to type and circulate a written judgement and formally hand it down as soon as practicable.

3. The requirements of anonymity mean that all personal details become expunged - precisely so that neither the location nor the individuals involved (the child, the parents or anyone else) can be identified from the text. Although this means that all facts are de-personalised so that the decision is inevitably harder to read and digest, it is possible that this further distancing will make its conclusions easier to accept.

The family members

4. The child (whom I shall refer to hereafter as "the son") has just had his first birthday. Both parents have parental responsibility for their son as they married on 21 July 2006, (three years before his birth). His mother has just turned 26, his father, 35; they continue to live together and seek the immediate return of their son.

5. They also have a daughter who is four years old. She was made the subject of a care order on 7 December 2006. She was placed with a paternal aunt and her female partner, but within two years the aunt’s relationship with her partner deteriorated, the aunt attempted suicide, and a previously undisclosed drug involvement surfaced; in September 2008 the daughter was returned to foster care, where she remains. As the placement within the family had broken down, the Local Authority made application just before Christmas last year for a placement order (with a plan for adoption). That outcome is opposed by the parents, who seek her return; the daughter’s case was argued before me at the same time as the case for the son, and I shall deal with that application by way of a short addendum to this judgment.

6. The son has two older half-brothers who are the children of the mother and her first husband, (to whom she was married in June 2002, just before her 18th birthday).

   The oldest boy is nearly 8; he suffered a number of injuries which were investigated and thought to be of a non-accidental nature. When he was 14 months old, as a result of a combination of factors which the parents recognised did raise concerns over the adequacy of their supervision, he was discharged from hospital into the care of his maternal grandparents. He has remained with them since August 2003 and initial interim care orders gave way to a residence order in their favour, made in January 2005 to formalise the arrangement.

   His full (younger) brother has just turned six; the agreed pre-birth plan was for the couple to live with the father's parents; but, within a fortnight of the plan being implemented, the father had left – and three days later, the mother also left; and so he has lived without either parent from the age of three weeks but with his paternal grandparents since birth. Again, initial interim care orders gave way to a residence order being granted in favour of the paternal grandparents in May 2005 when he was a year old.

Threshold criteria

7. **S. 31 (2)** of the Children Act 1989 states that "the court may only make a care order or supervision order if it is satisfied

   (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
   (b) that the harm, or likelihood of harm, is attributable to (i) the care given to the child or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) …(*not relevant*)."

8. Before any court may entertain the making of a care order (or indeed a supervision order) the statutory threshold criteria must have been established. The court has to be satisfied that the child concerned is suffering or is likely to suffer significant harm attributable to a lack of reasonable care being afforded to him.

9. The threshold criteria set out by the Local Authority are accepted by the parents. I therefore adopt as my findings of fact that threshold document (document A51in the bundle) the text of which has been agreed between the lawyers for the mother, the father, the guardian and the Local Authority. That document will be annexed to my order. It is signed by both parents and dated 8 February 2010. It confirms that at the relevant date - 9 June 2009 – (the tenth day after his birth), the son was likely to suffer significant harm and that likelihood of harm is attributable to the care likely to be given to the child if the

order was not made, not being what it would be reasonable to expect a parent to give him. He was discharged from hospital into the care of foster carers with whom he is thriving - as the parents have been able to see for themselves when exercising regular contact with him.

10. The threshold document is short. It refers to the judgment of the court in relation to the daughter where the judge's findings resulted in the daughter not being rehabilitated to the parents' care; the parents have a history of substance misuse; they failed to co-operate with professionals by not making themselves available for the son's pre-birth assessment; and they have minimised the professionals' concerns - and some they have not accepted at all.

11. The mother herself was the victim of non-accidental injury at the hands of her own mother and she was placed with foster carers at the age of just three months. They subsequently adopted her (and it is they to whom I refer above as the maternal grandparents). By the age of seventeen mother was receiving support under section 24 of the Children Act 1989; she is described in social work records as having a history of risk-taking, unprotected sex and prostitution. She married, had her two oldest boys, separated from her first husband and met her present husband. In his mid-teens, the father applied to the Army but was not accepted, he says because of his relatively small stature. Although the wife in earlier proceedings suggested he was working long hours away from home, so far as I can trace from the papers, there is no reference to his having experienced regular employment. This means he is available full-time and able to assist the mother in looking after either or both of their children.

Proceedings relating to the daughter

12. Within a month of the conception of her daughter test results confirmed the presence in the mother of a mixture of heroin, cocaine, cannabis and excessive alcohol. She sought medical help to wean her off the heroin; but a relatively low dose of buprenophine (known as subutex), prescribed by the doctor, was supplemented, unknown to the doctor, by an un-prescribed higher dosage obtained illegally and supplied by the father. When the daughter was born she was suffering from foetal alcohol syndrome caused by her exposure to the mother's toxicity (and, indeed, a similar diagnosis has now been made in respect of the oldest son); this condition has impacted on the development of both children.

13. The parents accept that a judge made findings of fact in respect of the threshold criteria for their daughter on 13/9/06 (when she was seven months old) as a consequence of which the daughter has not been returned to their care. Those findings contain four significant threads – [1] ongoing drug dependency (heroin substitute and cannabis); [2] domestic violence;
[3] significant personality traits; and [4] inability to work with professionals.
14. As to the daughter in the 2006 proceedings, due to ongoing concerns about both parents being still involved in drugs misuse and the suspicion of

domestic violence, she was discharged from hospital into foster care within four days of her birth. No residential parental assessment was sought by either parent. The September 06 judgement made reference to the immediate past history; to the mother's chaotic lifestyle, to her abuse of alcohol during her pregnancies with her two older boys, to her use of cannabis and to her resistance to "agency intervention and support." The judge asked himself whether the threshold criteria were made out -- and, if so, whether the evidence concerning the welfare of the daughter dictated that she could not be returned to the parents care. He reminded himself that a return to the birth parents must "of course be the first choice, unless it has to be ruled out as not being in her welfare interests." He was told – as I am – that everything had changed because the wife was now with her new husband.

15. The parents agree that those findings (examined below) justified the concerns expressed by health professionals at the time and the parents accept -- within the threshold criteria in respect of their son – that similar professional concern has been expressed about their son which they have either minimised or flatly rejected. The parents agree that they have a history of substance misuse, and accept that they have not co-operated with professionals - as exemplified by their not making themselves available for the pre-birth assessment. But the parents assert that everything has changed now because they are in a stable relationship.

[1] Ongoing Drug Dependency

Subutex

16. This assertion about changed circumstances prompted the judge in 2006 to consider the evidence about subutex. Initially a prescription for subutex for the mother was refused because she was testing negative for opiates (and thus it was thought to be unnecessary). However, and somehow, the doctor was persuaded to prescribe a low dose -- 2 mgs per day -- which the husband topped up with an illegally obtained supplement, so that the mother was actually taking 8 mgs daily. The prescription was then increased to 4 mgs, and a month later to 6 mg; and two weeks after the birth was increased to 8 mgs. The mother had plainly been in receipt of at least 8 mgs throughout the pregnancy. The husband contended that his wife would have resorted to street heroin if he had not taken the action he did; he sought to persuade the court that his action was the lesser of two evils; but the judge rejected that attempted justification and concluded that it was harmful – both to the mother and the unborn child - for the father to supply the mother in that way.

17. The mother asserted that she wished to reduce her dependency. The Community Drugs and Alcohol Team [CDAT] expressed the view that the mother’s dependency was entirely psychological (and not physical, as she contended). The judge found that she was unable to reduce her dependency despite her expressed wish to do so. He also found that the mother had been given advice in June 2005 that substance misuse during her previous two

pregnancies may well have contributed to the developmental delay suffered by her two older boys. He found that she refused to acknowledge that risk because she did not abstain from drug misuse during her third pregnancy despite that knowledge.

18. The father admitted to the judge that he was the cause of his wife becoming dependent on heroin; he had supplied her with class A drugs and at one time he had also injected her with amphetamine. The Father himself had been an habitual user of heroin. However, between 2003 and 2004 the father had been weaned from his heroin habit onto a methadone programme; and thereafter he was put on subutex and was taking 8 mgs of subutex daily. He accepted that he has had occasional lapses -- he tested positively for opiates in 2006, which arose “because he had mislaid his prescription”; and he admitted to me that -- at a low point in his relationship with his wife (shortly after the son's birth) he again resorted to heroin. His daily dosage of heroin substitute has not reduced, ‘though it has been changed from Subutex to Methadone; he suffers withdrawal symptoms if he reduces the dosage or tries to reduce his dependency; he accepts he has a continuing dependency on Methadone.
19. Subutex has given way to methadone now for the wife also; she was on 75mgs – reduced to 70mgs in Autumn 09, and is now down to 65mgs she told me. But dosages appear to have fluctuated – sometimes going upwards before coming down again - and both husband and wife recognise that they are each still heavily dependant on and, essentially, addicted to a heroin substitute.

Cannabis

20. Both parents told the judge in 2006 that they saw nothing in the least compromising about their admitted use of cannabis. The father had admitted to the Consultant Psychiatrist in 2006 that he and the mother smoked cannabis nightly before going to bed to help them relax. In his evidence before the judge the father reduced that frequency to an ‘occasional’ use; but the judge found that “on any view, it is a regular habit.” The father acknowledged that the use of cannabis and the care of small children "do not go together." The judge expressly warned "it is not difficult to envisage common situations where children require attention or are injured or are unexpectedly ill, perhaps at night. Parents under the influence of cannabis run the risk of responding inadequately to such crises."

The judge found "as an unavoidable fact" that both the mother and the father were still within the “grip of drug dependency.” He went on to say (and the emphasis by underlining is mine);-

“I do not wish to be judgemental about this. Those who have not experienced drug or alcohol dependency should be slow to criticise others who have been less fortunate. The fact however remains that on their own accounts both the mother and the father are at risk of relapsing into the dark world of drugs misuse and it is literally only the present level of subutex that prevents such a relapse. <u>Sad to relate, they have proved unequal to the task</u>

of weaning themselves off the substitute despite a professed desire to do so. There has not even been any reduction in their daily dosage.

"Furthermore, they are incapable or perhaps unwilling to reduce or end their use of cannabis, despite the father, for example, acknowledging that it is inconsistent with proper childcare. The situation would be radically different in my judgement if they had been able to show that they were entirely free of drugs and had remained so for six or 12 months, but that is not the position."

The position before me about cannabis

21. The husband told me he understood what I have quoted the judge as saying above. The father had started using cannabis in his early teenage years; there had been a gap of six years at one point, but his was a more or less continuous user, and his telling the court now, at this hearing, that he had given up cannabis -- when the test showed that it had been used in the last two or three weeks -- was "a bit too late, I realise."

22. The mother told me that she hardly ever touched cannabis now. She admitted that she might have an occasional spliff on a weekend, but could not recall whether she had partaken in the last few months; it was a "good few weeks ago" since she had last smoked cannabis.

23. This assertion does not square with what the wife, at other times, has told health professionals.

- On 28/5/08 she told the Specialist Practitioner (of the English Local Authority with whom she had an interview – and which I will term the 'English Assessment') that (at that time) she was prescribed 4.8mgs of subutex but she topped it up with "illicit subutex – buys approximately 3x 8mgs, tries to inject it in the arms" – according to the specialist's report dated 17/6/08, (although the frequency of such purchases is not recorded). She told the same specialist in that same interview that she drank three litres of cider a day, smoked 20 cigarettes a day and that her cannabis use was "everyday 20 spliffs from morning to evening."

- The November 09 CDAT Report from the Specialist Registrar referred to an interview which he had had with her on 30/9/09 when mother told him she "uses cannabis 1-2 joints once or twice a week."

- The TrichoTech reports recorded cannabis use by her;-
  in the period September 09 to December 09; and
  in the period between January and end March 2010.

- It was suggested to her during the course of cross-examination that the reason that she and her husband had no money to get to court on the first day of this hearing was because they had spent the money on cannabis last weekend; she denied that - and was appalled, saying that they never bought cannabis. She accepted that she had probably

last smoked cannabis “about six weeks ago” (therefore in early May 2010).

Conclusion (about drug dependency)

24. The parents deceive themselves that they are not still in thrall to drugs; they are not free of heavy reliance on prescription Class A drugs taken in substitution for heroin – indeed, subutex and methadone are Class A drugs in their own right. They both claim to have given up using cannabis, but – in reality – neither sees cannabis as being insidious or of much consequence; and their protestations about never using it again do not ring true. I am satisfied that they have not abandoned their use of cannabis.

25. The groundwork which the parents needed to undertake in order to achieve a different outcome was set out by the judge in the proceedings relating to their daughter; he told them that if they had been drug-free in the 6 to 12 months immediately before the hearing before him that would have signalled a huge turnaround. However, on the facts of this case (relating to their son and therefore as regards their current drug-taking), the parents have not yet done enough to demonstrate that they have "turned their lives around." I cannot ignore the fact that the mother has been involved with CDAT for the last five years and that her prescription has reduced but little over that period. I was not given similar details for the husband; he accepts his dependence on methadone is considerable still. Both parents remain outwardly casual about drug misuse and are still within the grip of drug dependency.

[2] Domestic Violence

26. Both parents maintained before the judge in 2006 that their relationship was stable and free of violence. The judge examined incidents in January 2005, in June 2005, and a string of incident records on other, earlier, occasions. He found it impossible to accept the mother's case that she had reported to the police violence by the father (as recorded) not because those occasions were true but in order to seek attention when she was lonely due to the father being away working long hours. He was satisfied that both parents had lied to him about the existence of violence in their relationship -- although he conceded that, since there had been no reports of violence over the 15 months prior to that hearing, things might have improved more recently - but he found there was a potential for violence in the future when the parties were under stress. The judge's determination was not appealed.

27. Instead of accepting the judge's findings at face value, and working with them, the parents continue to deny that there has ever been any violence in their relationship. Their self-esteem seems to be so strongly bound up in their eyes with the notion of their innocence (of domestic violence) that not accepting

what they say at face value and exposing the inherent lack of probability in what they say, makes any criticism seem brutal and risks jeopardising the fragile hold on recovery which their dependence on methadone is slowly facilitating. I feel that burden keenly. I would want the parents to understand that everyone wholeheartedly supports the efforts that the parents are making.

28. Both parents similarily maintain before me that their relationship is free of violence and, indeed, the Local Authority's searches have confirmed that, since the 2006 judgment was handed down, there have been no independent reports of violence between the parents.

29. Sadly, however, the wife is herself responsible for the Local Authority's continuing concern. After tracing her own natural mother, she went to stay with her and her female partner in England. The husband believes that they prevailed upon her to stay longer than she intended and encouraged her to consider settling close to them. So she embarked upon the English Assessment and told the Specialist Practitioner that "she left her hometown … due to a breakdown of her relationship with her husband of 4 years … she admits she is unable to stay with her husband due to violence."

30. In her evidence before me the mother told me that the practitioner had got this "all wrong; she is incorrect in what she has written." But I reject that argument. It is most unlikely that the Specialist Practitioner would invent such statements, and I accept that the mother used the words attributed to her. Whether what is recorded is true I may doubt, but I accept the words as a true record of what the mother told the Practitioner.

31. As to continuing domestic violence;-

- neither asserts a fear of the other,
- both confirm that there has been no recent violence between them,
- the social worker agreed that she had seen nothing in the course of this case to give rise to active concern on this account.
- the Consultant Psychologist engaged by the parents observed how the husband habitually deferred to the wife, how he was overridden and did not assert himself, leading the Consultant to conclude that he probably kept quiet to keep the peace.

32. Such submissiveness, of course, does not preclude domestic violence – indeed, it can stoke up fires of resentment which can suddenly erupt. There is common ground that the mother is not a reliable historian – as the parents' expert observed "she is quite capable of fabricating information if she believes it will be to her advantage or put her in a good light." I think it quite probable that the wife lied about the existence of recent domestic violence – and did so, perhaps, because she thought it would assist some hidden agenda of her own. I am more impressed with the reliability of the father, and accept his denial.

33. Whereas the judge (in 2006) found that there was a serious concern about the potential for violence between the parents, I am satisfied that they have matured somewhat and are far better able to cope with major disagreements between themselves without resort to violence. Given their past history, there is always the potential that stress may trigger violence; but that possibility is receding. In the case which has been presented to me, I find no sufficient reason to doubt what the parents both tell me about the current violence-free state of their relationship.

34. As to stability, the mother of course was not pregnant when she presented for the English assessment. Whether her mention of violence was designed merely to improve the prospects of being re-housed (as the husband speculated in his evidence), whether she was testing the water (to see if she would receive more favourable treatment for a future pregnancy from an English LA), or whether she was truly seeking to escape, is now unclear. The husband says now that he doesn't know what she was thinking then.

35. His medical records disclose that he went to consult his GP on 28/5/08 and reported that he was "very upset" that she had left him. The parties were back together by July 2008, but had separated again after that (dates are vague) and there is mention in her medical notes for September 2008 of the wife "being currently in a new sexual same-sex relationship which is causing stress in the house." She advised the Local Authority at the end of April 2009 that she had moved permanently to England, but the husband asserted that their plan had been for him to join her when they had suitable accommodation. By August 09 the mother's relationship with her own mother had broken down and the parents resumed living together in Wales.

36. That chronology shows a period of hiatus and extensive separation during the pregnancy, followed by settled living together for the last ten months or so. Before the judge in the 2006 proceedings there was a report (from a Chartered Forensic Psychologist) which analysed the personalities of both parents and predicted such a lack of stability in this marriage that it could not long endure.

37. But the marriage has not come unstuck, and the Psychologist in these proceedings has said that the parents are close. The Guardian has also been impressed with the couple's general commitment to each other over the six years they have been together. I am happy to add that the couple which I saw clearly loved each other.

[3] Significant personality traits

The mother

38. With court proceedings having been taken in regard to each of the mother's four children, it is inevitable that there is a wealth of accumulated material within the court bundle dealing with the mother's psychological and psychiatric history. Much of that evidence has a bearing on the decisions I am called on to make. Where medical opinion has been consistent over time it gains weight in the amount of reliance placed upon it; a court cannot ignore it and (from the parents' perspective) it becomes increasingly difficult for them to dislodge its conclusions (without an expert of like discipline expressing a strong contrary opinion).

39. Nor, in discharging its responsibility to the child, can a court "start from scratch" – as plainly the mother had hoped when trying to settle in England for the birth of the son in hopes that her past would not catch up with her; clearly, the medical history is very important; and, (again from the parents' perspective), it does not support the parents' case.

40. What three psychologists and one psychiatrist found from their various examinations of the mother was that her problems are long-standing; they all agree that she does not have cognitive defects/deficits which prevent her from parenting adequately. No-one said she has a personality disorder; one expert said she is on the borderline [between having a personality disorder (of a dissocial type) and not having such a disorder]; three experts suggested she does not have a personality disorder.

41. But what they all agree upon is that she has "antisocial personality traits" which means that she has a significant lack of empathy – the ability to understand and share the feelings of others – she does not understand her own emotions and has an almost complete inability to put the need of others before her own. She has no insight into these problems and tends to blame other folk when anything goes wrong in her life. The psychologist in the daughter's proceedings describes these traits as being reliable and stable -- that is to say, despite the passage of time, they will remain the same as they are now. Subjects like her, he said, tend to be cool and distant parents with no need of personal interaction. He thought there was a medium to high risk of the mother putting her needs before those of the child – and he predicted that those risk factors will remain static; her antisocial traits will not change over six months or (he implied) six years. The psychiatrist reported in July 2006 that the mother's lack of understanding of her problems makes it unlikely that she would respond to any form of therapy -- and the psychologist in the proceedings before me (whose evidence occupied much of the first day) was emphatic in her assessment that the couple would not wish to engage in any form of therapy; they could not see any need of it, and that presented an insurmountable obstacle at the outset.

42. The psychologist in the daughter's proceedings went further and concluded that even if it were possible to engage the mother in therapy it would need to be over a long period of time and the child's own development could not be put on hold whilst the mother caught up; the judge concluded (in 2006) that

the daughter's welfare excluded the prospect of such experimentation over what would necessarily have to be a protracted period.

The father

43. The psychologists all agree that if the father was presenting as a lone carer he is capable of being able to parent this child alone. He has never asked to be considered as a sole parent; he and his wife, in his eyes, are one indivisible unit; either both are fitted to jointly parent their children or the consequence must be accepted that neither are.

44. The psychologist in the daughter's proceedings described the father as having a dependent personality and as being highly dependent upon close interpersonal relationships with others for his own happiness. Despite finding that the wife's relationship with the husband was likely to be volatile and unstable, he concluded that the husband would try to fit in with the mother's needs and would tend to be overly-accommodating, trying to avoid confrontation in order to avoid the risk of the relationship ending. Although he would be able to parent a child on his own, (provided that his drugs use remained stable and did not stray outside his prescription) if they stayed together, he would not be capable of protecting a child from possible emotional neglect or even abuse by the mother - because the father would constantly put his relationship with the mother before that of the child. If he saw the mother doing something he ought to report he wouldn't do so if it meant damaging the relationship with the wife. He even supplied drugs to the mother when she was pregnant without any conscience about the risk of potential harm to the unborn child – which, sadly for the daughter, became actual harm which she carries for life.

45. In these proceedings regarding their son, the parents were given the opportunity to obtain their own expert medical evidence to gainsay this accrued weight of medical opinion. (The parents understood that, although "their" expert is being paid by the parents' legal aid, their expert must consider the evidence objectively; the expert's natural desire to advance the case for the parties by whom she has been instructed is subject to an over-riding statutory obligation to be impartial and to assist the court on matters within her expertise). The parents instructed an independent psychologist; but, sadly for the parents, their expert agreed with every conclusion (save one) of the health professionals in the previous proceedings.

46. That one disagreement was significant; it touched on the strength of the parents' relationship with each other (which one psychologist had suggested in 2006 was about to come to an abrupt end). Their psychologist believed the relationship to be surviving well to the parents' mutual benefit, sustained because each has been able to draw on aspects of the other's personality for support - and, despite the odds being against it, helping their relationship to endure. In simple terms, they clearly love each other.

47. The Guardian has knowledge of the mother gleaned over a period of many years' involvement with all four of the children. She has seen the mother

emerge from a chaotic lifestyle to a more stable position where the relationship with the father has been of some real benefit to her. But the Guardian's knowledge of the way the mother functions happens to tally with the psychological analyses in the case. The judge concluded in 2006 that the Local Authority, the experts and the Guardian were all correct and the risk to the daughter -were she to be returned - was just too great. Mother can provide an acceptable standard of care of a compliant baby in a supervised setting but when one combines this with the mother's enduring personality traits the Guardian's view was that the mother could not safely sustain her care for a young child beyond the limits of a strictly supervised parameter – both for the daughter in the earlier proceedings, and for the son in the case before me. She agreed with the experts' view of the father's inability to prioritise the needs of a child over his relationship with the mother.

48. The consensus of medical opinion suggests that whatever the mother does to address her other problems, her psychological difficulties are so deeply ingrained that it would be an unacceptable risk for the child to be returned to her because the mother could not cope with the child when his ongoing development prompted him into challenging behaviour (around the age of two years). Given the mother's lack of empathy, she would interpret a toddler's wilful behaviour as betokening that he no longer loved her, and she would not then sustain warmth or love for him, and there was a real likelihood that he would then "experience neglect and (possibly) emotional abuse." She would become and would remain a very distant parent. The father would be unable to repair the gap.
49. Before me the parents' psychologist was asked if there was any way around this difficulty. She answered that - if the absence of empathy was the only factor present - then careful education of the other parent and ongoing training and support for both parents could just about offset the risks to the child of suffering damage from emotional starvation from one of his parents. "A child needs the love of both; but often parents cannot do this to the same degree; and if the child gets this warmth and love from one supportive adult then the development of the child would not be significantly impaired. But (she concluded) because the husband always defers to the wife and does not assert himself, this input would be ineffective. The presence of all the other factors renders the risks unacceptable."

Conclusion about significant personality traits

50. So the experts agree that the accumulation of problems presented by the parents' various difficulties means that the parents cannot cope with the responsibility of looking after their children and makes entrusting to their care either their son or daughter too great a risk.

[4] Inability to work with professionals

51. In his 2006 judgment, the judge was troubled by many instances of the parents' inability to co-operate with professionals.

For instance;-

- The mother had failed to attend appointments with a range of individuals including CDAT, Sure Start, Social Services and a meeting with the Guardian – and on many (if not most) occasions there was no prior message to excuse non-attendance (though reasons were sometimes given afterwards).
- The judge found that the mother had an irresponsible attitude to medical care; she had a history of missing medical appointments and had discharged herself from hospital on several occasions against medical advice; [if she does that for herself it seemed to the judge more than possible she would adopt the same approach with a child].
- The mother also accepts that she failed to keep appointments with health visitors and other professionals concerning the child.
- She was dishonest about her use of Subutex – by deceiving the doctor about her ingestion, she gained access to a large quantity of the drug which imperilled her unborn child.
- The parents suffered from an apparent inability to attend appointments for contact arranged for their benefit – they were always late for morning contact; when examined by the judge they had no reason not to take an earlier bus.

52. The Local Authority, the Guardian and other professionals expressed the general view that the situation has not improved; the parents are still unable to work with the various professionals.

    The Local Authority pointed out various examples;-

    - She failed to co-operate with pre-birth assessments of the son
    - The father backed his wife's judgment and told Social Services not to visit
    - When it emerged (from her uneven gait and frequent falls/loss of balance) that she might have inherited from her natural mother a condition called Spinocerebellar Ataxia type 2, she was tested for this rare genetic condition; she was told, in September 09, that she was not a sufferer but she did not disclose that result to the Local Authority until March 2010; there was no explanation of why there had been this delay of six months in communicating this important information.
    - The report of the specialist registrar (in summer 2009) concluded that he discussed relapse prevention work with her but "she said she is not interested in this at the moment."
    - They missed appointments with Social Services and the Guardian, and neither apologised nor tried to re-arrange. They caused the start of these proceedings to be delayed by several hours by turning up late.

53. The mother lays the blame for her son not residing with her on everyone else; in her own (and her husband's) conduct she has found nothing to reproach; and that is entirely consistent with her personality traits. She has undoubtedly persuaded herself that "they are against her" – where "they" is everyone

except herself and her husband, because “they” do not support her case for the children to be returned to her.

54. This attitude presents the Local Authority with a great difficulty. It knows that the mother has consistently felt that the Local Authority is “against her.” All previous medical analysis has explained that she could not help sustaining that view; her instinct led her to be uncooperative; and so the mother not keeping appointments reinforces a received view in social services “look, yet again, she is not coming to case reviews, is not keeping appointments; here is history repeating itself.” By not chasing/pushing/persisting in the face of the parents’ expressed hostility, the case solves itself; every missed meeting strengthens the case against the parents retaining their child; it seems that social workers might be forgiven for just going through the motions.

55. From the parents’ perspective, they felt that their home circumstances were being ignored because those would be helpful to their case. The 2006 judgement accepted that their flat was well decorated and comfortable and was now kept clean and tidy – “itself…a considerable improvement over the way things were a year or so ago...” Father’s counsel suggested in cross-examination before me that a home visit by the social worker or by the Guardian might have been appropriate, to let them see for themselves how standards had been maintained or improvement sustained; the answer of both was that each was satisfied that the home circumstances would be perfectly adequate, and therefore did not warrant inspection. But both acknowledged that such a view had not been vouchsafed to the parents, and both accepted that that omission was to be regretted.

56. Likewise, in the proceedings before me, the position about contact has improved immeasurably. I have read many contact recordings – and I interpret the generality of the reported observations in a far more positive and hopeful way than does the Local Authority. For instance, a reported conversation about whose turn it was to change the baby’s nappy, was not disturbing evidence of dysfunction or even of one parent trying to get out of doing a chore but, in context, was a genuine attempt by the parents to be fair between themselves in the division of the limited positive/beneficial interactions with their baby which the artificial circumstances of supervised contact permit. Contact between the parents and their son was being maintained regularly and punctually, and the interactions were positive; but, again, there was an absence of acknowledgement to the parents of this major change which had come about since their daughter’s case in 2006.

57. Think for a moment what it must be like to be this mother. A broken leg, set in plaster, can be seen and reads to any observer as meriting help, or, at the very least, space and time; but, because the mother here suffers from something which is invisible, there is nothing for the uninformed observer to read from her physical presentation – so her lack of empathy communicates as selfishness, coldness and distance; and that, in turn, propels the observer to infer criticism, makes him/her defensive, quashes any desire to venture constructive criticism, stifles sympathy and certainly repels the expression of

sympathy. The consequence is that she – artlessly and naturally - starves herself of receiving suggestions and encouragement from others. [Little wonder then (but much credit to him) that the father is so protective of his wife.]

58. This improvement in parental behaviour must have created a dilemma for the Social Worker, because – in her judgment – such positive interaction could not alter the outcome here – (for there are too many other negative factors engaged). It suited the social worker that the parents did not keep their appointments; she accepted that she did not chase or challenge their lack of engagement. If meetings had been kept, it would have been awkward and difficult for the social worker to help the parents understand that, despite their best efforts in contact, they were hardly denting the medical analysis of risk which blocked the route to the children's return. In that context, witholding her criticisms of the parents must have seemed to the social worker to be an act of kindness – why make matters worse?

59. But the act of not voicing those criticisms had prompted her also to abstain from giving a single word of acknowledgement or encouragement to the couple; had enabled her, who was well-informed, to withold empathy, and – in so doing – had barred every last road to the parents' improvement. This was not malevolent; it avoided the risk of the parents being encouraged by false hopes; it was, I am sure, borne of genuine kindness; but it was wrong.

60. Opportunities for acknowledging to the parents the major strides which they have both taken were missed; not even a little chat at the end of contact. The Local Authority was aware of the mother's cast of mind and should have made appropriate adjustments to its stance; even if appreciation/praise might be wasted on the mother, its expression might have impacted on the husband's behaviour, might even have enabled him to demonstrate to the wife that she could trust to his judgment because the Local Authority was able to be positive in its communication with them, might have enabled him to engage her in submitting to expert help and support, begin to change the view that they could not be trusted to cooperate with professionals.

61. And there were signs that they might have begun to turn that corner too. The parents' psychologist declared she had encountered no difficulty in their cooperating with her; so far as anyone could tell me, both parents had cooperated with CDAT; the social worker recorded that the parents had agreed to cooperate with life story work, supply photographs and so forth; and the Guardian agreed that, as she had not asked to see the parents, there had been no opportunity for them to refuse to cooperate with her.

62. This last concession was surprising to me in a Guardian of this experience and disappointing too. She felt she had "a sufficient wealth of information" from her previous experience of the parents to be able to complete her recommendations without consulting the parents; by not arranging to interview them about this child, she did not explore things it was her duty to investigate – such as testing the parents' fall-back position of preferring the two children

to be adopted together in one placement. Moreover, the parents were bound to conclude that everything was stacked against them when neither the social worker nor the Guardian had actually seen them separately to ascertain their views about their son. To give her credit the Guardian readily accepted that, "with hindsight, this should not have happened"; I think that the illumination of hindsight should not have been necessary; however awkward for all protagonists, there should have been accorded to the parents a proper opportunity to impart all that they wished her to know about their side of this case.

Conclusion about working with professionals

63. I accept (as part of the threshold criteria) that the parents have failed to cooperate in the distant and immediate past – most graphically illustrated by the failure to advise about the outcome of the genetic testing and to offer no remotely satisfactory explanation of the six months' delay in supplying the information. I agree that this gives rise to a probability that they would not cooperate in the future. But I do not accept that it has been established beyond a peradventure that the parents have irredeemably demonstrated that they would not cooperate with professionals in the future.

64. With those observations upon the four main strands of the judgment which concerned the judge when dealing with the daughter, and with a feeling of engulfing sadness at the mother's predicament, I now turn to making a decision in the care proceedings relating to the son.

Threshold

65. The Local Authority made application for a Care Order under section 31 (1) of The Children Act 1989, and in its final care plan (annexed to the order) the Local Authority recommends adoption.

66. I stress that the child's welfare is my paramount concern. I have to take account of all matters recited in the welfare checklist as set out in section **1 (3) of the Children Act 1989**, and I have done so; but to the most salient I allude below.

Welfare Checklist

Age, gender & background characteristics

67. This white, Welsh twelve-month old male baby has been living with his foster family since 9th June 2009 (which is "the relevant date" for the purposes of section 31 CA 89). He has never lived with his birth family. The parents have not persuaded me in these proceedings that they have achieved the level of stability in their lives which they claimed warranted my entrusting the son to their care.

68. The son has two older half brothers and an older sister of the whole blood. All have suffered from global developmental delay; the firstborn and third children have been affected by foetal alcohol syndrome, the daughter so severely that she requires a lot of individual attention. These children have not had contact with the son.

Physical, emotional and educational needs

69. He appears to be meeting his developmental milestones. He is a happy and contented child. His physical emotional and educational needs are being met by his foster carers with whom he has been living since birth. He has settled with the foster carers and is reported to be thriving.

70. As to contact both parents have attended regularly and promptly, and have provided perfectly adequate care for the baby which has not been tested outside a supervised setting because of concern about the parents being unable to cope if left to their own devices.

Any harm which the child has suffered or is at risk of suffering

71. The child is likely to suffer significant harm as a consequence of the parents' drug dependency, (what the Guardian describes as) 'the mother's pervasive inability to function appropriately in relation to others (especially children)' due to her personality traits, (especially her lack of empathy, incapacity to experience guilt or profit from experience), and both parents' failure to prioritise their son's needs over their own.

Capability of meeting the child's needs

72. As the parents' psychologist asserted (and as the Guardian agreed) the mother has never been better positioned to meet a child's needs; but, even with the support of her husband, the professionals all advise that the parents lack a proven capability of meeting their child's needs to a good enough standard. The Guardian witnessed a contact between the mother and her eldest child in 2007 during which she insisted he should call her 'Mummy' and was incapable of grasping his difficulty about that, and could not bear it when he called her by her Christian name.

73. I emphasise that it is not necessary for the court to attribute blame for this situation; the mother and father might well be trying their hardest and yet still may be failing to meet the needs of the child, thus placing him at risk of suffering significant harm. And so it is here; even with the caveats I have added to my above conclusions about the four main strands of factual findings, (given my predominant concerns about drugs and personality) I find

that these parents cannot escape their own natures and past history in a time-scale which would be fair to their son.

74. Just as, in the past, family members have put themselves forward for caring for the mother's other three children, so mother's own birth mother and her partner put themselves forward to care for the son and were assessed; but the assessment was negative and has not been challenged; and no other family member has been able to respond positively to the invitation to take care of the son.

Wishes & feelings

75. At twelve months, the son is not yet of an age at which his wishes and feelings can be ascertained. I presume this son would probably wish to be cared for by his birth family if possible for, in general terms, every child is better off being raised within his family of origin; a child has a right to be brought up by his natural family unless there are cogent reasons why it is not in his best interests for that to happen; but, as is sadly apparent from the above analysis, cogent reasons exist in this case.

The likely effect of any change upon the child

76. There will be an absence of the contact between the son and his parents the regularity of which is well documented in the contact recordings. Whilst this has been a positive interaction for him, the Guardian (who attended a session of supervised contact in November 09) agrees with the Local Authority that the contact has not been of such quality as will cause him to suffer withdrawal symptoms were it to cease.

77. The child certainly needs to grow up in a family where his developing needs for good quality care and nurturing and support will be met in full so that he is given the security of living in a permanent and settled family unit. He has formed appropriate secure and loving attachments with the foster carers and it is reasonable to anticipate that he will be able to transfer these attachments to an adoptive family.

Articles 6 & 8.

78. I have firmly in mind **Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950:** which set out the right to a fair trial and the precept that every citizen has the right to enjoy a private family life free from the interference of the state unless there are proper and sufficient grounds to intervene.

79. **K. v. Finland [2003] 1FLR 696** sets out the precise terms of the relevant Articles and the judgment makes it clear that;-

(a) any order related to the public care of the child has to be capable of convincing an objective observer that the measure was based on a careful and unprejudiced assessment of all evidence on file, with the distinct reasons for the care order stated explicitly;

(b) the reasoning adopted has to reflect the careful scrutiny which any court could be expected to carry out by balancing the evidence in favour of and against making an order; and

(c) there is a positive duty to take measures to facilitate family reunification as soon as reasonably feasible but that has to be balanced against the duty to consider the best interests of the child.

80. As regards the daughter, after considering the above criteria, the judge asked himself whether it was necessary and proportionate to override the parents' right to family life. He concluded "sadly the result remains the same" and he therefore excluded the parents from consideration as carers for their daughter.

81. As regards the son, given the clear warning (in the 2006 case concerning the daughter) about the need for the parents to abjure drugs and show themselves to be drug-free for at least six months, given that they remain in thrall to drugs and given that the mother has undertaken no therapy for her personality traits, I conclude that family reunification is not feasible in this case.

82. I therefore conclude that it is in the best interests of the child for an order to be made.
83. I now consider what that order should be.

Range of court powers

84. In the absence of application for any other orders, the options facing the court are to make no order, to make a care order or to make a supervision order.

85. I agree with the Guardian that this is not a case in which the court can properly conclude that it is in the child's best interests for it to make no order.

86. **S. 31(1)** of the Children Act 1989 states that "on the application of any Local Authority or authorised person, the Court may make an order -- (a) placing the child with respect to whom the application is made in the care of the designated Local Authority; or (b) putting him under the supervision of the designated Local Authority."

87. The facts advanced by the Local Authority are based essentially on the risk of harm set out above because the parents lack the ability to meet their son's needs by providing him with a safe and stable environment and to prioritise his needs above their own. I am satisfied that he would be likely to suffer significant harm in the future unless there had been intervention on the

relevant date. I find that that situation continues at present and into the foreseeable future.

88. A supervision order is clearly not appropriate in the circumstances.

Care Order

89. On the findings I have made above, and on the relevant date, I find that the child was likely to suffer significant harm; and the likelihood of that harm was attributable to the probable want of care from the parents were the order not to be made. The threshold criteria are thus satisfied and a care order must be made to enable the Local Authority to share parental responsibility and to exercise its duty to act in the best interests of the child.

90. A child has the right to be raised in an environment where his welfare is not placed in jeopardy and where he is provided with the opportunity to flourish and reach his potential. The Local Authority sets out how it intends to achieve such a future by its Care Plan.

Care Plan

91. The court may only pass responsibility over to the Local Authority by way of a final care order when all the facts are as clearly known as can be hoped. I approve the care plan annexed to the order dated 16th March 2010, and I make a Care Order to the Local Authority in respect of this child.

92. Under the Act, the Local Authority must apply for a placement order if satisfied that the child should be placed for adoption. I accept that an adoption order is likely to be the best way to ensure that this child is afforded secure, stable and permanent care of high quality with carers who are able to meet his needs in a positive and sensitive manner.

Placement

93. The Local Authority has issued a formal application that the son might be placed for adoption. The son's details were placed before the Local Authority's Adoption Best Interest Panel on 24th February 2010; Panel recommended adoption. The Agency Decision Maker caused that decision to be revisited because a transcript of the judgment regarding the sister had not been placed before Panel. The decision was reconsidered on 24th March 2010, when it recommended that adoption was the best option in the range of possible outcomes for the son. On 6th April 2010 the Local Authority Decision Maker ratified the recommendation of Panel.

94. I incorporate (within this placement application) my findings in relation to the care proceedings. I also address the additional material required by section 1 (4) of the Adoption and Children Act 2002.
95. The Guardian has dealt with placement in her comprehensive report of 15th April 2010. I adopt each of her conclusions as my own, and I am satisfied that

on the evidence about contact it is highly probable that the son will not suffer distress at cessation of contact with his parents, 'though I echo the guardian's recommendation for letterbox contact between parents and son.

96. The decision about promoting separate placements for son and daughter has been carefully approached by the Local Authority. I accept that the sister is likely to be more difficult to place than the son; she is substantially older and has suffered established developmental delay. Had the Care Plan of either child been to insist on their being placed together, I apprehend that would have inhibited the prospects of success of both, to the mutual detriment of both.

97. If they had ever lived together or if they had a meaningful ongoing relationship, the situation would have been different again. But I agree that the children's best interests are best served by there being separate placements sought for them. I also agree with the Guardian's caveat, that there should (at least) be letterbox contact between the (full) siblings twice a year; and, obviously, if the Local Authority is able to secure placements for the children with prospective adopters who are open to the possibility of actual contact being carefully developed and sustained, that would be an highly desirable outcome which it remains part of the Local Authority's duty to promote.

98. The son is achieving his developmental milestones and is happy and settled with his foster carers. I am able to record that he has not yet developed any special needs for the purposes of section 1(4)(b) of the 2002 Act, and indeed is already uttering a range of words, (notably cat and duck for pets that feature in his life) but, in light of the late recognition/emergence of foetal alcohol syndrome in the daughter, that same possibility for the son must be kept under careful review.

99. The parties have all thought about the likely effect on the child – throughout his life – of his having ceased to be a member of his original family and become adopted. The legislation emphasises the need for the court to look at the long term nature of this decision. The parents attended most of this hearing, and felt unable to consent to the making of a placement order for the son, preferring to abstain from giving their positive consent, and leaving that decision to the court.

100. I am grateful to the parents for recognising that it will be very important to their son in due course – when reading his own carefully recorded life-story – that he is able to have, with their cooperation, a clear knowledge and understanding of his birth family, with photographs and other information which they can supply. I am keen to emphasise that they can make an essential contribution towards their son's development of a healthy sense of his own self by contributing to his life story work as fully as possible so that any questions he may have in the future might be answered.

101. For the avoidance of doubt I find that section 21(2)(a) of the 2002 Act is engaged, and I am satisfied that the child's welfare requires that I dispense

with parental consent to placement. I am satisfied that the son's best interests are served by a placement order being made in order to achieve the best prospect of permanence and stability for the child.

Conclusion

102. **I therefore make a care order and a placement order in respect of the son.**

103. **There is to be letterbox contact afforded to the parents on the usual annual basis. There will be continuing contact until a suitable placement has been found, with a phased reduction and farewell contact arranged as detailed in the Care Plan – with sibling contact as outlined above.**

104. **There shall be no order as to costs between the parties, save a Legal Services Commission Funding Assessment Direction for any Assisted party.**

Addendum; Anonymised Judgment in Placement Application

105. This case concerns the sister of the little boy who is subject of the anonymised judgment in case number BS09C00626. I shall call her “the daughter” and her history is recited within various paragraphs of that narrative judgment, particularly at paragraphs 5, 10 and 12 to 15.

106. She is now four-and-a-quarter years old and was made the subject of a Care Order on 13th September 2006, because of the harm of which she was found to be at risk. The order proceeded on the basis of a planned placement within the family, but the court did not formally anticipate a contingency plan for adoption.

107. She was placed with a family member but the placement broke down, and she has been with foster carers since September 2008. The Local Authority waited for the birth of the son and then made formal application to the court on 27th November 2009 for a placement order for the daughter. The child's details were placed before the Local Authority's Adoption Best Interest Panel on 4th November 2009. Panel recommended adoption and the Agency Decision Maker ratified that decision on 10th November 2009.

108. The parents oppose the search for an adoptive placement for their daughter, and wish to become her carers themselves.

109. The Guardian made a fourteen page report on 16th April 2010. It is a careful analysis of the daughter's position. In the light of my findings in case number BS09C00626, I adopt its analysis as my own; I have considered the full range of powers available.

110. I similarly conclude that these parents lack the necessary skills and personality traits which would enable them to look after their daughter, safely and appropriately, particularly given her special needs which arise from developmental delay caused by foetal alcohol syndrome. Her best prospect of achieving her potential lies in her settling into a secure and stable environment within a loving family; her need of achieving permanency is most pressing.

111. As I cannot entrust the daughter to the parents' care, and as the parents withold consent to her placement, I find myself compelled to dispense with their consent for reasons identical with those employed in the son's case. I have read and I approve the contents of the statement of the Adoption Team Manager identifying those steps which the Local Authority is able to take to promote the daughter's prospects of finding permanent placement; and I make a placement order in respect of the daughter.

112. The decision about promoting separate placements for son and daughter has been addressed in my judgment concerning the son. I have accepted that the sister is likely to be more difficult to place than the son, because she is substantially older and has suffered established developmental delay (which will necessitate substantial inter-action with professionals into her adulthood). I agree that the children's best interests are best served by there being separate placements sought for them but it is clearly important that, so far as is possible, the daughter should have the same opportunities as her brother of achieving long-term security.

113. I also agree with the Guardian's caveat (expressed in her report concerning the son), that there should (at least) be letterbox contact between the (full) siblings twice a year; and, obviously, if the Local Authority is able to secure placements for the children with prospective adopters who are open to the possibility of the actual contact, tentatively promoted by the Local Authority at present, being carefully developed and sustained, that would be an highly desirable outcome (which it remains part of the Local Authority's duty to promote).

114. Contact between the daughter and her parents has reduced to six times per year (including Christmas and Birthday). There are no plans to sustain that contact beyond placement; and so, in time, contact will reduce in a planned way, to include a farewell contact session – (similar to that outlined in the Care Plan of the son). Indirect contact will then be continued via letterbox contact once a year.

Conclusion

115. **I therefore make a placement order in respect of the daughter.**

116. **Letterbox contact will be afforded to the parents on the usual annual basis.**

117. **There will be continuing contact until a suitable placement has been found, with a phased reduction and farewell contact arranged (in manner similar to that detailed in the Care Plan for the son).**

118. **There will be biannual letterbox contact between the son and the daughter.**

119. **There shall be no order as to costs between the parties,**

save a Legal Services Commission Funding Assessment Direction for any Assisted party.