

IN THE FAMILY COURT AT BIRMINGHAM

Birmingham Civil & Family Justice Centre
33 Bull St
Birmingham
B4 6DS

BEFORE:

DISTRICT JUDGE PARKER

BETWEEN:

BIRMINGHAM CITY COUNCIL

CLAIMANT

- and -

CJH

DEFENDANT

Legal Representation

Ms Mary Prescott (Counsel) on behalf of the Claimant
Ms Hayley Chew (Counsel) on behalf of the Defendant

Other Parties Present and their status

Ms Narinder Singh - Children's Guardian
Mr Iain Hutchinson - North Yorkshire Council

Judgment

Judgment date: 19 March 2025
Transcribed from 14:32:14 until 14:39:56
and from 14:53:05 until 15:12:37

Reporting Restrictions Applied: **No**

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District Judge Parker:

1. I am concerned today with M who was born on the 24 April 2024, she is subject to an interim care order in favour of the Birmingham Local Authority and following placement in foster care she was placed with the maternal grandmother and her partner on 27 February 2025 after an assessment of them.
2. The maternal grandmother and her partner live in the North Yorkshire area, they care for two of the child's half siblings, they are respectively nine and five. They care for them under the auspices of the Care Order in favour of North Yorkshire hence the fact that North Yorkshire needed to undertake an assessment of them in order to care for M.
3. The matter of threshold in this matter for the purposes making Public Law Orders is not in dispute.
4. Mother, to her credit, recognises that she is not in a position to care for M and that is a very brave decision, and it is the right decision, and she is to be complimented for that, but to reassure mother, M will remain within the birth family.
5. She will remain with her maternal grandmother, and she will know that her mother is her mother, and her maternal grandmother is her maternal grandmother and that, in the current situation, as far as it can be said, this is a positive outcome.
6. The Guardian supports that and although ultimately it may well be the maternal grandmother and her partner may apply for a Special Guardianship Order, no such application is before the Court, indeed placement has only just occurred a little under a month ago. So, the situation is very new.
7. The other siblings are subject to Care Orders and it does seem appropriate to me that the appropriate order, at this stage, having regards to the least interventionist principle, and having regards to the case law with regards to Care Orders at home, which predominantly relate to parents, but equally relate to, in my view, family members, I am of the view that a Care Order is the most necessary proportionate order at this stage having regard to the welfare checklist and the Article 8 Rights of all those who are involved.
8. It will provide parity in relation to the other children, support and ongoing reviews in what, at the current stage, is a very new situation.
9. So, I will make a Final Care Order for M with a plan that she will remain living with her maternal family.
10. The issue of contact, of course, is always emotive. Up until the conclusion of these proceedings, I understand mother has enjoyed very good contact, it may have been sporadic, but the Local Authority's view is that that should be reduced to seven times per annum and be during the school holidays which would fit in with the plan in relation to the other half siblings.
11. Understandably mother feels that that is not sufficient to maintain the bond with a small child whom she has had regular contact with, although she accepts it is

sporadic. There are no concerns with the quality of contact, and she is concerned that this is a significant reduction. She would ideally like fortnightly or *alternatively* monthly, plus special occasions. I understand also that, although it is limited value in relation to a child of this age, that the Local Authority intend for there to be video contact in addition.

12. The child's Guardian supports the placement and the proposals at this stage for contact between M and her mother, provided it is subject to continued review.
13. The Guardian's view is that M has only just been placed as part of the family and the placement itself needs to settle. The family arrangements between the siblings and the mother is also an important factor with regard to the dynamics within the family itself as a whole.
14. Whilst the Guardian more than appreciates that the mother would want more family time, she is of the view that the mother needs to be patient because matters will always be subject to review. If she is not happy with the review, she can always bring her own application if matters cannot be resolved.
15. Taking on board everything that I have heard at this moment in time I believe at this stage, and I am saying at this stage, it does appear to me that there needs to be parity in the arrangements between the older children and M. So, I am endorsing the plan for seven times per annum contact, so that the children are all part of a unit together, but that does not mean that this is set in stone.
16. The contact will be open for review, and there will be video calls as well. I have to have regard to the fact that M needs to settle into a new family, and that I have to be mindful that the contact arrangements have to accord with what I think is in the child's best interest, as opposed to what mother herself may desire, however laudable that may be.
17. But as I said, this is temporary, and when I say temporary, I mean it is subject to review and bearing in mind the placement has only been effective since 27 February 2025, I believe that that is appropriate at this stage, but there needs to be a 'real review',
18. That is my decision, and the reasons for it.

(adjournment)

Designation

19. Having determined the Final Care Order in this matter in favour of the maternal grandmother and her partner, who live in the North Yorkshire Local Authority area with two of the half siblings, I am now asked to consider the issue of designation.
20. Quite rightly, these proceedings commenced by Birmingham Local Authority due to the fact that at that time, and still to this day, the mother resides in the Birmingham area where the child was born and therefore, quite properly, they have been throughout the designated Local Authority within these proceedings by virtue of the interim care order provisions.

21. Of course, as I indicated, in making final orders in this matter, an assessment has been undertaken of the maternal grandmother and her partner, by North Yorkshire, as the two elder children are subject to care orders with North Yorkshire, and therefore have been assessed by them in relation to their ability to care for an additional child. This assessment was not undertaken by Birmingham, it was undertaken by North Yorkshire and rightly so, and they kindly agreed to do that. In fact, I seem to recall that an extension of time was requested so that a proper job could be done, and quite rightly so.
22. Not only is such an assessment important for M, who it was proposed should move into a ready made family, but it is also important for the children, who are subject to Care Orders already with the maternal grandmother, in relation to preparing them to receive a young child in their midst, which to a significant degree, alters the dynamics of the family, for which a proper assessment needed to be undertaken. That assessment has been positive. In fact, I am pleased to say, by order of this court on 27 February 2025 I approved a transition of care to the maternal grandmother and her partner with an amended interim care plan to be provided.
23. I am now in the position, by virtue of the interim care order regime where the Local Authority is Birmingham, of considering Final Orders in this matter for M, for which North Yorkshire say that the designated Local Authority should remain Birmingham and Birmingham saying that it should be North Yorkshire.
24. The arguments are effectively this:
25. Birmingham City Council assert as follows:
26. That M is now with the maternal grandmother and her husband in Yorkshire, alongside her half brothers, who are subject to care orders in favour of North Yorkshire and although, at face value, the disregard provision, which I will come on to in a moment, may indicate that Birmingham should remain the Local Authority, this case falls within the exceptional category inasmuch that this family, if I accede to what North Yorkshire have to say, will be faced with the involvement of two Local Authorities, two separate social workers, two separate review mechanisms, duplicity of work, duplicity of professionals involved with the family, and management at a distance, rather than at the *coalface* within the area in which all the children are situated.
27. Effectively, logic would suggest that there needs to be a one stop shop, so to speak, in relation to all the children now in the grandparent's care, by way of support services and review mechanisms, particularly in relation to contact, which will be in the Yorkshire area so far as mother is concerned, and indeed, the review of that contact, which, incidentally, is on parity with the older children. It would provide joined up thinking in relation to those contact arrangements for all of the children under one umbrella as opposed to potential disjointed views in relation to the review of contact for one child in isolation to the other two.
28. North Yorkshire disagrees.
29. Up until 27 February 2025, M's ordinary residence was in Birmingham, there is no doubt about that. The move took place under the auspices of an interim care order in favour of Birmingham, there is no doubt about that. The placement is being provided

by the Local Authority, Birmingham. Reference is made to Section 105 of the Children Act 1989, which I shall elaborate on and therefore, they should be the designated Local Authority.

30. The mother, for what it is worth, would support continued designation to Birmingham due to the ongoing positive relationship she has with the Local Authority.
31. The Guardian, however, supports designation to North Yorkshire on the basis of what is in the child's welfare in relation to resources and contact arrangements.
32. In relation to the Law of Designation, Section 31(8), sets out the statutory test of designation of a Local Authority *and* a Care Order.
33. The Court has to first consider, under Section 31.8(a), the Authority in which the child is ordinarily resident, failing which, under Section 31.8(b), where the child does not reside in the area of a Local Authority, the Authority within whose area any circumstances arose and consequences of which the order was made.
34. Prior to 27 February 2025, of course, the child's ordinary residence may be considered to be in Birmingham, but the child has now moved and it may well be considered that the child is now ordinarily resident, or at least it is intended to be ordinarily resident, permanently by way of a Final Care Order and the Final Care Plan, with the maternal grandmother, along with her elder half siblings.
35. However, the provisions have to be read alongside Section 105(6) which provides that certain periods of time should be disregarded in determining a child's ordinary residence and those disregarded periods include where the child is, for example, in a school or institution, or in particular with regard to this case, has been provided with accommodation by, or on behalf of, a Local Authority.
36. Pursuant to Section 22(c) of the Children Act, a Local Authority placement includes placement with an individual who is a relative, friend or other connected person, and who is also a Local Authority foster placement.
37. No differential is made in relation to the purpose of the placement. There are many kinds of placements which the Local Authority make. Placement with regard to matters which are temporary, either with a foster carer or with a family member, pending further assessments, and placements which are intended to perhaps lead to a permanent placement. It appears that the Act does not differentiate between the two types.
38. The case of *Northamptonshire County Council v Islington County Council*, [1999] 2FLR 881, holds that Section 31(8) and Section 105(6) are to be construed in a way which provides a simple mechanism to determine the question of administration. It should be read as a simple test to determine which Local Authority is to be responsible for the care plan and its implementation. It is not appropriate, therefore, to apply the Section 1(3) checklist to that determination.
39. In that case it was said as follows:

“I would not say that the developments affecting the family during the period to be disregarded cannot in any case be considered, but I would say that such cases should be exceptional.”

40. *Re C v Plymouth County Council* [2001] FLR 875 reiterated that judges do not have a discretionary exit from the plain application of the statutory mechanisms of Sections 31 and 105, but only to indicate that simple rules of construction should be sufficient to determine all but the most exceptional cases:
41. Where the child is not accommodated by the Local Authority, because the Local Authority permits the child to reside with a parent, Section 105(6)(c) does not apply, and therefore the Court is free to apply conventional principles to the definition of ordinary residence. A placement with a relative who does not satisfy the necessary conditions are caught by the provisions of Section 105(6) and a disregard has to be applied.
42. As I indicated, no mention is made as to the purpose of such placement, be it for respite, temporarily, or with a view to permanency following a further assessment.
43. As provided by *London Borough of Redbridge v Newport City Council* [2004] 2 FLR 226, for the purpose of designation, the time to consider a child's ordinary residence is at the time of the matter being considered by the Court, not the time of commencement of proceedings.
44. In *Re H* [2003] EWCA 1629 it was said that:

“The effect of Section 23(6) is to cast upon the Local Authority a duty to make arrangements to enable a looked after child to live with a person or family to whom he is closely related, or with whom he is closely connected. Once that is achieved, the looked after child ceases to be provided with accommodation within the meaning of Section 105(6) and begins to live with a relative or family arranged by the Local Authority pursuant to their duty under Section 23(6).”
45. North Yorkshire indicate that this decision however predates Section 22(c) of the Children Act 1989.
46. A more instructive use is the recent case of *Re G*, (Designation of Local Authority) [2024] EWCA 1565, which says as follows:

“The date for determining ordinary residence for the purpose of designation under Section 31(8) of the Children Act is the date of the hearing. Section 31(8)(a) is to be considered and determined first, and only in the event that the Court decide that the child is not already resident in a Local Authority will the court go on to consider Section 31(8)(b). The statutory provisions in Section 31(8) and in Section 105 (6) of the Children Act are to be construed in such a way as to provide a simple mechanism for designation. It is the function of the judge to conduct a rapid and not over sophisticated review of the history in order to make a purely factual determination of the child's place of ordinary residence. The Court need not take a toothcomb to decide

whether the parent has voluntarily, under separate purposes, acquired ordinary residence.”

47. What is perhaps prudent is what the Court says next.

“The Local Authority in the area where the child ordinarily lives is best placed to monitor the needs of the child and to take action if the child is in need and to shoulder the financial obligation of doing so.”

48. The Court goes on with aspirations which have been set out in previous case law:

“Arguments between Local authorities as to which should be designating in care proceedings concerning children is a waste of valuable resources.

Ordinary residence and habitual residence are cognate expressions, neither of which are terms of art. There is an overlap between the meaning of ordinary and habitual residence.....one is sometimes defined in terms of the other. In designation cases, the terms are treated as akin to one another, close relatives or even synonymous. The determination of each is primarily a question of fact, thus ordinary residence refers to a person's abode in a particular place or country which they have adopted voluntarily and for separate purposes as part of the regular order of their life for the time being, whether of short or long duration.”

49. Although ordinary residence and habitual residence have directly comparable meanings, *Re S, (A Child)* [2017] EWCA 2695, makes clear that:

“It would be inappropriate and unnecessary to treat an application of this type in the same way with the same level of detail and sophistication as is sometimes found in disputes in relation to a child's habitual residence in international cases”

50. As set out in *Northamptonshire County Council v Islington London Borough Council* [2001] Fam. 364:

“Such an application should be rapid and not over sophisticated process. Local Authorities should do all they can to agree the designation between themselves and therefore such disputed cases should be the exception rather than the rule.”

51. In this case I have considered what all the parties have said and the law in this area. I am inexorably led to the conclusion that the appropriate designated Authority in this case should be North Yorkshire for the following reasons:

52. The Child will be placed with maternal grandmother and her husband who resides in North Yorkshire. However, it does not stop there.

53. M will reside with her half siblings who themselves are subject to care orders with North Yorkshire.

54. The maternal grandparents, (grandmother and her partner) have been subject to a detailed assessment by North Yorkshire in order to consider the viability of M's placement with them and the effects on their family.
55. To have two Local Authorities involved with this family, and I have not heard what the maternal grandmother has to say about it, in my view, would be most unfortunate. It would basically double the number of professionals, provide logistical difficulties in relation to oversight at a distance, duplicity of work, no joined up thinking in relation to the family as a whole, duplicity of support services, lack of coordination, and it is difficult to see any positives in a position whereby Birmingham Local Authority remain the designated authority, following the conclusion of the proceedings, in a case where the child will reside in North Yorkshire.
56. Accordingly, I have reached the conclusion and record it as an exceptional case, having regard to the legislation and following *Re G* that it is the Local Authority in the area where the child ordinarily lives which is best placed to monitor the needs of the child, oversee the care plan, negotiate and review contact and take action if it is required.
57. Accordingly, that is my decision and the reasons for it. Designation will be to North Yorkshire.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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