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Case No: LV18C00700

IN THE FAMILY COURT AT LIVERPOOL

35 Vernon Street,
Liverpool, L2 2BX

Date:30 October 2018

Before:

HIS HONOUR JUDGE GREENSMITH

Between:

Wirral Borough Council

Applicant

- and -

M (1)

N (2)

O (3)

P

Q

R

**Children acting through their Guardian Karen
McTavish (4)**

Respondents

Miss France-Hayhurst appeared for the **Applicant**

Ms Burnell appeared for the **First Respondent who had the support of an Intermediary**

Mr Haggis appeared for the **Second Respondent**

There was no appearance for the **Third Respondent who did not attend**

Miss Delaney appeared for the **Fourth Respondent**

JUDGMENT

HIS HONOUR JUDGE GREENSMITH :

1. The court is concerned with the welfare of three children, P (9.10.09 aged 8), Q (25.7.11 aged 6) and R (19.8.15 aged 2). The children's mother is M. The father of Q and R is N. The father of P is O. O has not played any significant part in his son's upbringing and has not engaged in these proceedings. N was involved in the children's upbringing until he and the mother separated in 2017; he wishes to maintain contact with all three boys but acknowledges he is not in a position to offer full time care.
2. The children have lived in their mother's care until an interim care order was made following the commencement of these proceedings. Proceedings were issued on 2 March 2018 and have reached final hearing in their 34th week.
3. A significant feature of this case is that the mother is learning disabled.
4. The matter first came before me on 21 June 2018. By this time the court had the advantage of Dr Allen's report dated 19 June in which it was confirmed that the mother was learning disabled. Up to that stage the emphasis of the case was very much on whether the mother could make changes sufficient to enable her safely to parent the children within the children's timetable.
5. At the hearing on 21 June, the following recordings were made:
 - i. *The Court is concerned with a mother and three children who suffer with learning difficulties/disabilities through no fault of their own. The evidence suggests that the mother is only limited in her parenting capacity by reason of her learning disability and the children's difficulties are, in broad terms, congenital and not caused fully by their mother's upbringing. The threshold as set out is wholly inadequate for the purpose of being a foundation for these proceedings and must be clarified in a separate threshold document.*
 - ii. *(Referring the parties to the relevant case law): The primary issue in this case is 'support'. The question of the mother's capacity to make and sustain change is a secondary issue. The Court is therefore primarily concerned with what support this local authority should be giving to enable the mother to parent her children. Only if it is demonstrated that it is impossible for the local authority to provide*

appropriate support to enable her to parent do we then move on to alternatives.

iii. The local authority should reset its sights not to assume that we have a parent who is incapable, with support, of parenting these children, who have lived with her for a significant length of time, but rather to consider the matter positively and look for solutions rather than focusing on problems.

iv. There must be collaboration between children's services and adult services in the planning for the children.

Directions were given for the mother to have the benefit of a court appointed intermediary.

The matter was timetabled through to the final hearing.

Threshold

6. The key facts of the Threshold have been agreed and are:

a. Injuries Sustained:

i. On examination on 12th February 2018, R (aged 2 ½ years at the time) was found to have sustained significant bruising/abrasions whilst in the mother's care on his legs, forearms, abdomen, waist, shoulder and neck, which were probably sustained as a result of insufficient supervision. The mother failed to seek medical attention for him in a timely manner. The mother has failed to provide a consistent explanation for R's injuries.

b. Domestic Violence:

- i. The mother has repeatedly engaged in relationships characterised by violence and abuse, numerous incidents of which have been witnessed by the children;*
- ii. The relationship between the mother and O featured domestic abuse;*
- iii. The mother has admitted to being assaulted by N during their relationship and the children have been exposed to regular and frequent violence perpetrated by N against the mother;*
- iv. On one occasion, Q was hit by a toy thrown during an argument between the mother and N.*

c. Neglect:

i. Home conditions at the family home were frequently poor;

- ii. *The mother has a history of failing to engage consistently with social care and medical professionals;*
- iii. *The mother is unable or unwilling to provide adequate stimulation, supervision or boundaries for the children at home;*
- iv. *Despite long-term intervention and extensive/intensive support from the local authority since 2009, the mother has been unable to implement change sufficient to meet the children's needs.*

d. Developmental Delay:

- i. *All three children suffer with developmental delay, which the mother has been unable to address or manage adequately.*

e. Honesty:

- i. *The mother concealed from the local authority and the police that she was in a relationship with N in November 2017, despite having approached the local authority for help in April 2017 and subsequently cooperated with the police in pursuing a conviction against him for assault;*
- ii. *The mother allowed contact between N and the children in direct conflict with advice given by police and the local authority and at a time when the children were subject to a child protection plan.*

f. Lack of Insight:

- i. *The mother lacks insight into the deficits in her parenting due to her cognitive abilities;*
- ii. *The mother lacks the cognitive ability to improve her insight, and the support she would require in parenting the children adequately would amount to substitute parenting by the local authority;*
- iii. *The mother lacks insight into the emotional and physical harm caused to the children by exposure to domestic abuse due to her cognitive abilities;*
- iv. *The mother has been unable to prioritise her children's need to be protected from harm over her own need to continue her relationship with N due to her cognitive abilities.*

g. Alcohol Consumption:

- i. *N has a history of alcohol misuse and he continues to drink to excess regularly.*

h. Failure to engage:

i. Both O and N have refused to engage with Children's Services.

7. The key issue of this case remains; whether the local authority is able to provide the mother with the support she needs and if it can, whether the provision that level of support would serve the children's welfare?
8. Throughout the proceedings the mother has maintained that she would dearly like the children to live with her. There is no doubt that the mother loves her children and that they love her.
9. The mother made the brave decision at the commencement of the final hearing (which was listed over five days) to concede that she was unable to provide full time care of the children. The Guardian supported a care plan which entailed the children being placed in long term foster care. The mother, N and the Maternal Grandparents will have supervised contact at defined times. The court supported the plan and indicated so at the conclusion of the second day of the hearing, judgment being reserved.
10. The essence of deciding what is in the best interests of the children is to be clear that neither they nor their mother should be prejudiced because of the mother's learning disability. This is established law. It is established that parents should be supported by The State to the extent that it is necessary to do so and such supports the welfare of the child; this has been referred to as "supported parenting". I refer to the collective jurisprudence stated within and following from *Re D (Adoption) (No 3)* [2016] EWFC 1. In this case Munby P at para 155, discusses the issue of,

"parenting which, in reality, would become parenting by his professional and other carers, rather than his parents which would likely have adverse consequences for his emotional development."

11. The President goes on to bring the jurisprudence together and names the syndrome of this type of parenting as, "*substituted parenting*". With reference to the efficacy of substituted parenting, the President says at Para 155 (iii):

'Even if a sustainable package could be devised which was in one sense capable of bridging the gap, it would not in fact be promoting [the child's] best interests. His parenting would, in reality become parenting by his professional and other carers rather than by his parents, with all the adverse consequences for his emotional development and future welfare.'

12. Assuming, then that supported parenting is appropriate and substituted parenting, not so, when does supported parenting become substituted parenting? Professor Jo Delahunty QC poses the question, thus, *“So where does one draw the line between extensive support and excessive support?”*¹ . Professor Delahunty goes on to propose that this question will vary in every case for every child. I entirely and very respectfully endorse that approach.
13. In order to answer the question posed in the preceding chapter it is the courts duty clearly to set out the level of support it finds, on the balance of probabilities, to be necessary to enable each child to be placed with their mother.

The Children

14. P is nine years old. He has been the subject of a paediatric assessment and a psychological assessment during the course of these proceedings. P has mild to moderate learning disability which at this stage of his development especially affects his language. The main cause of this is genetic. P requires attentive parenting and special education provision. The Guardian is of the view that P requires a level of structure and boundaries that has not been provided by his mother. This is supported by the fact that while P has been in foster placement he has thrived.
15. Q is seven years old. The result of his paediatric and psychological assessments is that he has language and developmental delay such that he is assessed as having a mild to moderate learning disability. Like P, his condition is said to be genetic. The Guardian reports that Q also has problems with incontinence and requires ongoing support with this. In addition to attentive parenting, Q requires practical support with his incontinence, something which the mother has been unable to give to a level where it has been effective.
16. R is the youngest sibling at three years. As is described in the threshold, R has suffered physical injuries whilst in the care or supervision of the mother. The injuries, whilst extensive, are probably accidental in nature. The extent of the injuries are indicative of the supervision R requires.

The Mother

17. The mother has been the subject of a thorough assessment conducted by Danielle Hoskinson, an Independent Child Care Consultant. The report has been conducted in accordance with The Framework for the Assessment of Children in Need and their Families, DOH 2000. PAMS tools have been used in the preparation of the report. The author had the benefit of the mother’s full psychological assessment. The conclusion is that the mother is unable to act as the sole carer for her children and that she does not have the cognitive capacity to reflect on the

¹ *Vulnerable clients and the family justice system: Part1: Disability and the parent – do we expect perfection in parenting.* Family Law April [2018] 398

impact of her poor parenting for her children. It is the uncontested view of Ms Hoskinson that, “The support the mother would require is considered to be unrealistic and will take the form of substituted parenting by professionals.”

18. Dr David Allen, a jointly instructed Clinical Psychologist was asked, what type of support he would recommend enabling the children to be returned to their mother. He advised that the mother required a comprehensive long-term support package. He said this should be in the order of three hours a day on school days which would be increased during weekends and school holidays. He recommended further support through each night, particularly if the mother or one of the children were to be unwell; it would be necessary also for the mother to have at hand 24 hour telephone support. In order for this support to work effectively, Dr Allen opined that the mother should work with a small team of say 2 – 4 permanent professionals. He recognised that this would be an ambitious project and that he had not come across anything similar.

The Prospective Support Plan

19. Whilst acknowledging the local authority’s position, and being cognisant of the exercise the court must perform in order to reach its own conclusion, I ordered a prospective care plan which would demonstrate what a support package, as recommended by the experts, would “look like”, to enable the children to return to the mother’s care. I requested that there be collaboration between Children Services and Adult Services. In response to this, both departments of the local authority came together to discuss the support which is available for the mother from the collective resources of both departments. The local authority has produced a four page “Care Plan” which sets out comprehensively the provision available. The report breaks down the areas in which the mother needs support and sets out how the support could be provided. The court is grateful to the local authority for exploring the options in such detail. Further to its brief the local authority suggested models which potentially meet the mother’s and the children’s needs. The report carefully analyses the needs of the family using the information obtained during the proceedings. Key to the conclusions is an acknowledgment that the mother requires a, “Whole package of parenting.” I agree with this. Each of the models which the local authority presents involves the local authority being wholly involved in basic parenting. In addition to long term foster care, the local authority explores the possibility of a mother and child foster placement and, rightly, in my view, discount this as it is not available indefinitely.
20. The conclusion of the report, which I accept, is that the cumulative effect of the support required would be that the mother would need 24hrs a day access to support and that there

must be someone physically present while she was caring for the children. The local authority says, "The maximum support which is available from the local authority will not provide the children with stability and the care they need."

Analysis

21. Applying the Children Act 1989 s1(3), the "Welfare Checklist", my analysis of this case is as follows:

- (a) The Guardian does not report the wishes and feelings of the children and because no oral evidence has been given the court has not had the opportunity to explore this. There is no criticism of the Guardian for not asking the children what they "want" as it may have given rise to an unrealistic expectation on the part of the children. I am clear that all three boys love their mother very much. I can assume that they would like to live with her if it was possible.
- (b) The children have greater than usual emotional needs. Each child suffers from developmental delay and the older two have been diagnosed as learning disabled. They have a need for better than good enough care.
- (c) The children are reported to be thriving in their current foster placements. A change in circumstance by returning to their mother's care would be detrimental to their welfare.
- (d) The children have had a very difficult upbringing in the care of their mother. They have been exposed to domestic conflict and care which has not met their welfare needs.
- (e) If the children were to be returned to their mother they would be at significant risk of harm. This would be primarily emotionally, but the injuries suffered by P are sufficient for me to find that the children would be at risk physically from sustaining injury through lack of supervision.
- (f) The mother is incapable of meeting the children's needs on her own. It is theoretically possible to put sufficient support in place so that the physical needs would be met, however:
 - i. It is, in my judgment, wholly unreasonable to expect the local authority to provide a care package such as would enable the return to the mother. The court has to recognise that the resources of a local authority are finite. It seems to me that the court is entitled to take a view that provision of the resources required to implement the care plan necessary to secure the

return of the children in this case is disproportionate to what could be achieved, having regard to the other commitments of the local authority.

- ii. As a separate consideration, I am satisfied that even if the local authority was able to put a care plan in place sufficient to secure the physical needs of the children, such a plan would be detrimental to the children's emotional welfare. The children would suffer from having a number of different carers. The carers would inevitably change on a regular basis. This would cause the children to experience diverse boundaries. Attachment issues would arise, particularly for R (3y). As they grow older they will realise they are living in a wholly artificial environment. They will be unsure what their relationship is to their mother.

(g) The range of options open to the court are limited in this case to return to mother with supported parenting, placement in a mother and children foster placement and the children remaining in long term foster care.

22. My analysis is that if the children were to return to the care of the mother with the care package that would be necessary to support that placement, they would be living in an environment which would not serve their welfare. The children would be subject to conflicted and inconsistent styles of parenting; they would have different boundaries imposed by various adults who would come and go from their lives with a degree of randomness, that they would find it impossible to maintain any real degree of consistency.
23. Whether the situation I have described could or indeed should be described as "substituted parenting" is a matter for others to decide. My view is that there is a potential danger in applying such a simple description to what is a highly complex dynamic. Professor Delahunty asks where the line should be drawn between extensive support and excessive support. It could be that using the phrase "substituted parenting" is a convenient way of identifying where the line falls. In the absence of a clear description of the dynamic that defines what substituted parenting is, each case should include a clear exposition of what the required support actually "looks like" and how the ensuing dynamic serves the child's welfare.
24. The circumstances of this particular case are such that the only option which would serve the welfare of the children is long term foster care.

Good practice guidance on working with parents with a learning disability (2007) revised September 2016

25. There is an imperative for all local authorities to follow this guidance. In Kent CC v A Mother [2011] EWHC 402 (Fam) Baker J said:

“All social workers, and family support workers, working with children and families need to be trained to recognise and deal with parents with learning disabilities. The Guidance issued by central government needs to be followed.”

I have serious reservations as to whether the guidelines have been followed in this case.

26. A review of the chronology of the local authority’s involvement reveals that the local authority was able to identify key aspects of the mothers’ personality which should have put it on notice that the mother potentially had a learning disability.
27. According to the Advocates Gateway² learning disability typically affects key aspects of a person’s personality (para 3.2). The local authority first became involved with the mother in April 2009. There were frequent encounters. In my judgment the problems the mother was encountering should have alerted the local authority to her condition. After regular involvement, on 4 October 2012 it is reported, *“It was identified that (the mother) experiences learning difficulties and can find it difficult to understand information, which has resulted in the children missing health appointments.”* To the credit of Adult Social Care a psychological assessment was arranged, four days later, but it was cancelled because the mother failed to attend. There is no record of what support the mother was given to attend the appointment or of any follow up. This was a tragically missed opportunity. A Core Assessment in June 2013 failed to identify the issue. There follows a sequence of entries from 2013 through to 2016 which identify behaviour consistent with a learning disabled person, yet no mention of the possibility of this being the underlying cause. On 29 April 2016, an entry records that the mother has been identified as a vulnerable adult who has, *“identified learning needs”* and has a, *“... diagnosed moderate Learning Difficulty.”* There follows a catalogue of incidents of domestic violence and incident of local authority support being deployed. At no point is there mention of the Guidelines and how they have been applied in this case.
28. The children were not accommodated until 12 February 2018 which was under Children Act 1989 s20 at the request of the mother – nine years after the first involvement of the local authority. While Q was born when the local authority became involved, during the involvement, P and R were born. The local authority should, in my view reflect on how different these boys early years would have been if the mother’s disability had been recognised earlier and the recommendations contained in The Guidelines had been followed.

² www.theadvocatesgateway.org