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(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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(FAMILY DIVISION)

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

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BETWEEN:

HOMEFIRST COMMUNITY HEALTH AND SOCIAL SERVICES TRUST

Applicant/Respondent;

- and -

SN

Respondent /Appellant.

IN THE MATTER OF JN

_____

SHEIL LJ

Introduction

[1] This is an appeal from the decision of McLaughlin J wherein he held that the appellant, SN, was unreasonably withholding her consent to the adoption of her son, JN, and that JN should be freed for adoption pursuant to Article 18(1) of the Adoption (Northern Ireland) Order 1987.

[2] The facts of the case are set out in the comprehensive judgment of McLaughlin J given on 24 June 2004. As stated by McLaughlin J at paragraph 47 of that judgment:

> "The ultimate decision which has to be made in this case is whether an attempt should be made to reunify JN with his mother, or whether it is appropriate that he should now be freed for adoption on the basis that his needs cannot be met within a reasonable timescale".

Before making such an order, the court must be satisfied that SN is withholding her consent unreasonably.

Factual background

[3] SN is now aged 21, having been born on 29 December 1983. She had a very unsettled childhood, having been placed in foster care as early as the age of 6. She is a single parent, being the mother of JN who is now almost 4 years of age, having been born on 3 April 2001. CM, who is the father of JN, had a similar background to that of SN. He has played no real part in the life or upbringing of JN and has had no contact with him since May 2001. Prior to his birth social services decided that it was in the best interests of SN and JN that they should both be placed in Barnardo's PACT (Parents and Children Together) residential accommodation for assessment immediately following the birth, which in fact was done. That PACT assessment was terminated on 2 August 2001 following a serious incident in which SN was involved with another resident. At that stage JN was placed in short term foster care. On 22 March 2002 he was placed in long term foster care with Mr and Mrs K, with whom he has lived ever since. On 12 September 2002, following a LAC (Looked After Children) review, the Trust decided to make an application to the court to free JN for adoption. SN has refused to give her consent to such a course and accordingly one of the issues before the court is whether it should dispense with her consent on the ground that she is withholding her agreement unreasonably: Article 16(2)(b) of the Adoption (Northern Ireland) Order 1987.

[4] JN has only been in the care of his mother for the four months immediately following his birth on 3 April 2001. As already stated, he has

been in foster care since 3 August 2001. On 7 April 2004 Mr and Mrs K, who have been his foster carers since 22 March 2002, were approved as prospective adoptive parents of JN.

Reports

[5] Mr O'Hara QC, who appeared with Mr McGuigan for SN, submits that the Trust had made up its mind by September 2002 that it would make an application to the court to free JN for adoption without giving his mother a further opportunity to prove herself as being capable of looking after him.

[6] In a report dated 16 November 2001 Ms Catherine Owens, the Guardian ad Litem made the following recommendation:

> "Consideration be given at the earliest stage to JN being returned to his mother's care. It would be preferable if this was in a monitored setting such as PACT, allowing a further period of assessment. Mr Paul Quinn's assessment will also provide further information as to the longer term planning."

Mr Paul Quinn, who is a Consultant Clinical Psychologist, was not able to see SN until December 2001, when he interviewed her on two occasions. In his report dated 1 February 2002 Mr Quinn stated;

> "At my assessment of her in late 2001 as a late adolescent or young adult, SN appears to exhibit notable personality difficulties and allied mental health problems. More specifically in addition to exhibiting notable depressive difficulties she also meets the criteria for border line personality disorder. Such a diagnosis is primarily characterised by instability and unpredictability of mood and behaviour and examples of this are well documented throughout her developmental history and in all of the reports available to me. SN also exhibits notable paranoid and anti-social traits which would further complicate this situation. As such I believe that she would not presently be able to provide an acceptable level of care for her son JN, especially as his sole carer. Indeed the results of the PACT assessment appear to suggest that even with very considerable supports her personality and mental health difficulties prevent her for utilising these in a productive way and this would be a concern for the future.

> With respect to future prognosis and on a more negative note such difficulties are going to be extremely hard to work with therapeutically and as such it would be my belief that prognosis in this case is poor. However on a more positive note, there appears to be some evidence of greater stability in SN's life over the past 6 months, one part of which has been her ability to 'hold down' a job for the past 3 months. In order to capitalise on this I believe that she would benefit from psychotherapeutic work to address her personality and mental health difficulties though, given the extent of her problems, this is likely to be protracted and long term. Research in this area does indicate a relationship between the length of such therapeutic work and increased likelihood of positive outcome, and in my experience in SN's case this is likely to involve at least 12 months therapeutic work on a weekly basis. However this would not rule out the possibility of phased improvement as this work progresses but clearly this can only be assessed after such work has begun."

[7] At a LAC Review on 25 February 2002 it was agreed that the therapeutic work should start with Ms Marcella Leonard, an independent Social Work Consultant. It was shortly after this review that JN was moved from short term foster care to long term foster care with Mr and Mrs K on 22 March 2002.

[8] As set out in the judgment of McLaughlin J at paragraphs 27 – 30, SN having initially engaged in the therapeutic process in a sustained manner for a prolonged period eventually refused to attend any further sessions of the therapy and refused an appointment made for her to attend on 30 August 2002. On 12 September 2002 the Trust decided to make an application to the court to free JN for adoption.

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[9] On 22 January 2003 Mr Quinn, the Consultant Clinical Psychologist, had suggested further therapeutic work aimed primarily for the benefit of SN coming to terms with her own problems although it would have had a coincidental beneficial effect in relation to the possible rehabilitation of SN with her son JN. Ms Marcella Leonard in her report dated 24 March 2003 agreed with Mr Quinn that SN would greatly benefit from further therapeutic intervention despite her latterly poor contact access attendance with JN. No further therapeutic work was set up for SN.

[10] Mr O'Hara QC submitted that the suggested further therapeutic work with SN did not start because the Trust had already made up its mind in September 2002 to proceed with an application to the court for an order to free JN for adoption.

[11] On 3 October 2003, just prior to the commencement of the hearing on 6 October 2003 before McLaughlin J, Ms Owens, the Guardian ad Litem, made the following recommendation:

> "I would respectfully recommend that the court consider granting a four month adjournment in respect of the Trust's application for a freeing order in respect of JN and SN's application of discharge of care order and contact order to allow for a programme of work to be undertaken with Ms Marcella Leonard and to be reviewed by Dr Quinn."

[12] On the first day of the hearing on 6 October 2003, prior to the sitting of the court, there was a meeting of those experts who were present that morning, as a result of which Ms Owens changed her recommendation to one of favouring freeing JN for adoption. Ms Owens was not present at that meeting of experts but was informed of the experts' views, as expressed at that meeting, by Mr Long QC, who appeared as counsel for the guardian ad litem. In an addendum, dated 14 October 2003, to her report of 3 October 2003, Ms Owens stated:

> "In the light of verbal feedback received by the guardian following a meeting of the experts in the case, namely Professor Tresiliotis, Mr Paul Quinn and Ms Marcella Leonard which occurred on 6 October 2003, I would now respectfully recommend that the court grant a freeing order in respect of JN.
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> The guardian was informed that the experts considered that the timescales required for SN to address the issues relating specifically to JN's admission to care would not correlate with the timescales for JN's need for a permanent placement to be decided upon. It was fed back to the guardian that after six months of therapeutic work, it is likely that it would be possible to reach a decision about the prospect of rehabilitation. Even if this work were progressing positively, this would only be the start of a process towards rehabilitation that could take an indefinite number of months."

[13] Professor Tresiliotis, having been consulted by the guardian ad litem, furnished a report dated 29 September 2003. Professor Tresiliotis is recognised worldwide as an authority on the subject of children who have been separated from their birth families and who have spent most or all of their childhood in substitute forms of care, including adoption, foster care or residential care. While both in his report and in his evidence to the court, Professor Tresiliotis had acknowledged the many positive changes which had occurred in the life of SN since September 2002, he did not consider that JN should be returned to his mother's care, stating:

> "The capacity of a parent to deflect and attempt to understand what went wrong and make efforts to change, is one of a number of key indicators of progress and is used to judge whether a child should be returned home or not. As long as the problem is denied, (*as it was by SN in the present case)* and there is no awareness of why care was found to be necessary, then the care giver is not in a position to deal with it."

Professor Tresiliotis was perplexed by SN's very poor attendance at contact with JN in the period immediately prior to September 2002, the details of which contact were set out in a schedule placed before the court. He stated that SN's explanations as to why she had missed contact sessions with JN showed no appreciation or insight of the impact thereof on JN, especially when he had to be returned so frequently to his foster home without contact having taken place.

Despite the fact that SN received no further therapeutic work her contact with JN has since October 2002 been 100% and of a very satisfactory quality; in October 2002 her contact with JN had been reduced to two hours, once per fortnight, following the Trust's decision on 12 September 2002 to make an application to the Court to free JN for adoption.

The hearing, commencing on 6 October 2003

[14] By the time the case came for hearing before McLaughlin J in October 2003 it was clear that there was by then a strong bond between SN and JN. She had by that time moved from the Women's Aid hostel into her own private accommodation in October 2002 and was in steady employment. She had a developing relationship with her then current partner, DP, which resulted in their beginning to co-habit. There has not been the slightest concern about the character of DP who appears to be an exceptionally fine young man. In early 2003 SN became pregnant but unfortunately lost the baby due to severe foetal abnormalities. This court was informed that she is now pregnant again.

[15] As stated by McLaughlin J at paragraph 48 of his judgment, with which this court agrees, JN is at present having all his needs met in his current foster placement with Mr and Mrs K with whom he has now been living happily for almost 3 years. Mr and Mrs K have a good relationship with SN and with KM, the paternal grandmother of JN.

[16] While, as already mentioned, Mr and Mrs K were approved as prospective adoptive parents of JN on 7 April 2004, whether or not they will in fact be the adoptive parents will depend upon the outcome of the adoption proceedings. It does appear very likely that they will be the adoptive parents.

Reconvened hearing on 12 December 2003

[17] Following the conclusion of the hearing before McLaughlin J, which lasted from 6 to 16 October 2003 and before he gave a judgment on 24 June 2004, the court had to be reconvened. At that reconvened hearing on 12 December 2003 Mr Toner QC, counsel for the Trust, informed the court of the following matters, which ought to have been disclosed earlier, and of which Professor Tresiliotis had been unaware at the time of his report dated 29 September 2003, namely that Mr and Mrs K had sold their house and intended moving to Scotland where Mrs K had obtained employment, that Mr K had an 8 year old (16?) daughter from his previous marriage with whom he had had no contact since she was 2 years old, and that the previous hearing in October 2003 had been conducted on the erroneous basis that Mr and Mrs K had already been approved as prospective adoptive parents whereas in fact this was not done until 7 April 2004. Mr Laughlin J stated that he was "deeply unhappy" about this non-disclosure, which view this court shares. At a subsequent hearing on 13 February 2004 McLaughlin J granted leave to Mr and Mrs K to take JN out of the jurisdiction to live with them in Scotland where he is now well settled. Contact between SN and JN remains at once per fortnight for two hours.

[18] Mr O'Hara QC submits that the learned trial judge effectively drew a comparison between SN on the one hand and Mr and Mrs K on the other hand and that it was not legitimate to do so. We consider that it was legitimate for the learned trial judge, as it is also for this court, solely for the purpose of deciding what is in the best interests of JN, to make some comparison between SN on the one hand and Mr and Mrs K on the other hand, while bearing in mind that that was only one of many factors relevant to the ultimate decision which the court has to make in the case and that the decision as to whether or not an adoption order should be made and who those adoptive parents should be will be a matter for any adoption hearing in due course.

[19] The learned trial judge had refused to order access to the adoption file by SN's legal advisors, who had wished to ascertain more information about Mr and Mrs K This is understandable as the courts now seek to avoid what had occurred in earlier years, when the procedure resulted in a confrontation between the parents of a child and the proposed adoptive parents at an adoption hearing.
Further, as stated by McLaughlin J at paragraph 91 of his judgment, with which statement this court agrees:

> "This is not a competition between prospective adopters and his natural mother. Whether or not he (*sic*) is a suitable person to adopt JN is a question which will be determined at any future adoption hearing."

The statutory framework

[20] Article 3(1)(a) of the Children (Northern Ireland) Order 1995 provides that where a court determines any question with respect to the upbringing of a child, "The child's welfare shall be the courts paramount consideration". Article 3(2) of the same Order provides that in any such proceedings "The court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child."

[21] 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 have regard to the welfare of the child as the most important consideration and shall -
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> (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
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- ."

[22] Article 18 of the Adoption (Northern Ireland) Order 1987 provides:

> "18(1) where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of a child that his agreement to the making of an adoption order should be dispensed with on a ground specified in Article 16(2) the court shall make an order declaring the child free for adoption.
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> (2) No application shall be made under paragraph (1) unless -
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> (a) the child is in the care of the adoption agency; and
> (b) the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption."

In the present case a full care order had been made on 16 May 2002. McLaughlin J was satisfied, as is this court, that it is likely that JN will be placed for adoption. While it seems likely that JN's adoptive parents will be Mr and Mrs K, they having been approved as prospective adoptive parents on 7 April 2004, that is not a forgone conclusion and will depend upon the outcome of any future adoption hearing.

Review of the exercise of discretion on appeal

[23] Was McLaughlin J wrong in holding that SN was unreasonably withholding her consent and that the court should freed JN for adoption?

[24] In the leading case of G v G [1985] 2 All ER 225 at 228 Lord Fraser of Tullybelton stated:

> "I entirely reject the contention that appeals in custody cases, or in other cases concerning the welfare of children are subject to special rules of their own. The jurisdiction in such cases is one of great difficulty, as every judge who has had to exercise it must be aware. The main reason is that in most of these cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong and the best that can be done is to find an answer that is reasonably

> satisfactory. It is comparatively seldom that the Court of Appeal, even if it would itself have preferred a different answer, can say that the judges decision was wrong, and unless it can say so it will leave his decision undisturbed."

Having referred to the decision of the Court of Appeal in Clarke-Hunt v Newcombe 4 FLR 482 at 488, Lord Fraser continued:

> "… There are often two or more possible decisions, anyone of which might reasonably be thought to be the best, and anyone of which therefore a judge may make without being held to be wrong."

Lord Fraser also went on to cite the principle as stated by Lord Scarman in B v W [1979] 3 All ER 483 at 96 where Lord Scarman stated:

> "But at the end of the day the court may not intervene unless it is satisfied either that the judge exercised his discretion on a wrong principle or that, the judge's decision being so plainly wrong, he must have exercised his discretion wrongly."

[25] This court is satisfied that at the time when the case was before McLaughlin J, it was in the best interests of JN that he should be adopted and it is the opinion of this court that that remains the position, subject to the outstanding issue of whether SN is withholding her agreement unreasonably.

As stated by McLaughlin J at paragraph 57 of his judgment, the meaning of "withholding his agreement unreasonably" in the context of a freeing application is to be found in the speeches of the House of Lords in Re W (An Infant) [1971] AC 682.

Lord Hailsham at 669B stated:

> "- - - The test is reasonableness and nothing else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness and reasonableness in the context of the totality of the circumstances. But, although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if, and to the extent that a reasonable parent would take it into account. It is decisive in those cases where a reasonable parent must so regard it."

Lord Hodson at page 718B stated;

> "The test of reasonableness is objective, and it has been repeatedly held that the withholding of consent could not be held to be unreasonable merely because the order, if made, would conduce to the welfare of the child."

[26] In many cases, and this is one of them, there is a tension between what is in the best interests of the child and the question of whether a parent is withholding his or her consent unreasonably. In Re F [2000] 2 FLR at 505 at 509 Thorpe LJ referred to the joint judgment of Steyn and Hoffmann LJJ in the case of Re C (A Minor) (Adoption: Parental Agreement: Contact) [1993] 2 FLR 260 at 272 where they stated:

> "The characteristics of the notional responsible parent have been expounded on many occasions: see for example Lord Wilberforce in Re D (An Infant) (Adoption: Parents Consent) [1977] AC 602 at 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 Re W (An Infant) [1971] AC 682 at 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. If authority is required for this statement of the obvious, it can be found in the analysis of a similar question by Lord Radcliffe in Davis Contractors Limited v Faireham Urban District Council [1956] AC 696 at 728-9."

Thorpe LJ at p.150 in his judgment went on to state:

> "That helpful contribution to an area of jurisprudence which has given great difficulty to trial judges up and down the country over the years is, in my opinion, important. It has, so far as I know, not been subsequently criticised. It stands on a secure foundation of authority….. ."

The President of the Court, Dame Elizabeth Butler-Sloss stated at p511:

> "I respectfully share my Lords' view that the useful and clear exposition of the problem that a judge in a freeing for adoption case has to meet in the case to which he has just referred is one that might perhaps be more widely disseminated. I had myself forgotten how helpful was that observation in the joint judgment of Steyn and Hoffmann LJJ."

The appellant's rights under Article 8 of the European Convention on Human Rights

[27] In all of these cases, the Trust and this court, as public authorities, have an obligation to comply with the provisions of Article 8 of the European Convention on Human Rights, which was incorporated into our domestic law on the coming into force of the Human Rights Act 1988 on 2 October 2000 Article 8 provides:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for

> the protection of health or morals, or for the protection of the rights and freedoms of others."

It is clear that the removal of JN from his mother, SN, constitutes interference with her Article 8 rights.

On the hearing of the appeal before this court Article 8 did not feature in any of the submissions made to the court. However, McLaughlin J at paragraph 71 of his judgment had stated:

> "I am satisfied that the decision to dispense with the consent of SN is a proportionate response in the circumstances and has due regard to the rights of both mother and child to respect for their private and family lives in terms of Article 8 of the European Convention on Human Rights."

In the recent and very important decision of this court in AR v Homefirst Community Trust, delivered on 16 February 2005 Kerr LCJ stated at paragraph 77:

> "In KA v Finland 1 FLR 696, ECtHR held that mutual enjoyment by a parent and child of each other's company constitutes a fundamental element of family life. Interference with that fundamental element of family life will be a violation of Article 8 unless it is 'in accordance with the law' pursues an aim or aims that are legitimate under Article 8(2) and can be regarded as 'necessary in a democratic society'. The fact that a child could be placed in a more beneficial environment will not alone justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the 'necessity' for such an interference with the parents right under Article 8 of the Convention to enjoy a family life with their child.
>
> The removal of a child from its parents is recognised in Strasburg jurisprudence and in domestic law as a draconian measure, to be undertaken only in the most compelling of circumstances. In particular the state authorities must explore alternative measures to avoid such a drastic course. Only where it can be demonstrated that no other option is feasible will

> such a choice be justified. This is particularly so in the case of a new born child."

A full reading of the judgment of Kerr LCJ should be undertaken by all involved in these difficult decisions about the future of young children. In that case the court was very critical of the Trust stating at paragraph 88:

> "We are satisfied that the Trust did not explore alternatives to the care order in any meaningful way. All of the evidence before us points inexorably to the conclusion that the Trust had decided at an early stage that the only feasible option for J was adoption."

The need for permanence and avoidance of delay

In AR v Homefirst Community Trust Kerr LCJ stated in the course of the judgment of the court at paragraph 91:

> "It is unsurprising that research into the subject discloses that it is desirable that permanent arrangements be made for a child as soon as possible. Uncertainty as to his future, even for a very young child, can be deeply unsettling. Changes to daily routine will have an impact and a child needs to feel secure as to who his carers are. It is not difficult to imagine how disturbing it must be for a child to be taken from a caring environment and placed with someone who is unfamiliar to him. It is therefore entirely proper that this factor should have weighed heavily with the Trust and with the judge in deciding what was best for J. But, as we have said, this factor must not be isolated from other matters that should be taken into account in this difficult decision. It is important also to recognise that the long term welfare of a child can be affected by the knowledge that he has been taken from his natural parents, particular if he discovers that this was against their will.
>
> So, while there may be many cases in which prompt decisions as to the placement of children are warranted, this is not inevitably or invariably the best course. In C v Solihull MBC [1993] 1 FLR 290 Ward J said that while normally delay in making arrangements for a child is adverse to his interests, where it is required to fully investigate the matters necessary to ensure that the right decision is taken,

> delay is not only not wrong, it should be supported. In that case an order had been made by justices in a family proceedings court returning a six months old child to her parents with an unconditional supervision order to the local authority. In allowing an appeal against the order of the justices on the basis that the justices should have made an interim residence order, conditional upon the parents undertaking a programme of assessment and co-operating with the local authority, Ward J said:
>
> '…delay is ordinarily inimitable to the welfare of the child, but that planned and purposeful delay may well be beneficial. A delay of a final decision for the purpose of ascertaining the result of an assessment is proper delay and is to be encouraged.'
>
> We consider that in the presence case there were sound reasons to postpone the decision as to where J should ultimately be placed. As the judge rightly observed, it might be many years before Mrs R could finally demonstrate that she had completely overcome her problems with alcohol and lack of insight, but it does not inevitably follow that no delay in deciding what should become of J was warranted. There was already cause for optimism and with close supervision it is at least distinctly possible that Mrs R would have been able to care for her son. ….although a decision on J's future that would have allowed permanent arrangements to be made was desirable, this did not, in our opinion, out-weigh the need to give Mrs R the chance to prove herself. Taking into account 'the imperative demands' of the Convention in relation to her Article 8 rights, the need to have matters settled for J should not have been allowed to predominate to the extent that the mother's convention rights could be disregarded."

[28] In Yousef v The Netherlands [2003] 1 FLR 210 at 221, para73, the European Court of Human Rights stated:

> "The court reiterates that in judicial decisions where the rights under Article 8 *(of the European Convention)* of parents and those of a child are at stake, the child's rights must be the paramount consideration. If any

> balancing of interests is necessary, the interest of the child must prevail."

With reference to that decision of the ECtHR, Kerr LCJ stated in AR v Homefirst Community Trust at paragraph 95:

> "Although the court must treat the child's welfare as paramount, this does not mean that it should exclude from its consideration other factors such as the Article 8 rights of the parent. While these cannot prevail over the welfare of the child, they must be taken into account. A decision to delay the arrangements for J would, of course, have carried the risk of prejudice to him but set against that risk must be the consideration that, in general, a child should be with his natural parent. While according J's welfare the paramountcy of importance that it required, we do not consider that this pointed overwhelmingly in the direction of a care order being made."

Conclusion

[29] If the Trust in the present case had been fully cognizant of SN's rights under Article 8 of the European Convention, this court considers that it should have given her a further opportunity to prove herself by undergoing the further suggested therapeutic work in early 2003. That regrettably was not done thereby depriving her of the opportunity to prove that JN could be returned safely to her care. Having regard to the real progress which she had made in her life, despite not having the benefit of the further suggested therapeutic work, there was some real prospect that she might succeed in so doing, although that would take some time to establish. Time has now inevitably moved on and this court has to look at this application in the light of matters as they now stand, bearing in mind that JN has now been happily settled with Mr and Mrs K for nearly three years and was only in the care of his mother SN for the short period of four months immediately following his birth on 3 April 2001. This court considers that it is now in the best interests of JN that he should be freed for adoption and that SN, his mother, is withholding her consent unreasonably.

In considering any further steps which may be taken in relation to the future of JN, it is incumbent upon the Trust and all others involved therein to comply with the obligations imposed on them by Article 8 of the European Convention.

O'Hara QC/McGuigan for the Appellant

Toner QC/Smyth for the Respondent

Long QC/Ramsey for the Guardian Ad Litem

Hearing: 21 and 24 January 2005