

**ROYAL BOROUGH OF GREENWICH v O**  
**[2012] EWHC 4231 (Fam)**

Family Division

Coleridge J

14 December 2012

*Fact-finding hearing – Baby exchange scam in Nigeria – DNA test confirmed the parents were not the biological parents of the baby – Parents found to be innocent of any wrongdoing – Which future placement was in the best interests of the baby*

The Nigerian husband and wife, living in the UK, were unable to have a child and sought help from a clinic in Port Harcourt in Nigeria. The doctor there encouraged the wife to go to Nigeria for fertility treatment for the sum of £12,000. The wife received what she thought was fertility treatment, causing her to believe she was pregnant despite pregnancy tests conducted by her GP back in the UK producing negative results. She returned to Nigeria several times and finally underwent 'a completely bogus delivery process'. A baby was presented to the wife as her own child. The wife returned to the UK, believing that it was her biological child but the GP raised concerns when the child was brought for an appointment and he knew that the wife had at no point in the previous 9 months been pregnant. The police and local authority became involved at which point the couple explained the process they had been through at the Nigerian clinic. DNA testing revealed that the couple were not the biological parents. The child had since remained in foster care under an interim care order. In *Re D (Nigerian Fertility Clinic: Fact-Finding)* [2012] EWHC 4231 (Fam), the judge found that while the whole factual edifice made him highly sceptical, the couple's evidence had been entirely consistent and they were honest witnesses. The factual circumstances supported a finding that they had been entirely innocent of any wrongdoing. The husband and wife were desperate to resume care of the child, who was disabled, and had suffered a deterioration in his condition since his removal into foster care. Local authority assessments of the couple had so far been glowing but the guardian sought further assessment by a psychiatrist of their acceptance of the reality of the situation and their ability to meet the child's needs.

**Held** – agreeing with the local authority care plan for the child to be placed with the husband and wife; adjourning a final determination for a month's time when further assessments and reports would be available –

(1) There was no need for a child and adolescent psychiatrist report. The judge was satisfied that the couple recognised the reality of the situation and would work with it. They had indicated at all times that they wanted help coping with the child in the longer term and the guardian's concerns were overstated (see para [4]).

(2) The position needed to be given very careful thought by the social workers. A paediatric overview would be helpful for everybody, not least so the parents could see in snapshot form exactly what the child's deficits were, how they were best managed and how they were likely to be managed in the future (see para [5]).

(3) Despite the couple's wish to resume care of the child it needed to be an orderly process carried out at this child's pace with a view to moving him to their care. If all things remained equal the whole process would take a maximum of 6 weeks (see para [5]).

(4) The matters to which the children's guardian had concerns would need to be addressed, but they could be done in the context of social work and social work reporting. A child and adolescent psychiatrist was not necessary but a paediatric overview would be extremely useful and helpful (see para [6]).

*Ruth Cabeza* for the claimant  
*Robin Powell* for the respondent  
*Sarah Forster* for the guardian

**COLERIDGE J:**

[1] This morning I gave a judgment very much extempore on the issue of the state of knowledge of Mr and Mrs O in relation to the circumstances in which D came into their possession this time last year. I entirely exonerated them from any misdeed or duplicitous behaviour. The question now arises as to where we now go from here and I would make two preliminary points. First; the only item so far as I am concerned is to do what is best for this little boy. Sadly he is quite disabled, the precise extent is a moving target; he is obviously not in a stable condition at the moment and it looks as if, on the evidence, his condition has deteriorated since he was removed from the care of the Os. I say that in an entirely neutral way; in other words he has deteriorated, but whether there is a connection between that and the removal is entirely unclear. I suspect it is much more likely that as he has developed as a child of under 1 year old the full extent of his disability is becoming clearer and, as would be expected with any 1 year old, the difference between D and a child without any deficits is becoming more pronounced. However, it may well be that in the loving and expert care of Mr and Mrs O he does better. It may well be that there is an element of that because of the devotion which they clearly have shown to date.

[2] Secondly, Mr and Mrs O are desperate, and I use that word advisedly, to resume the care of this little boy with whom of course they have a very close bond; birth or no birth they have looked after this child for the first 7 months of his life and unquestionably have done so with enormous skill and care and to have the child removed in the appalling circumstances in which they found themselves last summer is too horrible to contemplate. Therefore, I of course bear that in mind and I of course bear in mind that their desperate wish is to resume care of this child, preferably immediately. However, I am afraid it is not as simple as that and I do have to tread with care. I do have to ensure that this decision which we make is the right one; that it will not be derailed for any reason in the short-or medium-term and that all the appropriate training and assessments have been carried out. I assure the Os that I am as anxious as they are that this child should be in their care as fast as it is practical to achieve that, but consistent with taking the steps in a measured and unemotional way so that we get it completely right and there is no danger of any alteration. He is, as far as I can judge, doing reasonably well in his present placement; whether he would do better with them is a matter which only time will tell.

[3] Everybody is of one mind, namely that if the current assessments which we have remain of anything like the quality that they have been to date, there is no logic in this child not being with them. Against that, those preliminary remarks, what is the best way forward? The local authority say that they will, within the next 6 weeks, carry out the necessary assessing and training for this child to return to the Os. They have already done a lot of work, the assessments simply could not have been of a more glowing character and I have to start from that position. So I am not starting from a clean sheet of paper, I am starting from a position where the local authority have already done detailed work about this and drawn very clear conclusions

and so one needs to be careful not to be over cautious in moving forward. My strong feeling is that the child could move to the Os sooner rather than later. I am not going to put a time frame on it because it is a question of this being managed on the ground. I am certainly not going to impose my view today on that decision making because I think it is uniquely a matter for those on the ground who are managing this and I have confidence in the children's department of the London Borough of Greenwich who, I have already said, seem to me to have carried out their functions thus far entirely sensitively and sensibly and have reached, if I may say so from what I have seen, the right conclusions. Therefore, I am satisfied that they are in the best position to drive this forward in a way which is sensible, timely and in this child's best interest.

[4] I completely understand the child's guardian's sense of concern that we do not want to rush it. I see nothing in the local authority's attitude which would suggest that they want to go faster than is necessary. The difference actually between the local authority and the guardian is largely one of emphasis. Miss Foster on behalf of the guardian wants a child and adolescent psychiatrist or someone to satisfy themselves about the state of mind of the Os particularly in relation to two things; one, their real acceptance of the situation, the background situation, and two, their real understanding of this child's needs. I may not have said it in judgment this morning because it was not directly relevant, but I heard them both give evidence yesterday, and they were particularly asked about this. I have already indicated my high regard for their integrity and their intelligence and response to this whole matter as well as their complete cooperation with this whole process, once they knew what was going on. I have no doubt at all that they fully comprehend what led up to the situation that we now find ourselves in and that they have fully taken this on board. I am not persuaded that the exchange which took place between the foster mother and Mrs O at hospital is evidence which undermines what I have said. It has first of all been delivered as hearsay; secondly in relation to one matter the social worker who gave me evidence this morning about her conversation with the foster mother overnight, began her retelling of the evidence by saying that she was, 'very incoherent', when she was talking about this. That fills me with no confidence when I have not myself seen this woman come and retell the matter to me. Even if in the heat of the moment Mrs O did say, 'He looks like Mr [O]', and/or, 'we were not satisfied with the DNA test', I would not in the circumstances of this case regard that as significant. I am quite satisfied that there is no need for a child and adolescent psychiatrist to explore this part of their functioning, I am totally satisfied that they recognise the reality of the situation and will work with it.

[5] So far as their understanding of his needs are concerned, well, the real question is will they do what is best for him? And in that sense will they access the best expert advice and help and will they follow it? Again, I have no concerns about that at all. They have indicated at all times that they want help, they want help with coping with this little boy in the longer term and so again I think the guardian's concerns are overstated and I am not persuaded that it is necessary. I do think that the position needs to be given very careful thought by the social workers. I do think a paediatric overview would be helpful for everybody, not least so the parents see now in, as it were, snapshot form exactly what D's deficits are, how they are best managed and how they are likely to be managed in the future. That expert help will be of assistance to

them all and is certainly in D's best interest and we do not want to rush. I know that, as I say, they are desperate but I am keen that this should be an orderly process carried out at this child's pace with a view, as I say, to moving him to the Os. If all things remain equal, sooner rather than later, and the suggestion by the local authority is this whole process would take a maximum of 6 weeks. I think that is very much a maximum; I think if the work can be done by the social worker more quickly than that and she remains confident about the qualities which are already set out and which Mr Powell has emphasised very clearly, then it seems to me that that period of time can be foreshortened and possibly considerably foreshortened.

[6] In short, yes, let the matters which the children's guardian has concerns about be addressed; they can be done in the context of social work and social work reporting. We do not need a child and adolescent psychiatrist; a paediatric overview would be extremely useful and helpful. I have no strong views as to who that should be. Doctor Lord might well be the right person and that is a possibility, otherwise an independent person, but I think there is something to be said for having someone who has actually seen this child. This is not going to be a controversial document in the sense that there will be an issue. If Doctor Lord and/or the Medway doctor have already seen this child in a treating capacity I cannot actually see any difficulty in allowing them to produce the document and indeed I think there is a lot of merit in it because it is all very well doing these things on paper but actually you need sometimes to know about the actual, real child in your consulting room or the hospital consulting room, rather than just reading about this child on paper.

[7] Those are the decisions I have made. I think the sensible way forward is to look at this matter again at the end of January with a time estimate of half a day and I hope at that stage that it will be possible to see very much more clearly the way forward to a final determination for this child and what the appropriate legal umbrella is. I do not see any reason why adoption would not be a sensible legal framework for him. Again, all things being favourable and all things being equal, and I do not want to pre-judge that but let us do that again when we know precisely what the position is, what the support, what the level of support is that is required for him, now that the way forward is beginning to become clearer. We will then timetable the legal process hopefully to speed up the conclusion.

*Order accordingly.*

Solicitors: *A local authority solicitor*  
*Bar Pro Bono Unit* for the respondent  
*Creightons* for the guardian

SAMANTHA BANGHAM  
*Law Reporter*