[2010] EWCA Civ 12

Case No: B4/2009/2345

COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
His Honour Judge Lancaster sitting in the Newcastle upon Tyne County Court on 12 October 2009.

Royal Courts of Justice
Strand, London, WC2A 2LL

21/01/2010

B e f o r e :

LORD JUSTICE THORPE
LORD JUSTICE WALL
and
LORD JUSTICE PATTEN

Between:

Gateshead Metropolitan Borough Council (the local authority)	**Appellant**
JM (The Mother)	**1st Respondent**
AW (The Father) – did not attend	**2nd Respondent**
JK (The Guardian)	**3rd Respondent**
M-W (A CHILD)	

Gillian Matthews QC and Frazer McDermott (instructed by The Local Authority) for the Appellant
Charles Geekie QC and Tom Finch (instructed by Mulcahy Smith - Solicitors) for the 1st Respondent
John O'Sullivan (instructed by Messrs David Gray – Solicitors) for the 2nd Respondent – Mr O'Sullivan was excused attendance by the Court but provided 'pro bono' written submissions in relation to the disposal of the appeal that were adopted by the Mother.
Nicholas Stonor (instructed by Swinburne and Jackson – Solicitors) for the 3rd Respondent

Hearing date: 8th December 2009

HTML VERSION OF JUDGMENT

Lord Justice Wall :

Introduction

1. This is an application by Gateshead Metropolitan Borough Council (the local authority) for permission to appeal against an order made by His Honour Judge Lancaster sitting in the Newcastle upon Tyne County Court on 12 October 2009. The judge was conducting the final hearing of care proceedings under Part IV of the Children Act 1989 (the Act) relating to a female child, whom I will identify only by the initial B. As the case is ongoing, reporting restrictions will be imposed.

2. B was born on 18 October 2007, and was thus rising two when the judge delivered his reserved judgment, which is dated 5 October 2009. The judge decided that the local authority had not established the threshold criteria for a final care order under section 31 of the Act and dismissed the proceedings. He refused permission to appeal. However, on the local authority's application, he made an interim care order under section 40 of the Act to last until the final determination of the local authority's application for permission to appeal.

3. I saw the papers on 16 November 2009. At that point I did not have sufficient information to deal properly with the application, but on what I did have took the view that the application should be heard as swiftly as possible. I therefore completed the form by directing an oral hearing on notice with the appeal to follow immediately if permission was granted. At the outset of the hearing, we indicated that permission to appeal was likely to be granted, and invited the local authority to advance its case as if for an appeal. At the conclusion of the argument, we reserved judgment.

4. When dealing with the case on paper on 16 November 2009, I inserted the following directions into the form, namely that:-

> The constitution hearing the application should be provided with the court bundles, including all orders made to date and copies of the statements and reports which it is said the judge did not take into account. I anticipate that the court would welcome the assistance of the guardian, but I will leave it to the professional discretion of the guardian and his / her advisers as to whether or not the child is separately represented on the application.

5. Most unfortunately, the direction contained in the first sentence of this citation was ignored, and we were obliged to conduct the application without the bundles which were before the judge. Although the section of the form is headed "Information for or direction to the parties" the primary responsibility for this omission must lie with the local authority, which has the conduct of the application. This is a case in which there is substantial criticism of the local authority by B's mother, and in other circumstances, a failure by the local authority to produce its evidence - particularly in a case in which the judge has found that the local authority has failed to satisfy the threshold criteria for care proceedings – might appear suspicious.

6. In the instant case, however, I am satisfied that it is an oversight rather than deliberate concealment. For the future, however, I simply record that the observations of the single Lord Justice on Form 269C1 are there for a purpose and should be obeyed.

7. Following a consideration of my direction, the guardian was indeed represented by counsel, who both put in a skeleton argument and made oral submissions, for which I am grateful.

.***The background***

8. B's mother, JM is 39. She has a substantial medical and psychiatric history to which I shall have to make further reference in due course. B's father, AW is 45. He also has psychological and personality problems. JM and AW did not marry. They met in 2006 via the internet and have separated several times since. The precise nature of their current relationship is unclear, although in his judgment on 5 October the judge found (wrongly as it transpires) that "the relationship is over and has been for some months, at least since October 2008 if not before."

9. B was born prematurely, at 27 weeks gestation on 18 October 2007. The judge summarises her complex medical needs in the following sentences:-

> 2. She had a heart operation and during this her vocal chords were damaged. She has lung disease and has a tracheotomy for laryngeal web. She has feeding problems which require naso-gastric tube feeds. (B) also suffers from gastro-oesophageal reflux. A tracheotomy requires regular suction, she required oxygen during the daytime as well as night-time until a few months ago. The night time oxygen is set at a low flow level through her nose.
> 3. Feeding B has been problematic, but by June of this year she was able to tolerate soft foods but gagged on any lumpy consistency. She basically feeds via a naso-gastric tube. At one point it was thought that B may have cerebral palsy, but the medical evidence now seems to suggest that this is not likely.

The judgment

10. The judge's judgment is very short. It runs to 25 paragraphs spread over 11 pages of double spaced typed A4. After the summary of B's medical condition, which I have set out at paragraph 9 above, the judge devotes a little more than a page to the evidence of Dr. PC, a consultant paediatrician and neonatologist, concluding with Dr PC's evidence that:-

> 5. Looking after a child with a tracheotomy at home is extremely demanding and there are hardly any other medical conditions in children that are as, or more, challenging.

11. The judge then continues:-

> 6. Now I have dealt with this at length because it is important in my judgment to record the practical difficulties that faced mother on a daily basis. Dr PC explained that he thought it was no mean achievement for mother to have done what she did, a statement with which I agree. When discharged from hospital on 24 February (2008) on a package of support care for mother, it was not put in place as well as perhaps it ought to have been.

12. The judge then describes the support offered to the mother, and records Dr PC's opinion that the package of support at the beginning was insufficient. The judge also reports Dr PC's view that the criticism of the mother for taking B to hospital was "ludicrous" and adds "I find that Dr PC was right when he said that caring for a tracheotomy child without respite was total nonsense".

13. The judge then records Dr. PC's acknowledgement that "changing the naso-gastric tube is a very unpleasant experience all round" and he expresses his agreement with Dr PC's conclusion that the success by mother and father in becoming tracheotomy trained in the timescales achieved by them was "pretty impressive".

14. The judge then deals with events up to 20 August 2008 (when proceedings were instituted) and concludes that until B's removal on that date "mother had acquitted herself well in caring for B on her own in difficult circumstances". He is critical of the view formed of the mother by Mrs Newton, one of the children's community nurses in the case.

15. The judge then turns to the law. He cites section 31 of the Act and from a number of authorities. He accepts that "according to convention" the date for the meeting of the threshold criteria was when protective measures were first implemented on 20 August 2008 and that he is concerned with matters "occurring thereafter only to the extent that these inform as to the making of the threshold at that time". He then says:-

> 22. Counsel for the mother and father submitted that the evidence did not support that the threshold criteria were satisfied and that such matters as the local authority could prove amounted in fact to significant harm. On balance I find that (the mother) had achieved a good standard of care in respect of B. There is no evidence to show that any developmental delay as may exist is attributable in any way to the lack of care showed by mother. On the contrary, the evidence showed that mother had acquitted herself well in caring for B on her own in difficult circumstances with limited support. ***Although mother suffers from bipolar disorder, this is treatable, and the combination of this and her personality disorder such as it is do not show that she is likely to cause B significant harm.*** (emphasis supplied).

16. The judge then spends a paragraph on the domestic violence between the parents before concluding, in paragraph 23 of the judgment that the incidents relied upon did not satisfy him that the risk of harm to B was significant. He then firmly (albeit unbeknown to him at the time erroneously) refers to the relationship between the parents as being over. He then concludes, in paragraph 25, by finding that the threshold criteria under section 31(2) of the Act have not been proved, with the result that he had no power to make a care order.

17. Although I have summarised the judgment in a few paragraphs, I do not think that I have done it an injustice. Furthermore, speaking for myself, I am sympathetic to the judge's findings about the mother's care of B in what on any view were extremely difficult circumstances. The question, however, is whether or not the judge has done and said enough to warrant his conclusion.

The issues

18. For the local authority, Miss Gillian Mathews QC's argument was simple in the extreme. The judge has not mentioned (let alone discussed and given his reasons for disagreeing with) a substantial body of professional evidence, all of which supported the local authority's case that not only were the threshold criteria satisfied, but that the proper outcome of the case was for care and placement orders relating to B to be made. The judge's decision to dismiss the proceedings could not, therefore, stand. Miss Matthews accepted, however, that if the appeal succeeded, there would have to be a re-hearing, and that the local authority could not rely on the deficiencies in the judgment as a basis upon which to argue for care and placement orders.

19. For the mother, Mr. Charles Geekie QC, with his customary realism, recognised that the only straw he had with which to build the bricks of an argument on this point was the sentence in the judgment which I have highlighted in paragraph 15 above. The question for this court, accordingly, is whether the judge has said enough to warrant his conclusion. In order to resolve this question, it is, of course, necessary: (1) to set out the evidence which the judge has not discussed; and (2) to examine the law on section 31 of the Act.

Issue 1: The evidence not discussed by the judge

20. The judge had a great deal of written and oral evidence. In particular, and with particular relevance for present purposes, he had a psychiatric report on the mother from a jointly instructed consultant psychiatrist, Dr T, and a psychological report on both parents from a jointly instructed chartered clinical psychologist, Mr. M. In addition, and apart from the guardian, the judge had an assessment of both parents by a jointly instructed independent social worker, Mr. F. The judge heard oral evidence from each of these witnesses, and we have been provided with transcripts of the oral evidence of Dr T. and Messrs M and F, as well as the evidence of Dr. PC, to whom reference has already been made. The evidence of Dr T, Mr. M and Mr. F (as well as that of the guardian) did not support rehabilitation of B with either of her parents.

21. In her report, which is dated 30 September 2008, Dr T cites at length from the mother's medical records before concluding that, in her opinion, it was likely the mother suffered from both bi-polar disorder (which she categorises under ICD 10 F31.0) and an emotionally unstable personality disorder (which she categorises under ICD 10 F60.3). The former, she thought arose "as a result of the mother's genetic make-up" and the latter arose "as a result of a clearly quite dysfunctional childhood and particularly the very significant feeling of abandonment when this mother placed her in care in her early teens".

22. In paragraph 191 of her report, Dr. T concluded: -

> I note ***at no stage has there been any concerns with regards (the mother's) physical care of (B)***. However clearly her (that is, the mother's) psychological instability will in the long term, if untreated, lead to very significant risks in terms of B's psychological and emotional development and lead inevitably to difficulties for (the mother) in providing an emotionally warm secure and consistent environment for (B) to develop in. (Emphasis supplied)

23. In paragraph 188 of her report, Dr T accepted that "the bi-polar aspect of (the mother's) presentation is eminently treatable" (subject, of course, to compliance with treatment). However, Dr T added that the "presence of a personality disorder is significantly more problematic" since such disorders were essentially untreatable and the mother's capacity "to engage in any form of treatment or therapy has to be in doubt".

24. There is no indication that Dr. T substantially modified her view in cross-examination. Indeed, during the course of cross-examination by junior counsel for the mother, the judge intervened to point out the very trap into which the local authority now submits he fell. The following gives the flavour of what was a lengthy exchange:-

Judge: Before we move on, I just want to clarify something. I'm wondering what direction you want me to go in relation to this, because for the moment this is the only psychiatric evidence that the court has got. It looks to me as though you're trying to direct me to go along the path where you're inviting me to treat the opinion as valueless, either because of inadequacy of preparation or consultation or misunderstanding of this history, or deferment to a psychologist, or a combination of all three.

Counsel: Yes, I am.

Judge: There are some dangers in that from the court's point of view, aren't there, as to how the court ought to deal with things like that, because I haven't got anything to the contrary to prefer.

Counsel: No.

Judge: So if you continue in this line the conclusion that you want me to reach is that its valueless.

Counsel: Can I put it another way?

Judge: Which is a very dangerous thing for a court to do.

Counsel: In fact, it wasn't my intention to invite you to reach a conclusion that it has no value, but that it has limited value in the context of this case, and that there is a distinction, because your Honour is entitled to take into account, because I don't have any contradictory psychiatric evidence – I accept that – that's apparent.

Judge: How can I reject an expert opinion? The point about expert opinion is it's there to inform the court.

Counsel: Yes.

Judge: Whilst I accept the court has a right to accept it or reject it, there has to be a rational basis for doing either.

Counsel: Yes.

Judge: If the rationale is to accept, then one can take that view on the basis of credibility, professionalism and so on, but rejection has to be, I think, taken with great care. I'm not convinced that you're going to be able to persuade me on the matters you've referred to so far to reject it.

25. Counsel submitted that his cross-examination was directed to the reliability of Dr T's evidence, and in particular to "the reliability of the material which the expert is placing before the court leading to the ultimate opinion". He expressed the hope that the judge "ought to treat this evidence with a degree of caution." The judge is not convinced. He refers to "a very dangerous path that you're treading on in the absence of anything else which contradicts it".

The evidence of the psychologist, Mr. M

26. Mr M had no doubt that the mother's current situation was "extremely difficult for her to deal with". He also expressed the opinion that the mother was "relatively isolated emotionally and socially, has been prone to depression and has attempted to take her own life on a number of occasions". She also had a "volatile" relationship with the father and had had similarly volatile relationships with other partners. However, he could not say "with certainty" that she had a personality disorder although he agreed that she would meet "most of the criteria to be diagnosed as having an Emotionally Unstable Personality Disorder as diagnosed by Dr. T." He was also concerned that the mother was "unable adequately to identify and prioritise (B's) needs".

The evidence of Mr. F, the independent social worker

27. Mr F was of the opinion that the mother was not able consistently to prioritise B's needs over her own and that when she was feeling emotionally unwell, she would prioritise her own needs at the expense of B's needs. He concluded that the mother was "not able to look after (B) in ways which will always safeguard and promote her welfare". That was also the guardian's view.

Issue 2: The threshold; (1) the findings sought by the local authority

28. The local authority argued that the threshold criteria were satisfied on the basis of likely significant harm: that is to say, future harm. It relied on the mother's medical history, the diagnosis of bi-polar disorder and emotionally unstable personality disorder. It submitted that the mother "had been unable to provide a consistent level of care for (B) despite high levels of support". It relied on her social isolation and her abusive relationship with B's father. It

concluded with the proposition that "neither parent has a clear understanding of the local authority's concerns over their ability to care for (B) either singly or as a couple. Neither parent understands (B's) needs for stability, security and consistent parenting."

(2) The closing written submissions by the mother on threshold.

29. Two principal points were taken. Firstly, the future harm alleged was not "significant". Secondly, even if the local authority was to establish the facts set out in the threshold document, the threshold would not be crossed. The mother's bi-polar condition was acknowledged to be treatable and the remainder of her mental difficulties (including the overdoses) were historical. Dr T had been unduly influenced by her analysis of the mother's background contained in the medical notes, and had accepted the local authority's case that a support package had been put forward by the local authority sufficient to enable the mother to care for B. Dr. T's evidence should be approached with caution. There was a divergence between psychiatrist and psychologist as to whether or not the mother suffered from a personality disorder. On this, Dr T had deferred to Mr M. The support package offered to the mother was inadequate and unsuitable. Dr. PC's evidence was significant.

(3) the argument for the mother in this court

30. As one would expect, the mother's case was fully, and skilfully argued by Mr. Geekie. In his skeleton argument, he laid particular emphasis on Hedley J's decision in ***Re H*** [2007] EWHC 2798 and submitted that the judge had directed himself correctly both as to the date at which the threshold fell to be assessed and in relation to subsequent events. He submitted that the judge had, rightly, regarded the adequacy of the support given to the mother as the central issue in the case and had been entitled to conclude that the support had not been adequate. He argued that Dr. T's analysis had fallen short of a firm diagnosis of bi-polar disorder and that Mr. M had been entitled to take the view that the mother did not have a personality disorder. He submitted that the following was the position at the conclusion of the evidence:-

    i) the fact that the mother had some mental health difficulties had been well known to relevant professionals before (B's) discharge home;

    ii) the nature of the mother's mental health difficulties had not been clearly defined before the removal of (B). As a result, inevitably, she had not received appropriate advice or treatment;

    iii) whilst caring for (B) the mother had plainly been subject to stresses which would inevitably exacerbate any mental health difficulties; and

    iv) the expert evidence prepared for the proceedings was not clear cut. In so far as a diagnosis was made, it offered the possibility of a more coherent and consistent treatment regime than experienced by the mother to date.

31. In these circumstances, Mr. Geekie submitted that the judge was entitled to view the mother's mental health as subservient to his conclusion that she had not received adequate support. Mr Geekie submitted that the judge's conclusions (notably in the highlighted sentence) were supported by the evidence. The judgment, albeit terse, covered the ground and should be upheld.

(4) the law on section 31 of the Act

32. It is, perhaps, appropriate to set out the threshold criteria under section 31(2) of the Act (as they apply in this case) at this point: -

> (2) A court may only make a care order if it is satisfied
> (a) that the child concerned is likely to suffer significant harm; and
> (b) that the likelihood of harm is attributable to
> (i) the care likely to be given to (her) if the order were not made, not being what it would be reasonable to expect a parent to give to (her).

33. It is well established:-(1) that the date upon which the local authority has to establish the likelihood of significant harm is the date upon which the local authority initiated arrangements to protect the child: - see ***Re M (A Minor) (Care Order: Threshold Conditions)*** [1994] AC 424. and (2) that "likely to suffer" is not to be equated to "on the balance of probabilities" although the local authority must prove a factual basis upon which risk can properly be assessed. As Lord Nicholls of Birkenhead put it in ***Re H (Minors) (Sexual Abuse : Standard of Proof)*** [1996] AC 563 at 588 B-C:

> The same approach applies to the second limb of s 31(2)(a). This is concerned with evaluating the risk of something happening in the future: aye or no, is there a real possibility that the child will suffer significant harm? Having heard and considered the evidence, and decided any disputed questions of relevant fact upon the balance of probability, the court must reach a decision on how highly it evaluates the risk of significant harm befalling the child, always remembering upon whom the burden of proof rests.

34. In the instant case, the local authority took proceedings in relation to B on 20 August 2008. The question for the judge, accordingly, was whether or not, as at that date, there was a real possibility in the future of significant harm to B - attributable to her parents' care - if a care order was not made. It is in this context that the expert evidence has to be considered.

35. Speaking for myself I do not think the judge misdirected himself on the law.

Discussion

36. As the phrase which I have highlighted (see paragraph 22 above) from paragraph 191 of Dr. T's report makes clear, Dr. T was not concerned about the mother's physical care of B. What concerned her, and (as it seems to me) concerned the psychologist and, albeit to a lesser extent, the independent social worker, was the risk that the state of the mother's mental health would render her, in the longer term, incapable of providing properly for B. It is, I think, worth repeating what Dr. T was saying:-

> However clearly her psychological instability will in the long term, if untreated, lead to very significant risks in terms of B's psychological and emotional development and lead inevitably to difficulties for (the mother) in providing an emotionally warm secure and consistent environment for (B) to develop in.

37. In my judgment, the doctor was advising the judge that B was likely to suffer significant harm in the future if returned to, and if she then remained in her mother's care. The doctor's opinion may be right or it may be wrong: either way, as it seems to me, it is a serious professional view which, if he is to disagree with it, must be addressed by the judge.

38. Furthermore, the mother's historical mental difficulties plainly existed as at 20 August 2008, the time when the local authority took proceedings. It does sometimes occur that material which goes to the threshold criteria either emerges for the first time, or comes fully into focus, either at the final hearing or after the date on which the local authority has instituted proceedings. Provided that the evidence is admissible, and that parents have the opportunity to deal with the material (that is to say, provided the process is fair and ECHR Article 6 compliant) there is no reason why the relevant material should not go to prove the threshold criteria under section 31. This seems to me patently the case here.

39. I regard the following as trite propositions of law:-

> (1) Experts do not decide cases. Judges do. The expert's function is to advise the judge;
> (2) The judge is fully entitled to accept or reject expert opinion;
> (3) If the judge decides to reject an expert's advice, he or she; (a) must have a sound basis upon which to do so; and (b) must explain why the advice is being rejected.
> (4) Similar considerations arise when a judge prefers one expert's evidence to that of another. Judges must explain why they prefer the evidence of A to that of B.

40. If authority for any of these propositions is required, it is to be found (inter alia) in the judgments of Ward and Butler-Sloss LJJ in ***Re E (Care: Expert)*** [1996] 1 FLR at 570D-E and v 674-5 respectively.

41. Against this background, it seems to me that in the context of this application, Dr. PC's evidence is less significant. Dr T is pointing to a different sort of risk. Indeed, it may be argued that the judge was so concerned with the evidence of Dr PC – and B's physical care - that he omitted to deal with the evidence of Dr. T.

42. As Mr. Geekie rightly accepts, there is only one sentence in the judgment, and that is the sentence I have highlighted in paragraph 15 above. For ease of reference I will repeat it:-

> Although mother suffers from bipolar disorder, this is treatable, and the combination of this and her personality disorder such as it is do not show that she is likely to cause B significant harm.

43. With all respect to the judge, I regard this sentence as a wholly inadequate judicial response to Dr. T, leaving on one side the fact that Messrs M and F are not mentioned in the judgment at all. All the sentence is, I fear, is a simple expression of disagreement with Dr. T. There is no reasoning, and no analysis. Perhaps over the period during which the judgment was reserved the judge had forgotten his exchanges with counsel for the mother during the latter's cross-examination of Dr. T. Whatever the explanation the judge, as it seems to me, has indeed fallen into the trap against which he so carefully warned himself. For this reason alone, in my judgment, the judge's order cannot stand.

44. Viewed in this light, the citation from the judgment of Hedley J in ***Re H*** [2007] EWHC 2798 (Fam) loses its force. The mother has demonstrated - on her case – that she can care physically for B despite the inadequacies of the support package. Dr. T was not concerned, as was Hedley J, with compulsory state intervention based on a failure to support, thereby rendering care at home impossible. If that was the only issue, Dr PC's evidence may well have been conclusive.

45. One of the difficulties I have with Mr. Geekie's able analysis is that his summary of the position at the conclusion of the oral evidence does not properly address the experts' concerns. The mother's mental health was not – in their view - subservient to the proposition that she had not received sufficient support, and if the judge was to take the view that this was the true position, he needed to explain why he took that view. Mr. Geekie's analysis inevitably has to make a number of assumptions about the judge's thought process. Judicial brevity as Mr. Geekie submits, is indeed a virtue, but not, I fear, if its consequence is that a critical swathe of the necessary judicial reasoning process is omitted.

Outcome

46. Can the judgment be salvaged? There are, it seems to me, three possible outcomes. The first is that we send the case back to the judge with an invitation, pursuant to ***English v Emery Reimbold & Strick Limited*** [2002] EWCA Civ 605, [2002] 1 WLR 2409 (***Emery Reimbold***) to reconsider and to fill in the gaps. The second is that we start again with a fresh judge, albeit leaving in place the judge's findings about the mother in the light of Dr. PC's evidence. The third is that we start again with a different judge.

47. The difficulties about the ***Emery Reimbold*** solution are, in my judgment, legion. I put on one side the fact that this was a reserved judgment, What strikes me with greater force – if my analysis is correct - is that the judge has made up his mind without properly considering the evidence of Dr. T, Messrs M and F and the guardian. Were we thus to invite him to reconsider, he would be bound to reject their evidence. To put the matter another way, the conclusion which he has reached would render impossible a proper judicial discussion of that evidence. Equally, were the judge to change his view and find the threshold satisfied, neither the mother nor the father would have any confidence in the judge's final conclusion.

48. Equally, in relation to option 2, whilst a fresh judge would, I hope, look with sympathy upon the judge's findings about the mother in the light of Dr. PC's (and indeed Dr T's) evidence, it does not seem to me to be right for this court to fetter a fresh judge with findings which he or she may not, in the result, feel able to make – or to make in the same terms.

49. I am therefore driven to the conclusion that the judgment cannot be salvaged, and that there is no alternative but to give permission to appeal, to allow the appeal and to direct a complete re-hearing before a judge to be allocated by the Designated Family Judge for Newcastle, in consultation with the Liaison Judge for the North Eastern Circuit and the President of the Family Division. I reach that conclusion with reluctance; (a) because of the delay which it engenders; and (b) because I do not wish to put the parties through a repetition of what was, on any view, a difficult, lengthy and stressful hearing. For the reasons which I have given, however, I see no alternative.

50. Self-evidently, nothing in this judgment should be read as indicative of outcome, which will, of course, be entirely a matter for the judge who conducts the final hearing on all the evidence available to him or her. At the same time, the delay engendered provides the opportunity for a fresh assessment of B's prognosis and future. I am thus confident that the fresh judge will not lose sight of the mother's powerful desire to care permanently for B, and will only make a care order and an order placing B for adoption if satisfied that such a course is truly in B's best interests.

Lord Justice Patten:

51. I agree

Lord Justice Thorpe

52. I also agree.