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Judgment: approved by the Court for handing down | *Delivered:* **05/11/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

_____

ON APPEAL FROM CRAIGAVON FAMILY CARE CENTRE

Between:

LC and RC

Appellants;

-and-

B McK

Respondent.

_____

MAGUIRE J

Introduction

[1] This is an appeal by the two appellants against the decision made by His Honour Judge Sherrard ("the Judge") at Craigavon Family Care Centre on 11 March 2014. The two appellants are the maternal grandparents of two children, who the court shall refer to as "C", a female child born on 23 July 2008, and "B", a male child born on 5 August 2009. C and B are the children of F McK, who died on 4 May 2011, and the respondent, B McK. F McK was the daughter of the appellants. For an extensive period in their lives the children have been in the care of the Southern Health and Social Care Trust ("the Trust"). The Trust has appeared by counsel in these proceedings. On 20 December 2011 a Residence Order was made in favour of the appellants and the children were discharged from care. The effect of the Order was to vest parental responsibility in the appellants in respect of the children until they reach 18 years of age. The respondent's name appears on the birth certificates of each child. He also, therefore, has parental responsibility in respect of the children. On 20 December 2011 a supervision order was also made by the court. It was to remain in place from that date for 6 months. It has now expired. The proceedings before the judge involved:

(a) an application by the appellants to adopt the children; and

(b) an application by the respondent for enhanced contact with the children.

[2] The Judge decided to dismiss the appellants' application for adoption. It is from this order that the appeal has been brought. The Judge also dismissed the respondent's application for enhanced contact with the children. There is no appeal in respect of that order before this court.

[3] Throughout the proceedings the children have been represented by a guardian ad litem.

[4] Before this court, Mrs Keegan QC and Ms Murray BL represented the appellants; Mr McGuigan QC and Ms McAleavey BL represented the respondent; Ms Lindsay BL represented the Trust; and Ms Robinson BL represented the Guardian ad Litem. The court is grateful to all counsel for their well composed and helpful oral and written submissions.

Background

[5] In the court's view, it is unnecessary in this appeal to set the background out at any length. It will suffice to say that historically neither parent had been judged fit to look after the children. The mother appears to have come from a troubled background and have had an emotionally disturbed childhood. She was unable to form relationships easily and it appears that from around the age of 17 she regularly went missing from her home. She met the respondent when she was aged 18 in 2006. After the birth of C in September 2008, the mother made allegations to police of historic abuse aimed both at her brother and a cousin. Later she made allegations of sexual abuse directed at her brother and her father. None of these allegations has ever been proved in a court of law and there is a substantial history of retraction by the mother followed by reinstatement followed by retraction. Subsequent to her death in 2011 the Trust formed the view that the allegations against the mother's father (the second appellant) were not to be viewed as an obstacle to him and his wife looking after the children. This decision is not in issue in these proceedings.

[6] The father of the children has also had a chequered past. He has been married 3 times, the last time being to the mother of the children. He has been beset with problems of law breaking, domestic violence and alcohol abuse. He had one child in the course of his first marriage and 5 children in the course of his second marriage. The latter children long since have been taken into care.

[7] From shortly after the birth of C and B it was clear that neither parent was in a position to look after them. It was for this reason that they were taken into care. Initially the plan of the Trust had been that the children would become adopted by adopters who had at that stage yet to be identified. Later foster carers were identified as potential adopters. However, before this plan had been implemented

the current appellants, the children's maternal grandparents, offered themselves as potential kinship carers. In or about December 2011, following the making of a Residence Order in their favour, the children were placed with the appellants with whom they have lived since. As has already been noted, the grandparents now seek an adoption order in their favour in respect of the two children.

The law which applies to the adoption application

[8] Two articles of the Adoption (Northern Ireland) Order 1987 are of importance in respect of this appeal. The first one is Article 9 of the 1987 Order. It states:

> "In deciding on any course of action in relation to the adoption of a child, a court … 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…".

Article 16 of the Order deals with the issue of parental agreement. It states:

> "16(1) An adoption Order shall not be made unless –
>
> (a) The child is freed for adoption …
>
> (b) In the case of each parent … 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 … (b) is withholding his agreement unreasonably."

[9] At all material times to these proceedings it is clear that the respondent has withheld his consent to the maternal grandparents' adoption application. It is therefore clear that before an adoption order could be made the court would have to be satisfied that the respondent is withholding his consent unreasonably.

[10] A substantial volume of jurisprudence has grown up in respect of the question of when a parent is withholding agreement to adoption unreasonably. 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."

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

> "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 appears sufficiently strong to justify overriding the views and interests of the objecting parent."

[12] In this jurisdiction Morgan LCJ recently considered the matter in the case of TM and RM (Freeing Order) [2010] NI Fam 23. At paragraph [6] he noted 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 and R which expressly approved the test proposed by Lord Steyn and Lord Hoffmann in Re C, which he then set out as follows:

> "… making the freeing order, the judge has 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 an adequate 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 the child's welfare would be much better served by adoption and 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 well 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 on 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 Convention

[13] Increasingly the importance of Article 8 of the European Convention on Human Rights ("the Convention") has been recognised by domestic courts in the context of adoption. Article 8, *inter alia*, confers a right to respect for family life and this is engaged in adoption applications both from the perspective of the parent and the child.

[14] In the Down and Lisburn Trust case *supra* which went from the House of Lords to Europe and is reported in the latter forum as R and H v United Kingdom [2012] 54 EHRR 2, a number of important statements were made by the Strasbourg court in the course of its decision. For example, at paragraph 81 it was stated that:

> "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".

[15] It should be noted for present purposes that this statement was made in the context of a proposed freeing order of the child for adoption not by relatives but by what may be described as non-kinship (or stranger) adopters.

[16] Recently the Supreme Court has had the opportunity to consider the requirements of the Convention in the case of a stranger adoption in the case of Re B (A Child) [2003] UKSC 33. Of particular importance is what the court had to say about when such an adoption will be proportionate for the purpose of justifying

interference with the Article 8 rights involved. Such interference in general had to be necessary (my emphasis) to satisfy Article 8. At paragraph [34] Lord Wilson indicated that a high degree of justification was required before an adoption order could be made. Lord Neuberger at paragraphs [76]-[78] said that adoption must be necessary and that nothing else would do. Lord Kerr chose the language of the need for there to be a high degree of justification before an adoption order could be made (see paragraph [130]), whereas Lord Clarke said that only in the case of necessity would an adoption order be proportionate (see paragraph [135]). Finally, Lady Hale's view, like that of Lord Neuberger, was that an adoption order should only be made where nothing else will do (see paragraph [198]).

[17] In short, there can be no serious doubt that in approaching the issue of adoption of a child by a stranger the intention of the Supreme Court was to set a high threshold which had to be met before an adoption order could be made. Unsurprisingly, this view subsequently to the Supreme Court's decision has been endorsed in a line of Court of Appeal decisions: see Re P (A Child) [2013] EWCA Civ 963; Re G (A Child) [2013] EWCA Civ 965; and Re B-S (Children) [2013] EWCA Civ 1146.

[18] The Supreme Court's reasoning, however, did not draw any distinction between the sort of adoption application that it was dealing with and step parent or kinship adoptions, where a natural parent or a relative was involved in the adoption. Such adoptions were not separately discussed. This category of case, however, had been considered by the Strasbourg court in the case of Soderbank v Sweden (1998) 29 EHRR 95. In that case the proposed adopters were the natural mother and a stepfather. Their application was resisted by the natural father who was concerned that he would lose parental responsibility if the adoption went ahead. The court interestingly considered that such a case could be distinguished from the sort of case where the child was being adopted by strangers. Thus at paragraph 31 the court stated:

> "The Court considers that the present case falls to be distinguished from the Johansen case [a case concerning the deprivation of a mother's parental rights in the context of compulsory and permanent placement of her daughter in a foster home with a view to adoption by foster parents] in the following respects. While it is true that the adoption in the present case, like the contested measures in the Johansen case, had the legal effect of totally depriving the applicant of family life with his daughter, the context differs significantly. It does not concern the severance of links between a mother and a child taken into public care but, rather, of links between a natural father and a child who had been in the care of her mother since she was born. Nor does it concern a parent who had had custody of the child or who in any other

> capacity had assumed the care of the child. Accordingly, in the court's view, it is inappropriate in the present case to apply the approach employed in the Johansen judgment".

[19] At paragraph 33 the court went on to refer to the step parent adoption being such as to consolidate and formalise existing ties where the child had been living with the mother since birth and with the adoptive father since the child was 8 months old. The step father had taken part in the care of the child who regarded him as her father.

[20] Soderbank, therefore, appears to be an authority from Strasbourg which reflects the view that, at least in a step parent adoption case, the requirements of proportionality may be more easily satisfied than they would be in a stranger adoption case.

[21] The distinction drawn in Soderbank has now been accepted by the Court of Appeal in England and Wales in the recent case of Re D [2014] EWCA Civ 1174. In this case the leading judgment was given by McFarlane LJ who indicated that the appeal presented the court with a timely opportunity to consider how an adoption application by a child's step parent is to be approached. At paragraphs [42]-[44] he considered the impact of Soderbank, before going on at paragraph [46] to say:

> "In an adoption application the key to the approach both to evaluating the needs of a child's welfare throughout his or her life and to dispensing with parental consent is proportionality. The strong statements made by the Justices of the Supreme Court in Re B and taken up by judges of the Court of Appeal in subsequent decisions to the effect that adoption will be justified only where 'nothing else will do' are made in the context of an adoption being imposed upon a family against the wishes of the child's parents and where the adoption will totally remove the child from any future contact with, or legal relationship with, any of his natural relatives. Although the statutory provisions applicable to such an adoption … apply in precisely the same terms to a step parent adoption, the manner in which those provisions fall to be applied may differ and will depend upon the facts of each case and the judicial assessment of proportionality".

At paragraph [47] he went on:

> "By way of example, in a child protection case where it is clear that rehabilitation to the parents is not compatible with their child's welfare, the court may be faced with a

> choice between adoption by total strangers selected by the local authority acting as an adoption agency or adoption by other family members. There is a qualitative difference between these two options in terms of the degree to which the outcome will interfere with the ECHR, Art 8 rights to family life of the child and his parents; adoption by strangers being at the extreme end of the spectrum of interference and adoption by a family member being at a less extreme point on the scale. The former option is only justified when 'nothing else will do', whereas the latter option, which involves a lower degree of interference, may be more readily justified".

This led to the Lord Justice's conclusion at paragraph [48] which reads as follows:

> "Where an adoption application is made by a step-parent, the approach of the ECtHR in Soderbank v Sweden should be applied according to the facts of each case. In doing so the following central points from the judgment in Soderbank are likely to be of importance:
>
> (a) there is a distinction to be drawn between adoption in the context of compulsory, permanent placement outside the family against the wishes of parents (for example, as in Johansen v Norway) and a step-parent adoption where, by definition, the child is remaining in the care of one or other of his parents;
>
> (b) factors which are likely to reduce the degree of interference with the Article 8 rights of the child and the non-consenting parent ["Parent B"], and thereby make it more likely that adoption is a proportionate measure are:
>
> (i) where Parent B has not had the care of the child or otherwise asserted his or her responsibility for the child;
>
> (ii) where Parent B has only infrequent or no contact with the child;
>
> (iii) where there is a particularly well established family unit in the home of the parent and step-parent in which "de facto" family ties have existed for a significant period."

The position of the parties

The Grandparents

[22] The essence of the position of the grandparents in the court below, as in this court, was that they felt that an adoption order in respect of the children was required in this case in order to create a sense of permanence for the children in respect of their status and placement. The appellants were clearly of the view that the existing residence order in their favour was insufficient in itself to create and maintain stability for the children. In particular, the fact that the respondent also held parental responsibility in respect of the children was identified by the appellants as creating a potential for instability as in their view it would be productive of conflict between them and the father. It is obvious that the appellants were and are fearful that if the *status quo* is maintained there would have to be ongoing consultation with the father in respect of everyday matters and that this would be likely to place the children at the centre of needless controversies.

The Respondent

[23] The respondent has objected to the making of the adoption order in the court below and in this court on the basis that he fears that if the order was to be made he would have his involvement with the children erased or diluted to an unacceptable degree. His view is that the grandparents would wish his role to cease or be minimised. His fear was and is that the extent of contact would be further limited so that the children's identification of him as their daddy would cease. The respondent argued in the court below and in this court that while he accepts the children will have their home for life with their grandparents it was in their best interests to continue to have a meaningful relationship with him. The father denies that he would in any way abuse his parental responsibility for the children and has sought to support this by offering undertakings to the Judge in the care centre, which are described below. The father's concern about dilution of his role cannot be said to be fanciful as the Trust has recommended that if an adoption order is made in favour of the grandparents there should be a reduction in the father's level of contact with the children from the existing level to some two direct and two indirect contacts per annum, the former being supervised as at present.

The Trust

[24] The Trust's position before the court below, as before this court, has been that an adoption order in favour of the grandparents would be in the children's best interest. In their view, if an adoption order is made there should be, as described above, a reduction in the father's contact with the children.

The Guardian

[25] As with the case for the Trust, the guardian in the court below and in this court, supports the application made by the grandparents but it should be noted that the guardian (through no fault of hers) had not met or discussed the application with the father prior to filing her report. Nor at that time had she been in a position to assess the undertakings later give to the court by the respondent, which the court now refers to.

The Undertakings

[26] In the course of the proceedings before the Judge the respondent provided certain undertakings which appear to have been of importance to the Judge as he required that they be attached to his Order and circulated to the parties and placed on file.

[27] The undertakings were in the following terms: that he, the respondent, would undertake:

> "1. Not to interfere with, undermine or attempt to interfere with or undermine the children's residence with the applicants.
>
> 2. Not to challenge or interfere with the applicants' decisions regarding any of the following matters:
>
> (i) the children's schooling including choice of school placement, school trips or any other matter relating to the children's education that may require parental consent;
>
> (ii) the children's religious instruction and well-being;
>
> (iii) all matters pertaining to the children's medical treatment and health care; and
>
> (iv) holidays abroad and the issue of passports.
>
> 3. Not to bring or threaten to bring an application before any court for a residence order or a contact order or in respect of any of the issues detailed at (2) above, following the ultimate conclusion of these proceedings, save for any proceedings as may be necessary to enforce an existing contact order.

4. Not to intimidate, pester, harass or annoy the applicants or to incite or instruct any other person to do so.

5. Not to send any items including cards and presents directly to the applicants' home for the attention of the children".

The respondent then went on to say:

"I further accept that all day to day decisions relating to the children's care are entirely a matter for the applicants to take without reference to me."

The Judge's Order and Judgment

[28] The judgment given by the judge was *ex tempore*. It has, however, been transcribed from the relevant audio disk. The transcription makes clear that the judge gave substantial weight in the case to Article 8 of the Convention. The judge noted that the residence order in favour of the appellants was working well. The judge expressly indicated that the appellants were providing a secure and stable environment for the children. However, he went on to note that the respondent under the court order of December 2011 had the benefit of a contact order for contact every three months with the children.

[29] It is obvious that the judge was of the opinion that the making of an adoption order in favour of the appellants was a very serious step to take since it would remove the respondent's parental responsibility. The test which the judge applied to the grandparents' application was that he should only make an adoption order if it was truly necessary. In his view, the threshold which had to be overcome by the appellants was a high one. In so saying it appears clear that the judge was relying on the recent decision of the Supreme Court in Re B *supra*.

[30] The judge's conclusion was that applying a test of necessity to the facts of the case he was not satisfied that an adoption order should be made. He therefore refused the appellants' application for an adoption order citing concerns about changing the existing position (he referred to entering into the unknown) and about whether there would be any particular benefit for the children if a change was made.

[31] It is clear that the trial judge had the advantage of hearing evidence both from the appellant grandmother and from the respondent father. The court, however, does not have any statement about how the judge weighed up the character or demeanour of these witnesses. All that can be said is that it seems clear from the transcript of his judgment that he saw the case as one in which if an adoption order was granted the children would be deprived of being able to have the degree of

access to their father which they currently, at the time of the court's decision, enjoyed. The Judge's Order indicated that the appellants' application for an adoption order was refused and provided that any future applications from the respondent in respect of the children should be placed before him.

Evaluation

[32] While the present case is not a step-father adoption in its classical form, it has certain characteristics in common with this species of adoption. In particular, the proposed adopters are family members and not strangers. Indeed, they are family members who have been caring for the children for a not insubstantial period of time. In these circumstances it seems to the court that in terms of how to approach the issue of proportionality the case is closer to the Soderbank and Re D line of authority than the Re B (A Child) cases. In effect there appears to be a scale of possible approaches available running from at one end that which applies to pure stranger adoptions, where a high proportionality threshold for adoption has to be passed, to, at the other end, step-parent adoptions, where the requirements of proportionality are less strict for the reasons explained by McFarlane LJ in Re D.

[33] It seems to the court that inadvertently the Judge may have approached the test of proportionality believing he had to apply the Re B (A Child) standard. The Soderbank case had not been cited to him and the Re D case had yet to be decided at the point when he made his decision. In view of this, it is necessary for this court to ask and answer the question whether, applying a test akin to that found in Re D, the Judge's decision was wrong.

[34] In this court's view, the first question which falls to be considered is whether the proposed adoption would be in the best interests of the children. The Judge seems to have answered this question in the negative. It would appear that he was unable to conclude that there was any benefit to the children in changing the *status quo*. This court agrees with this view. It does not seem to the court that the respondent was in any serious way challenging the continuing role of the appellants as the principal carers of the children and he positively stated in his evidence before the Judge that he had no cause for concern in respect of the parenting the grandparents were providing. It is difficult in these circumstances for the court to see what real advantage would be bestowed on the children by the making of adoption orders. The grandparents already have parental responsibility until the children are 18 years.

[35] The appellants' counter to the above is to say that they need adoption orders so that they do not have to share parental responsibility with the respondent. It seems to the court that the Judge was not impressed with this point and again the court agrees with the Judge's view on this. In this regard it has to be acknowledged that the respondent, despite his discreditable antecedents, is C and B's father with whom they appear (through the vehicle of contact) to enjoy a relationship, albeit probably not a very deep one. Their relationship with him, however, is not to be

lightly discarded as it maintains a sense of identity for them and allows them to keep in touch with their only extant parent. If adoption orders were made it is likely that the respondent's relationship with the children would be detrimentally affected. The father would no longer have any rights as a parent and the plan clearly was that as a result of the new legal arrangement the respondent's contact with the children would be reduced, diluting an already relatively weak link between them. Such an effect might be justified in some cases. The appellants say that this is such a case and their plea in this regard is based on what they say is the risk of the respondent destabilising their relationship with the children and creating strife by his ability, as a person enjoying parental responsibility, to raise or contest everyday issues affecting the children. If the court was convinced that there was in fact evidence of weight to support this contention this might well point to the children's welfare best being served by adoption. However, in this case the Judge does not appear to have been impressed by the appellants' case in this regard. On the contrary, he appears to have been impressed by the respondent's case that he had not set out and had no intention of seeking to upset the legal arrangements as established in December 2011. Understandably the Judge appears to have placed some weight on the broad terms of the undertakings given by the respondent but in addition it seems clear that there was little to support the view that in fact the respondent had since December 2011 intermeddled in any significant way: on this, see, for example, paragraph 8.9 of the guardian's report which was before the court to the effect that no such issues had arisen by the date of her report (September 2013). In this court's view, the appellants have failed to show that the making of adoption orders is in the best interests of the children.

[36] In view of the court's conclusion on the first question, it is not strictly necessary to proceed further but, for the avoidance of doubt, the court will make clear that in the absence of evidence demonstrating that adoption is in the best interests of the children such a step could hardly be viewed as being a proportionate interference in respect of the Article 8 rights of the respondent or the children, even in the context of a kinship adoption. It has already in this judgment been noted that if adoption orders were made, the respondent would be detrimentally affected by these and, if the adoptions are not to be viewed as in the best interests of the children, the conclusion is unavoidable that they would not constitute a proportionate response to the situation as it stands.

[37] Much the same, it seems to the court, can also be said about the Article 16 issue of whether the respondent was or is withholding his consent to adoption unreasonably. It may be assumed that the Judge was of the view that the respondent was not unreasonably withholding consent even though his view is not expressed explicitly. If he was of this view, this court has little hesitation in agreeing with him. There were and are good reasons for maintaining the involvement of the respondent with the children in this case, albeit at a low level, and where adoption is viewed as not being in the children's best interests, there is no reason to believe that a parent, such as the respondent, can be viewed as acting unreasonably in refusing his consent

to a step which could reasonably be viewed as contrary to the children's best interests.

Conclusion

[38] It is right to end this judgment by stating what might be viewed as the obvious. First, the court is pleased to learn of the level of care which the children are being afforded in the care of the appellants. The children appear to be thriving and this is a testament to the love and care they are currently receiving. The grandparents are to be congratulated and nothing in this judgment should be viewed as casting any doubt on their achievement in this regard. The court very much hopes that their good work will continue unabated into the future.

[39] Second, the court considers it should address the respondent about his role. This judgment recognises his role as father but accepts that his role in this case is played by him making the best use of the direct contact he has with the children. Contact arrangements are there for the benefit of the children and the court hopes and trusts that the respondent will keep that in mind. As regards his role as a person who holds parental responsibility for the children, this judgment leaves that intact but the court will expect the respondent not ever to use it as a way of needlessly disrupting the care of the children afforded by the appellants. Rather it should only be used for the purposes for which it has been conferred *viz* for advancing the welfare and well-being of the children. The court equally will expect the respondent to live up to the undertakings which he has given and to ensure so far as possible the arrangements for the care of the children work smoothly now and in the future.

[40] For the reasons the court has given, it dismisses the appellants' appeal.