

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION

IN THE MATTER OF EFB (FREEING WITHOUT CONSENT)

STEPHENS J

Introduction

[1] The Trust, which I do not propose to name, brings this application to free a 4 ½ year old girl, EFB, for adoption under Article 18 of the Adoption (Northern Ireland) Order 1987.

[2] Ms Smyth appeared on behalf of the Trust. Mr Ferris QC and Ms Hannigan appeared on behalf of EFB's mother Ms AB. Mrs Keeghan QC and Ms Farrell appeared on behalf of Mr CD, EFB's father. Ms Alexander appeared on behalf of EFB. The importance of the decision which is the subject of this application cannot be underestimated as it will affect EFB for life. It is in that context that I am grateful to counsel for their thorough and helpful presentation of all the issues in this case.

[3] The judgment in this case is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them may be identified by name or location and that in particular the anonymity of the child and the adult members of the family must be strictly preserved. I will refer to –

- (a) the child as EFB
- (b) the mother as AB
- (c) the father as CD
- (d) the maternal grandmother as MGB
- (e) the siblings as S1B, S2B, S3B, S4D
- (f) the husband, from whom AB is divorced, as XY
- (g) the mother's cousin as Mrs McS and her husband as Mr McS
- (h) the mother's sister as JB

All counsel in this case are directed to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week of today's date as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be submitted to the Library for publication in its present form.

EFB

[4] EFB is the daughter of Ms AB and Mr CD. EFB is 4 years and 6 months old. She initially lived at home with her parents Ms AB and Mr CD and then with Ms AB as a sole carer. That initial period lasted from 4 September 2004 to 4 May 2006. There was thereafter a short period in foster care between 4 May 2006 and 25 May 2006. Then from 25 May 2006 to 14 September 2006 EFB lived with Ms AB and her mother, Mrs MGB. This return of EFB to the care of her mother was on the basis that Mrs MGB also lived with the family and was the major care giver for EFB. However in September 2006 Mrs MGB stated that she could no longer live with this arrangement as there were ongoing parties and disturbances and she could not remain in her daughter's house.

[5] As a result EFB returned to foster care. From 14 September 2006 to 16 October 2006 EFB was placed with foster carers but this placement broke down due to the impact of EFB's behaviour on the older children in the house. EFB's behaviour was good during the day when she was the only child in the house and received a high level of attention but she could not cope with having to share the foster mother's time with other children.

[6] EFB then changed foster carers but some element of continuity was maintained for her as she was returned to the foster carers who had looked after her for the short period in May 2006. She has been in the care of those foster carers from 16 October 2006. They have provided a high standard of physical and emotional care for her. The foster carers continue to have concerns about EFB's behaviour but feel that with consistent handling there has been some improvement. This placement was meant to be temporary until more permanent arrangements were made. The foster carers have a girl of almost the same age as EFB and with whom EFB is competing for the attention of her foster mother. At times EFB attacks her foster mother.

[7] A Care Order was made in respect of EFB on 12 October 2007.

[8] Having traced the sequence of events in respect of EFB I turn to EFB herself.

[9] She is a very active and energetic young child. She is loving and caring but demands constant attention. She requires firm management and clear boundaries. There are no significant issues in relation to EFB's health and development but it has to be recognised that she does have terrible temper tantrums together with disturbed behaviours. The temper tantrums occur when her wishes are not met and they are attention seeking. As I have indicated at times she attacks her female foster carer. Professor Tresiliotis is of the opinion, and I accept, that EFB has suffered significant emotional damage. Ms AB also agrees that EFB has been emotionally significantly damaged but blames this on Mr CD's violence.

[10] Irrespective of the outcome of these proceedings EFB presently faces a change in her placement. Her present foster placement was meant to be temporary. The foster carers have indicated that they will not be able to continue to provide a placement for EFB. A change is going to occur in EFB's life and that change has to be seen in the context that EFB has an attachment in particular to her present male foster carer. I consider that it is important to recognise that the next move by EFB whether by adoption or by long-term foster care, should lead if possible to certainty and security in her life.

[11] EFB is very fond of her mother. Ms AB deeply loves EFB. There is a considerable body of evidence that the contact which is occurring between EFB and her mother is positive. In January 2008 it was noted at a Look After Child Review that:-

"EFB interacts appropriately with her mother during contact. EFB enjoys spending time with her mother, however, is also content to leave after contact."

There had been an earlier stage when EFB hit her mother during contact but this has now passed. Professor Tresiliotis is of the view, which I accept, that underlying angry and ambivalent attitudes to her mother have been shifted to the foster mother. That at present EFB looks radiant and happy appearing to enjoy every moment of contact. That there is a lot of spontaneous shows of affection on the part of EFB to her mother and that Ms AB responds equally warmly. However Ms AB related to EFB as a child to child rather than as a parent to child. I consider that the quality of interactions is suitable to a very young child and that there will be very real difficulties as EFB matures. There is no doubt however that EFB loves her mother and is confident that her mother loves her. The contact between EFB and her mother is of good quality and perhaps of high quality. EFB benefits from it.

[12] Contact also occurs between Mr CD and EFB. This was restarted in autumn 2007. This is supervised direct contact. Initially EFB displayed discomfort during contact but increasingly she appears to enjoy her meetings

with him. A positive relationship is now developing between father and daughter but it is clear that so far EFB's main identification is with her present male foster carer with whom she is far more expressive and affectionate. EFB's observed contact with her father is much more circumspect. There are no spontaneous displays of physical contact and affection to her father. This is a relationship in the making. There is no present attachment or close relationship between EFB and Mr CD.

[13] EFB also has contact with her maternal siblings. This contact has been occurring periodically between EFB and one or two of her siblings rather than as a full group. EFB has a very high level of awareness of her siblings. Professor Tresiliotis advises, and I accept, that it would not be in EFB's interest to excise her siblings from her life. I also accept that irrespective of what happens to EFB in the future continued sibling contact should greatly assist her to consolidate a positive genealogical identity. The benefits to EFB in respect of sibling contact is not as great as the benefits of continued contact with her mother Ms AB.

EFB's mother

[14] Ms AB, 36 years of age, EFB's mother, is divorced. She was previously married to XY. She married him when she was 26 the relationship having begun when she was 20. The relationship was difficult and violent. Ms AB states that Mr XY was abusive and controlling.

[15] I should say at this stage that Ms AB dearly loves her daughter EFB and is distraught by these proceedings. She would dearly wish to have EFB returned to her care and if was not for the multiplicity of problems that she faces in her own life she could have provided a loving relationship for EFB.

[16] One of the problems from which Ms AB suffers is an emotionally unstable personality disorder. Dr Pollock in an assessment written in April 2004 stated that:-

"The ingrained nature of Ms AB's personality problems and how they impact on her parenting cannot be ignored. The diagnosis of personality disorder does not auger well for a positive prognosis in terms of potential to achieve change."

I accept that diagnosis as correct in April 2004. There has been no change to her parenting ability except on a superficial or ephemeral level. Ms AB's lifestyle has involved the abuse of alcohol and drugs. She has entered into destructive personal relationships. There has been and continues to be an unremitting cycle of self-destructive and self-harming behaviour together with an inability to cope in times of stress. She is an unreliable historian. For

instance she asserted that she has not abused alcohol since September 2006 and yet her son, S4D suffers from Foetal Alcohol Syndrome. She was accordingly abusing alcohol whilst pregnant with S4D. That abuse of alcohol being seen in the context that she was aware that an elder daughter, S3B also suffers from Foetal Alcohol Syndrome. She not only knew of the consequences of drinking whilst pregnant from her previous experience but was specifically advised as to the dangers of Foetal Alcohol Syndrome by the Trust. The fact that Ms AB is an unreliable historian is also demonstrated by the fact that she informed Dr Quigley that she was not abusing alcohol but test results demonstrated that she was. Ms AB has made several attempts on her own life with the most recent ones being in May 2007 and also at the end of 2008 and the start of 2009.

[17] The problems faced by Ms AB have been longstanding. She has been known to Social Services since 20 April 1990 when she presented as homeless. She stated that her mother had thrown her out of the family after a fight developed between Ms AB and her sister. Ms AB was apparently hit by her mother and had scratch marks on her face and the back of her leg.

[18] On 9 December 1996 a referral was received by Social Services indicating that Ms AB had been sexually abused from the age of 8 years by her uncle. It is not necessary to list out all the events that have occurred over the period since 1990 save to say that Social Services have been involved on a regular and consistent basis with Ms AB's various problems. Ms AB's insight has improved but remains superficial. In particular she lacks insight into the role that alcohol has played in her emotional difficulties and self-harming and the effect that her emotional instability could have on her children.

[19] A close relationship is often claimed between the quality of parenting experienced by parents themselves and the kind of parenting they subsequently provide to their own children. Much seems to depend on compensatory factors. Ms AB has stated that as a child she suffered extreme neglect, physical and sexual abuse and that she experienced a generally dysfunctional family life. Professor Tresiliotis is of the opinion, and I agree, that this has had a knock on effect on her parenting ability. There is a lack of compensatory factors.

[20] Ms AB's cooperation and engagement with Social Services has been cyclical. There is a history of not being open and honest together with unreliability. Her engagement has been essentially superficial and is dominated by her battle with Social Services.

[21] The joint expert, Professor Tresiliotis, considers that there is no prospect of EFB being rehabilitated to her mother's care. He advises, and I accept, that Ms AB presents with considerable unfinished business that pose unacceptable risks to a returning child. Ms AB has not acted in a way

compatible with caring for any of her children and there is no present prospect of change. It was not contended by Mr Ferris QC, on behalf of Ms AB, that EFB should be rehabilitated to the care of Ms AB now or at any future stage consistent with EFB's timescale. I do not consider that there is any prospect within an appropriate timescale of Ms AB being in a position to care for EFB.

EFB's father

[22] EFB's father is Mr CD, 45 years of age. He left school when he was 12 years old. He has no qualifications. The Trust have been aware of the relationship between Ms AB and Mr CD since April 2004. It is clear that Mr CD is aggressive, physically violent and also abusive. In January 2005 Ms AB reported a series of domestic violent incidents between herself and Mr CD. EFB at that time was living at home with her parents. As part of the child protection plan, such was the risk created by Mr CD, he was asked to leave the family home. However EFB was taken into care in May 2006 as a consequence of Mr CD being found in the family home. Mr CD then stated that he was unaware that he could not be in the home despite this having been made quite clear to him at an earlier stage and indeed despite Mr CD hiding in the home when social workers were visiting.

[23] On 30 January 2007 when Ms AB returned home following contact with her daughter, S3B, Mr CD was in her home. A row developed between them. Mr CD physically assaulted her and attempted to spray bleach in her face.

[24] Mr CD also has mental health problems with one episode of self-harm. He has acknowledged heavy drinking.

[25] Mr CD has never been married to Ms AB but was identified on EFB's birth certificate as her father. Accordingly he has parental responsibility. The application before me is to dispense with the consent of both Ms AB and Mr CD.

[26] Mr CD has some insight into his problems and their effect on his abilities to care for EFB. He has no insight into the difficulties faced by Ms AB and has infinite, though entirely misplaced, confidence in Ms AB's ability to provide good quality and safe parenting to EFB. Mr CD however did acknowledge that there had been a lot of drinking and violence within the family and he accurately perceives that his relationship with EFB is weak. He played little part in parenting EFB. He has no patience and EFB is not keen to go to him.

[27] Professor Tresiliotis does not support the proposition that Mr CD could care for EFB but instead adverts to ongoing dangers for EFB if she was

to be cared for by Mr CD. Mrs Keegan QC and Ms Farrell did not contend that EFB could be rehabilitated to the care of Mr CD, either now or at any future stage consistent with EFB's timescale. I do not consider that there is any prospect within an appropriate timescale of Mr CD being in a position to care for EFB. Mr CD wished that EFB could be cared for by Ms AB or failing that by Mr and Mrs McS.

EFB's siblings

[28] EFB has four maternal siblings. The eldest is S1B, 14 years of age. S1B lives with her maternal aunt, JB. There has been a Residence Order in respect of S1B since May 2001. S1B's father is XY. S1B is EFB's half-sister.

[29] The next sibling is S2B, 12 years of age. S2B lives with his father, XY on foot of a Residence Order made in May 2001. S2B is EFB's half-brother.

[30] The third sibling is S3B, 6 years of age. As I have indicated S3B unfortunately suffers from Foetal Alcohol Syndrome. An order has been made freeing S3B for adoption but as yet no placement has been found for her. She is presently in foster care. It is now unlikely given her age and her disabilities that adoptive parents will be found.

[31] The fourth sibling is S4D, 1 year old. He suffers from Foetal Alcohol Syndrome. S4D lives with Mr and Mrs McS and has lived with them since his discharge from hospital following his birth. This arrangement was a voluntary arrangement between Mr and Mrs McS, Ms AB, Mr CD and the Trust. It continued on a voluntary basis until 24 March 2009 when I made an Interim Care Order in respect of S4D. Mrs McS is Ms AB's first cousin. Mr and Mrs McS have three children of their own. A child of 6 and twins aged 5. Mr McS does not work. He suffers from a back condition. He is in receipt of sickness benefit. A downstairs bedroom is being constructed for him. As a consequence he is at home in a position to assist Mrs McS with the care of their children and the care of S4D. Mrs McS, motivated by a desire to help, has given up work in order to care for her three children and S4D. She is to be commended for the care and support that she has given.

Potential kinship carers

[32] The description of EFB's immediate family also reveals other members of her extended family. Mr and Mrs McS who care for EFB's brother, S4D. Mrs MGB, EFB's grandmother. In considering the question as to whether the consent of Ms AB and Mr CD to EFB being freed for adoption was being unreasonably withheld it was contended that they were acting reasonably in that that EFB should be cared for on a long-term foster basis by Mr and Mrs McS or alternatively that it was reasonable to withhold consent unless EFB was to be adopted by Mr and Mrs McS. It is clear that a placement with the

McS's would have the advantage of keeping EFB and S4D together and also that Mr and Mrs McS have the advantage of being members of EFB's extended family.

[33] Despite the fact that it was not contended that there were any other suitable kinship carers I have in addition considered the other members of the extended family to determine whether it could be said that Ms AB and Mr CD were reasonably withholding their consent unless and until EFB was placed with some other member of the extended family either on a long-term fostering basis or for adoption. Mrs MGB was unable to cope with Ms AB during the period 25 May 2006 to 14 September 2006. She has not put herself forward as a carer. She has a most difficult relationship with her daughter. Mr XY and JB have never been involved in EFB's life. I reject them as potential carers for EFB.

The legal tests

[34] As I have indicated the application to free EFB for adoption is made without the agreement of her mother Ms AB and her father Mr CD. To determine the application I have to consider:-

- (a) The duty to promote welfare of EFB under Article 9 of the Adoption (Northern Ireland) Order 1987. Article 9 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.”

- (b) Whether to dispense with the agreement of Ms AB and Mr CD to the making of the Adoption Order on the grounds that they are withholding their agreement unreasonably within the terms of Article 16(2) of the Adoption (Northern Ireland) Order 1987. In that respect I refer to the tests set out by the majority of the House of Lords at paragraph (70) of *Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36.
- (c) Whether EFB is in the care of an adoption agency within the meaning of Articles 18(2)(a) and 18(2A) of the Adoption (Northern Ireland) Order 1987. I conclude that she is, a Care Order having been made in this case.
- (d) Whether it is likely that if I may make a Freeing Order EFB will be placed for adoption, Article 18(2)(b) of the Adoption (Northern Ireland) Order 1987.
- (e) Whether a Freeing Order is a necessary and proportionate response to the interference with the right to respect for family life.
- (f) Whether I should make a Contact Order under Article 8 of the Children (Northern Ireland) Order 1995.

The issues raised on behalf of Ms AB and Mr CD

[35] As I have indicated it has been recognised that Ms AB and Mr CD could not say that they were reasonably withholding their consent on the basis of a realistic prospect, within an appropriate timescale, of EFB being rehabilitated to the care of one or other or both of them. I do not consider that rehabilitation of EFB with either of her birth parents is either possible or feasible either at all or within a timescale that can prevent significant damage occurring to her. I am quite sure that both of the birth parents are quite unable to change their lifestyle on a permanent basis so as to ensure the security, stability and safety of EFB. They have both failed to prioritise EFB’s needs. There has been sustained alcohol and drug abuse. There has been sustained domestic violence. There is a lack of insight into their shortcomings. They have failed to avail of professional help. All this has had and would continue to have a very severe adverse impact on EFB.

[36] There was also no dispute that EFB urgently requires stability and security in her life. That in general terms adoption has considerable advantages over long-term fostering in providing that stability and security. Thus in general terms adoption can emphasise stability, commitment and security for the child involved. That it can provide a greater sense of belonging for a child. That there can be disadvantages to long-term foster care in that there is intrusion from Social Services, a drift can happen with the child moving from one place to another and it tends to reinforce impermanence. The research based evidence for these propositions being set out by Professor Tresiliotis in the Journal of Child and Family Social Work (February 2002). Adoptive parents in general bring a different commitment to the task of parenting and this appears to lead to greater closeness between parent and child.

[37] It was contended that long-term fostering was in EFB's best interests and/or that Ms AB and/or Mr CD would not be unreasonably withholding their consent to freeing EFB for adoption on the basis that adoption, in preference to long-term fostering, should only take place if there was post adoption contact between Ms AB, Mr CD, the maternal siblings on the one hand and EFB on the other. That the importance of contact for EFB was of such a nature that it would not be possible to conclude in the circumstances of this case that the advantages of adoption over long-term fostering are more important than contact between EFB and her mother, father and maternal siblings. Accordingly without the right sort of adoptive placement having been found for EFB the parents' consent was not being unreasonably withheld.

[38] In the alternative it was contended that long-term fostering was in EFB's best interest and/or that Ms AB and/or Mr CD would not be unreasonably withholding their consent to freeing EFB for adoption on the basis that EFB could be cared for on a long-term foster basis by Mr and Mrs McS.

[39] In the alternative it was contended that long-term fostering was in EFB's best interest and/or that Ms AB and/or Mr CD would not be unreasonably withholding their consent to freeing EFB for adoption on the basis that insufficient steps had been taken by the Trust to investigate whether EFB could be cared for on a long-term foster basis by Mr and Mrs McS.

[40] In the alternative it was contended that a placement of EFB with her sibling S3B also impacted on whether adoption or long term fostering was in EFB's best interest and/or on whether Ms AB and/or Mr CD would not be unreasonably withholding their consent to freeing EFB for adoption.

[41] In the alternative it was contended that Ms AB and/or Mr CD would not be unreasonably withholding their consent to freeing EFB for adoption unless and until it was planned that EFB should be adopted by Mr and Mrs McS.

Contact with Ms AB, Mr CD and the maternal siblings

[42] I have set out the benefits that EFB obtains from the contact that she has with her mother, father and maternal siblings. Professor Tresiliotis advised, and I accept, that an adoptive family would have to accept and facilitate contact between EFB and at least her mother and siblings and possibly her father. The main advantage of long-term foster care compared to adoption, is that it usually accommodates more frequent contact between birth family members. Accordingly in his report dated 28 November 2008 Professor Tresiliotis' final view was:-

“Social Services should be free to seek either an adoptive family prepared to accommodate the amount of direct contact suggested, or a long-term foster family, and accept whichever comes first.”

The amount of contact suggested by Professor Tresiliotis is 3-4 annual supervised meetings for the mother and siblings to be used flexibly ie some of the meetings to be used for mother and siblings and one or 2 between mother and EFB. Turning to the father Professor Tresiliotis suggested having regard to the tenuous relationship between him and EFB that his claim for direct contact was marginal. He suggested that contact could be indirect and should EFB ask for direct contact later on, then it should be considered. Professor Tresiliotis also emphasised that there should be clarity as to the purpose of contact. This is not shared parenting and that as far as the number of contacts are concerned there should be flexibility with both parent and inter sibling contact. If an Adoption Order is made then one should not overload the adoptive family with too many arrangements and there should not be an undermining of the control of the adoptive parents. The contact is for the benefit of the child. The birth parents should provide emotional support and approval to the child in relation to the adoption giving permission for the child to attach to the adoptive parents.

[43] The oral evidence of Professor Tresiliotis was somewhat different from his written report in that he stated a decided preference for adoption with contact rather than long-term fostering with contact. He did not consider that as between adoption and fostering it was a question of whichever was first available. He had a clear preference for adoption with contact. If adoption with contact was not available then there should not be adoption without contact if long-term fostering with contact was available. Accordingly Professor Tresiliotis' first option was for adoption with contact and in that

respect he emphasised that one should not be overly prescriptive as to the amount of contact. Three to four contacts was a figure to be aimed at but there had to be flexibility. The essential feature was to find adoptive parents who recognise the benefits of and would respond positively to birth family contact. If that option was not available then a second option was long-term fostering with contact in preference to adoption without contact. Professor Tresiliotis based his opinion upon the benefits of adoption in preference to long-term fostering but balancing against that the benefits of contact for EFB with her mother, father and siblings. I accept the opinion of Professor Tresiliotis both as to the benefits of adoption over long-term fostering and as to the benefits of contact for EFB. This is not a case in which one can say that adoption is more important than contact as was suggested by Lady Justice Butler-Sloss as one of the potential options or approaches in the case of *Re P (Adoption Freeing Order)* [1994] 2 FLR 1000.

[44] This application first came on for hearing in January 2009. At that stage the Trust did not have a prospective adopter who had agreed to the amount and type of contact suggested by Professor Tresiliotis. The height of the evidence at that stage was that the Trust believed that they had prospective adopters who would agree to the suggested amount of contact and who had been approved as adopters. The course of adjourning the application to free for adoption in such circumstances was suggested by Lord Justice Nicholson in *Down Lisburn Health & Social Services Trust v H & R* [2005] NICA 47 at paragraphs [19] and [21]. The Trust applied for an adjournment and I granted that application.

[45] On 29 January 2009 the prospective adopters indicated that they would accept 3-4 times per year birth family contact but expressed a preference that contact with Mr CD be indirect rather than direct. However if the court decided that it should be direct then they would support one direct contact per year but would be keen that this coincided with the 3-4 times per year direct contact with the birth family rather than giving rise to an additional contact session. These prospective adopters recognise the need to maintain contact with EFB's birth family and they are prepared to facilitate such contact. I am satisfied that this was an informed and considered decision by the prospective adopters. The position is that the Trust have found prospective adopters with appropriate skills and abilities who are able to care for EFB in circumstances where she will not be competing with a child of similar age for the attention of her adoptive parents who are suitable for EFB and who are prepared to agree to post-adoption contact.

[46] In circumstances where, as here, there are adoptive parents agreeable to the suggested level of post-adoption contact I reject the suggestion that on the basis of contact, adoption is not in EFB's best interests. I also reject the suggestion that Ms AB and/or Mr CD would not be unreasonably withholding their consent to freeing EFB for adoption on the basis of contact.

[47] I accept the evidence of Professor Tresiliotis that the amount of contact with Ms AB and the siblings should be 3-4 times per year direct supervised contact. I also accept that the benefit of direct, as opposed to indirect contact with Mr CD is very marginal. I have considerable concerns that Mr CD's opposition to the social workers could lead to the undermining of EFB's placement. I therefore consider that initially the contact with Mr CD should be indirect although adopting the evidence of Professor Tresiliotis that there should be a degree of flexibility so that it could move to direct. I am satisfied that the prospective adopters will and can accommodate this. I am also satisfied that the change from direct contact to indirect contact will not cause any upset of significance to EFB. The present relationship with her father is marginal. A change in contact will have a marginal affect on EFB.

Placement with Mr and Mrs McS

[48] I have set out the family circumstances of the McS household. I accept and recognise that a kinship placement is preferable. However I find that a placement with Mr and Mrs McS would not be in the interests of EFB. I do so for a number of reason which I will summarise:-

- (a) Mr and Mrs McS's twins are almost the same age as EFB. The eldest child is also very close in age to EFB. EFB demands attention and the competition with the twins and indeed with their eldest child would put an intolerable pressure on EFB and in itself could result in a very considerable risk of the placement being unsuccessful.
- (b) EFB is presently facing the prospect of moving from her current foster placement which is going to place emotional pressure on her. I consider that she would have enormous difficulty in coping emotionally with the loss of her present placement and then with a breakdown of a placement with the McS's.
- (c) S4D, EFB's brother, is presently placed with Mr and Mrs McS. He has Foetal Alcohol Syndrome and this presently puts pressure on Mr and Mrs McS and will continue to do so in the future. There are risks here for both EFB in terms of the amount of attention that can be afforded to her by Mr and Mrs McS and also for S4D in that the additional challenges presented by EFB could lead to a breakdown not only of her placement but also of his.
- (d) There has been strain between Mr and Mrs McS and Ms AB. I am aware of this strain not only from the evidence in this case but also from the interim care proceedings in relation to S4D. It

has been agreed that I can take that later evidence into account. Mr and Mrs McS have had to change their telephone number as a result of long telephone calls from Ms AB. This has been causing upset to Mr and Mrs McS. A placement with a background of such strain would not be in EFB's interests.

- (e) Professor Tresiliotis was of the opinion, and I accept, that the fact that Mrs McS is related to Ms AB is not very relevant as to how EFB will settle down with her. That it will be like joining a new family. The benefits of a kinship placement are long-term benefits.
- (f) Mr and Mrs McS have been spoken to by the Trust. They have been informed of the Trust's concerns in relation to a placement of EFB with them. They have been advised to obtain legal advice. They have not followed up any desire to care for EFB either as long-term foster carers or as prospective adoptive parents.

[49] I conclude that any placement of EFB with Mr and Mrs McS would stand a very high risk of failure. That it would be a very difficult placement. That a failure with Mr and Mrs McS would significantly add to the emotional damage which has been caused to EFB.

[50] I also conclude that the Trust have made sufficient inquiries in respect of a placement of EFB with Mr and Mrs McS to establish that such a placement is unsuitable for her. There is no useful further investigation that should or could be carried out.

Placement of EFB in the same placement as S3B

[51] S3B has been freed for adoption but is presently in foster care. She suffers from Foetal Alcohol Syndrome. It would place very considerable pressures on any foster carer or adoptive parent to have to look after both S3B and EFB leading to a high risk of placement failure. A foster placement with S3B would have all the disadvantages for EFB that are encompassed in long-term fostering. The chances of the benefits of an adoptive placement would be seriously inhibited for EFB if the Trust were required to find an adoptive placement for both siblings given S3B's age and disabilities.

Conclusion

[52] I conclude that adoption is in the best interests of EFB based on the factual conclusions which I have already made. I do not consider that rehabilitation of EFB with either of her birth parents is either possible or feasible within a timescale that can prevent further significant damage occurring to her. I do not consider that long term foster care with Mr & Mrs McS is in the best interests of EFB. I have arrived at the conclusion that long term fostering in a foster placement with S3B would not be in EFB's best interests. I consider that in the circumstances of this case adoption has considerable advantages over long term fostering. I have set out those advantages at paragraph [36]. It is now clear that EFB will be adopted by parents who can facilitate birth family contact on the basis suggested by Professor Tresiliotis and which I have endorsed at paragraph [47]. Adoption satisfies EFB's needs for permanence stability and commitment and also satisfies her need for contact with her birth family. I direct that any adoption application is to be heard by myself and that a copy of this judgment should be placed on the adoption file.

[53] I conclude that Ms AB and Mr CD are unreasonably withholding their consent (as judged as at the date of the hearing) to an Adoption Order based on the factual conclusions and the circumstances which I have set out in this judgment. I am certain that a reasonable parent, recognising the factual findings that I have made, would not withhold consent on any reasonable basis. There is no prospect of rehabilitation to either birth parent. The placement with the prospective adopters identified by the Trust fulfils EFB's need for a safe secure environment where she does not compete for affection and yet has birth family contact. The circumstances of Mr and Mrs McS are such that they could not provide a suitable home for EFB without real and substantial risks to her placement and to the placement of her brother S4D. I recognise that there is a band of differing decisions each of which may be reasonable in a given case. I have been wary not to substitute my own views for that of the reasonable parent.

[54] I have heard evidence which I accept that it is likely that EFB will be placed for adoption.

[55] Adoption is in accordance with the law and it is for a legitimate aim (in this case the protection of the welfare and interests of EFB). I consider again for the reasons set out in this judgment that a Freeing Order is a necessary and proportionate response to the interference with the right to respect for family life. I make it clear that I consider that adoption is a wholly proportionate response to the circumstances of this case given the factual conclusions I have made and the advantages of adoption to the welfare of EFB.

[56] In relation to the question as to whether I should make a contact order I have been referred to the decisions of Gillen J in *Re: NI and NS (Freeing for*

Adoption without parental consent: Case Order) [2001] NI Fam 7 and *In the matter of J (Freeing without consent)* (2002) NI Fam 8. The Trust has adopted the suggestions in relation to contact set out by Professor Tresiliotis which I endorse in paragraph [47] of this judgment. I consider that those proposals freely given for such contact are more than adequate to meet the Trust's obligations and if they were to resile from contact along these lines then an appropriate application might be made. In addition in deciding whether to make an order I also take into account the evidence which I accept that there is a need for a degree of flexibility in approach without immediate recourse to the court. If the birth parents were not supporting the placement or if the contact was not amicable the Trust requires an ability to react to adapt to the circumstances that present on a daily basis. This issue needs to be carefully monitored and reviewed. I also take into account that this judgment will not accord with the wishes of Ms AB or Mr CD. I trust however that they will adjust to it and recognise that they must keep the paramount interest of EFB to the fore. In all the circumstances I consider that the no order principle should apply to the question of contact and accordingly I make no order with reference to contact in the circumstances with EFB. I emphasize however I have done this on the basis of the indications outlined by the Trust as to the nature of the contact that they propose.