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Neutral citation: [2022] EWFC 212 (B)

IN THE CENTRAL FAMILY COURT

No. ZC21C00366

First Avenue House
42-49 High Holborn
London, WC1V 6NP

Tuesday 6 September 2022

Before:

HER HONOUR JUDGE SAPNARA

(In Private)

B E T W E E N :

Mother, S

Applicant

- and -

(1) LONDON BOROUGH OF GREENWICH

(2) Father, M

(3) Paternal Cousin, R

(4) A CHILD, T

(via his Children's Guardian)

Respondents

MS M HUGHES (instructed by H E Thomas & Co) appeared on behalf of the Applicant.

MS K LAMONT (instructed by Legal Services, London Borough of Greenwich) appeared on behalf of the First Respondent.

MR D WARD (instructed by J Benson Solicitors) appeared on behalf of the Second Respondent.

MISS L COOKE (instructed by Family Law Group) appeared on behalf of the Third Respondent.

MS D PICCOS (Solicitor Advocate, TV Edwards Solicitors & Advocates LLP) appeared on behalf of the Children's Guardian.

J U D G M E N T

JUDGE SAPNARA:

- 1 These proceedings concern a little boy T who is now aged 4 years and 10 months. His mother is S. His father is M. The family is of a white British background.
- 2 There was a long history of Children's Services' involvement with the family across several local authorities due to significant concerns surrounding the parents' capacity to ensure the safety and well-being of their children. T was made subject to care and placement orders granted in favour of the London Borough of Greenwich which are dated 3 May 2018. The care plan for T was one of adoption.
- 3 The concerns which established the threshold criteria for the making of the final care order centred on the domestic violence in the parental relationship; parental substance misuse; untreated mental health; criminality; the parents' chaotic lifestyle; as well as the mother's inability to protect T from the father. Assessments completed within proceedings concluded that the parents lacked insight into the safeguarding concerns.
- 4 The mother was identified as a vulnerable young mother who could present in a childlike manner. During the care proceedings, T initially lived with S in a mother and baby foster placement. However, a parenting assessment was negative, and the mother tested positive for use of cannabis during the proceedings.
- 5 After the conclusion of the care case, the child was placed in July 2018 with his father's paternal cousin R as an approved friends and family foster carer. She put herself forward as a potential carer for T and underwent a full connected persons assessment. She was positively assessed as special guardian for T, in July 2018.
- 6 In September 2018, at the age of 10 months, T was placed in R's care under a Regulation 24 arrangement. The plan had been for R to obtain a special guardianship order for T. However, due to problems in the family during 2019/2020 regarding contact and other matters, R confirmed that she did not wish to apply for a special guardianship order for T, and, instead, she wished to be his long-term foster carer under the final care order. It is not disputed that the child settled in R's care, that there is a good attachment between the child and R, and that she has provided very good care for him. She is not married and does not have children, and therefore T is the only child living with her. The local authority made an application for the revocation of the placement order which was supported by the guardian and the mother. An order to that effect was made by the court on 29 January 2021.
- 7 Since the conclusion of the care proceedings, T has enjoyed regular contact with his mother which has progressed from contact being supervised by the maternal aunt, to unsupervised overnight staying contact at weekends, once a month. Direct contact stopped for a period because of the Covid 19 pandemic. However, it was increased to monthly contact in April 2021 following revocation of the placement order.
- 8 The maternal aunt has assisted with communication between the mother and R. T had some direct contact with his father, but this was disrupted both by the Covid pandemic as well as the father's incarceration in prison. The father last had contact with the child in January 2020. He has three other children. The father has not engaged consistently within these proceedings, but he has attended all four days of this hearing and given evidence. He

wishes to re-establish contact with T and to develop a relationship that progresses to direct contact.

- 9 The local authority undertook a risk assessment which was said to have been completed in October 2021. The assessment report was only produced during the course of this hearing, and, in fact, it appears to have been completed in September 2021. The father was assessed as continuing to pose a high-risk. The report did not consider direct contact to be in the child's best interests and recommended only letterbox contact twice a year. It concluded that direct contact would be meaningless between the father and the child, which is something that the father takes issue with.
- 10 Contact with the wider extended family members has been less consistent because of disputes within the family. These disputes also had the effect of influencing R's decision not to pursue a special guardianship order following her positive assessment. There remain significant levels of discord between the paternal family members. Nonetheless, the mother and R, to their credit, have engaged in some limited mediation with a view to improving relations between them.
- 11 The mother made her intention to apply for a discharge of the care order known to the local authority in or around April 2021, although that has always been her intention and she has made clear throughout that she intends to make changes, in order to have the child returned to her care. As I understand it, R became aware of the mother's plans at a LAC review meeting in or around May 2021, although the mother had intimated her intentions to social workers prior to that. Following the mother's application, R also sought a special guardianship order in her favour.
- 12 T has two full older siblings, U who is aged 8, and V who is aged 7. They live with their maternal aunt under special guardianship orders made in February 2016 which were made following care proceedings brought by the London Borough of XXX. The mother has a good relationship with her sister and enjoys regular and flexible unsupervised contact several times a week with U and V.
- 13 By an application dated 26 July 2021, the mother sought to either discharge the care order and to have T rehabilitated to her full-time care, or, in the alternative, she applied for gradual increased contact moving to unsupervised contact, and also staying contact. In her application, she stated that she had not been in contact with the father since July 2020 and that his current whereabouts were unknown to her. She had undertaken work, including completing the Freedom Programme, during 2021. She had undertaken eighteen sessions of counselling and had recently moved into a privately rented one bedroomed flat which she said was suitable to accommodate T. Therefore, she asserted that there had been a material change in her circumstances since the full care order was made. In her application, she stated that contact with V and U took place once a month for three hours supervised by her sister. However, by the time of the hearing before me, it is clear that matters have progressed since then, to regular flexible contact, which has been unsupervised and has also included staying contact.
- 14 Following directions given in these proceedings, both the mother and R have undergone assessments. The parenting assessment of the mother is positive and the assessment of R as a special guardian for T is also positive. Both were undertaken by social workers employed by the local authority.

- 15 The mother has undergone two hair strand tests for cannabis usage and both of those are negative. Furthermore, she has been assessed by the psychologist Dr Dowsett, who had undertaken assessments of her previously.
- 16 There has been significant delay in this case proceeding to a final hearing since the local authority filed its final evidence on 24 November 2021, in which it proposed that T should be returned to the care of his mother under a six-month supervision order. That remains the local authority's recommendation and care plan. The mother's application for a discharge of the care order is supported by both the local authority as well as the Children's Guardian. The local authority proposes a supervision order for six months, which is supported by the guardian, actively supported by the father and not opposed by the mother. During the course of the hearing before me, there has been quite a bit of discussion as to whether or not the duration of the supervision order should be for six months, nine months, or twelve months and I think it is fair to say that no party expresses any strong view about any of these options.
- 17 R seeks a special guardianship order in her favour in respect of T and agrees to the regular contact he enjoys with the mother continuing, including overnight staying contact.
- 18 All parties are agreed that the care order should be discharged. The central question is whether the child should be rehabilitated to the mother's care or remain in the care of R. It is not disputed that, either way, there would be extensive contact for each non-resident adult. Whether or not the child returns to the mother's care or remains in R's care under an SGO, the guardian recommends that there is a child arrangements order in place, setting out the spend time contact arrangements, and if the child returns to live with the mother, that there should also be a lives with order to that effect.
- 19 The local authority's care plan, at the outset of the hearing before me, had been that the father should only have twice yearly letterbox contact with T facilitated by the local authority. In light of the evidence which has emerged during the course of this hearing, and evidence that T has been asking about his father, and also given M's now active engagement at this final hearing, the care plan has been amended to include commencement of the proposed indirect contact and a risk assessment of the father to consider whether or not there can be some form of direct contact, perhaps starting with video contact. No party opposes the amended care plan. I asked the local authority to consider supporting the family by supervising any direct video or face-to-face contact between the child and the father in the future. This is what is expressly recommended by Dr Dowsett, and also by the child's guardian. The local authority has expressed itself willing to do so.
- 20 The local authority proposes that the child is moved to the full-time care of his mother under a careful transition plan dated 22 August 2022 and that the move to her care should take place very soon, over the next month or two. This is set out in the social worker's written evidence.
- 21 For the purposes of my decision, I have read the bundle of documents provided, and further documents as and when they have been produced during the course of the hearing. I have heard the evidence of witnesses and oral submissions on behalf of each party over the course of three days.

THE LAW

- 22 I have taken into account the relevant law applicable to the facts of this case. I have had regard to the specific case authorities advanced on behalf of the parties, in particular *Re B (A Child)* [2009] UKSC 5 which sets out, *inter alia*, that the court's consideration should not be rooted in the presumption of a child being placed with a biological parent but, rather, following consideration of what is in the child's best interests. On behalf of the local authority, my attention has been drawn also to the authority of *Re TT (Children) (Discharge of Care Order)* [2021] EWCA Civ 742.
- 23 The applicable legal principles can be distilled and summarised as follows. On an application to discharge a care order, I may discharge the order or replace it with a supervision order, in which case, there is no requirement for the threshold criteria, pursuant to s.31(2) of the Children Act 1989, to be crossed. As the decision concerns a question of the upbringing of the child, T's welfare is my paramount consideration. In considering, whether or not to vary or discharge the order, I must have regard to the factors contained in the welfare checklist, reminding myself this is not an exhaustive list. I also need to consider whether to make an order, and I must not make an order unless to do so would be better for the child than making no order at all.
- 24 The Art.8 rights of each party, pursuant to the European Convention on Human Rights are actively engaged in the decisions I am asked to make. An aspect of this is that public care of the child should, in principle, be regarded as a temporary measure to be discontinued as soon as circumstances permit, and the positive duty to take measures to facilitate family reunification must be balanced against the duty to consider the best interests of the child. Throughout my analysis of the evidence and in the conclusions that I have reached, I have borne in mind and given appropriate weight to the welfare checklist criteria contained in s.1(3) of the Children Act 1989, and the overriding principle that the welfare of the child is my paramount consideration. I have also taken into consideration the presumption contained in s.1(2A) that, unless the contrary is shown, the involvement of the non-resident parent in the life of the child will further his welfare. Much of the law relating to discharge of a care order is also applicable to the application for a special guardianship order.
- 25 I have had regard to the burden and standard of proof which applies. The burden of proof rests on any party seeking to establish a fact, and the standard of proof which applies is the civil standard; that is to say the simple balance of probabilities as set out in *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 141. In reaching any findings or conclusions in respect of any matters in the course of my judgment, I have borne in mind that burden and standard of proof.
- 26 I have also given myself a direction in relation to my approach to the evidence of the lay witnesses which is derived from the leading authority in criminal proceedings, (*R v Lucas* [1981] QB 720, [1981] 3 WLR 120), as adapted in subsequent decisions relating to family proceedings such as *Re A (A Child) (No. 2)* [2011] EWCA Civ12 and *Re H-C (Children)* [2016] EWCA Civ136, [2016] 4WLR 85. The essence of that legal direction is that I must be mindful that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress and the fact that a witness has lied about some matters does not mean that he or she has lied about everything.

ANALYSIS AND CONCLUSIONS

- 27 The mother's case is that she has made significant changes since the conclusion of the care proceedings. She highlights that she has consistently reported her intention to make changes to enable T to be returned to her care; that she has demonstrated such changes; and that it is now in T's best interests for him to be returned to her full-time care.
- 28 The mother did, indeed, end her relationship with the father in July 2020. There is no dispute about that. She initially moved into a refuge and has progressed to securing her own accommodation. She has stopped using cannabis, as evidenced by the results of two hair strand tests. She has completed a parenting course, the Freedom Programme, and engaged with counselling. She has worked well with the charity Pause, and other professionals. In the interests of transparency, I informed all parties at the outset of the hearing that I am a trustee of Pause, which is a charity that helps women to pause and take control of their lives rather than experience further pregnancies which result in care proceedings. No party objected to me hearing the case. For the avoidance of any doubt, my involvement with Pause in no way affects my approach to this case, my analysis of the evidence, nor any conclusions I have reached. I have reached the conclusions that I have by applying the relevant law to the evidence placed before me.
- 29 I have read the expert report of the consultant clinical psychologist Dr John Dowsett who has met with, and assessed, the mother. He considered it significant that the mother commenced a relationship with M when she was 16 and in a vulnerable situation with regards to her own family. Following receipt of support and counselling in the past couple of years, she has felt able to break away from M, despite previous separations and an on/off relationship for about ten years, in respect of which she has said she was scared for her life at times and described patterns of emotional abuse and coercive control. The mother has undertaken individual counselling and completed two versions of the Freedom Programme, which is a psychoeducational course for women around domestic violence and healthy relationships. The mother is to be commended for the work that she has undertaken.
- 30 She reported to Dr Dowsett that she recognised in the past she had been under-assertive as a parent, in part because of her personality and partly because of her own guilty feelings about her children's situation. She recognises that she needs to be more robust and not continue to be a "pushover", as she termed it, either for the children or other adults. Dr Dowsett stated that it was clear the mother recognises the need to keep her distance from M. She has engaged well with a variety of recent interventions, and she was able to evidence an understanding of the dynamics of abuse and coercive control in her relationship with the father. The mother expressed her relief that she would not have to deal directly with the father in the future.
- 31 Dr Dowsett concluded several matters. He said the mother displayed a clear and coherent understanding and recognition of the risks that M posed. She has engaged positively with the Freedom Programme and counselling, and she has a much clearer perception of her difficulties in the past. She recognises the impact the father's abuse has had on herself and the children. She acknowledges that the two older children had been affected particularly by hearing rows, tension, and arguments between the parents. She seemed attuned to how the children present, and she was able to identify a number of ways in which the children can be affected by their exposure to domestic violence.

- 32 S, this expert opined, had decisively separated from M and does not harbour any residual feelings or ambivalence about continuing the relationship. In the past, she was emotionally vulnerable and lacking a sense of inner security, he says, which caused her to be under-assertive and probably over-compliant to other adults as well as in the primary coercive control she experienced from M. She has undertaken work that has enabled her to emotionally separate from M and she now has the support of both family members and professionals, and she knows that she has a life away from him and is able to protect herself. Dr Dowsett opined that a reconciliation with the father was less likely now, as a result of the mother's progress, insight, and engagement with services.
- 33 Dr Dowsett says that there are now reasons to feel optimistic about the mother's capacity to keep the children safe and to manage any risks from the father, particularly in the context of ongoing contact. She has benefited from, and developed, a support network around herself which includes not only professionals but also her sister, her brother, and his partner. I note that both the brother and sister attended court on the first day of his hearing to support the mother. Dr Dowsett cautioned against the mother being placed in a position where she would have to handle any direct contact between the father and the children. The mother was considering obtaining an injunction from the father and Dr Dowsett considered that was probably a safe and appropriate way forward. I have not been presented with any evidence or submissions in relation to any such potential application and do not consider it necessary to make such an order.
- 34 Dr Dowsett concluded that the mother does not have any problems with the use of street drugs; this was of course reflected in the hair strand test results. There is no other evidence of any established problematic history of alcohol or substance misuse. She is genuinely motivated to do things differently, and to protect herself and the children, says Dr Dowsett. She does not require any further psychiatric treatment but should consult with her GP in managing any vulnerability to low mood or anxiety going forward, including a review of her current antidepressant medication. She does not present with any marked symptoms of anxiety or post-traumatic stress disorder. No further specific psychological therapy was recommended by Dr Dowsett at the present time.
- 35 I fully accept that expert evidence which has, in any event, been unchallenged in these proceedings. The expert's analysis and opinion are evidence based. It is clear from the evidence that I have heard and read that the progress made by the mother and the timescales within which she has made the changes have been significant and, to an extent, not really anticipated by anyone. As I say, the mother is to be commended for the sheer hard work she has put in and the determination she has demonstrated, all of which has served to improve her own life, and is ultimately also to the benefit of her children.
- 36 It has been invaluable to have had the evidence and input of the guardian, Ms Jane Paxton, as she is not only an experienced guardian but was also the guardian in previous proceedings relating to the children of the family. Therefore, she knows the family and the case well and her evidence is not one of a snapshot opinion. Her final analysis and recommendations report is dated 24 August 2022. Similarly, the social worker is well acquainted with the facts of the case and the family members, as she has worked on, and remained allocated to, the case for approximately the last four years. It has been reassuring to hear from her that regardless of the outcome of the applications before me, she will remain involved, the child will continue to be treated as a Child in Need and therefore subject to a plan, and that the social worker will be a point of contact, providing assistance and support going forward.

- 37 The observations and conclusions reached by Dr Dowsett of the improvements made by the mother are echoed by the independent observations of the guardian, and also by the allocated social worker in their own interactions with the mother. I have no hesitation in accepting the collective evidence of the professionals and expert in the case, that the mother has made significant changes and developed insight into her past difficulties, and that she has demonstrated a genuine commitment to maintaining those changes.
- 38 The tenor of that evidence is reinforced by my own assessment of the mother in the witness box. She was calm, clear, and considered in the evidence that she gave. She was thoughtful and reflective, and her evidence was consistent and candid. She was entirely respectful of the significant role of R in T's life and expressed what I considered to be her genuine and heartfelt gratitude for that, and a commitment to ensuring that regular and meaningful contact takes place in the future between T and R, if T is returned to her care. The father expressed similar gratitude and acknowledgement of the contribution that R has made to T's life.
- 39 The mother did not shy away from articulating some of the difficulties that she has encountered in trying to set up contact. She expressed her fear that if R were to acquire a higher form of parental responsibility, which would be conferred by the granting of a special guardianship order, that R may exercise that parental responsibility to the exclusion of the mother which might make negotiations over dates and times and duration of contact protracted and difficult. The mother feared that it might lead to a diminution of her contact with her child.
- 40 The guardian described M as a particularly challenging individual who has his own issues of mental health and possible drug use. Given the history of domestic abuse between M and the mother, the guardian recommends that if at any time there was to be any form of contact between the father and T, neither the mother nor any family member should supervise the contact and that it should be done via the local authority instead. During the course of this hearing, there has been the suggestion that either R or the mother's sister might be able to facilitate contact to the father but the professional and expert evidence, which I accept, is against that. The guardian was of the view that M's request for direct contact is not reasonable at this stage given, by his own choice, he has not had any contact for a considerable time. She was also concerned in her written report that M could be asking for contact to gain access to S. I agree with the guardian and accept that, at this stage, direct contact between the father and the child is not realistic in terms of the welfare best interests of the child.
- 41 The father tells me that he cannot read or write and therefore has difficulties with indirect contact. I am not entirely clear as to whether or not that is the true position, given that he was scrolling through his phone, during the course of parts of the evidence. When I asked him about this, he claimed that he was following the written evidence and could read and recognise words in the relevant document while he was hearing witnesses give oral evidence. There were a few short verbal interjections from the father and animated responses by him to some parts of the evidence with which he disagreed, but he did listen and comply when I asked him to refrain. He has otherwise participated entirely appropriately throughout the hearing and was engaged in the issues that were raised.
- 42 He informed me that due to some health-related issues, he preferred to stand throughout the hearing. He told me that he was not interested in getting back together with the mother, that he had moved on and was in a new relationship. There is no suggestion of any recent

attempt by the father to try to contact the mother, although there have been some concerns about this, even during the currency of these proceedings at an earlier stage. M told me he has a new relationship and a new baby, and he is invested in that.

- 43 He found the concept of indirect contact difficult, he said, not only because he does not read or write but that it would, in his view, be relatively meaningless for a child of T's age as the child would not be able to actively engage in such contact and M himself will find it difficult. Nonetheless, he expressed that he was willing to take up advice and support, which I indicated the local authority should provide in respect of his indirect communications, but that would be subject, of course, to his willingness to meet with social workers first so that they can offer him that support.
- 44 In my judgment, the father has had ample opportunity, at the very least within these proceedings, to pursue contact and he has chosen not to. He claimed that he did not realise that he could do so through his solicitors and that he had tried to contact social workers, but he has provided no evidence to substantiate his claims. I prefer and accept the evidence of the social worker as to the very limited involvement she says she has had with the father to date. In my judgment, the care plan providing for a cautious, risk-based approach to the issue of contact between the father and T, starting with limited indirect contact to enable the child to be prepared for the possibility of further contact, is the appropriate way forward and is entirely child welfare focused. The father must meet with the social workers to undergo an updated risk assessment. He must also undergo a hair strand test and demonstrate commitment to his wish to have contact with T before that contact can be progressed beyond the indirect contact. The ball is very much in his court. He assures me that he will actively engage in the way that has been indicated and I hope, for T's sake, that he will do so.
- 45 T is very fortunate to be a child who is loved and cared for by members of both his paternal and maternal family and to enjoy such positive relations with adults on both sides of the family, as well as with his full siblings. Overall, the facts of this case are rather unusual. On the evidence available to me, his mother and R are each perfectly capable of meeting his needs, subject to some of the some matters in respect of R which I will address later within this judgment.
- 46 I note that the local authority's own case is that despite any criticisms it levels against R, were it not for the mother being positively assessed and now in a position to resume the care of T, there would be no question of T being removed from the care of R, even if she was not seeking a special guardianship order. I agree with the guardian that some of the criticism which has been levelled against R has been misplaced, unfair, and at times overstated. The social worker's evidence was a little confused and lacking in clarity and logic at times. On closer analysis, some of the concerns which had been raised in relation to R and her care of T, appear to have dissipated.
- 47 I bear in mind that this is a family member who came forward to provide a loving home for T at a time of need. Were it not for her intervention, it is right to say that there would simply not have been this current debate about where and with whom the child should live because, in all probability, given his age, characteristics, and circumstances, he would likely have been adopted by strangers with only minimal indirect contact with his parents and members of his birth family. R was a young woman who essentially put her life on hold in order to assume the care of T and she has done a very good job. She is not yet 30. She has facilitated contact with the mother and the child's siblings and maintained a relatively positive relationship with the father also. The fact is that contact has taken place on a fairly

regular basis, and she has not prevented or frustrated that.

- 48 It is right that the local authority did not set out expressly in its evidence all the positive benefits of the child remaining with R and did not provide sufficient analysis of the harm that he may suffer, in the short term at least, if removed from her care. It appears to me likely, that in a bid to highlight the benefits of a move to the mother's care, which the local authority supports, that insufficient attention was paid in the written evidence to the disadvantages to T in relation to such a move. However, I take the evidence in totality and, in my judgment, whilst at times she appeared unable to articulate her analysis and concerns, the oral evidence of the social worker, taken together with her written evidence, makes plain that the local authority's assessment was innately infused with an acceptance of the reality that this child has settled in R's care; that he is well cared for by her; that he has a strong attachment to her, and that he is likely to suffer some distress and emotional harm at a permanent separation from her. Those are the obvious inferences to be drawn from the totality of the local authority's evidence. That analysis is underscored by the fact that the local authority has thought very carefully about the transition plan and the centrality of R's involvement and assistance in enabling the move to take place, in a manner consistent with the child's welfare best interests.
- 49 The evidence of the social worker, as I say, was, at times, difficult to understand but, overall, I am quite satisfied that she has had a long and involved history with the child and his family members, and that she has had to actively engage, repeatedly and consistently, in mediating between the mother and R in terms of setting contact and arranging dates. I am also of the view that she approached this case objectively, and very much focused on the child's welfare best interests. I can discern no evidence of any bias and I am quite satisfied that her evidence has been objective, and child focused. I accept her evidence, that without her intervention, it is likely there would have been considerable difficulties and discord between the mother and R, to which the child would likely have been exposed, and that it would have led to even more delay in reaching agreements about contact. Also, that the rate of progress of contact may not have taken place as it has.
- 50 I accept the evidence of the local authority and the mother that were R to acquire the enhanced level of parental responsibility conferred upon her by a special guardianship order, she may exercise it in a way that enables her to make decisions against the interests of the child and contrary to the mother's view as she would not need to consult with the mother and would be able essentially to override the mother's views.
- 51 R appears not to have understood the limitations of her rights as a foster carer. She has not held or acquired parental responsibility. She is not the biological mother of the child. The local authority of course continues, under the care order, to share parental responsibility with the mother and the father. I am quite satisfied, on the evidence that I have heard and read, that R has not always taken on board the advice and direction that she has been given by the local authority and professionals when she should have.
- 52 In comparison to R, I observed the mother to be relatively less assertive. R presented as a confident, forthright, and at times a strident, forceful, and assertive personality although it has to be said that at other times, she demonstrated that she is capable of being perfectly candid in recognising any shortcomings in her own approach and that she readily acknowledged and conceded matters that went against her own case. She herself recognised and acknowledged that when she made decisions about contact which the mother was not happy with and despite her saying that if the mother had approached her she might have

come to other arrangements, that the mother may not have been able to hold her ground and stand up to R and to counter her suggestions.

- 53 I accept the tenor of the social worker's evidence and that of the mother that, at times, R has misunderstood her role as a foster carer and failed to take into account and to act upon advice given by professionals where she disagreed with them. She allowed her own views to take precedence and acted upon them at times to the detriment of T. The stance she took, for example, in relation to contact on occasions was not reasonable. The social worker's view was that the child could have managed additional days of staying contact with the mother, but R did not agree and therefore it did not take place. It seems to me that it was entirely unreasonable for her to have taken the view that the planned telephone/video contact had to be suspended, because she said it got in the way of T's activities on holiday. In my judgment, that demonstrates an inability, on occasions, to appreciate the value to T of his contact with his mother and that this should take priority as it could easily have been accommodated, even with the other competing activities in the child's life.
- 54 R's case is that T is now settled in her care and would be emotionally harmed by being removed from her. It is right to say that when T initially had unsupervised contact with the mother, he did express distress at separation from R and did, on one occasion, I believe, wet the bed while he was in the mother's care during staying contact. However, it is abundantly clear that despite some ongoing difficulties at handover, which is not unusual in the circumstances, in my judgment, he is otherwise perfectly well settled in the mother's care during the time he spends with her, and he has a happy and enjoyable time which is very much to his benefit. Similarly, he enjoys the occasions when contact with the mother also includes his siblings. It is correct that he has never stayed the night with his mother at the same time as his siblings. However, he has stayed overnight alone with the mother for up to four consecutive days with her in the past. It does appear that the acceleration of contact with the mother has, in part, been brought about by the mother's application. The timing would seem to indicate this was so, as he had his first overnights at Christmas 2021.
- 55 What is of concern is that since January 2021, the evidence in relation to the child's presentation, as given by R, is completely at odds with that of the mother and the nursery. The child has demonstrated no behaviour of any concern whilst he spends time with his mother. That is what the evidence demonstrates. Similarly, having initially been a little unsettled, he has demonstrated no concerning behaviour before or after contact with his mother whilst he is at nursery, which he attends three days a week. R has enrolled the child in the nursery and she intends in due course to obtain employment.
- 56 Despite all this, R maintains that, in her care, the child does not wish to go for contact with the mother, does not wish to stay overnight, and is manifesting his distress and anxiety by being tearful and repeatedly wetting the bed. She says he has required reassurance and she has had to discuss matters with him, and that he is upset before and after contact. She has purported to comment on the child's presentation in the mother's home, even though she could not possibly know of those circumstances as she is not present. She has made some criticisms of the mother in these proceedings in the assessments and in her own evidence, although less so during her oral evidence. She has indicated, during the course of her special guardianship assessment, that she may decide to reduce contact if she was of the view that is what was required, in the child's best interests.
- 57 I am not entirely persuaded that the child has necessarily been behaving in the way that R describes, and I reach that view in light of R's conduct in recent times, to which I will turn

in a moment. However, even if R's claims were true, in my judgment, it is more likely that the child presents in this way due him picking up on R's own anxiety about the mother's application possibly succeeding. In oral evidence R readily acknowledged that this may be the case.

58 From a child welfare perspective, these matters are of concern. Such concern is compounded by the contents of the letter that I read from the child's nursery which states that R has been seeking to influence the nursery staff to provide untrue information to assist her case in these proceedings. The letter from the nursery is dated 10 May 2022 and is written by a manager there. T has been attending since January 2020. The nursery reports that the child has settled really well in the nursery and that he is happy there. There are no problems when he leaves his "mummy R". When T first started to have contact with his mother, say the nursery, he seemed very unsettled. He would become very upset when leaving R and would have a few toileting accidents. After a while, he would settle down once he had received some cuddles and reassurance from staff members. He would then be settled again at nursery until he saw his birth mummy again. This lasted quite a few weeks. All the staff members worked with R and T to support them through this transition. The letter goes on to say that after a while, they saw a change in T's emotional well-being and he would be happy and settled with his new routine, and he would even share with them his experiences of going to see his mother. The nursery said this:

"Since this transition, R has been struggling with the thought of T going back to his birth parents. R asked me for some evidence to give to her solicitor on how unsettled T is. This was whilst T was happy and settled after seeing his birth mummy. I declined to do a report on the things I do not see. Since this, R has not been herself around me. She is not her usual chatty self. I understand this is a very hard and emotional situation to be in and I have been reassured by the social worker that R is getting all the support she needs."

59 My own assessment of the evidence relating to this situation echoes those matters raised by the nursery. I do not accept the extent of the criticism of R for relying on her own mother to support and assist her in the care of T and wanting her mother's company when she drove the long distance down to area A, which she did for a significant period to facilitate contact. However, it does appear to me that there have been occasions when there has been unnecessary delay in arranging contact arrangements which suited the mother and her family, due to R waiting on receipt of her mother's work rota to enable her to agree a date. It appears to me that she was capable, on occasions, of simply transporting the child herself even though I recognise that it would have been onerous and she did not wish to be on her own in A, an area she was unfamiliar with. Nonetheless, she could, and should, have been more flexible about this, in my judgment.

60 On the evidence before me, I am quite satisfied that T has experienced confusion in relation to who his mummy is at times and the general circumstances he finds himself in as a member of the family. He has received a complicated and a confused narrative, it seems to me. While it might be understandable that the child might wish to call R "mummy", particularly when he was very young, one can well understand how upsetting that might be for the mother even though, to her credit, she has never quite expressed it in those terms. On the evidence before me, it is clear R has continued to reinforce the idea that she is "mummy" and that the child routinely calls her "mummy" and not even "mummy R". Although does appear to know that his mother is also his mummy, however, when the

mother has tried to explain the difference to him, in my judgment, R has not cooperated and supported her in that endeavour but has, instead, undermined it. This can only have served to reinforce confusion in the child's mind, which is to his emotional detriment. It was concerning to hear R reiterating in her oral evidence that she will continue to allow him to call her "mummy".

- 61 I note, as the mother points out, that early on, her older children had also started to call her sister "mummy", but the difference was that the maternal aunt had managed the situation successfully to ensure that this did not persist. In my judgment, R was perfectly capable of instilling that understanding in T in relation to herself and the mother and to clarify the situation in a way that would be helpful to him, but she has failed to do so.
- 62 The local authority also points to the fact that R has had access to four books which would help the child understand his life story but has only chosen to read and focus on the ones that refer to his time in care and how he has come to be in her care because of the history of his parenting. She has chosen not to read and explain to him a further book which explains the circumstances in which he might return to his mother's care even though she knows, and has known for some time now, there is a possibility that is what might be ordered within these proceedings. Therefore, she has missed a valuable opportunity to help the child prepare for such an eventuality in an age-appropriate way.
- 63 In my judgment, R's own feelings about any potential loss of primary care of the child may well have overwhelmed her and led to her behaving in the way that she has, out of a sense of desperation. In doing so, she has failed to prioritise the welfare of the child over her own needs. There must be a concern then, that in any future disputes over contact, if the child were in her care, there may be a risk of further similar misrepresentations/distortions about the child's situation. Such subjective views held by R, divorced from the objective reality, would inevitably be likely to impact negatively upon the child's welfare and any parenting decisions to be made about him.
- 64 R has been assessed positively as a carer for the child. She has been his primary carer and the child is well attached to her. She has had him in her care for the last four years, since T was aged 10 months. She may be a cousin of the father but, nonetheless, she is a biological family member and so she has enabled the child to grow up within the extended family and to know them. She has facilitated contact with family members. Despite what I have already stated about her conduct, nonetheless, I am satisfied that in the evidence she gave to me, she demonstrated that if I were to make an order for the child to return to the mother's care, she would engage actively with that and facilitate it in a way that would make it easier for the child to transfer. She has been largely positive about the mother and committed to the child's continuing relationship with the mother and his siblings, and, indeed, that contact has progressed while the child has been in her care. She has also been able to liaise with the father and the maternal aunt to facilitate contact.
- 65 R has readily acknowledged that she finds the prospect of the removal of the child from her primary care as something that she has struggled with and a decision in respect of which she will be devastated. I have considerable sympathy for her. On a human level, her fears are entirely understandable given the emotional and practical investment that she has made in the child's life.
- 66 While I understand her concerns around needing support from the local authority to manage extended family relationships and that, financially, it was better for her to care for T under a

care order, it does appear to me that she should have given consideration at an earlier stage to applying for an SGO to secure the child's permanency with her in that way. She did not do so, even though she had been advised repeatedly by social workers to make such application over the years that T has been in her care.

- 67 I accept the arguments advanced on behalf of R that arrangements in her care have been working and enabled the mother, the siblings, and family members to build their relationship with the child to the extent where it is now possible to realistically consider a move to the mother's care. It is right that the arrangements in the mother's care are currently untested. There does remain a residual risk in relation to the mother's own parenting capacity, and, particularly, in respect of her relationship with the father. The changes that she has managed to establish have been relatively recent. However, in my judgment, such risks as there are, have been comprehensively assessed and I concur with the professionals that they can be managed and are not of a nature and magnitude which are contrary to the welfare of the child and are unlikely to compromise his safety and well-being.
- 68 As the guardian observes, there is real benefit to the child's welfare of him growing up knowing that his mother has overcome the difficulties she presented with which resulted in him being removed from her care, and that she has overcome obstacles and made huge efforts to demonstrate significant changes. Most importantly, he will know that she has fought to have him back and that she has done all this for him because she loves him and is committed to him and to his siblings.
- 69 There is no automatic presumption that T should return to the care of his mother simply because she is his biological parent. However, the fact that she is his biological parent is a relevant factor in this case, in circumstances where there is a wealth of evidence which indicates that his mother would be well placed to provide long-term, secure, and stable parenting for him, and all professionals and the expert agree with this conclusion. In my judgment, for all the well-established factors such as identity, sense of belonging, and well-being associated with a child being brought up, wherever possible and commensurate with his welfare best interests, by a biological parent apply in T's case. In my judgment, it is very much in T's welfare best interests that he is provided with that opportunity.
- 70 I must consider his medium, and long-term needs, also. As he grows up, he will not have to contend with the different, more limited arrangements for the time he spends with his mother than his siblings do. The mother has confirmed that she has no intention for the foreseeable future to apply to have the other two children returned to her care. In my judgment, it is right that she should now focus on T and his needs. I have taken into account the evidence of what CAMHS has to say:
- “Being removed from one's primary attachment figure at this age is a deeply distressing and potentially traumatising experience. T and R have a very close bond and it will likely be traumatic for both of them to be separated.”
- 71 R, of course, does not consider that such a drastic change to T's circumstances would be in his best interests. However, I have reached the conclusion that whilst T may well suffer distress and emotional harm in the short-term from the separation from R, I am quite satisfied that this is capable of being managed and that the long-term benefits to the child of a return to his mother's care outweigh any short-term emotional harm or distress. Such harm and distress will be alleviated by the fact that he will continue to have substantial

contact with R. He will have the benefit of the professional input that has been proposed. The local authority has taken advice and has available and to hand, therapeutic assistance and of course the mother, the social worker, and R will be actively engaged in managing the transition and managing the child's distress. This child has thirteen more years left of childhood. He will have the benefit, in the mother's care, of attending the same school as his sister U because the mother lives near the maternal aunt.

- 72 The transition plan has required very careful thought to be given to it because of the age of the child and his attachment to R, which makes this an entirely different situation to that of moving a young child to prospective adopters. There needs to be a degree of flexibility, rather than a rigidity of adhering to the transition, it seems to me. R's suggestion of an amendment to the plan so that she leave T during the weekend and then return, so that the child knows that she is coming back, is not an unreasonable one. It may be preferable to her remaining throughout in the hotel with the child for the weekend in the transition phase. It seems to me that she makes that suggestion not because of her own needs but because she knows the child and genuinely feels it would assist him. Her views should not be discounted in this process, but I will leave that to the social worker and the mother to assess collectively. In all the circumstances, in my judgment, it is right and in T's best interests that he should be returned to his mother's full-time care.
- 73 On the transition plan, that will necessarily mean that there will be a delay to him starting school by two months or so. He will not be starting at the same time as other children in his year, but at this young age the opportunity to settle in his mother's care and to consolidate that arrangement takes precedence from his welfare perspective, in my judgment, and any negatives relating to a delay in starting school are secondary to that. As I have already noted, he will have the additional benefit of attending the same school as his sister. He will have the benefit of not only being raised by his own mother but the opportunity to form stronger links with his siblings and extended family members on both sides of the family, paternal and maternal. I note that members of the paternal family have felt alienated and supplanted by R and her mother who insist on T calling them "mummy" and "granny" to the exclusion of other family members. Because of such issues there has been a falling out between members of the family, which stems back to the funeral of M's grandmother some time ago. In area B, where R lives, T only has access to R, her brother, and her parents by way of family members.
- 74 The placement with the mother also has the added support of the father. It will certainly be easier for him to have contact with the child in area A. The geography helps, as this is where the majority of the family is located. I am of the firm view that the local authority must supervise any future contact between the father and the child and must not allow the mother to be placed in a position, where she has to communicate with the father, or be required to facilitate such contact herself. This move to the care of the mother will also help, in my judgment, to remove the confusion for the child around his identity, especially in terms of his relationship with his mother. R will remain a very significant adult in his life.
- 75 Having heard all the evidence, I am quite satisfied that there is a need for orders to be made, given all the disputes and issues which have been raised at this hearing before me. It is very much in T's welfare best interests that there is clarity around these arrangements. That clarity will be best achieved by having an order in place. The guardian recommends orders be made. The local authority opposes any order for contact and would prefer for there to be some form of preamble or written agreement to the same effect, so that the arrangements are

not rigid and there is flexibility.

- 76 In my judgment, there is a need for orders to be made. After reading and hearing all the evidence, I have reached the conclusion that the spend time arrangements with R should be as follows. With R, one week in the summer at the beginning of the summer holidays; three days around Christmas, before or after Christmas Day; and a long weekend on each of the three school half-terms, from Friday noon at the end of the week's holiday through to Sunday afternoon. Handover arrangements require to be determined. I am aware that contact moved to take place at a halfway point, but I bear in mind that the mother does not have access to a car and both R and her mother do, and that they are able to share the driving, but I will hear any further submissions in relation to that.
- 77 As planned, it would be beneficial for the mother and R to engage in mediation going forward. There may well be fall out emotionally from the decision that I have made, and in the short term, this will need very careful management. The provision of therapeutic support and advice, particularly for T, is a necessary and helpful one. The local authority, in my judgment, should consider providing ongoing support for R because she may well be distressed by my decision and may need that support. Her well-being is also important to T.
- 78 If all goes well, relationships are positive, and the child manages the contact without undermining his permanent home with the mother as his primary carer, then consideration can be given to additional contact of a long weekend at the end of the summer holidays as well as an additional three days at Easter, and, thereafter, it will be a matter for the mother to decide, in her discussions with R and perhaps also involving the local authority, any additional contact she may agree should take place between R and T.
- 79 It will be of real benefit to T to know that his father loves him, is engaged in these proceedings (at this stage at least), is interested in him and seeks to have a relationship with him. the proposed arrangements for contact are in T's best interests. I very much hope that the father will be able to engage with the local authority in the way that is indicated and that he will try his best to progress that relationship. If at any stage it becomes apparent that there is any risk of harm to the mother arising out of the father's intentions and conduct, and, by extension, that harm being visited upon T, such risk cannot be countenanced, and the mother and the local authority will have to take steps to ensure that the child and the mother are protected.
- 80 In my judgment, the appropriate orders are firstly, the discharge of the care order, and also a for child arrangements order to reflect that the child shall live with the mother and spend time with R and other family members. These orders are necessary to promote and safeguard the welfare of the child. R will, of course, be at liberty to arrange for T to spend that time with her, and also at times in the company of R's extended family, with whom T is already familiar and has a relationship.
- 81 The local authority's plan is for there to be letterbox contact with the paternal grandmother twice a year. That may well need to be re-visited in discussions with her, following any progress that might be made in respect of the father's contact with the child. The threshold criteria were already established on the making of the care and placement orders previously. What I am being asked to do now is to approve the significant change in the care plan and to substitute a supervision order in place of the care order. It is very much in the child's best interests for him to have an order of the least interventionist type that is possible on the facts and circumstances of the case. A care order is a necessarily intrusive state intervention

involving all sorts of statutory processes and the ongoing involvement of professionals. There is no need for that to continue now, nor for the local authority to continue to share parental responsibility.

- 82 There is a clear need, however, for the local authority to continue to advise, assist, and befriend the mother and the child, and, indeed, R as well as the father and the child's siblings. Given the history and issues raised in this case and the contact which will have to be managed following my judgment, the proportionate length of a supervision order, which is necessary and proportionate, is twelve months. The local authority needs to very carefully oversee and monitor the transition. I make that very clear. It must not simply be left to the mother and the aunt to manage the arrangements between them. The local authority's social workers need to be on hand to provide support and to assist all concerned.
- 83 In terms of the welfare checklist factors, T is too young to make informed decisions about his wishes and feelings. I have the benefit of his guardian's analysis. I am sure, in an ideal world, all things being equal, T would have wanted to be raised by his own mother throughout his childhood. The mother is quite capable of meeting his physical, emotional, and educational needs, and R, I observe, has met all of those needs while he has been in her care, save for those matters I have mentioned earlier in this judgment.
- 84 I have also addressed the likely effect on him of a change in his circumstances, in the short term at least, of distress, anxiety, and upset which all represent emotional harm.
- 85 There are no other issues in relation to his age, sex, background, and characteristics which are particularly relevant here. I have addressed the harm that he has suffered in the past and likely to suffer in either R or the mother's care. I have already addressed the capability of R and the mother in meeting the child's needs and considered the range of powers available to me. I have also considered the importance of the involvement of the father in the child's life. I am satisfied that the contact arrangements I have approved are the best that can be devised for T in all the circumstances, and I have outlined the potential risks in relation to that.
- 86 There is reference contained in the documentation to the father being of the Islamic faith. That is not a matter which seems to be particularly relevant in this case and it has not been actively canvassed before me by any party. The father does not insist that any matters in relation to faith or culture should be factored into plans for the child's upbringing.
- 87 That concludes my judgment.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.