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IN THE FAMILY COURT AT CHELMSFORD

CM15C05030/CM15Z00143.

London House,
New London Road,
Chelmsford,
Essex CM2 0QR.

Wednesday, 17th June 2015.

Before:

DISTRICT JUDGE HODGES

Between:

SOUTHEND-ON-SEA BOROUGH COUNCIL

Applicants

and

M

First Respondent

and

C

(by her Children's Guardian)

Second Respondent

MR WATTS (*instructed by Southend Borough Council, DX 2812 Southend*) appeared for the Applicants.

MISS KATHLEEN O'CONNOR (*instructed by Jefferies, DX 2817 Southend*) appeared for the First Respondent.

MR NIGEL HUMPHRIES (*instructed by Fisher Jones Greenwood, DX 3600 Colchester*) appeared for the Second Respondent.

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JUDGMENT

Wednesday, 17th June 2015.

- 01 I am concerned with C, who was born on 1st March 2012. Her welfare is my paramount concern. The proceedings before me have been brought by Southend Borough Council and they are represented in front of me by Mr Watts of counsel. C's mother is M. She is represented by Miss O'Connor. Miss M is not present in court. C has a guardian, Caroline Rosenthal, who is represented by her solicitor Mr Humphries. Both are present in court and have been present throughout the day.
- 02 Also present in court are Mr and Mrs G. They are the maternal grandparents. They are representing themselves and have done so with great courtesy to the court. As a preliminary issue I have to deal with their application for a Child Arrangements Order to be made, first they have applied for permission to make that application. I should say that these proceedings are being heard by me on 17th June and the final care proceedings are listed to take place on 4th July. That is in some two and a half weeks' time. The grandparents have applied this morning, the date fixed for the Issues Resolution Hearing and an early final hearing to take place, for permission to make the application for a Children Arrangements Order. They have attended court today and I have given them the opportunity to reflect upon their position and to consider whether they wish the matter to be adjourned for them to file formal statements. They indicated that they wished me to deal with their application today and that they would give oral evidence in support of their application. I have therefore heard from Mr G on oath and Mrs G tells me that Mr G has covered all areas, that she supports what he says and she herself has said that she does not think it would be of assistance for her to give evidence. She has not given formal evidence herself. I have also heard evidence on oath from the Children's Guardian. The Children's Guardian opposes the application, as does the local authority. The mother, though not present, through her advocate is neutral although I have been told by her advocate that if I decline this application the mother will not oppose – and I do not think I put it too strongly if I say that she agrees – to the making of a care and placement order. She was not aware this application would be made and if it had not been made she was expecting and indeed has prepared for final orders to be made today.
- 03 Turning to the legal position, I have to approach the application by the grandparents in accordance with Section 10(9) Children Act 1989. I have to consider first of all the

nature of the proposed application. The application is for permission to apply for a Children Arrangements Order and in turn that would involve C being placed with them if their application were to be successful. They are the grandparents of C and have had a relationship with her since birth. That is not disputed; I accept that, and that is the clear evidence of Mr G, that they have been good grandparents who have had a good part in her life. I have to consider the risk there might be of a proposed application disrupting the child's life to such an extent that she would be harmed by it, and where the child is being looked after by a local authority the authority's plans for the future and the wishes and feelings of the child's parents. I also have to consider the merits of the application.

- 04 There is within the papers for the care proceedings a viability assessment of Mr and Mrs G. This is not a short document. It is a document which has undertaken a careful assessment of the grandparents. The conclusion is not favourable to them. The conclusion includes the sentence:

'Given the extensive professional involvement with M as a child and the recent involvement with C, my professional opinion is that Mr and Mrs G would not be able to meet C's ongoing holistic needs in a safe way.'

The author concludes:

'M has disclosed an unhappy and dysfunctional childhood which may impact and distort her own view of parenting C. Overall this has had a negative impact upon her parenting capacity. M's own experience of being parented has had such an impact on her life that at times she recognises this and she does not want her daughter to suffer like she did. Research indicates that parenting styles affect a child's emotional wellbeing. I would be very concerned that C would experience a similar life and environment if placed with her maternal grandparents. There has been no evidence put forward by Mr and Mrs G to demonstrate how they have addressed their parenting style and made any significant changes to how they still respond to C's behaviour as an adult.'

So I have that viability assessment in front of me.

- 05 I heard evidence from Mr G on oath.. He told me that he loved his granddaughter and wanted to bring her up; that he had located schools close by and a playschool and infant school that would meet her needs. He feels that she would be happy with them and they want to do their best for her. He did however admit that when she, M, was a child that the grandparents, he said we, slapped her legs because of her behaviour. I interrupt to say that M has on various occasions said that she was abused physically by her parents. He said that they were asked to take on C early on. He said 'We did not take her on because my wife was ill and that M did not want C to come to us.' He agreed that caring for M and C conflicts and he agreed that in caring for M he had conflicts with M but he feels that he has now been retired for five years and that it would be different. He agreed that in January M did not want C to come and live with them. He said that he had been to many meetings in relation to M as she had grown up and that his wife had not attended them because of her depression. He acknowledged that they may have trouble coping with C and he said that he was working when M had problems and it was why it was difficult to keep the peace at home. It seemed to me significant the way he

put that; it was difficult to keep the peace at home, clearly acknowledging the conflict between Mrs G and M, and he said his wife had depression. He said her last depression was about a year or two ago and this was for a month and her tablets were changed. But he said that she is still receiving medication although it is on a low dose now. He said that Mrs G's problems with her daughter tended to bring on her depression.

06 I heard from the Children's Guardian and she said that Mr and Mrs G lacked insight as to the impact they had had on M's upbringing and welfare. M unfortunately has significant mental health problems and has been the subject of an assessment within the care proceedings by Dr Martinez which concludes that M is not able to care for C. Dr Martinez in her report identified that M had said a variety of things about her parents and Dr Martinez said that these matters will have impacted on her own mental health. The guardian says that Mr and Mrs G have no insight in relation to this; they express simply that C is very different. They acknowledge that children will be challenging but she is concerned about how they will cope with this and that their expectations are not realistic. The guardian is concerned about Mrs G's stability. She is still on medication. She is concerned about the relationship between the parents and M and how this would meet C's needs. She observed that Mr and Mrs G have listened to M's guidance, for instance, when C was placed with them briefly in January 2015, they did not take her to playschool because the mother had said she did not want her to go. There is a difference between their views, the view of the local authority and the views of the mother, and this is a potential source of conflict. The Children's Guardian said to me that if matters were put off she would be able to observe contact between C and the grandparents but at the present time C had had a final contact visit with her mother, that was on 5th June, and that C was now reconciled and prepared to moving on to a permanent placement. She had been told that she would not see her mother again and that communication would now be by writing letters. Miss Rosenthal said it would be very difficult for C to start unpicking this and looking at any further contact. She had reached a sense of closure and was being prepared and indeed looking forward to meeting a forever family. The guardian was very reluctant to disrupt this and saw that risk as being too great against the prospects of placement with the grandparents.

07 How do I translate that into the test in Section 10(9)? First of all I have considered whether there should be further inquiries. But it seems to me that between now and 4th July there is little further that could be done or could be presented before me. The grandparents could file statements but they have had the opportunity to give evidence and they have had the viability assessment since it was prepared on 24th March. They have chosen today, 17th June, to issue their application on the date of the IRH. They themselves did not protest that they wanted to file statements but have asked me to deal with this matter today. It seems to me that I would learn little further between now and 4th July when the final hearing is listed. The only way I could achieve further information would be to adjourn that final hearing and to secure a fuller more detailed assessment of the grandparents, perhaps from an independent social worker, and perhaps to secure a psychiatric report in relation to Mrs G. That would inevitably involve a significant delay in these proceedings which are now close to 26 weeks. C has an understanding of them and is prepared for the final hearing and for decisions to be taken. Similarly the mother M has also prepared in the same way. It seems to me that granting the application runs a real risk of disrupting this child's life and indeed to such an extent that she would be harmed by it. The local authority's plans are very clear and any adjournment is going to disrupt them.

- 08 I have to look to some extent at the long term prospects of the likelihood of success of this application. I only have a limited amount of information but in my view this application stands a very limited chance of success. The Applicant grandfather Mr G is aged 70. He has clearly had a conflictual relationship with M and I ask myself why should it be different in relation to C? The grandmother is aged 58. She has had depressive illnesses which have meant that she has been unable to attend meetings and Mr G told me this has led to conflicts within the home. She is still on medication and I have no evidence that she is any more stable or able to cope with C than she has been with M.
- 09 The main concern however it seems to me is the fact that this family would be in my judgment completely unable to cope with the triangular relationship of C, M and the grandparents. Mr G expressed in evidence that he hoped that his daughter was going to recover her mental health, that she had had some recent treatment that over the next four years might lead to her mental health recovering. I very much hope that that is the case and it may well be right, but he was very clear that he was going to continue his relationship with his daughter and indeed he is to be commended for that. He said he saw her yesterday. I just cannot envisage how the triangular relationship can possibly work. Dr Martinez in her report expresses the concern that mother is unable to bring up C because she is likely to expose C to extreme behaviours – ‘*scary situations*’ is the word she uses – and she is referring to the incident in January when M in front of C self-harmed, cutting herself, and C was clearly in a scary situation witnessing her mother bleeding. That is exactly the type of situation which Dr Martinez envisages recurring and which puts C at the risk of significant harm if she were to be placed with her mother. If I were to envisage C being placed with her grandparents it seems to me that it is only a matter of time before C is put in that situation again. This is because of the conflict which the grandparents will experience in their meetings with their daughter, who they will not be able to turn away and in the conflict that is likely ultimately to create and which C is inevitably going to experience. Their personal circumstances are not ideal but ultimately it is that relationship which it seems to me makes it impossible for their application to succeed. Given the disruption to the local authority Care Plan against the likelihood of success of their application, I am afraid that I have no hesitation in saying that that application should therefore be dismissed.
- 10 I turn now therefore to the main care proceedings. I have identified the parties save that I have missed out C’s father. He is not present in court and I understand has taken no part in these proceedings. He has been visited by the social worker on two occasions; he has been served with the proceedings and given the opportunity to engage. Unhappily he has chosen not to do so. Disclosure has been sought from the police and he has a chequered history involving serious convictions which would tend to indicate that even if he were to become involved his role in C’s life is likely to be very limited, but the reality of it is that he has chosen not to engage with the proceedings. The proceedings in front of me are an application for a care order and an application for a placement order. The Children’s Guardian supports the making of both orders; the children’s mother now supports the making of these orders.
- 11 A brief history is that M has unhappily suffered a longstanding mental health problem. She has since adolescence and before suffered from self-harming, depression and a personality disorder. She in addition has a neurological problem which tends to lead to

epilepsy. On 15th April 2012 C was accommodated for a period of eight days because of her mother's poor mental health. There is a chronology in the papers which details her ongoing struggle to cope with looking after her daughter. This culminated on 16th January 2015 when M self-harmed herself in the presence of C. She cut herself with a kitchen knife and blood was very present and she then proceeded to cut herself further with a broken vase. M was sectioned under the Mental Health as a result. C was placed with the maternal grandparents for about three days at that time and then subsequently because mother objected to C being with the grandparents C was placed in foster care on 19th January 2015 and she has remained there since that time. Unhappily Miss G was readmitted to Hospital again due to her mental health in May 2015. At that time she reflected upon the circumstances and acknowledged that she was unable to give good enough care to her daughter. She therefore took the very brave decision to recognise this fact and underwent the no doubt traumatic experience of a goodbye contact on 5th June 2015. She describes that in heartrending terms in her statement when her daughter asked when she could come home.

- 12 During the course of the proceedings assessments have been carried out, first of all by psychologist Dr Martinez. She concludes that the mother's emotional difficulties restrict her ability to meet her daughter's needs and that without resolution of these difficulties C will be exposed to unpredictable and scary behaviours. She has reservations about her ability to make far-reaching changes. I have described briefly the incident in January and that is exactly what Dr Martinez is referring to and my understanding of her report is that it is inevitable if C is in her mother's care that she will experience similar matters in the future, and that just cannot be allowed to happen. There is also an assessment by the Marigold Family Centre. They conclude that M loves her daughter but that she is unable at times of crisis to meet her daughter's needs, echoing very much what Dr Martinez has said. That is the factual background with which I am faced.
- 13 In view of the fact the order is not opposed I am not going to deal with the law in great detail. I have to be satisfied under Section 31 first of all that the threshold is crossed for the making of orders. The incident in January crosses that threshold. Having made that determination I now have to consider what order to make. I have to have regard to the fact that the local authority seek a care order with a Care Plan for adoption and a placement order. The recent authorities including *Re B-S* make it clear that I should only make that order if nothing else will do, and I must take a holistic view of all the facts. Unhappily there is no real prospect of any placement in C's timescale within her family and there is no realistic prospect of her being returned to the care of her mother. The prospect of her being placed in long-term foster care is simply not going to meet her needs in the future. C needs a forever family. I have to frame my decision-making however within the welfare checklist set out in the Adoption and Children Act 2002 at Section 1 and also in the Children Act. They are very similar but I will go straight to the Adoption checklist because that identifies certain other areas which are important.
- 14 First of all, the wishes and feelings of the child in the light of her age. She would no doubt want to remain living within her family, I have little doubt. She can have no concept of the long-term future however. Her particular needs. Given her young age what she needs is stability in a secure home where she can be brought up in a secure and stable manner. As I have identified her family in unhappily unable to provide that at this point in time. Her mother has poor mental health and if C was to be with her

grandparents that relationship between mother and grandparents and C would nevertheless mean that her mother's mental health would be brought to bear and that C would be at risk of scary experiences, as Dr Martinez is concerned. The likely effect of the child having ceased to be a member of the original family and becoming an adopted person. C will by virtue of the orders sought by the local authority lose the benefit of being brought up by her mother and grandparents. I hope that can be preserved to some extent by the letter box contact which is proposed and that should take place twice a year. She will lose that opportunity, but unhappily that is not going to be a productive relationship in light of the evidence of Dr Martinez, and although she will lose that opportunity it is inevitably only going to be a distant relationship if the order was not made. Age, sex and background. C is three years old and still of an age where she can be placed successfully for adoption. There is a statement in the bundle from the Adoption Social Worker which tells me that two families have been identified; she can be matched to one of those families during June, and will hopefully be placed before the autumn of this year. I have to consider the harm which the child is at risk of suffering and indeed has already suffered, and that is of course the risk of witnessing her mother's poor behaviours. They are not her mother's fault; it is the way she is; but C has witnessed them and it cannot be allowed to continue. The relationship she has with relatives and with other persons including the likelihood of these continuing and the ability and willingness of relatives to meet her needs, and the wishes and feelings of the relatives. It is clear that the grandparents do not support adoption. The mother does. She recognises that C needs a long-term placement. She needs a forever family, and that is only going to be achieved by the adoption process. The relationships with her own family in so far as they could possibly continue would only be by virtue of intermittent contact and balanced against the prospects of a forever family that is just not good enough in this particular situation. I have therefore no hesitation in saying that the local authority care plan is appropriate and meets C's needs. I therefore make a care order and I make a placement order.

- 15 I do not believe that the father has parental responsibility therefore I do not need to dispense with his consent. I do not have the formal consent of M and therefore I will dispense with her consent to the making of a placement order under Section 52 Adoption and Children Act 2002, the welfare of the child demanding it. In considering making these orders I have considered the Human Rights Act and consider them to be proportionate and that nothing else will do...
