



Case No: B4/2020/1253

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE FAMILY COURT AT BRISTOL**  
**(HIS HONOUR JUDGE BROMILOW)**

Neutral citation number [2020] EWCA Civ 1253

The Royal Courts of Justice  
Strand, London, WC2A 2LL

Tuesday, 8 September 2020

**Before:**

**LORD JUSTICE UNDERHILL**  
**LORD JUSTICE BAKER**  
**LORD JUSTICE ARNOLD**

**IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002**  
**AND IN THE MATTER OF JL (A CHILD) (LEAVE TO APPLY TO REVOKE**  
**PLACEMENT ORDER)**

**Between:**

<b>B</b>	<b>Appellant</b>
<b>and</b>	
<b>A LOCAL AUTHORITY (1)</b>	<b>Respondents</b>
<b>JL (by his children's guardian) (2)</b>	

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**GRAEME HARRISON** (instructed by Avon & Somerset Family Law) appeared on behalf of  
the **Appellant**

**JAMES CRANFIELD** (instructed by Bristol City Council) appeared on behalf of the  
**Respondent Local Authority**

**LINSEY KNOWLES** (instructed by Henriques Griffiths LLP) appeared on behalf of the **Child**  
through his **Children's Guardian**

**Judgment**  
(Approval)  
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**LORD JUSTICE UNDERHILL:**

1. We have decided that this appeal should be allowed and I will ask Lord Justice Baker to deliver the first judgment.

**LORD JUSTICE BAKER:**

2. This is an appeal by a grandmother ("Mrs B") against an order of His Honour Judge Bromilow refusing her permission to apply to revoke a placement order made in earlier proceedings in respect of her grandson J, born in December 2018, and for permission to apply for a special guardianship order, or alternatively a child arrangements order, in respect of the child.
3. The background can be summarised very briefly. J is the youngest of four children of Mrs B's daughter, M. The local authority has been involved with M and her children since 2012 as a result of concerns about domestic abuse between her and her partners. In August 2018 when M was five months' pregnant with J, the local authority started care proceedings in respect of the three older children who, in the course of the proceedings were made subject of interim care orders. Following J's birth in December 2018 he too was made the subject of an interim care order and placed with foster carers with whom he remains.
4. Thereafter a number of assessments were carried out on family members and friends to establish whether any of them could care for the children. In June 2019, the eldest child was placed with his paternal grandfather under a special guardianship order. Mrs B put herself forward as a carer for the two middle children. An assessment by the local authority recommended that the children be placed in her care and in August 2019 final care orders were made in respect of those two boys on the basis of a care plan that they should live with Mrs B. They remain with her today.
5. In January 2020 she was approved as a kinship foster carer for the two boys. It is her evidence that they have thrived in her care. As I understand it, the local authority does

not disagree with that assertion, although it draws attention to the fact that the two boys have a number of significant needs and that Mrs B has sought additional support to help care for them. The two boys continue to have contact with their mother, older brother and with J.

6. J's position in the care proceedings was more complicated. Several people were assessed as possible carers for him, including both of his parents, an aunt, another aunt and uncle and a family friend, Ms S. All assessments were negative. At that stage Mrs B did not put herself forward as a potential carer for J. It is her case that she did not do so because her accommodation was only a two-bedroom flat and she did not have the facilities to accommodate J in addition to his two older brothers.
7. At the final hearing of the care proceedings before Ms Recorder Bradbury, the local authority, supported by the children's guardian, proposed that J be adopted and therefore sought a care and placement order. A family friend, Ms S, sought leave to apply for a special guardianship order. Her application was supported by J's parents. Mrs B took no part in the hearing. In her judgment, the recorder recorded that Mrs B "has found herself in an unenviable position and has made a very difficult decision that she is unable to have J with her." At the conclusion of the hearing, the recorder delivered a comprehensive judgment in which she dismissed Ms S's application and made care and placement orders in accordance with the local authority's care plan.
8. On 30 April 2020 Mrs B filed an application for leave to apply to revoke the placement order. In her application she stated that she wanted to look after J, adding that she had hoped that J could live with his mother or another person put forward by the mother (meaning presumably Ms S) but that had not been approved by the court. She also said that she had intended to apply for revocation at an earlier stage after the recorder's order but "had been informed that as there was an appeal pending that was premature". The mother had indeed intended to appeal against the recorder's order but in the event the appeal was not pursued.
9. In her statement in support of her application, Mrs B described how she had now moved from her previous accommodation, which she described as a small two-bedroom

flat, to another property, a rented three-bedroom semi-detached house with a garden, directly opposite the older boys' school. She described how she had been trying to get rehoused by the council without success but had then heard of the three-bedroom property and quickly negotiated a move with the private landlord. Mrs B described the property as much larger so that the children had a lot more room to play and study. Friends and family members live nearby. Previously she had been anxious about living in the small flat because the children's parents were all aware of her address which was in a rather secluded location. She feels much less anxious in her current property.

10. In her statement Mrs B spoke fondly of J, described his meetings with her and his brothers in warm and affectionate terms. Unfortunately, but understandably, contact arrangements have recently been severely restricted as a result of the Covid-19 pandemic, although Mrs B and the boys have sent J a video recording. Mrs B described how she had been looking after the boys during lockdown, ensuring that the older boy attends to his studies and describing a range of other activities they had enjoyed. She also gave details of parenting classes she has undertaken to help meet the needs of the two boys.
11. Mrs B's applications were listed for hearing before the judge on 6 July 2020. They were opposed by the local authority but supported by the children's guardian. In her report the guardian said that it was evident that Mrs B's circumstances had changed considerably as a result of the change of accommodation. The guardian also recorded that J's foster carer had said that J loves seeing his brothers, mother and grandmother and knows them all. She concluded:

"In my view, the advantages for [J] being placed in his family and his relationship with his three older brothers who all adore him. The lifelong implications of being denied an opportunity to grow up with his siblings cannot be under-estimated. I am also mindful of the impact of adoption on the three older children, which will be considerable and resonate throughout their lives. If [J] was placed with Mrs [B], then he would also have the opportunity to have a relationship with his mother which to date has been very positive."

12. The guardian identified as "the crucial question" whether Mrs B could manage the care of J alongside his older brothers, both of whom had their own needs. Although she would have supported adoption at the time of the care proceedings, the guardian was clear that she no longer favoured that course. She concluded that the grandmother had demonstrated significant changes and should be considered as a carer for J. Her recommendation was incorrectly expressed in terms that Mrs B should be granted "leave to appeal the placement order", although it is to my mind clear that she had properly addressed the question before the court, namely whether to grant leave to apply to revoke the order.
  
13. At the conclusion of the hearing, the judge dismissed the grandmother's applications for reasons set out in a judgment which was subsequently handed down on 16 July. In that judgment he set out the history and correctly identified the legal principles to be applied when considering an application for leave to apply to revoke a placement order by reference to section 24(3) of the Adoption and Children Act 2002 and the relevant case law. He summarised those principles by reference to the established two-stage test, namely (1) whether there had been a change in circumstances since the placement order was made in February 2020 and, if so (2) whether, exercising his discretion, he should grant leave having regard to J's welfare and the prospects of the application succeeding. He observed that Mrs B had been "caring admirably" for the two boys and described them as "thriving" in her care. He concluded, however, that there had been no change in circumstances since the making of the placement order. He added that, if he was wrong in that conclusion, he was

"entirely satisfied that any exercise of discretion must lead to the application for permission being refused because of delay, lack of prospects of success and holistic welfare considerations".

He pointed out that J had been the subject of care proceedings throughout his 18 months' life, far longer than could have been reasonably contemplated at the start of the proceedings, and that any further delay or protracted decision-making would be contrary to his welfare. He noted that no details of prospective assessments of Mrs B's capacity to care for J had been produced, should she be granted leave to apply for a special guardianship order. Given the likely delays in obtaining such an assessment,

exacerbated by the pandemic crisis, he concluded that any revocation hearing would not be determined until the early months of 2021. The judge recognised that he was disagreeing with the guardian's conclusion but stated that her analysis had been directed at a reassessment of J's best interests, that she had not asked the right questions, and that she had mistakenly conducted her analysis on the basis that the application was for leave to appeal rather than leave to apply to revoke the placement order.

14. On 12 August Mrs B filed a notice of appeal against the judge's order. On 21 August Moylan LJ granted permission to appeal and listed the hearing before us today.
  
15. In support of the appeal, Mr Graeme Harrison on behalf of Mrs B submitted that the judge's decision was wrong and that the matters identified in the grandmother's statement amounted to a change of circumstances sufficient to open the door to an application to revoke the placement order. In his analysis of the second stage of the test, the judge had placed too much weight on the need to provide J with finality. It was only right that he be afforded the opportunity to grow up within his natural family. The appeal was supported by the guardian. On her behalf Ms Linsey Knowles pointed out that the guardian's mistaken use of the word "appeal" in her report did not invalidate her analysis or her conclusions as to whether there had been a change in circumstances or her analysis of J's welfare and in particular the advantages to J of exploring the opportunity for him to be brought up within a family placement.
  
16. In response, Mr James Cranfield for the local authority submitted that the judge had been entitled to find that no change of circumstances had occurred because, as a matter of fact, Mrs B's move to the three-bedroom property had been arranged prior to the hearing before the recorder. Mr Cranfield submitted that the grandmother had been well aware of the need to put herself forward as a carer but had chosen not to do so before the placement order was made. As to the second stage of the test, he submitted that care planning for J was wholly outwith appropriate timescales and a further two to three months for assessment and judicial consideration could not be in his interests. In particular, he pointed out that the grandmother's relationship with J is at present very limited. All the children have significant needs and, as the grandmother has at times

had challenges caring for the two older boys alone, adding J to the home would be detrimental to all of them.

17. With respect to the judge whose great experience in children cases is well-known, I have reached the clear conclusion that the decision was wrong and that the appeal must be allowed. In my judgment, this is a clear example of a case where a change in circumstances has occurred of a degree sufficient to open the door to an application to revoke the placement order. At the time of the hearing before the recorder, Mrs B had reached the conclusion that she could not care for J in her small and unsuitable flat. Following her move to significantly larger and better accommodation, she is now able to offer him a home. That opens up the prospect of J being brought up within his family and in particular with his brothers. It is likely that his current relationship with them and with Mrs B is not close, particularly given the restrictions on contact that have occurred in the pandemic. Looking ahead however, there is the potential for J to be brought up in a close relationship with his siblings and with his grandmother and indeed in a relationship with his mother and other family members.
18. The law requires children where possible to be brought up in their natural families. Adoption is a measure of last resort. Mrs B is by all accounts caring for the two boys very well, notwithstanding their difficulties in respect of which she has understandably sought support from the local authority. In those circumstances, it must be in J's interests at least to explore the possibility of being placed in her care.
19. The local authority and the judge were right to be concerned about the impact of further delay. Of course, as the statute makes clear, the court and the adoption agency must at all times bear in mind that in general any delay in coming to a decision is likely to prejudice the child's welfare: section 1(2). The delay in this case is unlikely to be at most more than a further six months. I accept that it may be harder for a child aged two and a quarter to settle into an adoptive placement than a child of 21 months. But to my mind the disadvantages of delay in this case are manifestly outweighed by the potential advantage of securing for J a placement within his family and the prospect of a close and lifelong relationship with his brothers.

20. The analysis in the guardian's report was, to my mind, perceptive and persuasive. It is unfortunate that she wrongly referred to Mrs B's application as being for leave to appeal rather than leave to revoke. That should, perhaps, have been picked up by her legal representatives, but the content of the report addresses the key issues and, with respect to the judge, I think he was wrong to disregard it.
  
21. I would therefore allow the appeal and grant Mrs B leave to apply to revoke the placement order and to apply for a special guardianship order. I will direct that the matter be listed for case management directions before another judge within the next fortnight. As the local designated family judge is unable to hear this case, it should I think be listed before His Honour Judge Marston for case management directions.
  
22. We were addressed about the scope of a possible further assessment. I do not think it is for us to decide that matter, although for my part I would consider that a comprehensive assessment is unlikely to be necessary, given the very full assessments of Mrs B that have been carried out prior to the placement of the two boys in her care and subsequently her approval as a kinship foster carer. What is probably needed here is a short further assessment focused on the question identified by the guardian, namely whether Mrs B can care for J alongside the other two boys, but I am content to leave details of an appropriate assessment to be determined by the judge conducting the case management hearing.

**LORD JUSTICE ARNOLD:** I agree.

**LORD JUSTICE UNDERHILL:** I also agree.

**Order: Appeal allowed.**





**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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