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

Delivered: **27.10.08**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

08/029055

OFFICE OF CARE AND PROTECTION

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

BETWEEN:

SOUTH EASTERN HEALTH AND SOCIAL SERVICES TRUST

Applicant;

-and-

**LS
and
PM**

Respondents.

WEIR J

Confidentiality

[1] Nothing may be published in relation to these proceedings or this judgment that would serve to identify the Respondents or the children concerned.

The nature of the proceedings

[2] The Applicant Trust seeks an Order pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 ("the Order") freeing two children for adoption without the agreement of their mother, LS. Their father, PM, gave his written agreement to their adoption on 16 October 2008, shortly before the commencement of the hearing in this matter. LS objects to the application for freeing and wishes both children to be returned to her care. The Guardian Ad Litem ("GAL") supports the Trust's application.

The background

[3] LS was born on 2 September 1985 and has, at least until recently, had a very difficult life. She has within her extended birth family been a victim of neglect and of sexual abuse. Her educational history only became clear during the course of the hearing when I asked that her school records be obtained. These show that by 1996 if not before she had been assessed as having special educational needs requiring her transfer to another primary school with a special class and the following year, upon transfer to secondary school, she was educated in its special unit due to what were described in the assessment of 8 July 1997 as her "generalised learning difficulties". These difficulties were assessed as requiring, inter alia, work with her vocabulary, reading comprehension, written work, numbers and, perhaps significantly in the context of this case, development of her listening skills and increase in her concentration span. By September 1999 when she was then 14 her reading and spelling ages were both less than 8. The general tenor of her school reports is that she tried hard, was always well-behaved and polite and in some subjects did well but remained very weak in English, Maths and Science. She also suffered from low self-esteem.

[4] LS met PM in July 2004 and after a very brief relationship she became pregnant with the first of their two children, R, who was born on 11 April 2005. Although born at 42 weeks his birth weight was only something over 4lbs. By the time of his birth PM and LS had parted and PM only learned of the birth of his son in June 2005. Thereupon he moved to live with LS in her flat close to her parents' home. R had been in the care of LS's parents ("Mr and Mrs S") since his birth although he saw his parents each day. Mr and Mrs S considered that LS was not able to properly care for R and LS herself was happy with the arrangement as she was not confident that she could manage a small baby.

[5] Unfortunately PM has throughout been far from a positive factor in the life of LS. Concerns were expressed about his alleged behaviour in a previous relationship and about allegations of past sexual abuse perpetrated by members of his wider family and Social Services therefore became involved. LS and PM moved together to various addresses during the second half of

2005 leaving Mr and Mrs S looking after R. In about November 2005 LS became pregnant with their second child, C.

[6] During this six month period Mrs S had been complaining to Social Services about PM and his family and had obtained a Residence Order in respect of R because of her expressed concerns. Surprisingly given this background, it emerged in early January 2006 that Mrs S had been having an affair with PM while he was living with LS and on 3 January 2006 the mother and PM went off together to live at PM's family home but leaving R behind at the insistence of Social Services. Subsequent investigations revealed that PM had been violent to LS during their time together.

[7] After Mrs S left the family home Mr S did his best to look after R and his own younger children with the help of LS and Mr S obtained a Residence Order in respect of R. However matters got on top of them and they were unable to cope. Mr S made visits to PM's home, sometimes accompanied by LS and by R in apparent attempts to persuade Mrs S to return to him. Social Services were concerned about R being left unsupervised in PM's family home in view of the information they had about possible abusers from PM's extended family potentially having access to him there. Meanwhile R was becoming dirty and unkempt as were his clothing and bedding although his health was found on medical examination to be good. Ultimately Social Services decided that matters could not continue as they were and on 9 March 2006 R was taken into care and placed with foster carers.

[8] The Trust then considered what to do next. A decision was considerably complicated by the fact that PM behaved most inconsistently in relation to LS and R, sometimes declaring that he wished to be with them and at others that he did not. His behaviour throughout appears to have been at best insensitive, thoughtless and selfish and at worst cruel and damaging to LS. Neither LS nor the Trust knew from one week to the next what his intentions were with regard to LS or his child. Simultaneously he appears to have been carrying on, in a similarly on-off way, his relationships with Mrs S and probably other women.

[9] Nevertheless the Trust had to do something and in April 2006 it decided upon a twin-track approach with the object of ensuring permanency for R within a suitable time frame. The plan was to assess Mr S, LS and PM for their suitability to provide appropriate care for R. It was hoped that PM and LS could, following some preliminary assessment and other work, undertake a joint residential parenting assessment at Thorndale, initially with R and later on in the assessment also with their new baby due to be born in August 2006. If this assessment were to fail then Mr S would, as a fall back, be considered as a possible carer for R.

[10] No sooner had this plan been devised than PM again changed tack; by the end of April 2006 he no longer wished to be considered for joint assessment and announced that he had in fact been in a relationship with another woman for some weeks. The Trust was therefore obliged to think again. In May 2006, following an assessment by a Consultant Clinical Psychologist (the first of several) which concluded that LS did not have a significant level of intellectual impairment, it was decided to have her assessed on her own at PACT.

[11] The PACT assessment did not go very well. LS found it difficult to interact effectively with R, she also had difficulty in maintaining his routines and was inclined to prioritise her own needs above his. When advised in relation to these matters by PACT staff she was unreceptive and at times resentful of or abusive to them.

[12] On 18 August 2006 the second child, C, was born. LS returned from hospital with her to PACT. Matters there did not improve and R, who had returned to foster care while LS was having her new baby, remained with the foster carers until he was returned full time to LS at PACT on 17 October 2006. Matters then deteriorated further as LS struggled to meet the needs of both children. Meanwhile, from the outside, PM was continuing his pattern of chaotic and inconsistent relationships and behaviour and seems to have pestered and unsettled LS a good deal by mobile telephone calls and texts to her at PACT. Her placement there was not getting better as, while it was acknowledged that she did try hard, she could not maintain improvement. Finally, on 26 November 2006, LS declared that "she couldn't do it any more" or, as she expressed it in the course of her evidence "I put my hands up". She asked Social Services to accommodate the two children and left PACT.

[13] Thereafter the Trust tried to discover whether there were any suitable kinship carers available for the children. Not surprisingly, given the dysfunctional nature of both families and the contradictory and unhelpful attitude of PM both to LS and to his children, this search did not bear fruit. However it occupied a period of 4½ months before failure was finally acknowledged by the Trust on 18 July 2007 when at a LAC Review it was decided to pursue permanency via adoption. On 7 August 2007 the Trust's adoption panel recommended that adoption was in R's best interests and that a freeing application be brought. On 27 September 2007 the Trust decision-maker endorsed that recommendation. By then R had been in care for 18 months.

[14] Thereafter nothing happened to progress the freeing application for a considerable time. Indeed the application was not actually made until March 2008, nine months after it had been decided upon. There is no acceptable reason for that delay. As a result, by the time the application came to be made R had been in care for two years.

Mr K C

[15] In about April 2007 LS met KC who was to become an important presence in her life. He was at first blush an unlikely friend for her because he is 54 years of age and she is now just 23. KC is an Englishman from Tyneside who was married in England for 17 years to a woman who had four children and he and she also had a child of their own together. After that marriage failed he lived with a lady in Belfast, MMcA, for 9 or so years and again he acted as a "step-parent" to her four children and they too had a child together. LS came to meet KC when she visited MMcA's house in the company of a cousin who knew that lady. It is clear that LS and KC soon became friends. He was anxious to emphasize in evidence that their relationship did not progress beyond friendship until he moved to live with her at her father's home at the end of June 2007. It is not necessary for me to reach a conclusion on that question. What is clear is that since June 2007 KC and LS have been together and LS has had what is undoubtedly the most stable period she has enjoyed, physically and emotionally, for very many years.

[16] After living together at a number of addresses, KC and LS moved to their present home in March 2008, a new three bedroomed privately - rented house which, although this did not appear from any of the social work or the GAL's reports, was conceded by the GAL at the hearing to be very well presented, clean and well furnished. The couple asked to be considered as joint carers for the children but an assessment in May 2008 concluded that they were unsuitable to proceed to work at a Family Centre or for residential assessment. The author of that report was not called to give evidence at the hearing but the report was admitted in evidence without formal proof and without admission of its contents or acceptance of its conclusions. LS continues to wish to have the children rehabilitated to her care supported by KC.

[17] Meanwhile the two children remain in separate foster placements while efforts to find an adoptive placement have continued. The objective upon which all are agreed is that they should if possible be placed together. A secondary preference is that that should be a Catholic home but it is also agreed that that preference would yield to the more important objective of placing them together. However there is a difficulty posed by the fact that R has been slow in meeting his developmental milestones. Reference was earlier made to his low birth weight and he has since been found to have a hearing problem for which ventilators have been inserted in his ears. Since then he seems to have made better progress with his speech but remains delayed at present. An Educational Psychology assessment of him is shortly

to be undertaken but it is thought that R will have significant difficulties when he enters P1 in September 2009. As a result the Trust has not been able thus far to identify suitable adopters. A search has been made both within the Trust and the other Northern Ireland Trusts but without success to date so that in June 2008 it proved necessary to enlist the help of Family Care Society which specialises in finding adoptive placements for more difficult cases. So far they too have had no success but believe that, if they cannot find a joint placement, there will be no difficulty in placing C immediately and they expect that they will be able to find a family for R although it may take some additional time given his particular needs. If a suitable joint placement has not been found by late February 2009 the Trust plans to consider separate placements in order that C's position is not prejudiced by unnecessary delay in achieving permanence for her. It is important to note that neither of the children's present foster placements is available to them in the long term nor can they offer the possibility of adoption for either child. Their present attachments to their carers will therefore inevitably be severed in the course of any move to permanence whether by way of adoption or rehabilitation.

The evidence of LS

[18] LS gave evidence broadly in accordance with the terms of her affidavit of 21 August 2008 and its exhibits. She accepted that in the past she had not been able to care adequately for her two children but felt that she has matured considerably over the past year or two and that, the children now being 3½ and 2, she could cope better than previously. She described her relationship with KC as strong, positive and supportive. LS drew attention to the fact, which is not disputed, that she has been unfailing in her weekly contact visits to the children and is managing the contact better. This is confirmed by Professor Triseliotis in the course of his magisterial report of 21 June 2008 in which he also observes that not only may LS have matured over the last 12 months but she has also benefited from the presence of Mr S at contacts since early 2007 because R has a particularly good relationship with his grandfather.

[19] I found that LS had a limited understanding of the reasons why the PACT assessment had gone so badly wrong. I conclude that at that time she was heavily dependent upon others including the malign PM for what she hoped would be support. She missed the contact with her family that she appears to need (whatever its value objectively viewed) and felt lonely and isolated. In addition, the effort of coping with the considerable demands presented by R as well as the new baby C were at that time simply too much for her. The question is whether LS could now, two years on, cope any better with the children than she could then? I consider that LS has matured with age and with the constant support of KC over the past 16 months but were she to again have to parent these children unaided I am not persuaded that she could do so. In my estimation LS would require considerable ongoing

day to day support if she were to have the prospect of successfully parenting the children.

The evidence of KC

[20] My conclusions in relation to LS make the assessment of KC as a long term support for LS in parenting the children vitally important. In short, if he and she together can provide good enough parenting that may lead to rehabilitation, if not adoption will be inevitable. I found KC an honest and intelligent witness who considered his answers carefully and resisted any temptation to give what might have seemed the politic answer. For example, he expressed uncertainty as to whether at his age he would wish to father more children with LS. His direct evidence was also broadly consistent with his affidavit sworn on 21 August 2008. He was cross-examined at length about a myriad of matters recited by Ms Hutchinson in her negative assessment report of May 2008 earlier mentioned. None of these, either individually or cumulatively, impressed me as being of much present practical relevance to the issue of rehabilitation. KC agreed that he had been drinking to excess at the time in 2007 at the time when he met LS and during the period before he moved to live with her. His evidence was that he had cut down his consumption and now only drinks a few cans of beer while watching football on television once or twice a week. He had not had the opportunity to get to know R or C as he was not allowed to attend contact and had only seen them for a matter of minutes on a few occasions.

[21] The impression that KC left with me was of a level-headed and steady man with an excellent working history. Most importantly, he is plainly very fond of LS and repeated, in my view sincerely, his desire to support her and to see her have her children returned to her. While I am fairly certain that he would not, all else being equal, choose to embark again upon fatherhood at his stage in life (for which he can hardly be faulted), I am persuaded that his sincere wish to support LS means that he is willing also to actively assist her in parenting her children, assistance which as I have said would in my view be essential for any prospect of success.

[22] I do not share the pessimistic conclusion of Ms Hutchinson's report nor do I accept that she has correctly concluded that LS is in the borderline intellectual functioning range. This assessment was based upon the results of a WAIS test of intelligence administered by a psychology assistant in May 2006 which produced a performance score which was very much higher than the verbal score. The degree of disparity between the scores should have been examined rather than the two scores simply merged to produce a result that failed to do LS justice by underestimating her overall level of intellectual functioning. The latest of several clinical psychology reports on LS (and by far the most informative and comprehensive) is that of Dr Philip Moore, Consultant Clinical Psychologist, of 14 September 2008. Dr Moore retested

LS, again using the WAIS test, and found that her performance IQ was at the mid-point of the average range whereas her verbal IQ was very markedly lower. This finding is in keeping with her ascertained special educational needs as earlier described.

Should the children now be freed for adoption?

[23] Before a Court may free a child for adoption in a case such as this it must first be satisfied:

- (i) That the parent is withholding consent “unreasonably” (Art. 16(2)(b))
- (ii) That it is likely that the child will be placed for adoption (Art. 18(2)(b))

Dealing with each requirement in turn, I am not at present able to conclude that LS is withholding her consent “unreasonably” as that term is understood in law. Had I been deciding that question immediately following the failure of the PACT assessment in November 2006 I have little doubt that I would have concluded that consent was being unreasonably withheld but now, a full two years later, a good deal has happened to provide grounds for some optimism that LS and KC together could successfully parent R and C. In my view Ms Hutchinson and the GAL both laid too much emphasis upon what may or may not have been significant events from the past and paid insufficient attention to LS and KC as they now are as a couple. I consider that they and the children deserve every help and encouragement to see whether adequate parenting can be accomplished by the two of them working together.

[24] Secondly, as to the likelihood of placement for adoption, the complicating factor is the disparity as between R and C. C could be placed almost immediately while R’s position is less certain and will require more time. All parties agreed that I ought not to consider freeing C immediately while deferring a decision on R and I am sure that it is right to take that view. At present, and until the end of February 2009 at earliest, no decision will be taken to try to place C and R separately. In those circumstances I cannot be satisfied that the children will be placed for adoption. True it is that no timescale is placed upon the likelihood of placement by Art. 18(2)(b) but Art. 20(1)(b) enables a birth parent to make an application to have a freeing order revoked if after 12 months the child has not either been the subject of an adoption order or at least by then has his home with a person with whom he has been placed for adoption.

[25] There was some debate between counsel as to what “likelihood” means in practice. Ms Walsh QC for LS espoused the formulation of Baroness Hale of Richmond in her dissenting speech in Down Lisburn H and SST v H & R at paragraph 24 where she states:

“Article 18(2) contemplates, even expects, that prospective parents will have been found, the match approved and the placement made, before the freeing order is made.”

With great respect to Baroness Hale, I find it difficult to accept that if the legislature had expected such a high degree of definition to the arrangements before freeing could take place it would not have added the words “... or the court is satisfied that it is *likely* that the child *will be placed* for adoption” (emphasis supplied) that follow the words “the child is already placed for adoption ...”, which latter words if found alone would be consonant with the construction contended for by Baroness Hale. In my view the additional words must connote the potential for the existence of a lesser degree of certainty at the point of freeing than that contemplated by the Baroness. Nonetheless, using the one-year “yard stick”, I am not satisfied that it is likely that the children, taken together by common agreement at this stage, will be placed for adoption as required by Art. 18(2)(b).

[26] Accordingly I am not at present satisfied as to either of the requisite matters and therefore decline at present to make an order that either R or C be freed for adoption. What I propose to do is to adjourn this application until 23 March 2009 to enable the possibilities for rehabilitation and the prospects for adoption to be clarified. In the event of an earlier significant change in circumstances any party will be at liberty to have the application re-listed upon reasonable notice to the others.