

**IN THE CHELMSFORD COUNTY COURT**

**Case No. CM12C05138**

Priory Place  
New London Road  
Chelmsford  
CM2 0PP

Friday, 1<sup>st</sup> February 2013

Before:

**HIS HONOUR JUDGE NEWTON**

In the matter of:

**Re: P (A Child)**

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Counsel for the Local Authority:

MRS BRABY-PAVITT

Counsel for the Mother:

MRS CADE

The Father did not attend and was not represented

Counsel for the Guardian:

\_\_\_\_\_

MR RICHARDSON

**APPROVED JUDGEMENT**

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1. THE JUDGE: The court is concerned with P. Her welfare is my paramount consideration. She has been subject to an interim care order, in fact from the date of her birth. Her mother is A. She is an Italian national. Her father is B who is a Senegalese national, he is currently living in Italy. His situation is unclear, as I understand it he travelled there under a student visa, at least on one version, and is an over-stayer. He certainly has no status in Italy and he is unable, as I understand it, as a result of his status, either to leave Italy at all, and is certainly not able to come to the United Kingdom. As long ago as 2<sup>nd</sup> November 2012 I gave him permission to intervene, that is to say to take an interest in these proceedings. I had not necessarily expected him to attend, because there was a information that he had lawyers in Italy, he has failed to take any part except for the fact that he saw both the social worker and the Guardian when they visited Italy, and has written to the court today indicating that he opposes the application of the Local Authority.
2. The Local Authority represented by Mrs Braby-Pavitt contend firstly that the threshold triggers are made out as pleaded and secondly that having regard to P's timeframe, particularly having regard to the circumstances today, that the court ought to make a care and consequent placement order leading to her subsequent adoption and they do so because having regard to the timeframes for the child the best expert evidence repeated by the Guardian in the witness box is that P's future needs to be settled, as soon as possible, but in any event by the time she is nine months old. Having regard to the timeframes, those put forward by the mother today, they are outside, indeed well outside, that timeframe.

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3. The mother, represented by Mrs Cade, has travelled from Italy in order to contest the proceedings, and contends strongly that she is well, that she is taking her medication and significantly it seems to me that she accepts, possibly, I do not know, for the first time, that is certainly the inference, that her condition of having bipolar affective disorder is one that requires her to take medication because many of the manic episodes in the past, of which there have been a number, have arisen, as I understand it, from the mother not taking her medication. She begs me not to make care or placement orders. She believes and indeed contends that the future for P should be in Italy, she is after all at least half Italian and also it would enable her to have a relationship with her two half-sisters. The mother has had two previous children: C, and D, . The father, as I said, does not appear but has filed the document to which I have referred. P's Guardian, Sally *Horsnall*, represented through Mr Richardson, has filed a report and contends, and indeed supports, the applications made by the Local Authority.
4. The background is an unhappy one. The mother, as I say, has had two previous children, both are currently cared for by their grandmother and the mother as long ago, she told me in evidence, as 2007, has had problems with her mental health. There have been admissions to psychiatric hospitals in Italy and of the three admissions of which I am aware one was voluntary and two were enforced. My understanding of the documents from Italy which are many and are helpful, is that the mother was treated in 2008. It appears subsequently she was in the USA for a time and during 2010 and 2011, the preceding years, she had been most unwell.
5. There were investigations by the equivalent of Social Services in Italy as to the welfare of C and D. What the reports show is that the mother had a sincere affection for her

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daughters and a desire and wish to care for her children but she was not able to do so in a suitable way because of her condition which interfered with her ability to maintain both her own life and therefore those of her children. As I made clear during the course of argument, the mother was anxious to point out that she had never terrorised C in particular, but in fact the way in which I had understood the translation was that C has been particularly upset by the experiences which she has had to witness, that she has been both traumatised and indeed has been terrorised, not by the mother's behaviour, but by what it is that she has witnessed and in particular her mother being profoundly unwell.

6. In any event as far as I can understand it, the dates may be wrong, C and D appear to have been in their grandmother's care since at least the early part of 2011 and continuing until the present date. There was for a long period of restricted contact, restricted both by the grandmother's wishes and by the courts and there has been as a result of the mother's condition considerable conflict between the mother and her respective mother and father. I am pleased to hear, if it be the case, that mother now being well, that the relations with her respective parents have improved, her father has not been very well himself, but are much better than they have been historically.

7. There had been proceedings in Italy and they were continuing in 2012, the documents show, and the situation when the mother has not taken her medication is that she has had a number of very intrusive paranoid delusions. In circumstances which are not entirely clear to me, the mother came to the United Kingdom in 2012 and on 13<sup>th</sup> June 2012 she was detained under section 2 and subsequently section 3 of the Mental Health Act. She was profoundly unwell. She was also of course pregnant with P and an unusual order was made in the Court of Protection on 23<sup>rd</sup> August 2012

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by Mr Justice Mostyn, who apart from giving various directions in relation to the Local Authority and others, gave permission for the birth by way of caesarean section. The Local Authority issued proceedings upon the birth of P , an interim care order was granted and has been renewed ever since.

8. The District Judge at the early stage gave permission for the Local Authority to withhold contact and I raise that because the doctors appeared to be saying at an early stage in the proceedings that the plan ought to be for P to be placed with the mother potentially in hospital. I was and remain deeply concerned about that. It might have been in the mother's interests but I think the mother, today, would understand that it would not have been in P's interests for that to have occurred. It has been of course of some concern to me because having made the order I did on 12<sup>th</sup> October concerning the instruction of Dr Winton, a consultant psychiatrist.

9. By that stage it was being asserted by the treating doctors that the mother had regained capacity under the relevant test. I have to say that when the mother appeared before me at that time she did not appear to be at all well, and I am surprised that it was being claimed that she had legal capacity . I am critical of the doctors because it appears to me that she was despatched (in deed escorted ) from the UK with undue haste simply because she wished to go back to Italy. I was led to believe that the mother was in a good state and a good frame of mind but frankly nothing could have been further from the truth, because if one looks at the reports of the admitting Doctors in Italy , it is clear that the mother when she arrived in Italy was in a very poor state .She should in my view have been assisted here to participate in these proceedings. I know she wanted to go to Italy but by going to Italy any realistic prospect of P returning to her care was diminished substantially. It is for that reason it seems to me that it was a

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most ill-advised thing to have occurred. I was critical at the time and I remain critical to this day.

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10. The good news is that as a result of the mother eventually complying with her medication which she did for some considerable time whilst out there, it is very evident that she is actually extremely well and has given evidence before me. As I said to her during the course of her evidence it seemed to me that she was as clear and articulate, indeed more so than most people I hear from the witness box where English is their first language, and English is not the mother's first language. In any event, in effect, the mother has had little or no contact with P although I am very happy that she had contact yesterday and I am pleased that it went well. So far as the hearing is concerned, the hearing has been listed for today, I have heard evidence both from the mother and from the Guardian, I have seen a number of documents in addition to those provided in the bundle, and of course I have heard submissions from the parties.

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11. I deal firstly with the legal framework. Of course the burden lies on the Local Authority to establish the threshold triggers, the allegations that it makes and the appropriate standard of proof is the civil standard on the single balance of probabilities. So far as the threshold triggers are concerned, I find they are established pursuant to section 31 of the Children Act in relation to what the Local Authority contends, that is that at the time the Local Authority intervened and instituted proceedings P either was suffering, or was more likely, in fact, to be suffering significant harm and that is because of the mother's very severe ill health at that time.

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12. The central issue which I have to decide is self-evidently whether P can in a foreseeable and planned way be placed with her family or whether according to the Local Authority's care plan the only realistic route, safe route, is that she can be placed

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for adoption. So those are the alternatives, whether there is any realistic possibility of her being returned to her mother or the family at large. I remind myself of the provisions of the welfare checklist section 1(3) and also what is known as the no delay principle, delay being inimical to the welfare of any child. I approach the Local Authority's application on the basis that the best place for any child is within her family of origin and especially where she is of an unusual racial mix, so far as this country is concerned. She is half Italian and half Senegalese and both her parents have differing religious backgrounds as well. It is obvious that the best place for a child is within his or her family unless there are clear welfare grounds to demand or prefer an alternative.

13. My task really is to consider whether P can be placed with her family and be cared for to a satisfactory and predictable standard within an appropriate timescale, not whether she might be better off adopted, that is not an appropriate consideration. If I were to conclude that it would be better for P to be placed in the care of the Local Authority then I am obliged to consider whether it accords with her welfare throughout her life to be made the subject of a placement order because that is, as I say, the application. I am guided in that by section 1 of the 2002 Act and also I consider, particularly in a case such as this, where she has two half-sisters, who are aware of P's existence, of the likely effect of her ceasing to be a member of her family and the risk that she is or may be at risk of suffering and any relationship she either has or could have with her family or with her relatives and their ability to provide her with a secure environment so that she can develop and meet all her potential needs.

14. If I conclude that a placement order accords with her welfare then I go on and have to decide whether that welfare requires me to dispense with her parents' consent, subject

A to section 52, and in addressing that issue I remind myself of the decision in *Re B*  
(*Children*) [2008] UKHL 35 and finally, because the mother refers to it quite rightly in  
her statement, I have to be satisfied that the orders I make are lawful, necessary,  
B proportionate, and a reasonable response to P's sad predicament. I bear in mind that a  
care order, particularly one with a plan for adoption and placement, represents a drastic  
curtailment of the rights of both the parents and of P under Article 8 of the ECHR and  
C that can only be justified by a pressing concern for her welfare.

15. Having regard to the evidence which I have heard, the mother's evidence was  
extremely clear. She opposes the application. She told me that she felt well and that  
D in a rather perverse and tragically sad way that her daughter had saved her. It had  
finally brought her to the realisation of accepting that she is bipolar and that it is  
necessary for her to take and maintain her medication. She told me that she knew that  
E P might not be able to return to her but she was asking that she should do so and in fact  
what she was proposing, as her psychiatrist, I think, had proposed in Italy, was that P  
would remain in foster care for approximately a year, or up to a year, and to show that  
F the mother would be able to maintain her medication and maintain a stable life, and in  
all other respects her life in Italy is ordered. She has accommodation, she has a secure  
job and she does have the support of her family.

G 16. I bear in mind of course that her family have had, as I think she would accept, a  
difficult time from time to time with her, because they have endeavoured to do the best  
for their daughter as well as their granddaughters and when the mother has not been  
H well that has been, I suspect, extremely difficult for them to balance. She said that  
actually because of the medication the relationship was now much better. She said at  
the conclusion of her evidence that she begged the court not to agree to the care and



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placement orders being made so that she lost her daughter forever. She believed that by committing to taking the medication that she could return back to Italy with P, that she should not go into adoption. It was not a good option for her and that it was not necessary for her to be adopted. She said that nobody is perfect, neither she nor any *adoptive* mother, and that I am quite sure is the case. Adoption is not a panacea. She says that she truly believes that provided she takes her medication she could provide for her daughter.

17. The Guardian was called to give evidence and was the first to admit that the difference between the mother's presentation as she remembered it at court in early October, indeed as I remember it, and today, was very marked indeed. In fact, as I observe they are almost like different people . The Guardian was concerned about the timeframe and also about the durability of the mother's commitment to taking her medication. It is not to say that she doubts the mother's intentions, or further in maintaining the medication, but there have been periods in the past when she has taken medication only subsequently to lapse. It may be, and I hope that it is, that the current position is that the mother having at last recognised that she does have bipolar affective disorder and recognising that she must take her medication at all times, that a corner has been turned, but only time will tell. The Guardian reiterated the evidence, with which the Court is familiar ,that a child's best chances are by being in a secure placement by the time he or she is nine months old, whether that be within the birth family or otherwise.

18. So, the sum total of the evidence is as follows; that I have absolutely no doubt and there is not a doubt the mother's clear, articulate, and well-articulated reasons for firstly her own condition, secondly the fact that she is taking her medication regularly, and thirdly, her deep felt belief that her daughter should and could be properly placed

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with her. Of course as I have said already the best place for any child is to grow up within his own family if it all possible. The problem that the court is faced with it seems to me is to balance that evidence and that is the evidence in the mother's current state, provided it is maintained, that she may well be able to offer a proper home, with the vicissitudes faced by adopters.

19. I am well aware that the adoption worker's statement indicates that there are three families who might be suitable. They are not suitable on a racial basis because as I understand it neither are either Italian or Senegalese and there is the added complication, it seems to me, that P, I hope, does have good health but she may suffer from ill health in the future. I simply do not know but the mother herself was anxious about her half-sister and that there might be a genetic predisposition to mental instability, I have no idea, and in any event it will make it the more difficult to find a suitable match, that is to say parents that are prepared to come forward and care for P. I have read what is in the care plan and the plan generally but I do not approve that that is the way it should be done if I approve those orders as I shall, there should however be a national search now not limited to regional registers.

20. It seems to me and I am sorry to say it but the way in which the case has unfurled is that I am not able to say that P can return to the care of her mother today. It is not a case where I can accede to the mother's wishes even though I understand, as the Guardian indicated also, not just the strength of feeling that she has, but actually as I said to her it is rare to have it articulated in such a forceful and coherent form. There is no-one within the wider family who today can look after P even though the father attempts to put himself forward but it is not, if I may say so, a starter.

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21. The evidence from the Local Authority is clear that a time-limited search could be productive and should be productive as far as P is concerned. The adoption team is experienced and can be proactive and should be. It seems to me therefore in balancing the two, that is the mother's timeframe of twelve months or thereabouts, all being well, and the Local Authority's timeframe in seeking a permanent placement, albeit not with her family, it seems to me in my judgment that it is much more likely to be secured by way of placement rather than within her birth family. So, whilst in some ways it is a very difficult decision, in other ways it seems to me a clear decision, clear enough for the court to make findings in the way in which it does. I therefore adopt the analysis of the welfare checklist made by the social worker and indeed by the Guardian and I make a full care order in this case.

22. The Local Authority additionally seeks a placement order. Identifying that P's welfare throughout her life is my paramount consideration the priority is to identify and secure a permanent, predictable and stable home for P. In my judgment, as I have indicated, that on balance can best be achieved by way of adoption and I am satisfied that is the best course. I am satisfied that as neither parent consents to the order that her welfare requires that I should dispense with their consent and I do so.

23. I very much hope that the mother on whom I concentrate will be able to have an opportunity of meeting the adopters. It is important for P to know that her birth family, as I know they do, will continue to take a continuing interest in her. It will not be straightforward. It will not be easy. The mother, I know, is to return to Italy shortly but if it is possible and a meeting is offered I very much hope that the mother would be able to play her part in that. So, I record as follows: I find the threshold triggers established pursuant to section 31 as set out. I make a care order. I record that I

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dispense with the parents' consent and I make a placement order. I order a transcript of this judgment to be obtained by the Local Authority, with the cost to be divided between the parties equally. I give permission for the relevant documents to be disclosed to the prospective adopters and indeed to the Italian authorities. I make an order that any applications relating to P should be reserved to me and I make the usual orders as to costs.

24. If in later life P reads this judgment, as she may well do, I hope that she will appreciate that her mother in particular loved her and wished for her to return to live with her and to bring her up. It is not her fault, nor P's that that was not possible and that a predictable home could only be secured by way of adoption. P should know that the mother very much wished to parent her and bring her up and I hope that that is some small comfort both to the mother and also to P.

*[Judgment ends]*