Neutral Citation Number: [2021] EWCA Civ 1652

Case No: B4/2021/1517

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT LIVERPOOL
HHJ Sharpe
LV543/21 and LV544/21

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 November 2021

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE ARNOLD
and
LORD JUSTICE DINGEMANS

- -

N (Children: Refusal of Placement Orders)

- -
- -

Leanne Targett-Parker (instructed by **Wirral Borough Council**) for the **Appellant Local Authority**
Ronan O'Donovan (instructed by **Atkins Hope Solicitors**) for the **Respondent Mother**
The Respondent Father appeared in person
Carl Gorton (instructed by **MSB Solicitors**) for the **Respondent Children by their Children's Guardian**

Hearing date : 28 October 2021

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on Tuesday, 9 November 2021.

Lord Justice Peter Jackson:

Summary

1. A local authority, supported by the Children's Guardian, appeals from the refusal of its application for placement orders in respect of children aged 2 and almost 4 who are presently in foster care. The Judge held that, despite many severe difficulties, it was better for the children to be returned to their mother under care orders, with restrictions on their father's contact, than for them to be placed for adoption. The key issue is whether there is any prospect of those restrictions being observed.

2. My conclusions, shared, I believe, with my Lords, are these:

   (1) The Judge was entitled to decide that it might be possible to reunite the children with their mother with workable restrictions on the father's contact, and the argument to the contrary is rejected.

   (2) However, he should not have dismissed the local authority's application without first ensuring that reunification was underpinned by clearly understood court-approved arrangements.

   (3) Accordingly the appeal will be allowed to the limited extent that the local authority's application is remitted to the Judge so that he can consider and endorse such arrangements or, if they cannot be devised, redetermine the application.

The background

3. The parents are British citizens, the mother's family coming from Eastern Europe and the father being of black African heritage. They met in 2011 when the mother was at school and the father was a teacher, and their relationship began the following year. In 2016, the father was indefinitely banned from teaching in schools for assaulting a student. The older child was born in November 2017. The family came to the attention of the local authority in June 2018 after a neighbour reported an incident between the parents. When social workers visited the family home they were met with hostility and verbal aggression from the father and were refused entry. The father was arrested for harassing the neighbour, bailed to live away from the family home, and arrested for breach of bail. The mother also withdrew all co-operation and the whereabouts of the family became unknown. This set the pattern for three years of unremitting oppositional defiance by the parents towards the authorities.

4. In October 2018, the local authority began proceedings and the child was placed in foster care for the first time under an interim care order. Mother and child were then housed together in three successive foster placements. In April 2019, the Judge conducted a fact-finding hearing in which he detailed the father's aggression towards the mother on one occasion and towards a list of professionals and other individuals on other occasions, and noted the mother's complicity with the father's stance. He found that the father habitually uses the threat of aggression to get his own way.

5. The second child was born in July 2019. The state of affairs between the parents and local authority was so bad that both children were briefly placed in foster care before being returned to their mother under interim care orders on the basis that they lived with

the maternal grandparents. That arrangement continued until about October 2020. During this time the parents continued to wage what the Judge described as a 'crusade' against the authorities, but the children appeared to be well cared-for. However, the situation remained unstable, with the parents refusing to disclose the father's whereabouts. In January 2020, the father was convicted of one or more offences relating to the then allocated social worker, and in September 2020, he was arrested after storming the Family Court in an attempt to confront the Judge. Staff had to barricade themselves in rooms and the father was eventually incapacitated by police with PAVA spray. The father was charged with assaulting an emergency worker.

6. The final hearing in the care proceedings took place in October 2020 by remote hearing. The father's behaviour, in interrupting and insulting witnesses and the court, was described by the Judge as the worst that he had ever seen and he was excluded from the hearing. The mother, who had deliberately attempted to sabotage the hearing by failing to take make sensible arrangements for the children's care, then absented herself by choice. However, the following day the parents returned and the hearing was completed. The Judge made a care order on the basis that the children would remain with the mother and that the father would have supervised contact. He ordered the father not to attend at any property where the mother and children were living or where the children were at school. In response, the parents, who were acting in person, stated that they would ensure that the father had unsupervised contact without involving the local authority and the father stated that he would breach every order made by the court. These statements were recorded on the court's order.

7. The next development was that, as had been anticipated, the mother and children moved away from the grandparents, but they refused to inform the local authority where they had gone. When they were located by means of a recovery order, the local authority commissioned a report on the children's situation from an independent social worker, who was subjected to a 45-minute tirade by the father on the telephone before he realised that she herself was black. She was allowed to visit on 30 November 2020, when she found the parents and children together and the children apparently doing well. However, the discovery that the father had been living in the home led the local authority to remove the children to foster care again. The parents sought to prevent this by applying to the court, but the Judge dismissed their application. They then set about undermining the foster placements, with the father intimating in a menacing way that he knew where the children were living. As a result, they had to move in February and again in March, with the result that instead of being close to their mother in London, they are now in Merseyside. The mother has had contact twice a week, while the father has excluded himself from any contact at all by refusing to engage with the local authority's proposals. The mother's contact has been positive except that she insists on telling the children that she is fighting for them.

8. In March 2021, after the children had to be moved to the third placement, the local authority issued its application for placement orders. That application came before the Judge in July 2021 at a remote three-day hearing. The mother again appeared in person, three firms of solicitors having previously applied to come off the record as acting on her behalf. The father also appeared in person from prison, following his arrest on multiple charges of racially aggravated assault arising from events when he and the mother went to demonstrate at the headquarters of the Metropolitan Police in June 2021.

9. The parents did not participate in meetings with professionals in preparation for the hearing in July 2021. The hearing otherwise passed off relatively normally. Evidence was given by the social worker, the father, the mother, the maternal and paternal grandmothers and the Guardian. All parties made written closing submissions in the days following the hearing and the Judge provided his judgment on 23 July and made his order on 19 August. In refusing to make placement orders, he indicated that the local authority would want to review its care plans, which were for adoption. Instead, the local authority applied for permission to appeal, which I granted on 29 September.

10. This short summary gives the merest outlines of the difficulties that have been created for these children over the past three years as a result of the grossly unreasonable attitude taken by their parents towards professionals. The documentation is full of examples of the mother's obduracy and the father's bombast and aggression.

The Judge's decision

11. In a conspicuously careful reserved judgment, the Judge set out the history, referring back to his judgments in April 2019 and October 2020. He dealt with a number of applications made by the parents and grandparents, to which I need not refer. He set out the legal test applicable to applications for placement orders and referred to authority on the assessment of risk. He found as a fact that, despite their denials, the parents were living together when the children were removed in December 2020. He rejected their case that the children were being inadequately cared for in foster care. He further found that the parents "when they wish to" can care for the children to an entirely adequate standard. However,

> "… the father uses intimidation as a tool to subvert people to his way. It is not the case that he is a man incapable of controlling his emotions through psychological failings or mental health issues, rather he chooses his emotive responses according to his assessment of the situation."

12. The Judge then carried out a comprehensive welfare analysis, which included the substantial positives in the children's relationships with the parents and the parents' more than adequate abilities when they are not consumed by their conflict with professionals. However, he described the risk of harm as the critical issue:

> "In this case there is a real risk of the children suffering future emotional abuse by being in the presence of their father on those occasions, which appear to be many, when he engages in his abusive, intimidatory tactics. That risk is compounded by the complete failure of the mother to acknowledge even the possibility that the father's behaviour could generate feelings of fear, intimidation or threat and therefore be properly acknowledged as abuse. To date there has been no occasion when she has sought to disassociate herself from anything the father has said or done. …
>
> The risk is real, it is clear and it would amount to significant harm to these children to suffer that exposure to that sort of behaviour on a recurring basis."

13. The Judge then systematically applied his welfare analysis to the placement options for the children. He excluded a return to the care of both parents, long-term foster care, or substitute family care. This left a choice between a return to mother and adoption. He identified the many advantages of a placement with the mother, before continuing:

> "But the mother also offers the father and the father offers the possibility of future harm. The mother is clear that she and he are the children's future, that together they can offer all that the children need, that the children need them both and that those who suggest that together they place their children at risk are simply wrong. She does not recognise it, therefore it is not there."

14. If matters had rested there, it is plain that the Judge would have felt obliged to make placement orders. The reason why he did not appears from these extracts from the concluding pages of the judgment, which are easier to set out than to summarise:

> "96. However that is not quite the end of the matter.
>
> 97. I referred earlier to a further factual issue which was relevant but which I stated I would deal with later in this judgment.
>
> 98. At the conclusion of her evidence the mother, for the first time in my experience of dealing with her, became emotional other than simply through venting frustration or raging against my decisions. There was no longer fire in her voice but now a real sadness and genuine upset. This difference in tone which I detected was also noted and commented upon in the written submissions of the Local Authority and the Guardian, which confirmed to me that I had neither imagined it nor misread it for exhaustion or was otherwise being offered a false prospectus by this mother.
>
> 99. The mother stated that she would now accept any terms imposed upon her in order to achieve reunification with her children, that whether she believed in the need for a care order or even an injunction she would abide by them both and for any such period as they continued to be in place. She went to explain that whatever others might think of her she was not a liar, if she said she was going to do something then she did it… She can justifiably claim consistency of action in that regard. She offered the fact of her breach of the injunction as a particular example of this quality. She told everyone she was going to breach the order, she especially told me. She did not shy away from so doing even though she could have attempted some form of deception. She was good for her word, on that occasion the consequences for the children were as I have already set out.
>
> 100. The Local Authority is not persuaded by this possible sea-change in the mother, it is of the view that it is a statement borne of desperation, without any intent to abide by it, that the reality

is that the mother is simply looking for the first opportunity to break it and do as she has always done, which is exactly what she wants.

101. I disagree. This mother does do exactly what she wants, irrespective of the costs to her. But, as I have said, she is consistent in that. Like both herself and her mother I also believe that she is not a liar. If she tells me that she will abide by the terms of the existing injunction then I am prepared to accept that is a change to which this mother will commit, not because she wishes suddenly to impress anyone, certainly not me, but because her commitment to her children overrules any other single factor in her mindset or in her life. Even if it puts her apart from the father.

102. The father was clear that he would not accept being separated from his children, that they need him in their lives and anything less would be him selling out on his children's welfare. The mother does not consider that he is wrong but in my judgment she believes that what would be far worse than the absence of the father in the lives of the children is the absence of the parents, the family and all that they know in their lives. The mother cannot abandon the children to adoption simply because the alternative is the limitation of the father's role for the time being.

103. If that is the view she has taken then I accept that she will follow through on her expressed intent. She always has and I have no reason to believe that she will not now apply that obduracy and determination in the direction of the welfare of the children, regardless of whether she thinks it is the right outcome.

104. That is a change…

…

108. Mitigation of the harm could be achieved if it was the case that the mother would herself police the required separation, a position she has hitherto totally rejected. There is a huge uncertainty even now as to whether this mother would or even could be that barrier between the children and unlimited, uncontrolled paternal contact but for once the possibility exists, in my view. Her qualities of determination, obduracy and single-mindedness could be applied for the benefit of the children rather than to their detriment and if this was so then that combination of protection but parental care would be achievable.

…

110. On that basis, but that basis alone, the scales, in my judgment, tip from adoption as the only effective protection

against the harm that might not happen but may impact disastrously upon the children towards maternal care as offering that necessary protection but without the disadvantages listed above.

111. However I cannot move on without spelling matters out in the clearest of terms. These children's place in their family is now totally dependent upon the mother's integrity, of her doing what she said she would do, namely abiding by the orders previously made and doing so for all of the time that those orders remain in place. This is not a quick fix or a short term move whilst the parents plot a more sophisticated way of creating a covert arrangement for the father to have such time with the children as he chooses. The mother either commits to this and holds to it or the option of parental care must be reassessed on the basis that any form of parental care will inevitably lead to the presence of the father and therefore the likelihood of exposure to his methods and therefore the real possibility of future emotional harm.

112. Weighing up all of the options against each other I have concluded that the outcome which best meets the welfare of these children is for them to be looked after by their mother under the terms of the care order allied to the continuation and extension of the injunction order made on 7 October and originally intended to run for 12 months. Subject to the issue referred to below that injunction will now be extended for a further period of 12 months, commencing from the date when the father is released from prison. At the end of that period it will expire unless the Local Authority seek its renewal in which case the matter will once again be returned to me.

113. The reality is that well before that time is reached one of two things will have occurred. Either the mother will have kept to her word, looked after the children, enabled them to have supervised contact with their father and not allowed anything other than that.

114. If so, there will no doubt be a further consideration of what orders, if any, then meet the needs of these children.

115. Alternatively the mother will prove the Local Authority and the Guardian were right, that this was not something she could or would follow through on, the children will allowed to spend time with the father on their own terms and thereby be exposed to risk.

116. If the second outcome occurs the Local Authority will no doubt with renewed ammunition make further applications concerning the children and re-assess what the realistic options are for them. Whether by that time [the elder child] is still a

> suitable candidate for adoption will have to be seen. However if there is a possibility of separation of the children now it will only be stronger then. Similarly, if adoption is not an option for one of them their bond may be such that [the younger child] would be condemned to follow [the elder child] into long term foster care irrespective of any other option open to him. In either case the prospect of identity contact only may well be a real option.
>
> …
>
> 119. I do consider that the range of powers available to me using the Children Act is a matter that I both have to consider and is a factor which makes a positive difference in this case. The Local Authority sought an injunction via s.100 of the Children Act 1989. They were right to do so. That injunction is an essential component of the arrangement which enables these children to be with their mother. Without that injunction at this point in time there would be no adequate protection for the children.
>
> …
>
> 122. That brings however a further issue. The outcome of my risk analysis is not shared by the Local Authority which, in accordance with division of responsibilities set out in the Children Act 1989, alone may design and operate a care plan. The current care plan does not allow for resumed maternal care. It does not follow that the Local Authority will accept my risk analysis and revert to their previous care plan. The Local Authority will wish to reflect upon this judgment before determining its next step. There is a process to be followed and the authorities of *Re W (A Child)(Care Proceedings: Court's Function)* [2013] EWCA Civ 1227 and *Re T (A Child)* [2018] EWCA Civ 650 will be familiar to the advocates.
>
> 123. That is my judgment."

15. The transcript of the mother's evidence runs to 55 pages. The passage to which the Judge referred arose in this way. The mother had given evidence for three hours in the morning, stating her position and answering questions from the local authority and the father. In the afternoon she was further questioned by the father and the Guardian. Her evidence up to that point consisted of a complete rejection of the court's findings, delivered with evident disrespect for professionals and the court. At the end, the Judge asked whether she wished to say anything in re-examination. At that point, on page 54, the mother said this:

> "… my overall position right now is that, yes, I understand that this is what the court is saying that there was a breach of an injunction and this is why I do not agree with it; definitely, I do not agree with it but what I will say is that – I will reiterate that I have been consistent in my submissions to the court and I have not lied so, when I have said – the opportunity to safeguard my

> children and remove them from risk should have been addressed at that final hearing – when I explicitly stated that I – I will prioritise my children's Article 8 right because it has been denied for so long but, at this moment in time, we have – circumstances have changed because now my children are actively being harmed. So, if the court will consider returning them to my care, then I will – because it's in their best interests right now – in their immediate best interests right now, to prevent future – more future long-term harm than they are already subject to. I will abide – just like I said on the injunction that I will not abide any orders made now – although I do not agree, I will agree to all of the restrictions so that the children can be returned to my care. So, there is no – no – yes, whilst I do not agree – I did not agree with it before – I haven't agreed with it at any point during these three years. So, it's not a question of whether or not I will agree with it; it was a question of whether or not I'm abiding by the court orders. Before, I said that I wouldn't and to me, I feel justified because I explained to the court exactly my rationale behind it and I expected the court to take any measures they felt necessary upon, you know, acknowledging my position but now, I am saying that the circumstances have changed because of what my children have gone through right now and it is vital that they are returned back to my care and I am willing to comply to the court's – what I believe is unprecedented restrictions and to continue applying to the court, you know, to try and combat and overcome these restrictions but I am willing to abide by the – whatever is put in place by the court.
>
> So, if it wasn't already explicitly clear, I'm sure that [my former solicitor] made it clear in my last statement that she wrote on my behalf but if it wasn't, I just wanted to make it clear one last time, that – well, yes, I think I've explained it.
>
> JUDGE SHARPE: Okay, so, you will abide by the terms of the injunction …
>
> A. That, obviously, I don't agree-
>
> JUDGE SHARPE: Yes?
>
> A. But I will agree to the restriction that it says on the court order. If the court order says until 100 years' time, then that's what I said – the 100 years' time. If it says a year, it will be a year so, whatever restriction it says but, I will keep stating my truth."

16. The statement to which the mother referred was a position statement filed in April 2021 and incorporated by the mother into her own lengthy, argumentative closing submissions in July 2021. It included these paragraphs:

> "9. M confirmed to the Court on 04.02.21 that she will comply with any reasonable expectations placed upon her by the LA

> were her children to be returned to her care. This includes that she will not permit contact between the children and F (save as authorised by the LA) and that she will act upon any attempt by F to see the children outside of the specific supervised contact, by making her best endeavours to prevent such contact from happening and immediately informing the LA (and if necessary the police) of any attempt that is made by F to see the children.
>
> 10. M accepts that she had not complied with the expectations of the Court prior to the children's removal. However, she has never previously suggested that she would. Indeed, albeit an unattractive position to adopt, M's was clear about her intention to breach the injunction at the outset and caused that intention to be recorded on its face. M was honest about her position in the face of the Court's order.
>
> 11. M's position has changed and she will commit to keeping F away and acting under any inunction that is in place to ensure that he does not have unauthorised contact with the children. Dishonesty is not an issue identified by the Court in this case. Indeed, M's honesty about her perceptions of F have been repeatedly expressed to the Court, to the detriment of her case. The Court can have faith that M is true to her word and when she says she will keep F away, she can be trusted to do so. This is a significant change of position. The Court may ask why can M be trusted now? The answer is clear. M understands she is standing on the edge of a precipice and she may lose her children. M is a devoted and loving mother. The children are her world. M will do anything to keep them within the family."

17. The Judge's order restated the injunctions against the father, but on this occasion it recorded the mother's express statement that she will comply with the order.

The appeal

18. The hearing took place by video-link. There are three grounds of appeal:

    (1) The Judge failed to explain why he was departing from the clear recommendation of the Children's Guardian in favour of placement orders.

    (2) He considered irrelevant evidence and discounted relevant evidence.

    (3) The injunction preventing the father from having any contact with the children and the mother, save for professionally supervised contact, is insufficient to protect the children in that it does not have a power of arrest.

19. The parties are agreed that on the facts of this case, where the positions of the Guardian and the Local Authority were the same, Ground 1 adds nothing to the other grounds. As to those, the Local Authority and Guardian argue that the Judge's decision was wrong because it privileged one piece of evidence – the mother's last-minute promise – while disregarding the extraordinary history that shows that such a promise could not

be considered reliable. Ms Targett-Parker submitted that the Judge himself had found that the mother "wastes few opportunities to seek to control or manipulate others to her advantage and demonstrates a particular skill at disguised compliance". Her recent actions include hiding the children's whereabouts after leaving the grandparents' home, conniving with the father's breach of the injunctions by living together with him in late 2020, and standing by approvingly while he serially destabilised the children's foster placements. The parents continue to be unable to work with professionals, for example by agreeing on sensible arrangements for the father to have contact. They do not accept any of the Judge's findings, and they are unwilling to address the father's extraordinary behaviour. The mother cannot be trusted: the Judge's statement that she "is not a liar" overlooks his own findings. He could not reasonably take comfort in the parents being as good as their word when breaking the order preventing unsupervised contact, when in fact they were going much further by living together, and then untruthfully denying it. The history also shows the Judge to be wrong in finding that the children are more important to the mother than anything else: at every stage she has prioritised the father, and the Judge does not consider how she would now extricate herself from his powerful influence when she does not even want to do so. The Judge accepted that this was an area of huge uncertainty but he did not meaningfully analyse the risks to the children that flowed from it. The mother's promise involved no acceptance of the risks and was only to obey the orders while "continu[ing] to apply to the court… to try and combat and overcome these restrictions". The decision leaves the children under care orders that the local authority has no way of monitoring. No other judge would have made this decision. The situation is totally unworkable: to coin a phrase, "it will not do".

20. Mr Gorton for the Guardian supports these submissions. The Judge's risk assessment was fatally flawed and ignored the weight of his own findings. The mother had been given the opportunity to parent the children in October but she had deliberately behaved in a way that led to their removal, causing them further harm, which was then compounded by the forced moves in foster care. The parents have not changed their beliefs or behaviour at all. A return to the mother would place the children in a situation of massive instability and uncertainty.

21. On behalf of the mother, Mr O'Donovan challenges the proposition that the mother's promise had come out of thin air, pointing to the earlier documents in which she had said something similar. In the welfare analysis and discussion sections of his judgment, the Judge undertook a careful analysis of the relative benefits of the only two realistic options for placement of the children. His analysis did not skate over negative matters but it also took account of the children's strong attachment to each parent, the fact that (in the father's presence) they were found to be thriving in December 2020, their unusual and distinctive ethnic and racial heritage, their relationship with their grandparents, and the hugely significant loss if they had to be placed separately. This was also a case in which the harm that had precipitated the original proceedings (arising from the father's behaviour towards the mother and towards others) was not of the most serious kind. Against this background, the Judge was understandably struck by the mother's presentation at the end of her evidence, compared to when he had seen her at earlier stages of the proceedings. He was entitled to conclude that the Local Authority had not established that nothing else, other than adoption, would meet the children's needs. Reliance is placed on the observations of Hedley J in *Re H (Care Proceedings: Foster Care Placement For Mother and Baby)* [2012] EWCA Civ 1700) at [25]:

> "… we are dealing with a judge who has immense experience in this area and who has decided, as it were, with his eyes wide open to do something that others would regard as rather out of the ordinary. It would be quite wrong if the law developed into a position where judges were not free to deal with individual cases on an individual basis, so long as they remain within the generous limits of discretion that are afforded them."

Mr O'Donovan argued that the Judge had done enough when dismissing the application but he conceded that if more was needed, the case could be remitted for future arrangements to be clarified.

22. The father addressed us in person. He first spoke in support of an application to admit an additional bundle running to 367 pages, designed to demonstrate flaws in the Local Authority's view of the case and in the Judge's past findings. (In passing, the father disagrees so strongly with the Judge's findings since 2019 that he had actively supported the Local Authority's application for permission to appeal from the refusal of placement orders – another sign, if one was needed, of the parents' self-defeating approach.) Having looked at the nature of the material, I would not admit it. It all comes from the previous proceedings but it is not relevant to the issues that are properly before us.

23. The father's submissions on the appeal itself were shortened by his being in agreement with much of what Mr O'Donovan had said. He complained about the way in which the Local Authority had acted and presented its case, saying that it was more concerned with disparaging the mother and himself than with the welfare of the children. However, he also told us that:

> "There is a need for the court to address how the parents and Local Authority should work together and about my contact with the children. There is a need for a robust agreement. It is well within the court's powers to require that agreement. Most of the aggravating factors are capable of being alleviated… Measures can be taken but the Local Authority must also make concessions."

24. In relation to Ground 3, the Local Authority points out that an injunction under the inherent jurisdiction was only necessary because the mother is unwilling to seek an order against the father under the Family Law Act 1996. In consequence, there can be no assurance that she will report any violation, and even if she did, a power of arrest cannot be attached to a non-statutory order.

Conclusion

25. The challenge to this order has two strands, roughly represented by Grounds 2 and 3 respectively. The first is that the Judge's decision was irrational in the light of the evidence as a whole, and the second is that the resulting position is not a workable basis for the children's future. As indicated above, I disagree with the first proposition but agree with the second. I can give my reasons quite briefly.

26. For the Local Authority to succeed in its main contention, it would have to show that the Judge had no alternative but to grant its application. In my view it cannot do that. The arguments in favour of placement orders were powerful ones that many judges might have accepted. In particular, without a true change of behaviour by the parents, there must be a high risk of a placement with the mother foundering on the same shoals as before, and next time the stakes are likely to be even higher, with the chances of the children finding a suitable adoptive home being further reduced and the dire prospect of long-term foster care re-emerging. However, there were also strong arguments in favour of the parents being given a final chance, not for their own undeserving sakes, but for the sake of the children.

27. Cases where parents decide to take on the system are always difficult. The attempt to shift the agenda away from legitimate child protection concerns creates levels of extraneous noise that pose exceptional challenges for social work and legal professionals, who often face relentless, unfair attacks on their integrity and judgement that are calculated to distract attention from matters truly affecting the child's welfare. This was just such a case, and the Judge was in my view to be permitted the widest latitude in deciding how to approach this very profound decision. He saw a change in the crucial matter of the mother's willingness to offer some level of formal co-operation and he was entitled to factor that into his analysis. To that point, his decision may have been a brave one, but it was not irrational in the sense that would entitle an appeal court to interfere.

28. However, the conclusion that the mother might be capable of being trusted was not sufficient in itself. It should have been seen as the starting point for identifying ground rules to underpin the children's return. Having taken the view that this might be possible, the Judge needed to press the parties for their detailed proposals: only by doing that could he know whether his chosen solution was realistic. As matters stand, there is no credible rehabilitation plan. It was not in my view enough for him to rely upon a limited negative concession by one parent and a message to the local authority that it needed to reconsider its care plan. In short, the Judge should have adjourned and required both sides to make positive proposals and, in the absence of agreement, to have adjudicated upon the situation so far as possible. If he reached the conclusion that the parties remained too far apart, he might, depending upon where the fault lay, have to revisit the application for placement orders.

29. Accordingly, I would allow the appeal and remit the application for placement orders to the Judge to complete his decision-making. It is to be hoped that the parents will now engage in discussions to identify arrangements that can be accepted by the other parties and approved by the court so that the prospect of adoption can recede. However, if they are incapable of taking what is surely the children's last chance of growing up within their family of birth, all options must remain open.

Lord Justice Arnold

30. I agree.

Lord Justice Dingemans

31. I also agree with the judgment of Peter Jackson LJ and, in particular, with his conclusion at paragraph 26. The judge had been dealing with this case for at least two years at the time of the hearing of the application for placement orders. He had seen the mother throughout those proceedings and was best placed to judge the significance and the likely reality of her change of approach as summarised in his judgment and set out in paragraph 14 of the judgment of Peter Jackson LJ.

32. As Mr O'Donovan, on behalf of the mother, fairly identified there were important finding of facts made in this case, which are summarised in paragraph 4 of the judgment of Peter Jackson LJ. Those findings, however, would not have led to the stark choice of a placement order on the one hand or continuing disruption to the children's lives caused by parents preventing the local authority from protecting the children in accordance with their statutory duties on the other hand, which confronted the judge if there had not been what Peter Jackson LJ has called, in paragraph 10 of his judgment, "the grossly unreasonable attitude taken by their parents towards professionals".

33. The result of this appeal means that the judge can now seek to case manage the mother's return from the brink of a placement order, for the good of the children. I agree with the hope expressed in paragraph 29 of the judgment Peter Jackson LJ that both parents might see the damage caused by their previous approach to the professionals and these proceedings, so that the prospect of a placement order can recede.