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IN THE FAMILY COURT  
(Sitting at Newcastle upon Tyne)

No. NE18C00632

The Law Courts  
The Quayside  
Newcastle-upon-Tyne  
NE1 3LA

16 December 2019

Before:

HIS HONOUR JUDGE SIMON WOOD

(In Private)

IN THE MATTER OF:

A LOCAL AUTHORITY

M

B (A child)

By his Children's Guardian, Ms Emma Weetch

**REPORTING RESTRICTIONS APPLY**

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MS C PACZKO appeared on behalf of the Local Authority.

The mother appeared as a litigant in person by telephone link from Hungary MR

N KINCAID appeared on behalf of the Child through his Guardian

Hearing date: 3 December 2019

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Approved/**JUDGMENT**

His Honour Judge Simon Wood

## **Preface**

The court heard this case on 3 December 2019 in circumstances more fully described in the judgment that follows. At its conclusion the court indicated that a care order would be made with immediate effect and gave short reasons (which have been separately transcribed) and indicated that its full reasons would follow in writing, to be translated into Hungarian. It further indicated that it would extend time to appeal to a date 28 days after service of the translated judgment on the mother. The court's full reasons now follow.

## **Introduction**

1. On the afternoon of 23 August 2018 a 14 year old boy, A, was found dead, hanging from a tree, close to his home. It was death by suicide. It is these immensely distressing circumstances that bring the welfare needs of his brother, B, now on the eve of his 12<sup>th</sup> birthday, before the court.
2. The local authority commenced proceedings urgently following the discovery of A's body, seeking and being granted an interim care order in respect of B. He was placed with foster carers with whom he has remained to date and the local authority seek, supported by B's children's guardian, originally Liz Stanley and later substituted by Emma Weetch, a care order with a plan of long term foster care, B to remain with his carers of the last 15 months, hopefully, for the rest of his minority. The plan is opposed by B's mother, M, who seeks B's return to her care or, alternatively, placement with his father or even foster care in her home country.

## **Background**

3. B, like A and his mother, is Hungarian. Their father, F, is Egyptian although M and F separated and divorced (possibly in 2012) and the court received evidence that it was at least six and maybe eight or more years since he played any part in the lives of his children. Describing F as abusive of her and the children, on M's report, she came to England with the boys in 2016, looking for happiness and to protect her children from racism (according to her account to the expert psychiatrist, Dr Thorp, who reported to the court in January 2019). However, an unanswered question relates to the haste with which she left Hungary and it seems likely that M's explanation is not the whole one.
4. Regardless, the boys quickly came to the attention of the local authority in 2016 with concerns reported by school which ranged from malnourishment, extremely poor housing, lack of registration with a doctor and emotional issues in A's case in particular. An early feature of the attempts to address these problems was M's mental health. It was suggested that she had, in Hungary, been the subject of the equivalent to detention under s. 3 of the Mental Health Act in England and it appeared that A had taken on a parenting role in the absence of M being reliably able to fulfil this essential task. A local authority assessment followed and the case was transferred

to early help services. Child concern notifications became a feature, from the police and school, with a steady escalation of incidents.

5. It is not necessary to detail them here: they are set out at some length in the chronology. One of the practical issues with intervention was M's almost complete lack of English. There are numerous episodes of high emotion in 2018 with A caught up in the middle, having to translate for M to try and explain to professionals something of their circumstances. Whilst M was working in a chip shop, it was thought she was being exploited financially. The family was accessing food banks due to lack of financial resources. Although a connection was made with a local church which provided support and help, they recognised a limitation in what they could offer in terms of M's distress, desperation even, in times of crisis. A, described as an intelligent child, missed much school, thought to be tending to M's needs. One of the impediments to progress was M's resistance to advice and help from professionals and her church described her as abusive when trying to offer her help. Indeed, the police were called to school more than once to remove M due to her aggressive and abusive behaviour.
6. The death of A came with little or no warning. It is possible that there was some sort of argument before he went out, ostensibly for a run. He was found by a passer-by some time later. A suicide note was later found. To add the distress, in it he sought to blame M for his decision.
7. Perhaps unsurprisingly, A's death precipitated a collapse in M's mental health with threats to kill herself and B, a lunge at a social worker with a knife and having to be restrained by the police. They exercised their powers in respect of B on M being sectioned, hence the need for an interim care order the following day in respect of B who was then 10 and had no one to care for him. On proceedings being issued a capacity assessment of M was ordered and she was found by Dr Thorp to have litigation capacity. So far as can be told, she has never lost that capacity since then. However, as I will come to, her behaviour has continued to be a cause for concern, causing the local authority to seek an order permitting it to withhold contact between her and B under s. 34(4) of the Children Act 1989 due to the high levels of emotional pressure being exerted on B who himself asked for contact to stop until his mother was 'better', telling his guardian: "My mum is too emotional for contact right now." Such an order was granted on 10 January 2019 following a contested hearing. The court was extremely concerned about M's then presentation and urged her to seek help from her doctor, armed with a full psychiatric report that Dr Thorp had prepared on 9 January 2019. What subsequently happened was that, following her being arrested by the police for alleged harassment on going to B's school, M quite simply disappeared in late March/early April 2019. About 10 days later, the local authority received information that M was back in Hungary, in poor physical health, and she has remained there ever since, engaging with the litigation in a manner that I will describe shortly.
8. So far as F is concerned, following A's death, the local authority was able to track him down quite quickly – in September 2018 - in Hungary. He told a social worker that he had no concern for B in M's care. In response to an enquiry as to whether he would attend any hearing, he said he would not as he was not a Hungarian national and had no visa to visit the UK, declining an offer of assistance to obtain one as well as the

offer of free legal advice, to which he was entitled of right: “It is not necessary.” He added that he did not think it appropriate for B to be returned to Hungary and he had no relationship with B: “It is like he has no father.” He then told the social worker that he had a new kebab shop and was not in a position to be a father at this time. He has never engaged since although, after the hearing, M sent the court a three line email in which he purported, on 26 November 2019, to ask the social worker for help “to get my son under my care”. I will revert to this.

## **Procedural issues**

9. This case has presented challenges that have dictated the course of the litigation. One consistent, however, has been the fact that the same judge has been able to conduct every single hearing thus ensuring continuity in otherwise difficult circumstances.
10. On proceedings being issued, M instructed an extremely experienced solicitor from a leading firm of child care practitioners. Notwithstanding that, from the outset, hearings were characterised by M’s apparent inability to trust her solicitor to put her case such that she would interrupt and seek to argue the case herself. That culminated at the hearing on 10 January 2019 when she was represented by counsel and M effectively attempted to take over conduct of the hearing. I should note that there has been a Hungarian translator present at each hearing to assist M and the court. Another feature of the hearings has been M’s rapid speech with which translators have all struggled to cope despite requests to slow down, not talk over them and give them time to translate.
11. At the next hearing on 21 February 2019, M appeared as a litigant in person for the first time. They have played no further part despite the court urging M at every available opportunity from that date onwards either to reinstruct them or to instruct new solicitors to help her navigate her way through this relatively complex litigation. Another feature of the case, since 8 February 2019 onwards, has been M bombarding the court, and others, with emails. M obtained my judicial email address and I have received directly at least 77 emails from her, almost always in Hungarian, often at very great length and with multiple attachments, usually photographs of happier times. All have been forwarded to the local authority and solicitors for B and all have been read, usually by the medium of Google translate, but whilst they contain many complaints about the social worker and how wrong it is for B to be in foster care in England, they are striking for their lack of any relevant evidence although M did comply with a request for a final statement which was received, dated 6 November 2019, to which I will come.
12. Following her being found to be in Hungary, on 12 April 2019 there was a hearing prior to which she had made a late request to attend by Skype which could not be facilitated. The hearing was adjourned to 13 May. Ahead of that hearing, the local authority was contacted by a Hungarian lawyer based in Hungary, Dora Kovacs. She wrote to the local authority with many entirely reasonable questions as to why B was in care in England and explaining that she had instructions to assist M. She was welcomed by the court and appeared, with M, by Skype at the adjourned hearing when it was confirmed that all the key documents (including social work statements,

threshold and response, parenting assessment, psychiatric evidence, final care plan and guardian's final analysis, all already translated into Hungarian) would be sent to Ms Kovacs to enable her to advise M and consider her position. Ms Kovacs speaks excellent English and quickly developed a full grasp of the issues. The hearing was adjourned to 28 May.

13. At that adjourned hearing, Ms Kovacs again appeared by Skype but without her client, indicating that M had agreed to absent herself from the hearing, not least as that on 13 May had been characterised by the constant interruption of M who talked over Ms Kovacs despite being told by her lawyer and the court to let Ms Kovacs speak. At this later hearing, it was agreed that an Hungarian independent social worker based in England, Ms Kitti Kovesi, would carry out an assessment of B's maternal grandmother as a kinship carer for B. The case was timetabled both to a review on 29 July and an issues' resolution hearing/early final hearing on 21 October.
14. At the review on 29 July, Ms Kovacs again appeared by Skype without M. The report of ISW had been received but it had not yet been translated and M was unaware of the outcome which was, in fact, negative in that it did not recommend placement with maternal grandmother for reasons I will address later. In the light of the negative conclusion, the IRH/early final hearing was brought forward to 25 September. A further review was fixed for 22 August when Ms Kovacs attended in place of M. She was able to tell the court that M was engaging with a psychiatrist in Hungary and was willing to undergo further assessment. The court pointed out to Ms Kovacs that her participation had been a very welcome and helpful development but nevertheless she did not have formal rights of audience. It suggested that consideration be given to reinstructing an English solicitor but, in the absence of that, it would nevertheless permit her to appear at the IRH/EFH.
15. Alas, by 25 September, Ms Kovacs had withdrawn from representation on the advice of her professional body and M did not appear or send alternative representation. M had emailed the court shortly before the hearing to say that she had undergone surgery on her wrist or hand and asking for an adjournment. Whilst, as an IRH, it was open to the court to finalise the proceedings given that all the evidence was complete, the court felt bound to adjourn, which it did to 18 November. Given that M appeared to be unrepresented, living in Hungary, speaking no meaningful English and actively engaging to the extent of sending multiple emails to the local authority, the court and others (including the Prime Minister), the court considered that it was appropriate to make contact with the network judge with a view to consideration of seeking the assistance of the Hungarian court under Council Regulation (EC)1206/2001, to include the use of a video link, so as to ensure that every opportunity was afforded, and seen to afford, M's fullest participation.
16. The court therefore made a referral to the International Family Justice Office and Mr Justice MacDonald, as Deputy Head of the Office, responded in detail on 10 October declining to make such a referral. As a consequence, the court made an order without a hearing on 6 November, vacating the hearing on 18 November and re-listing the IRH/EFH on 3 December, two hours allowed. In making that order, the court noted the following:

- **“There appears to be no legal obstacle to M participating in hearing by attending at a Court in England**
- **M is able to re-engage with an English lawyer and have the benefit of non merit, non means tested legal aid should she so wish**
- **M could make arrangements to attend the Court in England in person should she so wish**
- **M could seek for a direction from the Court for the setting up of a video or telephone link should she so wish**
- **If M chooses not to take any of the above options, the Court is of the opinion that appropriate arrangements have been made to enable her participation in accordance with Article 6; M has been given the opportunity by the Court to participate in the proceedings**
- **If M declines to cooperate with the options available for her to participate in the hearing without good reason, this should not delay the resolution of the proceedings any further.”**

17. In anticipation of this hearing, the court gave careful consideration to how in practice M could best participate. To that end it prepared a Judge’s Note which, duly translated, was sent to M ahead of 3 December, a copy of which is annexed to this judgment.

18. Prior to this hearing, M made a request to appear by Skype. Ms Paczko made arrangements to bring with her a suitably enabled computer but when connection was made the quality was such that it was agreed that it was not workable and so the hearing proceeded by telephone. Whilst the court apologised to M for the lack of a video enabled form of communication, it was satisfied that the telephone link provided a clear and reliable means of participation. The court and M were assisted by an outstanding Hungarian speaking translator. Although there were a number of interruptions and the translator had, on numerous occasions, to ask M to stop speaking and/or shortening her responses, I pay tribute to M’s overall restraint and co-operation with the spirit of the instructions contained in my Note. Thus, the hearing lasted for about two and a half hours. The local authority (which had prepared a detailed written opening) and Guardian addressed me well within the 20 minute they were each allotted and M was given freedom to speak at length. It was not possible to give a full judgment which could not sensibly have been translated simultaneously and thus the court announced the decision giving short reasons with this judgment to follow. The necessity for the making of the order on 3 December was in large measure dictated by the powerful need for B to have certainty, he having been in limbo now for over 15 months, more than twice the 26 weeks parliament has legislated for the finalisation of care proceedings.

### **Hungarian Central Authority**

19. Before turning to the substance of the application I should mention the role of the Hungarian Central Authority (HCA).



20. On proceedings being issued, the court made a determination that B was habitually resident in England and Wales in accordance with Brussels II (R). Whilst the court was mindful of the need to review this regularly, having lived in England since 2016 and on consideration of all of the circumstances, that determination was beyond argument and has never been challenged. Notification was duly given to the Hungarian Ministry of Human Capacities, Department of Child Protection and Guardianship Affairs, Central Authority (“HCA”) which, on 12 February 2019 contacted the court with notice of M’s request that she wished B to be placed “into his original family”. Repeating the fact that F did not wish to take care of B, the HCA said that M’s oldest son, X, A and B’s 30 year old half brother, or maternal grandmother would wish to care for B. To that end, the HCA said it would arrange for an assessment to be carried out. A very short assessment of maternal grandmother was received by the local authority on or after 18 February which, in a little over 10 lines, suggested that maternal grandmother’s “life and living conditions are suitable for holding the guardian office”.
21. The assessment raised a great many questions, hence the local authority request that followed which included an indication as to whether the HCA sought a transfer of the proceedings to Hungary as well as questions about how further assessment be carried out.
22. On 20 February 2019 the HCA replied in these terms: whilst not seeking a transfer in accordance with Art. 15 of Brussels II (R), were the English court to decide to transfer, the HCA would accept it, knowing of M’s wish that B be returned to his home country. Subsequently, the HCA confirmed that X was not able to care for B due to his own personal circumstances. Nevertheless, X accepted that maternal grandmother would be “a perfect person for” B, she having raised X in any event, and knowing that M “is not able to take care of” B. The HCA subsequently identified ISW as a suitable person to carry out a detailed assessment of maternal grandmother, hence the court’s order of 28 May 2019 under FPR 2010, Part 25 as to the necessity for such assessment.
23. When, on 26 November 2019, the local authority was contacted by an email purporting to come from F yet all attempts to contact the author, including by telephone (which went straight to voicemail), it also contacted the HCA to ascertain whether it could assist in verifying the position of F but no response was received.
24. The court is extremely grateful to the HCA for its assistance as outlined but notes that there has been no further engagement by it since March 2019. In particular there has been no request by the HCA for a transfer of proceedings to Hungary and no attempt to intervene in this litigation to any greater extent.

## **Threshold**

25. In considering the local authority’s contention that B was suffering, or likely to suffer, significant harm and that the harm or its likelihood was because B was not receiving

care that would be reasonably expected from a parent, the threshold findings sought under s. 31 of the Children Act 1989 are short and straight forward:

- a) The death of A, followed by M's breakdown in her mental health (including her being sectioned) and therefore unable to provide care for B.

For welfare;

- b) M has continued to suffer from poor mental health and has not sought/engaged with adequate treatment for the same.
- c) M returned to Hungary in April 2019 without informing the local authority.
- d) M has been arrested for offences of harassment due to her attending at the foster carers home, and a Restraining Order was granted prohibiting her from contacting B's foster carers.
- e) The Court granted a s.34(4) order due to concerns regarding M's mental health and her conduct at contact, which was adversely impacting on B's emotional wellbeing.
- f) B has expressed that at this time he does not wish to be cared for by M due to concerns around her mental health.

26. The only parental response document, dated 4 October 2018, accepted (a). It went on to acknowledge an acute grief reaction on A's death. It also noted that B had not had any contact with F for over 6 years.

27. There was no formal response to the welfare findings sought but M's return to Hungary without telling anyone, leaving B in England in foster care, her arrest for harassment on 28 March 2019 (which may have precipitated her flight) and the making of an order under s.34(4) of the Act are beyond dispute. I will address her continued poor mental health and B's wishes and feelings separately.

### **The local authority case**

28. The local authority case, quite simply, is that M is not able safely and securely to care for B and no alternative carers exist to foster care.

29. The key social worker is SW2 who replaced SW1 who prepared the initial social work statement which had chronicled the history and made the case for B to be cared for in foster care in the aftermath of A's death. None of that was controversial but I note here that SW1 was held in far higher esteem by M than SW2.

30. SW2 gave the court the evidence about M's conduct in contact that resulted in the local authority seeking permission to withhold contact. That had been preceded by increasingly abusive behaviour by M which resulted in the school having to call the police, for example, on 4 December 2018 when they took her home only for M to

report B as a missing person when, of course, he was in foster care. M then started attending the foster placement where she was eventually arrested for a Breach of the Peace as the police found her wholly unable to regulate her emotions which they felt was attributable to an acute mental health condition. Further abusive visits occurred to school and the foster placement (there was a further arrest on 10 December 2018) from which it became increasingly difficult to protect B who was understandably upset.

31. Unfortunately, M's conduct continued in contact when it took place. So, on 13 December 2018, M was irate, declined to calm down on request, was derogatory about the social worker and the foster carers, "screaming" at B who was upset and crying, later revealing that M had told him in Hungarian (no interpreter had attended) that she was leaving him in the UK and returning to Hungary. In the days that followed, B indicated that he did not presently want contact because of M's emotional state, a consistent position held up to the hearing on 10 January repeated not just to SW2 but to his very experienced guardian.
32. Having noted positive change in B's emotional state following the cessation of contact, further episodes occurred from 1 March onwards with M attending school in breach of a Restraining Order on several occasions, leading to her eventual arrest on 28 March. She was bailed to 8 April but then disappeared causing concern to the English authorities as to her wellbeing. On 10 April SW2 was able to make contact with maternal grandmother who advised that M was back in Hungary having arrived by car in a state of unconsciousness, thought to have been hunger induced. She was admitted to hospital and refused to talk to anyone. Maternal grandmother was alarmed as she appears to have been anticipating M's return but could not understand why B was not with her.
33. SW2 had completed a parenting assessment on 23 January 2019. It is a lengthy, comprehensive assessment but negative in its conclusion. The long history of emotional difficulties revealed that M turned to her children to meet her needs. This went beyond translation to, for example, searching for jobs for her and ensuring bills were paid. An authoritarian parenting style had additionally denied the boys freedom of opportunity to socialise and be with their friends. There were many gaps in the understanding of M's previous life experiences and Dr Thorp's opinion was that M had a form of personality disorder albeit the persistence of grief following A's death made a more precise diagnosis impossible. M was not complying with medical supervision and this appeared, on M's account, to be embedded behaviour. SW2 found her to be in denial about her behaviours and the impact on her children. There was no hint that she was receptive to change and she was resistant and suspicious of professional involvement.
34. SW2 draws on Dr Thorp's observation that M's difficulties were longstanding. Absent acceptance of support to address her difficulties, they will continue. Dr Thorp added:

“...B would probably not benefit from being returned to his mother whose presentation is chaotic, disorganised, angry and negative towards services.”

35. The local authority attempted to facilitate indirect contact between B and M but letters received were simply not appropriate to be shared. Apart from the multiple emails, there has been no direct engagement with the local authority since. What information there is comes from the report of Ms Kovesi whose instruction M supported. It reveals that, up to the date of being written, M’s behaviours have continued since her return to Hungary with lack of emotional regulation with consequent erratic, paranoid behaviours that escalate into aggression and violence with no insight into the impact on others, but particularly B. Indeed, as I will come to, it was M’s very aggression that resulted in maternal grandmother reaching the conclusion that, were she to assume the care of B in place of M, she could not safeguard him from his mother.

### **The mother’s case**

36. Despite the wide ranging and times abusive approach to her perception of the local authority’s shortcomings and the bad faith of its social work staff apparent at earlier hearings and in the many emails to which I have referred, M’s statement of 6 November 2019 is relatively concise.

37. She maintains that her mental health issues are attributable to an understandable grief reaction to an undoubted tragedy, aggravated by the court removing B from her care. She complains that her mental health has not been assessed at any stage and would wish to have such an assessment in Hungary as well as an environmental assessment of her living circumstances, such that the process has been unfair. Having been in Hungary since spring 2019 she says that there has been no contact from the local authority, her health and circumstances having improved.

38. She points out that there are other family members who could care for B such as “grandmothers and siblings” and argues that F has been “left out” of the proceedings despite him “claiming his rights” to have B live with him.

39. M is critical of the care B has received in foster care such as having to share the bathwater of another child, travelling by car without a seatbelt, being permitted to go swimming alone and be “in a dark cinema”. Without a video recording of B showing his wishes and feelings, she cannot comment on what they are said to be.

40. She concludes by saying that she wishes to raise B and the conditions are right for this in Hungary and she should be reassessed.

41. In her oral address to me, she confirmed that her first choice was for B to be returned to her care and they would live in her flat but, in default, she would seek B to be placed with F who lives about 200 km away. She said that her endorsement of F was recent. After an acrimonious divorce and them not getting on, then her organising A’s funeral with no help from F (indeed, he was cross with her because she arranged a cremation), she decided it would be a good idea for B to live with him “because he

has changed a lot”. It was very difficult to obtain an answer as to when she came to this view but it was clear that it was recent: she had not told him that she had returned to Hungary without B and she had not instructed her lawyer to tell him. She could not say how long it was since B had seen F but did not see that as any impediment.

42. Her final option was alternative family care in Hungary such as one of the villages they have for children who need alternative care. His cultural needs would better be met. He would get psychological or psychiatric (it was not clear which) help which she believes B needs. She wants B back before he commits suicide. She feels 1000% [sic] better and she does not accept that she is not well enough to care.

## **The Law**

43. There is no issue as to the legal principles that fall to be applied. It is for the local authority to prove, on the balance of probabilities, the facts upon which they seek to rely. In accordance with the leading cases of *Re: B* [2013] UKSC 33 and *Re B-S* [2013] EWCA Civ 1146 in considering the local authority’s application for a care order, the court must of course have regard to whether it is necessary to make an order at all; in having regard to the welfare checklist in section 1 of the Children Act 1989, of course, the court must throughout regard as its paramount concern the welfare of B. The court must bear in mind the rights of M and B under Art. 8 of ECHR to respect for family and private life.

## **Discussion**

44. Notwithstanding the limitations of the final hearing, there can be no doubt that the threshold is met. The circumstances in which B was taken into interim care are beyond dispute. M was simply not available to care for him by reason of her mental health.
45. More controversially, she disputes that such good reason continues to exist to date, citing the improvement in her mental health since then and complaining that there has been no re-assessment of her.
46. Whilst there has not been any recent assessment, there is good evidence that whilst the acute difficulties of August and September 2018 have subsided (she was released from detention on 5 September 2018), the opinion of Dr Thorp has already been noted. Her description of M’s mental state when examined is worth setting out:

*“She spoke quite rapidly and loudly on occasion, speaking over the interpreter and giving lengthy, rambling answers to questions. There was poor eye contact and rapport. She appeared pre-occupied with blaming others such as the government and social services for her son’s death.”*

This is a description that accords with the court’s own experience albeit it cannot speak as to eye contact in December 2019 and it has already been observed that there

was more reasonable compliance with expected behaviour at the final hearing which may be suggestive of some improvement. Nevertheless, Dr Thorp's pessimism at the ability to engage with treatment or services and the prognosis remains.

47. Following that report being written the court has referred to M's behaviour that culminated in her arrest and flight. There is no question in the court's mind that she was in no state to meet the needs of her son then. She then did a remarkable thing in fleeing England and returning to Hungary: the court reminds itself that she had appeared to flee Hungary when she came to England. Neither flight has ever been explained but this more recent one left her son to whatever fate awaited him in England and the thought process that caused her to behave in this way is unknown even now. If there is any insight into how it might have affected B or how he is supposed to process it, she has not shared it with the court.
48. As for her behaviour since her return to Hungary, the only glimpse that the court has emerges from Ms Kovesi's report. It should be recalled that it was M's suggestion, advanced through Ms Kovacs in May, that her mother, maternal grandmother, should be assessed as a carer. Her report of 10 July is a detailed and impressive document. As I will come to, it was entirely positive about maternal grandmother as a carer, despite her 78 years. However, the assessment was ultimately negative. She described in July how she had been approached by a social worker who had insisted on visiting with M which resulted in maternal grandmother being abused:

*"M has tried to initiate an argument with me by wiping her shoes into my sofa and telling me that I was dirty anyway and my hair looked awful. She was saying awful things about me for 2-3 hours and in the end she has tried to push and grabbed my neck and pulled my necklaces. I was shouting for help and asking the worker to call the police, but she has not done anything, just asked M to stop it. This lady has not even asked questions during my visit, she was just sitting there quietly. I cannot even imagine what M would have done to me were I alone. I am not going to let her into my house again. In this week, my friend's husband met with M on the bus and she told him that she was going to kill me and telling him awful and untrue things about me. After this incident, I am not sure that B would be safe with me in Hungary, as M would keep continue to harass and abuse me. I can imagine how she treated B and A when they were in her care, if she behaves like this with an adult. M had pushed me and hit my back in the past, without any reasons. I can understand why B does not want to have contact with M. I still want B to come and stay with me in Hungary but I am not sure that he would be safe with me. None of my relatives agreed to look after B as they are scared of M. If B cannot stay with me due to M's behaviour, I think B would be safe with a foster family in Hungary and I would visit him regularly. I am scared as M was telling me she would cut my throat if I cannot arrange for B to stay with me."*

49. Maternal grandmother is a retired primary school teacher with a very high standing in her community. Her credentials are impeccable and her ability to meet B's care in all but one respect is not in doubt. However, the manager of the Hungarian Local

Guardianship Office separately concluded that she is “not strong enough emotionally and physically to be able to manage [M]’s behaviours”. That is not a criticism of her; simply a sad reflection of that to which she has been exposed.

50. Maternal grandmother is not alone in making the observations she does about M. M’s brother, B’s maternal uncle, and X, B’s adult half brother, were also interviewed by Ms Kovesi. The former declined to care for B because he had had past experience of caring for A and B when he found that he and his wife could not cope with M’s behaviours. They did not want their children exposed to M’s “abusive behaviour”, commenting on its unpredictability. X simply said that he and the family felt that they could not care for B as M would harass them and they would not be able to keep him safe.
51. This evidence confirms the longstanding nature of M’s behaviours as well as their severity. It also confirms that, as recently as July 2019, they remained as florid and frightening as they have been historically. In the court’s judgment, taken in conjunction with Dr Thorp’s assessment of the prognosis, whatever improvement M has experienced since July is of short duration when set against the history and not evidenced other than by the relative compliance with the court’s directions at the hearing on 3 December. There is no evidence of attitudinal shift, there is no evidence of having engaged in treatment and, whilst the court would hope that M may belatedly be prepared to seek treatment and engage with professionals, it is simply far too late for B’s timescales in circumstances where he has been in limbo for 15 months and not only needs but is desperate to have a decision about his future. Regardless, the court has limited confidence in M’s assertion of change against the history since her decision to return to Hungary without telling anyone. Despite having a lawyer for a time in Hungary, despite the repeated urging to seek legal advice in England, she has done nothing to put evidence of significant change before the court in circumstances where she has had many months to do so. Thus the court will make the welfare finding sought that she has continued to suffer from poor mental health and not accessed treatment evidenced by events as recently as July that appear to be consistent with the known lengthy history.
52. With the exception of B’s wishes and feelings, to which I will come, the welfare findings sought are thereby all made out.

### **The options for care**

53. M’s primary case is for B to be placed in her care. She tells me she has a flat where B could live with her and she will meet his needs.
54. Her secondary case is for placement with F. I have already mentioned the extent of F’s engagement. Not thus far mentioned was the fact that in about October 2018, B received a text from F: M told me that the text was not meant for B but she did not dispute that he had received it. In this text F said he did not want to care for B who told the SW that F actually dislikes him. B was very clear he did not want to be placed in the care of F.

55. F has quite simply not engaged. From an initial refusal to engage there was the email received by the local authority shortly before the final hearing. The court heard of the lengths to which SW2 went to try and contact him – directly and via the HCA – without any success. There is, I sensed, some scepticism as to whether this was F actually trying to engage or some manoeuvre on the part of M. Either way, he has quite simply shown no interest in his son – a frankly embarrassing disinterest – and has made no meaningful attempt to progress any assumed change of heart on his part to play a belated role in the life of his son. There is no possible basis to delay a decision for B on the ground that F is available to care for him.
56. The court has already noted with regret the failure of the assessment of maternal grandmother to bring about a family placement for B with maternal grandmother along with the positions of B’s maternal uncle and adult half brother.
57. Maternal grandmother mentioned, as did M, the availability of foster care in Hungary. Having said that, the Hungarian authorities have made no attempts to advance a case for B’s return instead leaving a decision about this to the English court.

### **The child, B**

58. Meanwhile B has thrived in foster care. He has settled, is achieving academically at school and has just progressed from junior to senior school. He has clearly bought completely into his placement and talks of his carers in positive and affectionate terms. His wishes and feelings have been consistent and clear: he would like to be in his mother’s care if she were well and it would be safe. He does not think that she is well. Despite all his family being in Hungary, he wishes to remain in England. He particularly values the education he is receiving, talking about it in terms of being more favourable to his Hungarian experiences of school.
59. B has developed a good relationship with Ms Weetch, who by July had interviewed him on five occasions, and his solicitor. He has been fortunate to have such an experienced and committed team looking directly after his interests. The guardian describes how on each occasion B has expressed clear and measured views: he loves his mother and ideally would live with her in England but only if she is well. He wants to continue living in England with his current foster carers.
60. I had the pleasure of meeting B with his guardian and his solicitor on 23 July 2019. He was very clear then that he did not want to go and live with his maternal grandmother (not being aware of the outcome of Ms Kovesi’s assessment at that point but something he had already said to the guardian). He spent some time explaining to me his belief that, were he to return to Hungary, he would find himself in a school year at least one academic year behind that he is now in. He is a delightful, articulate and intelligent young person, speaking near faultless English. He is undoubtedly a credit to his mother. He could not, however, have been clearer in his wishes and that extended to not wishing to return to the care of family members in Hungary or to Hungary at all.



61. M has questioned B's reported wishes and feelings and said she will only consider them if she can hear them for herself via a video recording. I entirely accept her distress and frustration at having no direct contact with B but the court is entirely satisfied that these are genuine wishes and feelings, consistently and frequently repeated and represent B's real views, not influence by anyone else. That he can say positive things about his mother but make an informed decision not to want to see her presently points to a boy who has given this much thought to be to articulate his position in a mature and reasoned manner.

### **The Children's Guardian**

62. Ms Weetch prepared her final analysis as long ago as 28 August 2019 but whilst there has been a significant passage of time since then, in reality, nothing of substance has changed and she has been increasingly anxious for B to have a decision. She strongly endorses the local authority plan which is agreed by the Independent Reviewing Officer and, noting that B is open to some level of contact with family members in Hungary, emphasises the importance of maintaining a link with his Hungarian heritage, making suggestions as to how this can be achieved.

### **Decision**

63. The background to this case makes it amongst the most distressing of the many sad cases the court hears. However, the court is satisfied that the requirements of *Re B* and *Re B-S* have been entirely met and that, notwithstanding the challenges that managing this litigation and conducting this final hearing have presented, the Article 6 rights of B and M have been met to enable the process to be as fair as it possibly can be.

64. The realistic options for future care, a return to M, family care and non family care, have been explored to the fullest extent possible in the unusual circumstances that the court has described. Whilst M argues with understandable passion for B to be returned to her care or at least to Hungary, the court is unpersuaded that these are realistic options. In the court's judgment, any change brought about in her circumstances are limited, recent and unproven against a long history of difficulties and do not amount to significant change that could warrant the safe placement of B in her care.

65. There is no alternative family care for the reasons the court has explained. The option of institutional or foster care in Hungary has not been explored. The Hungarian authorities have not advocated it in circumstances where they might. However, B is almost 12 and has lived in England now for approaching four years. Whilst not competent in the sense of *Gillick v. West Norfolk and Wisbech AHA* [1985] UKHL 7, he is intelligent and articulate, integrated into an English community and school. He sees his future here notwithstanding his Hungarian heritage and the fact of his family in that country. The court is satisfied that, in the circumstances, his wishes and

feelings are such that they should attract significant weight when considering the welfare checklist provided in s.1 of the 1989 Act.

66. Applying the rest of the checklist, the important factors are B's needs, his background, any harm he is at risk of suffering and the capability of his parents meeting his needs. He has suffered significant harm in the care of his mother who, for a long period, has not been available to meet his needs. It is difficult to avoid the conclusion that he was abandoned by his father a long time ago for reasons not understood. Given his wishes, a significant change in his circumstances, as proposed by M, would be likely to have a significant adverse effect on him. Thus, notwithstanding the lack of available suitable family care, a transfer to Hungary under Art. 15 of Brussels II (R) would not, in the circumstances, be likely to meet his needs despite the positives which could be seen to flow from a return in terms of contact with extended family and meeting his cultural needs. The court is therefore satisfied that the only order which meets B's welfare needs in a proportionate way, despite the undoubted interference with the Art. 8 right that B and M have to family life, is a care order with a plan that B remain in foster care, hopefully, with his consistent carers for the last 15 months.

## **Contact**

67. The local authority seeks a further order under s. 34 (4) permitting it to restrict or deny the contact to which B would ordinarily be entitled to M. There has been an order in place continuously since 10 January 2019. Such indirect contact as M has supplied in the interim has, in the main, not been suitable for sharing with B. M's lack of engagement and then departure for Hungary has made it very difficult to carry out any work to help her produce anything more suitable. Separately, the local authority is committed to promoting contact with extended family members which seems entirely appropriate.

68. The local authority considers that, for so long as M's behaviour remains unpredictable and lacks emotional regulation, it is not in B's best interests to have direct contact. It proposes the promotion of indirect by email to the social worker in the interests of speed as well as the ability to edit/redact unsuitable communications.

69. The guardian supports the local authority position but emphasises that it is for the local authority under a care order to review this issue and support contact providing it is in B's best interests. Mr Kincaid, in his submissions, noted the extent of email traffic from M to the court and many other recipients including the Prime Minister as an unpromising sign of future restraint. He observed that the information thereby shared gave no indication of self reflection or contemplation by M as to how her circumstances may develop so that contact might develop.

70. So far as the court can tell, B's views are not very different to those of the local authority. He was involved in the process that resulted in the making of the order to the extent that he requested a break from contact.

71. M is plainly not just very hurt by this but affronted at the restriction proposed.
72. As the evidence stands, the court is not persuaded of any positive progress such that a relaxation of the order it made in January is yet appropriate and so the continuation of the s. 34(4) order is approved. It is nevertheless necessary for the local authority to seek to engage with M – and M to respond – with a view to promoting better indirect contact with the hope that she can demonstrate consistency and indirect contact that is less emotionally charged with a view to progressing to video or telephone calling as well as face to face contact were M to return to England for that purpose. M is urged to work with the local authority to this end.

### **Conclusion**

73. The court approves the care plan which, it notes, commits the local authority to supporting B in any application for British citizenship he wishes to make in due course, a commitment of particular importance as the UK prepares to leave the EU. It urges the local authority to endeavour to work with M to normalise B's contact with her and, separately, to ensure that contact with extended family in Hungary that is likely to meet B's needs is established sooner rather than later.
74. The court wishes to thank SW2, the guardian and the legal professionals who have worked hard and imaginatively in difficult circumstances to bring about resolution for B.
75. Whilst the court acknowledges M's distress and recognises that she perceives it as a case of tragedy heaped upon tragedy, it is satisfied the only order that will meet B's welfare is a care order. B, it is satisfied, is in a placement where he has been claimed, where his needs are met and where he is thriving and it only remains to wish B and his carers well in the months and years ahead.
76. This judgment will be translated into Hungarian and both the English and Hungarian versions will be served on M with the date by which any application for permission to appeal to the Court of Appeal must be made.

End of judgment

### **JUDGE'S NOTE**

This note is to assist the parties, but particularly [M], to prepare for the final hearing at 1400 hrs GMT on 3 December 2019. Two (2) hours has been allowed for the hearing.

At the hearing, the court will make a final order in respect of [B], a boy born on 22 January 2008

B's mother, [M], lives in Hungary. She has not told the court whether she will come to England for the hearing. She has been served with an order dated 6 November 2019, translated into Hungarian, asking her to say whether she:

- will attend the hearing in person, with or without an English lawyer
- will not attend the hearing but will instruct an English lawyer to attend the hearing for her
- will attend the hearing by telephone, with or without a Hungarian lawyer

She has not answered these questions.

If she attends the hearing in person or by telephone and is not represented by an English lawyer, difficulties may arise. This document is to assist everyone involved in the hearing to avoid or solve any possible difficulties.

Whatever she decides to do, a Hungarian interpreter will be present at court to assist her and the court.

[M] is reminded that:

- Care proceedings are complicated cases to conduct
- The court has extensive powers to make orders in respect of a child that can last for the remainder of its childhood
- She has the right to be represented by an English lawyer (solicitor and, if required, barrister), without any cost to herself
- She has been provided with a list of suitable lawyers who could represent her: if she no longer has this list, she can ask the local authority to send it to her again
- Because she is a non English speaking party to court proceedings who is not physically present in England, [M] is again urged to obtain legal representation in advance of the hearing
- [M] is entitled to represent herself without a lawyer
- [M] will be permitted to speak to the court with the assistance of the court appointed interpreter

At the hearing:

- All parties to the proceedings will be given the opportunity to be heard in accordance with Article 6 of the European Convention on Human Rights.
- This includes the right to be heard, respectfully and without interruption
- The judge's powers of management include the need to ensure that the court's resources are made fairly available to all litigants in this and other cases it is asked to decide
- The judge will permit each party to be heard for a reasonable period of time
- The judge will decide what is a reasonable period of time for each litigant to present their case

- This is a case where the evidence will be presented in writing, having also been translated into Hungarian. It will have been read by all parties before the oral hearing starts
- The judge has already read the written evidence.
- The judge directs the following timetable:

Local authority case:	[M's] 20 minutes
case:	40 minutes
The Children's Guardian's case:	20 minutes
Retiring time:	10 minutes
Judgment:	30 minutes

- Any party who interrupts another party's case will be told by the judge not to do so
- If that party continues to interrupt, the judge will consider whether to ask that party to leave the hearing
- In making the decision to tell a party to leave the hearing, the judge will consider fairness to each party and the ability to decide the case fairly without that party remaining for the whole hearing.

His Honour Judge Simon Wood  
November 2019