Case No: BH21C00340

IN THE FAMILY COURT AT BOURNEMOUTH

Deansleigh Road
Bournemouth
Dorset
BH7 7DS

Date: Thursday, 15 April 2021

Before:

HIS HONOUR JUDGE SIMMONDS

- -

Between:

Bournemouth, Christchurch and Poole Council **Applicant**

- and -

M (A Child) **Respondents**

- -
- -

MR ANTHONY HAND for the **Applicant**
MS VANESSA COWLARD for the **First Respondent**
MR GARETH BISHOP for the **Second Respondent**
MS DEBBIE LASENBY for the **Third Respondent**

- -

JUDGMENT

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HIS HONOUR JUDGE SIMMONDS:

1. M is a little boy, born on 8 February 2021. On 27 March 2021, he was presented at hospital. He was found to have a fractured right femoral shaft and also a right distal femoral metaphyseal corner fracture. Further injuries have also been discovered. Those will be the subject of further expert assessment and in due course a finding of fact hearing. The Parents both accept that they had the care of M and both accept that they are not in a position today to care for him in light of those injuries. They accept that the interim threshold has been met.

2. The Local Authority, in pleading this case, set out who they say are on the list of personal who could potentially be in the pool of perpetrators. It is at paragraph 11 of their threshold statement, dated 30 March, and says, "Parents, Maternal Grandmother, and Maternal Aunt".

3. On 1 April 2021, this matter became before HHJ Williams. He made an Emergency Protection Order. He then listed the matter to come back to him on 9 April 2021. He clearly had a grasp of the case and the issues before him. In his Order he says this;

> "Upon the court having heard submissions from the parties in respect of M's placement and whether there should be a placement with the Paternal Aunt, Ms H, which is opposed by the Local Authority for the reasons set out within the viability assessment, and because the cause of M's injuries and the identity of any perpetrator is unknown, and upon the parents having averred that Ms H has never had any unsupervised time with M and Ms H having indicated the same to the Local Authority and the

> Guardian, the Local Authority recording that they cannot corroborate that position, noting "it is self-reporting", and upon the court having heard submissions considering it can see no reason why M cannot be placed with his Aunt, Ms H, subject to the practical arrangements, and if the Local Authority disagree the court would have made the placement either under section 38(6) or an Interim Child Arrangements Order, the court not being in a position to do so today, as the Aunt had requested some more information and needs to make enquiries in respect of her work."

4. As a result of HHJ William's order the paternal aunt made those enquiries in respect of her work, but I am clear the Local Authority have singularly failed to provide the information that was required by the learned judge, as I will shortly set out.

5. The Local Authority maintain their position today with regard to the Aunt. It appears that a manager, who has never met or spoken to the Aunt has three major issues with regards to this that were fleshed out for me by Mr Hand on behalf of the Local Authority.

6. The first point is that she is on the list of potential people that could be placed in the pool of perpetrators. They say that the police enquiries are at an early stage, that although she has not had any unsupervised contact since 14 March 2021, the position of the Aunt and the family are all "self-reporting". Mr Hand accepts that there is no evidence whatsoever that she has had any unsupervised contact. At best, it is a suspicion, a worry, but with no evidential basis. It is a "we have a feeling there is something going on". To hold that position would mean that in every case where a viable family placement is an

option a Local Authority could oppose it without any evidential basis. This is a direct violation of both the family and the child's Art 8 rights and has no foundation in law.

7. I have heard from Ms H. I remind myself of the local authority assessment of her, that of a woman, who appeared to be "strong, genuine and willing to work with the Local Authority". She tells me that she has had no contact since 14 March 2021, never had any unsupervised contact, that the contact on 14 March was with other members present, that perhaps before that the contact was on the 5th and was a lift with the Mother, and there is no evidence whatsoever to contradict that. The idea that evidence that is "self-reported" is unreliable has no basis in law. There is no evidence that Ms H could possibly be on the list, and I accept that.

8. Secondly, dynamics and ability to protect. I asked Mr Hand, frankly, "Where do I find the evidence for that?" He accepted, "There is no evidence for that. If there is no evidence, you cannot rely upon it." Indeed the evidence that I have is that the paternal aunt is more than capable of standing up to her brother.

9. I, therefore, have two areas of concern that I am told has been robustly put by an Area Manager that has no evidential basis.

10. Thirdly, the Aunt has had little time to think about the ramifications, and also the effect of a placement on her and her family. I accept that, but there is a caveat to it, and it is this: what support is this Aunt going to be given by the State in respect of looking after this child because, of course, the child is with

a foster carer, which this Local Authority are funding and, of course, will be providing the normal fostering support, as they must do.

11. HHJ Williams, at paragraph 14 of his order, (iii), said this:

> "(iii) In the event that the court places M with Ms H, either under a section 38(6), if possible, or an Interim Child Arrangements Order, details of the support, which will be available to her, including any financial support and annexing the proposed written agreement it would enter with her."

12. The Local Authority have failed to provide that information. They have drafted a written agreement, but failed to share or discuss it with the paternal aunt, the person who it is about. The Local Authority have failed to comply with paragraph 14(b)(iii) of the order of HHJ Williams. Details of any support to include financial support has not been set out. They could not tell me, even now, what support would be given, what the process would be, or indeed what the emergency funding would be. They do not know what start-up items she would need. They, therefore, have not done what the learned judge required.

13. In *Re L (A Child)* [2013] EWCA Civ 489 at paragraph 53, the court dealt with the purpose of an Interim Care Order, and it said this:

> "53. …to ensure that the child is kept safe in the period prior to the court's full consideration of the local authority's care application."

14. Children, if at all possible, and by that I mean when it is safe and in their welfare to do so, should be raised within their family – their birth family. Removing children to a foster carer should always be seen as a draconian and

last resort. Many times this court is told, "Well, we do not know family members", rather than, "The child cannot be placed with these family members because of these concerns", i.e. what the balance is. We know that the Public Law Working Group reform very much looks at Local Authorities working more with families and with the real emphasis that children, if at all possible, should be with the family, i.e. referring back to what has been, in my judgement, the law for many years.

15. Even when the interim threshold criteria is met, the first stage pursuant to section 38(2), the court goes on to the welfare stage, reminding itself that M's welfare is the court's paramount consideration. In *Re C (A Child)* [2019] EWCA Civ 1998, the Court of Appeal helpfully summarised the law in respect of Interim Care Orders when the evidence is incomplete, there to regulate matters for the children's safety, that removal from parents is an interference with the right to respect of family life and, of course, that is why under Article 8 if a placement within the family is available, it should be first and foremost in everybody's mind. Removal is a sharp interference with family life. Separation can only be granted when necessary and proportionate and, of course, that is to include if there is any less radical option available to the court, reminding us always that the high standard of justification must be shown by Local Authorities seeking the order to separate requires it to inform the court of all available resources that might remove the need for separation. In my Judgement this extends to what support is available to allow the child to remain in the birth family. This then allows the court to undertake the requisite balancing exercise.

16. I appreciate that all I have in respect of the Aunt is an interim assessment, but what I have from that interim assessment tells me that this is a placement that would, and could, work. The Local Authority have no concerns with regard to her that I can see. As I have said, the report tells me that she has got two children that appear, on my reading, to be well cared for. She has had no involvement in respect of herself to the police or the Local Authority. The two matters that I see with regards to calling the police on her brother, and being the victim of domestic abuse, do not, in any way, rule her out as a carer. Indeed, in my judgement, the evidence is that on both occasions she acted appropriately, protectively and used the protective services available. Being a victim of a domestic abuse incident does not rule a person out as a carer and I cannot see in respect of that how that is or could be a concern for this local authority.

17. Secondly, when her brother misbehaved, came home drunk and would not behave, she called the police on him, showing that she is able to do that and stand up to him and take appropriate action.

18. Her children are doing well. There are no concerns and they are not known to the local authority. The school have not reported any concerns. She was described by the Local Authority in their assessment as "strong and genuine, and willing to work with the Local Authority". She works for XXX, 16 hours per week. Her home is "immaculate", was the term used.

19. On the evidence before me I have an Aunt who is strong and genuine, who is willing to work with the Local Authority, who has two children that are thriving in her care, who is not known to the police, who is not known to the

Local Authority, who keeps a very tidy home, "immaculate" in the words of the assessor. A woman who when her brother misbehaved, she acted appropriately; a woman who has given evidence that she has not had any contact with M where third parties have not been present. There is no evidence to counter that.

20. So, there is no evidence in respect of her possibly being on "the list", and no evidence in the second point with regard to dynamics. Indeed, in my judgment, the evidence is all to the contrary.

21. I am very clear, therefore, that M should be placed with his Aunt, and that should be placed as a matter of urgency, and I am going to order that, pursuant to section 38(6). However, I am not going to order it until next week; I am going to require the Local Authority to do what HHJ William's required them to do, namely to file a statement, setting out in detail, and specifically, the support that is going to be given to this Aunt, both in respect of practical arrangements, and also in respect of financial arrangements. Further to share and discuss that information with her to include the written agreement.

22. I would expect the Local Authority would want to provide her with assistance in going through that and to assist her in understanding and provide legal advice. I am going to ask for the Local Authority to tell me what support is given to M's foster carer and what support could be given to this lady. If they cannot tell me, then they are going to have to explain to me why they would not provide me with that basic information.

23. I will list the matter next week to prevent any further delay. I must say that I am concerned that this information is missing today as ordered by the Court

and the failure of the local authority to engage with the aunt to assist her in making the decision.

24. I am concerned that the Local Authority have not provided this basic information, which can, in my judgement, scupper the placement. Indeed by failing to comply with the Court order they made the placement impossible.

25. I have read carefully the analysis of the Guardian, which I adopt in full, together with her assessment of placement.

26. On behalf of the child, an email was sent to the Local Authority, at 11:21, today. In my judgment, it is an extremely helpful email. It talks about the Aunt being worried about M being placed with her, because "She is lacking information to enable her to say if she could have M stay". She said, you will see from the Guardian's position statement, that, "There is an issue about any payments that could be made to XX, fostering payments, set-up costs and nursery care, if she cannot use her existing childcare arrangements with her mum", and of course it must be remembered that that will be a requirement of the Local Authority, that she cannot use her mum. She could, of course, use her mum for her own children. The Local Authority have no jurisdiction there, but she cannot use in respect of M. That is the Local Authority making that condition, so the Local Authority will need to address it, in my view. "XX does not know what will be available and understandably would need to know what it would cost her to care for M, what financial support is available and what support or assistance she could have. She needs to know about what her commitment would be in terms of facilitating contact, i.e. the times. At this point in time, no one has sent her the draft working agreement", and then

goes on about the fact that it is in the court papers and goes on to say that "the financial support is essential". That email, in fact, should be read into this judgment. I found it a really helpful document about what is going on.

27. The Local Authority disagree with HHJ Williams' order and the possible placement with the aunt. By failing to comply with the Court order, failing to provide her with the basic information necessary and failing to engage with her to make the necessary decisions they have in reality used their corporate might to scupper the placement and the possibility of that today. That cannot be acceptable.

28. In *Re W (A Child) Adoption Order Leave to Oppose* [2013] EWCA Civ 1177, the then President, at paragraphs 51 and 53, said this:

> "51. I refer to the slapdash, lackadaisical and on occasions almost contumelious attitude which still far too frequently characterises the response to orders made by family courts. There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with *to the letter* and *on time*. Too often they are not. They are not preferences, requests or mere indications; they are orders: see *Re W (A Child)* [2013] EWCA Civ 1227…"

29. It goes on further, at paragraph 53, saying this:

> "53. Let me spell it out. An order that something is to be done by 4 pm on Friday, is an order to do that thing by 4 pm on Friday, not by 4.21 pm on Friday let alone by 3.01 pm the following Monday or sometime later the following week. A person who finds himself

unable to comply timeously with his obligations under an order should apply for an extension of time *before the time for compliance has expired*. It is simply not acceptable to put forward as an explanation for non-compliance with an order the burden of other work. If the time allowed for compliance with an order turns out to be inadequate the remedy is either to apply to the court for an extension of time or to pass the task to someone else who has available the time in which to do it."

30. In *A Local Authority in v DG* [2014] and *Re A (A Child)* [2014) and *Re W (Children)* [2014], the law is clear. As Keehan J said in *Re HU v SU*, at paragraph 48:

> "48. It must now be clear and plain to any competent family practitioner that:
>
> i) court orders must be obeyed;
>
> ii) a timetable or deadline set by the court cannot be amended by agreement between the parties; it must be sanctioned by the court; and
>
> iii) any application to extend the time for compliance must be made before the time for compliance has expired."

31. In that case, of course, Mr Newton QC, sets out the provisions of the Civil Procedure Rules and how he argued they applied to Family.

32. It is in my Judgment also simply not acceptable for a Local Authority to fail to provide essential information or take those steps to frustrate the Court process.

33. The reason I cannot place M today with the Aunt is because of the Local Authority's failure to comply with what was expected of them by HHJ Williams last week. I make it plain that that is why. I find that absolutely unacceptable. I do not know the reasons. The Local Authority have spent far too much time trying to find evidence that does not exist and less time complying with a court order. I appreciate the entire team involved in this case – all five of them – are new to the Local Authority but this cannot be an acceptable reason.

34. I am going to require, therefore, the Local Authority to set out and comply fully with the order of HHJ Williams. I am going to bring this matter back for an urgent hearing next week to consider that. I am going to require a senior person from the Local Authority to attend and explain why:

    i) The order of Williams HHJ was not complied with.

    ii) What any issues that arise from that are.

    iii) How we can ensure this does not happen again in this matter.

I must also put the Local Authority on notice as to costs thrown away as it seems to me that I am going to have to list this matter for a hearing next week for reasons only, and solely, as a result of their inability to comply with an order. They are therefore on notice as to why a costs order should not be made against them for their complete failure to do what was asked.

(End of Judgment)