Neutral Citation Number: [2019] EWCA Civ 1557

Case No: B4/2019/1789 AND 1828

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT LIVERPOOL
HH Judge Greensmith
LV18C04157

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 September 2019

Before :

LORD JUSTICE FLOYD
LORD JUSTICE LINDBLOM
and
LORD JUSTICE BAKER

- -

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF E (A CHILD) (REFUSAL OF PLACEMENT ORDER)

Between :

E (through her children's guardian) (1)	**Appellants**
Z BOROUGH COUNCIL	
- and -	
A MOTHER (1)	**Respondent**
A FATHER (2)	

- -
- -

Mark Senior (instructed by **MSB Solicitors**) for the **First Appellant, the child, by her guardian**
Damian Sanders (instructed by **Local Authority solicitor**) for the **Second Appellant,**
Joanna Mallon (instructed by **Morecrofts LLP**) for the **First Respondent mother**
Jamil Khan (instructed by **RMNJ Solicitors**) for the **Second Respondent father**

Hearing dates : 12 September 2019

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Approved Judgment

LORD JUSTICE BAKER :

Introduction

1. This is an appeal by a local authority and children's guardian against an order made by HH Judge Greensmith on 25 June 2019 refusing an application for a placement order in respect of a child, hereafter referred to as E, born in November 2018 and is therefore now aged 10 months. E had been in foster care under an interim care order since birth. Within the proceedings, the local authority applied for a care order and placement order on the basis of a care plan for adoption. At the hearing, the local authority plan was supported by the guardian. E's parents opposed the plan and asked the court to return E to their care.

2. The judge took a different course altogether. He concluded that the child's welfare would be best served by what he described as a "cohesive plan which will support future rehabilitation". He found that there were reasonable grounds to believe that, within a period of 12 to 15 months, the parents would undertake work which would enable them to resume care of their daughter and that, in the interim, she should remain in foster care. He therefore indicated that he would dismiss the application for a placement order in due course and meanwhile adjourned the proceedings to a further hearing on 17 September 2019 and directed the local authority to prepare a revised care plan reflecting his assessment of risk.

3. The kernel of his decision was expressed in paragraph 46 of his judgment:

> "Unusually time is on the side of this child. There is, in my view just enough time to demonstrate that change is possible and sustainable within the timetable for the child. We have not reached a position where nothing else but adoption will do."

4. The local authority and guardian filed notices of appeal. On 22 August, King LJ granted permission to appeal and listed the hearing before us today.

Background

5. The origins of difficulties for this family lie the parents' chaotic lifestyle involving drug and alcohol abuse, domestic violence and, in the mother's case, mental health difficulties. The police have been called out to attend incidents of alleged domestic abuse on over 40 occasions. The mother has made a number of attempts at suicide, including, on one occasion, jumping from a bridge, as a result of which she sustained extensive injuries. In 2016, the parents' two older children were removed from their care and subsequently made subject to special guardianship orders in favour of their paternal grandmother.

6. By 2018, the parents' circumstances had seemingly deteriorated further. Both were taking heroin and, in the mother's case, crack cocaine. The mother was pregnant again and in November gave birth to E. The local authority applied for a care order and were granted an interim order under which E was placed in foster care. In the course of proceedings, a psychological report was commissioned from Ms Helen Roberts who concluded that it was unlikely that the parents would engage successfully with therapy. The father was opposed to entering therapy, holding that he was able to overcome his problems without it. The mother expressed a willingness to undergo

therapy, but Ms Roberts concluded that she could not do so successfully in the context of her dysfunctional relationship with the father.

7. In the course of 2019, there were some signs of improvements in the parents' circumstances. The father obtained a job. The couple also obtained rented accommodation having previously been homeless. There were some possible signs of a reduction in their drug taking. On the other hand, incidents of domestic abuse and arguments continued and the police were called out again on more than one occasion during the currency of the proceedings.

8. At the hearing in June 2019, the court was presented with a document setting out the grounds on which the local authority contended that the threshold criteria for making a care order under s.31(2) of the Children Act 1989 were satisfied. The document gave details of how it was said that E would be at risk of physical and/or emotional harm as a result of specified allegations of domestic violence between the parents, alcohol and drug abuse, the parents' chaotic lifestyle, their failure to engage with and access appropriate services, the mother's mental health difficulties and the parents' lack of insight into professional concerns. The local authority's threshold document was accepted by the parents and the court. The issue for the court to determine, therefore, was what order should be made in the light of the agreed threshold. The local authority care plan was for adoption and an application was put before the court for a placement order under sections 21 and 22 of the Adoption and Children Act 2002. The applications were supported by the children's guardian. The parents sought the immediate return of the child to their care.

9. The judge had before him a substantial bundle of papers, including Ms Roberts' psychological assessment, a parenting assessment by the social worker, several reports by a drug-taking agency on samples provided by the parents over a period of nine months or so, documents disclosed by the police relating to the allegations of domestic abuse, statements by the parents, and the guardian's report and analysis. At the conclusion of the hearing, the judge delivered judgment which I consider in some detail below. He then made an order which included the following provisions:

> "(f) On 25 June 2019 the court found that:
>
> (1) threshold for the purposes of s.31(2) of the Children Act 1990 satisfied on the basis put forward by the local authority in the agreed threshold statement dated 1 May 2019;
>
> (2) E remains at risk of suffering significant harm as a result of the care she would receive from her mother and father;
>
> (3) no suitable kinship carer has been identified;
>
> (4) on all the evidence and on analysing the welfare checklist, the welfare of E requires the making of a care order, but not in accordance with the final care plan of the local authority;
>
> (5) on all the evidence and on analysing the welfare checklist, the welfare of E requires her to remain in foster care pending the implementation of a prolonged plan of rehabilitation;

(6) the basis upon which the court required the making of the final care order pursuant to a prolonged plan of rehabilitation whilst E remained in foster care is set out in detail within the agreed written judgment of the court annexed hereto;

(7) the court will expect the local authority to pay for support where that is not available from the NHS within a period that it has the chance to work and its efficacy assessed within a timetable for the child which the court proposes might be 12 to 15 months.

(g) On 25 June 2019, the court directed that the matter be listed on 17 September 2019 on a part-heard basis for the making of a final care order, approval of the amended care plan and the dismissal of the placement proceedings."

10. The guardian and local authority both filed notices of appeal against the order. It is convenient to deal here with a preliminary point raised by the respondents, namely whether the appeal is premature. It is said that, given that no final order has yet been made, the local authority and guardian should have awaited the outcome of the hearing next week at which it would be open to them to invite the court to vary or discharge the June 2019 order. For my part, I think the local authority and guardian rightly decided that, if an appeal against the judge's decision was to be launched, it was appropriate to do so immediately after the judgment in June 2019 in which he made findings about risk and set out his decision concerning the future care of the child. In saying that, I record that we have been told that, since the hearing in June, there have been three further incidents of alleged domestic abuse when the police have been called, the most recent only 10 days ago on 2 September, and a further incident in which the mother assaulted a police officer and another person, as a result of which she was prosecuted and received a community sentence. It is possible therefore that, if this appeal were to be dismissed, Judge Greensmith at the hearing next week might take a different course to that set out in his June judgment. But to my mind, that does not undermine the view taken by the guardian and local authority that any appeal against the judge's decision in June should be determined as quickly as possible.

The judgment

11. The judge described the parents' life as having been "impregnated by drug abuse, domestic violence and poor mental health" which he described as "the toxic trio". He recorded that the parents admit that they have spent periods homeless, at times rough sleeping on an allotment, and have a documented and admitted history of drug use, including cocaine, cannabis and opiates. He described the level of domestic violence between them as "substantial" and said that on a number of occasions, the mother has made allegations of violence which she has subsequently retracted. He noted that she has suffered from significant mental health issues and has attempted suicide. He recorded that the parents acknowledge that, in the light of their history and chaotic lifestyle, the threshold for a care order was crossed.

12. The judge continued, however, by saying that the parents had "each made significant moves towards improving their situation". In particular, he identified signs of improvement in the parents' long-standing drug habits. Both the local authority and

guardian contend that the judge misrepresented or misunderstood the evidence about the parents' recent drug taking. It is therefore necessary to consider the judge's analysis of that evidence in some detail.

13. In his judgment, the judge recorded that, on the second day of the hearing, the father had produced drug test results "which indicated use of cannabis, heroin and codeine from the start of March to the middle of May 2019". The judge recorded that the father had said in oral evidence that he had not used heroin and that the tests could be explained by use of over-the-counter opiate-based pain relief medication. On this point, the judge commented: "the father's evidence is tainted by the fact that the test results differentiate between heroin and codeine". He went on to observe, however, that

> "looking at this evidence in the context of the visible improvements in the father's life generally and especially improvements made together with the mother (without any significant support from the local authority), it is reasonable to find that the father's drug use is improving although further testing would be required to demonstrate sustainable change".

14. With regard to the mother's recent drug taking, the judge summarised the evidence as follows:

> "Recent drug tests of the mother demonstrate a reduction in use. The mother gave evidence asserting that she has not used crack cocaine or heroin since November 2018. Although the tests provided are evidence of more recent use, they do not indicate usage beyond the middle of April 2019. Considering the mother's stated position and the tests available, the court would need to be satisfied with more recent evidence of the mother's failure to abstain to find that the mother is not now drug-free, as she says she is."

15. The judge recorded that the parents had managed to secure private rented accommodation which should be suitable for a young child. He noted that the father now had obtained employment. Alongside these positive features, he noted that there had been further incidents of alleged domestic violence which had led to the police being called. He observed that "each of these occasions were altercations between the parents caused by excessive alcohol intake". His summary of the parents' evidence was brief. He recorded that the mother had said that she would be enthusiastic to engage in any therapy offered to her and that she had engaged on a parenting course. He described the father as having come across as "committed" and proud of his new home. He was, however, unwilling to engage in therapy, which led the judge to describe him as naïve in thinking that he could recover from alcohol and drug abuse without professional help. All this led the judge to conclude that

> "there are reasonable grounds to believe that … the parents are committed to change (ref their change of lifestyle); there is emerging solid evidence that they will be able to maintain the change (ref the father gaining employment and the parents' accommodation)".

16. The judge then analysed the evidence of the expert psychologist, Helen Roberts. He noted her conclusions that the relationship between the parents is based on unhealthy attachment; that the mother required therapy but this was unlikely to assist while she

remains in the relationship, and that there was little evidence to suggest the mother would be able to maintain any separation from the father; and that the father was not interested in therapy but rather was satisfied with himself as he is. The judge also noted, however, that Ms Roberts' report had been prepared in February 2019, some four months before the hearing. At that point, as Ms Roberts reported, there was little evidence of change or progress. In oral evidence, Ms Roberts acknowledged that there had been some recent positive steps in the parents' lives, but added that these did not change her opinion. The judge regretted that she had not been given the opportunity of a follow-up meeting with the parents given what he described as the changes in their circumstances. He concluded that the fact that she had given her opinion based on limited information without a further meeting with either parent somewhat undermined the value of her conclusions. Furthermore, he was critical of Ms Roberts for relying on the recent police callouts to demonstrate continuing alcohol use, observing: "in this respect she assumed that police involvement was the direct result of excessive alcohol use, a conclusion I am not sure she was entitled to reach".

17. The judge was critical of the work carried out by both the local authority and the guardian. He observed that they had both relied on pro forma platforms to convey their analyses. He stated that this approach had "left the court wholly ill-equipped to conduct its own holistic and multi-faceted analysis of the options for the child. The analyses presented to the court lacked essential ingredients; they are presented in a formulaic manner that undermines the process".

18. He was particularly critical of the assessment carried out by the social worker, saying that having listened to her evidence he found credence in the submission on behalf of the mother that the local authority had conducted the proceedings on the basis that adoption is the only likely outcome. He criticised her for stating in her report that the mother's drug results indicated maintained high use of drugs when, in the judge's words, that assertion was "simply not true". This led the judge to comment:

> "At best this is a careless misrepresentation of a significant fact. Being generous to the social worker, rather than forming the view that she has deliberately attempted to misrepresent, I would rather believe that it is an example of *confirmation bias* on the social worker's part".

A further reason given for discounting the social worker's assessment was that she had only visited the parents together on one occasion.

19. The judge was equally critical of the guardian. He found it obvious from the contents of her report that she had relied heavily on information from the local authority. He described her analysis as being "no more than a list". After hearing her cross-examination by Ms Mallon, he concluded that she did not have a proper understanding of what is required by a ***Re B-S*** analysis.

20. In the light of what he perceived as the deficiencies in the professional evidence, the judge felt able to depart from their combined recommendations.

21. Having thus analysed the evidence, the judge reached the following conclusions:

> "46. Unusually time is on the side of the child. There is, in my view, just enough time to demonstrate that change is possible and sustainable within the timetable

for the child. We have not reached a position where nothing else but adoption will do.

47. Both parents accept that a care order could be made in this case; it is implicit that the threshold for making such an order is made out. Having regard to the child's welfare is my paramount consideration and … the welfare checklist in s.1(3) of the Children Act 1989. I am entirely satisfied that it would serve the child's welfare to make a care order. Before doing so, where I disagree with the local authority's plan following the making of an order, I must ask the local authority to prepare a revised care plan reflecting the court's assessment of risk.

48. Regarding placement, the test is different. Firstly, I must be satisfied the placement would serve the child's welfare for the whole of her life. In assessing this, I must have the information available to carry out an holistic analysis of all realistic options having regard to the welfare checklist in s.1(4) of the Adoption and Children Act 2002. In this case, the *nothing else will do* test has not been established by the local authority. My conclusion arises from the following key features:

(a) There is no reference in the final statement of possible support that could be offered to the parents to help them to achieve and sustain improvement and reference the timetable for that support.

(b) There is no recognition and thereby no analysis of the progress the parents have made regarding improvement of their own circumstances and how sustainable these improvements are.

(c) The parenting assessment was apparently compiled after the local authority had firmly decided on a plan of adoption.

(d) The analysis of options available for the child fails to mention key elements of several of the options which have not been considered; these are mentioned above.

(e) There is no analysis by the local authority or the guardian of ongoing contact, parental or sibling.

(f) There are reasonable grounds to believe that the ***Re S*** (2014) test is met in that the parents are committed to change (ref their change of lifestyle); there is emerging solid evidence they will be able to maintain the change (ref the father gaining employment and the parents' accommodation); the change can be made within the timetable for the child (before the child reaches two years of age, or thereabouts).

49. Without these key features, in my judgment the local authority's analysis is fundamentally flawed and I am unable on the case presented to find that adoption is the only option which will serve the child's welfare for the whole of her life and it follows from this that I am unable to make a placement order. This means that the only option I have is to make a care order, as I am satisfied that the case for this is made out and that such serve the welfare of the child.

> 50. In my judgment, the only conclusion I can reach is that the child's welfare would be best served with a cohesive care plan which will support future rehabilitation, if that is possible. I am going to adjourn this application for about six weeks on the basis that I invite the local authority to devise a new care plan based on the child remaining in foster care, while a prolonged plan of supported rehabilitation is devised and if possible implemented. Any planned should be specific as to how the parents will receive the assistance they need. My expectation is that the child will remain in foster care for a further 12 to 15 months while work with the parents is undertaken. I expect the local authority to pay for support where that is not available from the NHS within a period that it has the chance to work and its efficacy assessed within a timetable for this child. I think this is reasonable as the local authority has done nothing to further the recommendations of Ms Roberts since receiving a report in February. I have considered whether to adjourn the proceedings to keep the matter in the court arena. As far as I can see the benefit will be prolonged court monitoring and the continuation of legal aid for the parents. To do this, though, would require an extension well beyond that which is permissible by legislation and current authorities. In any event, the local authority can renew its application for a placement at any time and the parents can apply for the care order to be discharged, at any time, provided they have a reasonable belief the correct test is met."

Submissions

22. The appeal was advanced on behalf of both the local authority and guardian, with Mr Senior, who did not appear below, taking the lead.

23. Mr Senior's overarching argument was that the judge conducted a flawed analysis of the evidence and proceeded to carry out a flawed application of the relevant legal principles. His grounds of appeal can be summarised as follows.

24. First, he contends that the judge was wrong to conclude that there was a sufficient evidential basis for concluding that the parents could put themselves in a position to care for the child within an acceptable timescale. Given the history of chaotic lifestyle, persistent drug abuse and over 40 incidents of domestic abuse reported to the police, the judge adopted an unduly positive view of the parents' prospects. Mr Senior submits that there is no substantial consideration within the judgment as to why the positives outweigh the negatives. On a proper objective analysis of the evidence, the judge's conclusion was mistaken.

25. Secondly, it is submitted that the judge did not sufficiently analyse the evidence. Whilst being critical of the evidence of the professionals, he failed to engage adequately with the parents' evidence. In any event, Mr Senior submits that the criticism of the guardian's analysis as "formulaic" was inappropriate given the guidance provided by Cafcass. If he felt that there was any lacuna in the evidence, the right course would have been to give appropriate case management directions. He was unduly critical of the guardian in particular for proceeding on an assumption that the incidents of domestic violence between the parties had been fuelled by alcohol.

26. Thirdly, Mr Senior submits that the judge was wrong in principle to find that it was appropriate for the child to remain in foster care for something in the order of 18

months or more prior to final decisions being made about her long-term care. It is submitted that such an outcome entirely disregards the proper approach to care planning under the 1989 Children Act.

27. Fourthly, it is submitted that the judge failed to give sufficient consideration to the views of the psychologist and guardian as to the timescale of the child when deciding whether there was sufficient basis for the proposed 18-month rehabilitation process. Given that both the psychologist and the guardian were opposed to the proposal, it was incumbent on the judge to provide a more substantial analysis of his reasons for rejecting their views.

28. Finally, it is submitted that, having identified the applicable legal principles, the judge failed to apply them appropriately. He correctly cited the tripartite test identified by Sir James Munby P in ***Re S*** [2014] EWFC B44 in the context of evaluating the capacity of demonstrating change in the Family Drug and Alcohol Court, namely:

> (1) Is there some solid evidence-based reason to believe the parent is committed to making the necessary change?
>
> (2) Is there some solid evidence-based reason to believe the parent will be able to maintain commitment?
>
> (3) Is there some solid evidence-based reason to believe that the parent will be able to make the necessary changes within the child's timetable?

Mr Senior submitted, however, that the judge wrongly misapplied these principles. On the facts of this case, there was no satisfactory evidence that the parents had either the capacity or commitment to make the necessary change within the child's timescale.

29. On behalf of the local authority, trial counsel filed lengthy grounds of appeal and a skeleton argument. These arguments were succinctly summarised by Mr Sanders at the hearing before us. The local authority's case on this appeal can fairly, I hope, be summarised as follows.

> (1) The judge was wrong to conclude that the parents' drug use was improving.
>
> (2) He erred in failing to find that the parents had lied about their drug use and were unable to work with the local authority or other professionals in an open and transparent way.
>
> (3) He wrongly concluded that a family placement was a realistic option. He wrongly sanctioned a prolonged rehabilitation plan when there was no solid evidence upon which he could have reasonably concluded that the parents will be able to make and sustain the necessary changes within the child's timescale. He ought to have realised that the parents' failings are so grave that the prospects of their being able to care for their daughter safely are extremely remote.
>
> (4) He failed to engage with or consider the positives that could be gained from adoption.

(5) He wrongly disregarded, or failed to attach sufficient weight to, the professional consensus of the psychologist Ms Roberts, the social worker and the guardian, and placed too much weight upon the parents' assurances they would engage with the rehabilitation plan.

(6) He was wrong to find the psychologist was not entitled to observe that recent incidents of domestic abuse or arguments between the parents were fuelled by alcohol.

30. On behalf of the father, it is submitted that the judge engaged with care as to the long-term welfare decision for the child, and that his decision was proportionate and well considered and in all circumstances, cannot be described as wrong. It is submitted that the judge was right to identify deficits in the local authority's evidence, in particular the parenting assessment carried out by the social worker who had only one meeting with the parents, and to criticise the local authority for prejudging the situation and "writing off" the parents. It is submitted that the judge rightly found that the guardian was heavily reliant upon the local authority assessment and failed to produce a comprehensive, thorough and objective analysis as required by case law. Mr Khan asserts that there does not appear to have been any real analysis by either the social worker or the guardian or the psychologist of the progress made by the parents. None of the professionals acknowledged real progress demonstrated by the parents' renewed commitment to contact, their success in securing their own property, and the father's achievement in securing employment. Although it is acknowledged that it may take time for the parents to place themselves in a position to care for the child, it is submitted that, with appropriate support and the ongoing engagement of the parents, it is achievable. It is therefore contended that the local authority and the guardian failed to demonstrate that nothing short of adoption was appropriate for E.

31. These submissions are adopted by Ms Mallon on behalf of the mother. It had been the mother's case that E should be returned to her care immediately, and that remains her position today. Ms Mallon's submission on this appeal, however, was that the judge was entitled to take the course he chose, and that his decision cannot be characterised as wrong. She acknowledges that the risk factors associated with the parents paint a worrying picture and that the mother has struggled in the past, but submits that the judge had the benefit of appraising the parents while giving their evidence and observing their general demeanour in court. She submits that he was entitled to conclude that they had started on the path of change, were committed to that process and that there was emerging solid evidence that they would be able to maintain that change. Ms Mallon also concedes that the proposed timescale of a further 12 to 15 months was unexpected. It is not, however, accepted on behalf of the mother that this was either wrong or unjust in all circumstances. Ms Mallon submitted that if the parents achieve the necessary change within that period, then the benefit to the child of being placed with her parents is immeasurable. Alternatively, if the parents do not make or maintain the necessary change, Ms Mallon frankly acknowledges that it is to be expected that the local authority will quickly issue a fresh application for a placement order.

Discussion and conclusion

32. All children wherever possible should be brought up by their parents. Judge Greensmith was rightly seeking to apply the principles, set out by the Supreme Court

in *Re B* [2013] UKSC 33 and developed by this court in *Re B-S* [2013] EWCA Civ 1146 and the subsequent line of authorities, that adoption is the option of last resort in children's cases, and that, when the court is being asked to approve a care plan for adoption and to make a non-consensual placement order, there must be proper evidence from the local authority and guardian addressing all the options which are realistically possible and analysing the arguments for and against each option, followed by an adequately-reasoned judgment.

33. The assessment of evidence, and the apportionment of weight to be attached to each piece of evidence, is a matter for the judge at first instance. An appeal court will not interfere with findings of fact by trial judges unless there are compelling reasons for doing so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them.

34. Nevertheless, I have reached a clear conclusion that the judge's assessment of the evidence in this case, and his application of the legal principles, were deficient in a number of respects.

35. First, I find that Judge Greensmith was unduly optimistic in his interpretation of the evidence concerning the parents' drugtaking. The undisputed history was that the parents have a longstanding drug problem, including in both cases class A drugs. The judge found positive evidence that they were tackling this problem. In my judgment, a realistic assessment of the evidence should have led him to be much more cautious.

36. The drug test report produced by the father records that the hair samples had been received on 3 June 2019 and that the date of sampling was understood to be 31 May 2019. The segments assessed were said to represent an approximate timescale from the start of March 2019 to the middle of May 2019. The conclusion of the report was as follows:

> "the analyses of the hair samples … suggested that cannabis and heroin had been used between approximately the start of March 2019 and the middle of May 2019. In addition, the results could be consistent with the use of codeine between approximately the start of March 2019 and the middle of May 2019."

37. In other words, the test indicated that the father had been using cannabis and heroin throughout the period sampled and may have been taking codeine as well. This was contrary to the father's oral evidence that he had not used heroin. It was his case that the tests could be explained by use of over-the-counter opiate-based pain relief medication, by which he presumably meant codeine. The judge acknowledged this conflict between the father's evidence and the test results by observing that his evidence was "tainted" by the fact that the test results differentiate between heroin and codeine. He went on to consider this evidence in the context of what he described as "the visible improvements in the father's life" and concluded that it was "reasonable to find that the father's drug use is improving", although adding that "further testing would be required to demonstrate sustainable change".

38. With respect to the judge, this is an erroneous assessment of the evidence. The test results clearly demonstrated that the father was taking heroin throughout the time assessed. The father's oral evidence was therefore manifestly untrue. The judge was of course right not to consider pieces of evidence in isolation but rather in the context

of the evidence as a whole. To my mind, however, he was not entitled to conclude that the fact that there were some signs of improvements in the parents' lives was evidence that the father's drug use was "improving" when the drug tests demonstrated that it was not.

39. Similar difficulties arise with the judge's assessment of the mother's drug test results. Looking at the results over a period of nine months, the tests demonstrated that the mother had taken heroin for a six-month period between September 2018 and March 2019 but not thereafter until the end of the test period in May 2019. As for cocaine, the tests indicated that she had taken the drug from the end of July 2018 until middle of April 2019 but not in the subsequent month prior to the end of the test period. The judge's summary of the evidence about the mother's drug use was that recent tests had demonstrated a reduction in use and that there was no indication of use beyond the middle of April 2019. Given the mother's abuse of cocaine over a period of nine months prior to that date, however, it would to my mind be unwise for any court to attach much weight to the apparent absence in the last month of the test period. Furthermore, as the judge duly noted, it was the mother's evidence that she had not used cocaine since November 2018. On the basis of the test results, this evidence was untrue. In those circumstances, the judge's conclusion that "considering the mother's stated position and the tests available, the court would need to be satisfied with more recent evidence of the mother's failure to abstain to find that the mother is not now drug-free, as she says she is" was, in my judgment, erroneous.

40. Secondly, I find that the judge failed to identify solid evidence to believe that the parents were committed and able to make and maintain the necessary changes. The evidence about the change of lifestyle was, at most, mixed. It is striking that the judgment is almost silent about the parents' oral evidence. It seems that the judge formed a favourable impression of them from their evidence and demeanour in court, but there is little analysis of this within the judgment.

41. In particular, I am concerned about the judge's failure to grapple with the evidence of domestic violence. The risks to children from being brought up in a household disfigured by domestic violence are now fully recognised and accepted by the family courts. This is reflected in Practice Direction 12 J in the Family Procedure Rules 2010 as amended, notably in the general principle in paragraph 4:

> "Domestic abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to domestic abuse, or witness one of their parents being violent or abusive to the other parent, or live in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents."

In this case, there is a worryingly long history of domestic abuse. It has clearly disfigured the parent's relationship for a number of years. Unless this issue is addressed head-on and tackled by the parents, it is difficult to envisage any court placing a child in their care. In my judgment, this issue did not receive sufficient recognition in the judge's analysis.

42. Thirdly, I find that the judge's assessment of the expert evidence was erroneous in a number of respects. Whereas his assessment of the parents' evidence is rather thin, he does go into some detail when analysing the evidence given by Ms Roberts. He was right to note that her report had been completed four months before the hearing, but in my judgement, he was not justified in finding that her conclusions were undermined. On the contrary, there was little if any reason for the judge to reject her pessimistic assessment of the prospects that the parents would engage successfully in therapy. Her conclusion that the mother was unlikely to succeed in therapy was based on her assessment of the parents' unhealthy, entrenched and mutually dependent relationship. There is nothing to suggest that there has been any improvement or change in that relationship since Ms Roberts' report. As for the father, he resolutely refuses to contemplate therapy, as the judge recognised in his judgment. To my mind, it is therefore unsurprising that Ms Roberts said that the recent improvements in the parents' lives did not change her opinion.

43. Furthermore, I refute the judge's criticism of Ms Roberts for assuming that the recent police involvement was the direct result of excessive alcohol use. His criticism seems inconsistent with his own observation earlier in the judgment that the recent incidents of domestic abuse and arguments were "altercations between the parents caused by excessive alcohol intake".

44. As for the judge's criticism of the social worker and guardian, there is, in my judgement, some basis for his observation that the local authority had formed the conclusion that adoption was the only option for the child before the completion of the assessment. On the other hand, I think he was unduly critical of the social worker and guardian for adopting what he described as a formulaic approach in the presentation of their evidence. They were plainly following professional guidelines in their attempt to comply with the case law cited above. Reading the guardian's report as a whole, it seems to me to contain a properly-considered analysis and I do not, with respect, agree with the judge's criticism that her analysis was no more than a list, or that it was unduly dependent upon information provided by the local authority.

45. Finally, having regard to well-established legal principles and the evidence in this case, the judge's proposal to postpone a final decision concerning the child's future for up to 18 months to allow the parents an opportunity to demonstrate change was, in my judgement, plainly wrong. As all children should wherever possible be brought up within their birth family and, as a result, adoption is the option of last resort, it is absolutely right that, in appropriate circumstances, parents should be given every reasonable opportunity to make changes sufficient to allow a child to be returned to their care. For my part, however, I find it difficult to envisage any case where it would be appropriate to wait as long as eighteen months before making a decision about whether a seven-month-old child should be placed for adoption. The judge expressed the view that a two-year-old child is "adoptable", but it is widely recognised that a child makes crucial attachments in the first two years of life and to postpone a decision about whether or not to place child for adoption until she has reached that age increases the difficulties of achieving a successful placement. As recognised in s.1(2) of the 1989 Act and s.1(3) of the 2002 Act, any delay in coming to a decision is likely to prejudice the welfare of the child. I do not say that a delay of 18 months could never be justified, but I find it difficult to envisage circumstances when it would be appropriate.

46. In this case, however, I am quite satisfied that the judge was wrong to find that there was anything like sufficiently solid evidence before him to conclude that the parents were committed or able to make and maintain the necessary changes within the child's timescale.

47. In those circumstances, whilst understanding the judge's reasons for pursuing this option, I conclude that his assessment of a number of issues concerning the child's welfare was mistaken and that this appeal must therefore be allowed. If my Lords agree, I would discharge the order of 25 June 2019 and remit the matter to be determined by another circuit judge. Having discussed the matter with the Family Division Liaison Judge, I propose to remit the case to HH Judge Parker who is, I understand, acting as Designated Family Judge in Liverpool at present.

48. Although I have expressed some views about the judge's assessment of the evidence, nothing I have said should be seen as indicating what the ultimate outcome of these proceedings should be. I anticipate that Judge Parker, or any other judge to whom the case is allocated, will wish to consider carefully what further evidence should be obtained. I suspect that this is likely to involve a supplemental report from Ms Roberts, updated drug tests on the parents, and further evidence from the police about allegations of domestic abuse. It may be an appropriate case, as suggested by the parents' representatives, for the instruction of an independent social worker. But detailed case management is a matter for the judge conducting the rehearing.

49. For the reasons set out above, I would allow this appeal.

LORD JUSTICE LINDBLOM

50. I agree.

LORD JUSTICE FLOYD

51. I also agree.