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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE: T and E (FREEING ORDER)

GILLEN J

[1] This judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and adult members of the family must be strictly preserved.

[2] This is an application by a Community Health and Social Services Trust which I do not propose to identify ("the Trust") in respect of two children whom I shall identify as T who is now 6 years of age and E who is now 5 years of age. The Trust applies for an order pursuant to Article 18 of the 1987 Adoption (Northern Ireland) Order ("the 1987 Order") freeing both children for adoption in the absence of parental consent. The application is opposed by the mother of the child whom I shall identify as N. The father of the child, who does not have parental responsibility, has chosen not to become involved in these proceedings notwithstanding that he has been informed of them by the social workers who were engaged in this case. He has failed to attend any Looked After Children Reviews and has not attended this hearing.

Background

[3] The historical background to this application was not seriously in dispute in any material manner. I consider that the relevant background material is as follows:

(1) From in or about 1996 onwards significant concerns had emerged regarding N's ability to care for her children. T and E have four older siblings namely S a boy who is currently 13 years old, S1 a girl who is currently 11 years, B a girl who is currently 8 years and S2 a girl who is currently 7 years.

Major areas of concern centred around issues of hygiene within the home and the consequent impact of this on the children, lack of structure and routine in family life, neglect of the children and exposure to a dysfunctional relationship between their parents which was characterised by domestic violence and alcohol abuse by the father.

(2) Subsequent Trust intervention with the family failed to result in positive and sustained change necessitating the children being transferred to and remaining in alternative care placements. The four older siblings are subjects of care orders in favour of this Trust and all but B and S2 have been placed in separate foster placements.

(3) Consequently T and E have been in the care of this Trust since 21 September 2000. Although the placement was made initially on a voluntary basis, care orders were subsequently granted in respect of both children on 20 February 2004. T has resided with the same foster carers since the 30 October 2000 when he was five months old except for a return home between 21 April 2001 to 21 September 2001. These carers are committed to offering him a stable home and also to adopting him. E has also remained with the same carers since 27 September 2001 and these carers are equally committed to adopting E within their family. It was not possible to find a joint home for the two children. They have had monthly contact with their parents and siblings together with an additional siblings only monthly contact.

(4) It must at this stage be highlighted that during the previous care proceedings Dr Mangan, Consultant Child and Adolescent Psychiatrist had assessed issues of attachment and contact in relation to both children and their respective foster carers. Dr Mangan had concluded that both T and E demonstrated secure attachments to their carers although at times of distress E also approached non significant others. A chief component in the condition of these children was that prior to removal from their home they had been placed in respite care for periods of time and had witnessed several incidents of severe domestic violence between N and the father G.

(5) Mr Quinn, Consultant Psychologist, had prepared a report dated 7 November 2002 for the earlier proceedings. Of particular significance were the findings that N had been subjected to a highly dysfunctional family life herself and this had had a deleterious effect on her development and later life function. Mr Quinn described her as having developed a personality disorder characterised by masochistic/self-defeating, avoidance and depressive features. One consequence of these difficulties was a tendency towards repeated involvement in destructive relationships with similarly damaged or problematic partners and limited ability to extricate herself from these situations. It was Mr Quinn's view that N's relationship with G typified such a pattern. Not only did repeat involvement in such relationships perpetuate her problems but also placed her children at high risk of experiencing

significant harm in his opinion. At that time the nature and extent of N's difficulties were such that Mr Quinn was pessimistic about the likelihood of sustained and positive change in her case.

(6) It was also common case however that N had brought about changes in her life since Mr Quinn's assessment in 2002. It was Mr Quinn's view that she had developed significantly greater insight into the situation relative to that which she exhibited in 2002. She now openly acknowledges serious deficits in family life at that time accepting instances of neglect, poor hygiene, exposure to chaos within the home due to G's excessive drinking and her inability to deal effectively with this as well as repeated and severe episodes of domestic violence. Similarly she reflected on her own inability to effectively dealt with this situation. Her relationship with G has now finally ended. She made the case to Mr Quinn when she saw him again in June 2006 that the destructive nature of the relationship had eventually dawned on her and she attributed this in part to social services interventions particularly those of the local family centre. She described improvement in her own sense of self and self worth. She has been in full-time employment for over 5 years beginning with a job as a cleaner and subsequently a better paid position as a care assistant in a home for the elderly. She has been in this job now for 3 years. She has now formed a new relationship with her current partner M. This relationship has been ongoing for the past 3 years and the couple are now engaged to be married. She described the relationship as characterised by mutual respect and consideration of each other's needs.

(7) She has enjoyed increased level of contact with the two older children S and S1. She described a similarly positive situation with the middle two children B and S2. As will appear from my analysis of the evidence before me, it was also common case that there is at least the possibility that the four older children may in the fullness of time be returned to her and rehabilitation effected over the next 3-4 years.

(8) The essence of the issue in this case surrounded the application by the Trust to free these children for adoption set against the proposition by the mother that she reasonably withheld her consent on the basis that she wished to be permitted the opportunity to work towards having T and E rehabilitated to her in the long term. She felt she should be given a chance to parent them in the long term and that in the interim, long term foster care with their current carers should be the solution.

Evidence

[4] **Sally Wassell**

This witness had undertaken an independent social work report on the case jointly instructed by the Trust, N and Ms Wilma Reid the Guardian Ad Litem.

[5] Her remit had been as follows:

(i) To consider the level and nature of the current attachments between T and E and their mother and father.

(ii) To consider the level and nature of the current attachments between T and E and their siblings.

(iii) To consider whether long-term foster care or adoption was the best care arrangement for the children.

(iv) To consider the current relationships between T and E and their foster carers and the attachment to them.

(v) Whether direct contact with N and G should be phased out completely.

(vi) What arrangements should be made for post freeing and post adoption contact between T and E and their parents on the one hand and also their siblings on the other in the event of the court making such orders.

[6] Ms Wassell had prepared a lengthy report dated 31 January 2006 and in addition to that report she gave evidence in person before me by way of television link from England where she is based. In the course of that report, her examination in chief and her cross-examination, the following salient matters emerged:

(i) Ms Wassell has 28 years experience as a qualified social worker having gained the Certificate of Social Work at Edinburgh University. She has been a specialist worker in the area of adoption and permanent fostering of children for the past 20 years. She is currently involved in work with 15 children in agencies throughout Scotland most of them in permanent placements either adoption or permanent fostering. She has been a consultant for 5 years to Barnardos Scottish Adoption Advisory Service and has 10 years experience as a jointly instructed expert in cases in England and Scotland focusing specifically on areas of significant emotional harm and its impact on a child's development.

(ii) She recognised that there had been improvements in the mother's outlook and behaviour since the care order. She had a job, a new relationship

and had moved on in her life. Ms Wassell found N's home well presented when she visited her and she spoke openly about her regrets concerning the past and the pain that had been caused to the children.

(iii) The mother had told Ms Wassell of her regrets that the children had been removed. She indicated that she wanted the eldest children back and was not discounting the possibility of E and T being returned although no timetable was specified. She was content that they currently remained in foster care and recognised their attachment bond with their current carers.

(iv) The witness felt that long-term foster care for these children would be unhelpful for them. She referred to the potential for uncertainty in their lives, the intrusion of regular Looked After Children Reviews and the presence of officials in their day to day living. She considered that if long-term foster care was the solution for these children, it would present as increasingly unhelpful and puzzling to them in light of the strong attachments they had with their current carers. Whilst she recognised that the mother has not attempted to undermine the placements, she regrets the break-up of her family and an application to have the children rehabilitated to her cannot be precluded. This situation of uncertainty is in the opinion of the witness far from being a natural one for very young children who do not have strong attachments to their birth parents and for whom there is no plan for them to return during their childhoods.

(v) This witness was in favour of adoption for these children for the following reasons:

(a) Both E and T are very young and need to have the opportunity for the utmost predictability of care in their care settings. Both children have been placed since 2001 and have deep and close attachments to their respective carers. Adoption offers the highest level of predictability of care and indeed, as researchers such as Professor Tresiliotis have observed, young children make more substantial long-term progress and are more resilient in adulthood, if they are adopted according to the witness. She contrasted long term foster care where regular statutory Looked After Child Reviews raised continuing questions as to the suitability of the placement which can interfere with a child's sense of security.

(b) The current carers have become "psychological parents" for both these young children after more than 4 years.

(c) In the witness's opinion it is coherent to promote and support an adoption plan for both of the children with their current carers. Whilst there is significant attachment connection between E and T and their siblings, this has been judged not to be sufficiently strong as to outweigh the very substantial benefits of maintaining the children in the care of their most

significant primary attachment figures who are now their respective current carers.

(d) E has a most secure of primary attachment relationship with her current carers Mr and Mrs J. She was significantly developmentally delayed when she entered the placement more than 4 years ago and has made profound, wide-ranging and sustained progress in her development. This is directly attributable to the tender care she has received in her foster placement. The child is entirely secure in both her initiatives to her carers and Ms Wassell was struck by their profound and tender commitment to her. Similarly she noted many examples of close, tender inter-reaction between T and his carers and this is entirely consistent with the fact that he has been in their care for more than 4 years and has been in the position of having to turn to them as his primary attachment figures. His carers are profoundly committed to him and this commitment has been borne out in his robust developmental progress in all spheres. The witness emphasised that the current foster carers have been their only parental figures known to these children. Their sense of primary attachment and security, particularly that of T, has developed with their foster carers. The first two years of childhood are of absolute significance in Ms Wassell's opinion for the formation of attachment relationships and also for the capacity to form relationships. A number of attachment theorists including David Howe and some papers from America illustrate the importance of emotional nurturing for young children in the first 2 years when they develop the capacity to make sense of reliable attachment figures. Damage to this sequence of events can be repaired over time but if reparative figures are available in the first two years this can be extremely helpful. Ms Wassell agreed with other views expressed in this case that currently N and G are viewed by the children as familiar adults but there is no sign of strong attachment behaviour and no initiatives to date that bring them into a category other than that of familiar adults. She emphasised again the favourable outcome for adoption in terms of certainty and predictability for children against the unpredictable dictates of the care system. She emphasised in cross-examination by Ms Keegan QC on behalf of the guardian ad litem the potential detriment to the children of remaining in the status quo where their awareness of relative uncertainty could increase over time if they do not have the predictability and certainty of adoption. It was her experience that children often begin to question why they need permission to stay with friends and can challenge the boundaries imposed by foster care where social services regularly make an input in the absence of the certainty created by adoption.

Post Adoption Contact

[7] It was the witness's view that post adoption contact for these children should amount to two visits per annum for each birth parent ie the parents should see the children separately. She considered this to be appropriate so

that each parent could deal with the children untrammelled by each other. It was also her view that whilst N wished to have contact with T and E with the other siblings, that was not in their interests and sibling contact should be separate from contact with the parents. Ms Wassell's view was that this would permit both N and G to discuss past and current problems individually with the children should the need arise particularly if this occurred in a neutral venue thus enabling the parents to provide encouragement and emotional support to the changing circumstances of these children. Whilst she recognised that neither birth parent accepted the Trust plan for either adoption or contact, she was hopeful that in time they would come to accept the situation. This was largely because although the parents express strong reservations about adoption, they did not question the care that the children were receiving in the placements. She hoped that the parents could be supported to the stage where they would give permission to the children to be adopted. Doubtless there had been some difficulties between T's carers and the birth parents but nonetheless N certainly recognised that T was strongly attached to that family despite the difficulties. Ms Wassell emphasised the need to focus on what was beneficial for the children. An enhanced opportunity for quality individual contact, though less frequent than in the past, would be particularly beneficial over time.

Ms McGinley

[8] This witness was a social worker in a family centre who had produced a report dated 24 August 2006. This witness had been the subject of a referral to the family centre in November 2005 requesting an initial assessment to establish N's motivation/capacity to change and to offer an increased future role with S and S1. At the first meeting on 24 January 2006 it was acknowledged that N had made progress since the children had come into care. N attended eight consecutive sessions and then failed to attend one in May. She attended on 9 June 2006 but failed to attend the next scheduled session on 23 June and thereafter did not respond to correspondence. Eventually there was a meeting on 26 September 2006 when it was clear that there was more ground yet to cover. Counsel on behalf of N put to the witness that the break had occurred because N simply felt overwhelmed by the situation. The reason she had given to the witness for failing to attend was because she had difficulties with the family and had to work overtime hours. The report recorded that N was aware of the enormity and complexity of the issues given that there were six children in four placements, each child with a set of friends, foster siblings, teachers and social workers as well as medical personnel. N recorded that she had a sense of her powerlessness when she talked about the expert reports which ruled out her potential to change within the timescales of her children's needs being met. It was the witness's view that N was motivated to resume care of her children but appeared to have a grasp of the important issues as to the welfare of the children. It surprised the witness that N had broken the contact with her.

The witness accepted that N did appear to be changed and demonstrated some insight into her shortcomings as a parent. She appeared motivated to challenge the long-term plans for her children on the part of the Trust but that had not been fully explored in their work. It was Ms McGinley's view therefore that the work with her remained incomplete.

Ms Tully

[9] This witness had been the social worker for T and E since January 2004. In the course of a number of reports which she had prepared and her examination in chief and cross-examination the following salient matters emerged:

(i) On the issue of current contact, she recognised that T and E relate well to their siblings. However she felt that it was difficult for the birth mother and father to give individual attention to the six children at the monthly meetings and in her view in the event of the children being freed for adoption direct contact should be reduced to twice per year with each parent separately seeing the children together perhaps on the same day. It was better that there be contact for T and E separate from the other siblings in order to afford the birth parents more quality time with T and E. She indicated that both sets of foster carers, who wish to be the adoptive parents of the children, are comfortable with direct contact twice per year together with appropriate indirect contact in addition.

(ii) When cross-examined on the basis that S and T have a very strong relationship as do E and S1, this witness adopted the same approach as that of Ms Wassell indicating that the primary preoccupation of T and E is with their foster carers and their families. The witness shared the view of Ms Wassell therefore that T and E see their home life as being with their foster carers and have no sense of identity with the birth parents viewing the children in their foster homes as their siblings. This witness, as did all the other witnesses in the case, recognised the progress of this mother N since 2004. If work progresses well with the mother, the Trust envisage contact with S and S1 increasing to a stage where there can be a shared care arrangement and eventually return to her care. However it was Ms Tully's view that it will be 9 months at the earliest to enable rehabilitation to take place. Similarly there was an opportunity for rehabilitation of B and S2 but that would take a further year. The witness gave evidence that she had discussed the issue of the return of the children with N at a professional meeting held on 30 August 2006. The purpose of that meeting had been for the Trust to review and debate its position on the freeing application in light of recent reports provided by Paul Quinn consultant psychologist and Ms McGinley from the Family Centre and to clarify N's view and future planning for the children. At that meeting N stated that she wished to have increased contact with her older children, S and S1 with a view to moving towards a return home. She

stated that this would be "baby steps" as she didn't know if she would be able to cope". At that stage N voiced her concern about the inclusion of her partner in any assessment and the impact of this on their relationship. She felt that she had excluded him from this and she accepted this would require to change. Significantly she stated that she did not visualise E and T coming home. She said that she would be happy for them to stay where they were. N acknowledged that the children were well cared for and were attached to their carers. She became emotional when discussing the freeing order application and expressed her unhappiness about the proposed level of post adoption contact stating that she wished to remain part of their lives. She was clear that she did not wish to relinquish her parental rights in respect of E and T whilst accepting that her priority at that time was to complete work to progress the possibility of a rehabilitation plan for her older children. She accepted that that would be a lengthy process. She expressed how emotional a situation that was for her but that she was happy to continue with the assessment work at the family centre with a view to reunification of the two older children. She would then plan to work towards a return for her middle two children. She was emotional at the realisation that she had not actually thought about the younger children coming home as she did not envisage this ever becoming a reality given her circumstances and the work required to be completed in relation to her other children. In cross-examination by Ms Keegan on behalf of the guardian a similar pattern emerged in earlier reviews. In a review of 17 June 2004 (4 months after the care order had been obtained in relation to T and E) N had indicated that she had become engaged, hoped to get married next year and would like the children to meet her fiancé at some stage in the future. The current carers for E had been assessed as potential adoptive carers for E and the adoption panel on 5 May 2003 had recommended that that family be approved. It was therefore the Trust's intention at that stage to proceed with a freeing order application. Similarly the panel had recommended that T's current carers be assessed and the adoption panel had recommended that his family be approved as potential adopters on 2 June 2003. It is significant therefore that at this stage N was not requesting the children to be returned and indeed had not even yet introduced the children to her fiancé. Similarly at a Looked After Children Review on 24 May 2005. Whilst again it was recorded that N had made many improvements in her lifestyle since her children's admission to care and the care orders being granted and she maintained an interest in her children's welfare and engaged very appropriately with Ms Tully to discuss matters in relation to them, she was not requesting that they be returned to her care. Similarly G was not in a living situation where he could provide for either of the children although he was still opposed to adoption. It was the witness's view that S and S1 are older, they were longer in the care of their mother, have stronger attachments to her, and S is asking for more contact with his mother. Unlike T and E therefore S and S1 have strong attachments and talk of being back at home. In contrast, considering the wishes and feelings of T and E, the witness recorded that these children refer to their foster parents as

being the couple who are important to them and with whom they do things. It was the witness's opinion that they would be both be very distressed if they thought there was a possibility of leaving. This resonated with Ms Wassell's view that the children would suffer a grief reaction if they left their current carers.

(iii) This witness also indicated in her opinion adoption was preferable to long-term foster care because the former offered the highest level of predictability of care. It removed the ongoing LAC Reviews and possibility of rehabilitation which was likely to introduce a degree of instability and ambiguity into the lives of these children. The current carers have fostered other children and wish to adopt T and E. Both children have integrated well within their extended family.

P A Quinn, Clinical Psychologist

[10] Mr Quinn has worked as a clinical psychologist within the National Health Service for over 20 years and is currently employed as a Consultant Clinical Psychologist within the Western Health and Social Services Board which provides clinical services to all other health boards in Northern Ireland. One part of this service provides specialist assessment and treatment facilities for adults who have been accused of or convicted of abusive behaviour towards children or other vulnerable adults. In the course of a report which he had carried out on the mother N on 7 November 2002 and in the course of a further report carried out on her behalf on 8 June 2006, his examination in chief and his cross-examination, the following points emerged:

(i) The chronology of events leading to N's children being removed from her care in September 2001 was not disputed. I refer to paras 3(1)-(5) of this judgment.

(ii) When he carried out the follow-up assessment of N in 2006, he had been heavily reliant on self-report information from N regarding the issue. He recorded that reliance and self-report information in cases such as the present one was of questionable validity and that had to be borne in mind when considering his findings. In addition to this psychometric assessment of issues such as personality and mental health status carried out during the present assessment suggested tendencies towards low level of disclosure in N's case. That could suggest tendencies towards underreporting of psychopathology or other problems.

(iii) Overall however she did appear to have developed significantly greater insight into her situation relative to that which she exhibited in 2002. For example she openly acknowledged serious deficits in family life at that time summarising the situation by stating that the children had been getting minimum care, and endured neglect and poor hygiene, exposure to chaos

within the home due to G's excessive drinking and her inability to deal effectively with this as well as repeated and severe episodes of domestic violence. While she did exhibit some tendency towards minimising issues such as the latter, for example by stating that the children were in different parts of the house when instances of domestic violence occurred, she largely accepted the destructive nature of the situation.

(iv) Mr Quinn indicated that in cases such as the present it is possible that people can exhibit significant and positive change in attitude and belief but with limited parallel change in behaviour. However he found many examples of positive change in her behaviour. For example she acknowledged that her relationship with G had finally ended some time after his last assessment and suggested that the destructive nature of the relationship had eventually dawned on her. She described improvement in her own sense of self-worth and acknowledged the positive benefits of having been in full-time employment for the past 5 years. Her improved sense of herself and self-efficiency also appeared to have been significantly affected by involvement in relationship with her current partner. However she did recognise that she had a tendency to overreact to limited criticism of her by her partner and at times when she had consumed alcohol this could result in her reacting angrily to him and grabbing him.

(v) With respect to her children, N's attitude towards them appeared to be one of considerable sadness tinged with some degree of hope. She openly accepted her shortcomings caring for them in the past. She acknowledged the bond that the young two children had with their carers due to factors such as their young age when taken into care and the quality of care received from their foster parents. She contrasted this with their lack of bond or attachment to her. In this respect she stated her belief that her chances of having the younger children returned to her care were "slim". On a more positive note she described the increased level of contact she had with the older two children S and S1. N suggested that this afforded both her and the children the opportunity to redress past ills and deficits. She described a similarly positive situation with the middle two children B and S2.

(vi) Mr Quinn's conclusion was that there had been a significant improvement in N's situation relative to that which existed at the time of the original assessment in 2002. Hopefully he felt that this would result in an increased ability on her part to relate to her children in a positive way, particularly the older children. However his report concluded:

> "All of the evidence available suggests that the two younger children have established positive bonds and attachments to their carers who wish to adopt them. Indeed N's accepts this proposition. Given this situation particularly if the best

> interests of the children are viewed as paramount, it is hard to envisage a situation where these bonds should be interfered with or broken. This is regardless of the level of improvement in N's case."

(vii) In cross-examination by Ms Smith on behalf of the Trust, he acknowledged that her attitudinal and behavioural changes appear to have been made without any real therapy. With the children not at home, and the absence of stress, he had to recognise that it might be a different picture if these stressors were present. Whilst there had been significant improvement therefore, he accepted that there were still parts of her personality which were likely to be challenged under stress. He acknowledged that whilst she had told Ms Wassell that she was alcohol free that did not appear to be the situation when she spoke to him. He recognised that personality features are enduring and whilst she has a desire to care for the children, she did have a realistic attitude that it would be very difficult. He had not read the report of Ms McGinley to the effect that the work concerning the return of the older children had not yet been completed and that she had ceased those attendances this year on the basis that she found if overwhelming.

N

[11] In the course of two statements which she had made on 28 September 2005 and 23 March 2006, her evidence-in-chief and her cross-examination the following salient matters emerged:

(i) She emphasised the changes that had occurred in her life since the care orders had been made in 2003. She described how she had "woken up and left G" when she realised that he was not supporting her and did not love her. She outlined her new job as a care assistant and her new relationship. She felt she had changed and matured. She addressed the attendance at the Family Centre, admitting that she had missed sessions over the recent summer because of a combination of her parents being ill, extra shift work in her employment and the fact that she was taking time out because of the emotional strain of the whole matter.

(ii) Her aim was to engineer the return of the children in an orderly fashion with S and S1 first, B and S2 second and thereafter T and E. She agreed that the whole process could take about two years. She did not accept the suggestion by Ms Smith on behalf of the Trust that there was a danger that stress levels could escalate with the return of the children. She emphasised how she now had stress in her job and was able to manage it. Taxed with the evidence that she had not requested in the past (even comparatively recently) the return of T and E, she indicated she did not know she could ask for increased contact with the children and while she had it in

her head that the children might return, she felt that the matter was "a done deal" for adoption in the case of T and E. Accordingly her next step was to save S and S1 and B and S2. Dealing with the LAC review of 30 August 2006 she acknowledged that she had been briefed about the purpose of the meeting and that Mr Fyffe who was conducting the LAC wished to know how her life had changed. She was shocked at the suggestion that conceivably the freeing order application might not go ahead because she had assumed this was "a done deal".

(iii) The witness was adamantly opposed to adoption and preferred long term foster care. Her case was that the children could remain in long term foster care for up to two years by which time she could have them all home. She acknowledged that T and E were well settled, securely attached and that they had now been in care for almost five years. She felt that she wanted to keep her options open because no one knows what the future may hold. She recognised that it would take longer to get T and E back than in the case of the older children but that the overall process might not take the full two years. N appeared that she did have a different type of relationship with T and E than with the older children because she had not had a chance to be with T and E. However she felt the difficulties could be overcome if she was given the opportunity. The witness felt that she now had a support system with friends and a more positive outlook.

(iv) On the subject of contact, she opposed the reduction suggested by the Trust and contrasted the proposal of two contacts per year to the twelve per year which was the current situation. One of her reasons for opposing adoption was there would be less contact. She emphasised that at the contact there was a strong relationship between S and T which she felt would be damaged if adoption occurred.

(v) Dealing with the foster carers she emphasised that she had a very good relationship with the foster carers of E but that the relationship with T's foster carers was less good because she felt that they did not respect her as a person. That family she felt kept her at arms length.

The guardian ad litem Ms Reid

[12] The guardian ad litem had the advantage of having participated in the care proceedings. Two reports were relevant to the current proceedings prepared by her on 2 March 2006 and 4 September 2006. In the course of those reports, her examination-in-chief and her cross-examination the following salient points emerged.

(i) She recorded that T and E both relate securely to their foster parents. T presents as very comfortable, relaxed and happy in his foster family having

been with him since he was aged five months. He has been assimilated into the family from such a young age that he regards them as his family and calls his foster parents "mummy and daddy". His foster parents report that for a very long time the child needed reassurance that he was coming back after contact to them. This family includes the two foster carers, D his foster brother and himself. Similarly E has lived with her foster carers since infancy and regards this as her home. In an exercise with the guardian ad litem as to what people were important to her or who she loved the most, she put first the foster mother, her foster sister, her foster brother and friends. Later she said she forgot "daddy" the first time and added the foster father in. The guardian described both of them as having a very secure attachment with their foster families.

(ii) Although G does not have parental responsibility, I am obliged to take into account his views and the guardian ad litem had obtained those for his report of 2 March 2006. He recorded that G was not happy with the children being in care. However he said they could not come to him as he did not have his own place but would prefer N to have them.

(iii) On the subject of the birth mother the guardian ad litem expressed the following views. She did not believe that N was in a position now or in the foreseeable future to take on the care of T and E. Whilst she recognised that ideally she would wish this to happen, the guardian recorded that N has acknowledged to most of the professionals involved in the case that the children's primary attachments are to their foster carers and her most recent position to the social workers had been that she does not envisage being able to take on the care of T and E. The guardian ad litem also noted that in her view N had not actively sought rehabilitation of T and E and the length of time they have lived with their respective foster carers was a very relevant factor therefore in this case. The fact of the matter is that T and E have been raised by their current foster carers almost from infancy and know no other home. She felt that N did appear to have some sense of the complexities involved in rehabilitating the children to her. Whilst the guardian therefore commended her for the progress she has made and her consistent interest in the children and their progress nonetheless it was her view that the family life of T and E was firmly rooted with their current carers and their welfare would be best served by a legal recognition of that fact together with a clarifying of the roles of the important adults in their lives to enhance their future security. She instanced the conversation she had with N in her report of March 2006 when she recorded, inter alia:

> "She acknowledged that from T's point of view he did not have a bond with her and it might be difficult for him if he did come back and if it were possible it would take a long time. She accepts E and T are settled and said she can see it would be detrimental if

> they were moved. …… She said she was trying to figure out what was best for them without being selfish. She said it was difficult for her to say she did not want them back some time or to keep the door open."

(iv) So far as the older children are concerned, she recorded that S had a good understanding of what adoption meant. She was aware of the plan for T and E from the social workers and he said it was "okay" for that to happen for T and E. S1 said she would be a bit happy and a bit sad if E and T were adopted. B had indicated she did not know what she thought about the adoption but was interested in knowing about the court. S2 said it was okay if the children were adopted.

(v) The guardian ad litem indicated a clear preference for adoption in this case. It was her view that whilst N's life had undoubtedly stabilised, and she would like the court to consider rehabilitation to her at a somewhat specified later stage in the future, in her view T and E had now found their family life in their current homes where they have resided from infancy and where they are securely attached to their foster parents whom they call mum and dad. She referred to the Department of Health circular May 1999 Permanency Planning for Children: Adoption – Achieving the Right Balance at para. 2.2 which states:

> "The child welfare system should be founded upon the need to find permanent homes for children and adoption should therefore be the first option for children who cannot live with their own parents."

Para 2.3 of that document states:

> "Adopted children do considerably better than children who have remained in the care system throughout most of their childhood. Adoption provides children with a unique opportunity to become permanent members of new families enjoying a sense of security and well being previously denied to them."

The witness went on to record that whilst in the last ten years the breakdown rates between long term fostering and adoption is narrowing, as older children with more complex needs are being adopted, there remains a lack of security with long term fostering, where any one of four parties can cause a move i.e. foster carers, parents, social services agency or the child. She noted that in this case the parents retain a hope of rehabilitation at some later stage and there therefore existed the potential for mixed loyalties and

conflicting needs and emotions which could serve to undermine the stability of the placement. She referred to the research of Professor Tresiliotis in 2002 which recorded:

> "The main defining difference found between two forms of substitute parenting appears to be in the higher levels of emotional security, sense of belonging and general well being expressed by children growing up as adopted, compared with those fostered long term."

It was the guardian's view that in personal and social functioning children who had been adopted perform better. She accepted that there is a place for long term fostering or residence care when this is compatible with the wishes of the parties concerned and reflects the relationships in a meaningful way. However it was her view that the undoubted permanency and security afforded by an adoption order should make it the order of preference for very young children. It was her view that in this case an adoption order would recognise that the foster parents were the psychological parents as outlined in Ms Wassell's report.

Dealing with contact it was her view that direct contact with each parent should be reduced to twice per annum. The foster parents had indicated that this was as much as they could manage. The children's attachment behaviour towards their birth parents in her view did not indicate that they would experience significant loss through the proposed gradual reduction in contact post freeing until it arrived at a level felt to be compatible with adoption which she felt should be twice per year.

It was the guardian's view that these children would be devastated if they were removed from their present carers. Moreover it was her view that the challenge presented to N to look after six children would be extremely difficult for her to meet realistically given that all the children had complicated case histories.

In passing I also note that the guardian indicated that there had been some delay on the part of the Trust in this process and that it had been somewhat protracted. It had been the Trust's care plan since the granting of the care orders to maintain the children with their current carers (as far back as 2004) and the children had settled into a life with no awareness of any prospect that this could be disrupted. She conceded in cross-examination to Ms Lyle that the Trust could have been more proactive in addressing the changes of the mother and in checking her position. She recorded that subsequent to the granting of the care orders on 20 February 2004, the Trust assessed and had respective foster carers approved as adoptive parents by an Adoption Panel in May and June 2004. She was informed that further delay

occurred as Trust senior managers reviewed a number of cases generally to ensure compliance with human rights issues and that no concerns were identified in respect of this case. It is my view that there was delay in this case on the part of the Trust. In light of the decision that I am about to come to it does not in any way prejudice these children but I have no doubt that this Trust should review its procedures to ensure that where it is the intention of the Trust to implement adoption as the care plan, a delay, as has occurred in this case, of 2½ years before the matter is brought to court is simply too long. Delay is risk laden and rarely serves children well. That no harm has been occasioned in this case is purely fortuitous.

I pause to observe that I found this guardian to be a source of informed and persuasive thinking in this case. .She had clearly invested a great deal of time and energy in her approach and I found her evidence most compelling

Conclusions

[13](i) I commence my deliberations by recognising the strength of the jurisprudence in the European Court of Human Rights ("ECHR") to the effect that it is a guiding principle that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permitted and its implementation should be consistent with the ultimate aim of reuniting parent and child. The minimum to be expected from the authorities in relation to parental rights of access is an examination of the family situation anew from time to time to see whether there had been any improvement. (see R v Finland (Application No. 34141/96).

(ii) The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child. After a considerable period of time has passed since the child was originally taken into public care, the interest of a child not have his or her de facto family situation changed again may override the interests of the parents to have their family reunited (see K A v Finland (2003) 1 FLR 696 at p. 721 para. 138).

(iii) Thus Trusts must be vigilant in keeping the objective of rehabilitation in mind and serious in implementing periodic reviews of any given child situation.

(iv) Freeing orders are draconian in nature in that they extinguish at that stage of the proceedings the parental responsibility of the natural parents for the children and declare that they can be adopted, so in effect terminating virtually all the rights of the natural parents in respect of the children and their upbringing (see Down Lisburn Health and Social Service Trust and

Another (AP) v H "The Down Lisburn Health and Social Services Trust Case")(2006)UKHL36.

(v) With reference to the European Convention on Human Rights and Fundamental Freedoms ("the Convention") and in particular Article 8 and its relevance to this case, I respectfully adopt the comments of Baroness Hale at paragraph 33 of the Down Lisburn Health and Social Services Trust case:

> "Article 8 of the Convention guarantees …. respect for family life. A public authority must not interfere with that right unless three conditions are fulfilled: first that it is in accordance with the law; second that it is for a legitimate aim, in this case safeguarding the best interests of the child; and finally, that it is 'necessary in a democratic society' – that is, that the interference is for relevant and sufficient reasons and proportionate to the legitimate aim pursued."

(vi) Article 9 of the 1987 Order provides that the general duty of courts and adoption agencies is as follows:

> "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 given due consideration to them, having regard to his age and understanding."

(vii) In interpreting this article, I again respectfully borrow the words of Baroness Hale in the Down Lisburn Health and Social Services Trust case where she said at paragraph 26:

> "Although this article emphasises the question in relation to the eventual adoption of the child, it clearly requires the court to regard the welfare of the child as the most important consideration when deciding whether or not to free a child for adoption. Even if an eventual adoption will be in the best interests of the child, the welfare of the child might indicate that it would not be right to make an order freeing her for adoption."

(viii) I also adopt the views expressed by Baroness Hale that the court has to take into account the child's need for contact with the parents in deciding whether adoption is in the best interests of the child.

(ix) I have come to the conclusion in this case, having regard to the provisions of Article 9 of the 1987 Order, that the welfare of these children requires adoption and would be in the best interests of both of these children. I am of this opinion for the following reasons:

(a) I was very impressed by the evidence of Ms Wassell and the guardian ad litem in this regard. The former gave her evidence with conspicuous care and cogency garnished as it was with a wealth of experience and common sense. Similarly I found the evidence of the guardian ad litem on this aspect of the case to be compelling.

(b) Given the young age of E and T, I am satisfied that the need for the utmost predictability in their care is crucial. Both children have been with their current carers since 2001 and have developed deep and close attachments to them. In my opinion adoption does offer the highest level of predictability of care and I have no doubt that this is precisely what these children need in the years ahead. Long term foster care in my opinion would introduce an element of uncertainty into their lives which would be inimical to their continuing welfare.

(c) I share the views expressed by Professor Tresiliotis in the research quoted that young children do make more substantial long term progress and are more resilient in adulthood if they are adopted. Continuing questions about the bureaucracy of social work involvement with regular reviews, attendances of social workers and the need to obtain Trust permission for various activities are all matters which can interfere with a young child's sense of security.

(d) The current carers have become what Ms Wassell has described as "the psychological parents" for both of these children after more than four years with them. I believe it has the potential to damage these children if a note of uncertainty about their future with their current carers were to be introduced at this belated stage.

(e) I share the view of the guardian ad litem and Ms Wassall that the attachment of these children to their birth parents is not sufficiently strong to outweigh the very substantial benefits of maintaining these children securely and permanently in the care of their most significant primary attachment figures namely their current carers. In my opinion there is ample evidence that these children now regard the entirety of the foster care families as their real home and the rock upon which their futures will be secured. The enormous development which these children have sustained during their period with each of these carers is testament to this proposition.

(f) I believe that the children do require limited direct contact with their birth parents in a post freeing context and in my opinion the proposals by the Trust are adequate to meet that need.

(g) Whilst I appreciate that this mother has made changes to her lifestyle – her recognition of past frailties, her break with her former partner, her new job, her new partner and her attendance at the Family Centre – sadly these have all come too late in the lives of these children. I appreciate that loss of these children will be a bitterly disappointing outcome for this woman who clearly loves these children, but these children have now remained within the substitute home with their carers for so long that the need now is for this to be finally secured even though it means overriding the interests of the natural parents in having their family reunited.

[14] I must then turn to Article 16(2)(b) of the 1987 Order and decide whether the Trust has satisfied me on the balance of probabilities that the one parent with parental responsibility in this case, namely the mother, is unreasonably withholding her consent. In approaching this matter, I respectfully adopt what Lord Carswell has set out in the Down Lisburn Health and Social Services Trust case at paragraphs 69 and 70:

> "69. Both the judge and the Court of Appeal cited the relevant statements giving guidance to courts in deciding the very difficult and anxious question whether a parent is unreasonably withholding agreement to the adoption of a child. The starting point is the speech of Lord Hailsham of St Marylebone LC in *In re W (An Infant)* [1971] AC 682, in which he dispelled the then prevalent idea that

there had necessarily to be an element more than unreasonableness. He stated categorically, at p 699:

> '…. the test is reasonableness and not anything else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness, and reasonableness in the context of the totality of the circumstances. But, although welfare *per se* is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent would take it into account. It is decisive in those cases where a reasonable parent must so regard it.'

The mere fact that the proposed adoption would conduce to the welfare of the child is not of itself sufficient to establish unreasonableness on the part of the parent. Nevertheless, as Lord Denning MR said in *In re L (An Infant)* (1962) 106 SJ 611:

> 'A reasonable mother surely gives great weight to what is better for the child. Her anguish of mind is quite understandable; but still it may be unreasonable for her to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable woman in her place would do in all the circumstances of the case.'

There may be an amalgam of factors, possibly conflicting, which will vary from case to case and cannot profitably be placed in prescribed categories. In *In re D (An Infant) (Adoption: Parent's Consent)* [1977] AC 602, *625* Lord Wilberforce said, in the context of a father's withholding agreement to his child's adoption by the mother and stepfather:

> 'What, in my understanding, is required is for the court to ask whether the

> decision, actually made by the father in his individual circumstances, is, by an objective standard, reasonable or unreasonable. This involves considering how a father in the circumstances of the actual father, but (hypothetically) endowed with a mind and temperament capable of making reasonable decisions, would approach a complex question involving a judgment as to the present and as to the future and the probable impact of these upon a child.'

70. The difficulty facing a court is obvious: it has to apply an objective standard of reasonableness, looking at the circumstances of the actual parent, but supposing this person to be endowed with a mind and temperament capable of making reasonable decisions. It was this difficulty which moved Steyn and Hoffmann LJJ to say, in their joint judgment in *In re C (A Minor) (Adoption: Parental Agreement: Contact)* [1993] 2 FLR 260, 272:

> '… 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 opinion 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."

In adopting that approach I recognise that the reasonableness of the parents refusal to consent must be judged at the time of hearing and I am doing that. I have taken into account all the circumstances of the case. I have recognised that whilst the welfare of the child must be taken into account it is not the sole or necessarily paramount criterion. I have applied an objective test in the case

of this parent. I have recognised that the test is reasonableness and nothing else. I have been wary not to substitute my own view for that of the reasonable parent. I recognise that there is a band of reasonable decisions each of which may be reasonable in any given case.

[15] I have come to the conclusion that this parent's agreement should be dispensed with for the following reasons:

(i) In my view a reasonable parent would recognise that a child cannot indefinitely wait for parents to change. These children have now been in care for over four years and the reasonable parent would recognise that consent to the certainty of adoption with reference to that position can no longer be withheld.

(ii) I am satisfied that this mother is intellectually persuaded that the welfare of these children and their best interests demands that they be freed for adoption. During this hearing I think she has spoken from her heart but not with her head. The passage of this case is littered with recognitions by her that withholding consent to their adoption is neither reasonable nor plausible. I accept the evidence of Ms Tully that N had not actively sought rehabilitation of T and E since the care order and until shortly before this hearing had not raised the issue in any concrete form. On the contrary I am satisfied that on 30 August 2006 she told social workers that she did not visualise T and E coming home. She acknowledged to the guardian ad litem that she has less of a bond with T and E than the older children and informed her prior to the report of March 2006 that not only did she accept that E and T were settled but she could see that it would be detrimental if they were moved. In truth I think that Sharon Crawford's report of 4 September 2006 reflects the reality of the position where she records:

> "N stated that she did not visualise E and T coming home. She said that she would be happy for them to stay where they were. N acknowledged that the children were well cared for and were attached to their carers. …. N was clear she did not wish to relinquish her parental rights in respect of E and T while accepting that her priority at this time is to complete work to progress the possibility of a rehabilitation plan for her older children."

I believe she inwardly shares the views expressed by Mr Quinn in his report of August 2006 where he concluded "It is hard to envisage a situation where these bonds [with the foster carers] should be interfered with or broken. This is regardless of the level of improvement in N's case." In these circumstances I do not think that any reasonable parent could withhold consent.

(iii) The process for the return of these children is unlikely even to commence for another 21 months pending the resolution of possible rehabilitation with the older children. Children cannot indefinitely wait for parents. There is much evidence of the damaging effects on children being allowed to drift in care without the appropriate attention being given to planning their future. The children are already rooted into their new family and further delay in finalising this position will simply cause these roots to grow frustratingly deeper as time goes on. I have no doubt that N recognises this and in those circumstances could not reasonably withhold consent to their being freed for adoption.

(iv) I have considered whether this interference with the rights of N and for that matter G under Article 8 of the Convention is a proportionate to a legitimate aim and I have come to the conclusion that it is and that it is for the legitimate aim of the well being and welfare of these two children.

(v) I am satisfied that both N and G have been given an opportunity to make the appropriate declaration under Article 17(5) of the 1997 Order and that pursuant to Article 18 of the Order there has been ample evidence before me that these children are in the care of the adoption agency and that it is likely that they will be placed for adoption. Before making an order under the 1987 Order, I have satisfied myself in relation to the father of these children that he has no intention of applying for an order under Article 7(1) of the 1995 Order or a residence order under Article 10 of that Order and that if he did make any such application it would be likely to be refused. I have however listened to the guardian's account of his views and I have taken them into account.

(vi) I consider that whilst it is not possible for me hearing this freeing adoption to make an order about contact after the adoption, I can express the view that the proposals for contact post freeing made by the Trust seem eminently sensible to me and should be implemented forthwith.I find myself in complete accord with the views of Ms Wassell as set out in paragraph 7 of this judgment for the reasons therein recorded . There is no need for an order to this effect as the Trust may need to react flexibly to the reactions of the birth mother to the consequences of my order.

(vii) Accordingly I have come to the conclusion that it is appropriate that I should make an order freeing both of these children for adoption.