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Judgment: approved by the Court for handing down (subject to editorial corrections) | *Delivered:* **07/12/06**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE T

(FREEING ORDER; CONTACT; DELAY; TRUST MINUTE TAKING)

GILLEN J

[1] This judgment is being handed down on 7th December 2006. It consists of 30 pages and has been signed and dated by the Judge. The Judge hereby gives leave for it to be reported. The judgment is being distributed on the strict understanding that no person may reveal by name or location the identity of the child and the adult members of their family 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 child and the adult members of his family must be strictly preserved**.**

[2] There are two applications before the court in this instance. First, an application by J, the father of the child T now aged 2 years of age pursuant to Article 53 of the Children (Northern Ireland) Order 1995 ("the 1995 Order") for increased contact with T. That application is dated 17 October 2005 and was transferred from the Family Care Centre to the High Court on 20 April 2006. That transfer was to enable this application to be joined with the second application now before the court namely that by a Health and Social Services Trust which I do not propose to name ("the Trust") for an order pursuant to Article 18 of the 1987 Adoption (Northern Ireland) Order ("the 1987 Order") freeing T for adoption in the absence of parental consent.

Background

[3] A care order was made in relation to this child by this court on 15 March 2005. The current freeing order application was mounted in April 2006. I have before me the judgment which I gave on that occasion in the

course of which I made a care order pursuant to Article 50 of the 1995 Order in relation to T and an order freeing his sister S for adoption. S, aged 5 , has now been adopted by her paternal aunt and uncle (X and Y) pursuant to an adoption order of 7 March 2006. That same couple are also the foster carers of T and the proposal by the Trust is that it is likely that this couple will also adopt him. The care plan at the time of the granting of the care order in relation to T was permanency with the preferred option of adoption by this couple.

[4] My judgment set out in a great deal of detail the sad history of the parenting of T and S. I do not intend to rehearse here the background findings of fact which I made. These findings were not challenged by way of appeal and there was no real suggestion in this case that the history as I found it was now under challenge. In relation to the father J there had been a history of aggressive and volatile behaviour which had impacted upon the children. He had failed to fully appreciate the impact that his consumption of drugs and alcohol had had, and he had failed to engage with or adhere to advice given by a plethora of services to assist him with his problems. I was satisfied that the child T was at risk of suffering significant harm if exposed to his father's drugs and alcohol habits coupled with his history of aggression and violence. He was unpredictable in his behaviour. The mother had specific mental health difficulties which had been displayed over the years and which had shown a relapsing and remitting pattern, preventing her prioritising the needs of the child and formulating strategies to cope with him.

[5] I can best summarise the background concerns by repeating what I said at para. [32] of that judgment:

> "[32] The capability of either parent in meeting this child's needs is a matter that has concerned me greatly. It is my view that neither parent is capable of meeting this child's needs. The history of domestic violence and the attitude of both parents towards it has troubled me greatly. The father has a history of criminal convictions dating from his early teens, including convictions for armed robbery and assault. Despite the evidence of a number of incidents of domestic violence eg. 23 January 2003 when G reported that J was wrecking the flat, 2 July 2003 when she reported that J in a drunken state had slapped her face and her interview with the guardian ad litem on 23 November 2004 when she advised that she was fearful of him finding out that she had rung the police on a number of occasions, she remains in my opinion inappropriately protective of J in the

> realm of domestic violence. She has repeatedly failed to make a complaint to the police despite referrals to them, and she told the guardian ad litem that she does not perceive J as presenting a risk to the children. When the guardian ad litem raised the inconsistency of this statement with the police record of her telephoning them, G replied "I hope J is not going to read that". I believe this woman is fearful of J knowing that there was a record of her having called the police. There is also evidence that J has attacked a mental health worker on 28 January 2003 at Railway Road and an assault on a social worker and senior social worker in October 2001. Domestic violence, and the prospect of domestic violence, is frightening to children and this also has an adverse effect upon their emotional development. At the moment I remain unsatisfied that either of these parents has the capacity to deal with this problem or to have a sufficient insight into the dangers of domestic violence. J's failure to come to grips with this as a concept, and G's inconsistent attitude to the threat that he presents because she is neither consistent nor honest about the level of risk all serve to prevent them having the capacity to care for this boy."

[6] Dr Bownes was a Consultant Psychiatrist who had reported on both parties in December 2004 on behalf of the Trust concerning G's psychological functioning and history of mental health problems and also on J on 1 December 2004 together with an addendum of 7 December 2004. It is relevant that I should quote from my record of his evidence at the care order proceedings:

> "Having spoken to her and having read her mental health background including notes and records of her admissions to psychiatric units, he concluded that she demonstrated some limited but significant insight and reflective thought regarding the extent to which deficits and shortcomings on her own part had contributed to her present difficulties and their possible implications for both her own and her children's safety and well-being in the immediate future. She was at that time, in December 2004, still taking valium and prozac for her depression and obtaining counselling for her feelings over the past. She claims she had not taken alcohol for 4 or 5 years. Dr Bownes concluded that the nature and severity of

the specific mental health difficulty she had displayed over the years had warranted treatment with anxiolytic and anti-depressant medication in both out-patients and in-patients settings in the attempt to ameliorate her distress and to assist her ability to cope with stressful and demanding situations. Ominously he recorded that the pattern and characteristics of the symptoms and behaviours demonstrated in recent times by G had followed a relapsing and remitting pattern and have shown a marked re-activity to external events including particularly inter-personal relationship difficulties in the marital and familial context.

(b) G clearly had a very disturbed background both in her early childhood and early adolescent years with difficulties emanating from parental disharmony, poor relationship with her mother, her mother's apparent abusive behaviour and harsh disciplining and a feeling of not being loved or wanted in absence of ongoing non-judgemental family support. Dr Bownes concluded that individuals with personality based difficulties of this nature typically report mood swings, difficulty dealing or coping with negative emotional states such as anger, boredom or frustration, feelings of low self-worth, ineffectiveness, powerlessness and lack of confidence. They often demonstrated a limited ability to cope with life's adversities, poor tolerance of stress or difficult or demanding situations, engagement in dramatic attention seeking behaviours and they often fail to take advantage of new and beneficial opportunities. In addition they generally fear being alone and abandoned in life and as a result they often enter relationships characterised by subordination of their own needs to those of their partner, compliance with their partner's wishes, tolerance of difficult, demanding or unreasonable behaviour on the part of their partner (including significant levels of violence) unwillingness to make demands on their partner and a limited capacity to make decisions without the partner's advice and reassurance. My reading of G was that this was a classic illustration of this kind of personality.

(c) It was Dr Bownes conclusion that G currently fulfilled the diagnostic criteria for dysthmia which is a condition often associated with personality based deficits and deficiencies. He recorded that such patients experience a state of chronic anxiety and depression that shows a marked re-activity to external events and stresses albeit not so severe as to threaten the life of the individual. Most of the time sufferers feel tired and depressed. In his opinion because of cumulative and interactional effects of her personality based deficits and deficiencies, and her dysthmic symptomatology, coupled with her limited opportunity to date to effectively and comprehensively address through therapy the psychological sequelae of her reported aversive childhood experiences, G was likely to have considerable difficulty in maintaining her current relatively stable state of mental health. Further she would have difficulty determining her lifestyle, prioritising the needs of any child in her care over her own needs and appraising and formulating strategies to cope with difficult and demanding situations independent of a significant level of support by the statutory and voluntary services for the foreseeable future.

(d) In his opinion G remains poorly equipped psychologically to cope with both the vicissitudes of life, interpersonal relationship conflict resolution regarding her husband and meeting the physical and emotional needs of a young child such as T.

(e) Her prospective well-being and ability to cope with the rigors and demands of domesticity and child care will be contingent upon the continued remission of her husband's mental health difficulties, avoidance of alcohol and his preparedness to support her unequivocally across a range of practical and emotional demands.

(f) Dr Bownes concluded that in his opinion before any serious consideration could be given to permitting T to return to G and J, G would need to be engaged in a structured, co-ordinated professionally delivered programme of work with a positive and sustained outcome across a range of relevant factors –

the essential component parts of such a programme being set out by him in eight paragraphs. These included:

> (i) Ongoing contact with the local mental health services to provide advice.
>
> (ii) Advice and guidance regarding structuring her day.
>
> (iii) Robust strategies for coping with negative emotional states without undue reliance upon J.
>
> (iv) Grief work aimed at helping her to come to terms with the death of her mother before progressing on to -
>
> (h) Developing a shared understanding of the precise nature of and psychological effects of her aversive childhood experiences.
>
> (i) Therapy aimed at exploring the links between her past experiences and her current personality based deficits and deficiencies.
>
> (j) Further exploratory work to ensure that psychologically distressing symptomatology such as intrusive imagery from her past dramatic experiences are fully resolved and are not likely to re-emerge and inhibit her ability to care for young children.
>
> (k) Advice and instruction regarding the potentially deleterious effects that mental health symptoms of the nature that she has evinced over the years have on the mental well-being and functioning of young children.

[5] Sadly Dr Bownes recorded that the records show that G has on several occasions in the past been non-compliant of instructions regarding both her

physical and mental well-being from both a responsible psychiatrist and her GP and she has been offered and declined therapeutic interventions aimed at addressing a range of difficulties.

[6] In evidence before me Dr Bownes developed a number of these matters. The following emerged from his examination-in-chief and cross-examination:

(a) Whilst she is a woman of average intelligence who was clinically stable when he last examined her, her progress depends very much on J's improvement. She is heavily reliant on him. If he suffered a major relapse, G would be in considerable difficulties. Illustrations of this in the past were that when she was in Gransha Hospital, G tried to harm herself and she became acutely distressed with a severe adverse reaction.

(b) Her track record is simply not good. Although in the past she has attended for therapy, she has a great number of non-attendances. Her ability to engage in the past has been poor and her track record is therefore not helpful in optimism for the future. For the work which is outlined to be successful, she would need to engage and work hard at things. It is a very full programme. Six months might give some indication if she is going to make any progress but Dr Bownes could not say that he was optimistic about the chance of success. The overall work would take a very long time indeed and it could be between 2 and 4 years before she was able to come to terms with her past. Laying to rest the psychiatric past could take a very long time indeed. As recently as August/November 2004, when she had been offered therapy she only attended 4 out of 12 sessions, albeit during that period her mother did die.

[7] Dr Bownes also had reported on J on 1 December 2004 together with an addendum of 7 December 2004. It was also pessimistic. From the reports the following matters emerged:

(a) J has evinced psychotic episodes over a number of years of a nature and severity to warrant significant periods of treatment with mood stabilising

and anti-psychotic medication in both in-patient and out-patient settings and under the auspices of the Mental Health (Northern Ireland) Order 1986. The notes and records from Gransha Hospital in particular indicate that a drug/alcohol induced psychosis is the most probable diagnosis in his case. He has demonstrated a reliance upon mood altering substances – particularly alcohol and cannabis in the attempt to manage his feelings and cope with stressful and demanding situations. This all gives Dr Bownes considerable cause for concern.

(b) Consideration of the medical evidence in the case indicates that the relapsing and remitting pattern of mental health difficulties that J has evinced over the years has been characterised by acute relapse at times of general psychosocial stress or demand and sudden intense relapse at times when illicit mood altering substances are abused. He has also manifested a lack of insight to the deleterious nature of drugs and alcohol, failure to adhere to advices and guidance regarding taking medication or engaging with services, a transitory lifestyle and loss of contact with prospective social support.

(c) Whilst it was to be acknowledged that J was now in a quiescent phase of his previously documented mental health problems, and needed to be given credit for remaining compliant with his medication and links with Alcoholics Anonymous, nonetheless Dr Bownes did not consider that his presentation was indicative of a permanent amelioration of psychopathology to the extent that he could consistently and successfully assume the care of a young child, cope with the emotional rigours and demands of such an undertaking and prioritise the child's needs over his own in all circumstances for the immediate future.

(d) Although the risk of relapse to a state of mental health was reduced given his current compliance, Dr Bownes felt there remained considerable residual deficits and deficiencies within J's character which would be an impediment to his ability to care for his children and which could still induce a relapse to a

state of significant mental ill-health. These factors included:

(i) His egocentricity, suspiciousness and "victim stance".

(ii) Limited ability to grasp concepts, critically appraise situations and information and take into account the needs of others as well as himself.

(c) The absence of skills to facilitate instruction and to take on board new, stimulating, social and educational opportunities for any children in his care.

(d) Lack of prior experience of parenting children.

(e) Limited conceptualisation of the changing physical, emotional and social needs of young children.

(f) Limited awareness of his own and his wife's positive and negative qualities and how these could assist or confine working as partners in the delivery of care to young children.

(h) Insufficiently robust and untested strategies for dealing with stressful and demanding situations.

[8] Dr Bownes concluded that these deficiencies would result in sub-optimal delivery of care to any child that J would have substantive responsibility for and could in themselves facilitate a relapse to the state of mental ill-health. It was Dr Bownes view that the considerable responsibility of child care would in all probability induce relapse in his case. In terms Dr Bownes found it difficult to cogently recommend a way forward in his case. Though he would benefit from therapeutic interventions which would assist maintenance of his current state of well-being, there could be no guarantee that in so doing his competency to parent in all circumstances would be greatly enhanced. Dr Bownes concluded that with or without therapeutic interventions J would require at least a further 12 months of a remitted state before the moderate to long term outlook could even be postulated. He concluded ominously "Clearly such a

timescale is liable to outrun that which is acceptable in meeting the needs of his children".

[9] Dr Bownes also gave evidence before me about J. During the course of examination-in-chief and cross-examination the following matter has emerged in addition:

Dr Bownes thought it inappropriate that contact should currently be of a direct nature between J and the children. Before any direct contact could even be contemplated, he would need to be fully engaged with all services available to him. It was imperative that he take absolutely no alcohol or mood altering drugs which would befuddle his thinking. He agreed with Dr Hughes that random testing is absolutely necessary. He agreed with Dr Hughes (see reference to her evidence later in this judgment) that six months documented proof of abstinence would be necessary before one could even start and that would need corroboration from various independent sources such as AA, Addiction Unit etc. A period of three months could indicate things were going well but this would not arrest the personality based deficiencies that are still problematic. His current persecution views suggest that he is unlikely to consistently engage with appropriate services. Whilst he does have the capacity and ability to abstain, the notes and records over the past ten years indicate that the likelihood is poor. Dr Bownes felt there was only a 30/40% chance that he is going to be abstinent of drink and drugs for even one year. The prospects of success are therefore low. Dr Bownes felt any recovery could take a long time."

[7] In the conclusions of my judgment at para [33] I stated:

"[33] Dr Bownes' view is that G remains poorly equipped psychologically to cope with the vicissitudes of life, interpersonal relationship conflict resolution regarding her husband and meeting the physical and emotional needs of a young child such as T. I share that view entirely. In truth I accept that her prospective well-being is contingent upon the continued remission of her husband's mental health difficulties, avoidance of alcohol and his

> preparedness to support her unequivocally across a range of practical and emotional demands. She needs to become engaged in the work outlined by Dr Bownes, which will take a substantial period of time. She has on several occasions in the past been non-compliant with services which have been provided to her and declined therapeutic interventions. As recently as August/November 2004, when she had been offered therapy she only attended four out of twelve sessions. This simply does not augur well for the future. Dr Bownes was pessimistic about J's prospects for change. He also has a history of relapsing and remitting pattern of mental health difficulties over the years. He has manifested a lack of insight to the deleterious nature of drugs and alcohol and has failed to adhere to advices and guidance proffered by a plethora of services afforded to him. With or without therapeutic interventions, J would require at least a further twelve months of a remitted state before any realistic appraisal in the future could even be postulated. Mr Hinds indicated that it would be twelve months before one could be better able to say if he has continued to make progress, and thereafter further work could bring the whole process to between two and five years. It is common case from the evidence of the experts including Dr Ann Marie Hughes that his adherence to treatment has at best been ambivalent. As recently as December 2004 he was involved in a drunken incident in a public house. I agree with the guardian ad litem's conclusions that 'the longevity of his difficulties increases the degree of chronicity.'"

The Mother's Case

[8] In essence the points made on behalf of the mother were as follows:

(i) That the mother was not unreasonably withholding her consent under Article 16 of the 1987 Order largely because since the care order was made on 15 March 2005 it was submitted that she had been afforded no further assessments by the applicant Trust despite the fact that she had made significant changes in her life. In particular it was asserted that the failure to afford the respondent mother any opportunities for assessment prevented her from demonstrating her ability to parent her son successfully.

(ii) Attention was drawn to the report from Dr Bownes which recommended educational and therapeutic work to be completed.

(iii) The Trust had failed to sufficiently keep abreast of the positive developments in her life.

(iv) It was asserted that if the court considered that an order for the freeing of the child for adoption was appropriate, then the respondent mother believed that due to the family placement of the child post adoption contact ought to be at least four times per year and not twice per year as asserted by the Trust.

The Father's Case

[9] In essence the points made on behalf of the father were as follows:

(i) The father was opposed to T being freed for adoption. It was his view that it was not in the child's best interests and that he was not withholding his consent unreasonably.

(ii) It was his view that long-term foster care would provide the current carers with more pro-active Trust supports than anything that might be provided to them by the Trust post adoption approach.

(iii) He emphasised that this was a family placement and that since the current carers live adjacent to his mother in one household and a married sibling in another, T was inevitably going to be aware that the respondents were his birth parents. He urged that a long-term view be taken and that the change of legal and familial status caused by adoption risked in the particular circumstances of the family placement, causing confusion and conflicting loyalties for T.

(iv) If the child was to be freed for adoption, since this was a family placement within the father's locality, it was unreal to confine direct contact to only twice per year. He asserted that as time went on T would inevitably see more of him and it was better therefore to have this organised as direct contact on a formal basis so that his primary carers were fully involved and could control the situation. He asserted that he was never any threat in reality to the placement and could be safely afforded greater direct contact.

(v) It was submitted on his behalf that his lifestyle had become much more placid and stable since the care order was made. Although he had an extensive criminal record, his last offence was on 9 April 2004, he had abstained from alcohol since the time of the care order and from drug misuse since July 2005, he regularly attended with AA and with Darren Askin of the

alcohol and drugs Service. He denied there had been any incidents of domestic violence.

(vi) It was argued on his behalf that there was inordinate delay between the care order being made and the freeing application commencing one year later on 5 April 2006. He also asserted that this Trust had failed to make available to him in a timely fashion notes/minutes of the LAC Review of 18 January 2006, the same not having been made available until July 2006.

The Trust Case

[10] The case made on behalf of the Trust was as follows:

(i) At the time of the granting of the care order, the care plan for T was permanency with a preferred option of adoption by his paternal aunt and uncle, the present carers. The view was taken that the child should be brought up together with his sister S who had been adopted by these carers.

(ii) Since the granting of the care order it was contended that J had made some little progress in his life but that these changes had been insufficient and were punctuated with a number of regressive and backward tendencies.

(iii) That this couple were still strongly connected in a relationship. G was unable to care for herself, let alone any child placed in her care. She would be unable to prioritise the child's needs above those of J. She was unable to deal appropriately with the stresses of life and continued to require professional assistance. There had been no evidence of sufficient change that would ameliorate the concerns expressed by the Trust and that would indicate that G was able to provide appropriate care for T with or separate from J.

(iv) It was asserted on behalf of the Trust that adoption offered the child the only chance of security and settled plans for the future.

[11] The court was invited to dispense with the consent of both mother and father on the basis that each was therefore withholding their consent unreasonably.

[12] In terms of contact the Trust proposal was that there should be a phased and gradual reduction in the direct contact. This was currently occurring between child and mother on a monthly basis and should be reduced to a point where G would be offered ongoing direct contact with both her children on two occasions each year in the event of an adoption order being granted. So far as contact between child and father had been recently assessed, he would be offered direct contact (on a separate occasion to that of G) with both his children on two occasions per year. That would be supervised and it would be necessary for the father to agree to a number of

steps in order to ensure the safety of T during those contact sessions. In essence it was the Trust case that it was not in T's interests to have high levels of direct contact with his mother and father following the making of an adoption order.

The Guardian Ad Litem

[13] The Guardian ad Litem in this case recommended that both children be freed for adoption. She basically adopted the reasoning of the Trust on both the issue of freeing and on contact. She considered that any formal contact should take place at a neutral venue and be supervised by a third party in the case of the father and to be of 30 minutes/2 hours maximum duration. She felt that the mother should have contact twice per year for up to 4 hours per session.

Evidence

[14] Ms McCarron

This witness was a social worker in the case. She had prepared a statement of facts for the hearing, had been involved in the care order proceedings and had updated her reports for the current proceedings. In the course of her reports, her examination-in-chief and her cross-examination the following matters emerged:

(i) She favoured adoption over long-term foster care for the following reason:

> (a) adoption alone would provide the legal, physical and emotional security that this child required;
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> (b) only adoption would remove the significant intrusion of the Trust with monthly visits, twice yearly LAC reviews, the requirement for full Trust consent for school trips and sleepovers etc. These are matters which children find intrusive.

(ii) She found no demonstration of sufficient change in G's lifestyle since the care order was made in March 2005. She highlighted that the Trust had offered her opportunities to engage with help since that date but she had refused to do so. She highlighted that she had been invited to attend the local family centre to enable her to understand the needs and developments of the child, to enhance the contact with the child and to help her manage him. Two sessions had been offered and she had failed to avail of either. She drew my attention to a LAC review held at the Social Services office on 16 June 2005 which recorded:

> "Ms Magill (family centre worker) reported that (G) was offered two appointments, however to date, has not availed of them. G stated that she could not attend due to sickness. The independent chairperson recommended that when G was ready to attend she should inform Ms McCarron social worker."

[15] It was highly significant in this witness's opinion that no effort had been made by G to pick up this invitation since that date.

[16] In addition G had been offered birth parenting counselling on two occasions. She had been offered this opportunity in September 2005 but did not attend. More recently on 3 November 2006 she had been provided with an appointment but again had failed to avail.

[17] Cross-examined on these matters, the witness accepted that the work in the family centre was principally to help her manage contact ie to manage the plan for adoption and that the birth parent counselling was essentially to help her accept the concept of adoption. Counsel criticised the fact that no positive initiative had been set in place by the Trust whereby G could comply with the steps suggested by Dr Bownes and referred to earlier in my previous judgment. The witness conceded that the Trust should perhaps have been a little bit more proactive in doing this. However Ms McCarron emphasised that G had shown absolutely no inclination to adopt help. She could have contacted her general practitioner or the social workers to ask for grief counselling or for other personal issues. The witness emphasised that if she had attended on the matters that were suggested, it would not only have equipped her to deal with the needs of the children but might also have led to other work such as grief counselling and the individual needs of the children. The witness emphasised that G had a history of failing to provide a protective environment for the children with her mental health state and difficulty prioritising the needs of the children. She did not work well with therapists in the past for example the efforts in 2004 and her continued failure to avail of the subsequent opportunities did not augur well for the future and led her to be pessimistic about change. The fact of the matter was that not only did she reject that which was offered, but made no effort on her own part to contact her general practitioner and take up the kind of steps advocated by Dr Bownes. This fitted the pattern of the historical concerns embraced by the Trust and her failure to engage services. The witness was pressed about the duty of the Trust to seek rehabilitation, but she firmly asserted that the absence of any evidence of change rendered this implausible. Although she accepted that this woman was passive and not confident with social services, nonetheless the fact that she refused what help was given, made no attempt to take up the invitation proffered by the independent chairperson at the June 2005 LAC coupled with the historical concerns about her failure to engage

with services all served to persuade the Trust that the steps they had taken were sufficient. The witness emphasised that the Trust had been mindful of the human rights of both G and J whilst at the same time of course taking into account the human rights of the child. The key to her approach was that work had been offered and not availed of notwithstanding that perhaps the Trust could have been more proactive.

[18] Similarly in the case of J, there had only been evidence of some very small steps on the path of change taken by him. He had a history of aggression, assaults on social workers, failure to attend LACs and general refusal to cooperate. The witness drew attention to the report from Daron Askin, senior social worker with the Alcohol and Drugs Service who had reported on 8 November 2006. J had admitted to him using cannabis shortly before their first meeting in July 2005 and even though J was adamant that he had not used cannabis or alcohol at any time subsequent to their meeting in 2005, Mr Askin was aware that J did not fully comply with his prescribed medication resulting in paranoid ideation. He had informed the Community Mental Health Team about this to allow them an opportunity to review his medication. Moreover there were a number of instances where he had not bothered to attend the Alcohol and Drugs Service. The progress he had made with AA and attempts to keep free of alcohol and drugs were in the opinion of the witness therefore small steps in what was undoubtedly a very long road if he was to sufficiently repair himself to look after children. He was clearly not complying with prescribed medication and that in itself was a worrying factor so far as care of children was concerned. Information had reached the Trust through G that as recently as September 2006 J was believed to be drinking alcohol and taking drugs. The source had apparently been G who had told that to her general practitioner. A further factor in this whole unhappy scenario according to the witness was that G had submitted an application for a firearm licence for J in the course of 2006. Given J's long history of violent unpredictable drug/alcohol induced behaviour of which G was clearly aware, this seemed to her to be a somewhat reckless action on the part of G. It convinced the witness that G's own emotional fragility and mental health issues together with her inter dependence on J in the context of the priority she had given to this relationship was further evidence that she was unable to provide safe consistent care for T.

[19] On the issue of delay, the witness accepted that the following sequence of events illustrated significant delay:

(a) On 3 February 2005 T was presented to the adoption panel;

(b) On 11 March 2005 the decision maker in the Trust concluded that an application should be made to free the child for adoption;

(c) On 15 March 2005 a care order was made;

(d) On 5 April 2006 an originating summons was issued on behalf of the Trust seeking to free the child for adoption.

The Trust acknowledged delay in this process on account of periods of sick leave, high work rate and change of personnel whilst at the same time emphasising that T was remaining in secure placement all the while.

[20] It was also apparent from this witness that the minutes from the LAC meeting of January 2006 had not been made available until July 2006. I shall comment on this matter later in the judgment but it was clear that this witness recognised that the delay in producing these minutes was unjustifiable.

[21] I found this witness impressive. She exhibited a genuine frustration at what she considered was the complete failure on the part of this couple to exhibit the necessary change if this child was to be now safely rehabilitated. In this regard I am satisfied that she reflected the spirit and mood of the Trust since the care order was made.

Guardian Ad Litem

[22] The Guardian ad Litem had reported twice in this case in reports of 17 October 2006 and 9 November 2006. In the course of those reports, her examination-in-chief and her cross-examination the following matters emerged:

(i) The witness highlighted in her reports the previous concerns that existed about G's capacity to parent her daughter and her son T. These concerns had focused considerably on her relationship with J. The details of domestic violence which I had outlined in my previous judgment, abuse of alcohol and unpredictable behaviour of J featured strongly in her report. She reminded the court in her reports of G's pattern of minimising J's violence and drug and alcohol misuse, the risk that J presented to G with his history of violence, her prioritisation of J's needs over her own needs and S's in the past, her inability to objectively assess the risk that J's often predictable and potentially violent behaviour presented to children, her inability in the past to protect S from the risk of harm, her failure to cooperate with social services when she enabled J to have unauthorised contact with S and the impact upon the parenting of her children as a result of her own history of depression. The report also highlighted and reminded the court of J's history of alcohol and substance misuse (including cannabis, ecstasy, and speed), his mental health issues with drug induced psychosis and more recently a diagnosis of schizophrenia, his violent and aggressive behaviour and the domestic violence. This history highlighted in the guardian's mind the need to

illustrate real evidence of change before rehabilitation could ever be considered.

[23] It was a primary concern of the guardian ad litem that although J and G indicated to her on 13 September 2006 that they were separated, they regularly presented as a couple in practice. She illustrated this by indicating that during these proceedings they have presented for interview with her together, on 9 October 2006 G advised the guardian ad litem to come and visit her in J's flat, on 11 October 2006 they travelled together to see her and it was clear from the inquiries which she made that the two of them were more together than apart. Indeed on 12 October 2006, G advised the guardian that they are indeed together as a couple. It was the witness's view that the emotional connection between them remains. G advised her on 12 October 2006 that she has stood by J because she believed in him. It was the guardian's continuing view that the status of the relationship between them was significant. Despite G having been the victim of domestic violence and having been unable to give priority to S's needs because of the central role of J, ominously continued to be occupied in her relationship with him. She still harboured concern that G could not protect herself from the risks of J because her pattern was to minimise/deny her fear of him on those occasions he had been aggressive/violent. She confirmed on 12 October 2006 that she had recently taken an overdose and that she had spent a night in hospital as a result. G confirmed on that occasion that she and J had not been getting on and that did not help, although everything else apparently had got on top of her.

[24] The witness continued to harbour familiar concerns about J. She referred the court to the comments of Dr Bownes in 2004 when he had said:

> "I do not consider that J's presentation at the current interview is indicative of a permanent amelioration of psychopathology to the extent that he could consistently and successfully assume the care of a young child, cope with the emotional rigours and demands of such an undertaking and prioritise the child's needs over his own in all the circumstances of the immediate future" and "the considerable responsibility of childcare would in all probability induce relapse in J's case."

[25] The guardian remained concerned that if T were to be in J's care, the environment would be unpredictable and shaped by J's needs. She still considered that his own issues precluded him from being emotionally available to a child in his care or to provide consistent care giving. It was her view that J did not have the capacity to parent T. In September 2006 he was still denying that he had assaulted a social worker in 2003 notwithstanding

the irrefutable evidence that this incident had occurred. I found the evidence of the guardian ad litem in this regard therefore to corroborate that of the Trust that insofar as J had made changes, they were too little and insufficient to indicate any material change that would have reflected an ability to care for T.

[26] On the subject of her recommendation of adoption as opposed to long-term foster care, the witness indicated to me that she could see no benefit in long-term foster care in this instance. This child is already surrounded by his family and continued State intervention in terms of social workers visiting and to exercise permission for the child to take part in various activities would not be beneficial to him. The family placement has already resulted in his carers behaving appropriately in relation to the risks surrounding him since his birth. His current carers have played a very significant role in the child's life and they respond to and are attuned to his physical and emotional needs. The child's needs and welfare are the primary focus in this household. Long-term fostering would leave the door open for birth parents, but the consequence of such an open door approach for both child and carers can bring anxiety about possible disruption of the placement. In the guardian's view J's stated opposition to T being the subject of an adoption order and his aspiration for a father/son relationship with T would result in increased possibility of legal and emotional insecurity for T and his carers if long-term foster care were to be the solution. The guardian felt that it was important for T that he feels safe, physically and emotionally and that he belongs to a family unit in which the prospect of disruption of relationships is not a feature for either himself or his carers. Whilst it was clear in the witness's opinion that G had not sought to undermine the placement, she did not have that confidence in relation to J.

[27] This witness dealt in some detail with the issue of contact post any freeing order or adoption order. She made the following points:

(i) At one stage she had countenanced the possibility of the parents having contact 3/4 times per year. However she changed her mind and came round to the view that two times per year was sufficient once she had taken on board the views espoused by T's current carers and future prospective adopters. It was her views that G did present as a benign adult to T during contact but notwithstanding this the carers felt that T should have two formal contacts per year with G and that this was in line with the level of contact his sister S had with G. The carers' preferred option was influenced by the level of informal contact that was bound to occur in any event. G can visit her mother-in-law's home and see the children albeit briefly as regularly as once weekly in practice. In relation to J however the carers had expressed concern that at the beginning of the year J had begun to visit their home with, they believed, the intention of seeing T. The carers were not happy about this as they wish to keep their family home out of the arena where contact occurred

and they saw his actions as a threat to their ability to provide a safe and harmonious home for T. It was the guardian's view that that as this was a family placement, and J does regularly visit the family, some form of formality would permit the carers to manage his attempts to see T in a more structured fashion. This was also the stated view of the carers. The guardian also emphasised that if contact was to work with J, he did need to engage in some work with the Trust so that he came to understand the purpose of contact in a post adoption situation. He had to come to appreciate that the purpose was not to foster a father/son relationship. If he refuses to cooperate with the Trust in this regard, then there is clearly going to be difficulty in continuing contact.

[28] I was satisfied that the guardian ad litem had put a great deal of thought into this case and I found her views to be constructive, cogent and informed.

Conclusions

[29] Before turning to my substantive conclusions in this matter I consider it is appropriate that I should draw attention to three matters that have concerned me about the Trust's approach in this case:

(i) The delay between the obtaining of the care order and the decision to apply for an order to free this child was far too long and quite unjustified. The reasons put forward – lack of staffing, change of personnel and illness – may all have played a part, but the welfare of children cannot be allowed to drift purely because of personnel problems. It is very important that this Trust examine its approach and the delay engendered in this case at the highest level so as to ensure that in the future children are not similarly subjected to such delay. In the event no prejudice accrued to this child but children must not be exposed to such a risk.

(ii) Notwithstanding the concerns that I had expressly outlined in my earlier judgment concerning the failure of this Trust to ensure that minutes of LAC meetings were expeditiously transferred to parents, and the assurances that I was given that a new system was now in operation, once again there was a failure to provide these parents with minutes of the LAC meeting of January 2006 until July 2006. This is particularly disappointing in light of the comments which I had made in 2004. Such matters are of great importance in the necessity to involve parents fully in the decision making process within a reasonable period. Once again this is a matter that should be drawn to the attention at the highest level in this Trust. Steps need to be taken to ensure that such unacceptable practices are not becoming endemic in this Trust.

(iii) Social workers within this Trust need to be reminded that care orders should be regarded wherever possible as temporary matters and that

rehabilitation of children with parents should be the aim wherever possible. To that end express reference should be made to this concept at each LAC review and notes properly made of this. Whilst I am satisfied from the evidence of Ms McCarron that this Trust had carefully considered rehabilitation after the care order, the notes and minutes were inadequate in recording this.

[30] In the event I am satisfied that the slackness that was evident in this Trust in terms of delay, the transmission of minutes to parents and the lack of express reference to rehabilitation in LACs subsequent to the care order occasioned no prejudice whatsoever to these parents in the circumstances of this case. The delay did not in any way harm this child because the child was at all times within a caring and loving home with people who wish to adopt him. I am satisfied that delay in the transmission of the minutes did not occasion J or G any prejudice whatsoever and they were well aware of the contents of the LAC. Insofar as rehabilitation may not have featured highly in the minutes of the LACs, I am satisfied that this omission to make such references was occasioned solely by the conviction, in my opinion justified, that insufficient change had occurred on the part of either J or G to make rehabilitation even remotely a possibility in this case. Nonetheless, this is no excuse for the failure on the part of this Trust to adhere to good practice.

[31] I shall now deal with substantive part of this case:

(i) The first matter in the chronological sequence of this case is the application by J under Article 53 of the 1995 Order to increase contact with T. I reject that application because I do not consider increased contact would be conducive to the welfare of this child set in the context of his current position with his carers. These carers need a firm measure of control over J's visits to T given the family placement and an increase in contact would erode that control to the detriment of T. I remain unpersuaded that J recognises the proper role of contact in the life of this boy Moreover for the reasons I shall subsequently set out in this judgment it would be inappropriate for T's future care arrangements. In considering this issue I have taken into account J's rights to a family life under the European Convention but in balancing them against the boy's rights to a family life I have determined no increase is merited.

(ii) I commence my deliberations on the Trust application 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).

(iii) 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 to 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).

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

(v) 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").

(vi) Addressing 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."

(vii) 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."

(viii) 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."

(ix) 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.

(x) 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 this child requires adoption and would be in his best interests. I am of this opinion for the following reasons:

(a) I was very impressed by the evidence of Ms McCarron and the guardian ad litem in this regard. Their evidence was cogent and compelling. In particular I was satisfied that in light of the history of J and G, this child needs the utmost predictability in his care. T now lives with his current carers, their daughter aged 8, and S aged 5. The female carer is his paternal aunt and the boy has been there since he was 3 weeks old. During this time this couple have provided a safe and loving environment for T and he has formed a loving and reciprocal relationship with them. I have no doubt that a permanent relationship with this couple provides the only hope for the sustained welfare of this child.

(b) I do not consider that long-term foster care is appropriate. I am satisfied that in a child so young, continuing questions about the bureaucracy of social worker involvement with regular reviews, attendances of social workers and the need to obtain Trust permission for various activities are all matters which would serve to interfere with this young child's sense of security as well as that of his carers as time progressed. Adoption, given his tender years, is clearly preferable. Professor Tresiliotis is quoted by the guardian ad litem as saying:

> "We can conclude that even when long-term fostering lasts, the children will still feel less secure and have a weaker sense of belonging than those who are adopted."

I accept that proposition in the context of this case and it clearly points towards adoption for this child. Similarly Professor Tresiliotis feels that that insecurity can influence a relationship between foster carers and children.

(c) This child is in an extended family placement and it is crucial that in those circumstances his current carers have the authority to safeguard and protect T and to deal with all decisions relevant to his long-term wellbeing. I believe that the opportunity to do this will be enhanced if it is underpinned legally by an adoption order.

(d) I have already outlined in some detail the background circumstances in this case involving the dysfunctional and thoroughly unsatisfactorily parenting history of J and G. Since the making of the care order I discern no sufficient change in their lifestyle or attitudes which would persuade me that this child could ever be rehabilitated to them. There have been longstanding concerns about the impact of J and G's own frailties upon their capacity to parent and I am satisfied that the guardian ad litem is right in concluding that they do not provide a care giving environment. The adoptive placement is the only method of providing this child with a greater sense of security necessary for his emotional and physical development. Whilst I recognise

that both mother and father have made some changes to their lifestyle, sadly these are inadequate and fail to address the real issues that confront them.

[32] It is necessary for me now to consider Article 16(2)(b) of the 1987 Order and decide whether the Trust has satisfied me on the balance of probabilities that the two parents in this case with parental responsibility are unreasonably withholding their consent.

[33] 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 these parents. 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.

[34] I have come to the conclusion that these parents' agreement should be dispensed with for the following reasons:

(1) It is my view that a reasonable parent would recognise that a child cannot wait indefinitely for parents to change. This child has been in the care of the prospective adopters since he was a few weeks old and time alone now demands that certainty be brought into his life. In my view a reasonable parent would recognise that too long has now lapsed for this child to wait any longer for them to bring about a change which has been so sadly lacking to date.

(2) The failure of either or both of these parents to sufficiently address their historical problems prevents them being in a position to provide a safe environment for this child. I am satisfied that the guardian ad litem is correct in opining that G elevates her relationship with J to a stage where she is unable to give that priority over the needs of T. I agree with the view of the guardian ad litem that her interdependence upon J prevents her being objective about the risks he presents and prevents her from prioritising the needs of T or any of her children above her need for an ongoing relationship with J. Her own emotional fragility and mental health issues when coupled with that dependence on J make her unable to provide a safe consistent caring

home for T. I believe that a reasonable parent in her position would recognise this and would not withhold agreement to the child being freed for adoption. Similarly I consider that J has not yet sufficiently addressed his past history of alcohol and substance misuse, or his violent and aggressive behaviour which culminated in acts of domestic violence. Both J and G need to take the steps outlined by Dr Bownes and they have not yet adequately commenced that process of repair. Neither of them in view show a sufficient inclination to even begin the process much less have completed any material in-roads into it. The efforts made by J have been patchy and inconsistent. I believe that a parent in his position would recognise and would not withhold agreement to this child being freed for adoption.

[35] I am satisfied that both J and G have been given an opportunity to make the appropriate declaration under Article 17(5) of the 1987 Order and they have declined to do so. I am also satisfied that pursuant to Article 18 of the 1987 Order, there has been ample evidence before me that this child is in the care of an adoption agency and that it is likely that he will be placed for adoption.

[36] I have considered whether a freeing order would constitute an interference with the rights of J and G to family life. I have concluded that such an order is proportionate response to a legitimate aim, that aim being the welfare and wellbeing of T. In doing so I have taken into account the right also of T to a family life.

[37] In my view future contact in this case should have an in-built flexibility in order that the Trust may react to the response of J and G to this order. It will be necessary for J to enter into an agreement with the Trust to address his views about contact in light of the order I have now made. Provided that he complies with the work deemed necessary by the Trust in order to flesh out his understanding of the purpose of contact in these changed circumstances, direct contact twice per year is probably appropriate. As to G , I do not believe that she does present any threat to the placement but I have taken into account the views of the carers as an appropriate factor in this aspect of the case. Accordingly I agree with the suggestion of the Trust and the guardian ad litem that direct contact should be twice per year. Once again I do not believe there is any need for an order to this effect in that the flexibility of the no order principle should operate in this instance. I therefore encourage the Trust to adopt the approach which they have outlined before this court and arrange for parental contact twice per year in each instance. I recognise that this is a family placement and that there will be in addition both indirect and other unscheduled meetings from time to time. However by the Trust arranging two formal contacts per year, it will provide some kind of structure and will afford assurance to the adoptive parents that they have a measure of control over the matter.

[38] I dismiss J's application for increased contact under Article 53 of the 1995 Order. In all the circumstances I also make an order freeing this child for adoption. The final decisions about contact post adoption can of course only be made at the adoption hearing stage.