

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE JL (unreasonable withholding of consent for adoption)

MORGAN J

[1] Nothing should be published which could lead to the identification of the child with whom this case is concerned or his family.

The background

[2] JL was born in 14 February 2006. His mother is JB and her mother is VB. Mr and Mrs G. have applied to adopt JL pursuant to the Adoption (Northern Ireland) Order 1987. JB objects to the adoption application and by agreement of the parties this hearing is for the purpose of deciding whether JB is unreasonably withholding her agreement to the proposed adoption.

[3] JB is a 25 year old woman. She suffers from cerebral palsy and walks with a limp. The use of her right arm is slightly impaired and her IQ has been assessed as falling within the range of mild learning disability. She became pregnant in 2005 and says that the father was GS with whom she had been having a relationship. GS has never been traced and has never held parental responsibility.

[4] JB approached the Trust on 24 October 2005 and advised that she wished to place her expected baby for adoption. She had previously attempted to obtain a termination in Northern Ireland. It seems clear now that her mother, VB, had significantly influenced these decisions. JB and VB had a volatile relationship. JB had made allegations of abuse against her mother with whom she lived. Her mother suffered from an arthritic condition and there is considerable evidence that she saw JB as a source of support to her in later years. To some extent a relationship of mutual dependency had arisen between them.

[5] On 14 February 2006 JL was born and JB held and bottle fed the baby until discharge from hospital on 20 February 2006. By agreement JL was accommodated in Trust foster care thereafter. JB requested weekly contact for one hour with the child and this was facilitated. On 20 March 2006 the Trust arranged for JB to meet a clinical psychologist for assessment. On that day she advised that she no longer wanted JL placed for adoption and indicated that she wanted to consider undergoing a parenting assessment at PACT. She disclosed that she was afraid of the repercussions from her mother and stated that she had wanted to leave home for some years because of her mother's bad temper. At a further meeting on 11 April 2006 she talked about the difficult situation at home because of her mother's drinking and stated that her mother got so drunk that she had to get her into a taxi and put her to bed when she got home from the club.

[6] At both of these meetings JB was advised that alternative accommodation could be found for her should she need it. At the second meeting it was suggested that this should be discussed with VB and an invitation was made for all parties to meet the Trust on 26 April 2006. On 12 April 2006 JB left a message for the social worker indicating that she did not want further contact with her. The social worker attended at her home but JB told her that she had changed her mind and wanted the baby adopted.

[7] There was a short break in contact at this stage but it resumed in early May 2006. JB still insisted that she wanted JL placed for adoption. The Trust contacted the clinical psychologist again to establish that she was able to give informed consent to such a course. JB also discussed post adoption contact at this time and advised that she would like letters and photos twice a year but did not want direct contact. On 1 June 2006 JB again discussed the placement and indicated that she wanted to continue weekly contact with JL until he was placed.

[8] On 22 June 2006 JB told the social worker that she had changed her mind about the adoption and wanted to keep JL. She disclosed that her mother had hit her on the back with a stool. On 14 July 2006 she indicated a desire to be assessed at PACT. On 19 July 2006 JB attended with the social worker and told her that she never wanted to have her baby adopted but that her mother had wanted him adopted. On 25 July 2006 JB visited the PACT project and after a further meeting on 28 July 2006 JB filled out an application form for PACT on 31 July 2006. By arrangement she met the clinical psychologist on 3 August 2006 and discussed with him the difficult situation at home including her mother's violence towards her on two occasions in the recent past. The clinical psychologist considered that her cognitive ability was such that she was capable of making the decision about whether or not to consent to adoption but further considered that she would find it extremely difficult to assume a major parenting role even with substantial support and a relatively calm emotional environment.

[9] On 7 August 2006 JB contacted the social worker to say that she wanted JL adopted and did not want to go to PACT. She declined offers of a work programme over the next number of weeks. On 20 October 2006 she left a message for the social worker to say that she would not sign the agreement for adoption as arranged on 24 October 2006. Two days later she telephoned to say that she did not want to see the social worker with whom she had been working. A different social worker was arranged for the weekly contact which was continuing. On 3 November 2006 JB advised that she wanted to give her written consent to adoption of JL and sought confirmation that she could see him on a weekly basis until the introduction to his prospective adopters. She asked that he be placed prior to Christmas as she wanted him to spend all his Christmases with the family with whom he would be growing up. She requested indirect contact once a year and asked to meet the prospective adopters. If they were agreeable she asked about the possibility of once yearly face-to-face contact. On 21 November 2006 JB gave written agreement to JL being placed for adoption and he was placed with prospective adoptive parents on 18 December 2006. Weekly contact ceased at that point.

[10] The Guardian ad Litem interviewed JB on 31 January 2007 and was advised that she had not given her agreement for the adoption of JL willingly but that she had been under pressure from her mother to do so. A meeting was arranged with prospective adopters for 5 March 2007. JB indicated that she did not want to disrupt the adoptive placement but that she wanted her mother to support her to care for JL. As a result of this disclosure the court requested the assistance of the Official Solicitor who reported on 26 March 2007 that JB had not fully and freely consented to the adoption of her son. Weekly contact was reinstated thereafter.

[11] On 3 April 2007 JB indicated that she wanted to secure accommodation in order to be assessed as an independent carer for JL. On 17 April 2007 she moved into a hostel designed to cater for those with learning difficulties.. This was the first time that she had attempted to live independently and it is clear that this was both an exciting experience and extremely challenging for her. She maintained regular contact with her mother who clearly was anxious to get her to return home.

[12] The next element of the assessment was a referral to the PACT Project for a parenting assessment. The admission meeting was held on 11 June 2007 and it was hoped to arrange 7 or 8 two-hour sessions over the following four weeks. This was intended to offer advice and support in relation to independent living skills and understanding the needs of young children. At or about this time JB formed a relationship with another person who stayed at the hostel and also formed friendships with others that she met in her new environment. This apparently contributed to the fact that she attended only three out of a possible seven sessions up to 16 July 2007. Over the following

four weeks she attended all six sessions offered and significant improvement was noted. It was envisaged, however, that it would take considerable time for JB to be able to achieve the skills and stability required in order to live independently prior to caring for her child. The final PACT report on 4 September 2007 noted that JB had attended three further contact sessions but had been unable to attend 2 sessions on independent skills. JB said that she was ill for both of these sessions.

[13] On 4 July 2007 it was necessary for JB to leave the hostel. She was offered a move into supported housing but decided to return home. On 9 July 2007 she requested assistance with accommodation as she felt she had made a mistake in returning home but when offered a place at another hostel she returned home the same evening. On 10 July 2007 she decided to move to supported housing but this arrangement was cancelled by her the following day. She then moved into supported housing on 19 July 2007 but returned home on 22 July 2007. She returned again to supported housing on 30 July 2007 but left on 13 August 2007 to return finally to her mother's home.

The principal findings

[14] In her evidence before me JB described an incident in the early stages of pregnancy where VB kicked her twice in the stomach leaving her hurt. She also described an incident where her mother hit her with a stool. Both of these incidents arose as a result of JB's assertion of independence in relation to the child. There is also evidence of abuse directed towards social workers by VB. More recently on 6 November 2007 JB left her mother's property with the assistance of a social worker because of a report that her mother was supporting the adoption of JL. JB returned shortly thereafter. Although she contends that her mother did not utter such a statement I bear in mind firstly that JB accepts that this probably represents her mother's view and secondly that her mother chose not to give evidence in order to dispute this specific allegation. Taken together with the history of alcohol abuse these incidents lend support to the view that the relationship is volatile.

[15] I am satisfied that VB suffers from serious arthritic problems requiring substantial medication. As a result she would be considerably restricted in the assistance that she could provide for JB and in any event it is clear to me from the evidence of JB that her mother has little motivation for the retention of JL in the family home.

[16] I accept that JB has shown considerable commitment to contact with JL. She describes her bond with JL and her importance to him. Her commitment to his interests was demonstrated by her evidence that she felt that JL should be adopted by his present carers whom she had met if he was not able to return home with her. I do not doubt the existence of a relationship with JL but it is clear to me that JL's primary attachment is with the proposed

adoptive parents with whom he has resided for the last year. I acknowledge the considerable love and affection displayed by JB towards her son and the considerable progress shown by her in her contacts in terms of care for JL.

[17] JB asserts that the only assistance she would require from her mother was to keep an eye on JL while she was in the bathroom. Although this view may be sincerely held by her the material available indicates that there is little evidence to demonstrate her ability to live independently. While in supported housing she had budgetary difficulties as a result of which debts were incurred. She did not appear to develop any skills in respect of shopping for food or planning and preparing meals. It appears that her mother provided her with money for various payments and VB appeared to be responsible for financial planning. JB's failure to attend the independent living sessions in the PACT programme meant that it was not possible to take steps to deal with those issues.

The legal test

[18] The Trust took on the burden by agreement of asking me to find that JB is unreasonably withholding her agreement to the adoption of child. The leading authorities on the test of the court should apply are Re W (An Infant) [1971] 2 AER 49, Re C (a minor) (Adoption: Parental Agreement, Contact) [1993] 2 FLR 260 and Down and Lisburn Trust v H and R [2006] UKHL 36 which expressly approved the test proposed by Lords Steyn and Hoffmann in re C.

“...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 4. 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 *In re D (Adoption: Parent's Consent)* [1977] AC 602, 625 ('endowed with a mind and temperament capable of making reasonable decisions'). The views of such a parent will not necessarily coincide with the judge's views as to what the child's welfare requires. As Lord Hailsham of St Marylebone LC said in *In re W (An Infant)* [1971] AC 682, 700:

'Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.'

Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some embarrassment at having to consult the views of so improbable a legal fiction, we venture to observe that precisely the same question may be raised in a demythologised form by the judge asking himself whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invented to provide the answer to this question."

Conclusion

[19] Although I am sure of the love and affection of JB for her son I am satisfied that this is a case in which the mother's consent is being unreasonably withheld. I am satisfied that the relationship between JB and her mother is volatile and at times violent. I am further satisfied that VB is of

the view that it is in JL's interests to be adopted and that she is unlikely to provide any assistance to JB in any attempt to cater for JL. In light of her past pressure on JB to pursue adoption it is likely that she will positively seek to undermine any return of JL to the home. In any event her medical condition may inhibit her to a greater extent as she gets older.

[20] I do not accept JB's assertion that she is in a position to independently care for JL. The evidence from the period in supported housing tends to suggest that she needs considerable assistance in the organisation of everyday activities such as shopping and that she has a poor grasp of the management of her finances. She did not participate in those elements of the PACT assessment designed to explore those matters. Her only explanation for non attendance was an assertion that she was suffering from a cold on both occasions. She has given untruthful reasons for not attending PACT on earlier occasions and I am of the view that this non-attendance is an indicator of lack of commitment to this aspect of the work. In any event it is clear from the report of the clinical psychologist that JB would find the need to make major parenting decisions for JL stressful even in the calmest of circumstances and the prospect of her achieving a sufficiently high level of ability in this area while in her mother's home is highly uncertain.

[21] JL has been in care without any order for almost 2 years. The evidence before me indicates that permanence is required in the short term for his benefit if he is to enjoy a stable and harmonious environment in which to grow up. JB cannot offer that within any foreseeable timescale.

[22] This decision of necessity interferes with the article 8 rights of the mother. The importance of the right to family life was recognised in particular in the decision of the Court of Appeal in AR v Homefirst Trust [2005] NICA 8. I consider that the many steps taken by the Trust in 2006 and 2007 to assist JB in the difficult situation in which she found herself paid proper respect to her interests in family life. When the interference with her rights is balanced against the risk to JL if uncertainty about his future is to continue the result is heavily in favour of the needs of the child prevailing.