

<b>Neutral Citation No: [2026] NIFam 15</b>	<b>Ref: HUM13076</b>
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No:</b>
	<b>Delivered: 08/06/2026</b>

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

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**FAMILY DIVISION**  
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**Between:**

**KJ and WR**

**Applicants**

**and**

**NS**

**Respondent**

**[Adoption; Unreasonable withholding of consent]**

\_\_\_\_\_  
**Peter McGuinness (instructed by Reid Black Solicitors) for the Applicant**  
**Julie McIlroy (instructed by McAtamney Solicitors) for the Respondent**  
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**HUMPHREYS J**

**This judgment has been anonymised as it involves a child. The ciphers given to the parents and the child are not their initials. Nothing must be published which would identify the child or the parents.**

***Introduction***

[1] This is an application brought by the birth mother, WR, and the stepfather, KJ, for an adoption order pursuant to Article 12 of the Adoption (Northern Ireland) Order 1987 (“the 1987 Order”) in respect of a child, TR. It is opposed by the birth father, NS.

[2] I have had the benefit of considering the statement of facts prepared by the applicants, the birth father’s replying affidavit, the skeleton arguments and the legal authorities referred to along with the detailed Appendix 4 report prepared by Ms McGookin and Ms Wisener of the adoption team of the Trust and the Children’s Court Guardian report prepared by Ms Gates. These have all been taken into account by me and I have also had the considerable advantage of having the parties’ positions outlined clearly in oral submissions.

### *The legal framework*

[3] The parties agree that the requirements of Articles 13 and 22 of the 1987 Order are satisfied in this case. The questions for the court to determine are twofold:

- (i) Is the making of an adoption order in the best interests of TR?; and
- (ii) Is NS unreasonably withholding his consent?

[4] Article 9 of the 1987 Order provides:

“In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall –

- (a) have regard to all the circumstances, full consideration being given to –
  - (i) the need to be satisfied that adoption, or adoption by a particular person or persons, will be in the best interests of the child; and
  - (ii) the need to safeguard and promote the welfare of the child throughout his childhood; and
  - (iii) the importance of providing the child with a stable and harmonious home; and
- (b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”

[5] The court must therefore apply a holistic welfare test and in doing so, has to ascertain the wishes and feelings of the child regarding the decision and give due consideration to them having regard to her age and understanding.

[6] The regard to be had to the child’s wishes and feelings will, of course, vary depending on the age and stage at which any particular child is at.

[7] The court must not make an adoption order unless it is satisfied either that each parent agrees or such agreement should be dispensed with on one of the grounds set out in Article 16(2) of the 1987 Order. In this case, the relevant ground is that the parent is:

“withholding his agreement unreasonably”

[8] It has been recognised that the wording of the statute is, at best, unfortunate since it will often be the case that a parent will object to the making of an adoption order on a perfectly reasonable basis. As Simpson J observed in *Re A Mother and A Father* [2021] NIFam 23:

“[36] In a way, it is unfortunate that the legislation uses the word ‘unreasonably’, conjuring up as it does in the public mind the concept of a selfish parent or a parent who is putting their own wishes ahead of the interests of the child or one who refuses to listen to reason. The parents in this case both love the children and genuinely want the best for their children. What they feel emotionally unable to do is to consent to the relinquishment of their parental rights forever.

[37] This is an entirely understandable position for any loving parent to take. Nothing in this judgment should be taken by the parents, or anyone who reads it, as a criticism of these parents’ stance in withholding their agreement. They should understand that there is a narrow, legalistic meaning to the concept of unreasonably withholding agreement.”

[9] The test to be applied by the court is explained in the leading authority of *Re C (a minor) (Adoption: Parental Agreement, Contact)* [1993] 2 FLR 260 per Lords Steyn and Hoffmann:

“... 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.

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.”

[10] The nature of the judicial exercise involves the application of an objective test of reasonableness in all the circumstances of the case, including a careful consideration of all the other options open to the court, weighing up the pros and cons of each.

[11] The court must also consider whether the significant interference with the right to respect for family life enshrined in article 8 of the European Convention on Human Rights caused by the making of an adoption order is both proportionate and necessary in all the circumstances. Such interference cuts across different family relationships, so the making of an adoption order will have a profound effect on the article 8 rights of a birth parent but the refusal to make one could also have significant consequences

for the family rights of those who are seeking to have that particular legal framework put in place.

[12] In *Re FD* [2021] NIFam 18, McFarland J reflected on the authorities and observed:

“In summary, although the statutory provisions apply to all types of adoption, the approach directed by the Supreme Court in *Re B* that adoption is only necessary when ‘nothing else will do’ primarily relates to ‘stranger’ adoptions. In family member adoptions, which would include aunts, uncles, grandparents, great aunts and great uncles, as well as one natural parent and a step-mother or step-father, the same proportionality exercise should be conducted based on the individual facts of the case, but when doing so the court should be mindful of the degree to which the two types of outcome will interfere with Article 8 ECHR rights. Stranger adoptions are at the extreme end of the spectrum, and family adoptions are elsewhere on the spectrum. As to where the case sits on the spectrum will depend on the facts, particularly the relationships within the family.” (para [19])

### *Consideration*

[13] In this case, TR is now aged 14, her parents were not married and they separated when she was about 10 months old. Thereafter, the applicant mother has been her primary carer and her stepfather has been a part of her life since early childhood. The applicants began to live together with TR was aged 4 and KJ has had a day-to-day parental role which is described in some detail in the Trust and Guardian reports.

[14] There were contentious and difficult family proceedings between WR and NS which led to the birth father obtaining an order for contact with TR. That did progress over time but ultimately ceased in early 2023 following an incident during the course of a contact which gave rise to allegations which the court is not in a position to determine. In any event, these matters proved highly contentious and have led to NS having had no further direct contact for over three years. I do note that the respondent has sent occasional messages but there has been no re-establishment of a relationship between TR and her birth father.

[15] In terms of the welfare analysis that I must conduct under article 9 of the 1987 Order, I have had the benefit of the Guardian’s report and the Appendix 4 report prepared by the Trust social work team. In the Guardian’s report TR is described variously as being bright, emotionally mature, intelligent and articulate and having put forward very clear and consistent views on her family relationships. She, in the

Guardian's analysis, has always been open and considerate about her wishes and feelings. She fully understood the role of the Guardian and social workers in the legal proceedings and made it clear to both that this application essentially originated from her own wishes, that she has wanted the adoption order for about the last four or five years as she firmly regards KJ as her father.

[16] TR also stressed to those professionals the importance of her bond with the whole family unit, that is with her mother, her stepfather and her younger sibling, and more broadly, the extended maternal family. She was able to clearly express her love and deep affection for KJ which has built into a close and trusting relationship in which she relies on him and seeks support and guidance from him. She also was able to express her wishes and feelings in relation to her birth father and the unfortunate consequences of the negative experience from contact visits and her clearly held view that she does not wish to re-establish any form of contact with him. She has expressed directly to the court that she wants to, as she describes, close the chapter in her life and the Guardian and the social workers have no doubt that this is a view she has arrived at after careful and insightful reflection.

[17] In the analysis of both the Guardian and the social workers in the adoption team, the making of an adoption order would be in TR's best interests and the views that she expressed, given her age and maturity, ought to carry very significant weight in the court's overall analysis.

[18] In terms of NS, I have no doubt that his position is genuinely held and sincerely expressed. The court has noted carefully the submissions of his counsel that he has never sought to meddle in an unwanted way in TR's life or to disrupt the family unit that she currently enjoys. He regrets that direct contact came to an end and he has sought through his messages around birthdays and Christmas to try and establish some form of indirect contact. He also makes the important point that this issue is not just related to him but also to his family unit, to his partner and to their daughter who is another half-sibling to TR.

[19] Unfortunately, however, the relationship with her birth father has broken down and it has not been possible to restore it. In TR's view this is not something at the moment that she wishes to reconsider.

[20] The court has reflected the alternative options open to it. To make no order in this case would run contrary to TR's expressed wish that KJ would acquire parental responsibility for her and would leave NS still holding such rights. The making of a residence order would formalise TR's place in the family unit but still leave her in a different legal position from her sibling and not provide any of the security and legal certainty that she clearly craves. I note in passing that there is no equivalent in this jurisdiction of special guardianship orders which can be made in England & Wales.

[21] TR has identified the making of an adoption order as being the only basis to provide the permanent structure that she has identified as being the legal answer to meet her welfare needs.

[22] I am therefore satisfied in light of the evidence that the making of an adoption order promotes the welfare of TR throughout the rest of her childhood years and into adulthood.

[23] Adoption represents a serious interference with a birth parent's rights, but in this case, being a kinship step-parent adoption rather than a stranger one and there is a slightly different set of principles in play. TR is fully aware of her background and origins, of where her father is and the option always remains open for her to re-engage with NS in the future. I am satisfied that the making of an adoption order whilst a very significant interference is nonetheless proportionate and necessary.

[24] The concerns expressed by NS clearly and articulately through his counsel are fully legitimate, but these are concerns that are addressed towards his own interests. The objective parent must also take account of the settled and clear wishes of the child and the absence of any meaningful relationship as matters stand between the child and her birth father and benefits of legal permanence within her existing family. In making that objective analysis, I have concluded that the father is withholding his consent unreasonably within the meaning of Article 16 of the 1987 Order. I stress that this is not a personal criticism, that is simply the application of a legal test.

### *Conclusion*

[25] I am satisfied that adoption is in TR's best interests, it is necessary and proportionate and that the father's consent is being unreasonably withheld. I therefore make an adoption order dispensing with the consent of NS. I direct that TR be henceforth known by her stepfather's surname in accordance with her wishes and feelings.

[26] I emphasise that the making of an adoption order whilst it terminates parental responsibility, does not terminate the fact of parentage nor does it extinguish the possibility of future contact. There are many cases before this court where there are successful post-adoption contact arrangements put in place. Should TR feel at any time that she wishes to re-establish that connection by whatever means then that is always an option open to her as she continues to grow through her teenage years.

[27] Having made that order, I will discharge the Guardian and I will make the usual order as to costs, that is no order save for the taxation of the costs of legally assisted persons.

[28] The court wishes to record that TR has dealt with these difficult issues of family relationships in a mature and insightful manner, and I am particularly impressed with

her ability to interact with a range of professionals and to present her views in such an articulate manner.