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Case No: BM23C50367

IN THE FAMILY COURT AT BIRMINGHAM

Priory Courts, 33 Bull Street,

Birmingham, B4 6DS

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Before:

DISTRICT JUDGE PARKER

Between:

BIRMINGHAM CITY COUNCIL

Applicant

- and -

(1) S

Respondents

(2) L

(3-4) THE CHILDREN

(Through their Children's Guardian)

MR DAMIAN SHEPHERD (instructed by **Birmingham Children's Trust**) for the **Applicant**

MS SARAH TIERNEY (instructed by **Greens Solicitors**) for the **First Respondent**

MR GRANT KEYES (instructed by **Wilson Browne Solicitors**) for the **Second Respondent**

MR ANDREW CRUMPTON (of **Anthony Collins Solicitors**) for the **Children's Guardian**

JUDGMENT

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.

Telephone No: 020 7067 2900. DX 410 LDE

Email: info@martenwalshcherer.com

Web: www.martenwalshcherer.com

DISTRICT JUDGE PARKER:

INTRODUCTION AND ISSUES BEFORE THE COURT

1. I am dealing with two children, S, who was born on 15 March 2018 and A, who was born on 29 December 2022. I have made findings as to final threshold which is appended to an order that I made on 18 September 2024. The most relevant paragraph in so far as today's hearing is concerned is this:

“When the mother suffers a significant relapse in her mental health she is prevented from affording the children an appropriate level of care, thus requiring appropriate intervention to safeguard them while she recovers. Without the successful completion of the recommended therapy this is a risk that is likely to remain.”

2. There are other matters in the threshold although I do not concern myself with those matters today.
3. This is happily a case where the plan agreed by everybody is for S and A to remain in their mother's care. The sole issue that I have been required to decide, for which I have heard detailed submissions, is whether I should make a supervision order for twelve months, which is what the local authority seeks, or make no order at all, which is what the mother invites me to do, as does the guardian. S's father effectively is in support of her remaining with the mother, the identity of A's father is not known.
4. I think it is appropriate to perhaps touch on two aspects of the proceedings before me.
5. There has been a psychological report on mum by Dr Gregory. It sets out that mother demonstrates a large number of traits of borderline personality disorder and

emotionally unstable personality disorder. It comments that there are patterns of instability, difficulties in controlling anger and stress-related paranoid ideation as well as patterns of unstable and intensive relationships. It recommends that she needs to engage with therapy of a multi-disciplinary approach. It comments that the mother has limited insight into professional concerns and the risks posed. Notwithstanding this, the recommended work can be done whilst the children remain in her care, but subject to there being respite in the event that the therapy is found to be difficult for her on top of her childcare responsibilities.

6. I also have the benefit of an independent social work parenting assessment. It reports that mother has a complex mental health history which she minimises and lacks insight into its effects on the children and her parenting. It also reports she has a mistrust of professionals. Having said that, positively, the situation throughout these proceedings has improved. There is no concern with regard to the home environment and mother's mental health has been stable. However, it defers to the psychologist such that therapeutic support is required to deal with her trauma and to avoid further deterioration at times of increased stress. It therefore proposes a safety contingency plan and a respite plan devised with the assistance of Dr Gregory.
7. The local authority in their final evidence comments that there has been a number of marked improvements and that both children now remain in the care of the mother (S having never been removed from her care). The plan is for both children to remain in mother's care under a supervision order for twelve months.
8. A family group conference has taken place which highlights extensive support from mother's family both here and abroad. However, there are concerns as to the co-operation of the mother due to lack of trust with professionals and a subsequent downturn in her mental health which, it is contended, mother remains susceptible to.

9. The children's guardian, at the previous hearing before me, questioned whether the matter should conclude by way of a supervision order or whether or not matters could conclude by way of a child in need plan instead, and wished to consider why a supervision order was considered necessary.
10. Accordingly, matters have been listed for today for me to give full consideration as to the respective parties' positions, the matter not having been concluded at the hearing before me on 18 September due to amendments that needed to be made with regard to the proposed support plans and for the guardian to give consideration to them. The support plans have now been approved by the children's guardian.
11. Mother, as I have indicated, opposes a supervision order and has filed a lengthy statement of 19 pages plus a position statement. I think it is fair to say that mother does not agree with the threshold as found by this court. Indeed, at the last occasion I determined that that issue should be addressed and heard submissions before determining the final threshold. Mother has not sought to challenge that subsequently. She also challenges the evidence that it was based on. It is fair to say that she holds a certain mistrust of the local authority.
12. In relation to the support plan, she questions its potential benefits. She feels confident that she will be able to manage her mental health; she has an extensive social network. She disputes that she lacks insight into her difficulties and quite rightly points out that not all mental health problems prevent a person from adequately parenting children, which indeed is correct, although of course there are cases where the opposite applies.
13. She maintains that a supervision order is not proportionate to the legitimate aim it sets out and is not necessary. She is happy to continue to receive support from and

to work with the local authority and other professionals. She points out that S has always been cared for by her, as indeed both her children prior to proceedings and both children have remained in her care for a significant period within the proceedings under the scrutiny of the local authority without concerns being raised.

14. The issue in this case is mother's potential deterioration in her mental health and the need for support. She has a significant support network and, therefore, the involvement of the local authority is likely to be negligible and that the aims set out in the supervision plan can quite equally be met under a child in need plan. A supervision order adds nothing, and, in any event, she says, lacks teeth by way of compulsion and enforcement.
15. The local authority's main concern is the potential relapse in mother's mental health which, when significant, prevents her from affording the children an appropriate level of care requiring intervention during the recovery process, and without successful completion of the recommended therapy, the risk remains (as per the threshold) The local authority feel, therefore, that matters should be finalised by the underpinning of a supervision order.
16. They raise concerns as to mother's insight and lack of acceptance of the concerns around her mental health. They point out that a child in need plan is voluntary and are meant for people and parents who see the need for help and are willing and ready to accept it. The local authority has concerns as to the potential for mother's disengagement and feel that the local authority still needs to maintain oversight, particularly given that the therapy itself may have a detrimental impact on mother's mental health, and that a supervision order would provide a statutory basis for ongoing support.

17. The children's guardian does not support a supervision order and that matters can be maintained under a child in need plan. Mother is subject to a positive parenting assessment which supports the children remaining in her care. That is notwithstanding, of course, the comments made in mother's own witness statement.

SUBMISSIONS

THE LOCAL AUTHORITY

18. They maintain that without a supervision order the local authority has no locus standi on a statutory basis for intervention in relation to the children, a child in need plan is purely voluntary and relies on parental co-operation. They highlight the concerns set out in mother's witness statement which they say shows a total denial of the assessment of risk and findings of the court and the concerns of the psychologist and independent social worker, as well as the potential effect of a future deterioration in her mental health, and that without therapy the risk remains. They also question whether mum really recognises the need for help and support, or indeed will accept that help and support, and therefore such an order, they say, is both necessary and proportionate.
19. I asked the local authority to help me with the potential differences between a child in need plan and a supervision order, particularly given that the supervision order appears also to rely upon the voluntary co-operation of a parent.
20. The local authority maintains that a supervision order places a statutory obligation on them and gives them force to assist and befriend the named child or children and that if the mother does not engage, then she can be reminded of the local authority's obligation in that respect.

21. I asked about the enforceability of the supervision order in relation to the local authority's obligations and what powers there are open to the local authority under a supervision order which are not available under a child in need plan. The local authority maintained that under a supervision order they are required to advise and assist and befriend the subject child.

THE MOTHER

22. It is accepted that the mother has experienced difficulties, but the question is: is there a need for an order now? The issue is one of risk and a proportionate response to that risk, the risk being the deterioration in the mental health of the mother and the impact on the children. However, it is contended that there are a number of mitigating factors. There are currently no safeguarding concerns at all. That in the past the mother has sought help at times of challenge and there is no evidence to the contrary with regard to that or evidence that she is unlikely to do so in the future.
23. S has never been removed from the mother's care. Although A was for a period of time, she was quickly returned to the mother's care where she remains.
24. The Mother has made her own referrals, and it is questioned whether the therapy can be delivered in the life of a supervision order in any event given the NHS waiting lists and the question mark as to its funding, which at present the local authority are not minded to assist with, although this may well be reviewed.
25. The Mother has an exceptional support network. The burden is on the local authority to justify the order sought and any such order would be an interference with the Article 8 rights of the mother and the children.

26. By and large, the support plan is more or less agreed. There is no issue with regard to mum seeking support and obtaining appointments with regard to her mental health and she has made referrals. If there are future problems, then the local authority could escalate matters, if they so wished, either by instigating a child protection process or in instigating proceedings.

CHILDREN'S GUARDIAN

27. A child protection plan has now been downgraded to a child in need plan. The Mother has made substantial improvements and therefore the guardian does not support a supervision order. The guardian does not accept the local authority's analysis in this case in relation to the necessity of a supervision order over that of a child in need plan. In her view, the children can be equally safeguarded under a child in need plan. If the mother fails to engage, then matters can be escalated or proceedings issued. The Mother has engaged and co-operated throughout these proceedings and continues to do so with minimal support from the local authority. In the guardian's view, there is no welfare benefit in there being a supervision order.

ANALYSIS AND JUDGEMENT

28. It is clear that mum has a mistrust of professionals. It is also clear that mother may question the benefit of the support plan and that she fails to accept the threshold as found, (as well as the evidential basis for it) including the psychologist's and parenting assessor's concerns and recommendations.
29. There is a concern as to her ability to recognise when support is needed, although having said that, the position put forward by mother's counsel shows that when there are difficulties, support is sourced.

30. It is contended that a child in need plan relies upon the voluntary co-operation of the mother, but so does a supervision order, and therefore there is an issue as to the potential benefits and differences between one or other option.
31. With a supervision order, unlike a care order, there are no looked after children reviews, there is no oversight by an independent reviewing officer and no sharing of parental responsibility or power of removal.
32. In this particular case, I bear in mind that whatever order I make, mother is very firmly on the local authority's radar.
33. Following a family group conference, we have an extensive support network with further assessments of family, who live abroad, being undertaken.
34. I also note that these are school-age children; this provides a further layer of oversight.
35. With regard to S, the father is actively involved. I am also aware that, as with both a child in need plan and a supervision order, if there are issues in relation to the local authority involvement, matters can be escalated.
36. In relation to supervision orders in particular, I need to look at the effects of making such an order as far as its statutory basis is concerned.
37. The provision of the statute provides that whilst a supervision order is in force it shall be the duty of the supervisor to advise, assist and befriend the supervised child, to take such steps as are reasonably necessary to give effect to the order and, where the order is not complied with or the supervisor considers that the order may no longer be necessary, to consider whether to apply to the court for its variation or discharge.

38. The supervision order may include certain requirements for the supervised child to comply with certain directions given by the supervisor namely; with the consent of a responsible person to require the responsible person to take reasonable steps to ensure that the supervised child complies with those directions; with the consent of a responsible person to require the responsible person to take reasonable steps to ensure that the supervised child complies with any requirement to submit to a psychiatric or medical examination; with the consent of a responsible person to require the responsible person to take the supervised child to a place specified in the direction for the purpose of taking part in certain activities.
39. I emphasise that the provisions of a supervision order is directed, in a number of instances, to the supervised child and is subject to the consent of a responsible person.
40. I remind myself of course that the issue in this case is in relation to mother's mental health, and in seeking support if there is a downturn in it which could potentially impact significantly on her parenting of the children.
41. A supervision order does not confer parental responsibility on the local authority and does not give the local authority power to remove the child. Of course, under Schedule 3 subsection (2) of the Children Act 1989, supervision orders may include certain requirements, but anecdotal evidence suggests that they are rarely used due to issues of enforceability.
42. A supervision order may last for a period of up to one year. An extension can be sought for up to three years and, in relation to that, the case of *A Local Authority v D & Ors* [2016] EWHC 1438 confirms that the court's power to extend a supervision order does not depend on the supervision order, which is sought to be extended,

being current or for an extension to have been made prior to the expiration of the existing supervision order.

43. A supervision order expires when a final care order is made, or the child obtains the age of 18 years, or an order is made requiring the return of the child to another country under the Child Abduction and Custody Act 1985, or upon successful application for a discharge of the order.
44. By way of further observations and comment, in a report published in April 2023 entitled “Recommendations to Achieve Best Practice in the Child Protection and Family Justice Systems: Supervision Orders” there was a difference of opinion as to whether supervision orders provide any additional support and access to services over and above the services offered under the child in need framework.
45. Within a report entitled “Recommendations to Achieve Best Practice in the Child Protection and Family Justice Systems” published 1 March 2021 it was mooted that supervision orders were seen as a relatively feeble tool that needed to be made more robust and useful.
46. The report set out three overarching principles in an attempt at ensuring a supervision order is as effective as possible: firstly, the child’s welfare is paramount; secondly, children are best looked after within their families, with their parents playing a full part in their lives, unless compulsory intervention in the family life is necessary; and thirdly, any intervention should be necessary and proportionate. This means actions taken should be no more than is needed to achieve the aim of keeping the child safe and well.
47. Supplementing these overarching principles are six core principles to a supervision plan: partnership and co-production with children and families; multi-agency and

multi-disciplinary working; clear, tailored plans including to address ongoing risks along with the findings and conclusions of the court proceedings; resource clarity; formal and robust review; accountability.

48. The report suggests that recitals to the final supervision order should be used to highlight the core principles, for example: why the order was made for a specific length, that the parents agree to a supervision order support plan and actions set out, the local authority agrees to provide and co-ordinate the services and support in the plan and the local authority confirms each part of the supervision order support plan is resourced and funded.
49. The Best Practice guidance aims to do all that it can without a statutory framework to focus minds and provide as much clarity as possible to the support plan and core principles to underpin it.
50. However, considering the anecdotal lack of use of Schedule 3 subsection (2) of the Children Act 1989, due to the lack of enforceability, nothing in the Best Practice guidance impacts that particular concern.
51. I also reference a recent article called “A Review of Supervision Orders: where are we now? Are they worth the paper they are printed on?” (2024 Family Law 1010)
52. Having considered matters in detail, I have come to the conclusion that I do not see the benefit of me making a final supervision order in this case.
53. It is my judgment that the risks in this case can be appropriately provided under a child in need plan and I say that on the basis of consideration of the least interventionist order and, indeed, the no order principle.

54. By that, I mean that the Court must have regard to the general principle that it is usually better to make no order unless it can be established that it would be better for the child if an order were to be made (i.e. it is of positive benefit) (S 1 (5)) ('no order principle').
55. This does not equate to a principle of "no order", no presumption is created one way or other. However, the Court should make the least intrusive order necessary.
56. The court must in each case therefore ask "will it be better for the child to make the order than making no order at all?" (Re G (Children) [2006] 1 FLR 771).
57. "There must be something in the making or operation of an (order) which makes it better for the children for an order to be made" (Re K (Supervision Orders) 1999 2 FLR 303)
58. The burden of proof, being on the balance of probabilities, in making a positive case for an order being made in accordance with the child's best interests, rests with the Local Authority.
59. An order should not be made "unless there is evidence establishing that the order will lead to an improvement from the point of view of the child's welfare." (Re X and Y (Leave to remove from the Jurisdiction: No order principle (2001) 2 FLR 118).
60. Thus, there must be "some tangible benefit to the children from making an order rather than leaving the parents to sort things out for themselves." (Holmes – Moorhouse v Richmond upon Thames London BC (2009) UKHL 7)
61. I do not believe that in this case a supervision order adds anything over and above a child in need plan.

62. As I have said, mum is very much on the local authority's radar, which will continue to be the case. There is a support network following the family group conference, we have school-age children for which the school will have oversight and one of the children's father is actively involved and, of course, the local authority will remain involved.
63. If there are issues, much with a supervision order as with a child in need plan, matters can be escalated.
64. A supervision order does not allow the local authority to have parental responsibility and they have no powers of removal. A child in need plan, of course, relies upon a parent's co-operation, but so does a supervision order. A supervision order's focus is on the child. The issue in this case is working with the mother.
65. Accordingly, for all those reasons, and based upon the evidence that I have read and the submissions that have been made and my analysis of the law, these proceedings will conclude with no order and that is my judgment and the reasons for it.

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