



Neutral Citation Number: [2025] EWHC 810 (Fam)

Case No: NG23C50181

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2025

Before :

MRS JUSTICE LIEVEN

Between :

A LOCAL AUTHORITY

and

Applicant

THE 'MOTHER'

and

First Respondent

FATHER 'X'

and

Second Respondent

FATHER 'Y'

and

Third Respondent

A, B, C & D
(Through their Children's Guardian)

Fourth – Seventh Respondents

Ms Sarah Dines (instructed by A Local Authority) for the Applicant

Mr Ben Clulee (instructed by **Bhatia Best Solicitors**) for the **Mother**
Ms Judy Claxton (instructed by **Jackson Quinn Solicitors**) for **X**
Ms Emily Sherwood (instructed by **Rotheras Solicitors**) for **Y**
Ms Anita Thind (instructed by **Nelsons Solicitors**) for **A, B, C & D.**

Hearing dates: **3 March 2025**

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 March 2025 by circulation to the parties or their representatives by e-mail.

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MRS JUSTICE LIEVEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Lieven DBE :

1. This is an application by A Local Authority (“LA”) for care orders in respect of four children – A (girl aged 7), B (boy aged 3), C (girl aged 2), and D (boy aged 1.5). A’s father is Y (the Third Respondent) (“R3”), the three younger children’s father is X (the Second Respondent) (“R2”). The First Respondent is the Mother of all the children (“M”).
2. The LA were represented by Sarah Dines, the M was represented by Ben Clulee, R2 was represented by Judy Claxton, R3 was represented by Emily Sherwood, and the Guardian was represented by Anita Thind.
3. Given that I will comment on a number of case management failings in this case below, it is only fair to say that the advocates for the LA, Guardian and Fathers have not been involved in the case before the final hearing.
4. This case is in Week 80, proceedings having commenced on 30 August 2023. R2’s position statement was uploaded to the portal on Friday 28 February 2024 at 3.44pm in which R2 accepted at least part of the threshold and that he was not currently in a position to look after the children; he therefore accepted that care orders should be made. In his oral opening at the hearing on 3 March Mr Clulee, on behalf of the M, made the same concession on threshold (which was accepted by the LA), but still sought for the children to return to her care. However, the M accepted that the case should be dealt with on submissions. R3 had accepted throughout that he was not in a position to care for A. Therefore the issue that I had to decide was a relatively short one.
5. It is to the highest degree unfortunate that the concessions on threshold which, as I will set out below, were inevitable and related to an incident on 18 June 2023, were not made much earlier. The judges involved and the advocates should have focused at a far earlier date on agreeing threshold, or determining it in an appropriately expeditious manner in order to allow the court and the parties to focus on the real issue, namely welfare.

The background

6. The M was born in Country F She has two older children who are not subject to these proceedings and live with their great aunt in Country F.
7. R2 was also born in Country F. He has two other children who do not live with him and with whom he has little or no contact.
8. R3 has a history of very serious mental health issues and has been in hospital for much of the last few years. He was arrested for aggravated burglary in June 2024, but received a hospital order rather than a prison sentence.
9. The M and children have been known to Children's Services since April 2021, in part because of the M’s history of entering relationships in which domestic abuse is a feature, including with R2 and R3. There is a reference in the chronology to a referral in respect of domestic abuse in 2019. Between 2019-21 A lived with R3. Unfortunately R3 then had a mental health crisis and was admitted to hospital and A had to very rapidly move to the care of her mother.

10. On 14 December 2022 A, B and C were placed on a Child Protection Plan because the M was said to be not attending antenatal appointments.
11. On 23 February 2023 the school reported A smelling strongly of cannabis. A had had very poor school attendance.
12. On 18 June 2023 there was a serious incident between the M and R2. I have seen a number of videos taken by R2 and of CCTV outside the house. The M left the house with A, leaving the two younger children in the house, and rang the police. She said that she had been assaulted by R2, dragged to the floor by her hair and punched in the mouth and had a bust lip. She also made a number of allegations about R2's past conduct. The children were in the house throughout the incident. It is worth noting that the M was three months pregnant at this point. R2 was arrested.
13. The following day the M reported that A had alleged R2 had touched her inappropriately, although A did not say this to the police.
14. R2 when interviewed by the police made a number of allegations about the M's care of the children. I note that in the videos he also makes such allegations to the M.
15. It is in respect of the 18 June 2023 incident that the M and R2 have now conceded threshold. R2's position statement states:

"4. In respect of matters of welfare,

(a) Proceedings are in week 80. They have gone on for too long and the parents and the children have suffered trauma and stress as a result of this process.

(b) X loves his children very much and misses them. They children love and miss their parents. X would like his children to return to the joint care of him and M.

(c) However, at this time X and M are living in and out of hotels, and reliant on family for financial support. They cannot offer a home or stability to the children at this time. X wants to change that for the children.

(d) Where the children are currently placed, with Z, X is reassured that they are loved and well cared for, and he is grateful to Z. .

(e) X does not oppose the making of a final CO for the children on the basis of the current plan. However, he would like to have contact more frequently than once a month and for contact to take place in the community. There is paternal family in the ... area where the children reside, and he would welcome being able to join family events with the children.

(f) X would like to care for the children in the future and he wishes to be reassured that at each Child in Care Review the possibility of returning the children to his care is actively considered. He would also ask that the care plan is specific in detailing the changes he and the mother need to

make/what they need to achieve, before they would be assessed to care for the children.”

16. The M and the children were placed in a refuge. On 3 July 2023 the M made a statement to the police and photos of her injuries were taken. On 7 August the M left the refuge and she and the children moved back to live with R2. It transpires that she was in contact with R2 throughout her time in the refuge (there was more than one refuge). On 21 August the M retracted all allegations against R2.
17. Proceedings were commenced on 30 August 2023. A parenting assessment was undertaken of the M and R2 on 5 September 2023.
18. D was born on 31 December 2023.
19. 26 weeks expired on or about 28 February 2024. It is difficult to see why proceedings could not have been completed on or very near this date. This is a case where further events happened throughout the proceedings, as will often be the case in proceedings of this type, and that became an excuse for a sequence of adjournments and ineffective Issue Resolution Hearings (“IRHs”).
20. Between April – May 2024 the younger children moved to Z’s care. Z is a relation of R2, who lives in County G.
21. On 1 July 2024 a Police Protection Notice was received when R2 contacted the police after what he said was a domestic incident between him and the M, when he alleged the M had scratched him. He subsequently retracted this allegation.
22. On 31 August 2024 A moved to her current foster carers in County H.
23. On 10 September 2024 there was an incident at contact with the younger children when the M alleged that the contact supervisors had acted unprofessionally and there appeared to be some form of dispute between the parents. The M accused the staff of bullying her, as she had done during contact at a different supervision centre.
24. On 14 November 2024 there was an incident at a train station when the M and R2 were returning from contact, this involved allegations made by the M against a third party, but also allegations made between the M and R2. The facts of this incident do not matter, but they form part of a pattern of both a chaotic lifestyle, but also a very combustible relationship between the M and R2.

Procedural history

25. An application for psychological assessment of the M and R2 was refused on 5 December 2023 and the case was originally listed to an IRH on 18 January 2024. Further time was needed for alternative carer assessments and this led to the re-timetableing of final evidence and the IRH being relisted on 8 March 2024.
26. There were then applications for further connected persons assessments of other family members and an assessment of R3 and his partner, which can only be described as ambitious given his mental health situation. The IRH was again adjourned, this time to 15 April 2024.

27. As I have said above, 26 weeks expired at the end of February 2023.
28. On 26 March 2024 there was a case management hearing at which the LA applied for the children to be placed with Z, who at that time was considering applying to be a Special Guardian. It appears from the order that the LA were considering making placement applications but had not made up their mind. The IRH was adjourned again, with further case management directions.
29. On 3 May there was a further hearing at which the Guardian applied for a psychological assessment of A, which was refused.
30. On 23 July 2024 there was a further CMO when the case was set down for a four day final hearing in the week commencing 22 October 2024. I note that by that date the case would have been in approximately Week 60. The case was set down for final hearing without an effective IRH, which should have narrowed issues, and quite possibly determined threshold.
31. On 15 October 2024 the LA applied for the final hearing to be adjourned because Z was unwell and it was not clear what her prognosis would be.
32. There was a further case management hearing on 25 October 2024. Z's health situation was very unclear, so it was not possible to determine her ability to care for the children in the long term. There was also an issue around R3's capacity, and whether it would be necessary to instruct the Official Solicitor. The case was again set down for final hearing, this time on 17 February 2025 for four days. That the final hearing had to be adjourned was perhaps inevitable. However, it was in my view extremely unfortunate and surprising that at least part of the hearing in October was not used to agree, or determine threshold. Z had no role in that issue. The fact that threshold was not "nailed down" much earlier in the proceedings led to repeated listings of long hearings that were then adjourned.
33. At the October hearing there was an order for the M and R2 to file their final evidence by 24 January 2024. They failed to do so.
34. By the morning of what should have been the final hearing before DJ Dinan-Hayward on 17 February 2025 the Mother had still not filed her final statement. For that hearing, and I believe earlier hearings, a large number of the key documents, including the LA's opening note and the M's position statement were not uploaded to the HMCTS FPL Portal. This meant that it was not possible to quickly review the case and understand the parties' positions.
35. Unfortunately, shortly before the hearing of 17 February 2025 the M had suffered a miscarriage. She had been in hospital over the weekend before the hearing. The parents applied to adjourn the hearing, but DJ Dinan-Hayward decided that it could go ahead on the last two days of the four day listing.
36. The M and R2 appealed this decision and HHJ Carter heard the appeal on 19 February 2024 given the urgency and the fact that there was no Circuit Judge available in the local family court that week. HHJ Carter allowed the appeal, acknowledging that DJ Dinan-Hayward was placed in an extremely difficult position. However, HHJ Carter determined that given the medical evidence about the M's condition, and the difficulties

she would have faced proceeding with the case and giving evidence, the District Judge had been “wrong” not to adjourn the case. HHJ Carter pointed out that threshold should have been determined at a much earlier stage, and if that had been done it could have been possible for the District Judge to proceed on submissions.

37. The matter was then listed before me for directions on 3 March 2025.
38. The M filed her evidence, which should have been filed on 24 January 2024 on 28 February 2025. A number of key documents were again not placed on the FPL Portal until the weekend before the hearing, and Mr Clulee’s position statement was only received on the morning of the hearing.
39. The issues at the hearing entirely changed when the Court received R2’s position statement on 28 February 2025, which conceded both threshold and care orders.

The children

40. A is living in foster care in H County and her carers have indicated that she can stay with them on a long-term basis once a care order has made. She appears to have a good relationship with them and to be fairly settled. However, A did tell the Guardian that she wants to live with her mother. The evidence is that A understands that there are proceedings and a judge will decide where she lives. She has found the fact of the proceedings, and the uncertainty about her future unsettling and the length of the proceedings have had a materially negative impact upon her.
41. A has consistently said that the M and R2 would slap her round the face, and the M would slap her legs and her butt, which really hurt. Both parents deny this is true.
42. A is behind her peers at school. When she was living with her mother her school attendance was at times very poor (50.3%). She is now a very regular attender.
43. A has become very upset, angry and dysregulated when her mother has not attended for contact. Although this may not be the M’s fault, it is of the highest importance that A is not unsettled in this way going forward.
44. The three younger children are all living with Z, a relative of R2 in G County. B appears to have quite limited speech for a child of his age, and there are concerns about developmental delay. I will make clear in the order the great importance of him having speech and language assessment quickly, and Z receiving the help she needs in this regard.
45. C is reported to be doing well and meeting her milestones. D was born during proceedings and was made subject to an ICO soon after birth. He too appears to be doing well in Z’s care.
46. It is worth noting that Z is over 60 years old, and looking after three young children is plainly a considerable burden for her, and her adult children. She has shown a high level of commitment to the children, but will undoubtedly need help and support in the years to come in order to provide the children with a secure medium/long term home.

The parties' positions

47. The LA seeks care orders in respect of all the children, with them remaining in their current placements. They point not merely to the history of very serious domestic abuse between the M and R2, but also the M's chaotic lifestyle with frequent moves of home with the children; her failure to get A to school regularly and her cannabis use which they say impacted on her parenting. The LA points to the fact that the M has moved very frequently, giving the children little or no stability in their lives before they were removed from her care. They also say that the parents provided little stimulation to the children, and it is posited that may be a reason for B's developmental delay. I note that it is impossible to know whether that is correct or not.
48. Importantly, they also refer to the M and R2's failure to regularly attend contact and the impact this has had on the children, in particular A who has become very distressed when her mother had not attended. According to the social worker there is a pattern of the parents confirming contact in the morning but then cancelling in the afternoon.
49. The Guardian supports the LA's application, but raised a strong concern about the level of sibling contact that had been happening. As far as I could gather there had actually only been two sibling contacts in the last six months. Sibling contact is difficult because A is in H County and the younger children are in G County. Z does not have a car large enough for all the children. Also it is an understandably daunting prospect for Z to drive long distances with three children under the age of five.
50. The LA have agreed to fund Z renting a car for sibling contact. They will also take on the responsibility of organising such contact 6 times per annum. This will be written into the care plan.
51. The Mother wishes for the children to return to her care. The M and R2 are currently homeless. They were living outside the LA area but the landlord demanded 12 months rent upfront which they were unable to pay and were evicted. A few weeks ago they moved to K County in part to be closer to the younger children. For a short period they stayed in a B&B, and a Travelodge, but for at least one night they were street homeless.
52. The M says that it has not been her fault that her attendance at contact with both A and the younger children has not been consistent. When she and R2 were living outside the LA area it was extremely difficult to get to contact because they needed to get a bus from the village to the train station and the times of the bus made it very hard to get to contact. Although I am sure finances have played their part, the fact that contacts have been frequently cancelled at very short notice does not support an analysis that this is simply down to money issues.
53. The M denies that her cannabis use impacted on her parenting. She had, up to the morning of the hearing not accepted threshold, and therefore denied both the domestic abuse incidents, but also their impact on the children. She made a limited concession at the hearing before me, through Mr Clulee. I note however, that there was no indication in her written statements or in Mr Clulee's submissions that she really accepted the impact of the domestic abuse incidents on the children.
54. She said in her statement that A's poor attendance at school was because the M intended to home school her, but said that she "had gone about it in the wrong way". I note that

there does not appear to be any evidence of the M actually schooling A. Home schooling does not simply mean keeping a child at home and not sending them to school. I note that the evidence from the school was that A was significantly behind her peers when she returned to regular school attendance.

55. R3 accepts that he is not in a position to care for A.

Conclusions

56. I will deal first with the welfare issues in the case, and then turn to the case management lessons that should be learnt.
57. I have no doubt that it is in all the children's best interests for them to be made subject to care orders and for A to remain with her foster carer, and the younger children to remain with Z.
58. The M (and R2) are not in a position to care for the children. It is clear that the M loves the children, and that she has a genuine desire to care for them. However, her chaotic lifestyle, with multiple moves both before and since the children were removed from her care, is inimical to meeting their needs. I accept that her current homelessness, and in part at least, her inability to regularly attend contact, are to some degree a result of her lack of money. However, they are also in part a result of choices she has made. She left the refuge and returned to R2 when she had stable accommodation, albeit in a refuge. She appears to have prioritised her relationship with R2 over the interests of the children and over their need for stability and to be away from the risk of being caught in the crossfire of a relationship characterised by domestic abuse.
59. In respect of contact, she has not informed the social worker well in advance when she cannot attend contact so that A (and Z) can be told when she cannot attend contact. That has led to real distress for A, and doubtless a great deal of inconvenience for Z and the social work team. There is plentiful evidence of the M not being able to prioritise the children's needs over what she wants to do.
60. There is also very significant evidence of the level of the impact of domestic abuse on the children. I have watched the videos of at least some of what took place on 19 June 2023 when the children (other than D who was not born) were in the house. This must have been very distressing for them. It included A being taken out of the house and from house to house by the M when she was very distressed.
61. I have considered the welfare checklist. A has said she wants to return to her M's care, but she appears to be settled and doing well in foster care. For all the children's emotional and psychological wellbeing they are currently much better off staying where they are. I also take into account A's very poor school attendance when in the M's care.
62. Overall I have no doubt that the children's best interests lie in staying in their current placements and not being returned to the care of the M and R2.
63. It is very important that the children maintain sibling contact. In the short term this will probably be most important for A, who will remember her younger siblings and be thinking about them. But it is also important for the younger children to know A, and understand their broader family.

64. For all these reasons I will make the orders sought.
65. In respect of case management, there are a number of lessons to be learnt from the problems that have arisen in this case. Judges and advocates need to keep the duties under the Family Procedure Rules closely in mind. Under FPR r1.2 judges have an obligation to engage in active case management. This includes ensuring that it is dealt with proportionately (r1.2(b)) and that the case only takes an appropriate share of court resources (r1.2(e)). That may require the Judge to be firm with the parties (and lawyers) about how those resources are used. Under FPR rule 1.3 all parties have an obligation to further the overriding objective. The duties set out in r1.2 apply just as much to the parents' lawyers and to Cafcass Guardians and their solicitors as they do to the judges.
66. Firstly, the case highlights the great importance of judicial continuity, for proper case management. I appreciate that judicial continuity can be hard to achieve, but here no judge took "ownership" of the case. Wherever possible one judge should be allocated to a case and do whatever of the hearings they can.
67. Secondly, together with judicial continuity goes the oversight of the Guardian and the Guardian's solicitor. The Guardian has a critical role in safeguarding the best interests of the children, including doing what s/he can to avoid or minimise delay. The Guardian should have been strongly raising issues such as the M's failure to file a statement, and the listing of a final hearing when threshold had not been settled. It is essential that if delay is to be avoided, Guardians and the children's solicitors play an active role in preventing delay.
68. Thirdly, as HHJ Carter said, this is a case where threshold should either have been agreed or determined at a much earlier date, so that all parties and most importantly the Court should focus on the real issue which was welfare. It was in my view inevitable that threshold was crossed, not least from the content of the videos of the events of 18 June 2023. If the M and R2 would not agree it, then the Court should have determined threshold at an IRH/early final hearing on threshold. The fact that it was allowed to drift meant that the case was listed for far too long (5 days reduced to 4 days) and led to delay and considerable wasted court time.
69. Fourthly, the matter should not have been set down for a final hearing before an effective IRH. This links to the need to sort out threshold at an earlier date. I appreciate that the aim was to get to the final hearing in February 2025 (relatively) speedily. But the actual result of not having an effective IRH was that the case was listed for a four day final hearing when the parents had not filed their final evidence. This, in my view, allowed the parents to avoid the inevitable conclusion that threshold was crossed and that realistically they could not care for the children.
70. Fifthly, is the failure by the lawyers to file the relevant documents on the FPL Portal at the proper time which placed a wholly unreasonable burden on the judiciary. I spent much of the day before the hearing (a Sunday) trying to piece together the history from the old documents some of which were on the Portal. No judge should be expected to have to do this in order to be able to ensure an effective hearing. The Portal has been mandated by the President of the Family Division for at least two years, and it is unacceptable for it not to be used properly in all cases.