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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

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

BETWEEN:

SMcC

Appellant

-and-

SOUTHERN HEALTH AND SOCIAL CARE TRUST

Respondent

-and-

HJM

Respondent

MAGUIRE J

Introduction

[1] On 9 March 2012 Her Honour Judge Loughran (“the Judge”) made an order pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 freeing a female child EM, date of birth 27 February 2007, for adoption.

[2] On 7 September 2012 the same judge made the same order freeing a male child SM, date of birth 6 February 2009, for adoption.

[3] EM and SM are siblings. Their mother is SMcC (“the mother”) and their father is HJM (“the father”). In each set of proceedings the mother and father opposed the making of a freeing order. In each set of the proceedings the party applying for the freeing order was the Southern Health and Social Care Trust (“the Trust”). In each set of proceedings a guardian ad litem had been appointed to represent the interests of the child. In each set of proceedings the guardian ad litem had supported the Trust’s application.

[4] The reason why there were two separate sets of proceedings was that there had been an issue about the paternity of SM. The issue had not been resolved at the date of the hearing of the first set of proceedings. Because of this, the proceedings in respect of SM were adjourned in March 2012. By the time those proceedings came back before the court in September 2012 the paternity issue had been resolved and it had been established that HJM was the father of SM.

[5] In respect of both sets of proceedings, the mother lodged an appeal to this court.

The background to the proceedings

[6] This section is based on the statement of facts filed in the court below and on the helpful chronology provided by the Trust to this court. Neither was the subject of dispute before this court. The mother was born on 15 November 1971 and is now aged 41. The father was born on 28 February 1974 and is now aged 38. They began co-habiting in or about 2006.

[7] The Trust as long ago as 1994 had involvement with the mother. At that time she was looking after her child, C, aged nearly two. C’s father was not HJM and HJM was not living with her at the time. There were concerns about the child’s welfare due to alleged alcohol misuse on the part of the mother. Later in August 1995 C’s father secured an interim residence order in respect of C. This was made permanent in November 1995. Subsequently C spent the remainder of her childhood in her father’s care without contact with the mother.

[8] EM was born on 27 February 2007. But even before she was born the Trust had noted concerns during the mother’s pregnancy. At this time the mother’s relationship with the father had begun. In November 2006 the Trust records reveal that the mother was failing to engage with services in respect of an on-going problem with her mental health. In addition, it appears that incidents of domestic violence were occurring. In one incident in January 2007, when the mother was seven months pregnant, the father allegedly committed a serious assault on the mother.

[9] Similar incidents of domestic violence, it appears, occurred in the first three months of EM’s life. In one such incident the mother was assaulted by the father

when she was holding the baby. As a result of such incidents the mother twice sought refuge in a Women's Aid hostel.

[10] In June 2007 the Trust sought and was granted an emergency protection order in respect of EM who was removed from her parents' care as she was viewed as having been placed at risk of physical and emotional harm by the parents.

[11] Around this time incidents of domestic violence appear to have been commonplace. In one incident it was alleged that the father sought to strangle the mother. In a later incident, EM was injured. In respect of this incident, alcohol was involved. Unsurprisingly these incidents led the Trust to commence proceedings for a care order. Initially a number of interim care orders were made.

[12] On 8 September 2007 EM was returned to the care of the mother but within the protective environment of Thorndale Assessment Centre where staff were available on a 24 hour basis. The object of the mother and baby being there was to enable an assessment to be made of the mother's capacity to care for EM.

[13] The mother successfully completed the assessment at the end of November 2007. At this time she was viewed as being capable of meeting the physical and emotional needs of EM but there were continued concerns in respect of the mother's past relationships and with the issue of domestic violence. The mother and baby, on leaving the Assessment Centre, entered Thorndale Resettlement Unit. During the next three month period there was one confirmed incident of alcohol use on the part of the mother, though there were also reports of the mother using alcohol and drugs while looking after EM.

[14] On 16 April 2008 mother and baby began living again in the community. While the mother denied the allegation, the Trust had reason to believe that within a short time the mother had recommenced her relationship with the father.

[15] As a result of an incident in which the mother had placed EM (by now aged 15 months) unsecured on a quad bike on 8 May 2008, EM was removed from her care. In due course an interim care order was made by the Family Proceedings Court. EM was again placed in foster care.

[16] In the period May-December 2008 the mother refused to engage in motivational interviewing despite Dr Bownes, a consultant psychiatrist, recommending that she should do so to assist her in the context of deliberations by the Trust concerning the future of EM.

[17] On 4 December 2008 the Trust ruled out the return of EM to the mother.

[18] On 6 February 2009 SM was born. It is now known that the father of SM, as with EM, was HJM.

[19] The Trust was granted an emergency protection order to remove SM from his mother's care on 6 February 2009.

[20] In the next period of months the mother had positive contacts with SM and EM. The mother agreed to engage in intensive work with a consultant clinical psychologist, Dr McDonald. In the course of this, she demonstrated insight in respect of past issues and presented as willing to learn. The Trust agreed, in light of these developments, to a care plan of the mother caring for the two children.

[21] On 8 June 2009 EM was returned to her mother's care and the same occurred in respect of SM on 20 July 2009. The delay between the return of the two resulted from the challenging behaviour exhibited by EM at the time of her return. As a result of this and on the recommendation of professionals it was decided that EM should be given time to settle before the return of SM.

[22] In succeeding months there emerged a series of incidents which created issues around the mother's ability to cope, particularly in relation to EM with whom, to the eyes of social work professionals, she appeared to interact poorly. The first of these related to the father attending the home and acting in a verbally abusive and aggressive manner, carrying a hammer and causing damage to a neighbour's car. Other incidents involved missed appointments in respect of EM's speech therapy; a failure by EM to attend the Community Paediatric Department; and temper tantrums on the part of EM, then 2½ years, which the mother attributed to her wilfulness. In respect of this last matter it was noted that the mother's management of EM involved the use of foul language. At this time the Trust observed that the mother was finding it difficult to cope with the competing demands of the two children. In the mother's opinion she viewed herself as coping.

[23] The Family Proceedings Court granted care orders in respect of EM and SM on 5 October 2009. The care plan was to maintain the children in the care of the mother with support from the Trust.

[24] On 13 December 2009 a serious incident occurred. At this time the mother had the protection of a non-molestation order but the father breached this. While at the mother's home he broke a window with a bottle of Buckfast. The police at 5.00 am were contacted by the mother and the mother and the two children had to flee to refuge accommodation.

[25] This led to a turbulent period involving multiple moves in accommodation and concern on the part of social work staff. For example, on 14 December 2009 the out of hours social worker dealing with the mother noted that she was not responding to the children crying; was self-absorbed; and appeared unable to control the children. Over the next seven days there were daily visits to the mother but reports indicate that she seemed unable to focus on the needs of the children and could not cope. Further repeated changes to the family's accommodation ensued. Eventually, the family moved to a different town.

[26] By April 2010 the Trust was receiving information from the Northern Ireland Housing Executive, which was housing the family, that the father had been living in the family home for some weeks. When the mother denied that this was true she refused to allow Trust staff to check the upstairs of her house.

[27] On 15 April 2010 the Trust removed the children from the mother's care. Afterwards the mother caused criminal damage to the property and was arrested for arson.

[28] Thereafter, initially the mother was permitted to have contact with the children for two hours twice a week.

[29] On 5 May 2010 the children were placed with Mr and Mrs C, foster carers. It now appears that they wish to provide a permanent home for the children.

[30] In the aftermath of these events the mother reported to one of the Trust's social workers that she had been consuming alcohol on a daily basis to excess over a period of three months while she had the children in her care.

[31] Proceedings were issued by the mother on 7 May 2010 to discharge the care orders in respect of the children as well as to increase her contact with them.

[32] On 22 May 2010 the father was charged with an armed robbery and remanded in custody. He later was convicted of this offence and sentenced to a substantial custodial sentence.

[33] On 26 May 2010 the mother is recorded by social services as having consumed two bottles of Buckfast and 12 cans of beer.

[34] Internal deliberations within the Trust in succeeding months pointed towards the children being permanently removed from the care of the mother. In August 2010 a specialist practitioner on mental health following three observed contacts between the children and the mother concluded that there were evident difficulties in the children's relationship with the mother. On 16 August 2010 a LAC review decided to change the care plan for each child in order to promote permanence and stability in their care arrangements. It was considered that these values would best be secured by adoption.

[35] A further LAC review in November 2010 recommended reduction in the mother's contact to fortnightly given the alleged poor quality of the contact.

[36] The father on 11 November 2010 denied that he was SM's father and declined DNA testing.

[37] On 8 December 2010 Her Honour Judge McReynolds at the Family Care Centre, Craigavon, dismissed the mother's application to discharge the care orders and reduced the mother's contact to once a week for 1 hour 45 minutes.

[38] The mother on 13 January 2011 reported to the Trust that she had been abusing "sleepers". On 26 January it is recorded in the Trust's records that the mother accepted that at that time she could not care for the children but she hoped that within a short period that she would be able to do so once the medications she was on settled down.

[39] On 10 March 2011 the Southern Area Adoption Panel recommended that adoption would be in the children's best interests. At a LAC review on 28 March 2011 a care plan for adoption was confirmed. On 5 April 2011 the Trust's Agency Decision Maker decided that adoption was in the best interests of each child.

[40] EM was assessed by the Northern Ireland Regional Genetics Centre in July 2011. The assessment indicated that she had significant behavioural and developmental problems against the history of maternal misuse of prescribed drugs and a chaotic background. Dr Magee, who carried out the assessment, stated that EM did not fit the criteria for Foetal Alcohol Spectrum Disorder ("FASD").

[41] A similar assessment was carried out at the same time in respect of SM. He was assessed as fitting the criteria for FASD. Later the mother when this assessment was explained to her (by the guardian ad litem) responded by saying that she binge drank when pregnant with SM.

[42] On 31 August 2011 the Trust initiated the freeing applications in respect of EM and SM.

The children

[43] It can be seen from the above narrative that each of the children has in fact only lived with the mother for limited periods of time. In the case of EM she was aged 5 at the date of the hearing before the Judge but she had lived with the mother for only approximately 21.5 months. When the same calculation is done in the case of SM the period is 9 months out of a life to the date of the hearing spanning some 43 months.

[44] Both children on 5 May 2010 moved into the care of Mr and Mrs C and together have lived with them since.

[45] The evidence before the Judge from the Trust was that the children had become well settled with Mr and Mrs C and the foster parents were providing well for their needs. Indeed genuine bonds were developing between them.

[46] The above, importantly, represented a measure of progress, especially in the case of EM, as there is a volume of evidence which suggests that EM was (and to a degree still is) a child who evinced or evinces significant behavioural problems which in the past have manifested themselves in disruptive behaviour; poor social interaction; developmental delays and poor concentration and understanding. In the case of SM the papers before the Judge reveal the existence of concerns in some areas but these were not as pronounced as those existing in relation to EM.

Contact

[47] There are extensive records within the papers which were before the Judge about contact sessions between the mother and the children in the latter half of 2010 and 2011. While these show that the mother availed of contact and came to the sessions prepared with gifts and treats for the children, those observing the contacts over time have developed substantial concerns about a number of aspects of the contact which occurred.

[48] The above concerns may be summarised as follows:

- (i) There was concern about the quality of the contact especially in relation to EM. It is suggested that the mother failed to pick up cues as to how she should deal with EM with the result that often the child resorted to temper tantrums and other forms of misbehaviour.
- (ii) There were altercations between the mother and EM which resulted in the mother handling her roughly.
- (iii) The mother at times seemed unable to cope with the demands of the two children.
- (iv) At times the sessions were chaotic.
- (v) The mother from time to time resorted to the use of inappropriate or bad language.
- (vi) At times the mother in the presence of the children undermined the childrens' carers and was responsible for seeding confusion especially in the mind of EM about the course of future events. As a result the child was placed into a state of uncertainty as to where her allegiances should lie.

The Mother's statement of evidence

[49] The Judge also had before her a statement of the mother's evidence. This document proclaims the mother's love for her children and her wish to have them restored to her care. It notes the mother's record in attending and completing courses designed to assist her and indicates that she has been able to learn from these and to apply them to the future care of the children.

[50] In the mother's view she was not responsible for the many moves which she and the children had made. While she blamed the father for these in part she was

critical of the Trust claiming that the Trust was content for her and the children to live in substandard accommodation; for failing to provide appropriate help for her; and for failing to give her due assistance towards her being able to rent suitable private accommodation.

[51] The mother, in her statement, is adamant in rejecting allegations that the father had in recent times been cohabiting with her or that she was having voluntary contact with him. As to the future, she said that she had no intention of contacting him.

[52] In her statement the mother recognised that alcohol and stress played a substantial role in her being unable to cope and implicitly she recognised that her state of mental health was also a factor. As regards these matters, however, she claimed (in March 2012 the date of the statement) that she had been sober since May 2010; that she had joined AA; and that she was engaging with a community psychiatric nurse and was regularly seeing her GP.

[53] Finally she notes that she had moved into a well furnished home in the estate the children were born into with bedrooms for each of the children. She expressed the view that she could listen to the advice of professionals and put the advice into action.

Dr Rodden's report

[54] A report from a Consultant Psychiatrist, Dr Rodden, was before the Judge at the September hearing in respect of the mother. She had been under his care since 2010 but he also had access to records going back to March 2004. He notes that the mother had had diagnoses of Emotionally Unstable Personality Disorder and Alcohol Dependence Syndrome but at the date when he had last seen her as a treating psychiatrist – 2 April 2012 – she was, in his view, not suffering from depressive illness or other severe mental disorder. He notes that she admitted to misusing prescribed medication and alcohol and had recently overdosed. In his view the mother was responsible and accountable for her actions and lifestyle choices.

The emerging themes

[55] In the context of above materials the court considers there is value in seeking to identify by way of overview what may be viewed as the emerging themes.

[56] The first theme which emerges relates to the duration of the Trust involvement with the mother in this case. It seems clear that this involvement is a reasonably constant feature since 2006.

[57] The second theme is one of apparent recurring difficulties in respect of the family. The relationship between the mother and father is plainly a considerable source of difficulty. There exists a well-documented domestic violence problem

between them and it seems obvious that that problem affects not just the parents but the children who are at risk when domestic violence comes to the surface. While it might have been thought that the mother would have identified and understood the damaging influence which the father brings into the home and ended her relationship with him, the history tends to show otherwise. At key points in the last few years the father has appeared or re-appeared and been responsible for incidents which have had highly detrimental impacts on family life, including causing the family to flee from their home resulting in numerous re-housings, resulting stress and probably resort by the mother in these circumstances to alcohol and/or drugs.

[58] A further obvious difficulty emerging from the background relates to the mother's weakness for alcohol and/or drugs. There is little doubt that when faced with problems and stress the mother will be likely to find refuge particularly in alcohol. This is not a minor matter because the consumption of alcohol and/or drugs is very likely to be destructive of her ability to properly look after her young children. Yet there appears, aspirational assertions apart, to be no resolution of this issue in sight.

[59] Related to these other matters it seems clear that the mother suffers from being unable to cope with stress. A factor contributing to this would seem to be her fragile state of mental health.

[60] A further theme which emerges from the background is one of the mother having been afforded at various times opportunities to prove herself but then her failing to take these opportunities. This is evident on the key issue of her care for the children. Twice she has had the children returned to her by the Trust for periods but twice the Trust has felt constrained to take the children away again. A similar pattern can be identified in respect of other issues such as her on/off relationship with the father and her apparent attempts to give up alcohol.

[61] It appears clear that over time the Trust has been instrumental in the provision of various services to the mother – designed to assist her overcome the difficulties she faced or faces. The records show that the mother was provided with counselling in respect of domestic violence; support to seek to enable her to overcome her difficulties with alcohol and drugs; packages of measures to help her with the needs of the children; and so on. Disappointingly, however, the mother does not appear to have been able, other than temporarily, to reap the benefits of such provision.

[62] Finally there is a particularly unfortunate theme which as time has gone on has become more prominent and that is a tendency on the part of the mother to blame others, particularly the Trust, for setbacks and difficulties while seeing herself as blameless or a victim of circumstance. Increasingly she regards the Trust as the problem and this approach places barriers in the way of the mother being able constructively to work with the Trust.

[63] The court will return to these matters in due course.

The law relating to the appeal

[64] As noted above the High Court's involvement arises from its appellate function in respect of the decisions of the Judge impugned in these proceedings. The court's role, however, according to the developed jurisprudence on this topic, is not that of providing a *de novo* hearing but rather is one which savours more of that of a supervisor or reviewer, but on a broader footing than the role performed by a judge in judicial review. This role of the High Court in the context of appeals in family law cases is dealt with in some detail by Gillen J in the unreported judgment of *McC v McC* [2002] NI Fam. 10. In this judgment, having considered the operation of the appellate system in family courts in England and Wales and having noted the material similarity of the statutory words used in conferring rights of appeal as between Northern Ireland and England and Wales, Gillen J was of the clear view that the principles which the appellate court should follow in the conduct of appeals are those found in the case of *G v G* [1985] FLR 894 and related authorities to which he makes reference. In essence, these principles are as follows:

- (i) The High Court will not interfere with the lower court's decision unless the decision was plainly wrong or the court erred in law or principle.
- (ii) In appeals the High Court will be reluctant to take oral evidence or receive additional evidence but can do so in exceptional circumstances. Decisions to take oral evidence or to receive additional evidence will be likely to be case sensitive.
- (iii) Accordingly a High Court appeal will usually not be conducted by way of full re-hearing.
- (iv) The High Court on an appeal will consider any transcript of what occurred in the court below, if available, and in particular will consider the reasons given by the lower court in support of its decision.
- (v) In hearing the appeal the High Court will pay due regard to the fact that judges work under enormous time and other pressures. Accordingly it would be quite wrong for the High Court to interfere simply because an *ex tempore* judgment given at the end of a long day is not as polished or thorough as it might otherwise be.
- (vi) In considering an appeal the High Court will bear in mind that in family cases there is often 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.

[65] In these appeals none of the parties has challenged the approach summarised or has sought to argue that *McC v McC* or *G v G* should not be followed. In these circumstances the court will approach its task in these appeals in accordance with these authorities.

The law relating to freeing applications

[66] Before considering the relevant provisions of the adoption legislation in Northern Ireland, it is both convenient and appropriate for the court to advert to the nature of a freeing order. Any judge dealing with such an order should bear in mind that its object is to extinguish parental responsibility of the natural parents in respect of their child or children as a prelude to adoption. The effect of making an order is to terminate virtually all of the rights of the natural parents in respect of the child or children and their upbringing. Consequently, freeing orders have rightly been described as “draconian in nature” per Lord Carswell in *Down and Lisburn Trust and Another* [2006] UKHL 36 at paragraph [45].

[67] Freeing orders, self-evidently, also are interferences with the Article 8 rights of a parent to have his or her right to family life respected. This has been recognised by the Strasbourg court, for example, in the Northern Ireland freeing order case of *R and H v United Kingdom* (2012) 54 EHRR 2. In that case the court held that such orders call for strict scrutiny. As the court put it at paragraph [81]:

“...measures which deprive biological parents of [their] parental responsibilities and authorise adoption should only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the child’s best interests”.

[68] Usually there will be no difficulty in establishing that freeing orders are in accordance with law and serve a legitimate aim (usually the protection of the child) but such orders will also have to be necessary in a democratic society and proportionate. This means that an individual order must strike a fair balance between the competing interests. In short, there must be relevant and sufficient reasons of the making of the order: *ibid* at [72] and [89].

[69] The relevant provisions of the Adoption (Northern Ireland) Order 1987 are as follows:

“Welfare of children

Duty to promote welfare of child

9. 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.”

Parental agreement

16 .–(1) An adoption order shall not be made unless –

- (a) the child is free for adoption by virtue of an order made in Northern Ireland under Article 17(1) or 18(1), made in England and Wales under section 18 of the Adoption Act 1976 (freeing children for adoption in England and Wales) or made in Scotland under section 18 of the Adoption (Scotland) Act 1978 (freeing children for adoption in Scotland); or
- (b) in the case of each parent or guardian of the child the court is satisfied that –
 - (i) he freely, and with full understanding of what is involved, agrees –

(aa) either generally in respect of the adoption of the child or only in respect of the adoption of the child by a specified person, and

(ab) either unconditionally or subject only to a condition with respect to the religious persuasion in which the child is to be brought up,

to the making of an adoption order; or

(ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in paragraph (2).

(2) The grounds mentioned in paragraph (1)(b)(ii) are that the parent or guardian—

(a) cannot be found or is incapable of giving agreement;

(b) is withholding his agreement unreasonably;

(c) has persistently failed without reasonable cause to discharge his parental duties in relation to the child;

(d) has abandoned or neglected the child;

(e) has persistently ill-treated the child;

(f) has seriously ill-treated the child (subject to paragraph (4) below overall).

Freeing child for adoption without parental agreement

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.

- (2) No application shall be made under paragraph (1) unless –
- (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.”

[70] Of particular importance to this appeal are two issues which arise from the above provisions *viz*:

- (i) Is the court satisfied that adoption will be in the interests of the children?
- (ii) Are the parents withholding their agreement to adoption unreasonably?

In respect of these issues, as regards the appellant, the Judge answered each question affirmatively.

[71] A substantial volume of jurisprudence has grown up in respect of issue (ii) above. In *Re W (An Infant)* [1971] 2 AER 49 Lord Hailsham when considering the test of unreasonableness said:

“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 must take it into account. It is decisive in those cases where a reasonable parent must so regard it.”

[72] In Northern Ireland Gillen J in the case of *In Re C (Freeing for Adoption Contact)* [2002] NI Fam. 1 has expanded on the appropriate test in this context. He states:

“In *Re C (A Minor) (Adoption: Parental Agreement: Contact)* [1993] 2 FLR 260 the court suggested that the test may be approached by the judge asking himself whether, having regard to the evidence in 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”.

[73] Finally in this jurisdiction Morgan LCJ has recently considered the matter in the Matter of TM and RM (Freeing Order) [2010] NI Fam. 23. He notes at paragraph [6] that the leading authorities on the test the court should apply are *Re W (An Infant)*, *Re C (A Minor)* and *Down and Lisburn Trust v H & R* which expressly approved the test proposed at Lord Steyn and Hoffmann in *Re C* which he then set out as follows (citations omitted):

“... making the freeing order, the judge had to decide that the mother was withholding her agreement unreasonably. This question had to be answered according to an objective standard. In other words, it required the judge to assume that the mother was not, as she in fact was, a person of limited intelligence and inadequate grasp of the emotional and other needs of a lively little girl of four. Instead she had to be assumed to be a woman with a full perception of her own deficiencies and an ability to evaluate dispassionately the evidence and opinions of the experts. She was also to be endowed with the intelligence and altruism needed to appreciate, if such were the case, that her child’s welfare would be so much better served by adoption that her own maternal feelings should take second place. Such a paragon does not of course exist: she shares with the ‘reasonable man’ the quality of being, as Lord Radcliffe once said, an ‘anthropomorphic conception of justice’. The law conjures the imaginary parent into existence to give expression to what it considers that justice requires as between the welfare of the child as perceived by the judge on the one hand and the legitimate views and interests of the natural parents on the other. The characteristics of the notional reasonable parent have been expounded on many occasions: see for example Lord Wilberforce in *Re D (Adoption: Parents Consent)* (‘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)* ...

‘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 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.”

The proceedings before Judge Loughran

[74] The proceedings in respect of the Trust’s freeing application relating to EM were heard by the Judge on 9 March 2012. Those in respect of the freeing application relating to SM were heard on 3 and 7 September 2012.

[75] Each hearing involved the Judge considering voluminous materials and hearing orally from those witnesses the parties called. The mother gave evidence orally in the course of both hearings as did the father. Both parents were legally represented by solicitor and counsel. In the grounds of appeal of the appellant as formulated at the hearing before this court there was no challenge to either of the hearings before the Judge on procedural grounds.

[76] It is clear that in respect of each hearing there was ample opportunity for each party to present evidence and argue his or her case.

[77] Substantial oral rulings were given by the Judge. Both hearings and the rulings in each case were on the record and this court has been able to read a complete transcript of what occurred.

[78] The transcript of the Judge’s rulings demonstrates that the Judge was conversant with all of the legal principles and was well aware of the case law in relation to such applications which I have cited above. It cannot be said (and has not been said) that she erred in law or in respect of any relevant legal principle.

[79] The issue before the court has been whether the Judge made an overall assessment which was plainly wrong. This chimed with the way the grounds of appeal were pruned before this court and the way in which the case was presented by Mr McGuigan QC in his submissions to the court on behalf of the appellant. While initially there were some 11 grounds of appeal in the principal Notice of Appeal relating to the case of EM, three of these were abandoned during the hearing of the appeal. These were grounds (viii), (x) and (xi). The remaining grounds are grounds which relate to factors or elements within the Judge's overall assessment of the various factors in the case.

[80] In the court's ruling in respect of EM the Judge set out in short form the submissions of the parties before offering her views. The Judge acknowledged that the mother loved the child and accepted there were very many positives in her attitude. But it is clear that it was the Judge's view that these factors alone were not enough. The Judge clearly was influenced by the fact that two attempts to rehabilitate EM to her mother's care had been unsuccessful and that among the reasons for this was the influence of the father and the appellant's alcoholism. In the judge's eyes the recent pattern of contacts between the mother and EM demonstrated the difficulties facing the mother. The judge described the contact as "on very many occasions" chaotic. The mother, the judge notes, used bad language to EM during contacts and importantly appeared not to manage EM consistently. On one occasion, the judge recalled from the evidence that during a contact session a supervising social worker had to intervene to prevent SM from injuring EM. The judge, at one point, remarked that the mother lacked "insight into EM's emotional needs". The judge also considered that the mother sent out to EM conflicting messages, for example, about where EM might be placed or who she may be placed with. The judge also noted that the mother criticised the foster carers before EM which inevitably placed EM in a confused state as to where her loyalty should lie. In the judge's view, the contact record showed that SMcC could not cope with the children during contacts. Hence she posed the question how could the appellant cope 7 days a week 24 hours a day?

[81] Overall the judge's conclusion in respect of EM's case was that "she [the mother] does not have the capacity to meet [EM's] needs. [EM] needs to have security and stability" and neither parent could provide these. As the Judge puts it, in a later passage in her ruling:

"Everyone agrees that [EM] is confused and she needs to know her future ... [EM] needs certainty now. And the only certainty that can be given to [EM] is through a permanent placement. And neither of her parents is able now or in the foreseeable future to meet all her needs in a permanent placement".

[82] In these circumstances the Judge's conclusion was that "adoption is the only route to providing her with stability and security". Therefore, the Judge expressed herself as satisfied that adoption was in EM's best interests.

[83] At this point in the ruling the Judge went on to consider the question of whether the parents were unreasonably withholding consent to adoption. On this issue the Judge noted the position of the father in prison. While there, the Judge was of the view he could not parent his daughter. But, in any event, the Judge was unimpressed by the father's expressed view that there were no problems in EM being looked after by the mother. This view, in the Judge's estimation, showed "a singular lack of insight into the needs of the child". This led the Judge to conclude that the father was, when the hypothetical parent test was applied, unreasonably refusing his consent to adoption.

[84] The same conclusion was arrived at by the Judge in respect of the mother in view of the need on the part of the child for stability, security and certainty.

[85] A ruling essentially to similar effect, was provided by the Judge on 7 September in respect of SM. The transcript of this ruling plainly shows that the Judge directed herself properly in law and had considered the material before her.

[86] In this ruling the Judge's emphasis is on the mother's abuse of alcohol. While the mother had given evidence before the Judge that she had stopped drinking the Judge drew attention to various materials before the court especially the report from a Consultant Psychiatrist Dr Rodden, to which reference has been made above, which tended to show that she had been drinking as lately as 2 April 2012. In view of this the Judge plainly felt that the evidence of the mother could not be relied on. In the Judge's view the mother could not meet the needs of her children when she was abusing alcohol.

[87] On the question of whether adoption would be in SM's best interest the Judge concluded as follows:

"My view is that the evidence before this court from her treating psychiatrist is that within the last 6 months she has been abusing alcohol and prescribed medication to the extent that she was in fact hospitalised and this leaves me in no doubt whatsoever that she hasn't even begun to make the change in her alcohol consumption which would be a pre-condition of [SM] being returned to her care. And she has been given enough time to address the issue, she failed to address it and therefore, in my view, the welfare of [SM], given his age, given the number of moves he has had, given the length of time that he has been in care, ... dictates that he now needs the

certainty ... stability and security and his welfare demands that he be adopted”.

[88] As regards the parents unreasonably withholding their consent to adoption the Judge reached conclusions in respect of each parent similar to that she had reached in respect of the case of EM.

The receipt of additional evidence

[89] Since September 2012 some items of new evidence have been assembled by the parties. The Trust at the appeal hearing sought to introduce that material into evidence. The application was not resisted by any party. In these circumstances the court was prepared, where the circumstances of the mother was central to the issues in the appeal, to agree to admit the evidence.

[90] The additional evidence consisted of the following:

- (a) A further and more up-to-date report on the mother by a Consultant Psychologist, Dr McDonald.
- (b) An up-to-date report on the mother by a Consultant Psychiatrist, Dr Bunn.
- (c) Further contact reports in respect of contact between the mother and the children).
- (d) Certain reports in respect of, in particular, EM’s educational progress.

[91] The report of Dr McDonald is dated 13 January 2013. In its section entitled “Relationship History” it is recorded that the mother had stated that the father was an alcoholic and drug addict. The mother referred to their relationship as chaotic and violent. Nonetheless, Dr McDonald records that the mother was visiting the father fortnightly in prison. She is quoted as saying that “the two of us [are] building a case to get the kids back”. She later denied to Dr McDonald that she was in a relationship with him.

[92] The mother acknowledged to Dr McDonald that alcohol consumption had a significant impact on her ability to cope, though she said that she had disengaged with alcohol consumption over the previous 3 year period. This statement was questioned by Dr McDonald who records that the medical reports in respect of the mother had contained the information that during 2012 she had misused drugs and alcohol and had taken an overdose of paracetamol, diazepam and alcohol.

[93] Dr McDonald’s report goes on to record that the mother placed primary blame on the Trust in respect of her parenting of the children in that the Trust had

failed to provide support. At a later point in the report the mother is also recorded as attributing blame for EM's poor behaviour on the foster parents. In particular the mother alleged that the foster mother was "pumping [EM] to make her insecure". At another point the mother indicated that EM's behaviour arose because the child wished to return to her mother. In respect of the current placement the mother is noted as saying that the carers "had the calculated intent to influence the children to ensure that the minors remain with them".

[94] In respect of the above Dr McDonald offered the view that the mother's "embitterment towards the statutory agency is entrenched and close minded in respect of any validity to the children's placement beyond her direct care". He identified this state of mind as indicating a poor prognosis in terms of her ability to prioritise the children's interests over her own.

[95] As to the mother's mental well being Dr McDonald was of the view that the frailty of her emotional health was well documented and that historically she was prone to damaging episodes of behaviour, such as overdoses, as impulsive responses to stress. In short, pervasive instability has been a dominant feature within her life domain for a chronic time period.

[96] Overall Dr McDonald concluded that if the mother was to be involved in the primary caring role in respect of the children she would require extensive support, education and direction and a positive response from her in respect of these. However, in his view, the mother's current mindset provided a poor prognosis for learning.

[97] Dr Bunn is a Consultant Psychiatrist and his report is based on an examination of the mother which was carried out on 9 January 2013. It notes that at the date of examination the mother was on anti-depressant medication and that she struggled, in her own view, to cope with stress. The report notes that the mother had little family support but that, according to the mother, when she has asked for support from welfare services it had not been provided. In respect of her past psychiatric history Dr Bunn indicates that she admitted to a history of overdosing but that currently there were no thoughts of self-harm, harming others or suicide. In Dr Bunn's review of the mother's medical records he drew attention to an incident on 16 March 2012 when the mother had consumed some 100 Temasezapan and Diazepam tablets in the context of alcohol use. On this occasion the mother attended the Emergency Department of Craigavon Area Hospital. Dr Bunn also noted that in the previous week to this at an outpatient's review the mother on 11 April 2012 had reported having taken an overdose. There is also a reference to her having been drinking for the last month.

[98] Dr Bunn describes the mother as evidencing deficits in her personality and to her being of an emotionally unstable borderline type. He remarks:

“This may manifest itself with difficulties coping resulting in deliberate self-harm in the form of overdosing, turning to alcohol or chaotic lifestyle, therefore presenting to services in crisis”.

In his view there was a history of alcohol dependence and poly substance misuse. At paragraph 8.2 of his report the matter is put baldly with the doctor opining that “her mental health symptoms will adversely impact her ability to care for her children”.

[99] A further view offered by Dr Bunn as regards the mother was that in view of her traumatic life experiences and her poor coping with stress in the future it was highly unlikely that she would revert back to past coping behaviours. On top of this Dr Bunn’s view was that the mother minimises the seriousness of her current circumstances and blames others rather than herself for her own actions. The past did not demonstrate any ability to cope with adverse pressure and he indicates that he is fearful that in the future “she would quickly revert to crisis management including overdose and alcohol misuse”.

[100] In summary, Dr Bunn offers the opinion that the mother “will cope poorly with stress and the demands of parenting. She will quickly be overwhelmed and present to services in crisis”. She also, in Dr Bunn’s view, was insightful stating that she saw no problem in coping with both children when this clearly was not the case. In his view she had failed to provide a safe environment for the children and at times cannot prioritise the needs of the children. Any support network, while beneficial, would not be sufficient to assist her in crisis management.

[101] The further contact reports provided to the court have been considered by the court but do not require summarisation here.

[102] Finally, the court was provided with a report in relation to EM’s progress at school written by her class teacher. It covers the period from September to late November 2012. In many ways the report is disturbing in that it depicts a young child who one day is lethargic while the next day is in a heightened state of arousal. The report describes various incidents: of disruptiveness on the part of EM; of the use by her of bad language; of her acting in a sexually inappropriate manner; of her being aggressive towards class mates and of her attempting violence on herself (attempted to cut her tongue with scissors). The picture painted is of a troubled and insecure child.

The submissions of the parties

[103] The Court has already referred above to the broad stance of the parties before it.

[104] For the mother, Mr McGuigan QC, advanced the argument that the mother was capable of looking after the children and had to an extent been the victim of events beyond her control. In particular, the father had in December 2009 been responsible for the family having to leave their home and the large number of relocations thereafter could not be laid at the door of the mother. What the mother had been able to show was her capacity to care for the children at least to the point where not once but twice the children had been returned to her. The mother, in his submission, was able to learn from past mistakes and in recent times this had been demonstrated by her abstaining from alcohol and her enthusiasm for contact with the children. She had, he said, adjusted her lifestyle and realistically could parent the children in future if given a chance.

[105] The Judge below had failed, in counsel's submissions, to take properly into account the fact that it was factors largely beyond her control which in the past had led to breakdown of placements. The reality was that the Trust had not taken the steps it should have particularly in the context of procuring help for the mother in looking after the children. It was argued, moreover, that the Judge had failed to give the mother the credit she deserved for the high standard of care she had been able to provide for the children and which had induced the return of the children to her care in the past. In this regard it was suggested that the mother would be able to work in harmony with the Trust in providing to the children a high standard of physical and emotional care if she was given the chance to do so. There was no good reason for believing that the mother would repeat the mistakes of the past and to the extent that the Judge below took that view, her assessment was wrong.

[106] In reviewing the reasons for the Judge's decisions in the court below it was suggested that the Judge had placed far too much significance upon contact reports, especially a small number of recent negative reports about the mother.

[107] In view of the above, and other points which I have not here summarised, Mr McGuigan did not shirk from the submission that the Judge below was plainly wrong in her overall assessments, both as to adoption being in the childrens' interests and as to her having withheld her consent to adoption unreasonably.

[108] As noted earlier, the father's posture in the appeal was as a supporter of the mother's position. He accepted that his behaviour had in part led to the difficulties which faced the mother and submitted that this should be taken into account by the court. In his view the court below had made the wrong decision.

[109] For the Trust, Ms Murphy argued that the mother's evidence was unreliable and that her assertions of not engaging in alcohol consumption and in drugs in recent times were unsustainable in view of the medical evidence in the case. The Judge below was clearly dissatisfied in terms of the veracity of the mother's claims in this regard and she had not erred in her view on this aspect of the case.

[110] The Judge moreover, it was submitted, clearly had carefully taken into account the history of the case and the many incidents in which the mother had been involved. The children had been only for a relatively small proportion of their lives in the care of the mother and that care had fallen below acceptable standards so requiring the Trust to intervene. In so far as it was suggested that that mother had not been provided with suitable assistance Ms Murphy argued that the provision of assistance had been fully documented with the consequence that the mother's claim in this regard was unsustainable. The Judge was well aware of the degree of assistance and support provided by the Trust and plainly did not view the mother's criticisms of the Trust with any favour.

[111] On the contrary it was submitted that the Judge had rightly identified a series of factors relating to the mother as being responsible for her inability to parent in a satisfactory way. Chief among these was the mother's problem with alcohol and drugs; her inability to cope with stress; and her fragile mental state. The mother's housing problems, counsel indicated, was not a predominant factor in the Judge's thinking and the truth was that the Judge, for various reasons, had failed to accept the argument placed before her that the mother had been able to make sufficient positive changes to her lifestyle to enable the court to conclude that adoption was not the course which best served the children's welfare. A return to the mother of the children was more than demonstrated by the apparent fragility of the mother's adherence to her new regime.

[112] In the Trust's view the Judge reached obvious and wholly sustainable conclusions that the way forward for the children was adoption and that the mother (and father) had unreasonably withheld their consent to this course. In others words, far from the Judge being plainly wrong, she was plainly right.

[113] As has already been noted above the Guardian ad Litem's view as provided to this court and to the court below has firmly been in support of the Trust's position. In the Guardian's view the mother was not and had not been open and honest with the court, for example, as to her relationship with the father. The Guardian considered that there was clear evidence that the mother could not cope with stress but brought stress on herself in a variety of ways through her drinking and her relationship with the father and her failure fully to co-operate with the Trust. In the Guardian's view the Judge was fully entitled to make the decision she did.

Was the judge plainly wrong?

[114] It seems to the court that the starting point in reaching a conclusion on the question above is to have regard to the position of the children. As already noted, both are of tender years and neither to date is at an age where he or she is able effectively to speak for himself or herself in proceedings of this nature. But it can hardly be doubted that both have suffered from a disruptive childhood to date and both have had to adjust, not just to a large number of relocations but also to life with

a succession of carers including their own natural parents, particularly their mother, and their current carers, Mr and Mrs C. It is difficult to accept that such chopping and changing which has occurred in the past can be productive of anything other than instability, uncertainty and insecurity and it is beyond argument that the effects of such cannot be other than detrimental to their welfare. This is a bad enough state of affairs in itself but it has undoubtedly been added to by the extensive period of time which has been consumed to date in determining what should occur in relation to the children. In these circumstances, as the Judge below recognised, there was and is an urgent need for the children to be provided with a loving environment and living conditions which are likely to be enduring and sustainable. There is already evidence of behavioural problems in EM's case, and in the court's estimation, these are unlikely to disappear in the absence of there being some certainty as to the way forward. While it is inevitable that the working out of care plans and the consideration of the possible ways forward will be bound to use up time in a purposive way, there will inevitably, in the court's view, be a point at which a longer term course has to be charted. In the case of these children, as the Judge below accepted, this time has now arrived.

[115] The long term needs of the children require a stable, secure and loving long term environment with the result that the enquiry for the Judge and now for this court necessarily must focus principally on the question of how what is needed can be achieved. The options in this regard are not limitless and must be realistically assessed before decisions are made.

[116] The Trust's preferred option, as is clear from the above, is adoption. It has for some time now been of the view that this course is in the best interests of the children. This conclusion, moreover, has not been arrived at lightly. Other ways forward have been considered. This is well evidenced in the papers. The Trust has explored the possibility of other family members than the mother and father looking after the children but the search for suitable carers of this type has been in vain. The option of the children being returned to their mother has also been considered. Indeed the Trust has tried and tested this option twice before without success. Unfortunately, on both occasions, for a variety of reasons, it has not proved successful. There have been difficulties, not all of which have been of the mother's making. Many of the mother's housing difficulties, as it seems to the court, arose from factors beyond the mother's control but, notwithstanding this, there are other indisputable factors for which the mother is primarily responsible which have been instrumental in creating unacceptable conditions in which to bring up young children.

[117] Firstly, there is the mother's alcohol consumption and her taking of drugs. While the court accepts that the mother has made efforts to overcome her difficulties in these regards on the evidence (as the judge below found) there could be no confidence that the mother has been able in fact to do so. Indeed, events in 2012 falsify the mother's claims that she has been able to stay off alcohol and drugs.

Instead, the evidence is that she continues to resort to these not infrequently and sometimes in an almost self-destructive way.

[118] Secondly, there is what appears to be an enduring relationship between the father and mother which has been responsible for much heartache for the family. The element of domestic violence has already been referred to in this judgment. The problems of the parents' relationship appear intractable and the court is unable to place any credence in the notion that the mother's relationship with the father is over. There is clear evidence that the mother still continues to this day to visit the father while he is in prison, notwithstanding all that has passed between them. The keeping alive of this relationship, in this court's view, endorsing in this regard the view of the Judge below, is likely often to be to the dis-benefit of the children. The reality in this context appears to the court to be harsh. The mother should long ago have put an end to the influence of the father, both in relation to her and her children. While that relationship subsists, it seems to the court unlikely that any form of stable family life for the children with the mother will be possible. The father brings into the unit, as his past behaviour clearly demonstrates, a malign influence which can give rise to a family crisis almost at any time.

[119] Thirdly, there is the factor of the mother's own susceptibility to stress and her fragile mental health. It very much appears that the mother is in something of a vicious circle. When she feels stressed she is unable to cope well but she is unable to avoid stress by reason of a chaotic lifestyle, poor relationship with the father, and her limited parenting skills. Of course when there is stress this promotes self-destructive behaviour. There is clear evidence that the mother in such circumstances turns to alcohol and/or drugs and is prone to binge drinking and on some occasions overdosing. A pattern of conducting herself in these ways is highly destructive of her capability to look after her children.

[120] All of these factors have caused the Trusts to discard the option of placing the children with their mother and therefore to look to other solutions.

[121] The Trust's preferred option has developed over time. It has, as noted above, now settled on adoption as a permanent solution and as the way to build in stability and certainty into the life of the children.

[122] The advantages of this option in the circumstances of this appeal appear to be substantial. Fortunately, the children are already settled with Mr and Mrs C. The environment in which they have been living has been reported on by social work staff positively. The court is satisfied that Mr and Mrs C provide a high quality and loving environment for the children. In so far as the mother has made some allegations against Mr and Mrs C, the court finds no substance in these. The children are still at an age where adoption can constitute a fresh start with limited heartache. But above all, freeing for adoption would appear, having regard to the issue of the welfare of the children, to be very much in their interests and would be likely to secure the benefits referred to at paragraph [113] above.

[123] The option argued for by the mother is that she should be restored to the position of the carer of the children. This option is supported by the father also. Both are firmly of the view that the children should not be freed for adoption. It seems to this court that the court below was correct to accept that the mother loved and was committed to her children, but the issue arises as to whether such love and commitment without more can provide what is required in this case. Can the mother provide the sort of stable, safe, enduring environment for the upbringing of the children which has been discussed above?

[124] In respect of this question the Trust answer negatively and the Judge in the court below was in agreement with that response. The reasons for these stances have already been identified and set out in the discussion at paragraphs [116]-[119] above. In short, the mother is unable at this time to care for the children because of the difficulties which beset her and which are still there and are unlikely to change within any sort of practical timescale. While credit should be given for the mother's attempts to reform unfortunately it has not proved possible for her not to slip back into old ways and habits which have been and are likely to be destructive of her ability properly and to an acceptable standard to look after the children.

[125] The court is satisfied that the Judge below essentially was acting on the basis of the analysis above even though the *ex tempore* judgments are not laid out precisely in the same way as this court has dealt with them.

[126] Reverting to the questions formulated at paragraph [70] above, this court, having regard to the materials before the Judge below, agrees with the Judge's conclusion that adoption was the way forward for each child and is the option which was in each child's best interests. In this court's view, the train of reasoning of the Judge was balanced and disclosed relevant and sufficient reasons for her conclusion. The issue, moreover, in this court's view, was not borderline. Given the background, the train of events, and the factors already referred to, this court considers that by some margin the adoption option was that which best met and meets the requirements of the situation and of each child.

[127] The second issue – that of whether the mother was unreasonably withholding consent to adoption – was also answered by the Judge below in the affirmative. But it seems to this court that once one accepts that in relation to these children that adoption is in their interests, especially if adoption is to be viewed as being clearly in their interests (as this court thinks), it will be likely to follow that an objective parent considering the issue would be likely to conclude that any course other than that of consent to adoption would not be reasonable. For this reason, when read in the context which has been described at length above, this court reaches the conclusion that it agrees with the decision on the second issue of the court below.

[128] It follows from the above that this court is of the view that the Judge below was not wrong (never mind plainly wrong which is the relevant threshold for intervention) in making the orders she did and in freeing each child for adoption.

[129] The court makes it clear that its analysis above is based on an anxious scrutiny of the Judge's decision having regard to the material before her. The court has reached its conclusions leaving out of account the additional evidence which was admitted for the purpose of this appeal. Unfortunately for the mother when that new material is placed in the balance the effect, in the court's view, is to copper fasten the judgment in the court below as the picture which emerges from the recent reports of the psychologist and the psychiatrist tends to give strong support to the Trust's arguments. This court is satisfied that the mother has in the past received extensive support from the Trust. This is substantially evidenced in the papers before the court. It therefore rejects arguments made by the mother that it is the failures of the Trust which are responsible for the present situation. But what is of greater importance for present purposes is the evidence contained in the reports which depicts the mother as at loggerheads with the Trust and as effectively being unable to work with it. Such a situation can only have a negative effect on the mother's case in that it makes it more unlikely that the mother will be able to discard the range of negative factors which militate against her as a potential carer of the children. It therefore also militates against her being able to provide the pattern and standard of care which is necessary in the circumstances.

[130] Finally, and for the avoidance of doubt, this court makes it clear that in reaching its conclusions on the issues in this appeal it has considered the interference which the decisions below (and now this court's judgment) represents to the mother's Article 8 rights. However the conclusion of the court is that such interference, unwelcome as it is to the mother, is justified by the exceptional circumstances of this case and the need to protect the interests of each child. The reality of this case, it seems to this court, is that there is no viable alternative option to that of adoption. It is therefore of the view that in dismissing the mother's appeal it is acting, as the Judge below was acting, proportionately having balanced carefully the competing interests which arise in this context.

Conclusion

[131] For the reasons given above, this Court dismisses the mother's appeal in respect of each order made by the Judge below.