

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27/05/2016

Before :

**THE HONOURABLE MR JUSTICE KEEHAN**

Between :

**BIRMINGHAM CITY COUNCIL**

**Applicant**

- and -

LC (1)

X (2)

A, T, W and H (3 – 6)

(By their children's guardian)

EH (7)

G (8)

K (9)

**Respondents**

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**Ms Scott-Wittenborn** (instructed by **Birmingham City Council**) for the **Applicant**  
**Ms Hills** (instructed by **HRS Family Law Solicitors**) for the **First Respondent**  
**Mrs Walker** (instructed by **Anthony Collins**) for the **Children's Guardian**  
**G and K** appeared in person

Hearing dates: 11, 12 and 13 May 2016

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**Judgment**

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mr Justice Keehan :**

**Introduction**

1. I am concerned with four children. A who is 11 years of age. Her mother is LC and her father is EH. She moved from the care of her mother to live with her father in March 2015. It is now agreed by the mother and EH, supported by the Local

Authority and the Children's Guardian, that A should continue to live with her father and spend time, as agreed, with her mother under the auspices of a Child Arrangements Order. I agree.

2. The three younger children are T, who is 5 years of age, W, who is 4 years of age, and H, who is 21 months old. The mother of all three children is LC and their father is X.
3. X has parental responsibility for T and W but not H. The local authority and the guardian have submitted that I should grant X parental responsibility for H. I agree.
4. X has taken no part whatsoever in these proceedings.
5. The local authority applied for Care Orders in respect of the younger three children on 26 June 2015. It applied for placements in respect of each of them on 6 October 2015 (T) and 2 November 2015 (W and H). The local authority's care plans provide for the children to be placed in an adoptive home together. If, however, after twelve months it has not proved possible to do so, the local authority will reassess the care plan and consider placing the children separately for adoption.
6. The children's guardian supports the applications made by the local authority and the care plans for each child.
7. The mother accepts the threshold criteria of s31 (2) Children's Act 1989 are satisfied on the grounds of neglect and emotional abuse. She concedes she cannot care for the children but opposes the plan for the children to be adopted. She supports the children being placed in the care of her brother, G, who is 25 years old, and his partner, K, who is 24 years old, under whatever legal framework the court considers most appropriate. If the court does not approve the children being placed with them, the mother would invite the court to approve the children being placed in long term foster care.
8. G and K were joined as parties to these proceedings at the hearing before District Judge Asokan on 12 and 13 January 2016 to enable them to pursue their application to care for the children. Like the mother they oppose the children being placed for adoption and if their application is not successful, they support the children being placed in long term foster care. They acknowledge that the children could not safely return to live with their mother.
9. G and K have represented themselves throughout these proceedings. I wish to pay tribute to them, as did Ms Walker, counsel for the children's guardian, in the course of her closing submissions. They conducted themselves with great dignity and co-operated with the legal teams for the other parties. They were polite to all involved. K, who acted as spokesperson for himself and his partner, presented their case eloquently and economically. They suffered no disadvantage as result of, perforce, their circumstances, being litigants in person.

### **The Background**

10. The mother, and G and their siblings had a difficult childhood. Their father left home when G was 8 years old and they subsequently had had only sporadic contact with him. Their mother sadly suffers from long term mental health problems.

11. LCs and X' relationship was characterised by episodes of domestic violence which on occasions took place in the presence or hearing of the children. Eventually in 2012 they separated.
12. The local authority have been closely involved with the mother and the children for many years. The theme of neglect has been virtually constant. The school attendance of the older three children was very poor, medical appointments were regularly missed, the children were seen in dirty ill fitting clothes, they were often dirty and hungry and the home conditions were invariably exceedingly poor.
13. G and K were regular visitors to the mother's home. They have been in a stable relationship since 2012. During that time, however, they have had no stable home life and have vacillated between living, for short periods, in rented accommodation or with family members. There is an issue about the period of time they lived at the mother's home. I shall consider that issue later in this judgment. Suffice to say that between February and June 2015 they were, at the very least, very regular visitors to the mother's home.
14. Matters reached a head in June 2015 when the three younger children were removed from the mother's care by the police exercising powers under s 46 Children Act 1989. They were placed in foster care and were subsequently made the subject of interim care orders.
15. A had moved to live with her father in March 2015.
16. I recognise in cases of long term neglect it can be a difficult decision as to when matters have gone too far and justify the removal of children into state care. I am bound to observe however, that on the facts of this case, the younger three children should have been removed at a much earlier date than June 2015.
17. The mother's co-operation with and attitude to the social workers had always been variable. On the removal of the children, matters very seriously deteriorated. The mother made multiple serious threats against the social workers.
18. The matter was listed for final hearing before a District Judge sitting in Birmingham on 13 January 2016. Shortly prior thereto the mother was arrested for threatening to kill the current social worker. Ultimately the police did not proceed to charge her with any offence. At the hearing on 13 January the mother was extremely volatile and making threats of harm to the extent that the social workers and the advocates felt very vulnerable. The District Judge made contact with me and she allocated the case to me.
19. On 19 January 2016 I gave the mother due warning that her conduct would not be tolerated. I made injunctive orders against her and warned her of the consequences if she were found to have breached the same.
20. During the initial final hearing of this matter before me in February 2016 the mother made no threats to anyone but she was clearly agitated. On occasions she could not control her emotions, despite the best endeavours of her brother, G, who had moved to sit next to her in court. She left court in temper on a number of occasions.

21. Without my permission, the mother chose not to attend any of the three days of this hearing. I am satisfied that she did so because she would not have been able to contain her anger or her emotions or would have been likely to threaten people involved in this hearing.
22. I note when Mr Eyles visited the mother and X on 24 February 2016 the mother accepted she had threatened to kill the social worker but claimed she had not meant it. In the same conversation the mother said about the current social worker 'I am going to get her'.

### **The Law**

23. When determining the applications for care orders and placement orders, I have well in mind that the welfare best interests of each child are my paramount consideration: s1 (1) Children Act 1989. I have particular regard to the provisions of s1 (2) of the Adoption and Children Act 2002 that I must consider paramount the welfare of the children throughout their respective lives. I take account of the welfare checklists set out in s1 (3) Children Act 1989 and s1 (4) Adoption and Children Act 2002.
24. I have had regard to the Article 6 and Article 8 rights of the children, the parents and G and K. Where, however, there is a tension between the Article 8 rights of a child, on the one hand, and the rights of a parent or adult on the other, the rights of the child prevail.
25. When considering the plan to place the three younger children for adoption I have well in mind the phrase used in *Re B* [2013] UKSC 33 that adoption should only be approved where 'nothing else will do'. I have had close regard to the judgment of the President in *Re B-S* [2014] 1 WLR 563, [2014] 1 FLR 1035 and, in particular, the imperative of undertaking a global and holistic assessment of all the realistic options.

### **The Evidence**

26. At the hearing before me on 4 February 2016 I heard evidence from the social worker, Claire Ashby and from a social worker who had undertaken an assessment of G and K. It quickly became apparent in the course of the evidence of the latter that that assessment was seriously and fundamentally flawed. It could not support the exclusion of G and K as potential carers for the children and most especially when the local authority's plan was to place the children for adoption.
27. One of the most glaring omissions was that none of the identified criticisms, which led to a negative assessment, had been discussed with G and K. It followed that their responses or accounts in answer to the same were neither recorded nor taken into account when coming to a conclusion on the merits of their request to be considered as carers.
28. In light of the foregoing the parties agreed, and I approved, the instruction of Mr Gary Eyles to undertake an independent social work assessment of G and K. Mr Eyles is an immensely experienced and well qualified former social worker and children's guardian. His report, dated 21 March 2016, is a thorough and comprehensive assessment.

29. Mr Eyles told me how much he had enjoyed undertaking the assessment of G and K. He said he would very much have preferred to have been able to make a positive assessment of them both as potential carers for the three younger children. With regret, he was unable to do so. He gave four principal reasons for concluding that they could not be recommended as carers for the children, namely:
- i) their lack of experience in caring full time for young children;
  - ii) the instability of their lives in terms of accommodation and the managing of household finances;
  - iii) the likely adverse impact and detrimental effect of the mother interfering and/or seeking to control their care of the children; and
  - iv) serious concerns about what they did or did not do for the three younger children when they were living with their mother. Although they may both have done their best to assist the children, it did not to any material degree alleviate or mitigate their neglect and suffering.
30. Mr Eyles said that the care of these three challenging children would place considerable pressure on G and K. Although he was impressed with their motivation and commitment to care for the children and the quality of their contact had been very positive, the burden of caring for them would simply be too much for them. He told me that their response to the neglectful care they endured at home was not good enough. In his opinion they could not cope with nor resist contact by or interference from the mother. He concluded that to place these children with G and K would be a huge gamble; their care would not be good enough for these children. They do not have the skills to care for these children.
31. The social worker, Ms Ashby, and the children's guardian completely agreed with and supported Mr Eyles' opinions and conclusions.
32. There was some disagreement between the social worker and the children's guardian on the degree to which, if at all, the local authority should be prescriptive about the frequency of direct contact between the three younger children in the event that they were placed separately for adoption. Ms Walker characterised it as a somewhat academic difference of professional opinion. If that situation arises there will at that stage have to be a very thorough review of each child's welfare needs and of the relative importance and frequency of direct inter sibling contact.
33. K gave evidence in a clear and confident manner although he became emotional when asked about the children being placed for adoption. He asserted that he and G could cope with caring for all three children. He urged me to make the widest possible injunctive orders against the mother to prevent her contacting him, his partner or the children. G and he had discussed and agreed they would move away from the maternal family, they would have no contact with the mother and would only meet with other members of the maternal family, including the maternal grandmother, in a public place.
34. K asserted that he and G would co-operate fully with the local authority and that they were willing to accept whatever support could be made available to them. He

reminded me that he and G had attended a parenting programme. They are to be congratulated for doing so but Mr Eyles, Ms Ashby and the guardian were agreed that the programme offered advice and support on only the most basic aspects of parenting.

35. G agreed with all K had said in evidence. He told me that he knew his sister, the mother, very well and knew how her mind worked. He accepted he had said to Mr Eyles that “she’s crazy. [She] had always had the brain of a child and was always the one to do crazy things”. A little later in the assessment process he told Mr Eyles that “you can tell LC until you’re blue in the face”.
36. G accepted that he was very close to his family and the longest period he had gone without seeing them was three months – although even then he would speak with members of the family every day or two on the telephone.
37. After the short adjournment on the first day of the hearing during the course of their cross – examination of Mr Eyles, G and K said they had been thinking about the dates of where they had been living. Contrary to what they agree they had told Mr Eyles, that they had lived at the mother’s home from February to October last, they now recalled that they would only stay one, two or three days a week at the mother’s home.
38. Mr Eyles was very clear that this version of events was not provided to him. G and K claimed to have misunderstood Mr Eyles’ question about the time they had spent living with the mother. When asked why this new version of events was not contained in their recent joint witness statement or their even more recent position statement, they could not explain the omission other than to say they had forgotten about it. I do not accept they had forgotten about this crucially important issue.
39. I regret to find that, in a misguided attempt to distance themselves from the neglect suffered by the children, they changed their account of the time they had spent living with the mother in order to improve their prospects of securing the care of the three younger children. The change was not only misguided but it was also disingenuous because (i) on the first version they were living in the home, they made little or no difference to the care of the children received or (ii) on the second version, they came and went from the mother’s home even though they knew the mother was neglecting the children. Both versions are equally a cause for serious concern.
40. G and K made repeated references to the involvement of social workers with the mother and the children in the context of what could they do when the local authority permitted the children to remain living with the mother. I have a certain degree of sympathy with that observation. It does, however, miss the point. They were, even if not living full time at the mother’s home, fully aware of the plight of the children and their best endeavours to support the mother and assist the children brought about no material change in the daily lives of the children. The neglect and suffering of the children was not significantly ameliorated by their presence in the home.

### **Analysis**

41. The mother accepts she cannot seek to persuade the court that she should resume the care of her younger three children. She supports the application of her brother and K

to care for the children. Given the mother's past irrational and impulsive behaviour, that acceptance should not, in my judgment, be seen as an indication that:

- i) she accepts the local authority's criticism of her as a parent to these three vulnerable young children; nor
- ii) she would not seek to interfere with and disrupt the placement of the children in her brother's and K's care.

42. The substantial past history strongly predicts quite the reverse. I regret I cannot accept at face value a single word the mother has said to the contrary in her statement. Perforce her choosing to absent herself from this hearing, I have been denied the opportunity of hearing and assessing her oral evidence.

43. The children have sadly been very adversely affected by the care, or more accurately the lack of care, they received when living in their mother's home. The foster carer's description to Mr Eyles of the physical and emotional state of the children when they arrived at the foster carer's home is truly shocking.

44. The adverse impact on the children of the care they had received at home was considered by the guardian in his final analysis of 3 May 2016. H, unsurprisingly at his tender age, is the least affected. In respect of T the guardian said:

“T has the clearest memories of events in the past and has disclosed witnessing adult behaviour that is inappropriate in view of a child; such as sexual intercourse and domestic violence. She will talk about contact with her mother on return to the foster home and is subdued for a while if it does not take place.

T enjoys time with friends having learnt over the period of foster care the ability to use initiative and find pleasure in socially acceptable play and activity. The ability to relate to other children is proving much harder for W to achieve.

T does not like disruption to routine and remains fussy about what she eats. She is shy and wary of strangers but clingy to those she knows at times of anxiety. She lacks the social confidence of a child of comparable age but will usually talk about those things troubling her. There is about a 2 year delay in learning linked to lack of stimulation and language delay because of the neglect at home.

T has become familiarised with her maternal uncles through the regular contact set up as part of their kinship assessment. She becomes more enthused about the contact with her mother but there have been some indicators that she does not get the full attention she craves from LC as part of the experience.”

In respect of W he observed:

“W has had traits of destructive and harmful behaviour from an early age; including spitting, hitting out, head-butting and punching walls and furniture. This aggression was often directed at his mother, siblings and peers without warning or remorse afterwards.

W continues to struggle to cope in social interaction. He is boisterous and tends to tantrum when refused his own way. The biting has stopped but he once drew blood from another child in nursery through this. Vigilance and consistent boundaries are making a difference and he is gradually learning the difference between right and wrong.

W’s speech and language delay is being corrected. He is a quick learner and it is hoped that lost ground can be made up within the next 6 to 12 months. W has an ability to focus on task.

W’s propensity not to cry, or seek comfort at times of physical injury or emotional distress is an expression of his ambivalence over seeking it out. In other words, it has gone unnoticed, to no effect, as a strategy for gaining adult attention.

W has made fewer friends than a child of comparable age. W only names two friends whereas T names up to twenty. He can still lash out at peers including his younger brother (H). He does not easily share toys and lacks appreciation of the thoughts and feelings of others.”

45. Mr Eyles, the social worker and the guardian are all agreed that the three younger children will each require more than ‘good enough’ care. They require experienced carers who will be able to meet their particular needs and, in the case of T and W, to deal with their very challenging behaviours.
46. There are three options open to me:
  - a) to place the children in the care of G and K
  - b) to place them in long term foster care; or
  - c) to approve them being placed for adoption.
47. A placement with G and K would have the very considerable advantage of keeping the children in the family and would enable A to maintain her relationship with them and they with her.
48. The disadvantage is that they would not be able to care for the three of them sufficiently well to promote and enhance their welfare and development. They would not be able to prevent the mother from interfering and destabilising the placement of the children which would, obviously be extremely damaging for each of them.

49. It would be a most unusual course to place children as young as these in long term foster care, absent extremely cogent reasons for doing so. In my judgment the advantage of enabling them to have relationship with A, their mother and father and other family members does not amount to extremely cogent reasons. In any event that advantage, albeit considerable, needs to be balanced against the disadvantages of long term foster care. They are:
- i) even the best of foster carers do not devote themselves to a foster child or make emotional investment in a child that adoptive carers invariably do;
  - ii) long term foster placements can breakdown or the children have to move because of a change in foster carer's personal circumstances;
  - iii) the children are subject to regular local authority reviews and have to be seen by social workers;
  - iv) the children have a corporate 'parent';
50. The advantage of placement for adoption is that the children are an integral part of the family life of their adoptive parents, with all the very substantial benefits that can bring for them not just during their minority but well into adulthood.
51. A placement for adoption has the singular disadvantages of causing the children to cease to be members of their birth family and of terminating the relationship between them and their sister, their mother, their father, G and K and other family members. I do not underestimate these disadvantages.
52. Notwithstanding the same, I am satisfied that the only realistic option for each of the three children is placement for adoption.
53. Even if I am wrong about that and a placement with G and K or a placement in long term foster care can be characterised as 'realistic', I am completely satisfied that a placement for adoption is the only option which will meet and promote the welfare best interests of each child. Simply put, I am completely satisfied that nothing else will do in the welfare best interests of these children.

## **Conclusion**

54. A has lived with her father, EH since March 2015. She is happy and settled and she spends time with her mother on a regular basis. The mother and EH are agreed that I should make a child arrangements order to reflect that position. The local authority and children's guardian support the making of that order.
55. From all I have read and heard, I am entirely satisfied that the current arrangements are entirely in her welfare best interests. Accordingly I shall make a child arrangements order to provide that A shall live with her father and shall spend regular periods of time with her mother as shall be agreed, from time to time, between her mother and her father.
56. When I granted permission for Mr Eyles to undertake an independent assessment of G and K as carers for the three younger children, I had very much hoped the assessment would be positive and support them as long term carers for T, W and H. It did not do

so. I have accepted the opinions and conclusions of Mr Eyles and of the social worker and the children's guardian. The consequence of the same is that placing those three younger children with G and K is not, in any sense, a realistic option.

57. I know my ultimate conclusion, that the only option in the best interests of each of the children is adoption, will cause both G and K some very great distress, anguish and disappointment. I know they will feel the loss of direct contact and a relationship with the children very keenly. I wish I could have come to a different conclusion. I sincerely regret I could not do so.
58. I am, however, in no doubt that the decision I have reached is the only outcome which would satisfactorily protect and promote the welfare best interests of the children throughout their respective lives.
59. G and K both have very positive qualities. I echo what Mr Eyles said about his report, namely that I would not wish this judgment to be used to prevent either G or K to care for other children in the future. They have a mutually supportive and strong relationship. Many of the factors which have militated against them caring for the children are beyond their control, most principally, the irrational, unpredictable and impulsive behaviour of the mother. Sadly when they sought to assist and support the mother in her care of the children, despite doing the best they could, it was found to be wanting, as they themselves in large measure accept.
60. In the premises I will make the following orders:
  - i) I grant a parental responsibility order in respect of H to X;
  - ii) I will make each of the three younger children subject of care orders;
  - iii) I dispense with the consent of the mother and of X to the adoption of each of the three children on the grounds of welfare of each child requires the same; and
  - iv) I shall make placement orders in respect of T, W and H.
61. For the avoidance of any doubt I approve the local authority's plans for contact between the mother, X, A and G and K and the three younger children both pending their placement for adoption and post placement.
62. I am immensely grateful to all of the advocates and to G and K for all the assistance they have given to me in this difficult and sad case.