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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF THE ADOPTION (NI) ORDER 1987

BETWEEN:

SOUTH EASTERN HEALTH AND SOCIAL CARE TRUST

Applicant;

-and-

FP

Respondent;

-and-

HB

Notice Party;

-and-

IN THE MATTER OF AP (A Child)

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Sir Reg Weir

Anonymisation

[1] This judgment has been anonymised to protect the identity of the child concerned. Nothing may be published in relation to the proceedings or this judgment that might directly or indirectly lead to identification.

The nature of the proceedings

[2] The applicant Trust ("the Trust") applies for an Order dispensing with FP's ("the mother's") consent to the proposed adoption of AP ("the child") on the ground that such consent is being unreasonably withheld. The mother agrees that she is withholding consent but denies that such withholding is unreasonable in all the circumstances of the case.

The background

[3] The child was born to the mother in June 2011. HB, to whom the mother is not and has never been married, is believed to be the father but he has taken little or no interest in the child since its birth and has never sought contact direct or indirect nor engaged with social workers despite their best efforts in that regard. He has taken no part in the present proceedings.

[4] The mother has been known to Social Services since the year 2000 following the birth of her second child ("E") in July of that year when concerns were expressed by nursing professionals. The mother appeared reluctant to follow advice from doctors and health visitors and missed medical appointments while in the community. As a result, in October 2000 and again in April 2001, E was admitted to hospital with concerns that his medical needs were being neglected and that advice was not being followed. E gained more than 2 kgs in weight during that second hospital stay of about one month but the mother would not accept that any failure on her part to follow advice had contributed to E being significantly underweight. E was therefore discharged from hospital to foster carers with whom he continued to make excellent progress.

[5] Also in June 2001 the mother asked the Trust to take her eldest child ("O") then aged 1¾ into care because she said she could not cope. The mother was then in a highly distressed state and complained that she was having relationship problems with the father of O and E which involved substance misuse and domestic violence which had on occasions occurred in front of the children. O was therefore placed with her father's parents and settled well until, within three months, the mother had quarrelled with those carers and asked that O be removed from their care.

[6] Following a Child Protection Case Conference in November 2001 when various unsatisfactory aspects of parenting came to light full care orders for both children were obtained. Attempts at a parental assessment by the Trust failed and Dr Bownes, consultant psychiatrist, assessed the mother and father in November 2002 and concluded at that time that the mother's behaviour reflected a pronounced level of immaturity and that she was driven by her own needs and would use any means open to her to get what she wanted regardless of the harm it might cause to herself or others. He noted that neither the mother nor the father was willing or able to acknowledge any of the concerns regarding the children and he

saw little evidence of capacity on the part of either to effect and sustain positive change. He did not advise the return of either child to the parents' care. In consequence the two children continued in various rather ad hoc foster care arrangements until, because according to the Trust, the mother had made progress in the interim, O was returned to her parents' care in May 2004 and E was returned in June 2005. Meanwhile in January 2004, a third child ("EN") had been born to the couple. During the process of phasing the elder children back home it was recorded by the Trust that the home situation had greatly improved and the mother was following its advice and guidance. The full care orders remained in place with reviews under the LAC process.

[7] The improvements were short lived. Disharmony continued between the parents with allegations of substance misuse until they appeared to separate around the middle of 2006 although on-going conflict between them continued on and off into 2007. Conditions for the three children disimproved and it was noted that EN was suffering delayed speech. The mother did not co-operate with speech therapy and failed to bring EN regularly to a nursery placement that the Trust had arranged. The mother moved house repeatedly between 2005 and 2007 and in June 2007, following her having taken an overdose of tablets, social workers found the two older children in bed wearing their school uniforms with the house in an unkempt state. In August 2007 a third party reported that the house was being frequented by strangers and that the children were dirty. There then followed an unsettled period with rows between the mother and neighbours culminating in a Child Protection Case Conference in December 2007 when a catalogue of concerns about the children's welfare was compiled from various housing, health and educational professionals. The children were however left in the mother's care while complaints continued to be received from various sources. In July 2008 a fourth child ("AL") was born to the mother.

[8] By October 2008 the mother had formed a new relationship with G and declared her intention of moving with him to Derry. The Trust asked Dr Bownes to assess the new couple to gauge their motivation and long term plans following which they were allowed to move as they wished. However by February 2009 the mother was back in the Trust's area having parted from G. She found a new home quickly and throughout 2009 matters appeared to rub along tolerably well, although there were repeated complaints that she was engaging underage babysitters and allowing young people to drink in her home. The mother denied these allegations and would not co-operate with the Trust's endeavours to do some therapeutic work with the children. In December 2009 a Child Protection Case Conference decided that due to the absence of the therapeutic work and the mother's unwillingness to co-operate with it the children should remain on the Child Protection Register. The mother at this time commenced a short-lived relationship with another man J but would provide the Trust with no details concerning him.

[9] Throughout 2010 matters continued in a similar pattern of minor and not so minor crises and uncooperative behaviour on the part of the mother. The second child, E, who was by now in his tenth year, began to display emotional and behavioural problems both at school and at home. A referral was made to the community paediatrician who expressed concern about E's vulnerability and about attachment issues. The mother said that E was unmanageable but was unable or unwilling to see that therapeutic work might help him and wished him to be medicated. She missed appointments with him at the paediatric clinic.

[10] In May 2010 EN, by then six, suffered a fall in circumstances that were somewhat unclear, fortunately without lasting effect. After he returned home a social worker called at the house unannounced and found the mother absent and all four children in the care of the eldest child O who was by then not quite 11. On 15 July 2010 AL, by then just two, was brought to hospital with a limp. The mother could not say what had caused it but an x-ray revealed a healing fracture. Investigations revealed that AL had, from 6 July, been left in the care of a childminder while the mother had gone to Donegal on a holiday with the other children. The childminder said that on the morning of 7 July she had found AL to be limping but was unable to contact the mother because apparently her mobile phone could not receive calls in Donegal. The childminder did not know the mother very well and had been paid £100 to keep AL for a week. She had not brought AL to the Accident and Emergency Department because she knew it would seem strange that she did not know the child's details. She did not hear anything from the mother until the day of her return from holiday.

[11] The Trust held a meeting at the hospital on 19 July 2010 as a result of which it was decided that the children were to reside with their maternal grandmother. A medical report from the Orthopaedic consultant expressed the view that there had been a fracture of the fibula, probably at least 2 to 3 weeks old when presented, that it would have caused pain from the beginning and a limp probably of more than one week's duration. The unusual location of the injury suggested to the consultant that it had resulted from a direct blow.

[12] On 1 September 2010 interim care orders were granted by Newtownards Family Proceedings Court in respect of EN and AL. It will be recalled that care orders had been granted in November 2001 in respect of O and E and these had remained in force. All four children were removed from the mother's care and placed in foster care. None has since been returned to her. They have all done well in foster care although they have at times suffered undesirable disruptions to their placements for which they were not to blame. In June 2011 the mother's fifth child "AP" ("the child") who is the subject of these proceedings was born. He was made the subject of an interim care order on the day of his birth and discharged from hospital directly to the care of the foster carers who have provided an excellent home for him ever since and, while expressing a preference to be allowed to adopt him if that were possible, have assured the child's Guardian Ad Litem ("GAL") that they

are and will remain equally committed to his long term care whether as adoptive parents or as long term foster carers.

The present proceedings

[13] These family issues initially came before me under three headings:

(i) An application by the father of the two older children, O and E, to have their care orders discharged. This application was ultimately not pursued.

(ii) An application by the Trust for full care orders in relation to the three younger children, EN and AL and the child.

(iii) An application by the Trust to free the child for adoption.

A great deal of court-directed work was done with a view to encouraging contact between the siblings and their mother, grandparents and father or fathers. The matter was before the court on multiple occasions and much effort was invested by the Trust and the GAL in seeking to improve and regularise these arrangements which was, on the whole, successful. The children became much more settled as a result and the eldest, O, was assisted by the GAL to secure a place at a prominent grammar school which she maintained for several years and from which she gained much. Unfortunately she decided to leave school on attaining the age of 16 and has therefore not achieved her full educational potential.

[14] Concurrently efforts were made to assess the mother's potential, firstly to understand the historic concerns of the Trust and secondly to alter her behaviour so as to demonstrate her ability to provide adequate parenting for the three younger children whom she wished to have in her care. It will be recalled that the child had been taken into care immediately after birth and therefore has never been parented by the mother. Successive interim care orders were made beginning on 27 June 2011 in respect of the child. The putative father of the child, HB, has informed the Trust that he has no interest in these proceedings and in any event his parentage has not been reliably established because of the refusal by HB to provide a DNA sample.

[15] This case was somewhat unusual in its progress in that a two-strand approach was adopted to the treatment and assessment of the mother which involved a Trust Family Centre on the one hand working in partnership with Dr Michael Paterson, consultant clinical psychologist, providing intensive therapeutic input on the other. Reports on the work that each was carrying out were shared between the Family Centre and Dr Paterson as it progressed so that each was aware of how the other's strand was going. Dr Paterson provided treatment on no fewer than 35 occasions between August 2011 and May 2013 and reported on a total of six occasions as his work progressed. His final report of 12 June 2013 draws together the results of his

intensive therapy and his view of the position that the mother had by then arrived at. The following extracts illustrate the "before and after" position:

> "3. At the start of my work with the mother I noted there were concerns about her having a lack of empathy and displaying selfishness. I also noted that she had a sense of inferiority and was quick to anger. I worked with her over the course of circa 35 sessions and found that she made excellent progress in a number of areas.
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> 4. The mother has now developed empathy for her children and this was evidenced, in particular, by two letters written to her children where she admits to having made mistakes and apologises to them. Also in my work with her I have noted that she can be empathetic for the child. The empathy the mother is able to show now would be at a level for good-enough parenting.
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> 5. Another area the mother had difficulty with was selfishness. There has been a marked shift in this as she would no longer put herself first. In the past the mother was focused on meeting her own needs before those of her children.
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> 6. The perception of inferiority held by the mother has shifted significantly and a core belief of 'I'm a failure' has weakened to a large extent. She has now confidence in herself and this is reflected in her general demeanour and the way she interacts with others. A related area would be anger outbursts. It should be remembered that anger is a survival response which occurs in the face of perceived threat. In the past, the mother was quick to anger if she felt that her negative self-belief of 'I'm a failure' was being triggered or that her abilities were being called into question. With her resolving significantly this belief system the anger issues have diminished.
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> 7. The mother has had problems in the past working with professionals. The reports from contact with the child demonstrate that she has been able to work well in recent months. Resolution of the anger issues has improved this.

8. The changes referred to above (paras 4 to 7) can be seen as likely to be long lasting. The mother has changed the way she thinks about herself and, as a result, that now affects positively her perception of new situations, her attitude and her subsequent behaviour.

9. In my update report of 20.5.13 (para 10) I noted that the mother can take instruction and act on it, knowing why she is doing something. I also reported that I felt she would have a limited ability to develop this. The mother has now developed a knowledge base and can, by and large, meet the child's needs as they stand currently. However, for the mother to continue to be able to meet the child's needs through his developmental years and adolescence then she would need continuous updating of information and on-going instruction. She has capacity and some knowledge about what the child's needs would be, but would need a third party involved as she has limited insight. However, the mother has sufficient ability to take in new information, assimilate that and to be able to act on it in the present. She is unable, in my opinion, to generalise this to new situations which will arise over time.

10. For the mother to provide long-term care for the child she would need continuing education at different stages of the child's life and also one-to-one contact where there would be supervised monitoring. I understand that there are classes available locally which provide education about different stages of a child's life and these would be available to the mother. The supervised monitoring, if it took place, would need to be with a person who has knowledge of child development through having been trained in this professionally and who would have had experience of working with children of different ages. Most suitable would be somebody with the equivalent level of knowledge and experience of a childcare assistant who could report appropriately to Social Services. Not suitable would be somebody who has recently completed a childcare course.

> 11. I have taken the mother as far as I can therapeutically and would have no more to offer her."

[16] At the hearing on 25 June 2013 Dr Paterson gave evidence and was cross-examined by counsel for the Trust and the GAL. He repeated and affirmed the conclusions in his final report, set out above, and expressed the view that the mother was motivated to parent the child but would require input from someone of at least the level of a child support worker at each stage of the child's development to ensure that she understood the child's needs emotionally and psychologically. He said "I believe that the mother would probably do very well in a residential assessment". He said that he had had good feedback from the Family Centre and there had been no indication of lack of commitment. The mother had willingly engaged with him and had been eager to change but had limited insight so that she would be unable to adapt what she now knew to the child's changes as he developed which was why he was recommending the ongoing support. He further explained this by saying that the mother can apply what she has learned in the "here and now" but the concern was as to how she would be able to apply her knowledge to the child as he developed. Therefore at each stage of the child's development the mother would require a four week intensive course and she would need guidance. He accepted that there was no guarantee of success.

[17] There was no challenge of substance to Dr Paterson's evidence and at the conclusion of the hearing I made the full care orders applied for, a course to which there was no objection of any substance. I indicated however that at that point the evidence had not satisfied me that the mother was unreasonably withholding her consent. Following discussion with counsel I adjourned the matter to enable a residential assessment at Thorndale to be arranged and, if that were successful, to see whether the mother could manage the child at home. I understood that proposed course of action to be agreed between all parties.

[18] Whether it was or was not it appears that the Trust then decided that it was not willing to arrange a Thorndale assessment. Instead, without informing the court, it purported to appeal a decision that I had not yet made to the Court of Appeal. The Court of Appeal remitted the matter to me leaving the Trust belatedly to inform the court that it did not wish to arrange the Thorndale assessment and was, in effect, resting its case upon the material in evidence at the June hearing.

What was really the mind of the Trust?

[19] Clues to the actual mind-set of the Trust are to be found in the minutes of a meeting of the Trust's Adoption Panel held on 18 June 2013, two weeks before the June 2013 hearing. At that meeting the child's case had been discussed and some of the exchanges contained in the minutes that subsequently became available are illuminating. For example:

> "The chairperson asked why the child had come back to Panel again and a social worker explained that it was due to the fact that Dr Paterson had carried out further work with the mother at the request of the judge *who had felt that she had made some kind of progress.* The chairperson referred to Dr Paterson's report noting that it was made quite clear that the mother had demonstrated progress but that it would not develop any further so there was no more work to be completed."
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> "A Trust member observed that the mother had been through a lot of assessments throughout her dealings with the Trust. The principal practitioner responded saying that *Dr Paterson's last piece of work had been required by the judge otherwise it would not have been carried out*."
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> "The chairperson questioned did the Trust hold a freeing order for the child as yet? *The senior social worker remarked that it was a formality that had to be completed.*"(emphases supplied)

[20] These minutes were not available to the parties in time for the hearing at the end of June 2013 but by 3 October 2013 when the final hearing on the freeing issue was held they had become so. The senior social worker was cross-examined about her remark to the Adoption Panel that the obtaining of a freeing order for the child was "a formality that had to be completed." Her reply was "that is horrendous to read this, it is not what I meant." The witness agreed with Ms Hyland, counsel for the mother, that there were better working relationships between the mother and social workers, that the mother had engaged in all assessment and attended all contacts. It was agreed that the mother was very affectionate with the child and that that had never been in doubt. It was submitted on behalf of the Trust that while the mother had made progress and could move forward with supports the supports suggested were "unrealistic and impracticable". Why they were so described was never made clear. In those circumstances it was submitted that the court should conclude that the mother was unreasonably withholding her consent. Senior counsel for the Trust conceded that there had been no alteration of significance in circumstances since the June hearing.

The child in his life setting

[21] As has been said, the child has been with his foster carers effectively since birth. It is clear that he is very well looked after by them and much loved. They are apparently quite comfortably off and are able to provide the child with a stable and

harmonious upbringing. They have said from the outset that while they would prefer to adopt the child if possible they are committed to his long term foster care should that be the outcome of these proceedings. The passage of time which I have deliberately caused to elapse has served to establish that these foster carers have been and are as good as their word.

[22] Importantly, the mother agrees that the child enjoys an excellent foster placement which she has now sworn that she has no intention of seeking to disrupt. In an affidavit of 13 April 2017 she says, inter alia:

> "8. I reiterate that I am content for the child to remain with the foster carers in long term foster care. I do not intend to make any application to discharge the Care Order. I am content to swear that this is my true position. I am confident that the foster carers will continue to appropriately love and care for the child and all the other children in their care, irrespective of their legal status. The facts of the case indicate that this indeed is their day to day reality. It is an extremely stable placement for the child and the other children. I support that for the child's sake.
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> 9. I hope this Honourable Court can therefore be satisfied by the fact that I have never made any other discharge applications and that I will also abide by that in this child's case. I simply would have no need or desire to do so. The child is thriving and I am happy for this to remain the case."

[23] Accordingly this case has, as I had hoped, now become one in which everyone; mother, Trust, GAL and foster carers, agrees that the child can and should permanently remain living with the foster family. The only question outstanding is as to the legal status within that family; long-term fostering or adoption?

The law

[24] In my judgment in *Northern Health and Social Services Trust v AR and BR* [2018] NI Fam 2 I discussed the decision of the Supreme Court in *Re B (A Child) Care Proceedings: Threshold Criteria* [2013] UKSC 33 and concluded that the effect of that decision was not to introduce higher hurdles to be surmounted before adoption without consent could be ordered. Rather it was, as I said then, to unearth, blow the dust off, restate and re-emphasise the existing law of proportionality which had in places failed to receive the attention it deserved and required alongside the important linked question of welfare. I shall not here repeat the detail of what I said there; those interested may find my discussion between paragraphs [25] and [32]. I

have however re-examined my approach in that case for the purposes of the present and see no reason to depart from it. I therefore propose to take the same approach to an evaluation of the facts of the present case.

Discussion

[25] As I have said, the welfare of the child has been admirably secured, practically since birth, by the consistent love and care afforded to him in his long term foster placement. No doubt his foster carers would like to adopt him and if the law were that those adults who could demonstrate that they could best provide for a child should be rewarded by the opportunity to adopt that child the foster carers in this case might have legitimate claim to such an outcome. However, that emphatically is not the law. The test for compulsorily severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by an overriding requirement pertaining to the child's welfare, in short where nothing else will do (per Baroness Hale in *Re B*).

[26] How do the facts of the present case sit with that test? In the first place there is no remaining consideration pertaining to the child's welfare – everyone agrees he could not be looked after better than he presently is and will continue to be. In the second place the mother was never afforded the opportunity to parent the child notwithstanding all the difficult and protracted work that she consistently undertook with Dr Paterson over a considerable period and very many sessions. She was denied the opportunity to undertake a Thorndale assessment and, if it had succeeded, to parent the child in the community with the modest level of professional support that Dr Paterson recommended. The minute of the Adoption Panel Meeting of 18 June 2013 demonstrates plainly that the Trust social workers had by that date firmly made up their minds against attempting rehabilitation. They misrepresented to the Panel the extent of the positive changes that the mother had made in her work with Dr Paterson and plainly regarded the granting of a freeing order as "a formality that had to be completed". True it is that Dr Paterson and the Family Centre have identified a lack of insight on the mother's part as a shortcoming that had not been and was not likely to be overcome, but it was principally for that reason that Dr Paterson had recommended that she have the periodic assistance of a social work assistant. The mother would not have been nor will she be the last parent to lack insight into their behaviour in relation to their children, but that feature of itself does not, perhaps fortunately for many other parents, give rise to a prohibition of their right to parent.

[27] Plainly I cannot say that the mother would have succeeded in being able to provide "good enough" parenting for the child. She might have failed in Thorndale or, subsequently, in the community. She had however worked hard with Dr Paterson over what in my experience was an unprecedented number of therapeutic sessions and had made significant, documented progress. Her relationship with Trust social workers which had historically been extremely oppositional had

improved and she was acknowledged to be taking direction. Her love for the child was and has never been in question.

[28] In all those circumstances how can it be said that nothing else but freeing for adoption will do? How can it be said after all her work and progress, that having been denied any opportunity to demonstrate her ability to parent the child, that the withholding of her consent to the child's adoption was "unreasonable"? In my view the Trust has entirely failed to discharge the high legal standard required of it before "unreasonableness" could be found. That being the only ground that has been argued to be applicable I am accordingly not satisfied that the mother is unreasonably withholding her agreement and I therefore refuse this application.