B4/2006/2608 and B4/2006/2609

Neutral Citation Number: [2007] EWCA Civ 358
IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CHELMSFORD COUNTY COURT
(HIS HONOUR JUDGE DEDMAN)

Royal Courts of Justice
Strand
London, WC2

Thursday, 15th March 2007

B E F O R E:

THE PRESIDENT OF THE FAMILY DIVISION
(Sir Mark Potter)
LORD JUSTICE WALL

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G & B (CHILDREN)

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MR FRANK FEEHAN (instructed by Messrs Moss & Coleman, Hornchurch RM12 6JP) appeared on behalf of the Applicant Mother and Father
MR ROBIN POWELL (instructed by Essex County Council, PO Box 11, County Hall, Chelmsford CM1 1LX) appeared on behalf of the Local Authority
MS NICOLA HARRIES (SOLICITOR-ADVOCATE) (of Messrs Raggett Tiffen & Harries, Ongar CM5 9JD) appeared on behalf of the Guardian

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J U D G M E N T1. SIR MARK POTTER, P: Lord Justice Wall will give the first judgment.

2. LORD JUSTICE WALL: The applicant in this case is J C, who is the mother of the two children with whom we are concerned. They are MG born on 25th November 2001 (making her five) and DARG born on 13th September 2005 (making her some 18 months old). The applicant seeks permission to appeal against placement orders made

under the Adoption and Children Act 2002 ("the 2002 Act") in relation to the two children by His Honour Judge Dedman sitting in the Chelmsford County Court on 1st November 2006, after a hearing lasting three days.

3. We have treated this application as the appeal, and, speaking for myself, I would give permission to appeal. What follows should, accordingly, be treated as my judgment in the substantive appeal itself.

4. On 1st November 2006 the judge stated what he intended to do, and made his orders. He did not, however, give a judgment on that date, but reserved his reasons to 17th November, when he handed down the reserved judgment which is in our papers and which is the subject of the appeal.

5. On 26th February 2007, having considered the matter on paper, I adjourned the application for an oral hearing on notice to the local authority involved, the Essex County Council, and the children's guardian in the proceedings, Mrs Tina Ruffles. Both have appeared by counsel, and we have received assistance from both, particularly from Ms Nicola Harries who is the solicitor advocate appearing for the guardian.

6. The case raises a short but not altogether straightforward point. For reasons which will emerge, the appellant mother is realistic and appeals only against the placement orders which the judge made. She recognises that the care orders in relation to the two children, which the judge made on the same day, were properly made.

7. The short point raised by the application, however, is expressed succinctly by her counsel, Mr Frank Feehan, in paragraph 2 of the supplementary skeleton argument he has placed before us in these terms:

> "[The mother's] wish, however, is to have the court hearing the question of whether placement orders in adoption proceedings should be made before reasonable efforts are made by the local authority and the court to assess potential 'family' members as suitable long-term carers for the children. It is submitted that such an approach is consistent with the legislation as set out in the main skeleton argument filed on [the mother's] behalf and, incidentally, with the children's article 8 ECHR rights."

8. The point refined itself still further during the course of Mr Feehan's able submissions. In reality, what he was seeking was for the placement orders to be set aside so that the local authority could be constrained to make a formal assessment of the appellant's foster sister as a carer for the two children concerned. Mr Feehan did not, as I understand him, abandon the position that the local authority should have also convened a family group conference to consider the possibility of other placements within the family, but in reality the only concrete proposal he was able to put forward was that Ms K B, the appellant's foster sister, should be formally assessed as a carer for MG and DARG.

9. I say at once, to get the point out of the way, that this course was not opposed by the local authority or the guardian on the ground that Ms B was not a blood relation of the

appellant, she having herself been brought up in foster care. Mr Feehan provided a number of cases in the European Court of Human Rights on the meaning and extent of Article 8 of the Convention to which it has accordingly, and rightly in my view, not been necessary to refer.

10. Before turning to consider the point raised by Mr Feehan directly, it is necessary to fill in some of the background.

11. The judge was in fact hearing care proceedings relating to six children, of whom MG and DARG, the two children with whom we are concerned, were the youngest. The oldest child, D G, is now 16. In descending order of age, the remaining children were D B who is 12, G B who is ten, and S B (who is also a girl) aged six.

12. The appellant is not the mother of D G. Her mother is a woman called M S. Her father was V G, who was also the father of the two children with whom we are concerned. Mr G committed suicide in July 2006, during the pendency of the proceedings. D G wished to live with her paternal aunt, S C, and the judge adjourned the application in relation to her in order to enable Mrs C to be assessed.

13. Mr Feehan tells us, and it was not contradicted, that the assessment of Mrs C only occurred because the guardian effectively insisted on it.

14. D, G and S B, all of whom as I say are girls, are the mother's children by Mr C B. The two children with whom we are concerned, MG and DARG, are the mother's children by the late Mr G.

15. Mr C B was a party to the proceedings, but took no effective part in them. So far as the three B children are concerned — that is D, G and S — the judge made care orders in relation to D and S, and in relation to G he made a residence order in favour of N B, who is Mr B's sister and the children's paternal aunt. Contact between the appellant and G was left to the appellant and N B to arrange.

16. The care plan for D and S was that they should remain in long-term foster care.

17. However, the care plan for MG and DARG was that they should be placed for adoption, and it was in pursuance of this care plan that the judge came to make the placement orders in relation to them.

18. The applications for the placement orders themselves were not made until the very last moment, and only served, I think, during the course of the final hearing itself. However, in the light of the decision of this court in Re P-B (A Child) [2006] EWCA Civ 1016, decided on 15th June 2006 but not yet reported, Mr Feehan took no point on the late service of the placement order applications and accepted that no injustice had been caused to his client thereby.

19. The wider background is explained by the judge in paragraphs 8 onwards of his judgment:

"8. The [Appellant] and [Mr B] lived together for about 6 years until the year 2000 and in the following year [Mr B] was imprisoned for offences of dishonesty in October 2001.

9. On his release from prison [Mr B] began a serious campaign of harassment against his former partner and Mr [G], with whom she had now formed a relationship and with whom she was living, which led to their leaving Barking and Dagenham under police protection and moving firstly to Harwich, then to Dovercourt and then to the Clacton area.
10. On the 9th May Mr [G] too was imprisoned and served some 4 months and immediately on his release he was the victim of an assault by [Mr B] which resulted in the latter's being sentenced to 2 years for attempting to cause him grievous bodily harm.
11. The [Appellant] who is nearly 32 years of age has learning difficulties and suffers from mental health problems, if not cause by, at least aggravated by her consumption of illicit drugs and it is fair to say her chaotic lifestyle has most likely been occasioned by these two factors. She was formerly a heavy cocaine user to the extent that the septum of her nose was blown and she has smoked cannabis for about 12 years.
12. The late Mr [G] suffered from a serious alcohol problem and was frequently in trouble with the police concerning motoring offences and served a prison sentence for 12 months in 2003 for assaulting a police officer and causing him actual bodily harm.
13. In the course of the [Appellant's] relationship with Mr [G] there were frequent calls to the police sometimes by the children and 13 occasions have been identified by the Children's Guardian between April and November 2004.
14. On the 20th June 2005 a strategy meeting in Barking and Dagenham raised the issues of the [Appellant's] having taken an overdose on the 7th June, Mr [G's] excessive drinking, the children's witnessing domestic violence, the problems of lack of engagement by the parents with professionals concerned for the children and their welfare, the school attendance of D and G, the cleanliness and hygiene at home and the cleanliness of the children themselves.
15. There were two complaints of domestic violence between those parties to which the police were called between the 21st July 2005 and the birth of [DARG] in September of that year.
16. When [DARG] was born there were traces of cocaine detected in the baby's urine as had been the case with [S] and [MG] at their births and her mother admitted having smoked a joint containing cocaine on the night before she gave birth.
17. Further instances of violence occurred mostly between [the Appellant] and Mr [G] but on the 10th October [S] complained of having been bruised and scratched by 'daddy' and her mother and stepfather found it difficult to show any enthusiasm for attending hospital so that consent could be obtained for an X-ray to be undertaken.
18. Further incidents of violence took place between the adults

culminating in the arrest of Mr [G] for causing actual bodily harm on the 24th January 2006. There were produced into the proceedings no less than 10 separate incident reports from the police of domestic violence of one sort or another in some of which about half of the [Appellant] was the victim and in some the aggressor and often these were in the presence of the children or some of them

19. There was no planning of finances within the household, the parents were failing to look after the medical needs of the children for example in the way in which head lice had been a constant problem, and the manner in which dog faeces and urine have been detected in the home. The children have been unsupervised when their parents have been asleep, [M] and [S] for example having been seen climbing on work surfaces. The parents have driven the children around when neither has a driving licence and the school attendance of the children has deteriorated.

20. The [Appellant] was complaining of feeling suicidal, fearing that she was hearing voices and becoming ill again early this year and the children were removed from their home on the 22nd February when interim care orders were made and a recovery order was made to trace [D G] who was found a week later at the home of [K B] where she and her father Mr [G] had been staying.

21. An examination of [Mr B] by Dr Christopher Mayer a consultant psychiatrist disclosed that he had a continuing problem with cocaine, that he was emotionally unstable, unpredictable and given to anti-social behaviour. Dr Mayer took the view that he would be unable to prioritise the needs of the children and that they would remain at risk in his care.

22. An assessment was carried out of [the Appellant] and Mr [G] by the NCH Bridge Child Care Development Service and Dr Maggie Hilton who carried out the psychological assessments of the [Appellant] and Mr [G] for that report gave evidence before me. Before the publication of the report to the parties however Mr [G] committed suicide by hanging on the 20th July 2006.

23. Dr Hilton observed that since they had been in care the children had all shown signs of recovery and the conclusion of the reporters was that the children particularly [MG] and [DARG] were likely to suffer if they were returned to a similar environment to that from which they had been removed into care.

24. Nonetheless the first recommendation of the Bridge Service was that the commitment of the parents, that is to say the [Appellant] and Mr [G], should be tested by seeing whether they could attend all contacts arranged, address their substance abuse and show by this hearing that they had achieved that, attend counselling and show progress.

25. If they could do so then it was thought that the Bridge might be able to recommend further work towards rehabilitation.

26. When the death of Mr [G] was reported an addendum was prepared by the Bridge to consider the prospects for [the Appellant's] caring for the children alone. Sadly the short answer was that she would be unlikely to be able to change significantly on her own so as to be able to offer

> adequate parenting within the time frame for the children themselves.
> 27. It is perfectly clear that the parents whilst Mr [G] was alive and [the Appellant] and Mr B since failed at practically every hurdle. They have failed to attend contact sufficiently regularly, they have failed to demonstrate their commitment to avoid substance abuse, and refused to comply with the Court orders regarding hair testing and they have not attended any counselling. When she has contact the children have been taken to inappropriate places such as the Benefits office for their mother to complain about her finances or to amusement arcades to play fruit machines. She arrived late on numerous occasions, cancelled some appointments late in the day so as to cause disappointment to the children, or simply did not attend without warning, even on [DARG's] birthday, offering rather lame excuses such as needing to see her solicitor. She also frequently indulged in arguments with the staff at contact which was unsettling for the children. Mr B's contact was limited to about half of those available and he was difficult to contact about his failure to attend.
> 28. Upon the evidence I heard I have no doubt that as at the taking of these children into care in February 2006 the environment in which they were living had exposed them, and was such as to continue to expose them, to the risk of significant harm which resulted from the lack of care they were receiving, which was not such as one would expect from a reasonable parent.
> 29. In my judgment the extent of the harm they suffered is well demonstrated by the progress they have made subsequent to their removal."

20. In summary, therefore, the judge was in no doubt that the threshold criteria under section 31 of the Children Act 1989 were met, and that the children should be the subject of care orders. There is, as I have already said, no appeal against the two care orders made by the judge in relation to MG and DARG or, as it happens, in relation to any other part of the judge's order.

21. Given the dearth of documentation before the court, we asked to see the Bridge report, to which the judge refers in the extract which I have just cited. We also asked to see the care plans for the two children with whom we are concerned, as well as the previous case management orders made by different judges in the case.

22. It would, I have to say, have been helpful if these documents had been in our papers. However, having seen the latter, I unreservedly withdrew any critical remarks I may have made during the course of argument. The case was plainly carefully and thoroughly case managed, and the interlocutory orders are detailed and careful. What has gone wrong in this case seems to me to have been the coincidence of a number of unfortunate events. These include the suicide of Mr G immediately after his assessment by the Bridge, the untimely death of the social worker dealing with the case, the failure of the local authority to convene the family group conference envisaged and indeed facilitated by the order of the court made on 19th April 2006, and the fact that Ms B did not put herself forward as a carer for the two children until the final hearing

itself.

23. The Bridge was given a very wide brief relating to all the relevant children and in particular a brief relating to the parenting capacities of the appellant and Mr G. The report is a very long and thorough document. Having had the opportunity to read it very quickly, it seems to me that the judge aptly summarised its conclusions in paragraphs 22 to 26 of his judgment (the passage which I have already incorporated). Plainly, the death of Mr G in July 2006 put paid to any possibility that the appellant could care for the children herself.

24. The criticism which Mr Feehan makes of the local authority is essentially that it has failed in its fundamental duty to these two children. That failure, he submits, has two particular aspects. Firstly, it has failed fully to explore the possibility that these two children could still be brought up within their natural family and, symptomatic of this failure, Mr Feehan argues, is the failure to convene the joint family conference, something plainly approved and facilitated by the order of the court.

25. Secondly, and more specifically, the local authority, Mr Feehan argues, has failed to assess the mother's foster sister, Ms B, as a potential carer for the children. A combination of these two failures has led the judge into error. He has, in effect, wrongly bought the argument that it is all now too late to unscramble, and that there is no choice but to place the children for adoption. Mr Feehan criticised in particular paragraph 48 of the judge's judgment, in which he says this:

> "Mr Feehan criticised the local authority, I am bound to accept with some justification, concerning their failure to organise a family group conference in connection with the family. This had clearly been planned but was probably overtaken by the untimely death of Mr Cakebread the social worker responsible for it and no-one's having picked up the reins thereafter. Again if there had been an early entry into the lists by them or other extended family members or the proposals made by Mrs Day or [Ms B] had been more appealing looking at the children's best interests I would have agreed to adjourn for this to take place, but I took the view that as at the 1st November [2006] it would be wrong to adjourn the case further and keep these children in limbo beyond this comprehensive consideration of their case."

That is a paragraph in which Mr Feehan submits the judge has gone plainly wrong.

26. In support of his argument, Mr Feehan relies on a decision of this court in which I gave the leading judgment, namely Re M-H (A Child) [2006] EWCA Civ 1864. Mr Feehan relies, in particular, upon two paragraphs in that judgment, numbered 30 and 31, in which I said:

> "30. However, in my judgment, Mr Rowley is right when he submits that the exercise of a judicial discretion in a care case is an amalgam of expertise from a number of disciplines, an essential part of which is or should be competent social work assessments which the judge can then

> appraise and accept or reject. The production of these assessments however is not the province of the judge. Accordingly, in my judgment, to do proper justice to K's interests in the instant case, the judge required the thorough independent social work input by means of a viability assessment which Mr F had sought. The judge denied himself that input whilst at the same time recognising that the local authority had failed to provide it. As I have already stated, his reliance on the guardian to do so was in my judgment misplaced and the result, as I see it, is a flawed exercise of judicial discretion. In my judgment and for this reason alone, Mr Rowley is entitled to succeed in this appeal. Ground 1 of the appellant's notice is in my view made out.
>
> 31. In these circumstances it does not seem to me either necessary or desirable to examine Mr Rowley's other grounds, particularly as Mr F's capacity to care for K falls to be re-examined in the context of an independent viability assessment. I need to make it quite clear, however, that the content of that assessment is wholly a matter for the professional judgment of the individual commissioned to perform the task. As I have already indicated the outcome may agree with the judge's conclusions or it may not. Either way, it is in my judgment a piece of work which has to be undertaken if K's welfare is to be fully and properly considered."

27. Mr Feehan acknowledges that the assessment of Ms B will cause some delay, but he asserts that the delay will be purposeful and that there is no reason why alongside it the local authority should not also continue their search for prospective adopters should the assessment of Ms B in the event turn out to be negative.

28. Mr Feehan points to the terms of the 2002 Act and the duties imposed upon the court in section 1, amongst other things, to have regard to the relationship which the child concerned has with relatives and others, and the likelihood of any such relationship continuing; and also the ability and willingness of any of the child's relatives to provide the children with a secure relationship. He submits that the local authority in this case has not fulfilled those basic obligations, and the result is unfairness to the children concerned.

29. The local authority and the guardian take common cause in asserting that the judge was entitled on all the facts of the case to exercise his discretion against any further family assessment. The guardian, in particular, had formed the view that there was no realistic prospect of Ms B being in a position to care for these two children. We have in our papers a transcript of the guardian's evidence to the judge. She made it very clear that she did not favour an adjournment in order for Ms B to be assessed as a carer for the two children. She agreed with Mr Feehan that a family group conference should have taken place and also agreed that no proper, full assessment of Ms B had been made. Nevertheless, she took the view that the judge had had sufficient information on which to decide the case.

30. Moreover, the guardian took the view (a) that Ms B had been aware of the

proceedings throughout and both could and should have come forward earlier; and (b) that Ms B was not in a position to give the two children the sort of care they plainly require. She gave evidence. On page 23 of the transcript she refers to "difficulties" in Ms B's household, and to Ms B's own children being known to the local authority.

31. In the skeleton argument for the guardian placed before this court, Ms Harries on behalf of the guardian puts the matter very clearly:

> "2. It is conceded that the Family Group Conference that had been proposed to take place in April 2006 should have been re-arranged following the untimely death of the family group conference coordinator, Mr Douglas Cakebread. However, by this stage the family of the Father of the middle three children, [C B], were already actively involved with the three [B] children, the paternal Aunt, [N B], having cared for the three girls at the outset of the proceedings. The Mother was well aware of the need for family members to put themselves forward as Miss [N B] applied for permission to apply for a Residence Order for [G] after the children were removed from her care. Following a positive assessment, [G] was placed with her paternal Aunt on a permanent basis. It is apparent from the Appellant's skeleton argument that her foster family were made aware of the situation concerning the family in March 2006 and had been invited to the family group conference.
>
> 3. At the final Hearing in October 2006 the Mother filed statements from her foster Sister, [K B], and her foster Mother, [E D]. Miss [B] gave evidence at the Hearing but Mrs [D] failed to attend. The Learned Judge heard evidence from Miss [B] about the support she could offer [the Appellant], and also about her wish to be assessed as a possible carer for any of the children. The Social Worker, Clare Lincoln, gave oral evidence of the Local Authority's concerns about [K B's] children who had been referred to the Children and Families Team in May 2006. The Children's Guardian, in her evidence, confirmed that an informal viability assessment was conducted of Miss [B] at the outset of the proceedings but for the reasons given by Miss Lincoln in her evidence, Miss [B] was not considered suitable. The Guardian confirmed that [E D], as a registered foster carer, would have been more aware of the Court process than an ordinary lay person (p14 CG evidence). She also confirmed that she had not been given the details of any other family members who might be in a position to care for the children. About the other cousins suggested by Counsel for the Mother, the Children's Guardian replied 'if these people were significant to the children, I would have heard about them by now. The people that I have heard about are [K B] and [E D] — I have not heard of these other cousins until today, so that is what I find unusual; that these people have not been raised earlier, particularly by the children'.
> 4. ...
> 5. In his Judgment on 17th November 2006 His Honour Judge Dedman considered the option of adjourning the making of the Placement Orders,

but acknowledged the evidence given by the Children's Guardian that she had not been made aware of any other members of the extended/foster family who were prepared to help out. It is submitted that in the light of the evidence before him (including that of the adoption social worker) the learned Judge was not plainly wrong in coming to the decision that the Placement Orders should be made. (para. 48 - 50 of the Judgment)"

32. The judge also had the advantage of seeing and hearing Ms B. He dealt with her evidence and her suitability in paragraph 38 of his judgment:

> "38. It was proposed on [the Appellant's] behalf that she would be assisted by her own foster mother Mrs [D] and/or her foster sister, K B, or other possible placements within her extended family. It was at the hearing practically for the first time that these offers had been made. Clearly Mrs [D] was not offering to care for any of the children but simply to lend support to [the Appellant]. For her part Ms [B] has her own three children to care for and this would raise her household to five children at one fell swoop if the Court were to agree to this course. The fact is of course that no-one on behalf of the family on either side had been made any such offers to accommodate the children or any of them until the Court hearing was imminent. In addition Ms [B] has already had her own problems with the Social Care Department of the local authority with her children and with the police in connection with anti-social behaviour at her home. I also think that it was a fair point made by and on behalf of the Guardian that even she had not been told that there were members of the extended/ foster family of [the Appellant] who were prepared to help out."

33. The judge then summarised Mr Feehan's submissions and his response to them in paragraphs 39 and 40 of the judgment, in which the judge said:

> "39. Mr Feehan asked me to adjourn the proceedings because I did not have sufficient information to take the Draconian step of putting the children into care and that a short planned purposeful adjournment would enable the Court to see the outcome of the Bridge recommendations even though those were based on the premise that their recommendations so far had been complied with. As I see it these are young children for whom time marches on and if as is anticipated the mother for example engaged in at least one or two years' counselling the likelihood is that the best life chances will have been lost to them.
>
> 40. I have taken into account not only the requirements of the Children Act, namely that the interests of the children themselves are my paramount consideration and the welfare checklist but also the impact of the Human Rights Act 1998 and the parents' convention rights to family life, but in the end my conclusion is that the making of care orders in line with the now amended care plans, which I approve, is a measured and proportionate response to the competing interests which arise in the case."

34. I have already cited paragraph 48 of the judgment. The judgment ends with

paragraphs 50 and 51 in which the judge concluded:

> "50. In my judgment, having regard to the welfare of these two children throughout their lives, adoption into a new, caring and capable family would certainly be in their best interests and sooner rather than later. In arriving at that conclusion I had to have regard to their best wishes and feelings, their particular needs, the impact throughout their respective lives of being adopted and having their ties to their birth family severed, their age sex and background, the harm which they have suffered and which I have found demonstrated and the relationships with their relatives or others who might be considered relevant. I therefore made placement orders in their cases necessarily dispensing with the consent of their mother on the basis that the welfare of the children required this course to be taken.
>
> 51. Overall I felt that the recently amended care plans were properly thought out and could be approved in respect of each of the children and am able to do so."

Discussion

35. There is no doubt in my mind that the local authority has made mistakes in this case. It plainly should have called a family group conference. However, there is substantial mitigation in relation to the criticism that it should formally have assessed Ms B as carer for the children. Up until July 2006, the appellant and Mr G were putting themselves forward as joint carers, and they received some, albeit cautious, support from the Bridge. It is equally plain that Ms B should have put herself forward at a much earlier stage. It was plainly unacceptable that she only advanced her wish to care for the two children at the final hearing itself.

36. The question for this court, in my judgment, is whether or not in these circumstances it was properly open to the judge to exercise his discretion as he did to make placement orders and to refuse the application for an adjournment to enable Ms B to be assessed. In my judgment, it was. I reach that conclusion, despite Mr Feehan's powerful submissions, for a number of reasons which I will endeavour to set out, albeit not in any necessary order of merit.

37. The first is that the judge had the evidence of both the local authority and the guardian that they did not regard Ms B as a suitable carer for the children. There was also evidence before the judge about Ms B's personal circumstances, which made it very unlikely that she would prove to be suitable.

38. The second is that the judge had the opportunity to see Ms B in the witness box and to make his own assessment of her. He plainly did not form the impression that she was suitable.

39. The third is that Ms B had not put herself forward earlier. I fully appreciate the difficulty in taking instructions from the appellant, but the death of Mr G is only a partial excuse. There was a period between July and the end of October when it was

plain that the appellant was not going to be able to care for the children, and it was at that point that Ms B should have put herself forward.

40. I do not resile from anything that I said in Re M-H, but there is inevitably a difficulty in extracting statements of principle from an individual case and applying them to a quite different case with different facts. There are, moreover, several important differences between Re M-H and the instant case. In Re M-H, the application for the assessment was not made at the hearing, but at a pre-hearing review. The applicant was already caring for one child of whom he was the father, and there was a strong argument for the half-siblings to be brought up together, even though the applicant was not the father of the subject child. The father had put himself forward at an early stage, and not at the last minute. He had throughout expressed a determination to participate in the proceedings. The judge in that case had rightly criticised the initial assessment, but had been wrong (we found) to say both that he had sufficient material on which to decide the case and that an assessment would not provide any further information of value. He had also wrongly relied on the guardian to remedy the defects in the local authority's case when the guardian herself had opposed a full assessment and did not carry out one of her own. He was also wrong to think that his own judicial assessment could compensate for the lack of a proper social work assessment. In that case, therefore, the judge left himself with no option but to decide the case with an important piece of information missing.

41. It was against this background that I made the observations in Re M-H which I have already set out. In my judgment, the judge in the instant case did not make the same errors. He was faced with a last-minute application for an assessment which could and should have been made earlier. Both the local authority and the guardian reasonably took the view that they had sufficient information to make it inappropriate for the case to be adjourned to enable the further assessment to take place. Neither thought Ms B suitable. They were in, my judgment, entitled to that view. Furthermore, as I have already said, the judge heard and saw Ms B. He was entitled to weigh on the one hand the advantage to the children of being brought up within their natural family and, on the other, the permanence and security brought about by adoption. He had to weigh both the delay occasioned by an adjournment, and the likelihood that the assessment of Ms B would prove negative. In my view he had sufficient material on which to make a decision, and I cannot say that the decision he made was wrong.

42. The moral of the case, yet again, is that the available options for a child should be teased out as early as possible, and if a family member wishes to be considered to care for a child, he or she should come forward at the earliest possible opportunity. Translated into the facts of this case, Ms B should have come forward after the death of Mr G. There would have been time to assess her between August and October. By the end of October/early November it was, in my judgment (and here I agree with the judge) too late, and the judge was entitled to say so, particularly since there was objective evidence before him pointing to Ms B's unsuitability.

43. Since Mr Feehan is, in effect, only advancing Ms B as a solution to the case, his criticism of the failure to convene the joint family conference, and the need to convene

such a conference now loses much or most of its force, notwithstanding my view that the conference should have been convened by the local authority at a much earlier stage.

44. For completeness, I should perhaps add that at the outset of this application, Mr Powell, for the local authority, sought to overcome the absence in the bundle of any evidence from the local authority by seeking our permission to introduce fresh evidence in the form of a statement from Ms Belinda Norval, a Team Manager employed by the local authority, setting out both what the local authority had done in relation to Ms B and what had happened since the hearing. We refused the application, for reasons given shortly by my Lord the President.

45. I would simply wish to add that many care cases do come quickly before this court, either as permission applications on notice to the local authority or as applications for permission to appeal with appeal to follow if permission is granted. It is the responsibility of the local authority to ensure that its case is properly presented to this court, and this includes ensuring that this court has the necessary material which it has placed before the judge. This does not mean that the court has to be swamped with transcripts, bundles or reports. In some cases, the judge has sufficiently recorded the local authority's evidence in the judgment. In other cases, like the present, it is important to understand precisely what the local authority's case was before the judge, so that the manner in which the judge dealt with it can be properly assessed. What is unacceptable is to have nothing from the local authority except a skeleton argument produced on the morning of the hearing, and an application to adduce fresh evidence to which the other parties, notably the parents (in this case the mother), have had no opportunity to respond. In the instant case, there is of course some mitigation in that the principal point taken on the appeal arises out of evidence available only for the first time at the hearing. When that occurs, however, the position needs to be explained and it is not, as I say, best explained by a skeleton argument which arrives only shortly before the court sits.

46. The rule in Ladd v Marshall is frequently relaxed in children's cases, but this fact is not a green light to remedy deficiencies which can properly be addressed in other ways.

47. For all these reasons, and despite Mr Feehan's able submissions, I would, speaking for myself, whilst giving permission to appeal, dismiss this appeal.

48. SIR MARK POTTER: I agree.

ORDER: Application for permission to appeal granted and the substantive appeal dismissed.

(Order not part of approved judgment)