

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version may be treated as authentic.

This extempore judgment was given in private on 22 March 2013. It consists of 10 pages and has been signed and dated by the judge. The judgment is being distributed on the strict understanding that in any report no person other than the advocates may be identified by name or location and that in particular the anonymity of the Applicant, Respondents and members of their family must be strictly preserved.

Case No: DA09P0804

Neutral Citation Number: [2013] EWHC 820 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/03/2013

Before:

MRS JUSTICE THEIS DBE

Between:

N

Applicant

- and -

B

1st Respondent

-and-

T & Y

2nd & 3rd Respondents

(By their Guardian)

Ms Elizabeth Spence (instructed by B Solicitors for the **Applicant**)
Ms Lydia Slee (instructed by C Solicitors) for the **1st Respondent**
Ms Camille Habboo (instructed by D Solicitors) for **2nd & 3rd Respondents**
Mr Bentley (instructed by **A County Council**)

Hearing date: 22nd March 2013

Judgment

Mrs Justice Theis DBE:

1. This matter concerns an application by the maternal grandmother (N), for the adoption of her grandchildren (T and Y) aged 9, and 3. She originally applied for a residence order jointly with her husband, the maternal grandfather. However, they separated in February 2011 and he has played no role in the proceedings since. He was discharged as a party in February 2012. The Respondents to the application are the children's father, (B), and the children themselves, through their Children's Guardian.
2. The grandparents stepped in as full time carers for the children following the tragic death of their daughter, the children's mother, in August 2009. She was murdered by her husband, the children's father (B). At that time T was just over 5 years of age and Y 2 months.
3. The father pleaded guilty to murder and the rape of the mother's sister, who was 16 years old at the time. The father was sentenced in October 2010 to life imprisonment and will serve a minimum of 14 years. His earliest possible release date is 2023 when the children will be 19 and 14, but he may be eligible for home leave in 2020 when the children will be 16 and 11. The father has not had contact to the children since August 2009, save one card sent to T which is reported to have disturbed him.
4. I should say at the beginning of this judgment that the grandmother and maternal family have provided T and Y with exemplary care, in what have been very difficult circumstances for them all. All the reports rightly, in my judgment, praise the high standard of care these two young children have been given.
5. The issues for me to determine are as follows:

- (1) There was an issue regarding the support plan that the Local Authority were able to provide. That issue has now resolved. An updated support plan has been filed dated 8 March 2013 and the following recitals are going to be attached to the order made today:

'Upon Social Services confirming that should Ms H deem that the family require therapeutic input beyond the initial 12 weeks, they will use their best endeavours to ensure there is no gap in the work and make all the necessary enquiries in relation to funding before the expiry of the first piece of work.

Upon Social Services indicating that it is their belief that the impending benefits cap should not impact on the amount of the allowance they pay to the Applicant and the allowance is not considered as income for the calculation. Social services will endeavour to provide confirmation of this in writing and in default shall facilitate an interpreter attending with the Applicant to meet a benefits adviser.

Upon the Local Authority indicating that it will seek to hold a planning meeting with the social worker and Ms H in the first week of April and that an appointment will be set up with the family and Ms H by no later than the end of April.

Upon the parties agreeing that the Local Authority should disclose the following documents to Ms H: case summary for the final hearing; sections E and G of the court bundle and F43 – 59.'

The court was further updated that it was likely the first appointment with Ms H will take place in the week of 2 April. I approved the support plan with these additions.

- (2) Whether there should be a special guardianship or adoption order. The grandmother seeks an adoption order. She is supported by the Local Authority and the Children's Guardian. The father agrees to a special guardianship order, but not an adoption order;
 - (3) If a special guardianship order is made consideration will need to be given as to whether there should be an order under s 91(14) Children Act 1989 (CA 1989) and/or any further orders restricting the father exercising his parental responsibility. The father agrees to an order under section 91 (14).
 - (4) Whether there should be an order for defined contact. The parties agree there should be indirect contact limited to birthday cards. The father sought a defined order, although his updated instructions were not to pursue that strenuously at the hearing today. The grandmother agrees with a recital in the order but not a defined order. That is supported by the Local Authority and the Children's Guardian.
6. I am grateful to all legal representatives. They have provided comprehensive skeleton arguments, position statements and referred to the relevant authorities. All their written and oral submissions have been of great assistance. The father has been able to join this hearing by telephone link for the submissions. He chose not to stay linked to the hearing for the judgment.

Background

7. The mother had lived in this country with her family since 1991. She married the father in Country E in 2002. The parents are first cousins. Following their wedding the mother returned to England and the father joined her in 2003. T was born a year later. They lived with the maternal grandparents until 2007, when they moved to accommodation close by. The grandmother continued caring for Y during the day as both parents worked full time. Save for one brother who is not known to the children the father's family all reside in Country E. The mother's immediate family all live in England.
8. Following the tragic death of the children's mother the grandparents initially applied for residence orders. Subsequently the grandmother issued an application for a special guardianship order and, more recently, for an adoption order.
9. The father initially raised concerns about the volatile nature of the grandparents' relationship. The documents reveal there were historical difficulties in that relationship, but they have now been separated for over two years and it is believed the maternal grandfather is in Country E. The grandmother intends to

issue divorce proceedings and is clear in her resolve to remain separated from the grandfather.

10. Following leave being given to make the residence application in 2009 there have been significant delays in this case being dealt with. It has taken 3 ½ years to reach this hearing. Whilst the children have remained in their grandmother's care throughout, the delays and uncertainties have, in my judgment, been detrimental to the children's welfare.
11. I need only summarise the delays but they emphasise, if that is needed, the importance of early identification of the correct level of judge, early transfer if needed, judicial continuity and the need to follow the guidance set out by Mrs Justice Hogg in *Re A and B [2010] EWHC 3824 (Fam)*.
12. Following initial directions the matter was first listed in June 2010 before a Deputy District Judge; it should not have been listed before him. The hearing could not be concluded and was adjourned part heard, in part due to the Deputy District Judge's concerns, correctly in my judgment, that there needed to be further specialist assessment. It took six months to return back to the Deputy District Judge, and then only following a specific application to list the matter. He made the children parties and listed the matter before a full time District Judge, with a direction that the parties provide information regarding specialist experts. Directions were made in January 2011 and the matter listed for hearing in June 2011, unfortunately the court of its own volition re-listed the matter in September.
13. A directions hearing was listed in August 2011 and the court was referred, for the first time, to the guidance given by Mrs Justice Hogg in *Re A and B (ibid)*. The matter was transferred to the High Court and a section 37 report was directed to be filed by 7 October 2011. That section expressly provides a s 37 report shall be filed within 8 weeks, unless the court otherwise directs.
14. In fact the section 37 report was not filed until 26 January 2012, three and a half months after it was originally directed. According to the statement from the Service Manager, for the area, for Children and Young People, the local authority were not notified of this order until early October and a letter was written to the court seeking an extension until December. This was followed by a further request to extension to early January. The report was filed after that. The report did not address the matters it was directed to, despite being '*quality assured*', and a further report had to be directed and was filed at the end of February, some 4 and a half months after it was originally directed. I am quite satisfied the obligation is on the party seeking an extension of time to apply for one (in the absence of any other direction being given by the court). The court had made an order and the expectation is that it will be complied with.
15. In early February 2012 the father conceded residence to the grandmother and directions were made for a report to be prepared by Dr Black, a child and adolescent psychiatrist who is an acknowledged expert in this field. Her comprehensive report in June 2012 sets out her detailed recommendations about the support that should be given to the children in this case.
16. The matter came before court in June 2012, the court expressed concern about the lack of support offered by the local authority (these are set out in detail in recitals to the order dated 22 June 2012) and directed the Local Authority file a special

guardianship report by 21 September 2012. The matter was listed back for review in October, with a final hearing listed in November. The Local Authority sought more time to file their report prior to the hearing in October. Although the court extended the time to December 2012 the recital to the October order records *'And upon the court expressing its concern and dismay with the delays in this matter which are adding to the anxiety of these children and the maternal family, caused solely by the A County Council and its failure to comply with Court Directions generally and most recently to prepare the Special Guardianship report in accordance with the court order on 22 June 2012 and failing to attend Court today or be represented to explain their failure to adhere to court orders'*. The matter was re-listed in January 2013 with a direction for the Local Authority to attend.

17. Despite having been given the requisite notice the Local Authority had failed to provide the necessary medical reports to enable the adoption application to be issued. On 28 January 2013 the court was informed by the Local Authority about the progress of the relevant medical assessments and further directions were made, listing the matter before me on 25 February 2013 for final hearing.
18. By early February both the Children's Guardian and the Local Authority were recommending adoption. The father conceded a special guardianship order and an order under s 91(14), he did not consent to an adoption order.
19. It transpired at the hearing before me in February the information given to the court in January by the Local Authority was wholly incorrect, with the consequence that I had to adjourn the final hearing again until March.
20. I directed the local authority to file a statement addressing the various delays in providing reports and how the court was given incorrect information in January. The statement from the Service Manager addresses the delays. Whilst there was some delay in the Local Authority being notified of orders I am quite satisfied that the main delays have been caused by the non-compliance of the Local Authority with court orders through inefficient or inadequate internal organisation or systems, or the authors of the reports, including those who *'quality assure'* them, not being of a sufficient calibre or having adequate training to undertake the work required. In relation to incorrect information given to the court regarding the medical assessments of the children, the Service Manager stated the legal representative who attended court in January informed her he obtained the information from the relevant Team Manager, who now works in Australia. In my judgment it is clear up until 25 February 2013 this Local Authority repeatedly failed in its obligations to the court and these children. There were repeated failures to comply with court orders and the information that was provided failed to properly address the relevant issues.
21. It is right to record that since the hearing before me on 25 February 2013 all the directions have been complied with by the Local Authority and the matter has been able to proceed today as an effective hearing. It is a matter of regret that it required robust direction from this court for the Local Authority to perform its duties as it should. I sincerely hope that will not happen again.

Special Guardianship or Adoption

22. The paramount consideration of the court when considering this issue is the welfare of the child throughout his life, in accordance with section 1 Adoption and Children Act 2002 ('ACA 2002'). The court must consider which order will better serve the welfare of the particular child (per Wall LJ *Re S (Adoption Order or Special Guardianship)* [2007] EWCA Civ 54 at para 47 (iii)). There is no presumption in favour of one order or the other, each case turns on its own facts. In accordance with ss 47 and 52 ACA 2002 in considering an adoption order the court needs to consider whether the welfare of the child requires the consent of the father to be dispensed with.
23. One of the relevant considerations in this case is whether an adoption order would skew the family relationships in the grandmother's home. The grandmother's brother is the father's father; the children's parents were first cousins. The children live with the grandmother and maternal aunts and uncles. They have contact with another maternal aunt who lives nearby with her husband and son, and their great maternal aunts who also live nearby. In the event of an adoption order their maternal grandmother would become their adoptive mother. Their aunts and uncles would become their legal half siblings. The paternal grandfather would become their paternal uncle and the father their first cousin. Following the death of the mother the grandmother has severed all contact with her brother and his family.
24. This shift in family relationships, in the event of an adoption order being made, was explained in some detail to the grandmother by a Senior Practitioner in the Local Authority Adoption Team, as described in the special guardianship report. She notes the grandmother had an understanding of the consequent shift in legal relationships throughout the family in the event of an adoption order being made.
25. In *S v B and Newport City Council: Re K* [2007] 1 FLR 1116 the impact of an adoption order in family placements was considered important by Mr Justice Hedley, when refusing to make an adoption order in favour of a special guardianship order. At paragraph 22, following a review of the underlying policy for adoption, he stated
'One purpose of adoption is of course to give lifelong status to carers where otherwise it would not exist. In familial placement, that is not necessary because family status exists for life in any event. That is not to say that a familial placement may never be secured by adoption. One can imagine cases where the need for security against aggressive parents, including forensic aggression, may be overwhelming.'
26. The skewing of familial relationships is clearly an important factor to put in the balance.
27. Another important factor is the concern the grandmother has about the father seeking to exercise his parental responsibility. The father accepts an order under s91 (14) CA 1989. However it is necessary to look at the reality of what the father's position is. In my judgment it is quite clear from the various reports that, despite the passage of time, the father has not begun to properly accept responsibility for his actions in relation to the mother and the maternal family, or to begin to properly comprehend the impact of his actions on the children. There is a clear thread that runs through his comments to the various professionals that

demonstrate, in reality, he can only look at the position through his own interests and rights. The following extracts from the various reports illustrate the point:

Pre Sentence Report 14 October 2010

B stated the thought of seeing his children again will help him survive [his prison sentence].

S37 report 26.1.12

B told me he wanted to have contact with his children and he had not seen them since his arrest....He indicated that if the maternal family provided appropriate care to his children he would consider agreeing with his children remaining in their care whilst he remained in prison (para 33).

B talked about his wish to manage T and in future he would like to explain to his son that what happened to his mother was a mistake (para 36).

B told me he wished to resume contact with his children (para 41).

B spoke about his wish to live with his children after his release from Prison. (para 48)

SGO/Adoption Report (December 2012):

B was of the view that he would oppose the making of an Adoption Order as in his view T and Y are his children and it would be unfair for him not to have contact with them and for his parental rights to be removed. B said "he will keep trying. I'll never give up. They are my children, I am their father. They will come to me".

*B said he would agree to the making of an SGO as **he would maintain parental responsibility and will be able to carry on seeking contact with the children.** (emphasis added)*

B was adamant that he wanted to see the children.

B was clear that his priority was to get to see the children and to explain to them what happened.

B was of the view that he had made a mistake and that he was paying for it by being in prison however he was of the view he will always be the children's father and should be able to see them. (E143)

28. The view I have formed is endorsed by the Children's Guardian who states '*In my opinion [the father] has consistently placed his own needs before those of his children, he seeks contact with the children to manage them and seek forgiveness for murdering their mother.*'
29. It is clear from these various references that despite the passage of time if he continued to have any legal right over the children, the father will use this to fulfil his own needs to the detriment of the children. I have formed this view despite his counsel submitting that was not his intention. I have to look at the wider picture having regard to his behaviour in the past and what he has said. His attitude provides little security to the grandmother, who will be providing for all the children's needs in the long term. Whilst it is correct to observe he may not get leave to make any application, his attitude is clear, he is more likely than not to take any opportunity to do so. The grandmother and children would be living with the spectre of the father making such applications which would, in my judgment, undermine their security that is so vital to each child's future welfare.

30. Dr Black recommends that the *'maternal grandmother should be released from having to share parental responsibility with her oldest daughter's murderer and the rapist and blackmailer of her middle two daughters'*. In her more recent report she recommends a way is found to *'relieve the maternal grandmother from having to share parental responsibility with the father and of preventing father from having a legal right to demand reports from school and home.'* Whilst it is clear the purpose of a special guardianship order is to enable a person to exercise parental responsibility for all aspects of caring for a child, it also recognises the need to preserve the legal link between the child and their birth family.
31. I have reached the clear conclusion, in the particular circumstances of this case the welfare of each of these children throughout their lives can only be met by an adoption order being made rather than a special guardianship order. I have reached that conclusion for the following reasons:
- (1) What both children need now and for the rest of their minority and beyond is a secure home. That is what their grandmother can provide, supported by the maternal family who live there or nearby. They wish to remain in her care. As the Children's Guardian submitted there is no birth parent that can care for them.
 - (2) Although it is right that an adoption order would skew family relationships I am confident that despite the shift in family relationships that would follow, the children will know the realities of the relationships within the family. That is clear from the grandmother's recent statement and the observation in the special guardianship report that the grandmother and the family are *'secure in their knowledge of the children's identities and they know the children's histories'*. This view is supported by the conclusions of the Children's Guardian at paragraphs 24 – 26 of his report.
 - (3) In this particular case a powerful consideration is the need for the grandmother not to have to share parental responsibility with the father. Particularly in circumstances where I am satisfied, from what the father has said, that he is likely to try and exercise it, even with a restriction under s 91 (14) and other restrictions under s 8. As recently as December 2012 he was declaring that it was unfair for him not to have contact with the children; that he will keep trying and will not give up; he seeks to maintain parental responsibility and will be able to carry on seeking contact with the children. The spectre of such applications will undermine the security of the placement that is so essential to the children's future stability.
 - (4) Bearing in mind the background to the criminal offences the maternal family fear manipulation by the father, directly or indirectly, so that he could control the children's lives. In the circumstances of this case that fear is very real due to the background of the father's behaviour, and is confirmed by the papers in the court bundle from the criminal proceedings. In particular the psychiatric report, the pre-sentence report and the sentencing remarks from the Crown Court. He was described in the pre sentence report as being extremely controlling and highly dangerous. From what I have read I wholly agree with that description. I am satisfied that a special guardianship order, even supported with orders

made under s 8 and 91 (14) CA 1989 severely controlling the father's ability to exercise his parental responsibility, will not, in the circumstances of this case, provide the lifelong security that these children need in being securely placed with their grandmother.

- (5) The grandmother has carefully considered the consequences of adoption and the lifelong nature of adoption. They have been explained to her by the senior practitioner from the adoption team, as set out in detail in the special guardianship report. She understands the change to the children's birth certificate would mean that the mother's name and details would be removed. She does not plan to change the children's names.
- (6) In her most recent statement the grandmother deals with the religious objections raised by the father to an adoption order. She sets out very clearly how she sees the adoption of the children by her in the circumstances of this case (where she does not intend to change the names, and where any limited inheritance consequences can be covered by putting arrangements in place). She is satisfied, in the circumstances of this case, with the arrangements that would be put in place by her, that adoption is acceptable under Islamic law. I agree. This is endorsed by the Children's Guardian, who says he is confident the family can manage this with sensitivity and support.
- (7) I agree with the recommendation of the Children's Guardian that permanence and long term safeguarding for the children can only be guaranteed through the making of an adoption order. For the reasons outlined above it is the order that best meets their long term welfare needs. In those circumstances, I will dispense with the father's consent as the welfare needs of each of the children, in my judgment, demand I do so.

In the light of my conclusions regarding an adoption order there is no need to consider an order under s 91 (14) CA 1989.

Defined Contact order or not

- 32. The grandmother supports the recommendation that is made by Dr Black and the Children's Guardian for there to be indirect contact by way of birthday cards once a year through the Connecting Adoptive Families Independent Services (CAFIS). She agrees that can be set out as a recital to the order.
- 33. In considering the issue of contact the court is required by s 46 (6) ACA 2002 to consider '*whether there should be arrangements for allowing any person contact with the child*'. There is power to make a contact order if the welfare of the child requires this to be done. I have been referred to the cases that underline the exceptional nature of contact orders together with adoption orders. In this case the grandmother agrees with the recommendation for indirect contact.
- 34. In my judgment the children's welfare will not be met by a defined contact order. The grandmother's agreement to the indirect contact can be recorded. The grandmother fears that a defined order would be seen by the father as a green light to his future involvement in the children's lives, that would be contrary to their future welfare and stability for the reasons outlined above.

Guidance in this type of case

35. I wholly endorse the guidance given by Mrs Justice Hogg in *Re A and B* [2010] EWHC 3824 (Fam) in particular paragraph 2 which provides

“The local authority should give immediate consideration to the issue of proceedings and, whether it considers it appropriate or inappropriate to issue proceedings immediately, it should appoint a social worker specifically for the affected sibling group who should offer immediate practical help and keep the decision under constant review in conjunction with the local authority's legal department.”

In this case the Local Authority conducted a Core Assessment, determined, in effect, that the family were coping, and did not allocate a social worker. It did not keep the position under active or any review thereafter.

36. The only addition I would make to the guidance given is the need for judicial continuity and effective case management.
37. This case is a shocking example of how a case got lost in the system, with no effective continuity or case manager. This lack of judicial continuity, combined with a Local Authority that has, in my judgment, failed on repeated occasions in their obligations to these children or to comply with court orders resulted in unacceptable delays that have been detrimental to the welfare of these children. This has caused additional stress to the maternal family who stepped in to care for the children at a time of unimaginable crisis for them all, following the murder of the children's mother.
38. In relation to the actions of this Local Authority I am informed on the making of an adoption order the case will transfer to the post adoption team and the children will remain Children in Need with an allocated social worker. That position will be kept under review and will not change without consultation with the maternal family.
39. In relation to the wider action of this authority a senior solicitor with the A Local Authority, states that the guidance from *A and B* will be circulated by legal services to the four Assistant Area Directors. The Services Manager has already circulated the guidance to all service managers. She has also sent it to the Assistant Area Director for Safeguarding to ensure the service managers dealing with referrals into Specialist Children's Services are aware of the guidance at the point of referral. This should mean appropriate action is taken in these cases in the future.