

ENGLAND AND WALES / JUDGMENT

A Local Authority v Mother & Ors

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IN THE FAMILY COURT CASE NO: BS24C50238 Neutral Citation Number: [2025] EWFC 217 (B)
SITTING AT BRISTOL BETWEEN A Local Authority -and- Mother -and- Father -and- A Applicant
1st Respondent 2nd Respondent (the child through their guardian) 3rd Respondent

JUDGMENT

Olivia Pike (instructed by A Local Authority) for the applicant Ruth Armstrong (instructed by Battrick Clark Solicitors) for the mother Courtney Daley (instructed by Daniel Woodman Solicitors) for the father Roberta Ferrari (of Powells Solicitors) for the child Hearing dates: 14 – 16 July 2025 Approved Judgment This judgment was handed down on 16 July 2025 by circulation to the parties or their representatives by e-mail at a hearing and by release to the National Archives Judge's name: Her Honour Judge Cope

JUDGMENT

This judgment was given in private. The judge gives permission for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Introduction

1. This is the local authority's application for public law orders in respect of a 13 month old child who I shall refer to as A. Proceedings were issued on 9 August 2024.
2. For the purpose of this final hearing, the local authority is represented by Ms Pike, the mother by Ms Armstrong, the father (assisted by a lay advocate) by Ms Daley and A by Ms Ferrari through her guardian Ms SD. I am grateful to them all for their assistance.

Background

3. Much of the background is set out in the judgment I gave following the fact-finding hearing which took place earlier this year when I found that the parents had allowed a friend to hold A in a dangerous position on her shoulders and that one of the parents or both inflicted injuries – primarily bruising and a fracture to A's forearm. Threshold was found to have been crossed. 4. I have made directions for assessments of the parents and various family members and friends during the course of the proceedings. Both parents have undergone capacity and cognitive assessments. Both parents are considered to be vulnerable.
5. The assessments of the paternal grandmother failed at the screening stage. This was also the case for family friends G and H. Two more proposed carers failed the viability assessment stage (maternal grandfather and a friend Ms I). A further friend, Ms J, declined to be assessed.
6. The ParentAssess assessment of the parents is negative. Dudley Lodge, Orchard House and Jamma Umoja have declined to offer a residential assessment of the family. 7. In short, there is a real concern by all professionals as to the parents' lack of accountability for A's injuries and consequently it is their shared view that A cannot be returned to the care of her parents who remain together.
8. A remains in her foster placement where she is thriving. She sees her parents three times a week for 90 minutes. Parties' positions
9. The Local Authority seeks care and placement orders with a plan for A to be adopted. It is hoped that adopters will be identified who will support face to face contact once a year so long as this is in A's best interests. The local authority says this would need to remain under review. The orders sought are opposed by the parents. The mother says that A's injuries were likely caused by her inexperience or by the father although not deliberately. The father says he does not know how A's injuries were caused. They seek for A to be returned to their care. The mother says she would care for A alone if the court felt such appropriate but that was not a case she advanced before me. The guardian supports the local authority's position. The legal framework
10. When asked to make public law orders there are two main questions. First, is the threshold criteria for making a care order under Section 31 Children Act 1989 satisfied? Secondly, if so, what order should the court make?
11. Section 31 (2) provides: 'A court may only make a care order or supervision order if it is satisfied (a) that the child concerned is suffering, or is likely to suffer, significant harm and (b) that the harm, or likelihood of harm, is attributable to (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control.'

12. The determination of whether the threshold criteria are fulfilled involves considering the position at the time that protective measures were taken (when the proceedings started). By contrast, welfare issues must be based on the totality of information available to the court and, unlike threshold issues, it is necessary to conduct a present-day evaluation of what is best for the child.
13. The burden of proving that the threshold is met rests with the local authority. The standard of proof is the civil standard.
14. As to the second question, the finding that the threshold is satisfied is the gateway to the making of orders in respect of A.
15. In determining the appropriate order, the court must follow the approach set out in Section 1 Children Act 1989. I bear firmly in mind that the child's welfare is my paramount concern (section 1(1) Children Act 1989). I remind myself of the provisions of the welfare checklist at section 1(3) and also what is known as the no delay principle set out at section 1(2).
16. I must be satisfied that any orders I make are lawful, necessary, proportionate and reasonable to address the child's unfortunate predicament. The granting of a care order let alone endorsing a plan for adoption would represent a significant curtailment of the rights of the parents and A under Article 8 of the European Convention of Human Rights.
17. It is of fundamental importance that there is discipline in the approach to welfare issues in care (and placement) proceedings. The court is not a court of social engineering. The court does not decide welfare issues by considering whether, on an individual judge's analysis, a child might be 'better off' in care (or with adopters). As Hedley J said in the 2007 case of *Re L*: 'society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.'
18. In analysing the local authority's plan for A to be adopted I am obliged to consider section 1 Adoption and Children Act 2002. My paramount consideration is her welfare throughout her life (section 1(2)). Again, I take into account the fact that delay is likely to prejudice her welfare. There is again a checklist of factors to be taken into account set out in section 1(4). In addition, both sections 1(3)(g) of the 1989 Act and section 1(6) of the 2002 Act require the court to have regard to the range of orders available.

19. The court may only make a placement order if either the child's parents' consent, or the court dispenses with the parents' consent. Section 52 provides that the court cannot dispense with a parent's consent unless it is satisfied either that the parent cannot be found or is incapable of giving consent or that the welfare of the child requires that the parent's consent be dispensed with.
20. Again, I must have regard to the child's article 8 rights and those of their parents.
21. With regard to the making of a placement or adoption order there is further assistance from the Supreme Court in the case of *Re: B (a child)* [2013] UKSC 33 followed by decisions of the Court of Appeal particularly in *Re B-S* [2013] EWCA Civ 1146 but also *Re: G (a child)* [2013] EWCA Civ 965. These cases all confirm that a placement for adoption is 'a very extreme thing' and 'a last resort' to be approved only when 'nothing else will do'.
22. The court must weigh up the realistic options and submit them to a thorough analysis, weighing up the advantages and disadvantages of each option. In *Re R* there was much discussion about what is meant by 'realistic'. The then President described this as 'fundamental'. Full consideration is required only with respect to those options which are 'realistically possible'. *Re B-S* does not require that every stone has to be unturned, and the ground exhaustively examined before coming to a conclusion that a particular option is not realistic.
23. The Supreme Court case of *Re H-W (Children), Re H-W (Children No 2)* [2022] UKSC 17 concerned the proportionality of care orders which must be necessary to meet the needs of the child having regard to the advantages and disadvantages of each available option. Various factors were set out to assist the court in answering this question.
24. In *R and C (Adoption or Fostering)* [2024] EWCA Civ 1302 Baker LJ referred to the likely template for contact arrangements post adoption which should be set at the placement order stage noting that the court should have regard not only to the short- term contact arrangements required in the pre-adoption stage, but also in setting the course for the maintenance of family relations over the longer term if it is in the child's best interests and for orders to include recitals in respect of post-adoption contact.
25. In *Re S (Placement Order Contact)* 2025 EWCA Civ 823 the mother had appealed following a contested hearing in which the judge made a placement for adoption order but declined to make an order under the Adoption and Children Act 2002, s 26(2)(b) for sibling contact. The appeal was dismissed, with the court affirming the lower court's decision not to impose a contact order. Sir Andrew McFarlane, giving the lead judgment in the Court of Appeal, gave guidance as to the management of post placement order contact. The use of section 26 orders to signal future arrangements beyond adoption was contemplated in cases where the child's need for contact prevailed. In some cases where adoption was a pressing need for the child, the negative impact of such an order in the search for an adopter was a relevant consideration. The hearing

26. I have considered the bundle of papers and heard from Ms SJ (independent social worker), Ms B (social worker), the mother, the father and the guardian.
27. Ms SJ carried out the parenting assessment of the parents. She was a clear witness. This was also the case for the social worker and the guardian. The mother was a quietly spoken witness who was clear in her evidence that she would like A back home with her and the father. This was also the case for the father. Regrettably I did find the parents to be rather naïve in respect of their understanding of the issues in the case and how their proposal might work. The first question - threshold
28. I have previously confirmed that threshold is crossed and on the relevant date A was suffering and was also likely to suffer significant harm. The harm being not just emotional harm but physical harm too. The second question – the order
29. I address the second question and the orders I should make. In this respect the welfare checklist requires consideration. The welfare checklist
30. A is too young to express her wishes and feelings. No doubt she would want to be cared for by her parents if her needs could be met and she was safe. However, she is settled with her current carers.
31. A is a smiley little girl who giggles and laughs a lot. She needs all of her needs to be met by her carer upon whom she is entirely dependent to meet her physical, emotional and educational needs. A appears to be meeting her milestones. She is under medical investigation for eczema, which requires a carefully managed routine to ensure that she is comfortable.
32. A has lived with her parents and two set of foster carers. She has been with her current foster carers since September 2024. She needs decisions to be made without further delay as whatever order I make she will need to move from her current carer.
33. A is of White British heritage.
34. I have already referred to the harm A has suffered. There remains a real risk that she will suffer further harm if she were returned to the care of her parents.
35. Sadly, neither parent has been positively assessed to care for A and this is also the case for family and friends. The assessor, Ms SJ attended court and gave evidence about her assessment.
36. There are additional matters that fall for consideration under Section 1(4) of the Adoption and Children Act 2002. Specifically, I must consider the likely effect on A, throughout her life of having ceased to be a member of her original family and becoming an adopted person. If she were adopted that would inevitably represent a huge change due to severing of ties with her birth family. She would need support to help her understand why she had not been able to live with her birth parents. In the event of any placement orders being made careful life story work would be necessary.

37. I must also consider 'the relationship which the child has with relatives ... including
 - (i) the likelihood of any such relationship continuing and the value to the child of its doing so'. The wishes and feelings of any of the child's relatives regarding the children must also be considered. I have already referred to some family members. The mother is no longer speaking to her grandmother. This is also the case for her brother. The father has limited contact with his mother. The balancing exercise in respect of the alternative options open to the court
38. The court must consider the realistic options and then undertake a balancing exercise to enable it to reach the right decision in respect of A. There are two realistic options in this case – A returning to the care of her parents or care and placements orders.
39. The pros of A being returned to the care of her parents are that she would remain in the family with her birth parents who love her very much. There might be some contact with wider family members. The right to family life would be preserved and the wishes of her birth parents would be met.
40. The cons are that the parents may not be able to meet her needs. A would require 24/7 support from professionals. There is a real risk that A would sustain further injuries. There is also a risk of harm if the parents did not pick up on A's cues and did not meet her day to day needs. If her needs were being met by professionals, A would not in real terms have a primary carer. Further, if the father was not able to manage his emotions A might receive scary and unpredictable care when he was looking after her. A might also find herself without professional support if her parents did not engage with professionals.
41. The pros of adoption are that A would have all of her needs met with a forever family throughout her life. She would be protected from suffering further significant harm. She would have life story work to help her understand why she was not living with her parents. The plan would be for her to see her parents once a year.
42. The cons are that she would not be brought up with her birth family and her sense of identity and belonging would be affected. Her legal ties with her birth family would be severed. Adoptions break down. If the parents had further children, A might be prevented from having a relationship with them. Analysis and conclusion
43. The parents' plan is that they would both care for A initially and once the father has secured a job the mother would care for A when she could not be cared for at say nursery. The father says he would work nights and then could take short naps (five to 10 minutes) when A was sleeping. He would help care for her during the day and care for her on his own when the mother starts college in September which would require her to attend on Tuesdays and Thursdays. He said he does not need very much sleep. A could go to nursery potentially five days a week from 8am to 6pm. There might be a neighbour who can support them and the maternal grandfather too. They would take any professional or other support offered by the local authority but do not really think they need it.

44. There can be no doubt that the parents love A very much. They have attended family time (this has been particularly so of the mother, the father not always being available due to work) and have made improvements in respect of their care of A over time. I have reminded myself of the entries referred to by Ms Armstrong which are positive and encouraging. The parents have tried really hard and say that they have done everything asked of them. It is apparent that they have made measurable improvements since A was removed from their care. To their credit this must be seen in the context of their young ages and their own difficult backgrounds which means that they have not experienced positive parenting themselves. It is also to the father's credit that he has until recently been in employment and provided not only for himself but the mother and A when she lived with them. The parents do not take drugs and can take care of themselves. However, their care of A has been fully supervised for limited periods of time when A's needs have at other times been met by an experienced foster carer which is likely to have had an impact on her needs being met by the parents over a short period of time.
45. Before I look at the practicalities of the parents' plan, there is a fundamental issue in this case namely neither parent has accepted the findings I made. Even now they say that they do not know how A came to be injured on more than one occasion. They suggest it must have been accidental and they present as a couple which in itself is troubling. One can perhaps understand a parent finding it hard to believe that the other might have inflicted an injury or injuries deliberately for a time but sustaining such a position for any length of time is concerning and is what has happened in this case. They are engaged to be married but say if they are told to separate they will. However, this is not what they want and sadly it is a position which lacks insight.
46. How A came to be injured and the findings in my judgment were further explored with both parents. The mother now provides further details about an occasion on 2 July 2024 which she has remembered. She says the father was stressed looking after A and gave an account in this respect. However, she was not worried about this and thinks that the father is a safe person to care for A on his own. Whilst the mother provided more detail it was not to the extent that it could account for A's injuries.
47. The father says that on the basis that it was not him who injured A, it must have been the mother. Like the mother he says that she would not have done anything on purpose and A would be safe in her care in the future. It is a difficult position to reconcile and one that regrettably lacks insight. It also demonstrates what appears to be a lack of communication between the parents or worse still that they were not honest in respect of the conversations they have had and what they have told the court.

48. The consequence is that it is very difficult for professionals to put in measures to manage the risk as they do not know the circumstances as to how A came to be injured. We already know that three residential assessment units have declined to take the parents due to the risk of harm. In this respect, one must not overlook that residential units have all sorts of measures in place to ensure that children are safe whilst being assessed with their parents.
49. Linked to the unknown cause of A's injuries, is the concern in respect of the father's temper. He did not accept he had any issue in this respect but this is not the view of the family support worker who has seen him cross and agitated on more than one occasion when she visited the home.
50. Sadly, the evidence is overwhelming and the parents caring for A is not a safe option. It is simply not in her welfare interests. I say such recognising the positives in respect of the parents some of which I have referred to elsewhere.
51. There are further difficulties. For A to return home this would mean 24/7 support which the local authority says is neither realistic nor proportionate. The parents say they could manage this but I am not sure what they expect the local authority to do or for how long. It appears to be that they are seeking some form of community assessment until it is deemed fit for A to be cared for without support. Aside from there being no application and several residential units having declined to take the parents, the parents have even less support than they did a year ago.
52. Further, the parents' desire to care for A in the home must be seen not only in the context of them not being honest about the cause of A's injuries but also in the context of the father having found it difficult having the family support worker in the home even for relatively short periods of time preferring to spend time on his play station and giving the impression at times of resenting people being in his home. I accept that on one occasion when concerns were expressed about his presentation, he had lost his job and did subsequently calm down having spoken to the family support worker. However, the support the parents would need to keep A safe and to meet her needs would be day in day out as opposed to a visit for a few hours each week. I am not satisfied that even if it were practical that the parents would cope with different agency workers in their two bedroom flat when A was not at nursery. It is simply not viable.
53. Regrettably, not only is such an arrangement unsafe and not viable it is also not in A's interests. It would likely involve having different people potentially providing her with primary care. The parents say that they would be providing the care but what is clear from the evidence I have seen and read is that they often need to be told what to do. The contact session in April was observed by the guardian. It shows some really good interactions between the parents and A. However, it came to an abrupt end in circumstances where A had only been crying for a matter of about 30 seconds. Even if the parents had been told that A was not particularly well that day and the foster carer might need to collect her, they were unable to demonstrate the required flexibility to care for a young child and so as soon as a

problem presented their reaction was for her to be returned to the foster carer with no attempt to manage the situation themselves. It appears likely therefore that there would be a heavy reliance on agency staff to meet A's needs.

54. Further, A has developed in many respects since she lived with her parents. She is becoming curious as to the world around her and unlike the assertion made by the mother that she would therefore be easier to look after, this is unlikely to be the case.
55. The plan for agency staff to support the parents at nights and over the weekends also assumes that A would be at nursery for the rest of the time – hours of 8am to 6pm were referred to. Of course, some parents who work find themselves relying on nurseries during the working day but A's circumstances are quite different to those of an ordinary child. A has lived with her parents, was seriously injured in their care before moving to two sets of foster carers. It is very difficult to envisage such long periods at nursery as being in her welfare interests.
56. The presence of two dogs in the home presents a further concern. They will also require the attention of the parents although they say they would rehome one or both of them if this was required. To suggest that the dogs can be kept in a cage is not a solution and it seems a surprising decision to get a second dog following the fact- finding hearing. Certainly, professionals have observed there to be problems with the dogs and the parents' management of them. I accept their observation as being accurate. It is a further example of the parents saying that they will take action if told but agreeing to take a further dog in the first place does not appear to be a child- focused decision. This way of thinking is similar to the parents' response to separating or having much needed therapy. In respect of the latter they appear to be receptive to this but on the basis that others have told them they need it rather than they themselves considering it to be necessary. I do however commend the father for agreeing to embark upon counselling which is due to start in a matter of days and would urge him to continue with this.
57. Taking all matters into account I am satisfied that the parents' case for A to be returned to their care lacks merit and this is a clear case where care and placements orders are in accordance with A's welfare and nothing else will do. These orders provide the best opportunity of permanence which is so important for a child of A's age. I am satisfied that care and placement orders are both necessary and proportionate. I dispense with the parents' consent such being in accordance with A's welfare.
58. As for contact, I have given careful thought to the recent Court of Appeal decision (see above) and in particular to paragraphs 75 to 80. It is my responsibility to consider contact and section 27(4) Adoption and Children Act 2002 sets out the legal position. The welfare provisions from a lifelong perspective are relevant.
59. The parents both felt that an order might be better. The local authority and the guardian do not agree. In my view, this is not a case where a court order should be made. The local authority will seek adopters who are open to contact, and I am satisfied that is the right way

forward in this case. I endorse that plan. To do otherwise would be too prescriptive and contact has to be in A's best interests in order for it to happen. Instead, there should be a recital to the order setting out the expectation in respect of the parents' contact. The parents have shown commitment to A and despite the serious injuries which she has suffered, this ought not to be reason to deter adopters from A having direct contact with her young and vulnerable birth parents.

60. Finally, I commend the parents for how they have conducted themselves throughout these proceedings. They attended court on every occasion and have been controlled, calm and collected in the most difficult circumstances.

61. That is my judgment. Her Honour Judge Cope 16 July 2025 15

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