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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

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Between:

A HEALTH AND SOCIAL CARE TRUST

Plaintiff

-v-

A MOTHER AND A FATHER

Defendants

IN THE MATTER OF GA (A FEMALE CHILD AGED 13 MONTHS)

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Ms S Simpson KC with Ms L Murphy (instructed by the Directorate of Legal Services) for the Trust
Mr H Toner KC with Ms E Ryan (instructed by Brendan Kearney & Co solicitors) for the parents
Mr G McGuigan KC with Ms C McCloskey (instructed by Quigley, Grant & Kyle solicitors) for the children's court guardian on behalf of the child

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McFARLAND J

Introduction

[1] This judgment has been anonymised to protect the identity of the child. I have used the cipher GA for the name of the child. These are not her initials; they were randomly selected and had been used in an earlier judgment referred to below. Nothing can be published that will identify her. As reference is also made to a full-sibling and a half-sibling who are the subject of earlier orders of this court, nothing can be published that will identify them. During his evidence the father suggested that the court had changed the name of one of his daughters to Rose (see [2] below). The court made no such order and had only chosen that name at random for use in the judgment as a means to protect the real identity of the child.

[2] GA was born in April 2022 and is now 13 months of age. She is the child of the mother and the father. She has an older full sister, six older maternal half-siblings, and one older paternal half-sister. A more detailed background to the extended family is set out in the judgments - *Re: Rose* (unreported 3 October 2019) and *Re RH* [2022] NIFam 31. My judgment in *Re RH* was delivered in October 2022 and related to the older full sister who was freed for adoption. *Re Rose* was a judgment of O'Hara J relating to the paternal half-sister. The maternal half-siblings have been dealt with through the care system of the Republic of Ireland. The mother does not have contact with any of her six children who live in the Republic of Ireland, the father does not have contact with the child anonymised as Rose, and neither parent has had contact with RH, their older child, or GA since November 2022.

[3] The Trust became aware of the mother's pregnancy when contacted by the father in November 2021. Communication between social workers and health professionals with the parents was difficult with both parents adopting a loud, aggressive, and argumentative tone. The mother had a midwifery appointment on 15 December 2021, but she later declined to attend for a booked scan on 4 March 2022. In all eight scan appointments were missed by the mother during this period.

[4] On 11 March 2022 the father advised the Trust that the mother was in Dublin waiting to catch a boat to Scotland and that social services "would not be taking the baby into care." Whatever the travel arrangements of the mother were, she did attend an appointment with an obstetrician in Northern Ireland on 15 March 2022. A pre-birth initial child protection case conference was convened on 16 March 2022 but neither parent attended although both were invited. The conference recommended that the baby be placed on the child protection register at birth under categories of potential emotional abuse and neglect.

[5] The birth on 21 April 2022 was not without incident with an emergency Caesarean section and transfer later that day to the neo-natal ward for tube feeding. During this period both parents presented to medical staff as aggressive with fluctuating co-operation.

[6] The Trust applied for an emergency protection order on 21 April 2022 with a plan of removal of GA to foster care on discharge from hospital. The family proceedings court granted the emergency protection order on 22 April 2022 but discharge from hospital was delayed due to ongoing feeding problems. The Trust then issued an application for a care order on 25 April 2022. GA was placed in a short-term foster placement under the emergency protection order on 28 April 2022 and an interim care order was then made on 29 April 2022. The child was moved to her concurrently approved placement on 13 December 2022.

[7] The Trust has reported that GA is currently meeting all her developmental milestones, is presenting as a thriving infant with her physical and emotional needs

being met to a high standard in her current placement.

The hearing on 17 April 2023

[8] Although Brendan Kearney & Co were on record as acting for both parents, it became apparent from comments made by the father both to Trust staff and to the guardian that the father considered that he would be representing himself. Brendan Kearney & Co made no application prior to the hearing to come off the court's record as acting for the father. Ultimately, the hearing was adjourned because of the father's stated medical condition, and it was confirmed that Brendan Kearney & Co were continuing to act for him.

The hearing on 23 May 2023

[9] Although it had been the stated intention of both parents to attend the hearing, neither attended. Mr Toner made an application that they should be permitted to attend the hearing remotely by video link on the first day to hear the proceedings and evidence. It was their intention to attend physically on 24 May to give their evidence.

[10] The application was made because the father said that he had a physiotherapy appointment that morning. Mr Toner said that the mother had told her solicitor that the appointment had been sought "pre-Covid" (although it was not clear if this meant pre-March 2020) and confirmation had only been received in the post on 22 May. Further clarification was sought on 23 May, and it was reported by Mr Toner he was now instructed that the appointment was at a local hospital at 10am on 23 May and that the appointment had been confirmed on the telephone and not by post. No indication was given concerning the father's longstanding back problem and whether that would prevent his attendance, or whether the problem necessitated the mother's caring for the father's personal needs thus preventing her from attending at court.

[11] On the 23 May I gave a brief *ex tempore* judgment refusing the parents' application and I now expand a little on my reasons in this judgment.

[12] Schedule 27 to the Coronavirus Act 2020 was a temporary measure and it has been extended for six monthly periods. It remains in place (expiring in September 2023). This permits the court to conduct a hearing with participants attending remotely. The key consideration is the interests of justice, and a key factor will be the ability of a person to participate fully in the proceedings (see eg *Re Four children* [2021] NIFam 42).

[13] Guidance was given in a number of decisions in England at the beginning of the pandemic (see eg *Re P* [2020] EWFC 32, *Lancashire CC v M* [2020] EWFC 43, *Re A* [2020] EWCA Civ 583 and *Re B* [2020] EWCA Civ 584). The main issue in the English cases was the opposite to the issue before me – can a party, particularly a vulnerable

party, participate fully in a hearing which they are attending remotely by live-link or telephone as opposed to in person? The President of the Family Division, McFarlane P in *Re A* at [8] and [9] set out some general principles and factors for consideration:

> "[8] It follows, applying the principles set out above and the guidance that has been given, that:
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> (i) Final hearings in contested Public Law care or placement for adoption applications are not hearings which are *as a category* deemed to be suitable for remote hearing; it is, however, possible that a particular final care or placement for adoption case may be heard remotely;
>
> (ii) The task of determining whether or not a particular remote hearing should take place is one for the judge or magistrate to whom the case has been allocated, but regard should be had to the above principles and guidance, as amplified below;
>
> (iii) The requirement for 'exceptional circumstances' applies to live, attended hearings while the current 'lockdown' continues.
>
> [9] The factors that are likely to influence the decision on whether to proceed with a remote hearing will vary from case to case, court to court and judge to judge. We consider that they will include:
>
> (i) The importance and nature of the issue to be determined; is the outcome that is sought an interim or final order?
>
> (ii) Whether there is a special need for urgency, or whether the decision could await a later hearing without causing significant disadvantage to the child or the other parties;
>
> (iii) Whether the parties are legally represented;
>
> (iv) The ability, or otherwise, of any lay party (particularly a parent or person with parental responsibility) to engage with and follow remote proceedings meaningfully. This factor will include

access to and familiarity with the necessary technology, funding, intelligence/personality, language, ability to instruct their lawyers (both before and during the hearing), and other matters;

(v) Whether evidence is to be heard or whether the case will proceed on the basis of submissions only;

(vi) The source of any evidence that is to be adduced and assimilated by the court. For example, whether the evidence is written or oral, given by a professional or lay witness, contested or uncontested, or factual or expert evidence;

(vii) The scope and scale of the proposed hearing. How long is the hearing expected to last?

(viii) The available technology; telephone or video, and if video, which platform is to be used. A telephone hearing is likely to be a less effective medium than using video;

(ix) The experience and confidence of the court and those appearing before the court in the conduct of remote hearings using the proposed technology;

(x) Any safe (in terms of potential COVID 19 infection) alternatives that may be available for some or all of the participants to take part in the court hearing by physical attendance in a courtroom before the judge or magistrates."

[14] These principles and factors must now be applied in the context of the current state of the pandemic which is no longer considered to be at a critical public health level. The Lady Chief Justice on 15 May 2023 issued guidance relating to physical (i.e., in-person), remote and hybrid hearings in what has been seen by many as a return to normality in relation to court hearings. Relevant extracts of that guidance are set out below:

> "This guidance reflects the recognition that there are matters where the interests of justice determine that physical attendance is necessary unless otherwise directed.
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> From 15 May 2023, all legal representatives, participants in proceedings, members of the media and public should

> attend court in person unless a judge has decided they can attend remotely applying the interests of justice test in that individual case."

[15] It is acknowledged that the issue before the court is a very significant decision as it is considering a care order with a care plan of adoption and freeing the child for adoption. These are draconian orders, and in particular the freeing order will take effect to pass parental responsibility into the sole control of the Trust, as the adoption agency. In the circumstances, the court should strive to permit the parents to engage with the court proceedings as best they can. But as McFarlane P observed, adoption hearings are not suitable for remote hearings.

[16] Both parents had the opportunity to attend. There did remain significant doubts as to the accuracy of the information being conveyed by the parents to their lawyers and then to the court. Even taking the very late physiotherapy appointment as accurate, ultimately this was a decision by the parents in relation to their own priorities in life. The mother had no real reason for not being in court, and the father had made a choice based on his own priorities.

[17] The schedule of business on the 23 May was the Trust's evidence and the evidence of the guardian. The parents were intending to attend on 24 May to give their evidence.

[16] Of concern to the court was the likelihood of either parent recording the proceedings and making the recordings available to a wider audience, notwithstanding the fact that they would potentially be committing a criminal offence (see section 102B of the Judicature (NI) Act 1978 inserted by the 2020 Act). The court's concern is not so much to protect the integrity of the proceedings but to protect the welfare of the child. There is a lengthy history in this case, and earlier cases, of the parents actually recording, or indicating that they were recording or intending to record, conversations and events with social workers, security staff and the guardian, using social media to reference their cases, and making threats to publicise the case and to contact journalists. The details are set out in the various reports before the court.

[17] In all the circumstances, taking into account the opportunity that had been afforded to the parents to attend in person; the lack of any excuse for the mother; the choice made by the father between a physiotherapy appointment and the court hearing relating to the future of his child; the parents would be represented in court by an experienced solicitor and two experienced counsel; the proceedings would be audio-recorded by the court and an accurate record would be available; the parents would have the opportunity to give evidence the following day; and the risk of unlawful recording of the proceedings and disclosure of the proceedings into the public domain without the consent of the court, I refused to permit either parent to attend remotely.

[18] The hearing then proceeded with the Trust's case being opened to the court, and evidence being given by a social worker and by the guardian. Mr Toner was offered a short adjournment after the evidence-in-chief to allow the parents to be advised about the evidence that had been given and to give instructions about any cross-examination. Mr Toner then cross-examined each witness.

The hearing on 24 May 2023

[19] The following day both parents attended court. Mr Toner indicated that he wished to call both to give evidence and in the absence of written statements having been filed and served, he sought the leave of the court that they be permitted to adduce their evidence. Rule 4.18(1) and (3)(a) of the Family Proceedings Rules (Northern Ireland) 1996 provides as follows:

> "4.18(1) … [A] party shall file and serve on the parties, any welfare officer and any court children's guardian of whose appointment he has been given notice under rule 4.11(5) -
>
> (a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing of … those proceedings …
>
> (3) At a hearing … a party may not, without the leave of the court -
>
> (a) adduce evidence …
>
> in respect of which he has failed to comply with the requirements of paragraph (1)."

[20] During the course of these proceedings, the family proceedings court had made an order on 22 April 2022 permitting the parents to file any statement by 29 April 2022. When the matters were then timetabled for hearing the High Court on 3 October 2022 directed the parents to file their statements by 8 March 2023. When the freeing order application was made it was consolidated with the care order proceedings and the existing timetable was applied to the freeing proceedings on 24 February 2023.

[21] No explanation was offered at this stage as to why the statements had not been filed.

[22] The rules have a purpose. Family proceedings are inquisitorial in nature with the focus on the welfare of the child and it is very important that the court and the other parties have an advance indication as to the evidence which any party wishes to adduce. This can assist in identifying areas of agreement and dispute and assists

everyone to prepare for the hearing. It avoids a 'trial by ambush' scenario arising.

[23] In the circumstances of this case, I granted leave to adduce evidence. I considered that the case which had been promoted to date by both parents was well documented through conversations and exchange of email. The Trust and the guardian could make a reasonable assumption as to what both parents would state in their evidence. If there was any new evidence, the trial process would be able to cope with such an eventuality.

[24] Both parents then gave their oral evidence. The father confirmed that it was a deliberate decision by him not to make a statement as he did not want the Trust to know what he was going to say. The mother was not asked why she did not file a statement, but she indicated that she, on a general basis, adopted the evidence that had been given earlier by the husband. In any event, when the evidence was given, it did not contain any significant deviation from the case that both parents had been promoting prior to the hearing. Both were available for cross-examination and were questioned on behalf of the Trust. The guardian declined to ask questions.

[25] I now turn to deal with the issues in the case.

Threshold

[26] The date of Trust intervention was two days after GA's birth, so the Trust's application is asking the court to find that at the time GA was likely to suffer significant harm attributable to the care likely to have been given to her by her parents. The court must be satisfied that this is "a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case" (see the speech of Lord Nicholls in *Re H and others* [1996] AC 563 at 585F).

[27] A significant part of the threshold factual background relies on previous harm suffered by the older full and half-siblings. This is, of course, relevant but the court must exercise caution as previous findings of harm and threshold in relation to other children do not necessarily mean that threshold is satisfied for another child. As Wilson LJ observed in *AP* [2007] EWCA Civ 1265 at 35 "it is necessary to consider each child separately even if in many cases a risk to one is a risk to all."

[28] The Trust provided a threshold document divided into three sections, dealing with the mother, the father and both as a couple. The facts that underpin the Trust's case against the mother relate to her experiences in the Republic of Ireland. The six older children were born in 2010, 2011, 2014, 2016, 2017, and 2019 by another man. All those children were removed from her care and are now being cared for in long-term foster placements in that country. The mother does not have contact with any of them. The evidence indicates poor, unhygienic, and chaotic living conditions, exposure to domestic violence, and a failure of the mother to protect the children.

[29] In the evidence given to this court both the mother and the father said that this was all the fault of her then partner and the social workers. The role ascribed to the former partner may, or may not, be correct, however the facts relied upon by the Trust are child-focussed and record the harm suffered by each of the children in the mother's care and her contribution to that harm with her failure to care for them and to protect them.

[30] In relation to the father, the Trust relies on the findings of fact set out in the *Re Rose* judgment and the volatility and aggression both within the earlier relationship and in his presentation to social work and health professionals. It further relies on anger management issues and drug misuse.

[31] In his evidence, the father sought to minimise his volatility and aggression and then to explain that it was a consequence of his having to stand up for his, the mother's and his child's rights against dishonest social work and health-care professionals. The father's evidence was very generalised and lacked specificity. This court has already noted the issues surrounding the case relating to his oldest child and the fact that he did have a genuine cause for grievance relating to how that case was handled by the Trust regarding the care planning aspect. He has no entitlement to a grievance concerning why that child was removed from his care in the first place. There were well documented concerns about his parenting ability at the time. The grievance relates to the form of care planning decisions made by the Trust, rather than the substance of those decisions.

[32] Finally in respect of their presentation as a couple, the Trust relies on the findings relating to the older full-sibling (set out in the *Re RH* judgment) and issues arising prior to GA's birth, including poor ante-natal care. This includes a failure to attend for eight scans and three midwifery appointments. This ante-natal care has no connection to social work practitioners and everything to do with the care and nurture of the then unborn child. It reflects an attitude of indifference and echoes what had occurred in relation to their older child when there was no ante-natal provision by the mother.

[33] The final fact the Trust relies upon is the focus of the parents on their 'fight' with statutory agencies, which impedes their ability to develop insight, to work in partnership and to make the necessary changes. The parents when they gave evidence acknowledged the 'fight' with statutory agencies, and in response to some of the cross-examination, both parents expanded the scope of their 'fight' beyond the social workers (on both sides of the border), to include administrative staff, security staff engaged to protect the well-being of the social workers and health professionals. The 'fight' encompassed all others perceived by the parents to be associated with the Trust, including lawyers, the guardian, and the court. The court in both *Re Rose* and *Re RH* has made findings on this issue. That was up to January 2021, the date of intervention in RH's case. All the evidence placed before the court would indicate that there has been absolutely no change between January 2021 and April 2022. In fact, the evidence proves that the attitude of each parent has become

more entrenched. Their evidence was just a poor attempt to justify their conduct and approach.

[34] In the circumstances I find that threshold is proven and that the Trust have shown that at the time of her birth there was a real possibility that it was likely that GA would suffer significant harm attributable to the care likely to be given to her by her parents. Threshold has therefore been proved.

Care planning

[35] There is a compelling need for the Trust to exercise parental responsibility for GA. The evidence is clear that when the parents had been involved in undertaking parental responsibility they have failed to prioritise GA's welfare. The most obvious is their refusal to register her birth. This was not a mere oversight, but was a matter repeatedly raised by social workers and at court review hearings. Eventually the parents registered the birth in January 2023 when GA was nine months old. Other evidence is the refusal to permit health staff at the time of GA's birth to undertake routine measures to alleviate distress and assist in the care of GA. There has also been a failure to attend routine medical appointments in respect of GA.

[36] The care plan is one of adoption. The Trust has also issued its application to free GA for adoption.

[37] In *Re H-W* [2022] UKSC 17 the Supreme Court re-iterated the importance of its earlier decision in *Re B* [2013] UKSC 33. When considering a care plan of adoption this engages article 8 ECHR (respect for private and family life) rights and the court must determine that it is both necessary and proportionate in order to satisfy the state's obligation under article 8(2). A proper holistic evaluation of the realistic options for the child is required. This evaluation should consider the likelihood that if left in the parents' care GA would suffer harm, the consequence of such harm arising, the possibility of reducing or mitigating the risk of harm and the comparative welfare advantages and disadvantages of the options presented (see [52]–[56] of *Re H-W*). This evaluation will result in the court arriving at an appropriate decision with the child's welfare as its paramount concern bearing in mind the draconian nature of an adoption order and the need to ensure that it is always regarded as a last resort as a care planning option. That last resort can only be reached after all other realistic options have been eliminated (see *Re R* [2014] EWCA Civ 1625).

[38] The court has considered the following options in this case – rehabilitation into the parents' care, long-term fostering, or adoption.

[39] The deficits in the care likely to be provided by the parents have been highlighted in the earlier judgments of *Re Rose* and *Re RH*. There is no evidence presented to the court that would indicate that either parent is motivated, or has even the capacity, to change. Neither has acknowledged a need to change and

neither has engaged with the services provided by the Trust. The non-engagement and dis-engagement in assessments were noted in the earlier judgments. 'Top-up' assessments were offered by the Trust but were declined by each parent.

[40] The evidence also supports the Trust's contention that after the court's judgment in *Re RH* (on 13 October 2022) and a significant incident at contact on 14 October 2022, the parents largely disengaged, not only with regard to RH, but also with regard to GA. There were brief intervals of engagement but in highly confrontational circumstances.

[41] The parents seem incapable of having any constructive relationship with social workers. This is blamed by the parents on the Trust and the excuses offered will usually revert back to the circumstances of Rose's care planning. The parents have constantly asserted that once the Trust change their staff, then they will be able to co-operate. During the RH case the complaint was against one office in the Trust and the evidence from the father was that he was able to work with the staff from another office when dealing with GA. That, of course, proved a wildly optimistic prediction, as the evidence indicates that the relationship with the different office followed a similar pattern to the old office.

[42] The court cannot simply ignore this level of non-co-operation and hostility. Two security staff need to be present during contact visits to protect GA and to protect Trust staff. The activities of the parents have also passed the criminal law threshold with the mother having received a suspended prison sentence for harassing Trust staff, and with the father convicted of harassment and awaiting sentence. He is also facing a hearing relating to an assault charge which is understood to relate to security staff on Trust premises. Threats have also been made to disrupt the current placements of both GA and her older sister RH.

[43] The positive aspects of rehabilitation would be GA remaining within her birth family with all the obvious benefits of such a placement. On the negative side would be an inability on the part of either parent to promote the physical and emotional needs of GA coupled with the certainty that neither are likely to seek out assistance from social services, medical staff and other agencies. There is every prospect that the Trust's efforts to monitor GA should she be placed in her parents' care would be actively resisted or avoided.

[44] Even looking at this case in the most positive light as far as the parents are concerned it is difficult to identify any method, such as using a court order or other provision, that would lead to the mitigation of risk. The Supreme Court in *Re H-W* at [54] stressed the need for a court to "consider the possible reduction or mitigation of the risk which pertains and the welfare advantages and disadvantages of imposing an order." It later stressed that this involved consideration of the range of orders available, a direct reference to Article 3(3)(g) of the Children (Northern Ireland) Order 1995 (part of the welfare checklist).

[45] Restraining orders are in place to protect two named social workers from the mother. A similar order may well be issued by the Magistrates' Court in respect of the father in the near future when he comes to be sentenced, although that is a matter entirely for that court. Civil injunctions could be put in place to protect other individuals and the inherent jurisdiction of the court could be invoked to protect GA by injunctions, but none of these interventions are likely to provide a framework for a care plan which involves allowing GA to live with her parents. Such a care plan would not only have to provide for her safety and the safety of those tasked with monitoring her well-being but would also have to be ensured that her physical and emotional needs are catered for.

[46] I cannot see any possibility that rehabilitating GA into the care of her parents is a realistic option. The priorities and focus of the parents are best summed up in the concluding comments of the father's evidence:

> "That's not a right that God gave me the day I was born into this world. On that day I was told that I could conceive and multiply and father and go forth and multiply. That's the word of the Bible – go forth and multiply. Like I said, if my wife was permitting, I'd give you a baby every year just to bankrupt you, I would. That will be up to my wife. She is the one who has to carry them, but I'd give you a baby every year just to show you in the light that you are. You are money-grabbing tramps that have no interest in children's interests. The only thing that you are interested in is propping up your bank book with lies from your social workers there who have no problem propping up their bank accounts with the lies and garbage that they have put in there to come and represent [them], you paid liar."

During her evidence the mother stated, "I agree with everything [the father] says." Even making allowances for words uttered in the heat of the moment, these comments reflect the real priorities of the parents and their approach to parenting.

[47] There are no members of the wider family who have been suggested by the parents, who have been identified by the Trust or have come forward as potential carers.

[48] That leaves the options of either long-term foster care or adoption. The current placement could provide either, although the stated desire of the current carers is for adoption. The analysis carried out by the Trust and the guardian support adoption as an appropriate care plan. I agree with those assessments. These carers can provide for GA's physical and emotional needs throughout her childhood. She is thriving in their care.

[49] One factor which, in my view, requires a care plan of adoption is the risk of breakdown in the placement and the harm to GA that is likely to flow from such a change of circumstances.

[50] Black LJ in *Re V* [2013] EWCA Civ 913 set out the principle differences for the child of fostering and adoption (at [96]):

> "(i) Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to "feel" different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement.
>
> (ii) Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time.
>
> (iii) Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a local authority, the starting point is that the authority is obliged to allow the child reasonable contact with his parents (section 34(1) Children Act 1989). The contact position can, of course, be regulated by alternative orders under section 34 but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement. Once the adoption order has been made, the natural parents normally need leave before they can apply for contact.
>
> (iv) Routine life is different for the adopted child in that once he or she is adopted, the local authority have no further role in his or her life (no local authority medicals, no local authority reviews, no need to consult the social worker over school trips abroad, for example)."

[52] Black LJ's second factor is very important in this case. The parents have expressed an intention to disrupt the placement, attempt to trace the child and to bring her to their home to live with them. Their conduct to date has involved criminal activity by harassing social workers to further that end. A care plan which permits the parents to retain parental responsibility is always going to have potential problems. The father is capable of extreme action (for example, when his conduct at a hospital in England where Rose was being treated necessitated the hospital trust having to obtain an injunction to restrain him). The provisions of Article 52(3)(b) of the Children Order allow a Trust to restrict the exercise of parental responsibility, but that would not eradicate the problem. Routine issues such as non-emergency but significant health issues, education, and holidays will be a potential for creating battlegrounds at which the parents will continue their 'fight' with social services. The well-being of GA and that of her carers would be collateral damage in that conflict.

[53] Adoption is a draconian order but in the extreme circumstances of this case it is the only realistic option that will preserve and enhance the well-being of GA.

[54] The contact arrangements within the care plan envisage the potential for contact with the parents but only after meaningful engagement by them with the Trust and then when a suitable regime will be put in place to protect GA and her placement. Such a regime would also have to ensure the protection the safety of Trust staff. All the evidence suggests that this is not possible now and given the current view as expressed in their evidence to the court, the parents are not ready to commit to undertake the necessary work. It must also be borne in mind that the parents have not availed of contact since November 2022, and prior to that their attendance was haphazard at a rate of 45%.

[55] The parents indicated that the contract which they were required to sign was draconian in nature and contrary to their human rights. The document is at pages 293 and 294 of the Trial Bundle. The main complaint advanced by the parents is the provision that they are not allowed to leave the contact room during contact. The purpose of that provision was to ensure continuity of contact between parent and child, to prevent either parent leaving and thus creating a potential confrontation with Trust or security staff endangering the well-being of the staff and exposing GA to seeing and/or hearing such a confrontation, and to prevent both parents from taking breaks to go outside to smoke. The latter condition was required because of evidence that such breaks were disruptive in nature and it was considered that they were not conducive to GA's good health given potential exposure to smoke through the parents' clothing.

[56] The evidence suggests that the parents did agree to sign this contract, but a short time later withdrew their consent. I consider that all the conditions in the contract, including this condition about leaving the room, were not so onerous as to create an insurmountable obstacle to contact, provided the parents approach the matter in a non-confrontational mood and with real concern for the welfare of GA.

The necessity for toilet breaks was raised, but I consider that that was chosen as a convenient example by the parents to attack the entire regime. It had no real substance. No evidence was placed before the court as to why this could be an issue and during the hearing on 24 May both parents were able to remain in the courtroom for a period of approximately one and three quarter hours (10:45–12:30) without appearing to be in any distress or in any need for a break. I discount from my analysis a very brief period when the father left the courtroom with his solicitor and junior counsel. Any parent desirous of seeing their child would not regard this as an issue.

[57] The proposed contact with the parents is every three months post-freeing, and every year post-adoption. This is adequate in all the circumstances, but it must be acknowledged that it is contingent on numerous conditions being fulfilled.

[58] Inter-sibling contact has also been considered. TUSLA have expressed an opinion that contact with the maternal half-siblings living in the Republic of Ireland at this time would not be in the interests of the half-siblings and that opinion, based on the circumstances of each half-sibling, must be respected. Rose is 17 years old and has indicated that she does not wish to see GA, and again that cannot be advanced at this stage. RH is already having contact with GA through arrangements made with both sets of carers. The proposal is for contact every six months, but it is likely that given the positive nature of the arrangements, that this will advance in step with the needs of each child and will increase in regularity within an informal structure.

[59] The proposed contact arrangements are satisfactory. The care plan is approved and as a consequence a care order will be made in relation to GA.

Freeing for adoption

[60] Freeing for adoption involves the court determining a two-fold test. The first test relates to the welfare of the child. Article 9 of the Adoption (Northern Ireland) Order 1987 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."

[61] This, to some extent, replicates the evaluation undertaken in determining the proportionality and necessity of a care plan involving adoption. I have already undertaken that evaluation, and for the reasons set out above, I consider that the welfare test is satisfied.

[62] The second and final limb of the test to be determined is how to deal with the failure on the part of both of the parents to give their consent to the adoption. This can be dispensed with if the court considers that it is being withheld unreasonably. This is an objective test and requires the court to consider the circumstances of the parents in this case but to endow them with a mind and temperament capable of making reasonable decisions (see *Re: D* [1977] AC 602 at 625).

[63] A reasonable parent is bound to give significant weight to what is in the best interests of his or her child. Such a parent would also take into account the attachment it has established with the child and the commitment the parent has towards the child and how the parent manifests that commitment.

[64] I dealt with the grievance that the father feels towards the Trust in *Re RH* (at [63] – [64]). Nothing has really changed since that decision. At [64] I said:

> "As for the grievance, a reasonable parent would take into account first that although the process in respect of [Rose] had become flawed, the actual decision making in the context of [Rose]'s welfare was meritorious leaving aside the actual personnel involved, second that it related to another child, and third it was a significant period of time since the decision was made."

[65] Recently in *Re AB* [2023] NIFam 7 I reviewed some of the older English authorities in relation to grievance when freeing for adoption was part of its law, including *Re B* [1990] 2 FLR 383, *Re E* [1995] 1 FLR 382 and *Re BA* [1985] FLR 1008. The theme that emerged from these authorities was that a sense of grievance needs to be based on facts, rather than emotion, it will only rarely be relevant to the thinking of a reasonable parent, and even then, it is unlikely to be more than a subsidiary factor.

[66] What happened to Rose was more than an error on the part of the Trust, it was a flawed approach to decision making. But in the context of GA's future and her well-being it is a subsidiary matter, and the court could not allow events which occurred over 10 years ago in relation to a half-sibling to burden the decision making in respect of GA.

[67] Reasonable parents would consider all the relevant circumstances relating to GA's life and reasonable parents would recognise that rehabilitation to them is impossible, that they have had only sporadic contact with her, and that neither parent has been able to parent the eight older children, either by themselves, with their then partners and as a couple in relation to the youngest two children. A reasonable parent would recognise that adoption is the only realistic option in this case.

[68] For these reasons, I will dispense with the consent of both parents and will free GA for adoption. I referred to the proposals of post-adoption contact above and do not need to add any further comment.

Conclusion

[69] I will make a care order in respect of GA and will free her for adoption. The guardian is discharged. There is no order as to costs between parties, save that legally assisted parties will have their costs taxed in accordance with the legislation.