Neutral Citation No. (2002) NIFam 5

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Ref: GILF3614
Delivered: 21/02/2002

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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RE A (ADOPTION: DISCLOSURE OF REPORTS OF GUARDIAN AD LITEM AND ADOPTION AGENCY OR BOARD)

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GILLEN J

I direct that there should be no identification of any of the parties in this case that could lead to the identification of the child under her present name or her adoptive parents.

(a) A, date of birth 19 July 2000, was born outside the United Kingdom and was placed by her natural mother in a children's home on 25 May 2000. The child remained there until placed with the present adoptive parents, Mr and Mrs C, on 29 January 2001. This excellent couple have already been approved by a Board Adoption Panel for Foreign Adoption in September 1996 and were further approved for a second child in or about November 1999.

I have already been satisfied that the statutory and regulatory requirements have been fulfilled in this case and that it is in the best interests

of A that she should be adopted by Mr and Mrs C who are an exemplary couple.

In the course of the hearing, Mr and Mrs C requested that the reports of the guardian ad litem and the reports by the Board (or as it is called in this jurisdiction the report of the reporting officer) should be disclosed to them. The reason put forward was that they were anxious to ensure that they could always be open and honest with the child and that the absence of these reports could lead to some unanswered questions later in the child's life. In particular they felt that if the child had access to these reports after their death, the child might have certain queries which had not been answered during her lifetime. They argued that if they had access to these reports during their lifetime, then they could talk the child through any aspects of the report that required elucidation or dilation at this time. They emphasised that they were not in any way impugning the integrity of either the guardian or the reporting officer but that they were acting in a manner they thought beneficial to the child.

The guardian ad litem, who gave her evidence in a measured manner, indicated concern at the precedent that might be created by the disclosure of such reports. Whilst conceding that it might be appropriate in certain instances to share this report, there was nothing exceptional about this case and she feared that disclosure might set a precedent in other cases. She submitted to me that there was nothing adverse to the couple in the report and that the details contained therein had been largely sourced from the

couple themselves. Certainly there was nothing adverse to their interests. She did however outline her concerns about revealing information concerning birth mothers that inevitably would be contained in such a report which conceivably might not be in the interests of a child to know and which could influence birth mothers in future cases in terms of frankness and openness.

The social worker who has spoken on behalf of the Trust in this matter indicated similar reservations, although she did point out that there is a policy of open access to files to the child.

The Rules of the Supreme Court (Northern Ireland) (Amendment No. 6) 1989 ("the Adoption Rules") deal with these reports. Under Rule 17, as soon as practicable after an originating summons has been filed, the court shall appoint a guardian ad litem of the child. Under Rule 18, which defines the duties of a guardian ad litem in adoption proceedings, the guardian, with a view to safeguarding the interests of the child before the court, shall, inter alia, on completing his investigations make a report in writing to the court drawing attention to any matters which, in his opinion, may be of assistance to the court in considering the application and shall notify the applicant that he has done so. Rule 18(2) applies the contents of Rule 6(3)–(6) to this report

and accordingly, as outlined in Rule 6(6) "any report made to the court under this rule shall be confidential".

A similar stricture is imposed under Rule 22 with reference to a report in writing by the Board which covers the matter as specified in Part I of Appendix G of the Rules. Rule 22(5) states:

> "No other person shall be supplied with a copy of any reports applied under paragraph (1) or (2) and any such report shall be confidential."

The confidentiality of these reports is therefore couched in mandatory terms. The information obtained in these adoption proceedings is confidential and must not be disclosed or published. It is right to say that a party who is an individual and who is referred to on a confidential report supplied to the court may inspect, for the purposes of the hearing, that part of the report which refers to him, subject to any direction given by the court restricting or extending the power to the report which may be disclosed to him or to his legal advisors only. In Re D (Minors) (Adoption Reports: Confidentiality) 1995 2 FLR 687, the House of Lords set out the principles on which issues about the disclosure of confidential adoption reports should be determined;

> "It is a fundamental principle of fairness that a party is entitled to the disclosure of all materials which may be taken into account by the court when reaching a decision adverse to that party. This principle applies with particular force to proceedings designed to lead to an order for adoption, since the consequences of such an order or so lasting and far reaching. When deciding whether to direct that notwithstanding Rule 53(2) of the Adoption Rules 1984 a party referred to in a confidential report supplied by an adoption agency,

> a local authority, a report officer or a guardian ad litem shall not be entitled to inspect that part of the report which refers to him or her, the court should first consider whether disclosure of the material would involve a real possibility of significant harm to the child.
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> If it would, the courts should next consider whether the overall interests of the child would benefit from non-disclosure, weighing on the one hand the interests of the child and having the material properly tested, and on the other both the magnitude of the risk that harm will occur and the gravity of the harm if it does occur.
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> If the court is satisfied that the interests of the child point towards non-disclosure, the next and final step is for the court to weigh that consideration and its strength in the circumstances of the case, against the interests of the parent of other party in having an opportunity to see and respond to the material. In the latter regard the court should take into account the importance of the material to the issues in the case.
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> Non-disclosure should be the exception and not the rule. The court should be rigorous in its examination of the risk and gravity of the feared harm to the child and should order non-disclosure only when the case for doing so is compelling."

Any person who obtains any information in the course of or relating to any adoption proceedings must treat that information as confidential and shall only disclose it if the disclosure is necessary for the proper exercise of his duties or the information that is required by a court, a public authority, the registrar general or authorised researcher.

Against the tide of openness however, there must be borne in mind that confidential information is given to adoption agencies by private individuals and there is a public interest in maintaining that confidentiality

that at times goes beyond the interests of the individual supplier of the information. Information imparted to an agency by birth parents or the adoptive family must therefore be considered in this context. In a recent case Gunn-Russo –v- Nugent Care Society and Secretary of State for Health 2001 EWHC Admin 566/2002 1 FLR 1, Scott Baker J dealt with an application by a woman, now in her fifties, who sought access to all remaining information about her adoption as a two year old. The adoption agency had refused on the basis that information given in confidence remained confidential, regardless of the passage of time or the death of those concerned. The plaintiff had sought judicial review of the agency's decision. The court gave considerable weight to her need for the information and echoed the view that adopted people find it important to have a complete personal history in order to develop a positive sense of identity which was promised long ago in the report of the Houghton Committee in 1972. Scott Baker J endorsed the approach of Scott J in Re Attorney General –v- Observer Limited and Others, Attorney General –v- Times Newspapers Limited and Another (1990) 1 AC 109 at pp. 14178 that the ambit of the duty of confidence depends on the nature of the obligation and the interest that it was intended to protect. Whilst it would clearly be unsatisfactory if public confidence in the integrity of confidential information obtained during the adoption process were to be undermined, it was nonetheless the case that the duty of confidentiality should cease if the information loses that quality of confidence over the passage of time (see Toulson and Phipps on Confidentiality (1996)).

It is interesting to note that the Adoption and Children Bill 2001 now establishes a new system for access to information, which will deny adopted adults an automatic right of access to their birth records. The aim would appear to be to safeguard those most likely to be at risk from an inappropriate sharing of information.

All this serves to illustrates that the courts must resolve the issue in each individual instance in a fact sensitive manner. A balance exercising has to be employed to weigh up the various factors in favour of disclosure against the benefit of maintaining confidentiality.

Having carried out that exercise, I am not persuaded that there are any pressing reasons to break the confidentiality of the reports at this stage of the proceedings. The guardian ad litem's report is a confidential document prepared for the benefit of the court and I have found nothing in it in this case which is adverse to the interests of the applicants. The information is all very fresh (unlike the situation in Gunn-Rosso supra) and all the relevant people are probably still alive. I am unpersuaded that there is anything in the report which would afford any measure of assistance to the applicants in discussing identity issues with the child as time goes on, whereas the principle which this case could introduce of almost automatic revelation of guardian ad litem reports could damage the confidentiality reposed in the guardians by the birth parents. I fear that the precedent which revelation in this case would cause could damage that confidentiality given that there are no exceptional circumstances at all in this case and nothing to alter it from the normal

approach. Similarly so far as the report from the welfare officer is concerned, I find nothing in this that would merit the exceptional circumstances being created whereby such a report would be ordered to be revealed to the adoptive parents by the court at this stage. There is nothing in the report adverse to the parents and there is no factual content which I believe would materially assist the adoptive parents in identifying issues for the child. Needless to say of course it will be open to the adoptive parents to apply after this adoption order under the open door system operated by this Trust. They must realise that my decision only deals with the reports within the context of the case before me. Once the case is over, then wholly different matters may apply and nothing that I say should fetter the discretion of the Trust in looking anew at the matter when and if necessary. In those circumstances I could not begin to assess the outcome as that is a matter for the Trust. One must also bear in mind that the child will also have a right of access to background information of this sort once the child is 18 in line with the greater freedom of information to adopted people.

In these circumstances I therefore refuse the application for the release of the documents.

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