IN THE SWINDON FAMILY COURT **Neutral citation: [2024] EWFC 8 (B)**

Case Number: SN23C50049

IN THE MATTER OF THE CHILDREN ACT 1989 and
THE ADOPTION AND CHILDREN ACT 2002

BEFORE HHJ Caroline Wright

In the matter of:
Child A born 16 June 2023

BETWEEN

SWINDON BOROUGH COUNCIL — Applicant

and

B — First Respondent

and

C — Second Respondent

and

Child A — Third Respondent

(By his Guardian)

Judgment dated 12 January 2024

1. Child A (A) was born 16 June 2023; he is now 6 months old. His parents are B, his mother aged 39 years and C, his father, aged 38 years. A has a maternal half sibling D aged 14 who he has not met, and a paternal half sibling E of similar age, who he has met in contact sessions. Neither half sibling lives with A's parents. A is the only child from his parents' relationship.

2. The LA, Swindon Borough Council, has applied for Care and Placement Orders in relation to A.

Background and proceedings

3. B became aware she was pregnant in late February 2023 when she was approximately 24-25 weeks. Both parents disclosed to professionals they were long-term Class A drug users who had been smoking and injecting heroin for many years as well as taking crack cocaine. The LA and professionals held a strategy meeting on 8 March 2023. All professionals recognised serious concern

that the baby might be born with withdrawal symptoms which would require a period of support by health professionals as the well-being and safety of the unborn child was continuing to be affected by parental drug misuse. The parents requested support, they stated they wanted to change and stay away from drugs in order to parent their child together. At that time the parents were living with a known drug user for whom they obtained crack cocaine in exchange for a place to live. Professionals recognised if there was no change this placed the unborn child at high risk. Both parents also experienced issues in relation to their mental health, particularly C who had expressed suicidal thoughts as well as threats to self-harm, but also B who experienced low moods and sometimes went missing.

4. A was made subject to a pre-birth child protection plan under the category of neglect on 15 March 2023. Both parents were referred to the Swindon Drug and Alcohol Service on 1 April 2023 via Turning Point Substance Misuse Service. During the pregnancy B tested positive for opiates, cocaine and methadone, C tested positive for cocaine and methadone. During the pregnancy the parents disclosed continued and increasing drug use. A pre-birth parenting assessment was conducted by Jackie Milton, social worker, in the pre-proceedings process. Within that parenting assessment Ms Milton records the following:

   Due to the concerns for the unborn baby a strategy discussion was held on 8 March 2023 where it was clear that the unborn baby was at risk of significant harm due to its mother being an intravenous heroin user whose engagement with drug support services was sporadic and she was not currently accessing any treatment. The baby had not received any antenatal care.

5. B had a pregnancy scan on 21 March which confirmed the baby appeared healthy and the estimated due date was early July 2023. Shortly thereafter B was prescribed methadone; she had reported using crack cocaine and heroin on a daily basis throughout the early stages of her pregnancy, she was trying to reduce her usage since discovering she was pregnant, but she had continued to use. The parents told Ms Milton they were sofa surfing in a flat where crack cocaine was being smoked, which caused them to continue to smoke crack cocaine. B disclosed she did not want her unborn baby to be exposed to methadone, which was why she continued to take heroin, albeit she was advised exposure to both heroin and crack cocaine for her unborn child was very risky. Sadly B's relationship with D had broken down albeit he had spent time with her and her mother during lockdown, so he has not met A.

6. Ms Milton recorded the following in relation to her concern in the pre-birth assessment:

   a. *There is considerable research to suggest that* ***maternal substance use can have an adverse impact on the health and development of the growing baby****… This stage of pregnancy, the type of substance and the way it is used or taken, the extent of the substance use and its duration (both over time and in terms of intensity) are all potentially significant factors.*

b. *Particular attention should be paid to whether the mother has attended antenatal care and followed advice to reduce any potential risk to the baby: the child may need monitoring for any special health needs as a result of prenatal exposure to drugs or alcohol.* ***The unborn child was not afforded any antenatal care prior to 21 March 2023 and it is recorded at that time his mother was using heroin, intravenously, and crack cocaine on a daily basis. He has also been exposed to methadone****.*

c. *In addition to exposure to chronic levels of illegal substances, the unborn baby has also suffered as a result of B's circumstances. Her physical health has been affected by the pregnancy causing her to feel extreme fatigue and the couple have relied on food banks and homeless charities for food, the diet may not always have been sufficient or balanced. Maternal drug injecting carries the risk of transmission to the baby of HIV and viral hepatitis, however test for blood-borne viruses have been negative. At the 32 week scan the baby's growth was slowing down, falling from the 26 centile to the sixth centile, and fears were raised that the birth might have to be induced early. The mother also reported concerns that he wasn't moving much and went to hospital for a check-up although no abnormalities were detected.*

d. ***Neonatal Abstinence Syndrome (NAS) refers specifically to the effects of drug withdrawal symptoms on babies exposed to substances in utero****. All opiates cause withdrawal symptoms in the baby and it is highly likely that this baby will be born physically dependent on opiates. Symptomatology is related to drug type and degree of exposure, with poly drug use altering the pattern of withdrawal. Treatment includes aiding withdrawal and specialised feeding.*

e. ***Babies born with withdrawal symptoms present with irritability, continuous high-pitched crying, disturbed sleep patterns, feeding problems, vomiting and diarrhoea.*** *As well as having immediate implications for the child's health, these babies can be harder to care for which has implications for parental bonding and attachment. Problems that flow from this may also predispose children to maltreatment.* ***Unborn child A has not been provided with a healthy environment and the implications for his health and development may not be known for a number of years.***

7. By the time of the initial CPC on 15 March 2023 neither parent had secure accommodation; they were staying with a regular crack cocaine user in a one-bedroom property, it was cold, the parents slept on a mattress on the floor, they were also using crack cocaine. Both maternal grandmothers were supportive of the couple, but unable to persuade either parent to give up/reduce their drug use.

8. By 13 June 2023, just before A was born, the parents said they were committed to addressing and reducing their drug use in order to abstain in the longer term. The LA provided the parents with hotel accommodation prior to A's birth, albeit this accommodation also exposed the parents to continued ability to buy and use

drugs. Due to C's mental health vulnerability he was referred to the Lift Psychology service who would offer him sessions with a psychologist to assist. A referral was made for B to the Perinatal Mental Health Team but it was not accepted as her presenting issue was substance misuse. By 6 June 2023 B informed CGL that she had recently increased her use of heroin and crack, it appeared to professionals B had a strong psychological barrier preventing her from working towards abstinence. Although both parents were supported by CGL during the pregnancy, Ms Milton also recorded the following in her pre-birth parenting assessment:

a. *Crack dependency is psychological not physical, there are no treatments available. Both parents would need to show motivation to stop. The mother had been receiving recovery coordination appointments, appointments with a doctor, she had attended all of her key worker appointments which included discussions around drug use and motivation to change. The father's engagement had been less effective, the couple had also been supported by New Beginnings in progressing their housing application.*

b. ***The level of the parents addiction is likely to require professional intervention and possibly inpatient treatment.*** *This was only likely to be offered if the parents were able to demonstrate a desire to change.*

9. Ms Milton concluded her parenting assessment that the parents would be unable to safely parent their baby. Their own needs were so significant, they prioritised their own needs, and had limited insight into the extent that their drug use affected them. She recorded the couple had expressed a request for a residential provision to help them with their drug use.

10. By the date of the **CPC review on 14 June 2023** the social worker who was allocated on 25 May 2023 was aware the parents had increased their drug intake during the pregnancy risking the health and development of their unborn child. The social worker recommended that **the unborn child was being placed very high risk of significant harm.**

11. A was born on 16 June 2023 at 37 weeks gestation. The LA issued proceedings at birth; A was made subject to an Interim Care Order which has continued to date. **A spent 61 days in hospital** before he was well enough to be discharged into foster care.

    <u>Child's presentation following birth and concerns as to short as well as long-term effects of harm suffered by A prior to and following his birth.</u>

12. On 21 June 2023 Dr Sarah Bates, Consultant Paediatrician and Neonatologist, Great Western Hospital BS Foundation Trust gave the following information about what had happened to A since his birth a few days before:

    a. ***A is experiencing very severe withdrawal symptoms and required morphine treatment, the dose had to be increased to treat his worsening symptoms. It is rare in babies for withdrawal to need morphine treatment, but this reflects the very significant exposure to opiates (both methadone***

and the significant on top use of heroin) that A received during the pregnancy. A's symptoms are profoundly distressing for him, the team caring for him have found it very upsetting to see him so agitated. The skin on his bottom is broken and bleeding from the loose stools which are part of his withdrawal. Despite all the care and treatment A is receiving he is still very distressed. A was small with a low birthweight. This is very likely to be reflective of the significant impact of the cocaine exposure during pregnancy.

b. ***A has a very significant risk of long-term developmental problems from exposure to cocaine antenatally***.

c. *There was a concern about abnormalities in relation to A's brain, but this was subsequently resolved. Nevertheless A remained at significantly increased risk of developmental problems because of antenatal substance misuse exposure. There was no question that A had experienced significant harm which might well impact his long-term quality-of-life as a result of his mother's substance misuse.*

d. *A will continue to need medical therapy to treat his withdrawal for some time. After he is weaned, A will need a supportive and very attentive family environment, he will need to attend neurodevelopmental follow-up at the hospital.*

13. A was discharged from hospital into foster care on 16 August 2023. In the discharge letter to the GP Dr Bates recorded the following:

a. ***A suffered NAS seizures a couple of times which were felt to be withdrawal related; he had required oral morphine to control withdrawal symptoms since the first day of his life when he was consistently scoring over 6 on the NAS system, several attempts had been made to wean him off oral morphine which had been unsuccessful until recently***.

b. *A had been born at 37 ½ weeks gestation, at birth he was transferred to the postnatal ward for NAS observations due to maternal heroin, cocaine and methadone active use throughout pregnancy.*

c. *On **19 June A was transferred to the neonatal unit with respiratory distress and worsening concerns regarding his NAS score, initially he self-ventilated, but subsequently required nasal optic flow for a short period due to suspected seizure activity, apnoea and tachypnoea. A required oral morphine which was finally discontinued on day 58. On day 12 A was noted to be having concerning episodes of suspected seizure activity which were considered to be withdrawal related***.*

14. Ms Milton prepared an addendum parenting assessment following A's birth dated 1 October 2023. In that assessment she has recorded the following:

a. *The **foster carers report that A has been challenging to care for. Initially the female carer had to hold him at all times. If he fell asleep and was put***

into his cot he would very quickly wake up and scream out, only settling once he was held again. They reported that noise or sudden movement made him stiffen and freeze and he needed their help to return to a settled state. They were able to do this by holding him tightly and singing or talking softly to him. *They reported that A reacted negatively if the carer's attention was elsewhere and he seemed to need her close to him at all times. They helped him feel secure by swaddling him, even having to bath him swaddled in a cloth and gradually removing it once he had settled. A slept in a crib next to the carer's bed so she could respond to him quickly to prevent his stress escalating.* ***The carers described a baby whose stress responses were perpetually heightened and who would transition from an alert state through to alarm, fear and probably terror very quickly.***

b. *A's experiences in utero and post birth were frequent pain and suffering. Developmental neuroscience suggests that babies who experience stress in the womb are more likely to use dissociation as a stress response as they are unable to use fight or flight. Dissociation as a response to stress can be misinterpreted as compliance and such children are less likely to be recognised as needing psychological support.*

c. ***When A was born relief was provided by the use of morphine rather than by a primary caregiver. This exposed A to repeated episodes of pain and fear without resolution during the early period of brain development which is responsible for unconscious reflexes where connections are made from experiences and patterns are laid down****. Babies need to be seen safe and soothed in order to feel secure, A's experiences to date indicate this was more likely to be challenging for a carer, as he was easily stressed.*

d. ***It is impossible to accurately predict the long-term impact on A of the harm that he suffered as a result of his prenatal exposure to heroin, cocaine and methadone****. His early adverse experiences could be overcome with good quality multisensory repetitive care where a consistent adult helps him to co-regulate and if he were to receive this in his first year, he would lay down foundations which would help him with future challenges.*

e. ***Unless A is supported to develop new neural pathways in his brain which help him to experience a calm and alert state his development would continue to be impaired. This will have lifelong implications on his ability to experience mutually satisfying relationships with his family, and later his peers and teachers****.*

15. In her report the Guardian advises as to the following:

a. *According to 'NS Inform' taking drugs during pregnancy can put a baby's health at serious risk. It increases the risk of child will be stillborn or will die within the first weeks or months of life. Other risks include being born early, being underweight, having feeding and breathing problems, getting infections, and having problems with development and growth. A experienced many of these symptoms, the impact on his development and growth will only become apparent over time.*

b. *The same website also describes NAS which is when either illegal or prescribed drugs that cause physical dependency pass through the placenta and are absorbed by the baby, resulting in the baby being born with the same physical dependency. Some of these babies require specialist care after birth and medical treatment to help them withdraw.*

c. *This was certainly the case for A. It is possible that A's growth and development will be impacted by his experiences. Whilst follow-up scans have not shown up any damage to A's brain structure, research suggests that* ***common problems for children who have experienced prenatal opioid exposure include visual impairments, cognitive deficits, impaired short-term memory, and psycho behavioural problems which become more apparent when expected developmental milestones are not reached****.*

Final hearing January 2024

16. The final hearing was listed to commence 3-5 January 2024, and to be heard by me. I contacted the parties in late December to inform them I would not be sitting on 5 January. The advocates instructed were unable to attend on 2 January as suggested, although the representatives for both B and the Guardian did attend that day to inform me that it would not be possible for everyone to start until the following day. I am very grateful to both of them for attending, and for letting me know.

17. On 3 January 2024 all parties attended with their representatives. On behalf of B, Ms Griffiths, counsel, indicated B wished to give evidence as to her application to adjourn the proceedings for a further period of time so that she could show she was committed to abstinence/reduction in taking drugs. This was partly due to the parents disclosing to their legal representatives and eventually to the Court that they had relapsed on Christmas Eve and had both taken small amounts of heroin and crack cocaine.

18. I heard evidence from B who was asked questions not only by her representative, but also on behalf of all the other parties. B explained she and C had felt hopeless and despondent on Christmas Eve which led to them both relapsing albeit only for a short time. B also told me that CGL had been helpful, that she was receiving support from the Nelson Trust, that her drug use had really reduced and that she had continued to be committed to reduction and abstinence even after relapsing. B pointed out she had managed to abstain from taking heroin for 3 months up to Christmas Eve, she had not taken it since then, and although she was still using crack cocaine, this was only weekly. B believes she can show to the Court within 3 months that she is able to abstain from taking drugs.

19. B also said if an order is made for A to be placed for adoption, she would really like to meet prospective adopters, and would like to have some direct contact in the future. B accepted at the present time she would be unable to care for A, but she was confident she could do in a relatively short period, and even if C is unable to abstain from taking drugs, she would want to care for A on her own. B

pointed out she has achieved abstinence before, so there is no reason why she cannot achieve this in the future. B assured me she and C do not have difficulties in relation to their benefits, and that in the hotel where they have been living it is very easy for them to obtain drugs. B said it was the receipt of the Guardian's Report that drove her and C to think there was nothing they could do, all professionals had been saying to them they would lose A, and they felt very desperate. B also felt that the support they had been given was insufficient, B had never been offered therapy or counselling, she had tried to deal with her addiction issues through CGL which had been good, together with support from the Nelson Trust, but she was never offered the opportunity to detox, nor to deal with the underlying issues relating to her long-term addiction to drugs.

20. Following hearing evidence from B the representatives indicated they did not seek to cross-examine any of the other potential witnesses. I heard submissions on behalf of each party, and indicated I would give judgment in writing which would be handed down on 17 January 2024.

21. I am extremely grateful to all counsel for the way in which they focused on the issues to be determined.

22. I requested assistance from all parties at the conclusion of submissions on the following:

    a. Whether the very significant harm A suffered following his birth as outlined above could potentially give rise to any claim on his behalf given the LA and professionals were well aware of the risks in early March and yet no medical/other detox was offered to B, in addition to all professionals knowing B was increasing her use of dangerous substances and her living circumstances:

    b. Potentially the proceedings might have taken a different course, particularly if the LA and other services had provided further support to the parents in tackling the causes of their long term drug use, through the FDAC model although this was not available due to Swindon Borough Council not having joined this despite it being available in this area.

23. I have read the bundle, the statements and evidence filed by each party, in particular assessments referred to above, the Guardian's analysis, LA documents, the case summary, my notes and the expert evidence.

Positions of the parties

24. The LA seeks findings as to threshold in summary as follows:

    a. A was exposed to parental substance misuse throughout B's pregnancy causing him a likelihood of significant physical and emotional harm including neglect given both his parents are long-standing class A drug users and both have admitted to using heroin, crack cocaine and methadone, confirmed by drug screening tests.

b. A was at risk of further emotional harm and neglect because his parents did not have appropriate accommodation, they had been staying with a known crack cocaine user and then placed in emergency housing in a hotel just before his birth.

c. B's older child was unable to live with her because of her drug use, which escalated after she left his father and became homeless.

d. Drug testing results of the parents showed the following:
   i. C: Up to July 2023 active use of cocaine, heroin and cannabis; up to October 2023 active use of cocaine, heroin, dihydrocodeine and cannabis; in November 2023 C accepted active use of heroin and cocaine.
   ii. B: Up to July 2023 active use of cocaine, heroin, dihydrocodeine and cannabis; up to October 2023 active use of cocaine, heroin, and dihydrocodeine; in November 2023 B tested positive for cocaine and methadone.

25. The LA seeks Care and Placement Orders authorising its care plan for A to be placed for adoption in accordance with the Care Plan dated 8 November 2023 subject to the matters set out below.
    The LA proposes that the parents contact which has been for 3 times each week at the Saltway Centre should be reduced to once a week for a month, fortnightly for a further month, thereafter monthly until a farewell contact can be arranged upon an adoptive placement being identified. The LA accepts it will keep an open mind with prospective adopters as to post adoption contact for the parents, as well as considering whether it might be possible for the parents being able to meet prospective adopters when identified.
    The LA accepts the parents should be supported by New Beginnings as well as receiving assistance from Lift, the Nelsons Trust and CGL.

26. B's primary position is that while she accepts threshold, she asks the Court to consider adjourning a final decision for a period of approximately 3 months so that she can show she can achieve abstinence from Class A drugs within that period.
    On behalf of B Ms Griffiths made the following additional submissions:
    a. B has been able to achieve abstinence in the past and has worked very hard within these proceedings to reduce her drug misuse. B has been able to achieve a significant reduction on her own with little support, which is a positive indicator that she can stabilise and achieve abstinence within a relatively short time.
    b. The parents, particularly B, have a very good relationship with A. They have been committed to contact, A has an attachment to them, he needs to be placed with them if possible as they are so committed to having him in their care and they are his parents.
    c. A is still young, there is a significant opportunity for him to be placed with his parents if they are given the chance of an adjournment to show that they can achieve abstinence, particularly given A will not be difficult to place if for some reason he cannot eventually return to his parents' care.

d. In the event the Court does not grant an adjournment B will accept this because she wants the best for A. She would wish the LA to consider carefully some post adoption contact up to 1-2 times a year and the opportunity for parents to meet with prospective adopters. B will accept the decision of the Court.

27. C supports B. C has also made some progress, he has been referred to Lift, and with a bit more time he believes he will be able to show reduction and eventually abstinence in taking Class A drugs.
    a. C has found group sessions with CGL helpful and is committed to caring for A in the longer term. C would accept that B should care for A on her own if for some reason he has not achieved sufficient progress within the next 3 months.
    b. In the event the Court makes Care and Placement Orders C would wish to have direct post adoption contact and to meet prospective adopters.

28. The Guardian Natalie Morgan supports the LA's applications as set out in her analysis dated 19 December 2023.
    a. The Guardian accepts B is insightful, as indeed is C, these are parents who understand their difficulties, who have accepted their limitations, and who very much regret what has happened to A within his short life already as a result of their chronic use of Class A drugs.
    b. The Guardian does not support an adjournment, she does not accept the situation for either parent will change sufficiently within 3 months, and she urges the Court to allow A to move on to have the best opportunity to be found an alternative permanent family who will meet his welfare needs for the rest of his life.
    c. The Guardian does support the LA being open to the parents being able to meet prospective adopters, as well as discussing with prospective adopters whether at some point direct contact between A and his birth parents will be appropriate. The Guardian also supports a life story book being completed so that A can be assisted to learn about his birth family when he is older and able to understand what happened to him when he was a baby.

Law

29. I can only make a Care and Placement Orders if I am satisfied that threshold is met. The threshold document is set out above and is accepted by both parents. I am satisfied and find as follows:

    a. A was exposed to parental substance misuse throughout B's pregnancy causing him significant physical and emotional harm following his birth given both his parents are long-standing class A drug users and both admitted to using heroin, crack cocaine and methadone frequently, confirmed by drug screening tests.

    b. A was at risk of further emotional harm and neglect because his parents did not have appropriate accommodation, they had been staying with a known crack cocaine user and then placed in emergency housing in a hotel just before his birth.

c. B's older child was unable to live with her because of her drug use, which escalated after she left his father and became homeless.

d. Drug testing results of the parents showed the following:
   i. C: Up to July 2023 active use of cocaine, heroin and cannabis; up to October 2023 active use of cocaine, heroin, dihydrocodeine and cannabis; in November 2023 C accepted active use of heroin and cocaine.
   ii. B: Up to July 2023 active use of cocaine, heroin, dihydrocodeine and cannabis; up to October 2023 active use of cocaine, heroin, and dihydrocodeine; in November 2023 B tested positive for cocaine and methadone.

30. I need to consider B's application for an adjournment and apply the principle in s1 (2) Children Act 1989 that any delay in determining the question of the child's upbringing is likely to prejudice his welfare. I must also consider whether the Court requires further evidence prior to making a final decision.

31. I must consider A's welfare interests as set out in the heightened welfare test pursuant to s1 (4) Adoption and Children Act 2002 in considering Care Plan for adoption and application for a Placement Order. I must also consider the rights of A and his parents to family life and that any intervention with those rights must be proportionate, justified, and necessary.

32. I must be satisfied that A's welfare interests throughout his life require adoption; A's welfare is the paramount consideration. In the case of Re B-S (2013) EWCA Civ 1146 the Court reiterated the principle that a child's interests require that they should be brought up by their parents or wider family unless the overriding requirements of their welfare make that impossible. Severance of family ties inherent in adoption without parental consent is a draconian step. Adoption must be considered as a last resort and is only appropriate where nothing else will do. Before a Care Plan for adoption can be approved there must be sufficient evidence and an adequately reasoned judgement.

33. If I am satisfied that adoption is the appropriate welfare determination for A throughout his life, either his parents must consent, or their consent must be dispensed with by the Court pursuant to s 52 (1) (b) Adoption and Children Act 2002. I can only dispense with the parents' consent if the welfare of A requires this. In deciding that issue I must consider whether adoption in the best interests of A throughout his life?

34. The burden of proof is on the LA to establish the factual basis for threshold; the standard of proof is the balance of probabilities. In deciding issues of welfare, the Court may consider threshold findings which are relevant to issues of risk, ability to care safely, the context of such findings and their relevance to the child who is the subject of the proceedings (Re Y (2013) EWCA Civ 1337).

35. I intend to add a postscript in this judgment in relation to the very serious concerns I have as to the actions of the LA as well as the lack of support services to both parents but particularly B both prior to and following A's birth.

Evaluation and decision

36. I have found threshold is crossed as set out above. All parties accept A suffered very significant physical and emotional harm at the time of and following his birth. It is tragic for A that this occurred given the warnings and very clear concern for A's welfare from the initial strategy discussion in March 23, the CPCs, the pre-birth parenting assessment from Ms Milton and knowledge of professionals including the LA as to the risks for A prior to birth due to B's use of Class A drugs on a regular basis throughout her pregnancy. I also accept and find that A was at risk of emotional and physical harm including neglect due to his parents living circumstances; although the parents moved into a hotel shortly before his birth, this did not lessen the risk given I accept the parent's evidence that they were unable to separate from people who were also regularly using Class A drugs.

37. I have some sympathy for B given I accept she has insight and that she has tried particularly since A's birth to reduce her use of Class A drugs, mostly on her own as well as with C. The conclusions of Ms Milton's pre-birth parenting assessment could not have been clearer:

The level of the parents addiction was likely to require professional intervention and possibly inpatient treatment. This was only likely to be offered if the parents were able to demonstrate a desire to change.

38. I accept Ms Milton's assessments: she was very clear that:

Crack dependency a psychological not physical, there are no treatments available. Both parents would need to show motivation to stop. The mother had been receiving recovery coordination appointments, appointments with a doctor, she had attended all of her key worker appointments which included discussions around drug use and motivation to change. The father's engagement had been less effective, the couple had also been supported by New Beginnings in progressing their housing application.

39. At the time of A's birth B's drug screening toxicology showed use of cocaine, methadone, opiates and cannabis, these were also detected in A's screening test at birth. By the time B provided her hair strand test in June she declared she had been a regular user of heroin, a daily user of crack cocaine and occasional cannabis user. The test results showed high use of cocaine, dihydrocodeine, and medium use of heroin/morphine over the 6 month period prior to mid-June. For the later test dated 3 October 2023 B declared use of crack cocaine 2-3 times a week, use of heroin once a week, and occasional use of dihydrocodeine. The test results showed high but reducing use of morphine and cocaine as well as medium use of dihydrocodeine which was also reducing over a further 3 month period. The last test is dated 12 December 2023. B declared continued use of crack cocaine 3 times a week, and reduced use of heroin, having ceased in mid-

September. The test results showed continued high use of crack cocaine, medium use of dihydrocodeine and morphine, and a much lower use of heroin which had ceased over a further 3 month period.

40. During this time B was attending CGL key worker sessions and completing the Foundations of Change programme. By end November 2023 B told her key worker at CGL she believed she was now in the maintenance phase as to her heroin use having abstained for over two months, and that she believed she was in the late contemplation/early action phase in relation to crack cocaine as she had reduced her usage not in frequency but in the amounts she smoked on each occasion. With the Nelson Trust B had engaged with her key worker, she had attended groups, and in particular sessions of 'A new way to live' which addressed addiction behaviours and gave an awareness of what addiction is.

41. Ms Milton had further sessions with the parents prior to filing her addendum parenting assessment. She reported the parents had a level of cognitive dissonance in respect of their drug use, reporting it had very little impact on their level of functioning and therefore the impact on their lives was not significant. Ms Milton was concerned that the couple were isolated, their network was mostly connected to their lifestyle of substance use, both reported their use of drugs could be triggered by their mental and emotional states. The couple reported to Ms Milton that C's mother was very supportive, as well as his sister, although B's relationship with her family was less positive. Ms Milton was concerned that neither parent had been able to make any significant change to their consumption of drugs over time despite being highly motivated to want to care for their son and become a family. Ms Milton observed good quality contact between the parents and A, they were responsive to his needs. Ms Milton also took into account that despite the difficulties of each parent their life was relatively stable, their relationship had remained strong despite the many challenges they had faced within proceedings. She advised the key behavioural change in order for the couple to be able to safely parent A was for them to become and remain abstinent from heroin and crack cocaine. Ms Milton acknowledged the couple had presented this as their goal and created some optimism in the professional network, although she had not seen any compelling evidence that either parent had fully engaged with their treatment plan.

42. When B gave her evidence in support of an adjournment, she talked about why the couple had relapsed on Christmas Eve. B acknowledged they both had the opportunity to call on relatives particularly C's family for support, but they did not do this. I accept the relapse did not trigger an increase in subsequent heroin use, nor did it trigger for B an increased use of crack cocaine. My concern however remains that despite the motivation, particularly of B, not only had she been unable to cease taking drugs or reduce significantly drug usage prior to A's birth, but also having observed the terrible consequences for A of her use of drugs prior to his birth after he was born, B had been unable to manage abstinence from drugs in the 6 months following his birth.

43. Whilst I have some sympathy for B, my focus is on A; I cannot envisage there is merit in adjourning these proceedings for a further 3 months. The harm suffered by A following his birth was extreme and lengthy; I have no doubt both parents

regret what he went through, but it was insufficient motivation for them to be able to give up taking Class A drugs even with support provided from CGL and Nelson Trust. Although C has been provided with some support from Lift, this has only just started, B has not been provided with any intensive counselling/therapeutic support to address the causes of her long-standing Class A drug use. I am not satisfied without such support, which would be likely to take some considerable time, there is any prospect of B being able to achieve abstinence, stability and a safe home in which A could be placed. In the circumstances I do not consider there is sufficient purpose in adjourning proceedings for a further 3 months. I do not necessarily blame either of the parents for what has happened, I do consider more could have been done particularly given the very stark recommendations made by Ms Milton as well as that it must have been obvious to professionals given the parents' history that they needed specialist support to address the causes of their long-standing Class A drug use if they were to have any prospect of making sufficient change. Sadly, applying the general principle that delay is likely to cause further harm unless justified, I cannot accept there is a safe basis for adjourning these proceedings to allow further time particularly to B to try to achieve abstinence from Class A drugs. B accepted in her evidence she is not in a position to provide a safe home for A currently. I accept she is right, whilst she is still taking Class A drugs given her history, her psychological functioning, her vulnerability and what has happened since she found out she was pregnant just under a year ago, I do not accept B would be able to provide a safe stable and appropriate home for A. B will need to work on the causes of her long-standing Class A drug use, she will need to work towards abstinence, she will need to integrate as she has in the past into a safer friendship and support community, work on her own self-esteem, and focus on her own well-being before she is able to parent a very vulnerable young baby herself or with the assistance of C who also has a great deal to do given his own vulnerabilities and difficulties. In the circumstances I do not accept it is appropriate to grant an adjournment.

44. I therefore need to consider the options for A. A is 6 months old; he is reliant on his carers to make decisions about him both in the long and short-term. A needs predictable, reliable and emotionally attuned care, he needs not to be exposed to parental substance misuse, to poor parental mental health, or the risks associated with either. A is meeting his developmental milestones and is starting to become curious about his environment. However, it is apparent both from the evidence set out above from Dr Bates, as well as that of A's foster carers, he already has significant vulnerabilities. A had no primary carer for the first two months of his life; he was in extreme pain, he suffered chronic withdrawal symptoms, he was very unwell and staff who were caring for him found it very distressing looking after him. When he arrived in foster care A had to be swaddled, he needed to be safe, he would become upset quickly and not necessarily soothe. A's long-term development may be impacted by the harm he suffered; the extent of any difficulties will not be known until he grows older. I accept the evidence of Dr Bates that A will require parents who are attentive, committed to him regardless of any potential difficulties he faces, both physically and emotionally throughout his childhood. A cannot be placed with carers who cannot commit to him all the time; he will need sensitive and attuned parenting, and the ability to feel secure in his placement in the longer term. I accept A's relationship with his

parents has been maintained through regular contact; the parents have been committed to this, and A has benefited from it. A's primary needs however are for permanence, safety, stability and to feel a full part of his future family who will be committed to him for the rest of his life.

45. I accept the recommendations made by Ms Milton, A's parents cannot meet his needs due to their own vulnerabilities, their long-standing Class A drugs misuse, and their inability to resolve these issues within A's timescales. A needs to move on to a permanent family as soon as possible, certainly prior to his first birthday. A has settled in foster care which suggests he is able to form attachments, and he will be able to attach permanently to his long-term carers if he moves on soon. There are no other family members who can care for A in the longer term. I accept the LA's changed position that they will keep the issue of the parents being able to meet prospective adopters as well as potential direct contact with A under review, and that they will discuss this with prospective adopters. Whilst I understand prospective adopters might be concerned as to the vulnerabilities of both parents, I am reassured, particularly by the evidence given from B, that if the Court were to make a Care and Placement Order the parents would accept this and would want the best for A in the longer term. Both parents are intelligent and reflective, subject to them being able to manage direct contact, which I do not consider should be a real issue, I am satisfied direct contact could be in A's welfare interests if prospective adopters agree to this, as indeed it should be possible for both parents to meet prospective adopters when A is placed with them.

46. I agree with the Guardian that life story work will be helpful for A, it will be important for him to understand what happened to him, as well as the fact that his parents loved him very much and tried their best within their own difficult circumstances. I have already indicated I accept threshold, A suffered very significant harm following his birth; unless and until A's parents can address the underlying issues relating to their use of Class A drugs as well as achieve abstinence, I am satisfied the risk of harm to A would be as great now as it was when he was born. A cannot be placed in a situation where he would be at risk of further harm given the very serious effects of his withdrawal from drugs following his birth, the fact that he had no primary carer for the first two months of his life, as well as the likelihood he will need sensitive attuned committed parenting as he grows up and continues to achieve his milestones. It is also relevant to note that A needs to be able to grow up without professional intervention; it would not be right for him to be subject to longer term supervision or concern from professionals around his carers and their ability to manage his needs both in the short and longer term. I agree with the Guardian's recommendation that it may be appropriate for A to have some direct contact if this can be agreed.

47. I accept that neither parent is able to give their consent to A being placed for adoption. There are no other family members who are suitable to care for A. I accept both parents love A very much, they have been committed to contact, they have been appropriate in contact, and A has formed relationships with them. Long-term foster care is not appropriate for A, there would not be the required level of commitment to him, he would be at risk of placement

breakdown, and most importantly he would not be able to be a permanent and full member of his family as he grows up. I am satisfied there are no other services that can be provided to the parents at this stage to provide safe care for A within his timescales. I have applied the heightened welfare test contained in s 1 (4) ACA 2002. I am satisfied that only adoption will meet the welfare needs of A throughout his life so that he can feel part of his family and grow up with a predictable and safe future. In all the circumstances having found that only adoption will meet the welfare needs of A throughout his life I dispense with the consent of B and C to adoption pursuant to s52 ACA 2002.

Conclusion

48. In accordance with my findings, threshold being established, the application for an adjournment refused, I approve the Care Plan together with the LA applications for Care and Placement Orders. I dispense with the consent of both parents to the making of a Placement Order. I give permission to share this judgement with prospective adopters and for a copy to be kept on file for A in the future.

Postscript

49. Pursuant to paragraph 35 above, I raised with the representatives the concerns I had which were twofold in relation to these proceedings and what happened:

No detox inpatient or other treatment offered to B during pregnancy.

50. It was clear from the CPCs in both March and later in June 2023 the LA and professionals were aware that the unborn baby was at risk of significant harm shortly after the pregnancy was disclosed. C was a long-term intravenous Class A drug user whose engagement with drug support services were sporadic, at that time in March 2023 she was not accessing any treatment in relation to her drug use.

51. Ms Milton's pre-birth assessment set out the very significant concerns relating to potential harm to the unborn child, recorded at paragraph 6 above.

52. In March 2023 the parents were staying with a friend of the mother who was unwell, she was a regular crack cocaine user, the parents were using with her, the flat was cold, the parents slept on a mattress on the floor.

53. From March- June 2023 the LA and professionals were aware that B was continuing to use high levels of Class A drugs including heroin and crack cocaine.

54. From what I can gather the parents said they were committed to addressing and reducing their drug use. B was referred to the Perinatal Mental Health Team but was not accepted as her presenting issue was substance misuse. By early June B had informed CGL she had increased her use of heroin and crack cocaine.

55. Ms Milton advised that crack cocaine dependency is psychological not physical, but the level of the parents addiction was likely to require professional intervention and possibly inpatient treatment. This was only likely to be offered if the parents were able to demonstrate a desire for change.

56. There is nothing to suggest that throughout the pre-proceedings process prior to A's birth B was ever offered an opportunity for inpatient or any other detox treatment. I do not know why this did not happen given all professionals were well aware of the significant risks of harm over the 3 months from March-June when A was born. It does not appear the issue of detox inpatient treatment was discussed at the CPCs; I do not know why. Given the LA were aware of the significant risks for A in utero, given the pre-birth assessment, professionals being very concerned and what happened to A after he was born, I consider there is a real issue as to why some attempts were not made by the LA/health to see whether B would agree to inpatient detox treatment or to go to a detox unit.

57. Leaving B living in a flat with a known crack cocaine user whilst she was increasing her use of heroin and crack cocaine whilst pregnant, without offering B an opportunity to detox in a controlled way with support I consider could be regarded as negligent/ a breach of A's human rights. In all likelihood this lack of potential treatment contributed to A suffering the very significant harm following his birth as set out in paragraphs 12 and 13 above. Given the history of B's difficulties, the knowledge that she was using and increasing her use of Class A drugs, that she was unlikely to be able to achieve a reduction on her own, I consider the LA was under a duty to consider what steps could be taken to protect B's unborn child as they knew of the likely dangers and harm the child would suffer at birth.

58. I have suggested to Mr Routledge on behalf of the child A that he should consider whether it is appropriate to disclose the papers in this case as well as this judgment to the Official Solicitor to ascertain whether to make a claim on A's behalf in relation to potential breach of his Human Rights pursuant to Article 3 ECHR.

Consideration of FDAC model and addressing underlying causes of Class A drug misuse

59. I am also concerned that after the LA issued proceedings, given threshold, the level of Class A drug misuse by both parents as well as their history and vulnerability, neither parent but particularly B was given appropriate support or assistance in addressing the cause of their long-term Class A drug misuse. Whilst I accept Ms Milton pointed out the harm suffered by A and the concerns as to his long-term development set out at paragraph 14 above, it appears there was no suggestion that either of the parents should address the causes of their drug misuse, but rather that they should use the support of agencies including CGL, Lift and Nelson's Trust in trying to reduce their drug use and achieve abstinence. I do not understand how either parent could have done this without engaging in more long-term support and specific counselling/therapy to understand why they had both ended up being long-term and high level Class A drug users.

60. This is a case in which, had the LA agreed to use the FDAC model, which is available in the area, potentially there could have been a different outcome. The FDAC model not only provides a different way of engaging with parents, but also provides significant support in order to ascertain whether parents can change within the child's timescales. Both these parents were motivated to change, both achieved some level of reduction in Class A drug misuse after A's birth. The parents were committed to contact, they loved their son, they wanted to care for him and participated in all assessments and support made available to them.

    Advice

61. It is tragic that A suffered such significant harm, and that his parents cannot care for him. It is also so unfortunate for A as well as his parents that had appropriate action been taken there might have been a different outcome. I urge the LA to reconsider participating in the FDAC model for dealing with Care proceedings where appropriate in circumstances such as these. I also urge the LA to reconsider carefully their procedures pre-birth for unborn children where it is apparent that the mother is taking and cannot control their use of Class A drugs given the very significant harm that is almost inevitable for that child at birth. This should not happen, pre-birth assessments need to consider not only the parent's ability to care, but also the risk to the unborn child and what might be done to ameliorate such a risk before that child is born.

62. I authorise a copy of this judgement to be published, with appropriate anonymization for consideration by this LA/health professionals and others in relation to both issues referred to above.

Caroline Wright
Circuit Judge

12 January 2024