[2011] EWCA Civ 918

Case No: B4/2011/0578, B4/2011/0700, B4/2011/1426 -

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM READING COUNTY COURT
(HIS HONOUR JUDGE D HAMILTON)

Royal Courts of Justice
Strand, London, WC2A 2LL

15th June 2011

B e f o r e :

LORD JUSTICE WARD
LORD JUSTICE RIMER
and
LADY JUSTICE BLACK

Between:

IN THE MATTER OF C (A CHILD)

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Official Shorthand Writers to the Court)

Mr Stephen Bellamy QC (instructed by Osbornes Solicitors) appeared at first on behalf of the Appellant Mother who later appeared in person.
Mr Aidan Vine (instructed by Radcliffe Duce and Gammer) appeared on behalf of the Respondent Father
Ms Judith Rowe QC & Ms Isabelle Watson (instructed by and for the Local Authority) appeared on behalf of the Respondent Local Authority
Mr Lee Pearman (instructed by Rayat & Co solicitors) for the Child

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HTML VERSION OF JUDGMENT

Lord Justice Ward:

1. This case concerns E, who was born on 5 April 2005 so she is just now six years old. Her mother appeals with permission granted by Rimer LJ and me last month after I had adjourned the mother's application to be heard on notice to the other parties. Her appeal is directed at an interim care order made by HHJ Hamilton in the Reading County Court on 11 March 2011. HHJ Hamilton made a further interim care order on 20 May 2011 and this time the father seeks permission to appeal his order. It is important to set out the nature of the judge's task and ours. The judge's powers flow from section 38 of the Children Act 1989, which provides as follows.

> "38 Interim orders
> (1)Where—
> (a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or
> (b) the court gives a direction under section 37(1),
> the court may make an interim care order or an interim supervision order with respect to the child concerned.

(2) A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2)."

Section 31 deals with care and supervision orders. Section 31 (2) is to this effect:

"A 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)the child's being beyond parental control."

2. In the definitions which follow in Section 31, harm means ill treatment or impairment of health or development and development includes emotional development. To decide whether the harm is significant the child's development must be compared with that which could be reasonably be expected of a similar child. Significant means what it says. The harm must be great enough to justify the interference by the local authority in the autonomous life of the family. To put it in another way, in order to reflect the need for respect to family life the interference must be a necessary and proportionate response to the concerns which impel the application for the care order being made.

3. If the threshold is crossed, then whether the court is considering making an interim order just as much as when it is considering making a final order, the child's welfare is the paramount consideration and the checklist in section 1(3) of the Act is engaged. Among the factors to which regard must be had is the range of powers available to the court, and they include the making of no order, or (and this may sometimes be forgotten), making a supervision order. Once again, proportionality has to be borne in mind to give effect to Article 8.

4. Our task on the appeal is to review the judgment and ask whether it is wrong. The judgment will be reversed if the judge has made an error of principle -- but that is not alleged in this case – or his evaluation of the facts can be shown to be plainly wrong. If the judgment is made without hearing the parties give evidence and seeing their demeanour, then the Court of Appeal may be in as good a position to assess the written evidence as the judge was, although we will always pay due and proper respect to his views especially where, as here, he has been immersed in the case and may be said to have a better feel for it than we can have in the short time available to ask. We can only interfere with an exercise of his discretion if he has exceeded the generous ambit within which there is reasonable room for disagreement. We will only grant permission if there is a real prospect of success. All of that is trite law.

5. Trite it may be, but that does not make the resolution of the case any easier. As I said when giving judgment on the mother's application for permission, my anxieties have not been dispelled by having another day's argument and a night's reflection before giving this judgment. This case does cause me great anxiety.

6. The background to the case is this. The parents did not marry. On any view theirs was a tempestuous, acrimonious, abusive relationship. The chronology suggests that in 2008 and 2009, that is to say in the years when E was advancing from two and a half years to four and a half years old, the police were called on 17 separate occasions by one or other of the parents. On four of these occasions the father accused the mother of assaulting him. On two of those occasions she was actually arrested. On one occasion she accused him of assault and he was arrested. Among the sources of conflict was the issue of father's contact to E. The mother appears to have had a similarly fraught relationship with her own mother and has been cautioned for assaulting her. On another occasion in 2007 she was arrested and detained overnight.

7. There is a chronology prepared by the local authority and placed before the court. The mother challenges aspects of it, and whilst therefore it should be read with caution because its accuracy has not yet been tested, its overall impact and flavour is relevant when considering whether there are reasonable grounds for believing that the care threshold will eventually be

established. Having regard to the essence of that chronology not its detail, this picture emerges.

8. The crisis response team were telephoned by the mother on several occasions during the night of 15 March 2010. The mother was obviously upset and she was concerned about whether or not that was having an effect on E. There seems to have been a deterioration in the summer of 2010. The local authority's concerns led to home visits in August and in the days that followed the emergency duty team and the crisis response team were involved. To put it at its lowest, mother was having a tough time for whatever reason. Not surprisingly the local authority felt obliged to investigate and decided to convene an initial child protection conference, which was held on 7 September 2010. The record of that meeting is before us. It is material to which the court must have regard in asking whether it is satisfied there are reasonable grounds for believing that the circumstances are such as is mentioned in section 31 of the Act.

9. The headmistress reported that E is "going very well at school" where she was "clean, happy and well presented in her school uniform, friendly and polite". Ms Dickinson, the social worker, stated "E and her mother clearly love each other" but she reported that E was well aware of the issues, having told her, the social worker that her father " makes her mother upset". The summary of that conference includes these passages:

> "Mother contacted social care for help and support. This triggered an assessment. There has been much harassment from the father to the mother and there has been numerous correspondence. Mother is preoccupied by this as it causes her distress. Stopping correspondence and contact has not worked in the short term. Mother's distress has escalated and she cannot manage her behaviour in front of [E]. Professionals have witnessed this. Mother has not managed to cease telephone contact with the father and change her telephone number. Numerous domestic incidents have been reported, mainly verbal but some have been physical. Only one has been reported by a third party with the father reporting most of the incidents. There have been no convictions for either parent. The chronology shows that the police took [E] into police protection in 2007 and this was considered again. Mother can meet [E's] basic needs, but there is concern as to whether she can meet [E's#] emotional needs. This conference is about [E] witnessing emotional distress caused by both parents. [I omit some words]. Family friends have been working with the family but the mother finds this difficult. There is a pattern of her not being able to accept support."

10. That last remark about there being a pattern of her not being able to accept support was prescient. The mother reacted angrily to this conference. Matters escalated the next day. The police became involved and, in the exercise of their powers under section 46 of the Act, E was removed from her mother's care and placed with foster carers. On 10 September 2010 the local authority obtained an emergency protection order. On 14 September the local authority instituted these care proceedings and the first interim order was made in the family proceedings court when the matter was transferred to the county court, where it has remained. The police action outraged the mother, so much so that the judge took the unusual step of investigating the propriety of the police response by conducting a fact finding inquiry over three days and giving a judgment on the events of 8 September in a long judgment delivered on 23 February. Rimer LJ and I refused permission to appeal those findings.

11. There is evidence that the mother had had a sleepless night on 7/8 September. She had left E with a friend overnight and was busy seeking legal aid when she was told, contrary to her understanding of the arrangements she had made with her friend, that E would be kept at school until the mother could collect her. That posed difficulties for the mother, who had consequently to arrive late at school. This friend had expressed her fear to the social workers that the mother's condition overnight was such that she feared that mother might have wished to harm herself. The headmistress of the school also questioned the mother's current mental state. As a result, the psychiatric nurse who was in attendance asked the mother whether she had any thoughts of self harm, to which the mother replied after a pause, "No, if that is the answer you want to hear". Later, mother apparently said that she was feeling "quite different now" and that was thought to be such an ambiguous remark by those who heard it that they felt she was implying that she was harbouring thoughts of harming herself.

12. The police were equally concerned about her mental stability. They concluded she was not fit to look after E that evening although she had by the end of it calmed down sufficiently to be fit enough to drive home.

13. The judge's conclusions at that fact finding hearing include these. Paragraph 97 of the judgment of 23 February 2001:

> "What [the mother] said at the school was ambiguous but it was quite obviously capable of being interpreted as a threat to harm herself, perhaps in the presence of [E] or in circumstances of which [E] might become aware or as a threat to harm [E].
>
> ...
>
> 99 It is not necessary or possible for me to say whether the local authority was right to think that [the mother] was contemplating self harm or harm to [E]. All I can say is that I do not believe that, if I had been there, I could have excluded these interpretations of what she said. Given the nature of the local authority's duties on 8 September 2010, however, it is sufficient that even at the first stage when it asked for the police to attend, the information available demonstrated a real (not fanciful) risk of significant harm to [E]. By the critical time when it asked the constables to take her into police protection, it had further information which made the risk seem greater. In my judgment the risk then left the school authority with no option but to take steps to safeguard [E] and at the time, a request for police protection was the appropriate means of enabling it to take those steps."

14. The mother makes the powerful point to us that it is extraordinary that if everybody there thought there was a risk of her suicide that no call was made for her to be sectioned under the Mental Health Act or given any medical assistance to overcome that prevailing distress. But that was the position at the time when it is material for the judge to decide whether or not there are reasonable grounds for believing that the threshold of section 31 was crossed.

15. HHJ Hamilton first considered this in a contested hearing on 7 December 2010. For the purposes of that hearing he referred to the basis upon which the local authority were contending that E was suffering or was likely to suffer significant harm attributable to the care she was given or likely to be given not being good enough. He said this and now I quote from his judgment of 7 December, reading from paragraph 6 of that judgment:

> "The local authority has lodged a schedule of the findings which it seeks for the purposes of establishing the threshold for making an interim order under Section 38 of the Children Act. It is quite short and can be summarised even more shortly. It contends that on the material date, 8th September of this year, [E] was suffering or was likely to suffer significant harm attributable to care she was given or likely to be given not being good enough (to use the convenient paraphrase). The basis of that was that she was suffering or likely to suffer emotional harm as a result of (a) the acrimonious relationship between her parents and possibly also the risk of physical harm for the same reason and (b) the apparent mental health problems of the mother which, it was suggested, could cause [E] to suffer emotional harm and neglect including the assumption of an adult role within her relationship with her mother, her apparently subdued behaviour when in her mother's care and other manifestations of her mother's perceived mental health problems. I say, 'perceived', because that is how it appeared to the local authority at the time."

16. He held that it was "abundantly clear that the threshold was made out". Elsewhere in the judgment he said that the "threshold for making an interim order is amply made out". This was a hearing in which all parties were represented by counsel albeit not the same counsel who now represent either the father or the mother.

17. Dealing with welfare he said this:

> "On [the mother's] application for a discharge [of the existing order], just as on a fresh application for another interim care order, the question has to be whether [E's] welfare requires that such an order be made. In that regard, nobody doubts the love which the mother feels for [E] or indeed the love

> which [E] has for her mother. The problem that has arisen has provoked the application for an order under section 34(4) is that the mother has been unable to manage her own emotions on the two occasions she has seen [E] (and I will come to describe those in a moment) and she lacks the ability to see herself, the impact of her emotional behaviour from [E's] perspective. I think it was Robert Burns who said what a good thing it would be if somebody could give us the gift of seeing ourselves as others see us and unfortunately, [the mother] is strikingly deficient in all that: all of us have our limitations in that: some have greater limitations than others: [the mother] is quite unable to see the problem"

18. The judge's recollection was of course correct. The quotation he had in mind is taken from Robbie Burns' poem To a Louse which he wrote after seeing head lice on the bonnet of the lady in church sitting in front of him and he berated this poor creature. I shall try to mimic Lord MacKay of Clashfern:

> "Ye ugly, creepin, blastit wonner,
> Detested, shunned by saunt an' sinner,
> How daur ye set your fit upon her,
> Sae fine a lady!"

And the lines which were quoted by the judge were followed by another important admonition:

> "O, wad some Power the giftie gie us
> To see oursels as ithers see us!
> It wad fraem manie a blunder free us"

19. It would from many a blunder free us. I hope mother is going to remember that. The advice is very apposite for the mother. It may well be that the social workers should look into their conscience and ask themselves to what extent it applies to them for they have a responsibility equally of having a relationship with the mother and of course I, in sounding off as regularly as I do, have to bear the words in mind as well.

20. Leaving literary allusions aside and returning to the chronology, the issue of interim care next came before the court on Friday 11 March. This time only the solicitor for the local authority and the mother in person appeared before the judge. It was a difficult judgment for the judge to deliver, as is apparent from the transcript before us. The poor judge was constantly interrupted, sometimes impertinently, and he showed great forbearance and patience. At some point the mother requested the judge to discharge the order he had made under section 34(4) of the Act which had terminated her contact after a visit to the school had apparently caused E distress. The judge could not of course deal with that application in the absence of the other parties. The mother made reference to a section 47 inquiry which was pending at that time, which was again not material for the particular hearing which had been arranged.

21. Turning to the application that was before him, the judge said this. Paragraph 13 onwards of the judgment of 11 March 2011. This passage occurs after the judge had been forced to withdraw because of the constant interruptions from the mother and he tried to resume where he had last left off and he said at that point (the point when he retired from the courtroom):

> "...the mother said that she still had to address me on the question of whether there should be an interim care order and she made submissions based on the welfare checklist in subsection (3) of section 1 of the Children Act, and particularly item (k), the ascertainable wishes and feelings (which she calls the wishes and feelings) of [E] and item (c), the likely effect of any change in her circumstances and she made the observation that no one had asked [E] about her wishes and feelings. There is evidence that work had been done to try and ascertain more about her wishes and feelings but she has not disclosed them and the word "ascertainable", which is omitted from [the mother's] submission to me, is important here.
> 14. In [the mother's] submission to me the interim care orders which have been made in the past should never have been made: they were made unlawfully and the correct procedure was not followed. She went on to say that the new evidence following deterioration in the emotional and physical wellbeing of [E] had not been considered. In her final submission she said

> that it was wrong to continue to extend the interim care order and she went on to refer to the evidence of Police Constable Martin about the occasion when [E] was originally taken into police custody and to repeat her assertion that on that occasion she was not liable or threatening to commit any act of self-harm or of harm to [E]. I reminded her of what I said about that in paragraph 99 of my judgment on that point "

I interpose to say I have already quoted paragraph 99:

> "15) Two things about this case are deeply disturbing. One is that [E] does not have contact with her mother and the other is that [E's] presentation in recent months has indeed been indicative of some disturbance. Whether that is a change or deterioration remains to be seen because one of the worrying features about her presentation at the very beginning of foster care was that she settled too well. That is an observation made by me …. "

22. And then I am afraid the mother interrupted the judge again and there was an unfortunate exchange between them, as recorded over several pages of the transcript. Eventually the judge was able to go back to where he thought he was and he said this, quoting from paragraph 16 of that judgment :

> "There are two features in this case which are deeply disturbing. One is that [E] is not seeing her mother and the other is that her condition, her presentation, does appear to be changing and it may well be changing for the worse. Before she went into foster care she was described as happy, settled and confident and displaying no particular causes for concern but since she went into foster care, when attempts have been made to arrange contact between her mother and herself she has been observed to be exposed to her mother's behaviour and to have even taken the role of concerning her mother, which was not an appropriate role for a child of her age to be taking.
> 17. Since then her presentation has apparently deteriorated further. It is not for me to say whether these are real changes or simply different manifestations of an underlying problem which was expressed by Miss Morgan [the social worker] when she said that [E] settled too well in foster care. I do not know, at this stage, even whether that comment is right but that was Miss Morgan's view and expressed to Dr Dale and to the court in evidence which she gave to me several hearings ago and which we have not yet got to the bottom of what is happening to [E].
> 18. The mother very naturally thinks that what is happening to her is very simply and very easily explained: [E] is suffering from separation anxiety as she would call it, in other words, suffering from the very fact of being separated from her mother. The difficulty about that is that her mother's own presentation is such that one would have to be very cautious not only about allowing [E] to go back to her mother's care but also about the circumstances in which contact can be reintroduced. It has to be remembered the original lack of contact started with [the mother] refusing to see [E] when she was first taken into foster care because she said that to co-operate with that would be to condone the local authority's conduct in taking [E] into foster care.
> 19. [The mother] shakes her head now to indicate she did not say that but the fact is that she said something very similar to Dr Dale when he saw her on 23rd February when discussing the arrangements which might be made for contact to be resumed, at least for the purposes of observation for his report. ... She insisted that there should be no representative of the Local Authority present and made similar observations to the Local Authority.
> 20. The situation cannot continue indefinitely but it is as it is but at the moment I have to consider the welfare of [E] and, in particular, whether that requires the continued separation of [E] in a foster placement rather than allowing her to go home to her mother. Nothing the mother has said to me today has given me any reason to think that [E] would be properly looked after or that her emotional needs would be protected and met if I declined to make a further interim care order. I readily acknowledge that harm is done to [E] by keeping her in foster care. The problem is that the harm which she is

> likely to suffer if she is returned to the care of her mother outweighs the harm she will suffer by being kept in foster care: it is as simple as that and that is an application of the checklist in subsection (3) of section 1 of the Children Act to which [the mother] has drawn my attention "

23. The position statement filed by the local authority made their position clear, namely that there had been no significant change of circumstances since the previous interim orders had been made. If, as would seem from the transcript we have, the mother's challenge to the making of the order was directed more to the welfare consideration than to the threshold requirement, the judge can be forgiven for not dealing in detail with the question of whether there were reasonable grounds for believing that the circumstances were as mentioned in section 31(2) of the Act. He clearly relied on his earlier findings. The question for us is whether he was wrong to find that the threshold was crossed.

24. Mr Aidan Vine, who now appears for the father but whose submissions also assist the mother, submits that the judge failed to address the question of whether the harm was significant. I use that as a paraphrase for the fuller question of whether there were reasonable grounds for believing that the child was suffering or was likely to suffer harm which was significant. It is true that the judgment is silent on whether or not the harm is significant, but that may well have been due to the fact that the issue was not sharply raised before him. In any event what is the evidence in this regard? 1) The background is undoubtedly the fact that the mother has lived much of E's life in a state of acute tension created by the difficulties in her relationship with her father and with her own mother. Dr Llewellyn Jones, a consultant forensic psychiatrist, reported on 21 November 2010, and this comes from the back of bundle 3 at page E40 paragraph 6 :

> "She [the mother] acknowledged she has very intense emotional range and this was clearly visible during the consultation with her. This extreme emotional lability, high levels of conflict in her relationships, her disturbed relationship with herself (characterised by various types of self harm including facial mutilation, an overdose, threats of self harm and eating problems) and general ambivalence leads me to agree that she has a diagnosis of a borderline personality disorder. This diagnosis was first made when she was young, and I completely agree with it."

25. Asked whether her diagnosis impacted upon her ability to parent, the report commented in paragraph 14 page E41:

> "[The mother's] parenting problems are likely to be related to her personality structure, she is very sensitive to criticism, and reacts in a defensive way when she feels undermined. This has led to significant conflict in her various relationships, which has been marked with professionals as well as her family members. She has not been able to protect [E] from persistent and high levels of conflict. Her distress levels are also very dramatic. I think things may be particularly marked at the moment as she has seemed to be depressed, and I do not think that her depression has been treated adequately. As I have said, I believe she loses empathy completely with the position of other people, including [E] when she is distressed, which must be very anxiety-provoking for her daughter and may force her to take a parental role. I think that because of her highest level of distress at times, she will be unable to respond sensitively to any distress shown by [E]."

26. She continued at paragraph 15:

> "Her tolerance of frustration is also poor; the rate with which her emotions escalate is dramatic, and her threshold for acting violently is low. I could not see that she had used weapons, and her major threat is likely to be intimidation rather than severe physical harm. However, [E] must have been exposed to an atmosphere at home full of tension, in which the adults around her could not contain their emotions or their behaviour. This again is a highly anxiety-provoking situation for a child; children exposed to intimate partner conflict and violence can develop difficulties in their peer relationships and later intimate relationships, as conflict and poor self control is modelled for them as a routine way to resolve inter personal differences.

> 16. I believe that her ability to parent has been affected in that she is someone egocentric has become completely overwhelmed with the demands of parenting, as her own emotional needs are extremely high. I would agree that there have been difficulties in her being emotionally available to [E] and in [E] taking a rather parentified role with her"

27. The second strand of evidence comes from Dr David Morgan, a chartered psychologist who had seen E, who reported on 8 January 2011. I read from his conclusion at paragraph 131 of his report at page E77 in bundle 3:

> "[E] has had a disrupted life in terms of changes at home, changes in the relationship between her parents and changes in her mother's behaviour. She does not appear to have a secure attachment to either parent and appears to be indiscriminate in her friendliness, as shown by her reactions to her two carers in a short period of time and her remark about loving a social worker she had met only once"

I bear very much in mind though it is relevant to the welfare question that E's first wish when offered three wishes by Dr Morgan was to live with her mother.

28. The third strand of the evidence comes from the mother's own reference in her submissions to the judge to a report by Dr Guy Northover, a consultant child and adolescent psychiatrist, which it is true the judge had not seen. He had found E to be suffering from an attachment disorder. It seems to me that those three opinions support the conclusion of the September case conference that E had suffered some emotional harm. The crucial question is whether it had reached a level which gives rise to a reasonable belief that it had become significant enough to justify the care proceedings. Here Mr Vine deploys two powerful arguments. First he submits that the evidence from the school that E was a happy well presented child doing well at school is contraindicative of emotional distress of that level. This is a fact which is at the forefront of the mother's passionate submissions to us. Secondly he submits that the local authority as a matter of fact did not consider on 7 September that care proceedings were justified.

29. Now I appreciate those submissions, but I think there are in turn two answers to them. The first is that the local authority are not tied to their earlier assessment so that they cannot review it or change their minds and the court is in any event charged with the responsibility of deciding the matter, taking into account all the facts, not only those existing at the time, but also any subsequent facts which illuminate or explain the state of affairs at the material time. Secondly, in my judgment the material time is the following day and the manner in which mother was presenting herself on that troubled day would undoubtedly have had its impact on E. No wonder she appeared withdrawn, showing no reaction to being taken into care and removed from a mother she undoubtedly loved and loves. It is important that this court does not usurp the functions of the trial judge who will have to decide whether in fact the harm was significant. All we are concerned about at this stage, the interim stage, is the lesser hurdle of there being any reasonable belief that the threshold will be crossed. Not without hesitation, for I see the strength of the point that before the crisis E presented as a happy child at school, nonetheless I conclude on the totality of the evidence now before us, which we have had the opportunity to digest E's contained distress on being removed from the mother she loved does indicate to me a level of emotional harm which may be found to be significant. But that is not the end of the matter. The threshold can also be crossed if there is a reasonable belief that she was likely to suffer significant emotional harm. Accepting for the purpose of this argument that she had suffered some harm from the conflicts that raged about her throughout her life, and accepting the mother's fragile mental state, it seems to me that the necessary involvement of the social services department carried with it the inevitable need that mother would have to cooperate with the department in the performance of their duties to monitor the situation and to offer the appropriate guidance and assistance. It was plain even at the case conference that this would be resisted and the real possibility therefore presented itself that this mother would resent and would resist all intervention. And so it has proved to be. Thus Dr Peter Dale, instructed on the mother's behalf reported on 4 March 2011, bundle 4 page E165 :

> "Her stance appears to have been disputatious uncompromising, volatile and hostile towards many who have come into contact with her including the local

> authority, and myself. Sadly a pattern seems apparent with [the mother] having been engaged for significant periods of her life in volatile intensely conflictual relationships (for example with her mother and [the father]). She is now in such a relationship with the child protection system.
> 13.3 In my view (from my perspective as a counsellor) the prospects for the mother being able to make significant changes in her habitual processes of perception, analysis and the nature of her emotional/behavioural responsiveness is uncertain."

30. Thus it seems to me that if drawn into a conflict with the local authority which would be inevitable, the prospect for E leading a healthy adjusted life where her well-being is protected recedes dramatically. I am for that reason more confident in concluding that there are reasonable grounds for believing that E was likely to suffer significant emotional harm when she was removed.

31. That leads us to the next stage of the inquiry. Is there enough reason to believe that E's welfare would demand the making of an interim care order? This is the issue which seemed so stark to us when the matter was before us for the grant of permission to appeal. The contrast between the happy child who went into care and the deeply traumatised child in need of a special therapeutic placement was tragic. Her deterioration was to be measured by the breakdown of two placements. The details of that distress in care were catalogued by Mr Bellamy QC, who was instructed to appear and did appear before us until the mother -- most unwisely in my view -- dispensed with his services. I recount some of the disturbing behaviour which Mr Bellamy has culled from the local authority's own chronology.

32. In a series of bullet points he chronicles among other events for I am being selective these :

> "15 September 2010 when Mrs Gow the headmistress reported that her teacher had described her [that is, E] as 'subdued, reticent and reluctant to participate in lessons and carrying her favourite toy, Bing-Bing around with her, constantly sucking her thumb. It was noticed that she had a sore on the inside of her mouth and suggested this might be a sign of stress.'"

Next:

> "In September the foster carer also reported [E] not playing with other children and biting her cheek and in contrast to previous behaviour at school not wishing to talk about her mother..."

Next:

> "By 1 November E may be self harming by using a stick to scratch herself so she could go to the school and the nurse."

Next:

> "Over Christmas E's behaviour had been 'extremely concerning'

...

22nd January 2011: Foster carers visited by prospective adopters of another child placed with them. [E] is present during their visit and becomes 'unsettled, very withdrawn, quiet and clingy.' Next day she ties a knot in her hair so tight it has to be cut out"

4 February: [E] 'very difficult at school and not co-operative.' Behaviour deteriorated in the last week. Very distressed with foster carers on return from school including pulling hair out, tying it in knots, banging feet on floor and lying on bed banging feet on mattress. She was rolling on the bed and moaning.

8 February: School expressed concerns at [E's] deteriorating behaviour."

33. That is a catalogue of disaster, unmitigated disaster, in the life of this five year old child. Given that state of affairs one can well understand why the mother asks us what is being gained by being kept in care. The judge was hardly unmindful of the problem, although I wonder whether he was as apprised of the full horror of E's distress as I have just read it. He "readily acknowledged that harm is done to E by keeping her in foster care" but he had to balance that harm against the harm she was likely to suffer if returned to the care of her mother. The difficultly which he correctly analysed arose from, and I go back to his judgment, paragraph 18:

> "The difficulty about that is that her mother's own presentation is such that one would have to be very cautious not only about allowing [E] to go back to her mother's care but also about the circumstances in which contact can be reintroduced."

34. The tragedy of this case, the awful tragedy of this case, is that this mother, now in tears, is her own worst enemy, but more tragically she is E's own worst enemy. E wants to go home to her mother. See the first wish she expressed to Dr Dale. The obstacle is mother's blind obstinate refusal to engage in any meaningful cooperation with the social services department who have statutory duties to perform. For that, see Dr Dale's report that I have already read. Thus it seems to me with great sadness, for I feel for E, the judge's conclusion is one which falls within the generous ambit where there is room for reasonable difference of opinion. This court in my judgment cannot interfere with it and in the result this appeal has to be dismissed.

35. I would not wish this judgment to end on that bleak note. Prompted I hope by our forceful observations during the hearing last month, the impasse which then bedevilled the case has been broken and due to our heavy-handed observations steps have been taken to find a more normal conclusion to this family tragedy. First mother very sensibly put forward the names of friends who have a daughter at E's school who were willing to look after E and the local authority approved the placement with them and so E has moved. She must be a very much happier little girl. Secondly, contact has at last been restored. The last contact was in October last year, an eternity ago for a little girl who loves her mother and misses her mother. As I would have expected that contact has been successful. The very reaction of the little girl to her mother speaks eloquently of the extent to which this child is missing her mother and wants to be with her mother.

36. Thirdly, there was or at least there was when the hearing opened, some happy sign that the mother was beginning to engage constructively with the guardian, against whom she had earlier set her face. I hope she will continue to do so, because in my judgment this case has to go to its allocated hearing over seven days fixed from 18 July and I urge that that hearing should not be lost even if the case is not as fully prepared as it may be because of assessments that have to take place now given the change of circumstances in the mother's own relaxation of hostility if it be such, and the appearance of the father as a viable alternative to provide for E's care. There is a little time left between now and 18 July for the mother to demonstrate that she can make the changes that are necessary to secure that which she wishes, namely the return of E to her care.

37. Having disposed of her appeal, I turn to the father's application for permission to appeal the judge's order of 20 May. He relies on the same challenge to the threshold requirement. For the reasons I have given, there is enough to satisfy the court that there is a reasonable belief that the harm E has suffered is significant or will be shown to be such. The harm is moreover attributable to the lack of proper care that was being given to E by both their parents, locked as they were and, it may be, locked as they are in a never-ending battle, which would inevitably have had its effect upon the daughter they love. If this battle and other factors conspired to produce the mother's breakdown on 8 September her inability to give E proper parenting is alone enough to say that this is not what it would be reasonable to expect a parent, and that means either or both of them, to give the child. The father recognises that if the threshold is crossed then the welfare considerations are best left to the final hearing. In that event I am not satisfied that he has any real prospect of success on his appeal and I would dismiss his application.

Lord Justice Rimer:

38. I agree. I too would dismiss the mother's appeal and would refuse the father's application for permission to appeal.

Lady Justice Black:

39. I agree with what has already been said. The mother's appeal must be dismissed and permission should not be given to the father to appeal. I am going to add a few words of my own because I share the anxiety about this case that has been expressed in this court and is obviously felt also by HHJ Hamilton. I want to take the opportunity to encourage the mother not to let the chance presented by the next few weeks which will lead up to the hearing of 18 July go by but to continue to build on the positive developments that are noted in the

judgment of HHJ Hamilton of 20 May. We can see from that judgment that the judge was thankful that events had taken a better turn, which included the resumption of contact between E and her mother and the mother's indication that if E could not come home and had to go to live with her friends in foster care she would support that placement. The judge recognised that the mother had made as he put it huge steps forward and was behaving quite differently from the way in which she had been approaching things earlier in the history of the proceedings. It is vital that progress of that sort is maintained now. It is very difficult sometimes to put one's feelings of injustice, whether well-founded or not, to one side and to do what is asked by others, be it the court, the guardian, or the local authority, even when one does not consider that it is necessary or appropriate or fair to ask that. Sometimes one has to do just that and put one's own feelings to one side and this is one of those situations.

40. E needs her mother to maintain now the more constructive approach which she had begun to show by the time of the hearing before HHJ Hamilton in May. That will then, I am sure, be reciprocated by the local authority.

Order: Father's application for permission to appeal refused; Mother's appeal dismissed