

[2010] EWMC 7 (FPC)

In the Family Proceedings Court

Before:  
A Lay Bench

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**Between:**

X Council	Applicant
<b>And</b>	
Mother	Respondent(s)
<b>And</b>	
Father	
<b>And</b>	
Child A by his Guardian	

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Mr H-D for the Applicant  
Miss P for the 1st Respondent  
Mr T 2<sup>nd</sup> Respondent  
Mr B 3rd Respondent

Hearing dates: 19, 20 & 25 January 2010

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**Justices' Reasons**

1. The court is concerned with the one child, "A", approximately 8 months old. A is said to be not a particularly well child, although the extent of this is uncertain as A will be the subject of ongoing future medical testing. Mother is in her forties. Father is in his fifties. The parents are married. A is Mother's fifth child but the second child of both Father and Mother.
2. The Local Authority has applied for a care order and a placement order in respect of A. Care plans have been filed. The care and placement applications have been consolidated within these proceedings. The Local Authority seeks a suitable adoptive placement. This was envisaged from a very early stage.
3. These proceedings commenced on 1<sup>st</sup> May 2009, an interim care order was made on 5<sup>th</sup> May 2009 and has been renewed on appropriate dates through to

this final hearing. A is placed with foster carers with whom A has remained during the course of these proceedings, in effect since birth. The parents have exercised contact throughout these proceedings. This is currently supervised contact, 5 days a week at 2 hours per session.

4. The parents opposed threshold, the care order and the placement order sought. They opposed the care plan. They presented as a couple (although separately represented) and wished A returned to them, indicating through submissions of their respective Counsel, in the nature of witness cross examination and in their written statements that they would cooperate with any support services in future. There was no alternative fall back carer put forward by the parents.
5. The Guardian supported the Local Authority's applications and the care plan.
6. The position of the parents changed by the second day of the final hearing. Both Mother and Father were to give evidence on the second day. On the second day Mother's Counsel stated that the parents did not wish to continue by giving evidence. They did not consent to the applications but did not oppose any more than to the extent they did at the end of the first day. The parents felt the giving of evidence would not take their case further. Father's Counsel indicated that the parents had reflected on the evidence heard on the previous day. It was said Father was unlikely to persuade the court to take a different view to the evidence of the Independent Social Worker. He, Father, knew the court will inevitably make a care order, then a placement order – then to an adoption order. He understood the consequences. He no longer opposed the applications.
7. The Threshold criteria the Local Authority wishes to establish is set out in the Amended Draft Threshold Criteria document dated the 27<sup>th</sup> November 2009. The Local Authority contends the threshold criteria under Section 31 Children Act are satisfied in that on the relevant date 1<sup>st</sup> May 2009 the child was likely to suffer significant harm and the likelihood of harm was attributable to the care likely to be given to the child if the Order were not made not being what it would be reasonable to expect a parent to give to a child. This document was amended at the beginning of the second day of final hearing in that the Particulars at paragraph 1 were amended and paragraphs 6, 7 and 8 were abandoned by the Local Authority. The Particulars therefore finally relied on were:-

1. A's half siblings, H and R were made subject to full care orders made on 15<sup>th</sup> August 2005 with a care plan of long term foster care, The reasons for these proceedings was that H and R suffered significant harm by being sexually abused by different male associates of their mother, with their mother's knowledge as contained in the Agreed Threshold document dated 17<sup>th</sup> August 2005.

2. Within those Care Proceedings, a number of assessments were carried out, none of which were able to recommend the return of (Mother's) children to her care. These assessments were:

1. A Psychological assessment completed by the Chartered Consultant (dated 9<sup>th</sup> May 2005), who concluded that (Mother) had allowed herself to be sexually exploited because she "did

not have the ability to form judgements about the appropriateness of them.” Also that she was “unlikely to learn appropriate parenting skills within the developmental timescales of her children.”

2. A Psychiatric report, completed by the Consultant Psychiatrist (dated 6<sup>th</sup> July 2005). Who commented that “I am afraid that I would not have confidence that (Mother) can parent any of her children well enough to protect them from abuse or other kinds of harm.”

3. On 19<sup>th</sup> June 2006 a Care Order was granted in respect of S who was born during the proceedings relating to H and R. Within S’s Care Proceedings, a Psychological report was compiled by a Chartered Psychologist (dated 7<sup>th</sup> October 2005). The Psychologist concluded that “I do not believe that (Mother) could protect herself or any child in her care from further sexual abuse.”

4. K was born on 21<sup>st</sup> June 2007 and proceedings were commenced immediately and came to a conclusion on 24<sup>th</sup> January 2008 with the making of care and placement orders. There was a contested hearing and the Justices made findings (which were contained within the papers filed with the court).

We do not intend to repeat all those findings, as they run to several pages but findings in relation to both parents were, hostility to professionals and lack of insight to Local Authority concerns. In relation to Father findings were violence and threats of violence to his family, violence to mother, violence to neighbours and their children.

5. The Court heard from the chartered psychologist (referred to in 2.1 above) and the following remarks from him were quoted in their judgement

- (a) “The only way that the risks could be managed was through a package of waking hours (support) 7 days a week until K attained the age of 18 or at least into his teens.”
- (b) That if the allegations of violence against the father were proved “(Father) and (Mother) are probably too risky to be trusted with the care of their child.
- (c) The parents would always be playing catch up with the development of their child.

8. As is seen from the Threshold sought to be satisfied, there have been previous care proceedings. They have been in relation to Mother’s four elder children:- R, H, S and K. Care orders were made in respect of R and H on 15<sup>th</sup> August 2005. Both are long term fostered. S was born during those care

- proceedings. A care order was made for S on 19<sup>th</sup> June 2006. He was adopted on 11<sup>th</sup> May 2009. Only K is the child of Father in these proceedings.
9. K who is Father and Mother's first child together was placed into foster care the day following his birth. On 24<sup>th</sup> January 2009 a care order and placement order was made for K. On 11<sup>th</sup> May 2009 K was adopted.
  10. Mother has not had an easy life. Psychological assessments in previous proceedings indicate that her abilities place her in the category of learning disabled. She suffers from V W disease preventing blood clotting properly. She suffers from asthma and, it is said, carries excess weight. She was known to the Local Authority since before R's birth. In early 2003 when living in another part of the country with R and H it came to light those children were being sexually abused by male associates of Mother. R and H told Mother of the abuse but she continued to associate with the males, to bring the children into contact with them and permit them to care for the children without her being present. Mother breached a written agreement with the Local Authority when the children were returned to her care. In the fullness of time, as said, care orders were made for R and H on 15<sup>th</sup> August 2005. In those proceedings, the psychological assessment of Mother concluded "(Mother) has very limited intellectual ability. She has been unable to perceive the risks to her children – in spite of her own experiences of similar abuse throughout a substantial part of her life". Further, "(Mother) is unlikely to learn appropriate parenting skills within the development timescales of her children. She is unlikely to be able to provide safe parenting against offenders who are commonly skilled in identifying vulnerable people".
  11. In those 2005 proceedings a parenting assessment of Mother was undertaken by a Consultant Psychiatrist and, despite Mother undergoing protection work with the Lucy Faithful Foundation, he agreed with the said psychological assessment of Mother in relation to Mother's ability to protect and her potential for change. He concluded she was not able to protect R and H from emotional and physical abuse. "Sexual abuse is only one of several risks to children in (Mother's) care. She has difficulty with coping with life's difficulties in general and her description of home circumstances when H and R were living with her indicate a very impoverished and neglectful style of parenting. Her account of (R and H's father's) behaviour towards the children indicates she was not able to protect them from physical and emotional abuse. She has not been able to protect herself and would not be able to protect a child in her care."
  12. In S's proceedings the psychological assessment concluded "Therefore I do not believe that (Mother) could protect herself or any child in her care from further sexual abuse".
  13. Father has come to fatherhood late in life. He has had no substantive experience of parenting, both his children including A being removed at birth. He is said to have had a comparatively solitary lifestyle, little socialisation and found his partner late in life. He has his own health problems. He has impaired mobility. The psychological assessment in K's proceedings indicates Father only has a slightly higher rating than Mother in the category of learning disabled.
  14. In the care proceedings involving the parents' first child together, K, the Psychologist's addendum assessment of 8<sup>th</sup> November 2007 expressed the view "Indications are that (Father and Mother) may both have learning

disability to a greater or lesser extent has rendered it unrealistic to employ detailed psychometric assessment often used to investigate personality patterns and potential disorders". The effect of the learning disability for Mother has been to leave Mother vulnerable to exploitation, difficult to acquire new skills and Mother would find it hard to keep up with K's developmental needs. Even if Mother and Father acknowledge support is needed and is asked for the help the parents would need is considerable. The assessment stated "They are likely to require support throughout periods when they are interacting with the child. This will amount to waking hours, seven days a week....." Given Father's impulsive aggression, if this were established the parents were probably "too risky to be trusted with the care of a child".

15. The independent parenting assessment concluded each parent was not equipped to care for a child alone. If domestic violence was a feature of the relationship, the presence of Father would not overcome Mother's shortcomings. Even if domestic violence could be disproved the author was "not particularly confident that the couple have sufficient personal resources to meet (K's) needs effectively..." There were too many risk factors.
16. In K's proceedings the Justices did make findings as in the Reasons of the 24<sup>th</sup> January 2008 which we do not repeat here in full, but emphasise, from page 4 at Paragraph Ba-Bj "...we have already proven that (Father) has a propensity to commit violence...."
17. Given the family history and the way the Threshold document as amended was formulated we considered it important to set out the duration of the problems and refer to attempts to previously support the family. The Local Authority's concerns are a direct consequence of the past events which led to A's removal at birth.
18. The precipitating event for these proceedings was A's birth.
19. The parental conduct since birth has, it is accepted, been generally good. Both parents have engaged well, have been regular in attending their supervised contact for 2 hours 5 days a week and the quality of contact has been good.
20. At this hearing we heard oral evidence from the Social Worker, and the Independent Social Worker, whose instructions were led by the parents but who was called by the Guardian. The evidence of these witnesses was challenged in cross examination by the parents. The Guardian was not called to give evidence. Her written reports were considered. Her evidence was not challenged by the parents. The parents did not give oral evidence in the circumstances we have described above at paragraph 6 and repeat here. Effectively, the parents cannot consent but do not actively oppose.
21. We read the bundles submitted including the reports therein. We have had handed up the original reports from the previous proceedings. The previous proceedings Reasons/Court findings were not actively challenged save for the said disagreements with these referred to in the written statements of the parents.
22. We were not referred to any statutes nor case law.
23. The issues to be determined at this final hearing are whether the Threshold criteria are satisfied pursuant to Section 31 Children Act 1989, is there sufficient information available to this court to enable an accurate conclusion to be reached as to the capacity of A's parents to provide A with good enough parenting, and their ability to demonstrate they have taken on board the

professionals concerns and that they have the capacity to change or have achieved change in order to address those concerns so that A can be provided with good enough parenting.

24. As to the Local Authority evidence, it relied on previous, although relatively recent, psychological and psychiatric assessments in the previous care proceedings some of the conclusions of which are recorded above. While the parents have not accepted these assessments and dispute the findings in their statements they remain unchallenged by the parents who gave no oral evidence. The parents have not produced any contrary expert evidence to refute these findings. The Findings/Reasons of the court in previous proceedings, again, were unchallenged. These, however, are matters of record.
25. The evidence of the Social Worker was that she has not seen any significant change in the parents to alleviate the Local Authority's concerns. She concentrated on four criteria. Firstly, the parents inability to work with agencies. Mother did not disclose her pregnancy until late. It was, however, accepted that all ante natal appointments were kept once "booked in". Secondly, historical concerns of sexual abuse. The parents showed no understanding of previous concerns. There was no further insight by the parents. There was insufficient change there. Thirdly, the parents' relationship. Positively for the parents, the fact they were still together was a good thing. There had been no recent complaints to the Police. This was qualified in that she only saw the parents on limited occasions. She was concerned the relationship was sustainable enough for a longer period. She recalled the correspondence of Mother writing to Social Services saying she was scared of Father who threatened to kill her. There was no input from outside agencies sought by the parents. Fourthly, the support from the Local Authority or other agencies. When the parents were asked by the Social Worker about support, they would respond that they would accept any support given. The parents had not approached the Social Worker at all to request any support. There was no insight by the parents as to what support would be needed if A went home. Nothing was said of A's potential special needs. The parents had shown antagonist views of the Local Authority and towards the foster carers. The Social Worker confirmed A's health was not good and that most things would be "found out". She agreed with the Independent Social Worker's report in that A needs a high level of care. In short, her evidence was that the parents had not changed sufficiently so that it was safe to return A to the care of the parents.
26. Cross examination of the Social Worker did reveal that the decision of the Local Authority to plan for long term adoption was made at an early stage based on earlier assessments from previous proceedings. Further, it was revealed that the Social Worker did not discuss the final care plan with the parents. The contents were conveyed through solicitors. Her reason for this was that she was told that the parents had made a complaint about her, the exact nature of which was unknown to her. As to this last point, we consider the parents could have been treated more sympathetically in a face to face discussion of the final care plan, but our findings do not, in any way, turn on this point.
27. The only other oral evidence we heard was from the Independent Social Worker. She was instructed by the parents to carry out an assessment of the

parenting abilities of the parents. A report and supplemental report were prepared, the outcome of which was that she supported the position of the Local Authority and not the parents, in that the final recommendation was that A is not placed into the care of the parents. For that reason the parents did not call her as a witness. She was called by the Guardian.

28. The Independent Social Worker stated the parents are in a loving, stable relationship. It is a positive relationship and they are interdependent on each other. Their current home is clean and physically suitable for a child. There is, however, no internal challenge to the relationship. Their commitment to A in contact and the handling of the baby was good. There is no doubt they love A. The main level of concern was their intellectual abilities. Into her overall considerations were the special needs of A. Child A is not a robust child. Mother, in her judgement, did not appreciate the risks of sexual abuse, even after having the support of the specialist Lucy Faithful Foundation Mother had to take some responsibility. Father shows some awareness as to the risks of a child in the parents' care generally but it is documented that when challenged he can become very angry. There were indicators of Father's potential for confrontation. If he reverts to previous behaviour it is an unsuitable environment for A. He has not had anger management, he did not feel the need for it. Father is assessed at an intellectual ability not hugely above that of a child. The parents were untruthful when they said they had given up smoking but had not. A is sensitive to smoking. Mother has her own health difficulties and does not look after her own health needs. There was no direct evidence of A's special needs, a diagnosis is awaited for A's dismorphic features. He sometimes stops breathing. Something is "not quite right" with him. He needs extra handling and sensitivity.
29. The reports of the experts in the previous proceedings had been considered by the Independent Social Worker in carrying out her thorough assessment. She states there was no evidence of a change from the findings in those reports. The psychologist's addendum report in 2007 said the parents would need twenty four seven support. The parents have been doing their best, but they have limitations and they are struggling. She has concerns that the parents' relationship can survive A being returned and considers that neither can parent safely individually. There are difficulties, the IQs of the parents cannot be increased, they have health difficulties, there are risks. Not enough evidence has been provided to show that the parents have changed sufficiently to provide an appropriate level of care to A.
30. The Independent Social Worker considered a residential assessment of these parents with limitations. It was a difficult decision not to recommend one. It was not disputed the parents could provide a basic level of care but a baby growing up in a non residential assessment setting is a far cry from a residential assessment. The parents were already working to the best of their abilities and any future change would be small. The concerns remained unresolved. The parents cannot grasp risk. She was adamant a residential assessment would not help.
31. The parents did not give oral evidence, so their evidence could be challenged. We did consider the parents' written statements. In short, the parents accepted they had learning disabilities, did not agree with the views of previous expert reports, did not agree with findings of the court in previous

proceedings and state that they have changed sufficiently and would accept all appropriate assistance so that A could be safely returned to their care.

32. The Guardian's evidence was contained in her Reports in respect of the care order application and a further Report in respect of the placement order application. She supports the Local Authority applications. All assessment reports of Mother and Father are not positive and indicate they are not in a position to safely care for A. Granting the orders would ensure A's long term welfare. The care plan is supported. The evidence of the Guardian was not contested by the parents.
33. Our conclusions in findings of fact are hereafter.
34. We find that as fact the parents cannot contest the agreed Threshold document dated 17<sup>th</sup> August 2005 as to the knowledge of mother of sexual abuse in relation to H and R as contained therein. We accept the assessments and findings of the Consultant Psychologist dated 9<sup>th</sup> May 2005 and the Consultant Psychiatrist dated 6<sup>th</sup> July 2005 that Mother could not protect her children nor likely to learn appropriate parenting skills as said therein. Likewise, we find the findings of the report of the Chartered Psychologist of 19<sup>th</sup> June 2006 in relation to S's proceedings cannot be contested. The findings of the court in K's proceedings cannot be contested, including the quoted remarks of the Chartered Psychologist.
35. We found the evidence of the Social Worker, the Independent Social Worker and the Guardian persuasive and accept this evidence. We find A has needs more than that of a normal child, even though A's needs have not been fully determined by medical practitioners. His parents in written evidence accept this. We accept that Mother and Father love A. They have tried their best within their limited intellectual abilities. Both Mother and Father have health problems. They both have learning difficulties. We accept they are in a stable relationship but we have concerns as to their relationship if A were returned to them. In that case there would be a substantial risk to the relationship. Neither parent could parent on their own. There is a long history of Mother failing to protect. Mother does not appreciate the risks of sexual abuse, even though she has received assistance to try to appreciate this. The parents have shown no real understanding of previous concerns of the Local Authority. The parents do not have the ability to protect A. Father has had findings of a propensity of violence and threats made in the past. There is a very real concern that he could revert to previous behaviour. The parents have been slow to engage the support of agencies. The parents have not actively been able to request support unless initiated by the Local Authority. There has been no real insight into the assistance needed should A with all A's needs return to parents' care.
36. We accept all the assessment evidence relied on by the Local Authority from previous proceedings. The concerns of the Local Authority are unresolved. We accept the parents cannot grasp risk. Any future change would not be enough. The parents have not changed sufficiently to provide an appropriate level of care. They could not jointly or individually care for A.
37. As to Threshold we are satisfied pursuant to Section 31 of the Children Act 1989 that on the relevant date 1<sup>st</sup> May 2009 the child was likely to suffer significant harm and the likelihood of harm was attributable to the care likely to be given to the child if the order were not made not being what it would be reasonable to expect a parent to give to the child. As indicated above Paragraphs 1, 2, 3, 4 and 5 are agreed documents, assessments and findings



already made and accepted. The parents in our judgement cannot dispute this. There was no contrary evidence provided by the parents.

38. The Threshold criteria having been satisfied, we turn to whether there is sufficient information available to this court to enable an accurate conclusion to be reached as to the capacity of A's parents to provide him with good enough parenting. We mention this since the Independent Social Worker was questioned as to whether a residential assessment in particular should have occurred or could occur in future. We accept the evidence of the Independent Social Worker in this respect that it was not appropriate for the reasons she gave in evidence set out above. We find the court has sufficient information available to it to enable an accurate conclusion. We would also add, that save for the cross examination points raised by Father's Counsel as to why a residential assessment was not undertaken – no submissions were made as to this point nor did the parents give oral evidence in relation to it.
39. We now consider if there is a need for an Order and if so, which Order. We have the child's welfare as our paramount concern. In doing so we address the Welfare Checklist in Section 1(3) of the Children Act 1989. This has been fully addressed by the Guardian and we agree and adopt her assessment of 14<sup>th</sup> December 2009 as our own. In particular we mention: - at Paragraph 7(d) the health issues of A and possible potential illness and/or disability; at Paragraph 7 (e) as to harm, the history of Mother and Father suggesting they are not in a position to safely parent A; at Paragraph 7(f) as to the capability of the parents, the expert assessments referred to therein and the assessment of the Independent Social Worker recommends A is not placed in the care of his parents as set out.
40. The significance of applying the Welfare Checklist is that Mother and Father are not in a position to care safely for their son. There are no other family members offering care to A.
41. We have considered the full range of powers/orders available to the court.
42. We have considered the least interventionist "No Order" principle and whether it would be applicable. In this case, however, in accordance with the findings in conclusion we have reached it is clearly appropriate for an order to be made. It would not be safe for A to return home
43. The order we are making in our judgement has to be a Care Order. The child is not being placed within the family. No other type of order is appropriate.
44. We approve the final care plan of the Local Authority recommending A be placed for adoption including the pattern of contact as set out therein.
45. We make a Care Order to The Local Authority.
46. We now turn to the application for a Placement Order pursuant to section 22 Adoption and Children Act 2002. This order would authorise the Local Authority to place the child for adoption with any prospective adopters who may be chosen by the Authority. Neither parent has given consent. The position of the parents to the Placement Order application is set out above. The court can only dispense with the parents' consent if the welfare of A requires the consent to be dispensed with. In reaching our decision we have had regard to the findings set out earlier in our judgement in respect of the evidence.
47. We have carefully considered the criteria in Section 1 of the Adoption and Children Act 2002. We remind ourselves that the paramount consideration of this court must be the child's welfare throughout A's life and that in general

any delay in coming to a decision is likely to be prejudicial to A's welfare. We have again considered a full range of powers under the 2002 Act and under the Children Act 1989 and we must not make any order unless it would be better for the child than not doing so. We have addressed the Welfare Checklist under the said 2002 Act. The Guardian addressed this in her report dated 13<sup>th</sup> January 2010 in the placement application. We agree her findings in this regard and adopt them in our Reasons. The Guardian states A will require a planned move to prospective adopters should be completed as soon as possible. A Placement Order will provide permanence and stability for A.

48. We find an adoptive placement is the only placement that would provide the stability and security that meets A's needs throughout A's childhood.
49. Neither parent gave any oral evidence opposing the placement application.
50. Given our findings we are satisfied the child's welfare requires us to dispense with the consent of the parents which we do. We have found the child cannot safely be returned to either of A's parents, no other family member can care for A and therefore at A's age the only appropriate placement is an adoptive placement.
51. Accordingly we make a Placement Order in respect of A and in doing so approve the contact arrangements.
52. We were not referred specifically to any Human Rights issues. In making the orders in this case the court has considered the rights of the parties and the child, in particular the right to a fair hearing and the right of any individual to enjoy family life. All Respondents have been legally represented and we are satisfied they have had a fair and proper hearing. The decisions we make are proportionate. The rights of the child to ensure he is protected outweighs the rights of the parents. The child's welfare is the paramount consideration.
53. The decisions we have made are in the best interests of A and these will be difficult for the parents who may not agree with the decisions. We would state that it has always been accepted in these proceedings that Mother and Father love A and have tried as hard as their abilities and learning difficulties allowed in their attempts to improve.

Lay Bench  
Legal Advisor Mr M