

Neutral Citation Number: [2025] EWHC 570 (Fam)

Case No: ZW22C50424/FD23P04395

IN THE FAMILY COURT
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/03/2025

Before :

MR JUSTICE TROWELL

Between :

LONDON BOROUGH OF BARNET

Applicant

- and -

FW

1st Respondent

- and -

GW

2nd Respondent

- and -

HW

3rd Respondent

(through his Guardian)

Eve Robinson (instructed by **The London Borough of Barnet**) for the **Applicant**

David Marusza (instructed by **City Law Chambers**) for the **First Respondent**

GW appeared in Person

Clair King (of BLM Solicitors) for the Guardian

Hearing dates: 5 March 2024

Judgment
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This judgment was delivered in private. The judge has given leave for this anonymised version of the judgment to be published. Nobody may be identified by name or location. The anonymity of everyone other than the lawyers must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

1. This matter before me is the final hearing in the application brought by the London Borough of Barnet for a care order in relation HW. HW is now 15. HW has a diagnosis of Foetal Alcohol Disorder, global development delay, and Attention Deficit Disorder. Despite his age he is not Gillick competent. I am told his mental development is more similar to what would be expected of a 13-year-old, albeit one who cannot read or write.
2. The London Borough of Barnet have been ably represented by Eve Robinson. HW's mother, FW has been represented by David Marusza. She did not attend the hearing. She is in poor health, I am told. She did not seek an adjournment. HW's grandmother – who has played a very big part in his life – GW, appeared in person. She was assisted by Mr Marusza (as her case and the mother's case aligned). The court is grateful to him for the help that he provided. Her capacity to conduct litigation had been in question earlier in these proceedings. I record here that the coherence and force of her submissions gave no cause for me to think that she was not as well able as many litigants in person to represent herself. Clair King represented HW, through his Guardian. Ms King has represented HW with different guardians for many years.
3. It is not known who HW's father is.

4. This application was brought as long ago as November 2022. I must make the observation that it is awful for HW to be subject to this application for over 2 years. Given the way in which this hearing has proceeded I am in no position to make any detailed observations as to this delay or apportion blame beyond some obvious points. It is inescapable however that the proceedings should not have taken this long.
5. The general points to explain the delay are (i) HW absconding and becoming involved in criminal proceedings – but those features are not unique to this case and they are not a sufficient explanation; (ii) the length of time that it took to create bespoke accommodation for him – which involved, I am told, very significant expenditure, and I note that sadly that accommodation was not able to be used because HW had absconded; (iii) what must be considered an error by the courts – the matter had been certified as fit for vacation business by an order in July 2024 and was to be listed in September 2024. It did not in fact get listed till the 20 November 2024, when I first heard it. This error was compounded by the fact that the Guardian had at the beginning of August asked for the matter to be listed as a matter of urgency given a change in circumstances. That request, despite being chased was not dealt with timeously.
6. The application before me was dealt with on the basis of submissions at the request of all of the parties. I raised in discussion my real concerns as to how it could be dealt with that way given that FW and GW wanted to argue against the care order and sought instead that HW should be cared for by GW. As part of that argument they would need to challenge the evidence of an Independent Social Worker, who had provided a negative parenting assessment of GW.
7. Nonetheless both FW and GW asked that I listen to their arguments by way of submissions rather than go through the process of cross examination of the Independent Social Worker and GW. A significant factor in their decision appeared to be a desire not to protract the hearing. GW is 79 years old and not in great health – she missed the IRH in February 2025 having just come out of hospital - though she did appear vigorous when before me.
8. This case struck me as one where the only realistic outcome is that sought by the Local Authority and supported by the Guardian, namely a care order to the Local Authority premised on a plan that HW continues in his current placement. Everyone, including

GW, says he is happy at this placement, although it is also agreed that his position is he would prefer to live with his grandmother. The alternative proposed by GW and FW, that HW returns to his grandmother's care, is impossible at the moment. There are police bail conditions in place that forbid him living there. The two alternative routes through this problem proposed by them were:

- a. HW and GW move to live with her family in either the North or the Midlands until the bail conditions are changed. This plan struck me as weak given the alleged offences to which the bail conditions relate (there has not yet been a charge) involve 2 alleged rapes of HW's cousins, i.e. other grandchildren of GW. It struck me as almost inevitable that the bail conditions would change if GW moved to prevent HW living at her new address.
 - b. Voluntary accommodation of HW in his current placement until the bail conditions were lifted. While I do accept that there are circumstances where voluntary accommodation can be long term, the circumstances of this case, in particular that it was suspected that HW's family had supported him when he had absconded, meant that this proposal suffered from the obvious problem that FW could withdraw her consent at any time, leaving HW in a highly uncertain position.
9. Therefore, having pointed out the evidential problem that would be faced if there was not cross examination, I acceded to the request to deal with the case on submissions.
 10. As a consequence this judgment will be short. It is written the day after hearing the submissions (Thursday the 6th March 2025) with a view to being sent out in draft on Friday the 7th March 2025. It will deal with the arguments raised by FW and GW. It will not rehearse the history of this matter any more than is necessary to deal with those submissions, consider the factors listed at section 1 (3) of the Children Act 1989, and set out my conclusions. I shall then attempt to deal with any consequential points – I have heard submissions on the appropriate level of contact should I make a care order, but there has been no application made in relation to that issue.
 11. As to the history of this matter I do record that there have previously been care proceedings and HW had previously been placed with another family member, who following the conclusion of those proceedings told the local authority that they were

unable to continue to care for him. That points to two matters (a) HW is difficult to look after, (b) he will be vulnerable to adult rejection. The ejection from the other family member's home was the effective cause of these proceedings.

12. Threshold: There is no issue as between the parties that the relevant date for assessing that is the 27 October 2022 and that at that date HW was suffering or was likely to suffer, significant harm and that harm or likelihood is attributable to HW being beyond parental control.
13. There was before the court a Final Threshold Document. FW had commented on an earlier draft and conceded significant harm. GW was taken by me to the document and conceded it too. It is unquestionably the case that HW is beyond parental control, and that he has suffered, and, if an order is not granted he is likely to suffer, significant harm. In short, his mother has a volatile lifestyle because of her use of alcohol and drugs which provides him with no security and means that his needs are not met. And even when in the care of his grandmother he is neglected and is at risk – for instance he and his mother got into a fight at the grandmother's such that the police were called. I do however observe that many of the instances given of his behaviour in the threshold document appear to have occurred when he is in the care of the local authority. An example is £10,000 worth of damage he caused to a Children's Home in 2022. HW is, no doubt because of his medical conditions and the way he has been looked after, a very difficult young man for anyone to manage.
14. Disposal. There are seven arguments advanced by GW and echoed by FW as to why I should not follow the path urged on me by the local authority. I will set them out and respond to them below:
 - a. The independent social worker, who had provided the negative assessment of GW's parenting capacity, did not understand the culture of the travelling community to which all of the family belong. *This Independent Social Worker was suggested by the Guardian and approved by the court as an expert witness because they did have extensive experience and knowledge of the travelling community. That contrasted with anyone who could have carried out the assessment for the Local Authority. There is of course a difference in knowledge between someone who lives as part of a community and someone who has*

experience of it, but I am not prepared to disregard the Independent Social Worker's assessment on this basis.

- b. *HW's behaviour has got worse when he has been removed from GW's care. It is right that there is a long list of poor behaviour from HW when he is in local authority care. Some of it will be because he resents being taken away from his grandmother. A lot of it will be because incidents are now recorded which previously were not. However, what happened in this case is that following the interim care order being made in December 2022, HW absconded repeatedly. When he was found at his grandmother's home in December 2023 the local authority took the view that it would be better to leave him with her than run the risk of his absconding again. The local authority provided heavy support – six visits a week. The time with grandmother has not worked out well for HW. In August 2024 he was arrested on suspicion of rape or attempted rape of an extended family member a few days earlier. (There has subsequently been an arrest for a further allegation of attempted rape. The arrest was in January 2025 and the allegation is made by a different family member in relation to an incident at the grandmother's house in 2020.) Following the first arrest HW had to move away from his grandmother as a bail condition. During the time HW was living with his grandmother my attention has been drawn to the four occasions in 2024 when the police were called out to the grandmother's home, HW's lack of engagement with education, and the lack of proper health care. That contrasts with his care since, in particular, he has moved to his current placement in December 2024. My attention is also drawn to the fact that the grandmother used to provide HW with money for cannabis. That led not only to him being harmed by taking the drugs, but also at risk from dealing with those who sell them.*
- c. *GW relies on the fact that she is very experienced with children. She has had 14 children herself and has now a very large extended family – she tells me she has over 100 grandchildren. The quick response to this is that I have to bear in mind the very particular needs that HW has, and the fact that she is now 79 and not in good health. Looking after HW and ensuring his ongoing safety will not be an easy task. The longer response would be to repeat the matters above.*

- d. GW says that she prepares healthy and traditional food in contrast to takeaway meals, or poor food that he has in care. She gives a vivid account of visiting him in one of his earlier homes and finding nothing for him to eat. *There is force in her criticism of the various places HW has been accommodated. And, I anticipate that will include their provision of food. He has since December been somewhere much better – a place he says is the best care home he has been in. He has been putting on weight and it is hoped that if this place can be retained – and there is no reason to believe it will not be – he will eat well.*
- e. GW says in the local authority's care he suffered instability. *That is right. One of the places they accommodated him was not registered. It defaulted on its lease and there had to be a rushed move from East London to Hertfordshire. The instability is however a product of HW's behaviour. A lot of places were reluctant to take him or asked him to leave. And further, bespoke provision was made for him which was then lost because he absconded. It is hoped, and there is good reason to believe, that he is settled where he is now and will not run away again.*
- f. GW says that in her area everyone knows HW. *I will take this with the point below.*
- g. GW says that HW knows no one where he is now. That means he is at risk. *I am told that it is not simply a benefit the HW is known in the grandmother's area. He is called 'Pikey', and this is not done out of affection but abusively. I accept that it will take time to make friends in a new area and given the size of the mother's family there is force in her observation that he will be lonely. Given however that he is under supervision (albeit not such as would warrant a deprivation of liberty order) at his current placement then absences are more likely to be noticed and responded to, than occasions when HW would just go out while living with his grandmother. The risk overall is therefore less in his current placement than with the grandmother.*

- 15. Mr Marusza urges on me that HW should be somewhere with therapeutic input to help him if he is not to be with his grandmother. I can agree that therapeutic input would be

helpful, but we cannot make perfect the enemy of the good. It is not a point of such weight to reason that HW should stay with his grandmother.

16. Having expressly considered GW and FW's arguments I turn now to consider the statutory check list in the Children Act 1989.
17. *Wishes and feelings:* HW wants to be with his grandmother but has said he likes his current placement. He has said it is the best care home he has been in. I attach weight to his views, but not the weight I would normally attach to a 15-year old's views given his reduced age mental age and understanding.
18. *Physical, emotional and education needs:* Physical needs and education needs are met better in HW's current placement than with GW. Emotional needs must be considered further. It cannot be overstated how important GW is to HW's emotional needs. She has been his emotional rock, while his life has been stormy. She turned up before me and fought for him in what she genuinely believed was his best interest. He needs someone who will do that. He emotionally needs her. I consider that this is best reflected in terms of supporting her contact rather than returning him to her care, given other factors in this case. It is however a powerful point.
19. *Change in circumstances:* HW is settled at his current placement. He cannot return now to his grandmother's.
20. *Age, sex, background:* HW is from the travelling community. He will lose part of his cultural heritage by not being brought up by his grandmother. I must bear this in mind. His age means this order will be short lived, which must count against making it. His sex does not bear on this decision.
21. *Any harm he has suffered or at risk of suffering:* He has been neglected by his mother. His education and his health have suffered with his grandmother. There is good reason to believe that he has not been properly supervised by her given the allegations against HW of rape and the police call outs.
22. *How capable his parents, or other person is of meeting his needs:* His needs are great. His mother accepts she cannot meet them at this time. On the evidence, including from the Independent Social Worker, his grandmother cannot meet them.

23. *Range of powers:* In this case the real choice is, if the bail conditions change, who is the carer. There is no real choice unless the bail conditions change. Were they to change then the choice is between grandmother and local authority. There is no point considering what can be done to help the grandmother with a supervision order, because she has already had as much assistance as possible.
24. As to long term planning, the hope is that HW will remain settled in his current placement until he is 18, and if a care order is made will then have the benefit of being a care leaver.
25. I bear in mind the no order principle and the right to a family life. Nonetheless, the outcome is clear here having balanced all the factors. There will be a final care order for the local authority.

Importance of GW

26. I do want to be clear that by making this decision I do not want to give the impression that GW is unimportant to HW.
27. I was enormously impressed by the obvious love that she had for him. I was impressed by the fact that a 79-year-old woman with health problems came to court to fight for him. I was impressed by her repeatedly telling me that he is a 'good boy' albeit one who has congenital problems.
28. My real hope is that her love for him outlasts this care order. To try and make that happen she must look after herself. In less than 3 years the care order will be over. HW needs her as a rock when the local authority will fall away.

Contact

29. There is no application before me for contact, but I have heard submissions on the issue in relation to FW and GW.
30. Both are to have unlimited phone contact. I approve of that.
31. FW is to have once a month direct contact (together with GW) subject to a review. She wants more. FW has struggled to take up contact previously. I would urge her to try and take this up and if she can regularly do so, I would urge the Local Authority to

consider extending it. I do not however think it would be good for HW to be let down. If the mother is unreliable then she cannot expect contact to be extended.

32. GW is to have twice a month direct contact (one with FW) subject to a review. She wants more. I can see that once a week would be better *if* it is taking place. I say this because of the importance that GW has in HW's life. My worry is again that HW is not let down, and bearing in mind GW's age and health I am worried she will struggle with more than twice a month. I would however urge the Local Authority to consider reviewing their proposed frequency of contact as soon as a pattern becomes established. And I urge them to be flexible. If there are times GW is feeling well then to allow more contact because there are likely to be times she does not feel well and she won't be able to take up contact.
33. As to the administration of contact:
- a. I agree that by appointment is appropriate. The care home (and Barnet) need to be able to plan for it for HW. I urge the Local Authority to make the process of making an appointment as easy as possible for both GW and FW.
 - b. I would urge the Local Authority to help GW and FW (but GW in particular) get to contact by (if requested) meeting a taxi cost. It is in HW's best interest for contact to happen and in his long-term interest to maintain these relationships, so if something can be done to help contact happen the starting point should be, do it.
34. Finally, as to contact, I want GW and FW to understand that they will have to work hard to make this happen, which will involve co-operation with the Local Authority and the Care Home. They owe it to HW. They cannot just be bad tempered if things do not work out easily. They will need to respect those they are talking to and respond to them reasonably.

Conclusion

35. I am happy to consider any other consequential points that anyone wants to raise with me but note that given GW is unrepresented and cannot read, this may involve a further hearing.

36. I am grateful to Mr Marusza for taking the trouble to read through this judgment to GW.

Mr Justice Trowell

7 March 2025