Lincolnshire County Council v M, PF, A and B

Final Hearing – 18th. 19th, 20th, 21st September and 11th October 2023

Judgment – Recorder Henry

1. This is case LN22C50054 and I am concerned with the welfare of child (‘A’) who was born in 2017 and is now 6 years old, and child (‘B’) who was born in 2021 and is now 2 years old.
2. The children’s mother has been assisted throughout this hearing by an interpreter and an intermediary (save for on the final day of the final hearing for reasons I will make clear). Mother also has another younger child ‘C’ who is currently the subject child in separate care proceedings.
3. The children’s biological Fathers have not played any part in these proceedings, despite the best efforts of the represented parties to engage them. The fourth respondent ‘PF’ is Mother’s ex-partner. He has been involved in A’s life for some time, having lived in the same household with him until he was 3 years of age and then exercising regular weekly family time “contact” with him. Although A relates to PF as ‘uncle’, it is right to say that PF has occupied the role of a Father figure or “psychological Father” for virtually A’s entire life.
4. The children are represented by their children’s Guardian. All parties have had the benefit of Counsel’s representation throughout.
5. This case comes before me for final hearing, initially listed for 4 days on 18th, 19th, 20th and 21st September 2023. For reasons which will become clear, it was necessary to add an additional date for further evidence to be dealt with, when the case was part heard. The matter came back before me to hear further evidence in relation to A’s case on 11th October 2023.
6. An ex-tempore judgment was given orally at the conclusion of day 4 of this final hearing in respect of B’s case only. This judgment should be read in conjunction with my earlier decision, which was taken at a time when all of the evidence had been heard with regards to B. I will elaborate further below but suffice to say that the 5th “part heard” day of this final hearing was necessary in order to facilitate further evidence about A’s case only. Final care and placement orders have been made in respect of B.

Background

1. This is a particularly sad case. A referral was made to the Local Authority in respect of concerns around domestic abuse in 2017, although that referral did not progress to any substantial involvement of the Local Authority. The Local Authority’s current involvement with the family really commenced in 2021. A child and family assessment was completed after the midwifery service raised concerns about Mother’s mental health whilst she was pregnant with B. Support was provided within the “Team Around the Child” process and at the time there were no other significant child protection steps put in train. On 4th April 2022, A’s nursery providers raised concerns in respect of Mother’s mental health. Thereafter, Mother was admitted to hospital and detained under section 2 of the Mental Health Act. Mother was experiencing a significant episode of postpartum psychosis.
2. Initially Mother and B were accommodated in a Mother and baby unit. During that time, sadly, further concerns were raised in respect of Mother neglecting B’s basic needs which led to serious concerns about his low weight and failure to thrive. B was reviewed by a paediatrician at the time who concluded that his difficulties were likely caused by the care he was receiving. Mother was acutely unwell and was unable to respond to B’s cues when he required his basic needs to be met. A decision was taken to remove B from the ward and ultimately he was placed in foster care. He has remained in that foster placement ever since his removal from Mother, and now resides there with his half-brother C whose proceedings are ongoing.
3. During this time, A had been cared for by PF. Mother made her wishes clear that PF should care for A when she was admitted to hospital. From April 2022 until around August 2022 A lived with PF whilst a Special Guardianship Assessment was carried out. An initial viability assessment carried out on 20th April 2022 recorded the following relevant matters:
	1. PF’s police check revealed issues around domestic abuse involving his previous partner “EP” in 2013 and 2014. The social care history in respect of those incidents appeared to be that the parties had now separated, initial assessments were completed, but no further action was taken in respect of the parties’ child D. Social care checks were completed when A and his Mother lived with PF from 2017 onwards with no concerns raised. There are “cross allegations” of domestically abusive behaviour from both EP and Mr PF. The assessment concludes that *“PF has been in a previous relationship where domestic abuse was a feature. This relationship ended eight years ago and there have been no further incidents in subsequent relationships, therefore it could be determined that it was the dynamics of that particular relationship that were unhealthy”.*
	2. A is diagnosed with Autistic Spectrum Disorder and Global Developmental Delay.
	3. At the time, A was attending nursery for 3 days. Nursery reported that A was calmer during periods of time when he had been in PF’s care (including when Mother had a previous stay in hospital and when Mother was in hospital to give birth to B).
	4. PF sourced full time statutory education for A at a special school which was due to start in September 2022; an EHCP was in place to support A’s educational needs.
	5. A was non-verbal at the time of the initial viability assessment, but he was seen in PF’s care by children’s services on 12th April 2022 when observations were reported as positive, including A seeking comfort from PF and PF being able to use “*gentle tones and simple explanations*” to distract A, whilst balancing the meeting with social care and A’s needs. PF’s relationship with A is described as *“wonderful”.*
	6. PF had demonstrated considerable commitment to caring for A, including giving up an additional job he had at the time and negotiating both compassionate leave and reduced hours at his primary place of work in order to be available to care for A.
	7. PF understood A’s additional needs and adjusts his parenting accordingly.
4. Overall, PF was said to be working well with professionals and was deemed a viable placement for A whilst further assessments were undertaken. By 1st August 2022, the Local Authority produced a statement which suggested that since the initial viability assessment serious concerns had come to light which led the Local Authority to conclude that PF was no longer a viable interim placement for A. Those concerns were that a full DBS check revealed a conviction for battery (rather than a caution for assault) in respect of PF’s ex-wife, EP. In addition, the Local Authority had undertaken discussions with PF’s ex-wife which were said to be “very detailed” along with her two children. A number of allegations, including of sexual abuse, were made by PF’s step-daughter. The statement also reports that Mother had made an allegation that PF had strangled her around 5 years ago. The statement made a number of assertions and conclusions, including speaking about “the sexual abuse” as an established fact.
5. As a result of the above, the Local Authority returned the matter to Court and sought removal of A from PF’s care. PF was not informed of that application and was not a party at the time. Mother was given very limited information about the reason the case was being returned to Court. The change in care plan was endorsed and PF was told that A would be removed into foster care after nursery. PF was not heard/represented in respect of the application. A was placed in a separate foster care placement to B.
6. PF was served with a heavily redacted version of his Special Guardianship Assessment on 15th August 2022 and on 18th August 2022 he made an application to be joined as a party to proceedings. That application was considered on 30th September 2022 and was dismissed. PF subsequently appealed that decision; he was given permission to appeal on 2nd December 2022 and the appeal was granted on 22nd December 2022. As a consequence of the successful appeal, PF was joined as a party to proceedings and the matter was case managed to include any applications for expert evidence.
7. PF was ultimately assessed by an Independent Social Worker. As the case progressed, further assessments were undertaken of Mother and the matter ultimately came before me for final hearing commencing 18th September 2023. By the time of the final hearing, and after the Local Authority had concluded in its final evidence that Mother would be unable to care for B in particular, Mother’s position with respect to B had crystallised. On day 1 of the hearing, Mother confirmed via her Counsel that she did not actively oppose the Local Authority’s plan of adoption for B. That was an extraordinarily brave decision which I will comment upon further below.
8. As a result of Mother’s change of position, and in view of the fact that there are no other realistic prospects put forward by any party in respect of B’s future arrangements, the analysis concerning the welfare disposal decisions for B had simplified; at least to the extent that any decision to place a child for adoption could ever be described as “simple”. I was able to determine B’s case at the conclusion of day 4 of this final hearing which was the originally listed fixture. A copy of my oral judgment in respect of B will be released into the proceedings concerning his younger brother C, along with this judgment. Read together, those documents provide the context for the way in which this hearing has had to be managed.
9. There remain two other key procedural aspects of the case to mention in order to provide a full understanding of the background. The first is in relation to days 1 – 4 of the final hearing. Having heard evidence and submissions throughout that period, I took the view that the case in respect of Mother’s ability to care for A had crystallised. At that stage I heard legal argument from all parties with regards to the Court’s ability to rule out Mother as a viable carer for A. Dealing with the case in this way had two advantages. Firstly, it allowed the issues for the remaining day of the part-heard final hearing to be as narrow and as proportionate as possible. Secondly, having heard all of the necessary evidence in respect of Mother, it provided her legal team (including her intermediary) with an opportunity to discuss with her the Court’s determination concerning her ability to care for A between day 4 and day 5 of the final hearing, without Mother enduring any further unnecessary delay.
10. Having heard legal argument on the point, and in accordance with the case of *North Yorkshire v B* (with which all Counsel were familiar and remains good law) I gave judgment that sadly, Mother was not in a position to care for A and would not be in such a position within his reasonable timescales. I considered that the evidence in respect of Mother’s case was clear. Sadly, Mother faces a number of issues, in particular her mental health. The report of the psychiatrist is contained within the bundle and was unchallenged. For the avoidance of doubt, I remain satisfied that the expert’s opinion in respect of Mother’s mental health prognosis is an accurate reflection of her current difficulties. Though she is much more stable now than during the episode of acute ill-health in April 2022, I agree with the expert that *“Any future episodes of depression … even with her current support, particularly if present at more than a mild degree of severity would be likely to impair significantly her ability to concentrate and focus, impairing her ability to parent her children safely, particularly in view of her older child’s additional needs”.*
11. Mother is a vulnerable individual. Her mental health difficulties are not the only challenge that she faces in being able to provide safe and reliable care for A. Mother has recently engaged in a domestically abusive relationship. As the social worker observes in the Local Authority’s final evidence Mother was invited to undertake both a Claire’s Law and Sarah’s Law check but declined to do so. Eventually a Claire’s Law check was carried out by mental health services and shared with Mother. Despite this, she continued to have contact with the partner about whom the Local Authority was concerned and latterly had a child with him, who (as I have already mentioned) is subject to separate proceedings. Sadly, the picture in respect of Mother’s understanding of chaotic and volatile relationships does not appear to have altered since her PAMs assessment in March 2023 when an Independent Social Worker, observed that Mother had *“no insight into how her* [chaotic relationships] *impacts her parenting and her children”.* In the allocated social worker’s final evidence, she concluded that *“although Mother can verbally express how she would keep herself and her children safe, she has not put this into practice and this is evident by the relationships she has entered into and she has continued to have contact with people who pose a risk to her and her children, when she has been informed of the risks posed”.*
12. Given the issues I have highlighted above, and in particular because A requires careful and attentive parenting, which is predictable and meets his additional needs, I was satisfied that Mother was not in a position to care for A. Any questions in respect of contact however were left over to the final day of the final hearing because clearly Mother would still have an argument to advance in respect of spending time with A, irrespective of her ability to care for him as a sole carer.

The Parties’ Positions

1. The Local Authority sought care and placement orders in respect of B. I gave judgment on 21st September 2023 in respect of B’s case only. In that oral judgment I endorsed the Local Authority’s final care plan for B and made final care and placement orders. The remainder of this judgment therefore focusses on A’s case. The Local Authority’s preferred plan for A is that he remain with his current foster carers Mr and Mrs F, pursuant to a Special Guardianship Order. There is no formal application before me for a Special Guardianship Order, but the relevant assessments of the prospective carers are contained within the bundle.
2. Mother seeks the return of A to her care. She says that she is now in a better position than she was when she was very unwell and that she is able to meet all of A’s needs. As I have already explained, Mother did not actively oppose the Local Authority’s plan in respect of B. In an extremely child focussed decision, Mother accepted that the position in terms of her relationship with B was different to her relationship with A and despite there being no other options for B she did not seek to persuade the Court that she was in a position to care for him. I have already determined that regrettably Mother is also not in a position to care for A safely.
3. In the event that Mother is unable to care for A, PF wishes to care for him in the long term. He would happily do so under either a Special Guardianship Order, a Child Arrangements Order or any other legal arrangement which the Court sees fit. There had been limited disclosure to PF at days 1 – 4 of this final hearing. I directed that he have sight of the report from the psychiatrist in respect of Mother’s mental health difficulties, which he was provided with to consider before he gave evidence on day 5.
4. The children’s guardian supported the Local Authority’s case in respect of B. In respect of A, the children’s Guardian had previously supported the views of the Local Authority, but upon further reflection his position altered during oral evidence. I will summarise the evidence I heard below, but in summary, the Guardian considered A’s case to be a finely balanced one. He told me that ultimately he could see a scenario whereby A would be cared for by PF and his support for the Local Authority’s case on the papers weakened as the evidence continued.

Law / Procedure

1. All parties are familiar with the law in this area which is well established and settled. I will deal initially with the factual basis of the case. I am not tasked in this matter with determining any significant disputes of fact. The final threshold in this matter was sensibly agreed some time ago and endorsed by HHJ Gillespie at a hearing on 26th July 2023. That threshold records Mother’s significant mental health difficulties, the fact of her detention under section 2 of the Mental Health Act and the neglect to B (and consequent risk of neglect to A) as documented at the Child Protection Medical, which identified that B was failing to thrive.
2. The Local Authority do not seek findings in respect of PF and his previous relationship. In my judgment that was a necessary and sensible position to take. Not only would a detailed enquiry into alleged events which took place over a decade ago generate significant additional work and satellite issues, but it would likely be a disproportionate exercise for the Court to undertake in view of the issues in this case. The fact of PF’s conviction is a matter of public record and he has confirmed that the caution detailed within his PNC record is accurate. Those are both matters from some time ago. For the avoidance of doubt, I am satisfied that the threshold criteria are crossed for the purposes of making final orders.
3. In terms of the welfare disposal decisions I have to make, the following basic principles are clearly of relevance:
	1. Any decision which the Court takes must be in line with the principle that the children’s welfare is the paramount consideration; I am guided in determining what is in the children’s best welfare interests by reference to the welfare checklist contained at s.1 of the Children Act 1989
	2. Simply because the final threshold in this matter is crossed does not mean that I automatically go on to make public law orders. I must only do so if I am satisfied that making those orders is necessary and proportionate.
	3. Flowing on from the above, I must only make orders (private or public) if doing so is in line with the “no order principle” i.e. that the making of orders will better meet the child’s welfare needs than if the Court did not make orders at all.
	4. I must keep firmly in mind that delay in concluding the proceedings is prejudicial to the children’s welfare interests; all parties, especially the children, deserve to have the proceedings concluded as swiftly as possible.
	5. I have in mind the leading authorities in this area and in particular that society must be prepared to tolerate diverse standards of parenting. Deciding matters for children is not a “beauty pageant” and there is no place for social engineering. I must make decisions which meet the child’s particular needs and welfare circumstances, in accordance with the legal principles outlined.
	6. When I am making decisions I am entitled to look at what is sometimes referred to as the “broad canvass of the case”. I must not speculate and should only reach conclusions based on the evidence before me. Ordinarily this would be most relevant when considering matters of disputed fact, but I remind myself of that here in any event given the competing cases in respect of welfare decisions.
	7. All parties’ Article 6 and 8 rights are engaged and I remind myself that making any orders, public law orders in particular, represents a significant interference in family life. As I have already said that interference must only be countenanced if it is necessary and proportionate.
4. It is necessary to record at this stage that by the final day of the final hearing which was listed “part-heard”, it was not possible for Mother’s intermediary to be present. That fact only came to light on the morning of day 5 of the final hearing. I determined that the case should proceed on the following basis:
	1. Mother had been assisted by the same interpreter throughout the hearing and had developed a rapport with that interpreter; the continuity of that working relationship was important in determining whether Mother would be able to continue to fully engage in the final day of the proceedings;
	2. Although the role of the intermediary had been hugely important to Mother’s engagement with the first 4 days of the final hearing, Mother was not expected to give evidence at the final day of the final hearing. By this stage, I had already ruled that she was not in a position to care for A and she had confirmed she did not actively oppose the Local Authority’s case for B;
	3. It was understood by all parties that given the time constraints involved, it would not be possible for judgment to be given within the trial window. Instead, a reserved written judgment would be prepared which Mother would have time to consider with her legal team / intermediary / interpreter if required once judgment had been circulated;
	4. The remaining matters which Mother was due to address the Court about were submissions points, and although clearly Mother needed to understand fully how her case was being put, she was more able to understand and cope with this than she was able to give evidence from the witness box;
	5. Had the matter not proceeded, and for reasons of judicial unavailability, the case for both children would have incurred delay which was unconscionable in the circumstances; there may have been a risk that evidence would have had to be recalled before a different tribunal in relation to A’s case at least, which would not have been a proportionate use of Court time and resources.
5. For all of those reasons the case proceeded without Mother’s intermediary present for the final day of the final hearing.
6. Finally, I should record the position in respect of Mr and Mrs F, the current foster carers. As I have mentioned, I do not have a formal application for a Special Guardianship Order before me. However, Mr and Mrs F have been assessed and I am satisfied that I am entitled to make a Special Guardianship Order pursuant to s. 14A (6) (b) Children Act 1989 if I determine that is the correct welfare outcome for A. During the break between days 4 and 5 of the hearing, the Local Authority consulted Mr and Mrs F further and I understand it was made clear to them that if they wished to make any kind of application to the Court (including if they wished to be heard on any of the issues) they must do so as a matter of urgency. No such application has been made and, in any event, the Local Authority continued to advance the case effectively on behalf of Mr and Mrs F. I understand from the Local Authority that Mr and Mrs F would be content to continue caring for A under any kind of order, including a final care order as A’s long term foster parents, if that was deemed necessary.

Evidence

1. I have read the entirety of the bundle and have paid specific attention to the written evidence the psychiatrist has provided in respect of Mother. Much of that has already been dealt with in my earlier oral judgment which determined B’s case. I will therefore not repeat that here. Similarly, I do not intend to repeat all of the oral evidence that I have heard in this final hearing. I will summarise the salient points below.
2. I heard initially from the Independent Social Worker who carried out the independent special guardianship assessment of PF, during which she also spoke about some of the issues in the case with Mother. In summary, the Independent Social Worker told me the following:
	1. That her concerns around PF’s ability to care for A in the long term centred on his “*past parenting and relationships*” which she felt there was a lack of understanding about on PF’s behalf.
	2. She accepted that Mother had made an allegation about PF, but that the allegation had been made at a time when Mother was detained in hospital due to her mental ill-health and that she had later retracted the same; she was also aware that the Local Authority did not seek findings about this allegation.
	3. It concerned the Independent Social Worker that Mother and PF “*remained close*” and she queried whether PF could keep A safe from the risks posed by Mother, but did not appear to reach any formulated conclusions about this aspect of the case.
	4. She told me that it was “*not [*her*] role to determine facts*” but went on to say that *“my opinion is based on the evidence and it is my view that the evidence is compelling. My opinion is based on my worries that PF has not fully reflected on the issues”*. This oral evidence arose from a proper line of cross examination taken in respect of the Independent Social Worker’s report where she writes the following:

*“PF refutes the extent of the allegations made in respect of him by his ex-partner, child and ex-partner’s children. Though there is no way of proving or disproving the allegations made, on the balance of probability and evidence, the occurrence of the reported domestic incidents and physical chastisement of the children were more likely than not”.*

Despite the Independent Social Worker’s assurance in her oral evidence that she had not come to conclusions of fact on disputed issues, her written evidence is inconsistent with this assertion. She describes the allegations as “*verified*”. Alarmingly, she goes on to discuss that allegations of a sexual nature “*cannot be disregarded”* and “*is a factor that needs to be considered*”; that is despite her acceptance in her own written report that i) she had not been able to speak to the person who had made such allegations and ii) reports from the family of that person detail difficulties with “false stories” being made up. Neither the views provided by the Independent Social Worker or her comments about alleged sexual allegations were proper conclusions which it was open to her to make. It is not clear to me at what stage (if at all) the Independent Social Worker was aware that the Local Authority took the view that there was insufficient evidence in respect of all of these allegations for it to pursue any findings of fact at all.

* 1. The Independent Social Worker agreed that PF’s care of A was positive, that the basic care he received was good, that he knew A needed support and reassurance following his removal from PF’s care and that PF understood A’s emotional needs, had engaged well with nursery and had attended several courses about parenting children with autism. The Independent Social Worker had also spoken to another ex-partner of PF who was very positive about him. The Independent Social Worker had observed contact and commented that the family time worker was very positive about PF’s interactions with A. She noted that A had a “*fantastic bedroom*” at PF’s home.
	2. The Independent Social Worker confirmed that she recommended A spend time with PF once per week, but not in a way which would jeopardise his ability to “*settle and form relationships with his carers*”.
	3. Finally, she confirmed in re-examination that she was worried about “*PF’s insight into the issues*”; she did not expand upon this further. Her written report appears to focus on PF’s cross-allegations against his ex-partner, and his denial that the extent of the allegations made by her are correct. It appears however that PF accepts the conviction he has; which he told me he pleaded guilty to at the earliest opportunity.
1. I then heard from the allocated social worker. She produced several statements in the proceedings, undertook the Special Guardianship assessment of the foster careers Mr and Mrs F, and latterly provided a welfare analysis in respect of the competing options for A’s long-term care. In summary her evidence was as follows:
	1. That as far as she was aware, despite Mother’s difficulties which prevented her from caring for A (or B) in the long term, she was currently compliant with medication and was not disruptive in any way.
	2. A had a “*lovely relationship*” with PF, and it was always preferable to place children within their families if it was safe to do so. The social worker partially retracted a point she had made in the final social work evidence template as to it being a “negative” that if A was placed with PF he would not be placed within his “biological family”. Plainly the foster carers are not A’s biological family. The social worker appeared to accept that PF was an “*important person and role model*” to A, though she would not agree that he was a “*father figure*”.
	3. The social worker agreed that PF had adapted his parenting for A, engaged well with the independent social worker, had never presented as angry or difficult towards other professionals, had a suitable home, promoted A’s ethnicity and had previously been able to safely promote contact with Mother. The social worker accepted that for the short period of time that A had been in PF’s care, he had moved from being primarily non-verbal, to putting two words together at the beginning of sentences.
	4. The social worker had only seen PF once in family time and had spoken to him once on the telephone; she had not spoken to him about the historic issues or previous allegations, nor had she spoken to his support network (which she accepted was good).
	5. An alternative “transition plan” has been filed which details how A may move to PF’s care over approximately a 5 week period if the Court refused to endorse the foster carers continuing to care for A. The social worker told me that this would be “*subject to discussion”* if A moved to PF’s care and that “*some form of order*” would need to be in place - an early help worker would need to assist, with some monitoring from the allocated social worker and appropriate support in place to assist with the transition plan
	6. Much of the social worker’s support for A to remain in his current placement but under a Special Guardianship Order appeared to me to come from the fact that he has now been placed there for 12 months, albeit on an interim basis.
2. It was at this stage in the evidence that all parties agreed that there was a “gap” which needed to be filled before A’s case could be determined. I proceeded to hear evidence from Mother and the children’s Guardian in respect of B only. Mother’s evidence as far as it related to A was that she sought to care for him in the long term. I have already outlined my conclusions in respect of her case in the earlier oral judgment of 21st September 2023. It is right however to note that Mother had also given the following oral evidence in terms of the potential for A to reside with PF:
	1. Mother told me that she had no intimate relationship with PF now and that if an order was in place stipulating that she should stay away from PF were he to care for A, then that is what she would do
	2. She told me that she would only see A on set days and although she would want to see A as much as possible she said “*I understand I would need to stay away*”
3. The children’s Guardian gave evidence in respect of B’s case and endorsed the need for further evidence from the Local Authority in respect of the welfare case concerning A.
4. When A’s case resumed on 11th October 2023, I was provided with a welfare analysis from the Local Authority in respect of the competing options for A. PF had filed a statement in response as directed, and the Guardian had produced a position statement. In short, all parties maintained their previously advanced positions.
5. The Local Authority updated the Court on the morning of the resumed hearing that the foster carers Mr and Mrs F had confirmed that they would accept any order which the Court saw fit, rather than a Special Guardianship Order. The Local Authority’s position is that it “*would not stand in the way”* of a Child Arrangements Order being made. Regrettably, there appeared to be very little analysis which had formed the basis of that position; in particular, there was little or no consideration as to whether any carer would require the enhanced parental responsibility that a Special Guardianship Order would confer, in order to meet A’s welfare needs.
6. It was confirmed that Mr and Mrs F were “*open to more contact than had been recommended, including unsupervised overnight contact to PF*”; again, I was not clear the basis for this analysis or whether it formed part of the Local Authority’s case as what might be called a “solid” recommendation, or whether it was simply a preference of Mr and Mrs F expressed via the Local Authority. Either way, Mr and Mrs F had not made any applications in the intervening period and were not present.
7. I am afraid that when I enquired further as to how Mr and Mrs F had reached the conclusion that they were prepared to accept any other order, including a Child Arrangements Order, there was little information available from the Local Authority about the practical arrangements which might be in place for Mr and Mrs F were the Court to conclude that a Special Guardianship Order was unnecessary. For instance, it was not possible for the Local Authority to answer a basic enquiry as to whether the financial position each order placed Mr and Mrs F in would be acceptable to them. Plainly a Special Guardianship Order comes with a financial “allowance”, and the prospect of further support in the future. The same would not necessarily be available to Mr and Mrs F via a Child Arrangements Order. The Local Authority had sufficient time (this being a case in its 77th week when it first came before me, with the addition of a further day for evidence) to provide these details. The fact that they were not available to was lamentable to say the least.
8. When the case resumed I heard again from the allocated social worker, followed by PF and the Children’s Guardian. All parties agreed in the circumstances that it would be neither necessary or appropriate to re-call the independent social worker on these issues. The task at hand was to make a welfare determination in respect of whether A should live with PF or Mr and Mrs F. Doing so was an issue for the allocated social worker and was not something which the independent social worker could assist with.
9. The social worker set out the “pros and cons” of A being placed in the respective placements in her oral evidence as follows:
	1. Were A to return to PF’s care, he would be returning to someone he had lived with and was familiar with. PF was someone who knew A and his needs, and had previously successfully cared for him. PF’s home was one which A already knew and PF could meet A’s needs; he had undertaken training in order to gain an increased understanding of A’s condition, and this would be akin to a family placement whereby there was significant love and affection for A and an excellent relationship
	2. Against the positives was the status quo argument; the social worker was worried about A experiencing the potential disruption of a further move, especially away from a placement in which he was currently happy. She remained concerned about what she termed “*historic concerns*” and the potential for A to express any worries he might have given his “*vulnerabilities*”. That said, the social worker went on to accept that any move to PF’s care would be planned and familiar, in comparison to the more traumatic experience of leaving his Mother and PF and being placed with carers who were, at that stage, strangers to him
	3. If A were placed with Mr and Mrs F, the social worker confirmed that they (and the Local Authority) would support a progression to community based unsupervised contact for PF, followed by overnight contact. The social worker accepted that in terms of the Local Authority’s risk analysis (i.e. being concerned about previous parenting and domestic abuse) there was something of a contradiction in the proposal that community contact would then move to unsupervised overnight contacts, when there was effectively no way of “policing” this, and when the Local Authority would no longer hold parental responsibility. The social worker commented that PF could collect A from school eventually, and conceded that this pattern of family time did appear to be akin to the “*start of a transition plan*”
	4. The social worker accepted that it was positive that PF’s conviction was historic, that there had been no further incidents over a substantial period of time, and that it was a positive consideration that PF could give A 1:1 care, as compared to the prospective Special Guardians who have 4 children in their care, one of whom has additional needs
	5. Although PF lived “*across town*” from Mother, the social worker accepted that there was no evidence to suggest that PF had allowed Mother to disrupt any of his contact arrangements with A throughout the proceedings, and Mother had not been “*disruptive*” in a way which made holding enhanced parental responsibility a pre-requisite to any placement with PF (though there may be other arguments to support that type of order being in place)
	6. It was a further positive that PF lived 30 minutes away from A’s school, which could stay the same and meant that A would be travelling less every day (it being approximately an hour’s journey to and from Mr and Mrs F’s house and school). A would also be closer to his medical teams
	7. The social worker told me that any transition to PF’s care would need to be carefully managed, preferably with A remaining in contact with Mr and Mrs F; the social worker did not think it was appropriate in the long-term for A to be placed under a final care order, but could see numerous benefits to A remaining under an interim care order during a period of transition to PF’s care, if that is what the Court deemed was appropriate
	8. Finally, the social worker confirmed that she had held discussions with PF who had been clear with her that he would protect A from any risk posed by Mother. The social worker explained that PF had now had sight of the report by the psychiatrist in respect of Mother’s mental health difficulties and was better informed as a result. The social worker felt that PF would alert authorities if Mother attended at his address (accepting that he had previously alerted mental health services even in circumstances where he knew that would likely lead to the children being removed from Mother)
10. PF gave evidence following the conclusion of the Local Authority case. The salient points of his oral evidence were as follows:
	1. That he and A were very close and he felt that A would learn more and be well provided for on a 1:1 basis. He has enjoyed very positive contact sessions with A, during which A has asked if he can “*go Uncle’s home”*
	2. A recognised the importance of Mr and Mrs F in A’s life, he told me that A had been with them for a year and that they were significant; it was important to PF that they have some form of ongoing contact with A
	3. When Mother was in hospital and had been unwell, A was eventually able to visit her in person at hospital. However, PF informed the Local Authority about an incident he was made aware of when Mother had attacked someone on the ward, he told me that he was concerned there would be a risk to A if that were to happen again (even if that risk were indirect)
	4. PF did not think that any contact for Mother and A should take place at his house; he told me that his home would be A’s “*safe haven”* and he did not want anything to disrupt that. Instead he suggested a neutral venue in the community and would be content for orders to be in place preventing Mother from attending at his home if necessary
	5. He and Mother keep in touch; that was largely infrequent and by text message, but there are occasions when Mother had attended PF’s place of work. PF feels that he can “*read*” Mother and can sense if she is becoming unstable or unwell – he felt it was important for A to have contact with his Mother but that it had to be “*safe and manageable”*
11. Finally, I heard from the Children’s Guardian. In summary, he told me that this was a complex case which did not have a simple welfare analysis. Although his overall position was that he felt A should remain with Mr and Mrs F, but have frequent contact with PF (a position which differed from his final analysis), the Children’s Guardian went on to make the following clear in his oral evidence:
	1. From his perspective both relationships, i.e. with PF and Mr and Mrs F, were significant for A and any plan for his long-term care needed to identify how those relationships could best be promoted with A “*centre stage”*
	2. Although he could not be sure about how A would react to a further move / change in placement, he was clear that A had demonstrated a significant degree of resilience and that any move had to be balanced, imaginative and creative
	3. For the Children’s Guardian, it was difficult to accept on A’s behalf that a positive placement should be altered because the Children’s Guardian did not have a “*crystal ball”* and could not be sure of the impact of change on A; that said, the Children’s Guardian could see a scenario whereby A could live with PF as long as the transition process was overseen by a professional
	4. During cross examination by PF’s Counsel, the Children’s Guardian conceded that this was a “*finely balanced case”* and that although his resting position was that A should remain with Mr and Mrs F, he “*would not rule out*” a move to PF’s care

Analysis

1. I am content to set out my decision in this matter followed by my reasons for reaching that determination below. I have received written submissions from the parties, their respective final positions are as follows:

The Local Authority seeks a Special Guardianship Order to be made in favour of Mr and Mrs F, with contact to PF and Mother

PF seeks A’s return to his care under a private law order, though he would not object to a care order if the Court considers this is required

The children’s Guardian now seeks for A to remain with Mr and Mrs F, but pursuant to a final care order. If I am against him on that point, the Children’s Guardian says that a Child Arrangements Order, accompanied by a Supervision Order, is the appropriate package of orders for A to remain in Mr and Mrs F’s care, with provision for fortnightly contact to PF.

1. Suffice to say that there could scarcely be a more diverse package of potential orders urged upon me by the respective parties. I do not consider that the Local Authority has made out its case that I should make a Special Guardianship Order (effectively of the Court’s own motion) to Mr and Mrs F. They have plainly done an admirable job in caring for A during the proceedings, but on the basis of the evidence I have heard I am not satisfied that this is the correct long-term placement for A. Nor am I satisfied that A should remain with Mr and Mrs F under a final care order, or supervision order. A needs security and permanence if that can be achieved, and the continued *long-term* intervention of the state is not a favourable outcome for him. In my judgment, the evidence demonstrates that there is a viable *family* placement available for A. In those circumstances, the aim of both the Local Authority and ultimately the Court, should be to rehabilitate A to his family if that is safe. This case is not without risk, but the Court is not in the business of making welfare decisions for children which are expunged of all potential risk or concern; that is precisely why evidence is often required as to what support can be offered to parents or carers who hope to look after children in the long-term, in order to determine whether their care can be made safe enough.
2. I have already made clear that when this case initially came before me for day 1 of the final hearing it had been in proceedings for 77 weeks. That is highly irregular given the statutory timescales in which care proceedings are to be concluded. That said, a significant amount of that delay was incurred in order to ensure that due process was carried out following the appeal process. The delay has not been the fault of any of the lay parties. Despite the considerable amount of time that proceedings have been in place, the state of the Local Authority’s evidence was not in order by the time this matter came for final hearing. That is regrettable. Ultimately however, the Court must be in a position to make proper and appropriate decisions for the subject children who come before it. I am prepared in this case to take the unusual step of leaving the proceedings open, during which a transition plan is to be carried out whereby A will return to the care of PF under an interim care order. For the reasons I will go on to set out, I find that this is the most appropriate placement for A in the long term. I consider it to be clear that such a transition requires the Local Authority to retain parental responsibility, with all the consequent duties and responsibilities they will retain to A, to ensure that he receives the most support possible whilst he returns to PF. I will make consequential directions below.
3. I am satisfied that a return to PF’s care is the best welfare outcome for A for the following reasons:
4. It is not possible for A to return to his Mother’s care, she having already been ruled out as a realistic option for him. In terms of his relationship with PF, I am more than satisfied that this is the closest relationship to what might be termed “direct family” for A. Even the term “direct family” is something of a misnomer. The evidence is that A lived with PF for three years, has maintained regular contact with him since he and his Mother separated, relates to him as “Uncle”, continues to enjoy a positive relationship with him now, and understands that PF is someone who cares for him and is a regular presence in his life. Although their relationship has ended, it might be more accurate to refer to PF as a step-parent figure, although even that “categorisation” is not of much assistance. There is a real danger that in trying to “pigeonhole” the important people in children’s lives, an unrealistic portrayal of a nuclear family will be portrayed. The fact is that PF is a very significant person to A and his potential to care for A in the long term should have been seen in that light.
5. Having satisfied myself that PF is a family figure to A, who has been committed to him throughout, I have gone on to consider any risks posed which may prevent a placement with PF. For the avoidance of doubt, I reject the evidence of the independent social worker that the “evidence” in respect of the Local Authority’s concerns around previous relationships and parenting is “compelling”. Not only have the Local Authority taken the view that it is unable to establish any of those concerns as fact because of a lack of evidence (and that enquiry in any event a disproportionate exercise), but more importantly I have not heard evidence about any of those “concerns”. The domestic abuse conviction which resulted from the relationship PF had with his ex-wife is significant. It should not be made light of. But there are other factors in weighing that risk which must be analysed. The conviction is now somewhat historic, PF has had further relationships without issue and there has been no further police involvement or findings made. PF accepted his conviction. The fact that he disputes the other (untested) allegations is not representative of a failure to accept concerns on his behalf. That view presupposes that those allegations have occurred as a matter of fact. If it were the case that every person whom allegations were made against was forced to accept the allegations without further enquiry, there would be little point in the Court ever examining those allegations.
6. It is obviously important to consider the impact of change on A. It would be churlish to suggest that there will be no impact on him whatsoever in moving from Mr and Mrs F’s care. He has been there for a year now and they have cared for him to a very high standard. A’s additional needs make routine and predictability all the more important for him. However, the evidence is that A has managed change before well. Continuing contact with Mr and Mrs F, as well as a carefully planned transition rather than one based on necessity because of an urgent / emergency situation, will mitigate the risks to A in his placement being altered. I am satisfied that even if there is short term disruption for A he will be able to cope with this change overall. In addition, A will be able to remain at the same school which has been a significant support for him and a stable fixture in his life during this interim period. The school should be heavily involved in supporting A’s transition where possible. The Court’s decision now is intended, absent any very significant change, to be a decision which lasts for the remainder of A’s childhood. Any short term disruption to A has to be seen in that light.
7. As I have mentioned already, it is a smaller but nonetheless relevant consideration that A’s school can remain the same. That mitigates against any immediate disruption which A may feel. His journey to school will also be less onerous when travelling from PF’s home. That is not a determining feature of my decision, but it is a relevant consideration nonetheless.
8. In both potential placements I am satisfied that it is of course positive that A can continue to have contact with his Mother. Having heard PF’s evidence on this point, and based on the fact that he has previously reported his concerns about Mother, that there is no evidence of Mother disrupting PF’s contact or his current placement, and that there is evidence Mother is currently stable and compliant with her medication, I am satisfied that PF is able to manage the risks that Mother would pose to A. It was clear having heard PF’s evidence that he understood why it would not be advisable initially for A to have contact at PF’s home with his Mother. Any contact will need to be managed carefully, probably with the assistance of professionals at first. PF’s positive working relationship with professionals bodes well and I am confident that he would continue to engage with the Local Authority in order for Mother’s contact to be appropriately dealt with.
9. It seems to me that there is a significant benefit to A in having a placement with PF which is “one on one”, rather than there being other children present in the home. I accept that A has forged relationships with the children currently in his foster placement, and altering his living arrangements with them may represent a loss to him. However, that is not a loss which is so significant that it should prevent a placement with someone who is akin to family as long as that placement is safe. A’s established relationship with the other children in the placement with Mr and Mrs F is all the more reason for A to continue to have contact with his foster carers and their family wherever possible.
10. For the avoidance of doubt, I do not accept that the status quo argument in this case is so significant that it prevents any change taking place for A. There are many cases in care proceedings which sadly go on to last much longer than ideally they should. The fact that A has been lucky enough to enjoy a nurturing and loving placement, without numerous placement moves, is not sufficient to prevent the Court altering that arrangement if it is in A’s best interests in the long term to do so. The evidence being that A is resilient and can cope with change, despite his additional needs, is clear.
11. I accept that it has not been possible to obtain information from A’s treating paediatrician. A recent appointment had to be rearranged because it was due to take place after school and would not have allowed the foster carers sufficient time to travel to the appointment before it was far too late for A to be out of the house after a long day at school. Even though I do not have up to date information available about A’s additional needs, I am satisfied that PF has been assessed as capable in caring for A. PF’s parenting ability has not been called in to question. He has undertaken a number of additional courses in order to educate himself about children who have autism and he was the person who identified A’s current school provision as appropriate and secured a place. A’s school will be well versed in educating and offering pastoral care to children with his diagnosis. I am satisfied on the evidence I have heard that PF would continue to engage with the school appropriately.
12. That is the judgment of the Court.

Recorder Henry

10.11.2023

Representation

Lincolnshire County Council: Gareth Frow (counsel)

Mother: Michael Masson (counsel) instructed by M & B Law

PF: Helen Compton (counsel) (7BR), Kitty Geddes (counsel) (7BR) instructed by Chrystal Theofanous, Sills & Betteridge

Guardian: Gaynor Hall (counsel) instructed by Bridge McFarland