

Judgment: approved by the Court for handing down

Delivered:	23/05/00
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(subject to editorial corrections)*

HIGF3203

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE: JALB (2000/26A)

HIGGINS J

This is an application under Article 57(1) of the Adoption (Northern Ireland) Order 1987 (as substituted by Schedule 9 (paragraph 160(1) to the Children (Northern Ireland) Order 1995) for an order giving parental responsibility for a child to the applicants.

The applicants, Mr Bl and Mrs Bl, are citizens of the USA who are domiciled and resident in the USA. The female child, the subject of these proceedings, is JALB (J) who was born in Northern Ireland on 24 February 1998 and is now 2 years and 2 months. The child's mother is SABt (nee B) who married ABt on 30 April 1997. The marriage allegedly lasted 2 weeks and was unconsummated. The mother states that the child's father is JP with whom she had a relationship both before and after her marriage and who is the father of SABt's other child J-L who now resides with his maternal grandmother on foot of a residence order. The mother SABt and the father JP consent to the application before the court. ABt who is the husband of SABt has parental responsibility for J but cannot be found. The mother is not and has not been in a position to care for J nor is the putative father. Consequently in May 1998 when she was 2 months old J went to live with her great aunt Mrs S who has given her all the affection and care which she requires. For

reasons which are not material Mrs S will not be able to care for J throughout her childhood. Social Services have been involved with SABt and J since her birth. J is not the subject of any court order. A case conference in July 1999 concluded that it would be in J's best interests for her to be adopted. The child's legal relationship with the North & West Belfast Social Services Trust is not entirely clear. She was placed with Mrs S with the mother's agreement following the breakdown of a residential assessment for the mother and J at Thorndale Assessment Centre. This was intended initially as a very short term measure. I will assume for the purposes of this ruling that the child is as stated by the Guardian Ad Litem a looked after child under Article 27 of the Children (Northern Ireland) Order 1995.

During the autumn of 1999 the applicants Mrs and Mrs Bl were staying in Northern Ireland. Mr Bl was working as a volunteer in a drop-in centre. Mrs S met Mr and Mrs Bl. By November 1999 a proposal that Mr and Mrs Bl adopt J was being discussed. J was introduced to Mr and Mrs Bl. The child's mother was involved in the discussions and she agreed with the proposal. Mr and Mrs Bl commenced to make arrangements, including a home study by a private Adoption Agency in America and engaged a solicitor locally to represent them. The Trust representatives met with the solicitor on 9 December 1999 and decided not to oppose the intended application by Mr and Mrs Bl but indicated that the application would require to be made by the applicants. A notice of intention to apply to adopt J dated 10 December 1999 was served on the father in compliance with Article 22 of the Adoption (Northern Ireland) Order 1987. Article 22(1) states:

“22.-(1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least 3 months before the date of the order, served notice on the Board or HSS Trust within whose area he has his home of his intention to apply for the adoption order.

(1A) An application for such an order shall not be made unless the person wishing to make the application has, within the period of two years preceding the making of the application, given notice as mentioned in paragraph (1).

(1B) In paragraphs (1) and (1A) the references to the area in which the applicant or person has his home are references to the area in which he has his home at the time of giving the notice.

(2) On receipt of such a notice the Board or HSS Trust shall investigate the matter and submit to the court a report of its investigation and shall assist the court in any manner the court may direct.”

For the words “ adoption order” read an “ order under Article 57(1) “ – see later in this ruling.

Thus the Board or Health and Social Services Trust on whom notice shall be served is the Board or Trust within whose area the applicant has his home at the time of giving the Notice.

Article 22(2) requires the Board or Trust on receipt of such a notice to investigate the matter and submit a report of its investigation to the court and to assist the court in any manner the court may direct. Article 22(3) requires the Board or HSS Trust to investigate in particular the suitability of the applicants and any other matters relevant to Article 9 of the Adoption Order and also whether the child was placed with the applicants in contravention of Article 11 of the Order. Article 9 imposes a duty on the court to promote the welfare of the child.

An Originating Summons seeking an order under Article 57(1) of the Adoption Order was lodged in the Family Division of the High Court on 17 February 2000. Following a directions hearing the application was listed for the purpose of submissions on a preliminary issue, namely, what conditions if any require to be fulfilled by an applicant under Article 57, before a court may consider whether or not to grant the application.

Article 57(1) as substituted by the Children Order states:

“57-(1) Where on an application made in respect of a child by a person who is not domiciled in Northern Ireland or England and Wales or Scotland an authorised court is satisfied that he intends to adopt the child under the law of or within the country in which the applicant is domiciled, the court may, subject to the provisions of this Article, make an order giving him parental responsibility for the child.”

Neither applicant is domiciled in Northern Ireland or England and Wales or Scotland and it is their intention to adopt J under the law of the State of Tennessee in the United States of America.

Article 57(2) as amended by Schedule 9 paragraph 160(2) of the Children Order states:

“(2) The provisions of Part III relating to adoption orders, except Articles 12(1), 14(4), 15(2), 17 to 21 and 26, shall apply in relation to an order under this Article as they apply in relation to adoption orders subject to the modification that in Article 13(1) for ‘19’ and ‘13’ there are substituted ‘32’ and ‘26’ respectively.”

Part III of the Adoption Order as amended by the Children Order provides for the making of adoption and ancillary orders by the Court and establishes the requirements which must be fulfilled before such orders may be made. By Article 57(2), Part III of the order, with certain exceptions, applies to applications under Article 57(1). Thus for the purposes of Article 57(1), the relevant Articles of Part III of the Order should be read as if the words “an order under Article 57(1)” replaced the words “an adoption order”. Thus applications under Article 57(1) are treated in the same way as an application to adopt and many of the requirements for an adoption order must be fulfilled before an application under Article 57(1) may be granted.

Article 57(3) states:

“(3) Articles 50, 51(1) and 53(1) and 54 shall apply in relation to an order under this Article, except that any entry in the Register of Births or in the Adopted Children Register which is required to be marked in consequence of the making of an order under this Article shall, in lieu of being marked

with the word ‘Adopted’ or ‘Re-adopted’ be marked with the words ‘Proposed foreign adoption’ or ‘Proposed foreign re-adoption’, as the case may require.”

Article 58(1) makes it unlawful for a person to take or send a child who is a British subject outside the British Isles with a view to adoption of the child by any person not being a parent, guardian or relative of the child and any person who contravenes Article 58(1) shall be guilty of a criminal offence.

The relevant provisions of Part III of the Adoption Order require to be read as follows:

“13-(1) Where -

(a) the applicant, or one of the applicants, is a parent, step-parent or relative of the child, or

(b) the child was placed with the applicants by an adoption agency or in pursuance of an order of the High Court,

an [order under Article 57(1)] shall not be made unless the child is at least 32 weeks old and at all times during the preceding 26 weeks had his home with the applicants or one of them.”

Neither of the applicants is a parent, step-parent or relative of J nor was J placed with the applicants by an adoption agency or in pursuance of an order of the High Court. J is older than 32 weeks and if she was placed eg. in pursuance of an order of the High Court an adoption order could be made if at all times during the 26 weeks preceding the date of the order she had her home with the applicants or one of them.

Article 13(2) requires to be read as follows:

“(2) Where paragraph (1) does not apply, [an order under Article 57(1)] shall not be made unless the child is at least 12 months old and at all times during the preceding 12 months had his home with the applicants or one of them.”

Thus where Article 13(1) is not applicable the child must be older than is at least 12 months and have had his home with the applicants or one of them for a longer period of

time namely for 12 months. In the present circumstances the conditions of this Article are applicable and require to be fulfilled.

Article 13(3) requires to be read as follows:

“(3) [An order under Article 57(1) shall not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a married couple, both applicants together in the home environment have been afforded -

(a) where the child was placed with the applicant by an adoption agency, to that agency, or

(b) in any other case, to the Board or HSS Trust within whose area the home is.”

Thus, as J was not placed by an adoption agency, the Board or HSS Trust must be afforded sufficient opportunities to see the child with the applicants in the home environment. The home environment would be the home where the child has spent the qualifying period required by Article 13(1) or (2) whichever be applicable. The relevant Board or HSS Trust is the Board or Trust within whose area the home referred to above is situated. Thus in the instant case J requires to have had her home with the applicants for a certain period of time preceding the date of any order and the court must be satisfied that the relevant Board or Trust have had an opportunity to see the child with the applicants in that home. The purpose of these requirements is to ensure that before a child is adopted or removed from the jurisdiction for the purposes of adoption, the court can, by evidence from the Board, Trust (or agency where appropriate), be satisfied that a proper relationship has developed between the child and the applicant and that the child is well cared for.

Article 16 which requires either parental agreement or the dispensing of that agreement by the court also applies to an application under Article 57(1). In this case the mother and the putative father are in agreement. The mother’s husband to whom she was married when the child was born cannot be found and his agreement could be dispensed with.

Article 57(1), (2) and (3) apply certain specified articles of the Adoption Order to applications to remove a child from Northern Ireland for the purposes of adoption. Neither Article 9 (duty to promote the welfare of the child) nor Article 11 (restrictions on arranging adoptions and placing children) which are in Part II of the Order are among the sections specified. However it is inconceivable that Article 9 would not apply. It opens with the words - “in deciding on any course of action in relation to the adoption of a child”. The removal of a child out of the jurisdiction for the purposes of adoption would qualify as a course of action in relation to the adoption of a child. If Article 57(2),(3) and (4) are not exclusive of Article 9 then there is no reason why Article 11 should not also apply in relation to the making of arrangements or the placing of a child who is the subject of an application to remove him out of the jurisdiction for the purposes of adoption. Indeed it is consistent with the regulatory and protective jurisdiction of the Adoption Order that both Articles should apply. But why should Parliament specify only certain Articles in Article 57(2), (3) and (4) as applying to applications under Article 57(1). The answer to that probably is to ensure that the rigorous pre-adoption order provisions in Part III (with certain exceptions) should be adhered to in Article 57(1) applications.

The Adoption Rules (Order 84; Rules of the Supreme Court (Northern Ireland) (Amendment No. 6) 1989 No. 343) are framed in the same manner. Rule 48 states:

“(1) An adoption under Article 57(1) shall be commenced by originating summons in Form 8 issued out of the Office.

(2) Subject to paragraph (3), Part III of this Order except rule 15(1) and Part V except rule 52(1)(e) shall apply to an application for an order authorising a proposed foreign adoption as if such an order were an adoption order.

(3) An applicant for an order authorising a proposed foreign adoption shall provide expert evidence of the law of adoption in the country in which he is domiciled and an affidavit as to that law sworn by such a person as is mentioned in section 114(3) of the Judicature (Northern Ireland) Act 1978 (that is to say a person who is suitably qualified on the account of his knowledge or experience to

give evidence as to that law) shall be admissible in evidence without notice.”

Part II of the Adoption Rules makes provisions for adoption orders. The Board to whom notice is given under Article 22(1) is a respondent to the proceedings - (Rule 15(2)(d). On filing the originating summons the applicant shall supply three copies of a report by a medical practitioner made not more than three months earlier on the health of the child and of each applicant covering the matters specified in Part II of Appendix F - see rule 15(5)(b). Where it is proposed to request the court to dispense with the agreement of a parent three copies of a statement of facts on which the applicant intends to rely shall be attached to the originating summons. A Guardian Ad Litem should be appointed (Rule 17(1)) who shall, with a view to safeguarding the interests of the child, carry out the duties set out in Rule 18, which include making a report in writing to the court. Any document signifying the agreement of a parent to the removal of a child out of the jurisdiction for the purposes of adoption shall be in Form 10 and if executed in Northern Ireland, be witnessed by a Justice of the Peace - Rule 19. Where, as in this case, the child was not placed for adoption the Board or Trust to whom notice was given under Article 22 shall, within 6 weeks of the Notice of Hearing or Notice of Presentation, supply three copies of a report in writing covering the matters specified in Part I of Appendix G (the Appendix G Report) - see Rule 22(2). This requirement to submit an Appendix G Report should apply to a Trust if the Trust is the Notice Party and carries out the investigation under Article 22(2). The Master shall send a copy of the Appendix G report to the Guardian Ad Litem - Rule 22(4). Rule 23 which relates to the hearing also applies.

Appendix G of the Adoption Rules specifies the matters to be covered in the Appendix G report supplied by the Board under Rule 22(2). These include the following:

- 1) The child - (h) date and circumstances of placement with prospective adopter.

4) Prospective adopter(s) - many personal details including inter alia; (i) physical description; (j) personality; (m) past and present occupations and interests; (n) particulars of the home and living conditions (and particulars of any home where the prospective adopter proposes to live with the child, if different); (o) details of income and comments on the living standards of the household; (r) attitudes to the proposed adoption of such other members of the prospective adopter's household and family as the Board considers appropriate; (s) previous experience of caring for children and assessment of ability in this respect; (v) assessment of ability to bring up the child throughout his childhood.

5) Actions of the Board

(a) (iv) reasons for considering that the prospective adopter would be suitable to be an adoptive parent and that he would be suitable for this child.

7) Conclusions

As far as possible the court should be given a fuller picture of the child, his natural parents and where appropriate the prospective adopter -

(a) a summary by the medical adviser of the health, history and state of health of the child, his natural parents and if appropriate the prospective adopter;

(d) if the child has been placed for adoption;

opinion on the likelihood of full integration into the household, family and community of the prospective adopter

and on whether the proposed adoption would be in the best long term interests of the prospective adopter.

The report of the Boards medical adviser on the health of the prospective adopters should as far as practicable cover the matters set out in Appendix G Part II. They include a medical history of the family covering the applicants' parents, brothers, sisters and other children.

This summary of the material to be furnished to the court gives a clear indication of the extent and proximity of the contact required between the Board or Trust, the applicants and the child before reports are submitted to the court and any decisions made. The material specified is helpful in interpreting the requirements of Article 13 of the Order. Article 13 is entitled 'Child is to live with adopters before order made'. Each subparagraph of Article 13 imposes requirements related to the home -

- (1) during the 26 weeks preceding the making of an order the child is required to have his home with the applicant or one of them;
- (2) during the preceding 12 months the child is required to have his home with the applicants or one of them;
- (3) the Board should have sufficient opportunity to see the child with the applicants together in the home environment that home being within the Board's area.

It was submitted on behalf of the applicants, in the alternative, that the child might be permitted to leave the jurisdiction and travel to America and live there with the applicants in their home in America in order to fulfil the 'home requirements' of Article 13. It is clear that the home referred to in Article 13 is a home within Northern Ireland which would lie within the geographical area of one of the Boards or Trusts. Furthermore at the time of serving notice on the Board or Trust the applicants are required to have their

home within the area for which that Board or Trust are responsible - see Article 22(1) and (1B) of the Adoption Order. The matters required for the Appendix G report would suggest that the opportunities to see the child with the applicants sufficient to inform the court as to the circumstances would require to be much more than fleeting or causal. It is not possible nor helpful to attempt to set a number for the opportunities afforded to the Board or Trust to see the child in the home environment, but it must be in excess of one and sufficient to enable the officer of the Board or Trust responsible for the report to comment meaningfully on the matters specified in Appendix G. Thus it seems clear that the child must have his home with the applicants in Northern Ireland for a certain period of time before the court could grant an application under Article 57(1). J has lived and inferentially, if not evidently, had her home with her great-aunt and uncle at their house in County Antrim.

The applicants' home is in Tennessee, United States of America and an adoption home study from their state together with personal details about them have been filed with the court. Since 27 March 2000 the applicants have been residing at the home of J's great-aunt and uncle and with J. This date is later than the date on which Notice was served under Article 22 and it would appear that at the date of service of the Notice neither applicant was residing at a home within the Board or Trust's area. The purpose of residing at the J's great-aunt and uncle has been to enhance their relationship with J and to attempt to fulfil the requirements of Article 13. If it is determined that J has her home with the applicants at that address then they or one of them would require to reside there for twelve months or if the child is placed in pursuance to an order of this court, for a period of 26 weeks. This is a considerable burden for these applicants who are of limited financial means. It is proper to record that the applicants appear to be well regarded by all in Northern Ireland who have encountered them and the documentation which has been reviewed by the Guardian Ad Litem does not present any different picture. J's mother

told the Guardian Ad Litem “they are genuine caring people and J clicked with them”. There is no reason to doubt that statement.

Two questions remain for consideration -

1. does the present arrangement whereby the applicants apparently reside at J’s great-aunt and uncle’s house constitute J having her home with the applicants or one of them.
2. does that same arrangement qualify as the home environment in which the Board should have the opportunity to see J with the applicants.

The house is the home of the great-aunt and uncle and the applicants are mere visitors or lodgers there. The purpose of Article 13 is to create a situation in which a proper parent and child relationship can develop, to promote and safeguard the welfare of the child and to ensure that the child is provided with a stable and harmonious home. The emphasis should be on the nature and quality of the relationship between adult and child rather than the physical building or its contents. Several persons could occupy one building and each regard it as their home but in a different manner from the others. A person may have more than one home and each building could be occupied by different persons as well as the one who lives in both at different times and all may regard one or both residences as their home. Where a person has two residences he may regard one as the principal residence and his home. Much may depend on the nature and character of his residence there.

The meaning of the word ‘home’ was considered in the context of adoption by Sheldon J in Re Y (a minor) (adoption and jurisdiction) 1985 3 AER 32. The relevant part of the Headnote reads -

“The question arose whether persons who were resident abroad but domiciled in the United Kingdom could apply for an adoption order under the 1975 Act and, in particular, whether such applicants were required to have a home in England, since s 18(1) of the 1975 Act required an applicant for an adoption order in respect of a child not placed with the applicant by an adoption agency to give at least three months’

notice of his intention to adopt the child to the local authority 'within whose area he has his home' while s 9 provided that if an applicant was a parent, step-parent or relative of the child an adoption order could not be made unless the child had had his home with the applicants for a specified time and the court was satisfied that the local authority 'within whose area the home is' had been given a sufficient opportunity to see the child with the applicants in the home environment.

Held - (1) A person who was domiciled in England but resident abroad was not entitled under the 1975 Act to adopt a child in England unless when giving notice of his intention to adopt the child the applicant had a 'home' in England in the area of the local authority to which notice had to be given under s 18(1) of that Act and which was required by s 9 to see all the parties together in their home environment, since it was clear that for the purpose of those provisions the 'local authority' meant a local authority within the jurisdiction of the English courts (see p 26 f to j, post).

(2) The term 'home' was incapable of precise definition for the purposes of the 1975 Act and it was a question of fact in every case whether an applicant had a 'home' in England. However, applying the ordinary common-sense meaning of the term, a home comprised the essential elements of regular occupation (whether past, present, intended for the future or intermittent) with some degree of permanency, and based on some right of occupation whenever it was required. Moreover, the requirement in s 18(1) that an applicant had to have a home within the jurisdiction for a specific period did not import an obligation on the child and the applicant to be actually living in the home at any particular time or for any particular length of time, since what was required was merely that they should spend sufficient time there to enable the local authority concerned to see all the parties together, and what that involved in terms of residence depended on the facts of the particular case. Since neither the London properties nor the husband's daughter's house could be regarded as a 'home' for the purposes of the 1975 Act, it followed that the applicants did not have a 'home' in England and the court had no jurisdiction to make an adoption order."

He quoted the shorter Oxford English Dictionary definition of a "home" - "A dwelling-house, house abode: the fixed residence of a family or household, one's own house, the dwelling in which one habitually lives or which one regards as one's proper abode". He then said page 37:

“It is a definition which, in my judgment, contains the essential elements of a ‘home’ as it is to be understood for present purposes. I have no doubt that an individual may have two homes; but each, in my judgment, to be properly so called, must comprise some element of regular occupation (whether past, present or intended for the future, even if intermittent), with some degree of permanency, based on some right of occupation whenever it is required, where, in the words of Kekewich J in *Re Estlin, Prichard v Thomas* (1903) 72 LJ Ch 687 at 689, ‘you find the comforts of what is known as a home’, the fixed residence of a family or household.

It is a concept which may also have different meanings in different contexts, so the definitions to be found in other cases in connection with other statutes may, for present purposes, be misleading. Nevertheless, I am encouraged in my conclusion by finding a similar theme in two judgments of Evershed MR and Salmon LJ. Thus, Evershed MR in *Beck v Scholz* [1953] 1 All ER 814 at 816, [1953] 1 QB 570 at 575, in a judgment concerned with the Rent Acts, said:

“The word “home” itself is not easy of exact definition, but the question posed, and to be answered by ordinary common-sense standards, is whether the particular premises are in the personal occupation of the tenant as his or her home, or, if the tenant has more than one home, as one of his or her homes. Occupation merely as a convenience for ... occasional visits ... would not, I venture to think, according to the common sense of the matter, be occupation as a home.’

So also, per Salmon LJ in *Herbert v* [1964] 1 All ER 882 at 887, [1964] 1 WLR 519 at 528, a case concerned with the Landlord and Tenant Act 1954:

“Home” is a somewhat nebulous concept, incapable of precise definition ... In my view, if the evidence establishes ... a substantial degree of regular personal occupation by the tenant of an essentially residential nature, it would be difficult, if not impossible for a court to hold that he was not in occupation of the premises as a home ...’

The requirement that the applicant or applicants must have a ‘home’ within the jurisdiction for the period specified, however, does not also import an obligation that they or the child should be living or residing there at or for any particular time or length of time. Of course the less time that any of

them spend there the more difficult it is likely to be to persuade the court that it is a 'home'; but the only statutory obligation in this connection would seem to be that they should spend sufficient time there to enable the local authority concerned to see all parties together in their 'home environment' as provided by s 9(3) of the 1975 Act and properly to investigate the circumstances as required by s 18. What that will involve in terms of residence will be a question to be decided in the light of the facts of each case."

This was a case under the 1975 Act in England and Wales in which the word 'home' required to be construed in accordance with section 87(3) which stated that references to the person with whom a child has his home referred to the person who has actual custody of the child. No similar provision exists in the Northern Ireland legislation. Thus 'home' in the Northern Ireland legislation requires to be construed in the context in which it is used. Nonetheless the remarks of Sheldon J are helpful in construing what is meant by a 'home'.

It would appear that section 57(1) was intended to permit persons who are domiciled outside Northern Ireland but who on a temporary basis have their home in Northern Ireland and are resident in Northern Ireland to remove to their country of origin a child who has come to live with them in their home in Northern Ireland. That is not the applicants' situation. They met J in Northern Ireland at her great-aunt's home when they were staying in Northern Ireland for a period of time during which the male applicant was helping out at the Drop In Centre. J did not have a home with them then but did have with her great-aunt. The applicants returned to America and later came back to Northern Ireland for the specific purpose of furthering their aim to adopt J. J has never been formally placed with them, she remains placed with her great aunt. The applicants have moved into the great-aunt's home to be with J. The great aunt's home is not their fixed or habitual resident though it may be their accommodation for a number of months. The fact the applicants have a home in America is no bar to them having a home in Northern Ireland. The arrangement may be characterised more accurately as lodgings. But lodgings

for the lodger may be home provided there is a sufficient degree of permanence about it. The intention of the applicants is relevant. The expression ‘home is where you make it’ is instructive. The applicants wish to adopt J, they wish to establish a home with her in Northern Ireland to fulfil the Adoption Order requirements. In that sense their living in the great-aunt’s home is not a mere convenience, it has a defined purpose. I am not prepared to hold at this stage that the present arrangements for the applicants and J could not constitute a home for the purposes of the Adoption Order.

After J’s birth her mother commenced a residential parenting assessment at Thorndale Assessment Centre with J. This was arranged by the Social Services Trust and J’s mother agreed to it. The assessment commenced on 16 March 1998 and lasted for 6 weeks until 6 May 1998. According to the Guardian Ad Litem on this date J was placed with her great-aunt. The arrangement was originally planned to provide respite for J’s mother. However, it would appear that by then the assessment had broken down. J’s mother then agreed with her aunt that J would live with her and the Trust agreed to this arrangement. The Guardian Ad Litem comments that J “has been accommodated in accordance with Article 27 of the Children Order since 13 May 1998”. According to the Reporting Officer’s report the assessment was suspended on 13 May 1998 after the mother failed to attend at Thorndale on 11 May 1998 when J was due to return there from her great-aunt’s home. According to the Reporting Officer’s report “J was voluntarily accommodated with her great-aunt from 13 May 1998 and remains in this placement to date”. Thereafter J’s placement was regularly reviewed via Case Conference and Looked After Children’s Reviews”. Article 27 of the Children (Northern Ireland) Order states:

“27.-(1)Every authority looking after a child shall -

- (a) when he is in the care of the authority, provide accommodation for him; and
- (b) maintain him in other respects apart from providing accommodation for him.”

Article 25 defines what is meant by the expression “a child who is looked after by an authority”:

“25.-(1) In this Order any reference to a child who is looked after by an authority is a reference to a child who is -

- (a) in the care of the authority; or
- (b) provided with accommodation by the authority.”

J is not in the care of the authority (ie Trust) nor is she being provided with accommodation by the Trust. On the information presently before the court the Trust have approved an arrangement between the mother and her aunt that J should live with her mother’s aunt. It was submitted as an alternative to J residing with the applicants in Northern Ireland that the Trust could make arrangements for J to live in America. Article 33 of the Children (Northern Ireland) Order makes provision for a Trust to arrange for a child to live outside Northern Ireland with the approval of the court. However, Article 33 only applies to children in the care of a Trust and consequently J does not qualify. Therefore, the only option open to the applicants is an application under Article 57(1).

If the background as outlined is correct then J was voluntarily placed with her great-aunt by her mother in order to live with her great-aunt and not for the purposes of adoption. Her mother and putative father agree to her removal to America for adoption but no formal placement with the applicants for that purpose has occurred either by the Trust as adoption agency nor by the court. Therefore Article 13(2) is applicable and J requires to have her home with the applicants for 12 months preceding any order. Does J have her home with the applicants. I am not persuaded that she does not. J still resides at her great-aunt’s home and the original placement has not been terminated in fact, though the presence of the applicants may have changed the arrangements. I have no reason to doubt the genuineness of the applicants. It may be in J’s best interests in accordance with Article 9 of the Adoption Order for her to be adopted by them, but I am unable to

conclude at this stage that J has her home with them (nor do I need to for present purposes). It has not been demonstrated that the home which J has had with her great-aunt for the last two years has come to an end nor that she now has her home with the applicants. A sense of what is meant by a child having his home with someone may be gained from Article 28 of the Adoption Order. This Article imposes, in specified circumstances, restrictions on the removal of a child against the will of the person with whom the child has his home. Article 28(1) states that while an application for an adoption order is pending a person is not entitled to remove the child from the actual custody of the person with whom the child has his home. Therefore the question arises - in whose custody is J. She was placed in the custody of her great-aunt and at the very least there is nothing in the evidence as yet to demonstrate that this situation has materially altered. Mrs McGaughey on behalf of the Official Solicitor who was engaged as Guardian Ad Litem and for whose assistance I am grateful put the question this way - are the applicants exercising the necessary and effective parental control of J in the great-aunt's home. It is said that the applicants care for J during the day. Even if it is all day and night has the great-aunt relinquished her role as custodian of J which she has carried out for nearly two years. Has the great-aunt relinquished her role as custodian of J whilst both she and J continue to reside in her home? It may be possible to do so, though that decision does not require to be made on this occasion.

Therefore the answer to the preliminary points raised are -

- (i) unless J is placed with the applicants by an adoption agency or the High Court she must have had her home with the applicants at all times during the preceding twelve months; and
- (ii) should J be placed with the applicants by an adoption agency or in pursuance of the order of the High Court she must have her home with the applicants for 26 weeks preceding the making of an order;

- (iii) whether J has her home with the applicants whilst all three live at the home of J's great-aunt is a question of fact to be determined in accordance with the evidence adduced;
- (iv) whether the arrangement whereby the applicants and J reside at the home of J's great-aunt is a 'home environment' for the purposes of Article 13(3) is a matter to be determined in accordance with the evidence adduced.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

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RE: JALB (2000/26A)

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J U D G M E N T

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H I G G I N S J

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