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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

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Delivered: 20/09/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE ADOPTION (NORTHERN IRELAND) ORDER 1987

BETWEEN:

A HEALTH AND SOCIAL CARE TRUST

and

AB and EF

**Mr Simpson KC with Ms Lindsay (instructed by Directorate of Legal Services) for the
Applicant Trust**

The Respondent Mother was unrepresented

**Ms Ramsey KC with Ms McCullagh (instructed by Toal Heron Donnelly Solicitors) for
the Respondent Father**

**Ms McCloskey (instructed by Jerome J Haughey Solicitors) for the Children's Court
Guardian**

KINNEY J

Introduction

[1] Nothing must be published which would identify the family of the child to whom this case relates. The case has been anonymized as it concerns proceedings in relation to a child. Acronyms have been chosen for the various parties.

[2] The applicant in this case is the Health and Social Care Trust ("the Trust"). The Trust made an application for a freeing order under the terms of the Adoption (Northern Ireland) Order 1987 in respect of X. The first respondent, AB, is the mother of X but she has played no part in these proceedings and has confirmed that she does not wish to participate in the application. The father, EF, objects to the Trust application. The Children's Court Guardian (the Guardian) supports the Trust application.

Background

[3] X was born in January 2020 and initially lived with his parents at the home of his paternal grandparents. After a week he moved to live with his parents for a period of approximately two months. He then returned to his paternal grandparents in a kinship placement. Rehabilitation to his parents was ruled out and in November 2020 the father put one of his sister's, J, and his parents forward as potential kinship options. He told the Trust that he did not wish another sister, L, to be involved in the support network. The following day the father informed the Trust that he wished to put all his siblings forward as potential kinship options. After discussions involving the Trust and the family the preferred option was for X to be placed with L. Rehabilitation of X to his father was ruled out at an LAC review in January 2021 and a care plan of kinship adoption was proposed.

[4] Various assessments were carried out on the father including an assessment by the Family Centre, by Dr Pollock and finally by Miss Dermirkol, an independent social worker. None of these recommended rehabilitation.

[5] The father was arrested for drug offences in November 2021 and was remanded in custody. He was subsequently convicted of possession of class A drugs with intent to supply and possession of criminal property. He was sentenced to seven years and six months in custody in March 2023. His earliest expected release date is August 2025.

[6] X was placed with his paternal aunt, L and her husband in February 2022. They live in Dublin and X has resided there since then. In May 2022 the court granted a full Care Order and approved a care plan of kinship adoption by L and her husband. Contact between the father and X was set at once per month via zoom. At a LAC review in September 2022 that contact was reduced to once every two months.

[7] X is now four years old. He is well settled with his kinship carers. There was some delay in speech development but more recently there has happily been a significant improvement. L has arranged for private speech and language sessions involving blocks of therapy and engaged with a specialist provider. X attends crèche and will start school in 2025. He had been enrolled in a two-year programme as part of the early years scheme in the crèche.

The law

[8] The Trust seeks a freeing order under the Adoption (Northern Ireland) Order 1987 (the 1987 Order).

[9] Article 9 of the 1987 Order states:

“9. In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall –

- (a) Have regard to all the circumstances, full consideration being given to –
 - (i) the need to be satisfied that adoption, or adoption by a particular person or persons, will be in the best interests of the child; and
 - (ii) the need to safeguard and promote the welfare of the child throughout his childhood; and
 - (iii) the importance of providing the child with a stable and harmonious home; and
- (b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”

[10] Article 16 of the same Order deals with the issue of parental consent. It provides:

- “ 16. (1) An adoption order shall not be made unless ...
- (b) in the case of each parent or guardian of the child the court is satisfied that –
 - (i) he freely, and with full understanding of what is involved, agrees –
 - (aa) either generally in respect of the adoption of the child or only in respect of the adoption of the child by a specified person, and
 - (ab) either unconditionally or subject only to a condition with respect to the religious persuasion in which the child is to be brought up,

to the making of an adoption order; or

(ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in paragraph (2).

(2) The grounds mentioned in paragraph (1)(b)(ii) are that the parent or guardian – ...

(b) is withholding his agreement unreasonably.”

[11] The Trust asks me to find that the parents are unreasonably withholding their consent. In *Re C (a Minor) (Adoption: parental agreement, contact)* [1993] 2 FLR 260, Lords Steyn and Hoffman set out the test which was subsequently endorsed by Lord Chief Justice Morgan in this jurisdiction in *Re A* [2011] NIFam 19:

“... making the freeing order, the judge had to decide that the mother was ‘withholding her agreement unreasonably.’ This question had to be answered according to an objective standard. In other words, it required the judge to assume that the mother was not, as she in fact was, a person of limited intelligence and inadequate grasp of the emotional and other needs of a lively little girl of 4. Instead she had to be assumed to be a woman with a full perception of her own deficiencies and an ability to evaluate dispassionately the evidence and opinions of the experts. She was also to be endowed with the intelligence and altruism needed to appreciate, if such were the case, that her child's welfare would be so much better served by adoption that her own maternal feelings should take second place.

Such a paragon does not of course exist: she shares with the ‘reasonable man’ the quality of being, as Lord Radcliffe once said, an ‘anthropomorphic conception of justice.’ The law conjures the imaginary parent into existence to give expression to what it considers that justice requires as between the welfare of the child as perceived by the judge on the one hand and the legitimate views and interests of the natural parents on the other. The characteristics of the notional reasonable parent have been expounded on many occasions: see for example Lord Wilberforce in *Re D (Adoption: Parent's Consent)* [1977] AC 602, 625 (‘endowed with a mind and temperament capable of making reasonable decisions’). The views of such a parent will not necessarily coincide with the judge’s views as to what the child’s welfare

requires. As Lord Hailsham of St Marylebone LC said in *In re W (An Infant)* [1971] AC 682, 700:

‘Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.’

Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some embarrassment at having to consult the views of so improbable a legal fiction, we venture to observe that precisely the same question may be raised in a demythologised form by the judge asking himself whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invented to provide the answer to this question.”

[12] The test for making a freeing order without the consent of a parent is, of necessity, a demanding one. This is well recognised in the authorities such as *Re B (a Child)* [2013] 2 FLR 1075. In that case the Supreme Court re-emphasised the need for proportionality in considering adoption orders. The court must look at the advantages and disadvantages of the proposed order and decide whether adoption is necessary in the particular circumstances of the case.

[13] The consideration of the article 8 rights of the parties is more nuanced in a kinship adoption. The court has considered this aspect in a number of cases, most recently *In the matter of FD (a female child aged 2½ years)* [2021] NI Fam 18. The court said:

“13. However, when the proposed adoptive placement is with a family member or members there are two considerations. Firstly the consideration of any article 8 ECHR rights is nuanced, because the child is not being removed entirely from the birth family and being placed in a “stranger” family. Secondly, it could have the potential to lead to a distortion of family relationships. This is sometimes referred to as a “skewing” of the child’s relationship as the child’s new adoptive carers from the

wider family will become the legal parents of the child although the birth parents will still remain a feature of the child's life.

14. Courts have been dealing with this issue both before and after the *Re B* case... The approach still requires the application of a proportionality test but as the impact of a familial adoption would normally be less than the impact of a "stranger" adoption, the emphasis referred to by the Supreme Court in *Re B* is of reduced significance."

[14] The father objects to the making of a freeing order. He also opposes the planned adoption in particular with his sister, L. The father has recognised that X is well settled in his existing placement and he does not wish to undermine that placement but argues that there is no tangible benefit to X of adoption by L and her husband. He raises a number of different objections as follows;

- the dysfunctional and damaged relationships within the birth family which will impede any future relationship between X and his father;
- the absence of a narrative for X and a failure to involve the father in decisions affecting X;
- the lack of information about a TUSLA assessment of the kinship carers in the Republic of Ireland;
- if the order is made there will be no scrutiny by the Trust or the court on a placement outside the jurisdiction.

[15] The father also argued that if the application for the freeing order is not dismissed then it should be adjourned to allow the freeing order and an application by the kinship carers for an adoption order to be heard together.

Family relations

[16] The father has claimed that he has a very fractious relationship with his sister L. He does not believe that the family will support or encourage any future relationship between him and X. The father did not give oral evidence at the hearing of this matter, but in his affidavit, he described long-standing and deep-seated issues and problems within the family going back to his childhood. He had requested family mediation. However, this assertion by the father of a long family history of dysregulation was first made during these proceedings and did not feature in the family history that he provided to the family centre, to Dr Pollock or to Ms Demirkol. Furthermore, the father positively supported kinship placement for X with his parents and his siblings.

[17] In June 2023 the father made allegations that his own father had sexually abused him when he was a child and that his mother was aware of what happened. This allegation was subsequently retracted and the father in his affidavit said that his words, spoken during a conversation had been misconstrued. However, the evidence also showed that the father had made reports to prison staff that his own father had sexually abused him when he was younger and his mother was aware of the abuse. The father, subsequently to this allegation and its retraction, sought mediation with his parents but they did not feel it was appropriate to engage in such mediation at that time.

[18] The father has also asserted that he has not been visited by his family in prison. However, any prison visits by family should be initiated by the father informing the prison of his desire for a visit. A meeting between the father, the social worker and L was arranged in January 2024, but the father did not attend, apparently on the basis of legal advice. The father decided not to give oral evidence during the course of this hearing and these matters could not be further explored.

Narrative

[19] The father has raised concerns about the lack of narrative work being conducted with X. This has led to potential confusion for X and in particular in the way he addresses family members including the father. The absence of a narrative is a failure to implement a significant aspect of the care plan. The father continues to hold parental responsibility and he argues that he has not been involved in discussions regarding what X is being told. Much of the information provided to X is by L. The father argues that the Trust has not done enough to involve him in decisions regarding X and pointed in particular to aspects of X's care in which the father had not been involved. These included a decision regarding X's start date for school, the decision to have him vaccinated against chickenpox and the referral of X to the specialist provider to assist with speech and language development.

[20] The social worker gave evidence that narrative work was being conducted with X. The narrative work is being done informally and delivered primarily by the kinship carers. The narrative work is grounded in X's age and stage of development and is primarily delivered by answering questions that X asks. The father is not excluded from that work but his involvement is necessarily limited because of his own custodial situation.

[21] The social worker gave evidence of her attempts to maintain contact with the father. She explained the difficulties that were created by the father's incarceration. Attempts have been made to arrange meetings with the father to keep him informed of various matters but it is not always straightforward as he is in prison. The father is kept informed through the LAC process. Minutes of meetings are sent to him and also to his solicitors. All issues are discussed at the LAC review and the father has an opportunity to participate and make comments. The Guardian in her evidence

also referred to the fact that she had found it difficult to make contact with the father. She had contacted the prison on numerous occasions and also wrote to the father asking him to call her. When the father called, he rang from a private number and did not leave a message. The Guardian was therefore unaware of the calls and unable to reply. She was eventually able to meet with the father by zoom. She noted that the father did not ask anything about X. He only wished to discuss his perception of misrepresentations in the care proceedings and in his criminal proceedings. He only talked about X after prompting by the Guardian. The Guardian noted that the father's approach to issues about the narrative were focused on himself rather than on X or the impact on X. The Guardian confirmed that the narrative work being conducted was appropriate for X at this stage of his development.

TUSLA

[22] The TUSLA assessment has been completed. The uncontradicted evidence provided by the Trust is that this assessment cannot be presented to the appropriate Trust panel unless a freeing order is made. However, the court was told that the assessment was positive. The Trust had previously completed a kinship assessment of L and her husband and this was also ratified by TUSLA. TUSLA have been provided with background information about X and the reason that he was placed in its jurisdiction. They have carried out an assessment of the prospective adoptive carers specifically in reference to the placement of X.

Scrutiny post freeing order

[23] The father asserts that if an adoption order is made there is an inability for continuing scrutiny by either the Trust or by the court. However, once the final adoption order is made it is not clear what role is envisaged for the courts in this jurisdiction. The social worker gave evidence that there would in fact be ongoing involvement of the post adoption team with the family to assist, particularly with contact. This involvement will continue after the making of any adoption order and also notwithstanding X's placement outside the jurisdiction.

Consideration

[24] The father has raised a number of objections to the Trust's application. There is already in place a Care Order with a care plan of adoption which was granted in May 2022.

[25] The father objects to the proposed adopters. He has claimed that he has a very fractious relationship with family and particularly with L and her husband. I consider it noteworthy that in June of last year the father made allegations of sexual abuse against his own father and that his mother was complicit in that abuse. He subsequently retracted these allegations in September 2023. He claims that his comments were misconstrued. I do not accept that. The father clearly made

allegations against members of the family. He made the allegations to prison officials. He did not present any similar history to the professionals who engaged with him in conducting assessments. Until recently the father had identified his own father as support for him and he put forward various family members to be assessed as carers, including L. I am satisfied that any difficulties that exist within the family are largely driven by the father himself. He complains he has not been visited by his family whilst in custody. Such visits need to be initiated by him. He has previously refused attempts at mediation and only suggested mediation more recently in the immediate aftermath of unfounded allegations against his parents which must have caused a great deal of hurt and stress for the entire family.

[26] Whatever issues may exist in family relationships are secondary to the best interests of X. If a freeing order is granted it will create a fundamental change in the nature of all of the family relationships and in particular the relationship between the father and X. The father will no longer enjoy parental responsibility. His future relationship with his extended family is very much within his control and subject to the way in which he approaches the issues. The evidence before me is clear. All of the family including L are supportive of the father. They regard him as a vulnerable individual. I am satisfied there was no animosity or ill will towards the father demonstrated by the family.

[27] I am satisfied that there is in place a narrative for X. It has been approached by the Trust as informal and organic, allowing X to be informed of his circumstances in an age appropriate way. X is well settled in his placement and there is nothing in the evidence to show that there has been any detriment to X's identity in that placement. The Guardian is also satisfied that the narrative being provided is age specific. She has spoken to X. She has accepted that her role has been more limited because of his placement but she has met with him. She has also met with the father and was concerned that the father expresses his issues in terms of himself rather than in terms of X.

[28] This case involves a kinship placement, and in those circumstances, the stringent requirements required before such an order may be made may well be slightly less than that for a stranger adoption. Stronger relationships in the future between X and his biological parents would not be a central feature of a "stranger" freeing order. Nevertheless, the family have made it clear that they will continue to promote relationships between X and his father. L in particular has been very clear in her recognition and understanding of the relevance of the father to X.

[29] I am satisfied that the appropriate assessments have been completed both by the Trust in this jurisdiction and by TUSLA. The assessment completed by TUSLA will be shared with the Trust should a freeing order be made. I am also satisfied that the Trust post adoption team will remain involved with X should a freeing order be made. There will be further scrutiny in any event before any final adoption order is made involving the authorities both in the Republic of Ireland and here.

[30] The father has also sought an adjournment of these proceedings to have both a freeing order and any adoption order to be heard contemporaneously. I am satisfied there is no basis for this request. A freeing order application is a necessary step before an adoption order is to be considered.

[31] The father has expressed his desire to be reassessed on his release from prison. There are a number of difficulties facing the father. First, he has already had a number of assessments carried out which were commissioned and completed before his conviction for very significant drugs offending. The very serious offending which took place subsequent to those assessments militates further against the father. The release date he has suggested of August 2025 is simply the earliest possible release date available to him and is not guaranteed. Even if he were released at that time, he will be subject to licence conditions. There will be further risk assessments of the father regarding his offending. His associations will be looked at and how those could potentially affect X. There would have to be further assessments of his capacity to parent X taking into account the instability of the lifestyle he has chosen. All of this will add very considerable delay and is built on a foundation of assessments carried out before the father's conviction which clearly demonstrated that rehabilitation was not a realistic option for X. The father's desire for rehabilitation is understandable but it is both unrealistic and unachievable within any timescale which aligns with X's best interests.

[32] On a more positive note the father has made it clear that he is not seeking to disrupt the placement of X. It is the nature of the order with which he disagrees. X is well settled and is in a loving and secure environment. His physical, emotional and educational needs are being appropriately met. In considering whether a freeing order is appropriate and necessary I must consider and promote X's welfare throughout his childhood and have regard to the importance of providing him with a stable and harmonious home.

[33] X is thriving in the care of his current carers. He is a young boy who needs to be protected from emotional instability. At his young age he has no real understanding of his complex family circumstances. He is extremely attached to his grandparents and is secure in his extended family relationships. He is receiving a high level of care from L and her husband.

[34] I have ruled out rehabilitation to either parent and the options I must now consider for X are long-term fostering or freeing for adoption. I must look at the advantages and disadvantages of each proposed order to decide what is best to meet X's needs. The advantages and disadvantages of both long-term fostering and adoption have been considered by the Trust and by the Guardian. In considering both of those options I have taken into account all of the matters identified in the reports and in particular the analysis completed setting out the advantages and disadvantages of each type of order.

[35] X is entitled to an opportunity to live his life outside the care system. He needs to be protected from emotional instability. Long-term fostering would provide continuing Trust involvement in X's life until the age of 18 and the father would continue to enjoy parental responsibility. The principal disadvantages would be the lack of legal security in the carer's relationship with X and the possibility of further applications relating to his placement, the invasive nature of ongoing involvement by social services and the effective cessation of placement by the age of 18. The father argued that he has not disrupted X's placement and would not bring further applications if X was subject of long-term fostering. This may provide some support to the argument that he would not issue challenges in the future but it sits rather uneasily with his evidence about the toxic relationships in the family and his inability to have a relationship with his sister L. The nature of some of the father's challenges in these proceedings would also cause me some concern about his approach in the future. He is in my view unrealistic in some of the assertions made and the position that he is taking in this case. One example is his request for direct contact with X which will involve a return journey for this young child from Dublin to Magilligan prison.

[36] The most unrealistic position he is taking is that he believes that he can be reassessed on release from prison and gain the direct care of X at some early point in the future despite all of the evidence to the contrary. There appears to be very little positive engagement or efforts of engagement by the father in promoting X's welfare. Most of his challenges are centred on how they affect him. He has not been proactive in arranging consultations with social services. I am satisfied that the social worker in this case has made strenuous efforts to keep the father involved and informed. She has made numerous attempts at contacting him in prison. Full information has been provided through the LAC process. I can understand the father's frustration created by the communication difficulties, but there is a reality to his situation. He has been convicted of very serious criminal offending. He is in a custodial environment. Contact and communication with him is not straightforward and I am satisfied that the social worker in this case has made continuous attempts to contact the father by telephone, email, letter and personal visits. Most of the delay and the difficulty in speaking to the father has been caused by his circumstances and not a lack of effort by the Trust.

[37] Adoption for X will provide legal certainty and security for him with a reduction in statutory involvement and intervention and the avoidance of any sense of stigma or intrusion into family life. Research findings show that generally speaking, particularly for a young child like X, there are better opportunities and outcomes in permanent placement. Whilst such findings are helpful in a generic sense, I am conscious that each case is very fact specific and any reference to research is just one factor to be weighed in the balance. The principal disadvantage of adoption is the severing of all legal ties between a child and his parents and the challenges of potential placement breakdown.

[38] X would have a very long time in foster care ahead of him. Adoption would allow him to more fully integrate with his new family, improve and develop a sense of belonging and allow him to be invested with a real sense of security and certainty. X is entitled to an opportunity to live his life outside the care system and the restrictions that this would inevitably bring to his life. I am satisfied that X needs a sense of belonging and that he should have the continued protection, support and stability which he currently enjoys in his placement. I am satisfied that it is overwhelmingly in X's best interests that he should have the benefit of an adoption order rather than remain in long-term foster care. I have taken into account in reaching this conclusion the article 8 rights of both X and his parents. Whilst I acknowledge the importance of the bond between a child and his parent, I am satisfied that this is a case where freeing for adoption is both a necessary and a proportionate order.

[39] I must now consider whether or not the father is withholding his consent unreasonably. This question must be considered and answered according to an objective standard. The test is one of reasonableness. It is not a test of the love that a parent has for their child. The test is most straightforwardly formulated by posing the question – are the advantages of adoption for the welfare of the child sufficiently strong to justify overriding the views and interests of an objecting parent.

[40] I am satisfied that this is a case where a reasonable parent aware of all the factors and in particular the welfare effects, would recognise the benefits of adoption to X and would recognise the unreasonableness of refusing consent. This is a case where the advantages of adoption for X are sufficiently strong to justify overriding the views and interests of the parent. I am satisfied that a freeing order is in the best interests of X and is both proportionate and necessary. I, therefore, dispense with the need for the father's consent and I make a freeing order in respect of X.

[41] The mother has already indicated that she has no desire to participate in these proceedings or to be further involved with X. I make the same dispensation of the need for her consent in relation to the freeing order.

[42] Another aspect of the father's criticisms in this case has been on the level and nature of contact. There is no ongoing contact for X with his mother. He has no contact with his half siblings. Contact with the father is by way of video contact. This has not been without its own difficulties. The father's behaviour is at times inappropriate and sadly X has become distressed after calls and has had nightmares. L has been proactive in providing information through the social worker to the father to facilitate and improve contact. She has engaged in contact and prompted both X and the father during the video call to help improve the quality of contact. I was told this has helped. However, all of the problems have not been solved.

[43] The father objects to the Trust proposals for contact. He seeks direct contact. His position in my view is simply untenable. The father currently remains in Magilligan prison. X resides in Dublin. A conservative estimate of the round-trip

travel time for this young child would be 7-8 hours. The father's request, in my view, is not child focused in any respect. I am satisfied with the level of commitment shown not just by the Trust but also by L in promoting contact and in promoting the quality of that contact. L has always put X's needs first. It is also clear that the current proposals for indirect contact are based on the father's current situation and will be reviewed by the normal LAC process. It is clear that the father can take steps to improve the quality of contact which is currently available to him. L has played a very significant role in supporting X and encouraging responses. The father has raised through his counsel criticisms of some of the contacts including their location and also references made to family events. The father perceives these to be deliberate and malicious attempts to annoy him or disrupt contact. Having heard the evidence I am satisfied that this demonstrates again how the father's focus is firmly placed upon himself. The social worker has confirmed that L is open to extending contact and also to meeting with the father. Both the Trust and L are keen to work in partnership with the father and the post adoption team will remain involved.

[44] Another aspect of the contact is the lack of contact between X and his siblings. It would appear that this aspect of X's needs has been overshadowed by the difficulties in contact with the father. None of the siblings remain in the care of their mother and are in different placements. The carers have indicated to the Guardian that they would welcome further information about the siblings to be able to support X. They will form an important part of his life story work. Both the Trust and the carers have indicated that this contact will be carefully looked at and promoted.

[45] I am satisfied that the current proposals of the Trust for contact are appropriate.

[46] I make a freeing order in respect of X.

[47] I discharge the Guardian.