

TRANSCRIPT OF PROCEEDINGS

Ref. PO16P01149

IN THE COMBINED COURT CENTRE AT PORTSMOUTH

Winston Churchill Avenue
Portsmouth

Before HIS HONOUR JUDGE LEVY

[PERSON A]

- v -

SOUTHAMPTON LOCAL AUTHORITY

[PERSON B]

Details of counsel appearing on behalf of the claimant was not supplied

MS HABEL appeared on behalf of the Respondent ~~Local Authority~~ SOUTHAMPTON CITY COUNCIL

MS EARLE appeared on behalf of THE MOTHER

MS MAGEE appeared on behalf of ~~THE CHILD~~

INSERT TRANSCRIPT TITLE

INSERT DATE, START AND END TIME

(FOR APPROVAL) (if applicable)

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MS HABEL: May I please, your Honour, in this matter I represent the local authority. My learned friend, Ms Earle, represents THE MOTHER. My learned friend, Ms Magee, represents THE CHILD through her guardian. THE CHILD'S social worker is in court, and her guardian, and, of course, her mum, XXX

JUDGE LEVEY: Yes.

MS HABEL: --- and we are very pleased to say we are joined by XXX who was born on ~~the~~ DATE REDACTED and her name appears spelt various different ways in – in the papers. I think we have all noticed, but I gather this morning it is XXX

JUDGE LEVEY: (asks for spelling).

MS HABEL: (asks MOTHER for spelling).

MOTHER: (confirms spelling).

JUDGE LEVEY: OK.

MS HABEL: Your Honour, before I say anything further, there has been a written application by [JOURNALIST MELANIE NEWMAN] ---

JUDGE LEVEY: Yes.

MS HABEL: --- to come into court and this morning, [JOURNALIST LOUISE TICKLE] has attended court, although I think that was not anticipated and no one had any notice of that, and I think there is another lady in court as well.

JUDGE LEVEY: Yes.

MS HABEL: Clearly, I think all parties have concerns about confidentiality issues ---

MS EARLE: My Lord, I do apologise, I stand on my feet at this point. [MOTHER] and [MOTHER'S HUSBAND] just left court. I think they are probably swapping ---

JUDGE LEVEY: Yes.

MS EARLE: --- with caring for [OTHER CHILD]. I wonder if we could just pause a moment ---?

MS HABEL: Yes.

JUDGE LEVEY: Yeah.

MS EARLE: --- so [MOTHER] can come back into court, of course.

MS HABEL: That is all right.

MS EARLE: Thank you. I am sure that is what is happening out there. That was the plan that we discussed. Thank you.

MS HABEL: Yes, all parties are concerned about confidentiality and a jigsaw effect as well of identifying parties.

JUDGE LEVEY: Mmm.

MS HABEL: Nobody, of course, has sought to exclude the journalists from attending the proceedings today, but I think it might be helpful to your Lordship for this matter to be clarified with them ---

JUDGE LEVEY: Yes.

MS HABEL: --- before I get on to dealing with the matters which are outstanding in relation today, which are relatively straightforward.

JUDGE LEVEY: Mmm. Yes. So I think, if I can just turn to you for a moment - I think as you – as Ms Habel has just said, my – this is a fairly straightforward hearing and I believe I am right in saying, from what I have read, that all parties agree what the outcome should be. So the – the question is going to be what can be, or what should be reported and, as you have heard, the – the worry of the parties is whether or not there might be identification of them by piecing together information from any reports that there may be and, of course, there are restrictions on what can be reported, and so it is going to be very important of you do decide to re – to report anything that – that a great deal of care is taken to ensure that none of the parties and in particular, of course, [THE MOTHER and her family can be identified. The local authority have some views about identification of their employees which may, or may not impact (inaudible) material or relevant, I suspect. Is – is the – before the hearing starts, is there anything that any of you would like to say about that? I know I have dealt with it very generally.

SANCHIA BERG: I mean, I feel I would like to introduce myself because you have MELANIE NEWMAN's name, and you do not have mine. My name is (inaudible), I am a reporter on the Today Programme on BBC Radio 4, and I (inaudible) reporting from judgments of the family court. So I am quite familiar with this, and what I would say with regard to identification, particularly, jigsaw, is that I would take as my guide the information that is already in the public domain – public domain through the Court of Appeal ---

JUDGE LEVEY: Mmm.

SANCHIA BERG: --- So I would say that I have done quite a lot of this before and been able to protect people's identity successfully and safely.

JUDGE LEVEY: Yes, OK. Thank you.

JOURNALIST LOUISE TICKLE: And hello, my name is (inaudible). I am a freelance reporter with an interest in standing court, which I report on for all kinds of clients. I am here with a general interest in the case, rather than with a specific reporting objective, but I would, potentially, in the future like to be able to report not just what has happened in the Court of Appeal judgment, but what goes on in the court today, so I am thinking about relax – relaxing the normal reporting restrictions so that I would be able to report, which I will only do with permission, and, potentially, being able to report more detail of what has gone on in the past, so respect of the initial judgment, which I have not had sight of, from Judge Hess, and, potentially, if my interest takes me that far, to do, perhaps not today, but in the future application, something that I have done in the past, which is to apply all the paperwork in the case, not just for my information, but potentially, to report from (inaudible). Thank you.

MELANIE NEWMAN): So my position is essentially the same as the (inaudible).

JUDGE LEVEY: Yes, OK, thank you. All right. Well, that is helpful. I think and it might be sensible, perhaps, once the – the matter is concluded, to think about whether or not it might be appropriate for any of the documents and for – for example, the judgment of HHJ Hess, which I assume was not published?

MS HABEL: Well, your Honour, I simply do not know.

JUDGE LEVEY: No, it – it ---

MS HABEL: All – all I know is that it was transcribed ---

JUDGE LEVEY: Yes. I saw that.

MS HABEL: --- and I have shared that information with [Person G] and [Person F], not [Person H], but I have shared with them that there was a transcript ---

JUDGE LEVEY: Mmm.

MS HABEL: --- and we have talked about the practice direction of Sir James Munby about the publication of judgments.

JUDGE LEVEY: Yes.

MS HABEL: My understanding is that the normal way forward would be to apply to the judge whose judgment it was and for that to be published in an anonymised form.

JUDGE LEVEY: Mmm.

MS HABEL: What – what I am not clear about is whether, or not my Lord would be able to authorise that today, or whether, or not my Lord would wish the journalists to apply to Judge Hess in the usual way, but I – I would suggest that that would be a useful starting point to fill in ---

JUDGE LEVEY: Mmm.

MS HABEL: --- what happened before the matter ---

JUDGE LEVEY: Mmm.

MS HABEL: --- got to the Court of Appeal and how it arrived at the Court of Appeal.

JUDGE LEVEY: Yes. Yes, it gives the necessary context, I think. All right. Well, let us – let us deal with the hearing and then we will see where we go after that.

MS HABEL: Well, my Lord ---

JUDGE LEVEY: Mmm.

MS HABEL: --- knows that following that appeal, the matter was remitted to this court, that there were two expert assessments carried out; one was a psychological assessment of the family, and one was an independent social work assessment, and I think, particularly, Dr – the – the psychologist who prepared her assessment made certain recommendations, and both those assessments were very positive about THE CHILD being rehabilitated to the care of THE MOTHER, who, of course, is married to THE HUSBAND and was expecting little XXX, and so the local authority put in place work as recommended by the experts, drew up a rehabilitation plan and that work went very well. It was reflective parenting work and, I think, THE HUSBAND undertook a – a triple P parenting course in addition to that, and I am aware that THE MOTHER was carrying out her own individual work.

JUDGE LEVEY: Mmm.

MS HABEL: All of that has been very positive. I have the children's social worker here today and she is nothing but positive about the way in which THE MOTHER and THE HUSBAND have been working, both with herself and with the specialist assessment team who have been carrying out the reflective work. THE CHILD moved home IN THE SUMMER There have been great efforts made to sort out THE CHILD's schooling because she was at a different school ---

JUDGE LEVEY: Mmm.

MS HABEL: --- and she remained at that school. The local authority facilitated travel to and from, but making it quite a long day for THE CHILD. Very pleased to be able to report that she is moving schools to the local school, not at some future time as I said at – I might have said in the case summary to the court, but, in fact, after half-term.

JUDGE LEVEY: Oh, OK. Good, because I think in THE MOTHER's position statement, she talks about her being 22 on the list ---

MS HABEL: Yes.

JUDGE LEVEY: --- and asking for some help. Good.

MS HABEL: Well, I am not quite sure how it has come about, but I – whether it is – whether the social worker has been able to do anything. She has been phoning the school daily, she tells me.

JUDGE LEVEY: Mmm.

MS HABEL: So – and I am sure THE MOTHER has done her – her bit, too, so – you know, between the most two good ladies have achieved that, which is very positive. THE CHILD has had two sessions of play therapy to date and will be having some more sessions and there will be regular social work visits, albeit, at a decreasing frequency, in accordance with the plan file ---

JUDGE LEVEY: Mmm.

MS HABEL: --- and the SAT Team will remain involved at the request, I think, of the family, for a further six weeks. There have been some behaviours that THE CHILD has shown at home which have concerned THE MOTHER and she has been open about saying what they are to the local authority and working on how to deal with them, and that, really, is why the SAT Team is going to stay involved for a further six weeks, to assist with those and, of course, the social worker will be involved for the duration of the supervision order and if any further support is needed that can, certainly, be considered.

JUDGE LEVEY: Yes.

MS HABEL: So a very positive picture and all credit to the family for the way in which they have worked with the local authority since – since the matter has come back ---

JUDGE LEVEY: Mmm.

MS HABEL: --- from the Court of Appeal.

JUDGE LEVEY: Yes.

MS HABEL: That said, I should – I should just say what the orders are I am asking you to make today. The care order should be discharged and there should be a supervision order for six months.

JUDGE LEVEY: Yes, and I think the – the appeal, of course, related to the application for a placement order, I think, did not it?

MS HABEL: That placement order was, I think, orally withdrawn. There was a ---

JUDGE LEVEY: Ahh.

MS HABEL: There was an application by the local authority, orally, at the last hearing on the 25 of May and it was withdrawn then.

JUDGE LEVEY: Ahh.

MS HABEL: So it went ---

JUDGE LEVEY: I understand. That is – that is my memory failing me.

MS HABEL: It went in May.

JUDGE LEVEY: Yeah, OK. Thank you.

MS EARLE: Yes, my Lord, that is my understanding ---

JUDGE LEVEY: Yes.

MS EARLE: --- and I think that is reflected in the pre-ambule to the court order at the May hearing. You will have THE MOTHER’S position statement ---

JUDGE LEVEY: Yes.

MS EARLE: --- This is an incredibly positive outcome and she is happy to agree to the current local authority care plan. So discharge the care order with a six-month supervision order, testament, as my learned friend has said, to the hard work, dedication and commitment of THE HUSBAND and THE MOTHER ---

JUDGE LEVEY: Mmm.

MS EARLE: --- and it has been a long, I think she described, an arduous journey ---

JUDGE LEVEY: Yes.

MS EARLE: --- because, of course, this has taken place at – over the last three, or so years and it is hard to encapsulate, perhaps, in words quite what impact that has had emotionally and – and, of course, financially. You – you will know that ---

JUDGE LEVEY: Mmm, I saw.

MS EARLE: --- certainly, on behalf of THE MOTHER, she believes in part that had she not been able to get the funds together to get legal representation she would not be in the position that she is in ---

JUDGE LEVEY: Mmm.

MS EARLE: --- and that is not, I would day, I am not making an application today for the costs against the local authority, this is not a case where – since January of this year, we could, possibly, suggest that the local authority’s behaviour has been reprehensible, or unreasonable. They have gone along with the professional recommendation and they have supported this family and they all worked, very collaboratively, together, which is hugely positive, but I think THE MOTHER would say that there is a flaw in the system, plainly, and that responsibility lies with the legal aid agency in this, case, rather than the local authority --

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JUDGE LEVEY: Mmm.

MS EARLE: --- but I flag that on her behalf because, plainly, that has been another layer of strain ---

JUDGE LEVEY: Mmm.

MS EARLE: --- in the circumstances of this case ---

JUDGE LEVEY: Yes.

MS EARLE: --- but she is very happy that the school situation has been resolved, that the play therapy has started, that the local authority are going to be around to provide support over the next six months, which she and THE HUSBAND are more than happy to engage with. I just want to check if there is anything else that THE MOTHER would like me to say. Yes, another issue that has been raised outside of court, I think it was flagged in the position statement and has been flagged outside of court today is in relation to the triple P course which THE HUSBAND has complied with and en – and completed. There was reference to the local authority paying for that, back in the May order, or indicated they will try to cover it. I cannot remember what the precise words are. That still has not been paid for. It is probably – every penny does count. It was £71. I have asked about that today, and I know the social worker has been very proactive in this case and she is still acting proactively to try and achieve a position whereby the parents can be provided with a reimbursement for the amount of money they have spent, there.

JUDGE LEVEY: Yes. Well, I will lend my support to that, if that helps? I probably did that in May ---

MS EARLE: You did.

JUDGE LEVEY: --- I suspect.

MS EARLE: Yes.

JUDGE LEVEY: So I will reiterate that. Perhaps it can go in a recital to the order that it was the view of the court that I should be reimbursed.

MS EARLE: And should be dealt with as expeditiously as possible.

JUDGE LEVEY: Mmm, yes.

MS EARLE: Thank you very much, my Lord. Nothing else to add, unless I can assist?

JUDGE LEVEY: No. Thank you very much. Ms Magee?

MS MAGEE: My Lord, you will have seen the guardian's positions statement ---

JUDGE LEVEY: Yes.

MS MAGEE: --- she fully endorses the orders being sought today and the care plan that supports the supervision order. She commends the family and, indeed, the professionals who have worked with the family for uniting in THE CHILD'S best interest, so that this outcome can be achieved.

JUDGE LEVEY: Mmm.

MS MAGEE: Just insofar as the reporting matter is concerned, the guardian, too, would prefer not to be identified ---

JUDGE LEVEY: Mmm.

MS MAGEE: --- in any reporting and fully supports the – the restrictions so that the family is not identified one way, or another.

JUDGE LEVEY: Yes.

MS MAGEE: My Lord, thank you.

MS EARLE: My Lord, can I just deal with that point?

JUDGE LEVEY: Mmm.

MS EARLE: I am so sorry, I admitted to deal with that. There have been discussions outside court with the – two of the people who have attended, [Person F] and [Person G], and MOTHER'S position, for the court record, is that any reporting should be very sensitive to her request that matters are kept as private as possible in terms of identification. That includes, as you have already eluded to, any form of jigsaw identification. There are certain dynamics in this case, whether it be the age of THE HUSBAND, ethnic background, those sorts of descriptions that may form the potential for there to be a jigsaw identification. They would, as I say, like that to be wholly respected in terms of any reporting that – that takes place.

JUDGE LEVEY: Yes, OK. Thank you very much.

MS HABEL: Your Honour, just to say that at B131, the placement order was ordered to stand withdrawn in the May order, and I can, certainly, put a recital on the order about the funding of the triple P course.

JUDGE LEVEY: Yes. Thank you.

MS HABEL: Unless I can assist you further?

JUDGE LEVEY: No. No. Well, I am very grateful. It is – when this case first came before me, I think there were hopes that – that the – the outcome would be a successful one. It – it was early days, of course, then, the matter having just come back from the Court of Appeal, and I am very pleased that – that THE CHILD has now returned to the care of THE

MOTHER and I can only repeat and endorse the – the words of – that have been used to characterise the work which has been undertaken by the family with professionals. I – I can see from the – the assessments that have been undertaken that they have worked extremely well with professionals and it is enormously to their credit and it is a testament to the hard work that has been put in that – that this – this is the outcome.

In – in the circumstances, having regards to the evidence, I have no doubt at all that THE CHILD’S welfare is met by the discharge of the care order. It is entirely appropriate in the circumstances and I agree, too, that a supervision order is appropriate, in those circumstances, for six months to provide continuing, and I am sure, reducing support to this family as – as THE CHILD continues to – to become established within, I suppose I ought to say, her new home even though it is also her old home. So I – I am very pleased to be able to make those orders.

In terms of – of reporting, I will make an order that no details may be published which might identify the family and having considered the – the position in relation to the identity of professionals, the written document from the local authority, certainly, indicates a concern that identification of professionals within the local authority might enable identification of the family almost by a process of elimination. It seems to me, in view of the – the submissions made on behalf THE MOTHER and the family, that – that that is appropriate in the circumstances and the same, I think, applies to the children’s guardian, [Person I], who was, I think, the guardian in the – the original proceedings, but not at the time of the decision of HHJ Hess. So that – that restriction, I think, ought to remain in place.

As to whether release of HHJ Hess’ judgment ought to be permitted, I cannot think of any real reason why – given that it is anonymised, but has not been published, I cannot think of any reason why I should not make a direction enabling disclosure of that to the representatives of the press. Now, it is certainly in a form that – that would have enabled it to have been published and whilst I am not a serial publisher of my own judgments, there is no reason why it should not be, I think, released in those circumstances. So I will give permission for that and that, I think, will give some context to the position that – that everyone finds themselves in today. I think the original order was made by HHJ Miller, was not it, back in 2016?

MS HABEL: It was the 31 of March 2016 and I – I, honestly, do not – I was not present at that hearing.

JUDGE LEVEY: No.

MS HABEL: I do not think anybody – oh, [Person I] was. I do not know whether she delivered a judgment on that occasion, or not, bearing in mind that it was a consent order.

JUDGE LEVEY: Yes.

MS HABEL: I do not – the judgment of HHJ Hess is transcribed. I do not think it is anonymised.

JUDGE LEVEY: Well, I – I am not sure. I know – I noticed - I have only had chance to read it very briefly this morning. It, certainly, does not identify the children, or the child, rather. I think she called ‘Name’ – I have seen ‘Name 1, Name 2 and Name 3’ referred to in it.

MS HABEL: Oh, yes.

JUDGE LEVEY: Yeah.

MS HABEL: Yes. I mean, it does identify the guardian and the professionals from the local authority who were working with the family at that time, but, of course, those are different professionals now.

JUDGE LEVEY: Yes. Yes. I – I do not think it is for me to direct that it should be published. I am making a direction that it can – that it may be released ---

MS HABEL: Yes.

JUDGE LEVEY: --- so having already made – come – made the direction that the names of the professionals should not be reported, then I do not think there is any need for any redaction of that document in those circumstances.

JOURNALIST LOUISE TICKLE: Sir, may I address you?

JUDGE LEVEY: Mmm.

LOUISE TICKLE: We are just seeking a little bit of clarification, if that is OK? In the published Appeal Court judgment, the names of two professionals are included. The ethnicity of THE MOTHER is included and there is also the issue that she (inaudible). So I propose that we are seeking to clarify that we can (inaudible) publish what is already in the public domain and – because that was brought up in a – in pre-court discussion today ---

JUDGE LEVEY: Mmm.

JOURNALIST LOUISE TICKLE: --- and I would like to clarify that. I would also like to try to, perhaps, (inaudible) as to if you were to order that we can report what was going on in court today, what we may, or may not say? Because I am aware that there is another child, that THE HUSBAND is (inaudible). Now, I am not saying that we would seek to report all,

or any of that, but I – I – this might be something that is worth a discussion. Is that – does that make sense?

JUDGE LEVEY: It, certainly, makes sense, yes. Any comments? I mean, if – if material was already in the public domain, then ---

MS MAGEE: Well, my Lord, is – is it the argument, I think, quite successfully recently is that just because, for example, 30 per cent of the population may have – or, probably, a smaller amount with respect to the Court of Appeal have read that judgment and be aware of that information, that was actually put into the ---

JUDGE LEVEY: Mmm.

MS MAGEE: --- public domain in the broadest context, and so, I think for the reasons that there are some more striking features of this family, that if details about ethnicity and – and for example, the other child are reported, that could in – in fact, if someone put their mind to it, lead to identification of the family. So I think that the fact that their information is in the Court of Appeal judgment that has been published, it does not, necessarily, make it wide public knowledge ---

JUDGE LEVEY: Mmm.

MS MAGEE: --- and I think the guardian's position would be to try and maintain that privacy for the family.

JUDGE LEVEY: OK.

MS EARLE: I would, certainly, endorse everything that my learned friend has said as clearly – I – I cannot put better what my learned friend has said – a limited number of individuals who would have the interest in actually reading Court of Appeal judgments opposed to if it is published within the wider domain ---

JUDGE LEVEY: Mmm.

Mmm.

MS EARLE: --- whether that is a newspaper, whether that is on a television programme. I understand that some interest in looking into this for the purpose of research and the Channel 4 Dispatches programme, and of course, how far and wide that would, really, reach the public compared to a Court of Appeal judgment, and I think we have received some reassurance. There have been some e-mails coming from [MELANIE NEWMAN] for example, with regard to the sorts of features that would not be highlighted on her pos – on her – her position was, which was to refer, for example, to the fact that (inaudible). Now, that was a feature that was highlighted by her that might lead to a jigsaw identification. We were provis –

provided with some reassurance in e-mail, that would not be included and yes, I did, on the basis of the Court of Appeal judgment, but I think she was taking a censor approach which mean that, actually, in the wider domain, we would not refer to that and we would prefer the press to take that more sensitive approach, please.

JUDGE LEVEY: Mmm.

MS HABEL: Certainly, insofar as the local authority is concerned, this family has a – an unusual profile. I have – I have no evidence for this, but I – in the context of [Authority A], I suspect, and the local authority suspect that this is quite an unusual family and for that reason, the less specific ---

JUDGE LEVEY: Mmm.

MR CLAY: --- the better.

JUDGE LEVEY: Yes.

MS HABEL: Of course, there are certain aspects of the case that relate, for example, to THE MOTHER'S status when she arrived in this country and the circumstances she found herself in which are referred to in both judgments.

JUDGE LEVEY: Yes, all right. OK. Then – then, I think that the prohibition should extend to information which might already be out there in the sense of it being contained within the Court of Appeal judgment. I am very concerned to ensure that the – the family's identity should not be able to be pieced together. So names of professionals involved in this application should not be revealed. Personal information relating to the family; ethnicity, ages, similarly, should not be referred to.

JOURNALIST SANCHIA BERG: Sorry, may I speak?

JUDGE LEVEY: Yes.

JOURNALIST SANCHIA BERG: Jus to be – to be clear, this information is already in the public domain. You are saying that we – we cannot report information that is already in the public domain?

JUDGE LEVEY: The decision that I have made is that names of professionals involved in these – this case should not be reported. That is what I said.

MELANIE NEWMAN: Yeah. Could I just make a representation? I – I did say that I would not mention (inaudible), but I do think that THE MOTHER'S ethnicity does have some bearing.

MS EARLE: We would agree to the description '[Ethnicity A].

JOURNALIST LOUISE TICKLE: [Ethnicity A]?

MS EARLE: Yes.

JUDGE LEVEY: Yeah, OK.

MS HABEL: I mean, that sounds – but it is much less specific.

JOURNALIST LOUISE TICKLE: Black [Ethnicity A]?

MS EARLE: Yeah.

JUDGE LEVEY: Well, if – if there need to be negotiations about that, they do not need to go in – within the hearing. OK, well, MOTHER, good luck. I hope it all continues to go well.

COURT CLERK: Court rise.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.