

*FINAL CARE ORDER AND PLACEMENT ORDERS – DISENGAGED MOTHER,
UNKNOWN FATHER AND LETTER TO CHILD*

Neutral Citation Number: [2024] EWFC 325 (B)

In the Family Court at Crewe Family and Civil Justice Center

In the Matter of the Children Act 1989

The Adoption and Children Act 2002

In the Matter of B

Judgment date: 11 November 2024

Before: HHJ Hesford

JUDGMENT AND LETTER TO CHILD

Advocates:

Ms Renn Moucarry for the Local Authority

Ms Christine Johnson for the mother

Ms Emma Squires for the child via her Guardian

HHJ Shelley Hesford :

Introduction

1. This court case is about B, young girl aged approximately 1 and a half. B's father is unknown. Her mother has had two other children who were removed from her care at birth and have been adopted. B is in foster care and has been since her removal from mother's care. Her mother has had very limited supervised contact with her during these proceedings.
2. The local authority began this court case immediately after B was born, seeking a care order. At the time proceedings were issued the local authority sought removal to foster care but the Guardian supported placement of the mother and B in a mother and baby assessment unit. That placement broke down after a short time and the mother has disengaged from the proceedings

since that time. The local authority now seeks the making of both a care order and a placement order, so it may place B for adoption. Mother has not engaged with these proceedings in any meaningful way and has not filed any evidence. She has been served with the placement order application which was issued recently but has not come to court. Her solicitors are without instructions. I am satisfied though that it is appropriate to proceed in her absence, as when the initial Issues Resolution hearing was listed it was recorded that final orders may be made at an IRH, including in the absence of any party.

3. At this hearing the mother's counsel sought an adjournment in order to obtain the mother's instructions. The mother had informed her solicitors in a rare moment of providing instructions in September, that she was opposed to the plans and would seek further assessment but nothing has been heard from her. The application was opposed by both the local authority and the guardian. I dismissed the application. I considered it to be completely without merit and that it would cause harm to B due to delay if granted. Additionally I would have refused any formal application to extend the timetable for further assessment in any event.

The Issues and the Evidence

4. In preparing for this hearing, I have read the documents filed by the parties in this case, including the local authority's final evidence and the guardian's report. There is no evidence from the mother to consider. I have heard in court today from each of the lawyers in the case but no one has given evidence as the mother has not come to court to challenge the local authority's plans.
5. The local authority, supported by the children's guardian, says that sadly the only option for B is adoption. There have been worries about the mother since before the court proceedings. There was no full initial assessment of the mother or her partner as she failed to engage. The initial statement of the social worker identified concerns which included the mother's misuse of alcohol and drugs including crack cocaine, domestic abuse, poor mental health including diagnoses of PTSD and Emotionally Unstable Personality Disorder, criminality and incarceration, homelessness, chaotic lifestyle and her very limited engagement with professionals. Before B was born, the mother had started to make progress in her recovery and whilst accepting this, the local authority placed B under a child protection plan in the category of neglect and the process that happens before a court hearing was commenced. Mother was in a relationship with Mr R, who was not B's father and this was considered to be a very unhealthy and toxic relationship. Mother had little insight into the nature of this relationship and the potential risks to her and B and she prioritised Mr R.
6. At the commencement of the court proceedings, the mother entered the assessment unit alone with B. Sadly it was not proving to be successful. Mother's medication did not assist her with being able to care for B, particularly at night and whilst this was being considered by the mental health team, B J had a health scare which necessitated her admission to hospital. Following her release, she returned to her mother's care at the assessment unit. Efforts were made to stabilise the mother's medication so that she could care for B at night. Throughout the period at the assessment unit mother struggled to maintain routine and consistency with out prompts in regard to B's feeding and day to day tasks such as maintaining home conditions and administering medication. During a meeting the CPN nurse advised that mother may be reliant upon prompts and to possibly try without. A no prompt plan was agreed to commence. Mother

appeared to meet B's need in the early stages however staff intervened on several occasions daily. After a few days mother expressed to staff that her mental Health wasn't good, staff then agreed to care for B for mother to have some self care time. During this time mother spent 3 hours talking on the telephone to a male who is currently serving time in prison.

7. Mother spoke to her CPN who confirmed that she is not presenting as a risk to herself or B but may require additional support. A safety plan was agreed for the no prompt plan to end and for staff to return to prompting and supporting mother in caring for B. B was to reside with staff during the night. A couple of days later, a placement staff member informed the social worker that on the previous night staff had overheard mother on the telephone to a male who made threats of arson towards the placement provision. Police were called.
8. The following day the placement informed the social worker that due to the threats made they were unable to manage the risks of mother and B remaining at their unit. They sought to terminate the placement immediately. B moved into foster care.
9. Mother disengaged from the proceedings when B was removed. She attended 2 contact sessions following removal then contact on B's 1st birthday but she was intoxicated and contact ended after 20 minutes. She is currently incarcerated for breach of license conditions. She indicated that she sought reassessment in February 2024 but this was rejected as there was no evidence of change and it was likely to cause delay.
10. Following the mother's disengagement, the local authority sought to assess suitable family members and viability assessments were carried out. The family members later withdrew from assessment. This has caused delay in finalising the plans for B.
11. As well as failing to engage with the local authority, the mother has not given her solicitors instructions during the proceedings and has not filed any evidence responding to the local authority's evidence, initial or final. She has also not responded to the guardian.
12. Such information as the local authority has been able to gather during the proceedings only demonstrates that the concerns evident at the beginning are still present. In summer 2024 the mother was sentenced to 28 days in prison for failing to comply with her probation requirements. She is subject to an Intensive Supervision Order. She was released a month later and was subject to an electronic tag, living in supported accommodation. Thereafter the Local Authority were informed by the probations service that the mother was again incarcerated, in HMP X, for breach of license conditions. I am informed by the social worker that the mother was recently sentenced to [a significant number of] months imprisonment.
13. Because B cannot live with her parents or extended family, in the local authority's eyes the only option is adoption. That plan is supported by the guardian. They both say that nothing else will do for B. Ultimately, once B is placed for adoption, the plan is for contact only by the letterbox scheme due to the risk of her mother doing something to destabilise that placement.
14. Sadly, I know nothing of what the mother would want to happen. As I have already said, she has not engaged in these court proceedings. Although she has not kept in touch with her solicitors and I have no evidence from her, I do not doubt that she loves B.

Threshold

15. For a court to make a public law order such as a care order, it needs to be established that the threshold criteria is satisfied. It sets out how things were when the court proceedings began. Because these parents have taken no part in the court proceedings and make no concessions therefore, I have considered the evidence carefully to consider if the local authority can meet its responsibility to prove those facts to the civil burden of proof. Having looked carefully at the evidence, I am satisfied that it can, and the findings I make are as follows

THRESHOLD AS FOUND BY THE COURT

16. At the time the Local Authority took protective measures in respect of the child, she was likely to suffer significant harm, and that harm and likelihood of harm was attributable to the care being given to her or likely to be given to her, if the order was not made, not being what it would be reasonable to expect a parent to give to her.

The Court finds B was likely to suffer harm by way of emotional harm, physical harm and neglect.

The Local Authority considers that there are reasonable grounds to believe that the child B is suffering or is likely to suffer significant harm and the harm or likelihood of harm arises because the child is not receiving the care that would be reasonably expected from a parent as follows:-

1. Poor Parental Mental health

- Both Mother and Mr R struggle with their mental health.*
- Mother has a diagnosis of PTSD and emotionally unstable personality disorder.*
- As a result of Mother's poor mental health, she has made previous attempts to end her life.*
- Mother chooses not to comply with her mental health medication and lives a very chaotic lifestyle.*
- Mother has said she doesn't want to take medication for her mental health as she cannot drink alcohol on the medication.*

2. Domestic Abuse

- Domestic abuse has featured between Mother and Mr R.*
- Mr R presents as very controlling of Mother. On [a date] Mother was unable to leave the property or let professionals in due to Mr R locking Mother in the property.*
- There have been incidents at a Women's Centre during Mother's early pregnancy where Mr R was hostile and aggressive towards professionals and at appointments.*
- Mother shows a lack of insight into the emotional abuse and controlling behaviour that she has experienced and the impact of domestic abuse on B.*

3. Drug Misuse

- *There is a significant history of substance misuse for both Mother and Mr R.*
- *Mr R uses cocaine.*
- *Mother misuses alcohol and takes illegal drugs and has continued to do so throughout her pregnancy with B.*
- *Mother has turned up drunk and under the influence of drugs at the Women's Centre during early pregnancy.*
- *Mother takes crack cocaine.*
- *Mother fails to recognise the impact her recreational drug misuse could have upon her own mental health and the health of B.*

4. Criminality

- *Mr R is currently incarcerated due to being arrested and charged on with Driving whilst disqualified, Possession of Knife Blade in a public place, No Insurance, Robbery and Dangerous driving.*
- *There is an extensive criminality history for both Mother and Mr R.*

5. Previous Social Care Involvement

- *There is an extensive history of involvement of children's services with Mother's older children E and L.*
- *E and L were removed at birth due to substance misuse and poor mental health which resulted in Placement Orders being made.*

Decision and Law

17. I now turn to consider what orders if any are in the best interests of B. I start very clearly from the position that, wherever possible, children should be brought up by their natural parents and if not, then by other members of their family. The state should not interfere in family life so as to separate children from their families unless it has been demonstrated to be both necessary and proportionate and that no other less radical form of order would achieve the essential aim of promoting their welfare. In *Re B* [2013] UKSC 33 the Supreme Court emphasised this, reminding us such orders are "very extreme", and should only be made when "necessary" for the protection of the child's interests, "when nothing else will do". The court "must never lose sight of the fact that (the child's) interests include being brought up by her natural family, ideally her parents, or at least one of them" and adoption "should only be contemplated as a last resort".
18. It is not for the court to look for a better placement for a child; social engineering is not permitted. In *YC v United Kingdom* [2012] 55 EHRR 967 it was said : "Family ties may only be severed in very exceptional circumstances and....everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing."

19. I have looked again at the words of the President in *Re B-S (Children)* [2013] EWCA Civ 1146 as well as the judgments in *Re B* (supra) and reminded myself of the importance of addressing my mind to all the options for B, taking into account the assistance and support which the authorities or others would offer.
20. In reaching my decision I have taken into account that B's welfare throughout her life is my paramount consideration and also the need to make the least interventionist order possible. I have to consider the Article 8 rights of the adults and B as any decision I make today will inevitably involve an interference with the right to respect to family life. I am very conscious that any orders I go on to make must be in accordance with law, necessary for the protection of B's rights and be proportionate.
21. A placement order is sought by the local authority in respect of B. The court cannot make a placement order unless the parent/s has/have consented, or the court is satisfied that the parents' consent should be dispensed with. A court cannot dispense with a parent's consent unless either the parent cannot be found, or lacks capacity to give consent, or the welfare of the child "requires" consent to be dispensed with. In that context I am conscious that "requires" means what is demanded rather than what is merely optional.
22. I have to ask myself whether B could be safe in the care of either or both of her parents or whether she should be adopted. I have to balance the pros and cons of each of the options. McFarlane LJ in *Re G* [2013] EWCA Civ 965 said "What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options." In addressing this task, I have considered all the points in the welfare checklists and I shall look at the evidence in the light of those factors.
23. Two key factors which are inextricably linked are any harm which B would be at risk of suffering and the ability of her parents to meet her needs. It goes without saying that B is a very young girl who needs everything to be done for her by her carers. She needs to live in suitable home conditions and be fed and cared for. She needs to be loved. She needs to be protected and kept safe. The reality is, were she to be in the care of her mother she would, I am sure, suffer significant harm. I have made findings as to the harm she was at risk of when these proceedings began, findings which are set out in this judgment. Very sadly it seems that mother is still living the same lifestyle. She has herself been affected greatly already by her life experiences during her own childhood and she is clearly still very vulnerable. I am satisfied that in her care B would suffer harm and that she would not be able to meet her needs.
24. If I make a placement order B will remain where she is until an adoptive placement is identified. She will then have to move carers and that will have an effect on her. It will be done in a managed way though with support from the social workers.
25. I acknowledge that there is the potential for B to be harmed by being adopted. She will not be growing up in her birth family and will know that. She may question why that is not possible. I have taken into account the loss of those relationships when considering the best outcome for B.

26. I have then to consider the options for B of her being adopted or living with her mother. Both the Guardian and the social worker in the last pages of their final evidence go through the pluses and minuses of each option and I can do no better than to adopt their detailed reasoning. It is evident to me that B would suffer harm in the care of her mother and that could not be a good setting for her to live. If she is adopted, she will be safe and all her needs will be met. Life story work can assist her to understand her start in life, and hopefully this judgment can be part of that.
27. In this case, having carried out the balancing exercise that I must, I am satisfied that there is no realistic prospect of B being placed safely in her mother's care, and that her needs for stability and permanence can only be met in an adoptive placement. I am satisfied that the local authority's final care plan for B is proportionate and (in the context of both s1(1) Children Act 1989 and s1(2) Adoption and Children Act 2002) in her best welfare interests and so I make a care order. I am also satisfied that B's welfare requires me to dispense with her parents' consent to placing her for adoption, as this is in her best interests. Her father is unknown and cannot be traced. I therefore make a placement order authorising the local authority to place B for adoption.
28. There is one further direction I wish to make. I think it is hugely important for children who are adopted that they have information available to them, through their adoptive parents, so they can make sense of their early life. This judgment, in setting out what I have read and heard in court, gives at least a summary of that start. Whilst it will be published in an anonymised form in the public domain it is important that it is easily available to those who will be bringing B up. I propose therefore to make a direction that this judgment should be released by the Local Authority to B's adopters so that it is available to her in future life; that release however is on the basis that it should not be disclosed beyond them or any medical or therapeutic staff working with the child or family. It is very important therefore that the judgment is passed on to the Adoption Team to give to them. I have written this not for the benefit of the adults but for B and wish to be sure it reaches her when she is older. I have also attached a letter which I have written to her, this can be placed in her life story book for her to read until she is a suitable age to read this judgment if she so chooses.
29. Finally I remind myself, judges are often told that a willingness by adoptive parents to talk about a child's birth history, and maybe, if appropriate to have contact with birth relatives, can show children that their adoptive parents understand and accept them and their birth families as part of who they are. It can help children feel that their identity with their adoptive parents and their birth identity are not separate but part of a whole. Children, we are told, may need explicit reminders that their adoptive families accept and embrace their histories as part of who they are now. They need to know that they can ask questions and talk about their birth family as part of coming to terms with what they have experienced. Obviously ultimately that comes down to the adopters found for B; all I can do is pass on what I have been told and what the most recent research shows. I am aware of course, that such decisions must be taken in the individual circumstances of every child and sometimes it may not be in a child's best interests for direct contact to take place.

HHJ Hesford

11 November 2024

Letter to B:

Dear B,

I am the judge who has had to make the decision about whether you could have lived with your mum or whether you should be adopted. Young people whom I have met tell me that they want to know from judges why decisions are made, and so I have decided to write this letter to you. I do not know when you will read it as it will be given to your adopters so I apologise if it ends up being too babyish by the time you read it.

I have read a lot of papers written for the court case about you and your family. During the court hearing, your social worker and your children's guardian told me what they thought should happen for you. Sadly, your mum has found this whole court case to be too hard for her to deal with. She did not feel able to come to court or see a solicitor. I have not heard what she would want as she has not told the social workers either. Your mum had a very difficult childhood and I think she knew that she would not be able to look after you as well as you needed, especially when you were a little baby. She has had lots of problems of her own and sadly was not able to recover from these. I think she knew that you would be better looked after by your new adoptive parents, who I know will love you very much. I have read a lot about you too and you are a lovely little baby with a nice smile and laugh. Everyone adores you.

I have thought very hard about what I have heard and tried to work out what is best for you. I only really had two choices for you. These were to wait and see if your mum changed her mind and recovered from her problems and then felt able to care for you or to plan for your adoption. I don't think your mum was going to recover or change her mind quickly and it would not be good for you to have to wait for a very long time. I have to focus on what is best for you now as I make this decision and I have to know you will be safe. For that reason, I decided that the best outcome for you would be adoption. Your new parents will give you a great life and care for you, they have been specially chosen and they have chosen you too. I gave a short judgement setting out why I decided as I did but it does not say much more than this. This is something that will be available for you to see when you are old enough to but hopefully this letter will give you some better understanding at the time you read it.

Wishing you all the best for your future.

Yours sincerely

HHJ Hesford