

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION

BETWEEN: _____

IN THE MATTER OF TMH (FREEING WITHOUT CONSENT)

Stephens J

Introduction

[1] The Trust, which I will not identify, brings an application to free TMH for adoption under Article 18 of the Adoption (Northern Ireland) Order 1987. TMH's mother, Ms MH, also brought an application to discharge a Care Order made on 11 March 2008 so that TMH could be returned to her care. Both applications were to be heard at the same time before me but at the start of the hearing I was informed that Ms MH did not wish to proceed with her application and sought leave to withdraw it. That was an entirely proper approach to take in view of the factual findings and decisions that I make in relation to the application to free TMH for adoption. Leave was granted to withdraw that application.

[2] Mr Toner QC and Ms Louise Murphy appeared on behalf of the Trust. Ms McGreenera QC and Ms McCaffrey appeared on behalf of TMH's mother Ms MH. Mrs Keegan QC and Ms Bowman-McAlister appeared on behalf of TMH. I am grateful to counsel for their thorough and helpful presentation of all the issues in this case.

[3] The judgment in this case is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them may be identified by name or location and that in particular the anonymity of the child and the adult members of the family must be strictly preserved. I will refer to –

- (a) the child as **TMH**
- (b) the mother as **Ms MH**
- (c) the father as **FN**

- (d) the maternal grandmother as **Mrs PH**
- (e) the father of the child's maternal half sibling as **DL**
- (f) the child's maternal half sibling as **TL**
- (g) the partner of the child's mother in 2003 as **Mr B**
- (h) the present partner of the child's mother as **Mr Q**
- (i) the proposed adoptive parent of the child as **Ms SO**
- (j) the child's foster carers since 2006 as **Mr and Mrs S**

All counsel in this case are directed to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week of today's date as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication.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.

[4] The remaining application to free TMH for adoption is made without the agreement of TMH's mother, Ms MH. TMH's father, FN, has played no part in TMH's life since 2003. His whereabouts are unknown and it has not been possible to contact him for the purposes of these proceedings. His name does not appear on TMH's birth certificate. He does not have parental responsibility within the technical statutory meaning of Articles 5, 6 and 7 of the Children (Northern Ireland) Order 1995 and accordingly he is not a parent within the technical statutory meaning of Article 2(2) of the Adoption (Northern Ireland) Order 1987. Therefore the question of dispensing with his agreement under Article 18(1) of that Order does not arise.

The legal tests

[5] To determine this application I have to consider:-

- (a) The duty to promote the welfare of TMH under Article 9 of the Adoption (Northern Ireland) Order 1987. Article 9 provides:-

"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.”

(b) Whether to dispense with the agreement of Ms MH to the making of the Adoption Order on the grounds that she is withholding her agreement unreasonably within the terms of Article 16(2) of the Adoption (Northern Ireland) Order 1987. In that respect I refer to the test set out by the majority of the House of Lords at paragraph [70] of *Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36.

(c) Whether TMH is in the care of an adoption agency within the meaning of Articles 18(2)(a) and 18(2A) of the Adoption (Northern Ireland) Order 1987. I conclude that she is, a Care Order having been made in this case.

(d) Whether it is likely that if I make a freeing order TMH will be placed for adoption, see Article 18(2)(b) of the Adoption (Northern Ireland) Order 1987.

(e) Whether a freeing order is a necessary and proportionate response to the interference with the right to respect for family life.

(f) Whether I am satisfied in accordance with Article 17(6) of the Adoption Order (Northern Ireland) 1987 that TMH’s father, FN, has 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 he did make such an application it would be likely to be refused.

- (g) Whether I am satisfied in relation to TMH's mother, Ms MH, that she has been given an opportunity of making, if she so wishes, a declaration that she prefers not to be involved in future questions concerning the adoption of TMH. I will deal with that issue immediately. An opportunity has been given to Ms MH during the course of the hearing before me to make such a declaration. She does not wish to make it.

Family structure and the circumstances of Ms MH

[6] TMH was born in 2003 and is now 6 years of age. Her mother is Ms MH, 30. Her father is FN, 32. His address is unknown. He is the cousin of DL who is the father of TL, 11. TL is TMH's half-brother. TMH has another half-sibling "D" who is the daughter of FN. Her surname is unknown, as is her address. TMH's maternal grandmother is Mrs PH.

[7] Following the birth of TL concerns emerged about Ms MH's ability to provide TL with stable and appropriate care as a result of her misuse of alcohol, the relationships she formed and her inability to control her finances. Social Services were involved between 1997 and 1999.

[8] Social Services became re-involved with Ms MH and her new partner FN following TMH's birth in 2003 because of concerns about domestic violence and alcohol abuse. FN was a dominant, controlling and violent man and Ms MH was traumatised by his behaviour. The early months of TMH's life were fraught with verbal aggression and acts of physical violence perpetrated by FN in relation to Ms MH.

[9] Ms MH's relationship with FN ended when TMH was a few months old. Ms MH then commenced a relationship with Mr B. The focus of that relationship was drinking and late night parties which impacted negatively on Ms MH's ability to care for TL and TMH. Furthermore Mr B rejected TL and TMH which Ms MH tolerated on the basis that he fulfilled many of her personal and relationship needs.

[10] In June 2003 the Trust made its first application for a Care Order in respect of both children. Supervision Orders were granted which lapsed in March 2005 as the Trust believed that the level of concern in respect of the children would no longer meet the threshold criteria.

[11] Subsequently however concerns persisted. Ms MH appeared to be hostile to TMH, verbally abusing and swearing at her, saying that she looked and behaved like her father, FN. Ms MH requested that TMH be placed in care on a number of occasions. Ms MH's perception was that TMH was problematic, unbearable and unmanageable with what she saw as severe temper tantrums where she would hit out at Ms MH. This perception, combined with TMH's strong physical resemblance to FN, raised strong feelings within Ms MH. Ms MH's perception of TMH as a difficult child was not fully shared by professional staff. Unfortunately Ms MH frequently lost control and responded to TMH with high levels of verbal hostility and aggressive physical postures. This negative, cyclical pattern of interaction between Ms MH and TMH became ingrained and Ms MH increasingly screened out TMH's attachment behaviour. She became less responsive to and more aggressive with, her daughter. Such a response no doubt sent a clear and frightening message to TMH and led to an increasingly deprived, neglectful and emotionally abusive experience for her.

[12] In June 2005 TMH was placed in emergency respite care.

[13] The Trust wished to secure the rehabilitation of TMH to Ms MH. However Ms MH continued to state that she found TMH's behaviour unmanageable. There was a lack of expressed warmth, poor stimulation, negative statements about TMH in her presence, rough handling of TMH, limited eye contact with her, and leaving TMH to eat alone in the kitchen whilst others would eat in the living-room. Ms MH failed to engage with support services or to accept the rationale for Social Services involvement. She continued to drink heavily, having late night noisy parties in the home to which police were being called. At times adults were still drunk or drinking the following day and were incapable of caring for or protecting the children. On several occasions the children had to be removed by the police and placed with Ms MH's mother. Ms MH dismissed these concerns and was unable to see the risks to the children. There was neglect of TMH's physical needs with the family support worker and nursery staff having to undertake basic care tasks in respect of TMH such as washing her and providing appropriate clothing and food. Minor injuries were sustained by TMH causing concern about inappropriate discipline or poor supervision. A pattern developed of Ms MH denying concerns and protesting about TMH's behaviour.

[14] An Emergency Protection Order was granted on 27 September 2006 and TMH was placed in foster-care on that date. She has remained in foster care since.

[15] The position in relation to TL was different. Ms MH appeared to have a qualitatively different relationship with her son. He seemed to be a more resilient, self-sufficient child whose emotional needs had been met to a greater extent than had TMH's. However there were increasing concerns as to Ms

MH's parenting of TL with poor school attendance and unkempt presentation together with lack of appropriate food, poor home conditions and supervision, parties and many males in the home. Ms MH struggled to meet TL's needs.

[16] Attempts were made from October 2006 to early 2008 to rehabilitate TMH to the care of her mother. Contact arrangements were put in place between Ms MH and TMH but the quality of contact was initially poor with Ms MH failing to attend, cancelling at short notice, arriving late and wanting to leave early. She would often ignore TMH during contact. The quality of contact has improved with social work and therapeutic intervention.

[17] A full care order was made in respect of TMH on 11 March 2008.

[18] Ms MH had formed a new relationship with Mr Q. On 20 March 2008 Ms MH was physically assaulted by Mr Q and left the family home with TL to reside with a friend. However TL's father removed TL from this home because of concerns he had about this individual. Following a dispute with this friend Ms MH returned to Mr Q on 26 March 2008. TL's father was later given joint custody of TL and until recently cared for him 4 days per week, Friday through to Tuesday morning, to avoid him being with Ms MH over the weekend which is Ms MH's risk time. Ms MH indicated that this arrangement was convenient for her as it "breaks the week up". However, following concerns in respect of Ms MH resuming her relationship with Mr Q, TL is now living with his father on a full-time basis.

[19] On 29 March 2008 Mr Q subjected Ms MH to a further serious physical assault lasting 20 minutes that included "being headbutted". This assault occurred the same night as Mr Q was arrested for stabbing another man. However Ms MH continues to believe that Mr Q is a good man but is simply violent with alcohol taken.

[20] Ms MH continues to abuse alcohol and indeed her alcohol consumption has increased. She herself describes it as out of control drinking. Physically as a result she is in a poor state coughing up blood with raised liver count. She has been admitted to ... Hospital, Addictions Clinic for 2 weeks.

[21] On 5 October 2008 whilst Ms MH continued to live with Mr Q he again assaulted her. This was a vicious assault during which he almost bit through her top lip.

[22] In October 2008 Ms MH allowed an individual to use her address as a bail address denying being aware of his criminal record or that he was being investigated for attempted murder.

[23] In December 2008 Ms MH describes a party which occurred where an individual had tried to rape her downstairs in a house where her son TL was sleeping. After this incident Ms MH was involved in smashing a neighbour's window. Ms MH was oblivious to the risk to TL in this situation.

[24] On 23 April 2009 Ms MH was evicted from her home which eviction was prompted by the police raiding the house for drugs though no drugs were found.

TMH's present placement

[25] TMH has lived with Mr and Mrs S, foster-parents, since 27 September 2006. This placement has worked well but it is clear that there are some problems in that TMH demands attention from her foster-carers and competes with the other children in the house for that attention. TMH becomes very jealous when her carers are required to share their attention and affection with the other children in the house, particularly the young baby. I conclude that TMH would respond and settle in an environment where she did not have to compete with other children and where she could be secure in her relationship with her carer.

The trust's plan for adoption

[26] A prospective long-term foster-carer or adoptive carer has been identified by the Trust. She is Ms SO. She lives in a rural community. She works as a secretary. She has experience with looking after her own younger sister and takes an active role with her own nieces and nephews. One of her nieces spends a lot of time with Ms SO and often stays overnight at weekends. I have received detailed evidence as to the attitude that Ms SO adopts towards children including her encouragement of their self-esteem. I consider that Ms SO has knowledge and experience of looking after children and she is a person who is capable of meeting TMH's needs. I consider it likely that if I make a freeing order TMH will be placed for adoption with Ms SO.

[27] Ms SO agrees with the Trusts proposal that there should be post adoption direct family group contact between TMH, her half brother TL, her mother Ms MH and her maternal grandmother, Mrs PH. Such contact could only take place if the family group support TMH in establishing and maintaining her attachment relationship with her adoptive carer. In that respect Ms MH needs to be offered and needs to commit to work to help her to understand TMH's need for security, stability and permanence and the centrality of the adoptive carer to providing this for TMH. Similar work should be undertaken with Mrs PH and TL. The number of such family group contacts each year should be flexible but the aim should be for up to 4 each year.

Article 17(6) of the Adoption Order (Northern Ireland) 1987

[28] I am satisfied that TMH's father, FN, has no intention of applying for an order under Article 7(1) of the Children (Northern Ireland) Order 1995 or a Residence Order under Article 10 of that order. I reach that conclusion on the basis that he has made no attempt to play any part in the life of TMH since shortly after her birth in 2003. In addition if he applied for such orders I am satisfied that given his lack of attachment to, or care for, TMH to date it is likely that any such applications would be refused. I also reach that conclusion on the basis of the evidence of Ms MH, which evidence is to the effect that FN is not a reliable individual or a person who could be entrusted with the care of TMH.

Welfare

[29] Rehabilitation of TMH to the care of Ms MH is not a realistic prospect either within an appropriate timescale or at all. In her statement dated 11 May 2009 Ms MH accepts that she is in a continuing relationship with Mr Q. I find that the relationship between Ms MH and Mr Q is marked by alcohol abuse and physical violence. That relationship is entirely inconsistent with any prospect of a child being secure in the environment generated by such features. Ms MH herself worries about her capacity to care for TMH without assistance. I do not consider that rehabilitation of TMH to Ms MH is possible or feasible either at all or within a timescale that could prevent significant damage occurring to TMH. I am sure that Ms MH is unable to change her lifestyle on a permanent basis so as to ensure the security, stability and safety of TMH. She has failed to prioritise TMH's needs. There has been sustained alcohol abuse. There has been sustained domestic violence. There is a lack of insight into these shortcomings. She has failed to avail successfully of professional help. She enters into relationships which cause significant harm to her children.

[30] There is no kinship placement available for TMH. Her maternal grandmother has ruled herself out on health grounds. There has been no other suggestion of a viable kinship placement and I do not consider that there is such a placement available.

[31] The remaining options available for TMH include long-term foster-care or freeing for adoption. There was no dispute that TMH urgently needs stability and security in her life. That 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. That it can provide a greater sense of belonging for a child. That 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 also 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.

[32] I have considered the disadvantages of adoption including the potential loss of or at least diminution in, contact with the birth family and in particular with Ms MH. I conclude that the quality of contact between TMH and her mother has improved though to a limited extent and that there is a bond between them. I have also considered that adoption will involve a move from TMH's present area and the need for her to adjust to a new environment. I consider that the advantages of adoption for TMH far outweigh the disadvantages. This is a case in which I consider that adoption is more important than contact, see *Re P (Adoption Freeing Order)* [1994] 2 FLR 1000.

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

Whether Ms MH is unreasonably withholding her agreement to the making of an adoption order

[34] One of the factors I have been asked to and do consider, in relation to the question as to whether Ms MH is unreasonably withholding her consent to freeing TMH for adoption, is whether 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 TMH's welfare and the advantages of adoption, see *BA (Wardship & Adoption)* [1985] FLR 1008..

[35] Ms MH alleges that on 11 March 2008 she consented to the granting of a full Care Order "strictly on the basis that the care plan for TMH was one of rehabilitation to" her care. That she was completely shocked when the Trust very quickly changed the care plan which had been presented to the court. That in the event it now transpires that on 12 March 2008, the day after the hearing on 11 March 2008, the Trust presented TMH's case to a Permanency Panel. In order to determine whether the allegation that there are facts which give rise to a bona fide sense of injustice is correct it is necessary to consider the sequence of events since TMH was placed with her current foster-carers Mr and Mrs S.

[36] TMH's placement with Mr and Mrs S commenced on 27 September 2006. At a Looked After Child Review on 30 May 2007, which was attended

by Ms MH, the care plan for TMH was discussed. At that stage the primary care plan was for rehabilitation to the care of Ms MH but one of the alternative options was adoption. Under the heading "Ms MH's Situation" the minutes record:-

"Ms MH stated that she was not very happy with the situation and had been told that TMH would be returning to her care in May 2007. ... stated that it was his understanding that Ms MH had been informed of this by her legal team. ... explained that it was not possible to give an exact timeframe for TMH's return home but advised that the care plan was rehabilitation home to Ms MH's care. She did however point out that TMH's situation could not continue indefinitely and the Trust has an obligation to look at TMH's permanency needs. ... advised Ms MH that the Trust would be meeting to discuss options in relation to TMH's care. She advised that the options would be long-term foster care, care with relatives or *adoption*. ... advised that the care plan for TMH is rehabilitation to Ms MH's care however noted that it had been hoped that the work identified for Ms MH would have been at a further stage, therefore a concurrent plan is required to be put in place." (emphasis added)

Shortly after this exchange Ms MH left the meeting. The minutes then continued under "Care Plan":-

"As discussed the care plan for TMH is rehabilitation to the care of her mother. It was however noted that the Trust have an obligation to look at permanency needs for TMH and ... agreed to arrange a meeting with Child and Family Care Manager and ... to discuss other options. Permanency will be referenced at all future reviews".

I find as a fact that at the latest from the date of that meeting that Ms MH was aware that an option was adoption if rehabilitation to her care was not successful and that there were concerns as to her progress in respect of work being undertaken to achieve rehabilitation.

[37] A document entitled "Updated Final Care Plan" dated 11 February 2008 was prepared by the Trust which in the event was the care plan put before and considered by the court on 11 March 2008. That care plan states:-

"TMH's care plan is rehabilitation to the care of her mother, Ms MH. ... Due to changes in Ms MH's personal circumstances, housing arrangements and concerns regarding the care provided to TMH's sibling, TL, it has been necessary for the Trust to put concurrent plans in place for TMH. Initially the Trust will revisit the option of family and if there is not an option long-term fostering and adoption would be explored. It is likely given TMH's age that long-term fostering would not be in her best interests. *If rehabilitation is to be ruled out at any point the Trust will present TMH's permanency needs to the Trust Permanency Panel.* The Trust continues to promote a care plan on rehabilitation with a 3 month period of further assessment to assess Ms MH's new partner, Mr Q and their planned living arrangements. A further Looked After Child Review is scheduled for 25 April 2008." (emphasis added)

Ms MH had been aware of the potential that a care plan would include concurrent planning for adoption since at the latest May 2007. This was the first care plan that included "concurrent" planning. However the italicized part of the care plan indicates that it was not truly concurrent but was sequential in that active steps to advance the fall back plan of permanency by adoption were dependant on rehabilitation being ruled out. TMH's interests emphatically demanded and had demanded for a substantial period, that there should be concurrent planning. Not just the articulation of a desire to undertake concurrent planning but also active steps to advance the secondary fall back plan of permanency by adoption so that if rehabilitation was ruled out then there was an alternative plan which could be immediately implemented. The progression of the concurrent aspects should not have been dependent in any way on the first plan failing and this should have been but was not, an earlier imperative in this case.

[38] I find as a fact that on 11 March 2008 before Ms MH consented to a Care Order that she was aware of the plans, one of which was for adoption, contained in the care plan dated 11 February 2008. I make that finding on the basis of the evidence of the Guardian ad Litem. She attended court on 11 March 2008 and states that the implications of the change in the care plan were carefully explained to Ms MH in the presence of her legal representatives at court. The Guardian ad Litem states and I accept that the

seriousness of the matter was explained to Ms MH and it was emphasised to her that her full engagement with the Trust was required to effect rehabilitation, as TMH could not be left to drift within the public care system.

[39] I also find that on 11 March 2008 Ms MH indeed understood, in fact wrongly, that adoption was now the care plan. I make that finding on the basis of the evidence of a Social Worker. On 12 March 2008 she received a telephone call from Mrs PH, TMH's grandmother, stating that Ms MH had contacted her "in a state after court stating that TMH would be adopted" and the social worker clarified the true care plan to Mrs PH.

[40] Ms MH states that she consented to the granting of a Care Order on 11 March 2008 strictly on the basis that the care plan for TMH was one of rehabilitation to her care. I reject that evidence. I find that Ms MH was informed of a plan to rehabilitate to her care or for permanency including permanency by adoption. Indeed that Ms MH wrongly misunderstood that the primary plan was for adoption.

[41] As I have indicated I find as a fact that on 11 March 2008 Ms MH believed, wrongly, that the Trusts primary plan was for adoption. However on 11 March she was not aware of one specific aspect that is that on 12 March 2008, the day after the making of the Care Order, the Trust was to present TMH's case to a Permanency Panel. I consider that she should have been given this specific information as should her legal advisers. So also should the court. This was especially so in view of the fact that the care plan approved by the court on 11 March 2008 stated that it was only if rehabilitation is to be ruled out at any point that the trust will present TMH's permanency needs to the trust permanency panel. However I conclude that if she had been informed or if her legal advisers had been informed, there would in the event have been no different outcome to the proceedings on 11 March 2008. There is a possibility that Ms MH would not have consented to the Care Order but it has not been contended that a Care Order would not have been made and indeed the application to discharge the Care Order brought by Ms MH has been withdrawn. There were no actual adverse consequences of what occurred on 11 and 12 March 2008. Indeed what occurred on 12 March 2008 was generally in line with what Ms MH wrongly understood would be occurring. However she was not aware of, but should have been informed about, the specifics.

[42] I also find that the care plan did not change on 12 March 2008. A Permanency Panel does not change a care plan. It makes a recommendation. In fact the panel recommended that clear timescales needed to be set to finally clarify if rehabilitation can be achieved. If not adoption was recommended as the alternative plan.

[43] I also find as a fact that on the 11 and 12 March 2008 the trust had not changed its attitude to rehabilitation being the primary objective of the care plan. The care plan was changed at a Looked After Child Review on 25 April 2008. The reason for that change is that in the meantime between March 2008 and April 2008 there was deterioration in the conduct and personal circumstances of Ms MH with further incidents of violence and drinking. The change in the care plan came about by virtue of that deterioration which deterioration has to be seen against the background of TMH's age, her being in care for a considerable period and Ms MH having made no progress towards being in a position to care for her in the future.

[44] I conclude that it was not until 25 April 2008 that it was agreed at a Looked After Child Review that rehabilitation of TMH to her mother should be ruled out. Also on that date the amount of contact between TMH and Ms MH was reduced from 3 times per week to once per week.

[45] I reject the factual basis for a bona fide or reasonable sense of injustice of any real substance. I consider that the Trust should have been actively advancing a concurrent plan for permanency by adoption at a much earlier stage. I consider that the failure to inform Ms MH on 11 March 2008 of the specific information as to what was to take place on the 12 March 2008 has to be seen in that context, in the context that the Trust was doing nothing more than what they ought to have been doing at a much earlier stage, in the context of Ms MH's knowledge over a considerable period that adoption was the fall back plan and that there were concerns as to her lack of progress, in the context of her mistaken belief that the primary plan was now for adoption and also in the context of TMH's interests.

[46] I also make it clear 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.

[47] I conclude that Ms MH is unreasonably withholding her 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 Ms MH. The placement with the prospective adopter identified by the Trust fulfils TMH's need for a safe secure environment where she does not compete for affection and yet has the potential for contact with her birth family group. The circumstances of Ms SO are such that she can provide a suitable home for TMH. 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.

Procedure

[48] I should also record the action that Ms MH took as a result of what she perceived was the injustice which had occurred on 11 and 12 March 2008. By a C1 application dated 1 July 2008 issued in the Family Proceedings Court Ms MH applied to discharge the Care Order dated 11 March 2008. The reasons for so applying were stated as being:-

“The Trust’s position prior to the final Care Order being made was that TMH was to be rehabilitated back to (Ms MH’s) full time care. The Trust have now changed their position and (Ms MH) wishes to challenge the Trust’s decision.”

Upon that application coming before the Family Proceedings Court it was adjourned without directions and without being transferred, on the basis that the Trust was to bring a Freeing Application. I was informed that the reason for that adjournment was that the matters for determination in Ms MH’s application to discharge the care order would overlap with the matters for determination in the Freeing Application. That overlap indeed existed as both applications would involve consideration as to whether rehabilitation to Ms MH was a viable option, either at all or in an appropriate timescale, and as to what occurred on 11 March 2008 when the Trust obtained the Care Order. In addition no application was made to the District Judge to appoint a Guardian ad Litem to represent TMH and no such appointment was made. It was not until 30 January 2009 that the Trust brought its application to free TMH for adoption. That was some 7 months after proceedings were issued by Ms MH on 1 July 2008. During those 7 months there were no statements of evidence, no directions in relation to expert evidence, an inadequate discovery process, no report from the Guardian ad Litem and no preparation of documents. In effect the mother’s application was put on hold for 7 months awaiting the freeing application from the Trust. It should not have been. The Guardian ad Litem should have been appointed in July 2008 and on appointment she should have sought directions from the court bringing early definition to the issues then before the court. She should also have sought a transfer to the Family Care Centre so that the mother’s application and the anticipated freeing application could be heard by the same judge, though not necessarily at the same time if the trust did not comply with an expeditious timetable set by the court. There was no need to wait for the Trust’s freeing application before giving directions up to and including setting a date for hearing in relation to the mother’s application. In the event, TMH’s future would have been secured at an earlier and more appropriate stage if these steps had been taken. She has endured over a year’s additional insecurity since the Looked after Child’s review of 25 April 2008. She is now over 6 years of age. She has been in foster care for nearly 3 years. She has had a troubled and turbulent life without much by way of love and affection. She

is amongst the most vulnerable members of our society. The current proposed guide to case management should assist in preventing delay prompting the early appointment of the Guardian ad Litem who should thereafter immediately proactively bring definition and direction to the case.

[49] The Trust also had an obligation to ensure that a Guardian ad Litem was appointed to represent the interests of the child at the earliest opportunity and to ensure active case management through to an expeditious hearing. The only explanation from the Trust for the 7 month delay in bringing the freeing application demonstrated the failure to actively pursue the implementation of a concurrent plan. Concurrent planning should have been actively pursued and in that respect I refer to *Hershman and McFarlane, Section C paragraphs 967-968* and the decision of Bracewell J in *Re D and K (Care Plan: Twin Track Planning)* [1999] 2 FLR 872.

Conclusion

[50] I conclude that adoption is in TMH's best interests. I do not consider that rehabilitation of TMH to Ms MH is either possible or feasible at all or within a timescale that can prevent further significant damage occurring to her. There is no possible kinship placement for TMH. I do not consider that long term foster care is in TMH's best interests. I consider that in the circumstances of this case adoption has considerable advantages over long term fostering. I have set out those advantages. Post adoption contact with Ms MH, Mrs PH is important, but not more important than adoption. In any event there is a clear potential for it being accommodated. Adoption satisfies TMH's needs for permanence, stability and commitment. Adoption by Ms SO would meet her needs for contact with her birth family group, though as I have indicated this would not have been a decisive factor in arriving at a decision as to whether to free TMH for adoption. 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.

[51] I have already concluded that Ms MH is unreasonably withholding her consent.

[52] I have heard evidence which I accept that it is likely that TMH will be placed for adoption.

[53] Adoption is in accordance with the law and it is for a legitimate aim (in this case the protection of the welfare and interests of TMH). 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 TMH.

Post adoption contact

[54] 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. I endorse the Trusts suggestion for post adoption contact set out at paragraph [27]. However I decline to make a contact order. I consider that if the birth family group does not support the placement or if the contact is not amicable, then the Trust requires an ability to react to the circumstances with which they are presented. I consider that the no order principle should apply to the question of contact. I emphasise that I have done this on the basis of the indications outlined by the Trust set out at paragraph [27] which I have endorsed.