

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Bronagh (a pseudonym) (Application to free for adoption)

STEPHENS J

Introduction

[1] This is an application by a Trust pursuant to Article 18(1) of the Adoption (Northern Ireland) Order 1987 to free for adoption a 2 year old girl whom I shall call Bronagh, though that is not her real name. Bronagh was born in April 2009. She has been placed with her dual approved foster parents since April 2010.

[2] I have anonymised this judgment by the use of pseudonyms in relation to Bronagh and in relation to her half siblings. Nothing should be published which would identify any of the children or any member of their extended families. Any report of this judgment should make it known that the names used in relation to the children are pseudonyms. Prior to publication of this judgment on the Court Service website I afford the parties the opportunity of considering the pseudonyms and if they consider them inappropriate to either suggest an alternative or to request anonymisation by the use of initials. If any party wishes to avail of this opportunity then the Office of Care and Protection should be informed in writing within one week. If the Office is not so informed then the present pseudonyms will remain.

[3] In addition the parties are requested to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week as to whether there is any reason why it should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be submitted to the Library for publication in its present form.

Family Structure

[4] Bronagh's mother, ~M~, is 21. ~M~ has been involved with Social Services since 2002 following allegations that her brother and cousin tried to rape her. In 2003 at the age of 14 ~M~ became pregnant as a result of a rape by a 41 year old man and her first child Ciara was conceived and then born in November 2003. ~M~ has a full scale IQ of 76 and mild learning disability. It is apparent that she had an extremely difficult upbringing and it is a matter of regret that these negative early experiences and trauma have impacted adversely on her ability to parent her children despite the provision of residential assessments and educative programmes for examples of which see Dr McDonnell's report in 2008.

[5] Bronagh's father, ~F~, is 21. ~F~ has also been known to Social Services for a considerable period of time. He was placed on the child protection register in 1989. It is also apparent that he had a difficult upbringing and that this also has negatively impacted on his ability to parent a child despite the provision of a residential assessment and educative programmes.

[8] Bronagh has half siblings:-

- (a) Ciara, though that is not her real name, is 7 and her father is ~E~. Ciara has been freed for adoption. The freeing order was made on the basis of evidence that ~M~ was not capable nor was committed to caring for her for any length of time on her own. In 2005 Ciara was exhibiting sexualised behaviours within and outside the family home.
- (b) Ronan, though that is not his real name, is 3, and his father is stated to be ~S~ though this has not been confirmed. Ronan has been freed for adoption.

[9] The potential for a placement of Bronagh with her half siblings has been considered (1/150). It was evident that her half siblings have complex needs and I consider that there is a high risk that their placements would be compromised if Bronagh was in the same placement.

[10] Bronagh's maternal grandparents have been involved with Social Services since 1972 in relation to inadequate parenting and lack of appropriate supervision.

[11] Bronagh's paternal grandparents have been known to Social Services since June 1987. There have been numerous concerns about the volatile relationship between them including serious domestic violence and the impact this has had on their children. Bronagh's father, ~F~, states that as he

grew older he began to stand up to his father to protect his mother (1/48/2.56).

Bronagh

[12] Bronagh has already suffered considerable disruption in her short life. She was initially placed with her mother in a mother and baby foster care arrangement. ~M~ did not continue to reside in this placement upon the granting of the interim care order but there was then a high level of contact for Bronagh with both of her parents together with a community based parenting assessment. Bronagh then moved with her parents to a residential assessment in Thorndale. This lasted approximately 6 weeks and then disrupted. Instead of returning to the original foster placement, Bronagh was placed with another foster parent, in October 2009. This was a short term foster placement. As a result of her experiences and prior to the care order being made she was a watchful, clingy child who became distressed and agitated if she was out of view of her then foster carer even momentarily. The new foster carer became her primary attachment figure. Unfortunately due to the short term nature of that placement she had to move again on 22 April 2010. This move involved an intensive phase of introduction of Bronagh to her current placement. Her present foster parents are dual approved. She has settled in that placement and is now a vocal, lively, active child who is progressing very positively overall though with some continuing signs of wariness. She has a steady routine.

[13] Bronagh has good contact with both of her parents. She has familiarity with both of them. ~F~ engages more with Bronagh during contact. Both parents are committed to contact with Bronagh.

[14] Bronagh has lived with ~M~ between her birth in April 2009 and the interim care order on 14 May 2009 and for a matter of weeks during the Thorndale residential assessment. Her primary attachment is to her current foster carers who are her prospective adopters.

Contact if a freeing order is made

[15] The Trust propose that if a freeing order is made there should be post freeing direct contact with Bronagh's parents and also with Bronagh's half-siblings on a twice yearly basis. Indirect contact is also proposed. The proposed adopters of Bronagh are her present foster carers and they agree with post adoption direct and indirect contact. The adopters of Bronagh's half siblings are agreeable to contact between Ciara, Ronan and Bronagh. The prospective adopters of Bronagh are prepared to meet with ~M~ and ~F~.

[16] The purpose of post adoption contact is to help a child with a greater understanding of her life history and understanding of her parents, for

instance that they remain in good health. I consider that the amount of post adoption contact being suggested by the Trust is appropriate to meet those needs if in the event I decide to make a freeing order.

[17] If I do make a freeing order then in relation to the question as to whether I should make a contact order I refer to the decisions of Gillen J in *Re: NI and NS (Freeing for Adoption without parental consent: Case Order)* [2001] NI Fam 7 and *In the matter of J (Freeing without consent)* [2002] NI Fam 8. There needs to be flexibility and accordingly if I did make a freeing order then I consider that the no order principle should apply to the question of a contact order and I would decline to make a contact order.

Proceedings to date

[18] Bronagh was born in April 2009. It was agreed with the Trust that Bronagh and her mother would remain in hospital until 5 May 2009 (1/53). The Trust brought an application for an interim care order on 1 May 2009 (1/4). I granted an interim care order on 14 May 2009 on the basis of an interim care plan that involved educative work for both parents together with supports and assessments (1/68). The work was to be undertaken at the Riverside Family Centre and was to be in two phases. There was to be an assessment of ~F~ in relation to anger management (1/71). A move to a Thorndale Residential Assessment was contemplated.

[19] On 11 November 2009 threshold criteria were agreed between both parents and the Trust. I approved those criteria.

[20] I granted a full care order on the basis of a care plan (1/121a) that Bronagh would be freed for adoption which ruled out rehabilitation to either parent, whether individually or as a couple, on 12 April 2010. The decision to grant a full care order was a decision made on the papers in that the parents chose not to give evidence nor did they wish to challenge by way of cross-examination any of the conclusions arrived at by the Trust or the Guardian ad litem. During the course of the hearing for a full care order I remarked that the care plan which was for permanency by way of adoption did not contain a timetable for adoption. At the conclusion of the application for a care order I discussed with counsel for all the parties what would be a suitable timescale within which the Trust should bring an application to free Bronagh for adoption. A timetable was set recognising Bronagh's need for a prompt decision and this was done without any objection from counsel for either of the parents. It did not allow any time for any substantial further assessment of the parents. The nature of the evidence was such and the conclusion that I had then reached during the course of the care proceedings were such that it was not then envisaged that there could be any substantial change of circumstances by either parent within an appropriate timescale for Bronagh.

Educative programmes and assessments

[21] On 26 August 2006 an educative parenting programme was carried out by the Trust in relation to ~M~ and both of her parents. The conclusion was that whereas ~M~ could verbalise Ciara's needs she appeared to lack the necessary maturity to care for Ciara (1/44/2.28).

[22] A residential parenting assessment at Thorndale was offered to ~M~ but with the placement beginning on 15 October 2006. ~M~ declined that placement preferring a placement in PACT (1/44/2.29). The assessment by PACT was postponed until ~M~ demonstrated a commitment to meeting Ciara's needs (1/45/2.34). It commenced on 18 January 2007 (1/45). The conclusion of that assessment was that it would be difficult to envisage that ~M~ would be able to adequately protect and meet Ciara's needs (1/45/2.35).

[23] ~M~ undertook a psychological assessment with Dr Galbraith in November 2006. She attained a full scale IQ of 76 (1/45/2.31).

[24] On 10 August 2007 ~M~ moved into a PACT residential assessment with Ronan who had been born in 5 July 2007. This was a 12 week residential parenting assessment and also was aimed at developing independent living skills with advice, support and educative input as appropriate (1/46/2.43). PACT staff concluded that ~M~ was consistently unable to provide adequate care for Ronan in relation to feeding, dressing, hygiene, physical care, budgeting and medical care (1/46/2.44). She was also assessed as being unable to meet her son's emotional needs by providing opportunities for stimulation and play.

[25] On 2 March 2009 a pre birth case conference was held in relation to the then unborn baby Bronagh. A number of steps were planned including:-

- (a) The previous assessments in relation to ~M~ were to be reviewed to identify specific areas of assessment.
- (b) There was to be an initial assessment of ~F~ in relation to his engagement/commitment to the child protection process.
- (c) A check was to be made as to the availability of a Thorndale residential assessment.
- (d) Family support workers were to be available.
- (e) Core group meetings were to take place regularly.

[26] An assessment of ~F~ and ~M~ was completed. It concluded that ~F~ may offer some potential as a parent but due to concerns in respect of the

instability of their relationship, minimising of concerns in relation to domestic violence and alcohol misuse, a parenting assessment with an element of educative work was required (1/31/3.15).

[27] ~F~ has been advised to make an appointment with his general practitioner in order to process a referral to the addiction treatment unit (1/53/4.5).

[28] Educative supports and assessments were part of the interim care plan leading to the interim care order on 14 May 2009. I have already described those supports and assessments.

[29] On 3 June 2009 a report was received from the Riverside Family Centre (1/73). It is apparent from that report that on 3 June 2009 ~M~ criticised and ventilated loudly to ~F~ for over 45 minutes in front of Bronagh, who was asleep, about how she felt he had not carried out the bathing procedure of the baby that morning. Her criticism was extreme and continued to escalate in anger until it was deemed necessary to request she leave the assessment. When she re-entered the room she physically took the baby from ~F~'s arms even when advised not to due to her emotional state. Concerns for the safety of the baby while ~M~ was holding her and then attempted to change the baby were greatly heightened and staff remained in the room. The conclusion of the assessment was that ~F~ had become more proactive and is accepting of advice and direction, that he was clearly building an affectionate bond with his daughter and enjoys undertaking her basic care; however that ~M~ can be loud and is constantly directing ~F~; that there has been increased tension in their relationship and that ~M~ has become more aggressive and critical in her attitude to ~F~ and appears to resent that he wants to spend more time with his daughter than with her, yet she requests that he undertakes most of the caring duties. ~M~ has no concept of how her aggression is impacting on the baby as she is unaware of the baby when in these periods of verbal outbursts. ~M~ presents as a very controlling person who is very rigid in her thinking and clearly puts her needs before anything else.

[30] Despite the negative aspects of that report and on 1 September 2009 Bronagh moved to Thorndale with both of her parents for a residential assessment. Unfortunately the dominant feature of the 5 week assessment was her parents' turbulent and volatile relationship (1/100/1.1). On 13 September 2009 ~M~ required to be accommodated in a separate flat after Bronagh had been exposed to her parents' verbal aggression over two days (1/100/1.2). On 30 September 2009 ~M~ moved out of Thorndale with ~F~ adamantly stating that their relationship was over (1/101/1.7). The assessment continued in relation to ~F~ alone. He failed to engage with staff or to follow their advice and was aggressive. The assessment came to an end

on 21 October 2009. Neither parent was assessed as suitable to care for Bronagh.

[31] Marcella Leonard, Independent Social Work Consultant, was commissioned by the solicitors for ~F~ and ~M~ to carry out an assessment of their parenting skills. Her report is dated 19 March 2010. It is evident from that report that the relationship between ~F~ and ~M~ is unstable, involves domestic violence, arguments and relationship breakdown; that ~M~ lacks the understanding of the impact on the emotional attachment development of children; that ~M~ presents as an immature, young adult who appears to be struggling in managing daily life events and the challenges her relationship with ~F~ presents and therefore is not able to tune into the needs of a child; and that ~M~ cannot cope with stress and may revert to self harm behaviour. Ms Leonard was of the opinion that ~M~ would require significant educational input as to what constitutes physical and emotional harm and how these could present within her relationship with ~F~ and others. However Ms Leonard was concerned that ~M~ may not be ready to take this information on board given as a couple they have been unable to maintain a commitment to attend sessions at Riverside Family Centre and given ~M~'s mild learning disability.

[32] In relation to ~F~ Ms Leonard stated that he has demonstrated an ability to meet the physical and practical needs of Bronagh but that he struggles with the emotional needs; that he lacks an understanding of the depth of emotional trauma which can be caused to a child not only in seeing carers argue but in hearing them as well. He stated that he appreciated that he could not parent Bronagh on his own. Ms Leonard was of the opinion that ~F~ appears to be able to take on board education and advice regarding the practical parenting but significantly lacks the awareness of the importance of the emotional and developmental needs of Bronagh. She also referred to the fact that they were offered as a couple six sessions at Riverside Family Centre for educative work but only attended two. Ms Leonard was also of the opinion that ~F~ lacked an understanding of what is emotional safety and the importance of this for a child's development. She raised concerns over his ability at this stage in his life to fully take on board the issue of safety. ~F~ was adamant that he did not perceive he had any areas within his behaviour which needed to change. He presented with animosity towards Social Services and Thorndale staff. He does not see the point of attending the addiction treatment unit at a nearby hospital. He acknowledged that his relationship with ~M~ was rowdy at times. It was evident that both ~F~ and ~M~ acknowledged their on-off relationship, their frequent arguments and history of domestic violence.

Alcohol Misuse and Aggression from ~F~

[33] On 20 December 2008 ~F~ was arrested for assault on police, disorderly behaviour and resisting arrest whilst under the influence of alcohol (2/50/3.7).

[34] On 17 April 2009 ~F~ came back to the home he shared with ~M~ with alcohol consumed. He banged on the door and ~M~ called the police (1/51/3.16).

Instability of parental relationship

[35] The relationship between ~M~ and ~F~ commenced in December 2007. On 16 May 2008 ~M~ and ~F~ reported that, following an argument whilst in a pub, ~F~ had walked 8 miles home (1/47/2.49).

[36] In June and September 2008 the Trust was receiving information that the relationship had come to an end but this was denied by both ~M~ and ~F~.

[37] In October 2008 the paternal grandmother informed a social worker that there had been an argument between ~F~ and ~M~ and that ~M~ had attempted to strangle ~F~. The relationship had come to an end and ~F~ had returned to live with his family (1/49/3.5). The police were involved in this incident. ~M~ however states that she was grabbed by the throat.

[38] On 14 February 2009 ~F~ informed the social worker that his relationship with ~M~ had ended as ~M~ was too bossy and he could not take it anymore (1/50/3.9). By 17 February 2009 however both ~M~ and ~F~ were denying that their relationship had ended at any time.

Minimising the Trust's concerns in failing to deal openly and honestly with the Trust

[39] ~M~ originally denied to the Trust being pregnant with Bronagh but it is apparent that she had attended a family planning clinic and was prescribed folic acid tablets usually prescribed to women who are or are seeking to be pregnant (1/49/3.4). This is but one example of the ways in which both of the parents are not open and frank with social services.

Depression

[40] On 28 May 2008 ~M~ stated that she had taken an overdose of tablets the previous night (1/47/2.49).

Legal Principles

[41] To determine the application to free Bronagh for adoption there is in essence a two stage process. First I have to consider in accordance with Article 9 of the Adoption (Northern Ireland) Order 1987 whether adoption is in Bronagh's best interests. Second, where as here, Bronagh's parents do not consent to adoption, whether the Trust has established on the balance of probabilities that both parents are withholding their consent unreasonably within the meaning of Article 16(2) of the Adoption (Northern Ireland) Order 1987. In that respect I refer to the test in the majority of the House of Lords at paragraph [70] of *Down Lisburn Health & Social Services Trust v. H* [2006] UKHL 36. I say in essence there is a two stage process because there are also a number of other matters which I am required to and will consider. They are:-

- (a) Whether Bronagh is in the care of an adoption agency within the meaning of Articles 18(2)(a) and 18(2)(A) of the Adoption (Northern Ireland) Order 1987.
- (b) Whether it is likely if I make a freeing order that Bronagh will be placed for adoption, see Article 18(2)(b) of the Adoption (Northern Ireland) Order 1987.
- (c) Whether a freeing order is a necessary and proportionate response to the interference with the right to respect for family life.
- (d) Whether I am satisfied in accordance with Article 17(6) of the Adoption (Northern Ireland) Order 1987 that Bronagh's parents have no intention of applying for:-
 - (i) an order under Article 7(1) of the Children (Northern Ireland) Order 1995; or
 - (ii) a residence order under Article 10 of that Order,or if they did make such an application it would be likely to be refused.
- (e) Whether I am satisfied in relation to each parent that they have been given an opportunity of making, if they so wish, a declaration that they prefer not to be involved in future questions concerning the adoption to Bronagh.

[42] The Article 8 rights of all the family members are engaged. Any interference has to be in accordance with the law and necessary in a

democratic society, in other words that it can be justified as a proportionate response to a legitimate aim (protecting health or morals and the rights and freedoms of others); or as the European Court puts it when considering the substance of the interference, that the reasons for the interference are “relevant and sufficient”.

[43] As a public authority the court has a duty to act compatibly with Convention rights. If a court takes the view that convention rights have been infringed in a case before it, then the duty on the court requires it to say so. In *Principal Report v K and others (Scotland)* [2010] UKSC 56 Lady Hale stated at paragraph [41] in relation to Article 8:-

“[41] ... there are positive procedural obligations inherent in the right to respect for family life. Parents must be enabled to play a proper part in the decision-making process *before* the authorities interfere in their family life with their children. This has been established time and time again in the Strasbourg jurisprudence, dating back to *W v United Kingdom* (1987) 10 EHRR 29, at para 64:

“64. . . . In the Court’s view, what therefore has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as ‘necessary’ within the meaning of article 8.”

[44] The requirement that there are sufficient procedural safeguards where fundamental rights are in issue is to ensure that the interference is “necessary in a democratic society”; in other words, that it can be justified as a proportionate response to a legitimate aim. The European Court of Human Rights reiterated in *Yousef v The Netherlands; (Application No 33711/96)* [2003] 1 FLR 210 that in judicial decisions where the rights under Art 8 of parents and those of a child are at stake, the child’s rights must be the paramount consideration. If any balancing of interests is necessary, the interests of the child must prevail (see *Elsholz v Germany* (2002) 34 EHRR 58, [200] 2 FLR 486, para 52 and *TP and KM v United Kingdom* (2002) 34 EHRR 2, [2001] 2 FLR 549, para 72).

Events since the Care Order was made on 12 April 2010

[45] A major factual contention on behalf of the parents was that since the care order was made on 12 April 2010 they have recognised a need to address their relationship difficulties and that their relationship has improved as a consequence. This was the account which they gave to the guardian ad litem on 30 September 2010 and they indicated to her that they had entered an improved and more harmonious relationship with each other. In the assessment of the guardian that was also their presentation on that date.

[46] In ~M~'s statement dated 8 October 2010 she recorded that her relationship with ~F~ had "entered a very calm period in which they sought to work together in partnership" and that ~F~ had dramatically altered his lifestyle in recent months. The statement continued:-

"He expresses no interest in socialising outside our home and has abstained from alcohol for 4 months."

That dates the commencement of ~F~'s abstinence from alcohol as June 2010.

[47] In ~F~'s statement dated 15 October 2010 he recounted that whereas there had been some incidents in the past concerning his consumption of alcohol that he was now "totally abstinent". Also that he has now realised that there is a need for him to work on his relationship with ~M~. Since this realisation and coming to an understanding as to ~M~'s depression at a deeper level their relationship had:

"entered a new and rewarding phase resulting in new found happiness and stability".

[48] Doctor Patrick Manley, Consultant Psychiatrist, retained on behalf of ~M~, assessed her on 14 October 2010 and reported on 20 October 2010. She informed him that her partner, ~F~ was drinking up to about 5 months ago but that he had cut back significantly since that time. That would have dated the start of the cutback in alcohol consumption by ~F~ to approximately May 2010. She admitted that he could be angry when drinking with a tendency to nasty comments and episodic physical aggression. She admitted that he had hit her on two occasions during which he punched her during episodes of anger when intoxicated. She recounted that his behaviour had significantly improved since he stopped drinking.

[49] There was no mention in either ~M~'s statement of 8 October 2010 or in ~F~'s statement of 15 October 2010 of an incident which occurred on 7 July 2010, nor did ~M~ recount this incident to Dr Manley when he examined her

on 14 October 2010. This incident occurred at a time when ~M~ was asserting that ~F~ did not socialise outside their home and had abstained from alcohol.

[50] The Police Service of Northern Ireland's record of what occurred on 7 July 2010 is that at 11.05pm ~M~ phoned the police to report that her "*ex partner*" (emphasis added) had turned up at her home address and was causing a disturbance and threatening to break her windows. The police attended and ~M~ alleged that ~F~ had been abusive to her and threatened to put a brick through her window. She said that he had been drinking since the afternoon and that he was heavily intoxicated. ~F~ was arrested for threats to commit criminal damage.

[51] In her evidence ~M~ stated that she and ~F~ had "a wee bit" of a difference of opinion that day about him going for his driving test and "silly things like that". He was angry, stormed out of the house, went drinking and, upon his return, he was abusive and lifted a brick, threatening to throw it through a window. She called the police. Apart from this incident and "differences from time to time" she and ~F~ had been "getting on great". She saw the incident of 7 July 2010 as "a hiccup."

[52] ~F~ in evidence stated that he did not think it necessary to tell anyone about the incident as he did not think it "that big of a deal in all honesty". It was just a petty argument. He was asked as to what would have happened to a person standing behind the glass of a window if a brick had been thrown through the window. He replied "They get the full brunt of it" but this acknowledgement was accompanied by an amused demeanour demonstrating by how he said it that he has no insight into the seriousness of this incident.

[53] ~F~'s evidence continued that if Bronagh had been at home he would not have gone home after drinking. That he was in fact very intoxicated. That he does not argue very often with ~M~.

[54] Neither of the parents disclosed information as to the events of 7 July 2010 in their statements dated respectively 8 and 15 October 2010. Instead they presented a new period of domestic harmony. It was asserted that ~F~ was not socialising at the home since June 2010 and was abstinent from alcohol. All of this was incorrect in that on 7 July 2010 they had a disagreement, he stormed out of the house, and went to the pub. He became grossly intoxicated and was abusive and was barred from entering the home by ~M~. He was threatening to throw a brick through the window and she had to call the police. He was arrested. A relatively trivial matter between the two of them appears to have prompted a serious argument ending up with police attendance and an arrest.

[55] I have given consideration as to whether the description in their statements was false to their knowledge or whether they continue to have no insight into the nature and extent of the incident on 7 July 2010. I conclude that it was a combination of the two. They present as very young and immature without any grasp of the need to tell the entire truth or of the fact that what occurred is entirely unacceptable. ~M~ describes what occurred as “a hiccup.” ~F~ did not think it was a “big deal.” They have both become inured to unacceptable levels of domestic violence and abuse. They continue to lack basic insight. However in addition they have known of the concerns of the Trust and of the Guardian as to the instability of their relationship together with alcohol abuse and domestic violence. They would have known that this incident should have been recounted and that the picture that they were putting forward in their statements was incomplete and false to their knowledge. I do not consider them to be honest witnesses. They have previously not been frank and open with the Trust. That remains the position. They did nothing to bring any of these alleged changes of circumstances to the attention of their own lawyers until days before the hearing on 21 October 2010. That lack of activity on their part is entirely consistent with there being in reality no substance to the alleged changes in circumstances. I do not accept their evidence that there has been any improvement of substance in their relationship or in the abuse of alcohol by ~F~. I do not accept that they have gained insight.

[56] One explanation put forward on behalf of the parents was that they were confused as to the date upon which the change in their circumstances occurred. ~M~ dated the commencement as June 2010. I do not consider that there has been any confusion in their minds as between June and July 2010. I consider that they were depicting a longer period of alleged domestic harmony and that they deliberately did not reveal what had occurred on 7 July 2010.

[57] It was the evidence of both parents that there has been change since 7 July 2010 as opposed to from June 2010. I do not accept that evidence.

[58] It was contended on behalf of the parents that in view of the improvements that had occurred that there should now be a period of further assessment and counselling of them. No definition was brought to those assessments of the parents nor any timescale enunciated. The issue was dealt with in cross-examination of the social worker on behalf of the Trust and of the Guardian ad litem. I accept the Guardian’s evidence that there would have to be a number of preparatory steps before a residential parental assessment could be carried out. ~F~’s issues with alcohol would have to be addressed before they could enter a residential assessment. There would have to be relationship counselling and ~F~ would have to recognise the deficits of ~M~’s parenting so that he could compensate for them. Some of these assessments could run concurrently but given the history of alcohol in

this case it was the Guardian's view that there should be a one year alcohol free period with no incidents prior to a residential assessment. I accept that evidence. A relationship counselling course would take 3-5 months once the parents got onto the course. There are waiting lists. Overall the best estimate is that it would be one year before a residential assessment could be accessed. Residential assessments last 12 weeks but the assessment could be extended. Overall the timescale of a further assessment of parents would be over 1 year and 3 months if it was to run its full course. If the initial stages continue to demonstrate such parenting deficits that a residential assessment would not be appropriate then it would take a shorter period. However the parents are contending that it would be a success and therefore they contend that the period to be contemplated is that of approximately 1 year and 3 months. They accept that during that period Bronagh would remain in the same foster placement with the dual approved carers.

[59] As is apparent, I do not accept the premise that there have been improvements in relation to either parent, but even if that premise was correct then I consider that:-

- (a) Neither would be assessed as competent enough at the end of any assessment period.
- (b) The timescale is inappropriate for Bronagh who is now 2 and needs stability and a secure placement.
- (c) The residential assessment would come at great cost to Bronagh who would be removed from her primary attachment figures.

[60] I do not consider that there is any prospect of Bronagh being in a placement with either or both of her parents either within a suitable timescale or at all.

The lack of further assessments of the parents by the Trust between 12 April 2010 and the hearing of the freeing application

[61] The Trust did not carry out any assessment of either parent between the care order on 12 April 2010 and the hearing of the freeing application.

[62] A letter was sent to the parents on 10 August 2010 informing them of and inviting them to a Looked After Child Meeting on 14 September 2010. The parents' solicitors were not informed and accordingly the solicitors did not know of this meeting. In the past the solicitors had taken steps to arrange for the parents to attend. Without the assistance of their solicitors neither of the parents attended. They had been given an opportunity to attend but on this occasion the steps taken by the Trust to secure their attendance were not as full as had previously been taken.

[63] If the parents had attended the Looked After Child meeting on 14 September 2010 or if the Trust had assessed the parents between the incident on 7 July 2010 and the hearing of the freeing application on 21 October 2010 then it is questionable as to what the Trust would have been told. On the basis of my factual findings if an honest or insightful account was then being given by the parents it would not have revealed any change of circumstance.

Conclusion in relation to the assessments of the parents

[64] The most reliable and valid assessment in this case are the assessments at Riverside and Thorndale. They were detailed assessments when the parents were under observation for long periods of time with no opportunity for inaccurate self-reporting of their skills, insights and abilities. Those assessments revealed that neither of the parents was able to care for Bronagh either alone or together. I do not accept the proposition that there has been any subsequent change by either of the parents. Particularly in relation to ~M~ there has been a long history of attempts for her to learn and these have proved unsuccessful.

Best interests

[65] Rehabilitation of Bronagh to the care of either of her parents is not a realistic prospect either within an appropriate timescale or at all. I am sure that Bronagh's parents are unable to change their lifestyles on a permanent basis so as to ensure the security, stability and safety of Bronagh. They have failed to prioritise Bronagh's needs. There has been alcohol abuse by ~F~. There has been sustained domestic violence. There is a lack of insight into these shortcomings. They have failed to avail successfully of professional help. There is major instability in their relationship.

[66] There is no kinship placement available for Bronagh.

[67] The remaining options available for Bronagh include long-term foster-care or freeing for adoption. Bronagh urgently needs stability and security in her life. In general terms adoption has considerable advantages over long-term fostering in providing that stability and security. Thus in general terms adoption can emphasise stability, commitment and security for the child involved. It can provide a greater sense of belonging for a child. There can be disadvantages to long-term foster-care in that there is intrusion from Social Services, a drift can happen with the child moving from one place to another and it tends to reinforce impermanence. Adoptive parents in general bring a different commitment to the task of parenting and this appears to lead to greater closeness between parent and child. In that respect I refer to and adopt the reasoning in the penultimate paragraph of the judgment of Ormrod LJ in *Re H (Adoption: Parental Agreement)* [1982] 3 FLR 386.

[68] I have considered the disadvantages of adoption including the potential loss of or, at least, diminution in contact with the birth family. I take into account the proposals for post freeing contact with the birth family. I consider that the advantages of adoption for Bronagh far outweigh the disadvantages.

[69] I have considered all the circumstances of this case and I conclude that adoption is in Bronagh's best interest.

Whether the parents are unreasonably withholding their agreement to the making of an adoption order

[70] Amongst the factors I have been asked to and do consider, in relation to the question as to whether the parents are unreasonably withholding their consent to freeing Bronagh for adoption, are whether:-

- (a) there has been a breach by the Trust of Article 8 in that it failed to keep in contact with either of the parents after the full care order was made on 12 April 2010 in order to assess any potential change in their circumstances. If there was a failure by the Trust to comply with its obligations under Article 8 of the Convention then that should be stated but it is not determinative of the application see *Yousef v The Netherlands*; (*Application No 33711/96*) [2003] 1 FLR 210; and
- (b) there are facts which give rise to a bona fide and reasonable sense of injustice. If such facts exist that factor has to be weighed alongside the other circumstances of the case, including Bronagh's welfare and the advantages of adoption, see *BA (Wardship & Adoption)* [1985] FLR 1008.

[71] I have set out the facts in relation to what occurred after the full care order was made on 12 April 2010. I consider that there was minimal contact by the Trust with the parents after 12 April 2010 but that, overall, the decision making process was fair and such as to afford due respect to the interests safeguarded by Article 8. Both of the parents were involved procedurally from the commencement of the freeing application, being parties to it. Each parent was separately legally represented by solicitors, senior and junior counsel. I do not consider that there has been a breach of the positive procedural obligations on the Trust.

[72] In any event in balancing the interests of the parents and Bronagh the interests of Bronagh prevail.

[73] I have rejected the factual basis for a bona fide or reasonable sense of injustice of any real substance on the basis that I do not accept that any change has occurred in the parents' circumstances.

[74] I also consider that the advantages of adoption are such that a hypothetical reasonable parent would not on the basis of any sense of grievance on the facts of this case refuse to consent.

[75] I conclude that both parents are unreasonably withholding their consent (as judged as at the date of the hearing) to an Adoption Order based on the factual conclusions and the circumstances which I have set out in this judgment. I am certain that a reasonable parent, recognising the factual findings that I have made, would not withhold consent on any reasonable basis. There is no prospect of rehabilitation to the parents either individually or as a couple either at all or within an appropriate timescale. The placement with the prospective adopters identified by the Trust fulfils Bronagh's need for a safe secure environment and yet has the potential for contact with her birth family group. I recognise that there is a band of differing decisions each of which may be reasonable in a given case. I have been wary not to substitute my own views for that of the reasonable parent.

[76] I have heard evidence, which I accept, that it is likely that Bronagh will be placed for adoption.

[77] Adoption is in accordance with the law and it is for a legitimate aim (in this case the protection of the health and morals and the rights and freedoms of Bronagh). I consider again for the reasons set out in this judgment that a Freeing Order is a necessary and proportionate response to the interference with the right to respect for family life. I make it clear that I consider that adoption is a wholly proportionate response to the circumstances of this case given the factual conclusions I have made and the advantages of adoption to the welfare of Bronagh.

Conclusion

[78] I make an order freeing Bronagh for adoption.

[79] I direct that any adoption application is to be heard by myself and that a copy of this judgment should be placed on the adoption file.