**Neutral Citation No. [2011] NIFam 19** | *Ref:* **MOR8368**

*Judgment: approved by the Court for handing down* | *Delivered:* **10/11/11**

*(subject to editorial corrections)*

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**FAMILY DIVISION**

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**RE A (adoption; unreasonable withholding of consent)**

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**MORGAN LCJ**

[1] This is an application by Mr and Mrs S to adopt a child, A. Nothing should be reported which would identify either the child or the birth or foster family.

**Background**

[2] The child, A, was born on 23 February 2005. She is now 6 years and 8 months old. Her mother, B, was just 17 at the time of her birth and was leading a chaotic lifestyle characterised by drug abuse and homelessness. Social services were involved prior to the birth and A was placed in foster care with Mr and Mrs S within two days of her birth. B had intermittent contact during 2005 but her lifestyle remained chaotic as a result of which a care order was made on 15 December 2005 with a care plan for adoption.

[3] By that time B had formed a relationship with M who was also using drugs. As a result of that relationship she had become pregnant and in February 2006 gave birth to K. M was not the father of A but in March 2006 B and M asked to be considered as a couple to care for A. The Trust decided that a psychological assessment was necessary and this was received in November 2006. The report recognised the progress B and M had made with K but did not recommend rehabilitation with A. In December 2006 the Trust's plan remained adoption via a freeing application. Throughout 2006 B had intermittent contact with A who remained with her foster carers.

[4] In February 2007 B advised the Trust that she wanted A to be adopted and wanted no further contact. In March 2007 she confirmed that she wanted to consent to adoption. She wanted the Trust to explore the option of A being adopted by her brother and his partner but if that was not possible she would like Mr and Mrs S to be considered given the attachment the child had with

them. In May 2007 B said that she had not changed her mind but she did not want to consent to adoption. She wanted to think about contact. The Trust established that her brother and his partner were not in a position to care for A. In June 2007 the Adoption Panel met and recommended adoption as being in the child's best interests. Mr and Mrs S enquired in September 2007 about the adoption process and were advised that a freeing application would soon be lodged. The Trust was also considering other prospective adopters. It seems clear that by October 2007 the Trust had concerns about Mr and Mrs S as they were older (both are now in their 60s) and were parenting three older adopted children with special needs.

[5] In February 2008 the Trust lodged a freeing application. It is worth noting that the child had by this time been parented by Mr and Mrs S for three years and more than two years had passed since the care order had been made with a care plan of freeing for adoption. This delay in dealing with the issue of permanence for this young child was completely unacceptable and potentially very harmful for the child. I expect that systems have been put in place to ensure that delays in similar cases do not occur in future.

[6] In March 2008 Mr and Mrs S formally made an application to adopt A. It appears that it was not until June 2008 that they were provided with information on the adoption assessment process and referred for medical examination. The medical report from the adoption medical adviser reported that Mr S had poorly controlled diabetes as a result of which the risk of future ill-health was unacceptably high. In light of this the Trust informed Mr and Mrs S that the Trust would not be undertaking an adoption assessment on them. It is not clear to what extent there was any liaison with those responsible for the treatment of Mr S or consideration of how his diabetes might be controlled. Suffice it to say that in these proceedings the Trust has now accepted that despite his diabetes there is no medical reason why an adoption application by Mr and Mrs S should not proceed. The latest medical evidence before me indicates that there is good control of diabetes by Mr S.

[7] In mid-July 2008 B requested contact with A. This took place approximately 1 week later. Although the Trust sought to follow this up over the next number of months they were unable to make contact with B. The Guardian decided that an attachment assessment should be obtained from Professor Triseliotis and he eventually provided three reports in November 2008, June 2009 and May 2010. In November 2008 the Trust were successful in contacting B to tell her that the freeing application was due to be heard on 11/12 December 2008. B said that she would prefer A to stay with Mr and Mrs S because she had been there since she was a baby. At this stage B was pregnant again and she gave birth to a child, T, in June 2009. Mr and Mrs S lodged a residence order application in December 2008 and instead of the freeing application proceeding the case was then transferred to the High Court. At a subsequent LAC review Mr S strongly voiced his opposition to

the Trust plan to move A. Life story work commenced in February 2009. During this period attempts were made to arrange further contact with B but she was not available. The child was now four and had spent her entire life with Mr and Mrs S as part of their family.

[8] During the first half of 2009 B was kept advised of the adoption issues in relation to A. In late May 2009 B told the Trust that A had been with Mr and Mrs S so long that she would not want A to move because of her attachment. In late July 2009 B indicated that she had had a conversation with the Guardian as a result of which she now requested to be reassessed as a parent for A. On 10 August 2009 she was interviewed by the Trust and said that it was only now that she felt capable and able to parent the child. In September 2009 B contended that A should be returned to her because there had been substantial changes to B's lifestyle, she was in a stable relationship, she believed she had matured, she was caring for two children without Trust involvement and she had a significant support network through M, M's extended family and the local church. At this point the Trust decided that it would not actively pursue a freeing order and would look at the possibility of rehabilitation. B resumed contact with A on 5 October 2009. Contact continued on a weekly basis until February 2010 when K and T joined the contact. A Parenting Capacity Assessment was carried out in relation to B and M as prospective parents for A during the first half 2010. That assessment recognised the motivation and commitment displayed by both. They demonstrated a clear understanding of their children's needs and actively promoted security, stability, emotional warmth and care for their two daughters. Their practical skills were excellent and their communication skills were good. Both recognised that A would experience change if rehabilitated with them.

[9] By July 2010 the Trust was moving towards rehabilitation as the care plan. Contact continued on a weekly basis and in October 2010 overnight contact was introduced. A stayed for a period of about 10 days with B and M and their two children over Halloween. Although apparently promoting rehabilitation as the care plan the Trust eventually adopted a neutral stance on the hearing of the application for a residence order. I concluded that in light of the evidence about the risks to the child should she be returned to B I was minded to make an order in favour of Mr and Mrs S on the basis that they pursued an adoption application.

[10] That application was made on 16 May 2011. Shortly before that B gave birth to a fourth child L. B was still maintaining a vigorous opposition to the adoption and pursuing rehabilitation. In July 2011 she sought to make arrangements for A to attend her wedding with M in September 2011. By the end of July, however, it appeared that the relationship between B and M had broken down. It was reported that M had been drinking to excess and B had suffered domestic violence. B returned to Belfast. Although persistent

attempts were made to engage her in contact with A these did not prove successful. It seems clear that the nature of the unhappy relationship between B and M was not communicated to social workers dealing with the adoption application. B may have good reasons for breaking off her contact with A but the inference is that she had little appreciation of the potential effects on the child. B now does not oppose the adoption but has not given consent. There is no dispute that an adoption order is in A's best interests and is otherwise in order.

[11] The applicants ask me to find that the mother is unreasonably withholding her agreement to the adoption of children. The leading authorities on the test of the court should apply are Re W (An Infant) [1971] 2 AER 49, Re C (a minor) (Adoption: Parental Agreement, Contact) [1993] 2 FLR 260 and Down and Lisburn Trust v H and R [2006] UKHL 36 which expressly approved the test proposed by Lords Steyn and Hoffmann in re C.

> "…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.
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> 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 *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] Although it is clear that the mother has strong feelings for the child I have no doubt that I should dispense with her consent in this case. She is not in a position to offer this child security and stability. This is a clear interference with her rights as a mother under article 8 of the ECHR but that is necessary in the interests of the child. The Trust has indicated that it will provide support for the family to ensure that A does not become the primary carer for the other adopted siblings.

[13] I am satisfied that this is an appropriate case for a contact order. There has been a history of contact with B, her other children and A's grandmother. I am satisfied that it is in A's interests for that to continue if possible. I direct, therefore, that the applicants shall permit 4 contacts per year with B, the maternal grandmother and A's half siblings on her mother's side. I will adjourn this case to an appropriate date when the child can attend for the adoption order to be made.