Neutral Citation Number: [2015] EWFC 27

Case No: LJ13C00295

IN THE FAMILY COURT
Sitting at LEEDS

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 March 2015

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

In the matter of B and G (Children) (No 3)

Between :

LEEDS CITY COUNCIL	**Applicant**
- and -	
(1) M	
(2) F	
(3) B	
(4) G	
(B and G by their children's guardian Victoria Wilson)	**Respondents**

- -
- -

Mr John Hayes QC and Ms Joanne Astbury (instructed by the local authority) for the Applicant (local authority)
Mr John Myers and Ms Lucy Sowden (instructed by Lester Morrill) for the First Respondent (mother)
Mr Nkumbe Ekaney QC and Ms Pamela Warner (instructed by Crocketts) for the Second Respondent (father)
Ms Clare Garnham (instructed by Ramsdens) **and Miss Vikki Horspool** (of Ramsdens) for the children' guardian

Hearing dates: 20-23, 27-30 October, 3-5, 7 November 2014

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was delivered in open court

Sir James Munby, President of the Family Division :

1. These are care proceedings in relation to two children, B, a boy, born in July 2010 and G, a girl, born in July 2011 (these are not their real initials). In terms of their ethnic origin, both the father, F, and the mother, M, come from an African country which I shall refer to as country A, though the mother was born and brought up in a Scandinavian country which I shall refer to as country S (again, these are not the real initials). The family are Muslims. The proceedings were commenced in November 2013, triggered by M's seeming abandonment of G in the street. B and G were placed in foster care the same month and have remained with the same foster carer throughout.

2. I heard the case over twelve days at Leeds in October and November 2014. The local authority, Leeds City Council, was represented by Mr John Hayes QC and Ms Joanne Astbury, M by Mr John Myers and Ms Lucy Sowden, F by Mr Nkumbe Ekaney QC and Ms Pamela Warner, and B and G, through their children's guardian, by Ms Clare Garnham and Miss Vikki Horspool. I am very grateful to all of them for the enormous assistance they provided me in an unusual and complex case.

3. At the end of the hearing on 7 November 2014 I reserved judgment. On 11 November 2014 I handed down a very short judgment announcing my decision and my conclusions on various issues: *Re B and G (Children)* [2014] EWFC 43. I said that I would give detailed reasons in due course. On 14 January 2015 I handed down a further judgment dealing with the most important issue in the proceedings, whether G had been subjected to female genital mutilation (FGM) and, if she had, what the implications of that were in relation to planning for her and her brother's future: *Re B and G (No 2)* [2015] EWFC 3. My conclusion was that the local authority was unable on the evidence to establish that G either had been or was at risk of being subjected to any form of FGM.

4. I now hand down this third and final judgment dealing with all the other issues in the case.

5. Before proceeding any further, it will be convenient for me briefly to identify those issues and to set out my conclusions.

<u>The issues</u>

6. The local authority's threshold document is dated 14 May 2014. A revised version dated 6 November 2014 was served at the conclusion of the oral evidence. Apart from the issue of FGM, the local authority's case was arranged under four headings: (i) M's mental health, (ii) domestic violence, (iii) neglect and physical abuse, and (iv) lack of cooperation / engagement. An earlier allegation of substance misuse by F had, very properly, been withdrawn.

7. Leaving on one side the issue of FGM, which is now out of the way, the local authority's care plan for B and G was critically dependent on my findings, in particular in relation to domestic violence. Putting the matter shortly, the local authority's case was that sufficiently serious findings of domestic violence by F, against either M or B and G, would justify B and G's adoption. Otherwise, the local

authority's case was that they should be placed with F subject to a supervision order, M being ruled out by the local authority because of her continuing mental ill-health.

8. As set out in my first judgment (*Re B and G (Children)* [2014] EWFC 43, para 2), I concluded that:

> "(i) The local authority is unable on the evidence to establish that G (as I shall refer to her) either has been or is at risk of being subjected to any form of female genital mutilation.
>
> (ii) There was a greater degree of marital discord than either M or F (as I shall refer to them) was willing to admit to. There was also, I am satisfied, some physical violence on the part of F, though neither very frequent nor of the more serious variety.
>
> (iii) Given all the facts as I find them, including but not limited to (i) and (ii) above, threshold is established.
>
> (iv) Given all the facts as I find them, including but not limited to (i) and (ii) above, I reject the local authority's case that B and G should be adopted. Adoption, in the circumstances, would not be in the best interests of either child. It would be wholly disproportionate.
>
> (v) M is not at present able to look after B and G.
>
> (vi) B and G need a decision now. A decision cannot be deferred until such time has elapsed as will enable the court to determine whether M's continuing recovery has progressed to a point at which she can safely and appropriately resume care of them.
>
> (vii) Given all the facts as I find them, including but not limited to (i), (ii), (v) and (vi) above, the best interests of B and G require that they be cared for by F.
>
> (viii) Notwithstanding the arguments of the children's guardian that this should within the framework of care orders, the best interests of B and G require that they be cared for by F within the framework of supervision and section 8 orders.
>
> (ix) The transition to the arrangements in (viii) above needs to be in accordance with care plans and transition plans (a) revised to take account of this judgment and any suggestions from F or M or the children's guardian and (b) once finalised, approved by the court before implementation (this can be done on paper and without the need for any further hearing)."

9. I invited the parties to agree, and submit to me for approval, orders to give effect to that judgment. I subsequently approved both the orders and the final version of the care plans for B and G.

The background

10. Although, as I have said, in terms of their ethnic origin, both the father, F, and the mother, M, come from the same African country A, their personal histories are significantly different. M was born in Europe in country S in 1991. She and her family moved to this country in 2007. F was born in country A in 1973, though war in country A drove him and his family to another African country in 1991. F arrived in this country in 2005. F is not merely much older, he is significantly less 'westernised', than M. An important aspect of this is F's belief that M was possessed by a spirit, a 'jinn'. In his final submissions on his behalf, Mr Ekaney described F as a simple man with a relatively unsophisticated background, limited education and unconventional views about mental illness, principally influenced by his background and culture. I agree. F and M met in this country in 2008 and married in an Islamic ceremony in 2009. I am satisfied having heard their and other evidence that there is no basis for any suggestion that the marriage was arranged, let alone forced. They found each other and they decided to marry. It is clear that the marriage is now over and that their relationship is at an end.

11. There is, I am satisfied in the light of all the medical and other evidence I have read and heard, no doubt that M has, as the local authority alleges in its revised threshold document, suffered since her teenage years from Schizo-Affective Disorder; that this has made her very vulnerable to stress-induced psychotic episodes marked by erratic and aggressive behaviour; that there has been a pattern of non-compliance by M with medication and mental health services; and that this has impacted adversely on her ability to meet her children's needs and exposed them to chaotic and inconsistent parenting and neglect. A key question is whether M's mental health is now sufficiently under control as to enable her to look after B and G. My conclusion is that it is not.

12. In relation to the matters with which this judgment is concerned, I heard oral evidence from (in this order) the maternal grandmother, the children's foster carer, the health visitor, the nursery manager, the contact supervisor, a psychosis practitioner, Dr T, the social worker, M, F and the guardian.

13. I take the four issues in turn

The issues: the mother's mental health

14. The local authority's case is that M lacks insight into her condition and the significant risks it poses to young and vulnerable children – risks which, it says, B and G will be exposed to if returned to her care given the current prognosis. On this point F and the guardian make common cause with the local authority. Correctly, all treat Dr T's written and oral evidence, which I unhesitatingly accept, as crucial. In my judgment it is to a great extent determinative.

15. There is no dispute about the correctness of Dr T's diagnosis of schizo-affective disorder, accompanied by depressive traits. The illness is currently in remission but it

is a lifelong condition vulnerable to relapse through stress. Dr T in her evidence described it as a “chronic grumbling psychosis” and referred to M’s “fluctuating mental state.” She describes M as having been “floridly unwell” when admitted to a psychiatric unit in country S in April 2014. In answer to the suggestion that there was a “marked difference” between how M had presented when she saw her in January 2014 and in September 2014, Dr T’s response was “she didn’t present any differently at all to me”, though accepting that there was “cause for more optimism.” I accept that evidence.

16. Dr T’s view, which she maintained firmly in the face of appropriately probing cross-examination by Mr Myers, was that at least 12 months’ stability in M’s condition was essential if B and G were to be safe in her care and that the necessary period had not yet elapsed. If stability and compliance could not be maintained over that length of time, it would be “very risky” for them to be returned to her care. M, in her opinion, remained vulnerable to stresses. Dr T thought that there needed to be ongoing supervision of contact. She could not support B and G’s return to M’s full time care. She drew attention to the fact that M’s attitude was unchanged:

> “I would suggest a further 6 months … It is not only about her stability of mental state and engagement with mental health services, it is monitoring of [the] situation and she remains adamant she does not want that to happen and that’s dangerous.”

As against that, Dr T readily acknowledged that the point had now been reached when M’s contact with B and G could be increased.

17. M’s case is that she has undergone a “remarkable transformation” since April 2014 and that she is following her medication regime which enables her to lead a perfectly normal life with no impairment of ability to parent. Her presentation, says Mr Myers, is markedly different from that of the woman who abandoned her baby daughter in November 2013 – evidenced, he suggests, by M’s improved contact with B and G in recent months.

18. I accept that there has been improvement in M’s mental health. But Dr T’s evidence, which I accept, is clear, compelling and withstood all challenge. It would be irresponsible not to heed and give effect to it. In my judgment, M is not at present able to look after B and G.

The issues: domestic violence

19. There is no doubt that on many occasions M has described to various professionals, both in this country and in country S, experiences of domestic violence, both physical and verbal, in her relationship with F. Apart from two occasions, in March 2013 and November 2013, when the police were called to incidents, there is no independent corroboration of any of M’s allegations, all of which she has now retracted. The local authority’s case, that F subjected M to verbal abuse, controlling behaviour and, on occasions, violence, is therefore dependent on the accounts given by the various professionals to whom M spoke. I have no difficulty in accepting, as I do, that these accounts are accurate. The question is not what M said; the question is whether she was accurate and honest in the various accounts she gave.

20. M's position at the end of the hearing was that she had disagreements and arguments with F, but was never subjected to physical violence, and that F controlled her access to mental health and child protection services. M maintained the position in cross-examination that her allegations of physical violence were untrue. In his closing submissions on her behalf, Mr Myers pointed out, as did Mr Ekaney on F's behalf, that in relation to other aspects of her history (which he helpfully listed) there is evidence of M having said things which were clearly untrue. He also pointed, as did Mr Ekaney, to the delusional aspect of M's illness.

21. F accepts that there was a significant level of parental disharmony. He denies any physical violence against either M or B and G.

22. My conclusion, having carefully considered the mass of material put to me and the helpfully detailed submissions from counsel, is that there was, as I have said, a greater degree of marital discord than either M or F was willing to admit to. There was also, I am satisfied, some physical violence on the part of F, though neither very frequent nor of the more serious variety. It was, as Mr Ekaney submits, at the lower end of the scale. Beyond that it would not be right to go.

The issues: neglect and physical abuse

23. The local authority's case falls into four parts. First, it is said that B and G have experienced multiple moves of home in this country and abroad, causing instability and inconsistency of care. Secondly, the local authority points to specific instances of neglect: in October 2013, G was taken to nursery with spare clothes that were damp, soiled and smelled of urine; much more significant, on 7 November 2013 M, it is said, abandoned G in an alleyway in the city centre, where she was found cold, wet and very distressed. Thirdly, the local authority points to incidents when, it says, B and G were hit. The mother admits that she hit B in October 2013 on the back and face. There are confusing, and to an extent internally inconsistent, accounts given by M and F of physical assaults by the other on B and G the children, for instance, hitting the children with spoons. Fourthly, it is alleged by the local authority that B and G have been exposed to the volatility and violence in their parents' relationship.

24. M admits the abandonment of G in November 2013 but denies any physical abuse of B and G and disputes that they have otherwise suffered either neglect or emotional harm.

25. F denies any physical violence against B and G. Mr Ekaney on his behalf submits that the allegation of actual physical abuse is not supported by the evidence and that, in any event, there is no evidence that B and G have been emotionally damaged as a result of anything they have seen or experienced. They do not present as children who have suffered from exposure to significant or repeated violence, whether domestic violence or violence directed at them. The foster mother's evidence does not suggest that there was anything significantly wrong with either B or G when they were first taken into care. More generally, as Mr Ekaney correctly submits, the clear impression one derives from all the evidence is that B and G are lively, well-adjusted children, who have a free, easy, warm, positive and loving relationship with F. In saying that, Mr Ekaney is at pains to emphasise their relationship with M and the important need for it to continue.

26. The guardian's final position in relation to this part of the case is striking. As Ms Garnham put it in her closing submissions:

> "Without exception these two children have been described in very positive ways; it is clear they are delightful and endearing children who make a good impression on anyone who meets them. It is also clear that the first impressions of these children did not signify children who had been exposed to neglect, or an abusive home environment. They appeared to have been protected from the worst excesses of the mother's mental health challenges. They have experienced positive parenting."

I entirely agree. The guardian's analysis accords with everything I have read and heard.

27. There is no doubt that B and G experienced instability and inconsistency of care, brought about by M's recurrent mental health difficulties and F's limited ability to cope with them. There were the specific instances of neglect I have already referred to. To the extent that there was marital discord between F and M, B and G were exposed to it. I think it is probable that on a few occasions B and G were exposed to mild chastisement – but nothing more serious.

28. What is important, however, is the fact that, as I have already found, none of this seems to have had any significant or prolonged impact on either B or G – so nothing they have been exposed to can have been that serious.

29. I have considered the foster-carer's account of an occasion in March 2014 when B and G referred to M having been "pushed" by F and M crying in response to being pushed (not "hit", the word subsequently used by the social worker). I am inclined to think that this referred to something they had actually experienced, but it does not affect my overall conclusion.

<u>The issues: lack of cooperation / engagement</u>

30. The local authority's case has four components. First, it points to M's history of poor engagement with mental health services. Secondly, it says that F has failed to recognise and understand M's mental health difficulties and its adverse impact upon her parenting ability, attributing the difficulties to her being possessed by a 'jinn'. Thirdly, it points to missed health visitor and medical appointments for B and G. Fourthly, it says that F and M have been uncooperative and hostile to, and have on occasions refused to engage with, social work involvement; F, it says, has presented as controlling and stated that he would not allow M to engage with workers.

31. M admits poor engagement with professionals due to her mental health problems.

32. F accepts that, prior to the children being taken into care, he failed to engage and co-operate with the local authority and that this led to him adopting what was understandably perceived as a controlling attitude towards M. This, I accept, was driven by the two factors to which Mr Ekaney drew attention. The first was F's perplexity about the family situation, largely caused by his failure to recognise the nature and extent of and inability to understand M's mental health difficulties. The

other was F's desire to protect his family and his fear, from his perspective well-founded fear, that B and G would be removed from their care. Since B and G were taken into care, F's attitude has changed. There has been, as Mr Ekaney puts it, a high level of co-operation and engagement with the local authority, coupled with a high level of commitment to B and G. And, as I accept, this is not due to any compulsion; it reflects F's growing realisation and acceptance of the underlying realities.

33. Given M's and F's concessions, which appropriately reflect the reality of what was going on, there is no need for me to make any further findings.

Discussion

34. I am prepared to accept, in the light of my findings, that threshold is established, though not by a very large margin.

35. What is quite clear, however, in the light of these findings, is that the part of the local authority's case which was that B and G should be adopted (its alternative case, as we have seen, being for a placement with F under a supervision order) cannot be accepted. Adoption in the circumstances would not be in the best interests of either child. It would be a wholly disproportionate response to the comparatively little that has been found proved against either F or M, not least given the quality of B and G's continuing relationship with both F and M. Adoption of these children is, at the end of the day, unthinkable.

36. The guardian, as Ms Garnham put it in her final submissions, has never seen the domestic abuse alleged, were it to be found, to be *on the facts and in the circumstances of this particular case* an impediment to the placement of B and G with F or to M's contact with them. Her "firm foundation" is that B and G should have the opportunity to live within their birth family. She "cannot" support a care plan envisaging severance from the family. Adoption, she says, would not be proportionate. I entirely agree.

37. The guardian's recommendation is that B and G are placed with F, the placement to take effect after a short transitional reunification; that this should be subject to a care order (the guardian being supported in this respect by M); and that M's contact should, at least initially, be supervised.

38. Mr Myers submits that, given the improvement in M's mental heath, B and G should, as she would wish, be placed with her in country S. Whilst accepting that F presents what Mr Myers calls a viable placement option, M argues, and, I accept, genuinely believes, that B and G would benefit from a life amidst their extended family in country S. Mr Myers, in his closing submissions, formulates what he calls the "key elements" of her care plan. If, nonetheless, B and G are to be placed with F, M would contend for that to be under the aegis of a care order. In essence her argument is that, given all that has happened, F will require the strict monitoring which can only be secured by the local authority sharing parental responsibility, and that without that level of statutory involvement there is too great a risk that M will be cut off in country S from contact with B and G.

39. Mr Ekaney points to what he submits, in the light in particular of Dr T's evidence, is the objective reality that M is unable to resume the immediate care of B and G despite

the progress she has made. In common with both the local authority and the guardian he submits that appropriate parental care can at this stage be provided only by F. In relation to the appropriate form of order, Mr Ekaney observes correctly that no-one has advocated that placement with F is predicated on a particular order. He submits that there are clear and compelling reasons why care orders would be disproportionate: F's unwavering commitment to B and G since the proceedings began and the lack of any basis for believing that care orders would assist B and G on a day to day basis.

40. Recognising the progress that M has made, I nevertheless conclude, without hesitation, (a) that M is not at present able to look after B and G, (b) that B and G need a decision now – a decision cannot be deferred until such time has elapsed as will enable the court to determine whether M's continuing recovery has progressed to a point at which she can safely and appropriately resume care of them – and (c) that the best interests of B and G, now and into the future, require that they be cared for by F.

41. I am also satisfied that, notwithstanding the arguments of the children's guardian that this should within the framework of care orders, the best interests of B and G require that they be cared for by F within the framework of supervision and section 8 orders. Two separate arguments propel me in this direction: first, the arguments from Mr Ekaney to which I have already referred and which I prefer to the arguments from Mr Myers; and, second, the fact that the local authority is not seeking care orders. It would be a very strong thing, in circumstances such as exist here, to impose on a local authority an order more stringent than it is proposing, and in my judgment there is no adequate justification for doing so. Over and above all this, and at the end of the day of determinative importance, I am satisfied that F is trustworthy and can be relied upon. Care orders are simply not necessary. Otherwise I agree with the guardian's recommendations in relation to transition planning and that M's contact should initially be supervised.