

MF v LONDON BOROUGH OF BRENT AND OTHERS
[2013] EWHC 1838 (Fam)

Family Division

Ryder LJ

(sitting as a Judge of the Family Division of the High Court)

28 June 2013

Adoption – Child placed with foster carer for majority of life – Foster carer applied for adoption order – Whether an adoption order was in the child’s best interests – Whether ongoing contact with the grandmother and siblings was in the child’s best interests

The 7-year-old child had been placed with the foster carer at 4 months old. A placement with the paternal aunt and uncle was attempted but after a year he returned to the foster carer. Upon his return to her care, the local authority approved the placement with her with a view to adoption. The foster carer now sought an adoption order. The maternal grandmother, who cared for two of the mother’s other children alongside her own child, supported an adoption order but sought monthly, unsupervised contact with the child at her home. The mother would not consent to an adoption order and the foster carer preferred a contact order not be made due to child protection issues and other adverse consequences that could arise.

Held – making an adoption order and a limited contact order in favour of the grandmother –

(1) An adoption order would promote the child’s welfare throughout his life by giving the foster carer the exclusive attributes of a parent that he required. No other order would provide for his needs in the same way. Adoption was not antagonistic to contact on the facts of the case; they were complimentary but there was a clear and unavoidable principle on the facts – if the court had to choose between adoption and contact, which it did not, adoption would be preferred (see para [29]).

(2) Continuing contact with the grandmother and siblings would be in the child’s best interests. Absent a situation of crisis where there was an expectation for the grandmother to be open and honest with the foster carer and the local authority, contact did not need to be supervised. It was important for the foster carer to be involved in some of the contact arrangements so that the two important women learnt to work with each other. The grandmother would remain a psychological and actual grandmother without parental responsibility or legal rights and the foster carer would become a parent with exclusive parental responsibility (see para [30]).

(3) The adoption and contact orders were inextricably linked on the facts of the case: both orders were necessary and the success of the adoption order was in part dependent upon a minimum level of contact with the child’s birth family, particularly his sister and maternal grandmother. The balance of contact, though desirable, would not form part of an order as that would go too far and be potentially antagonistic to the exercise of the foster carer’s parental responsibility (see para [34]).

Statutory provisions considered

Children Act 1989, s 8

Adoption and Children Act 2002, ss 1(2), (4), 26(5), 46(5)

Cases referred to in judgment

B (A Child), Re [2013] UKSC 33, [2013] 1 WLR 911, [2013] 2 FLR 1075, [2013] 3 All ER 929, SC

Oxfordshire County Council v X, Y and J [2010] EWCA Civ 581, [2010] 3 WLR 1746, [2011] 1 FLR 272, CA

P (Placement Orders: Parental Consent), Re [2008] EWCA Civ 535, [2008] 2 FLR 625, CA

R (Adoption: Contact), Re [2005] EWCA Civ 1128, [2006] 1 FLR 373, CA

Mary Hughes for the applicant

Dinali Nanayakkara and *Giles Bain* for the first respondent

Joanna Hall and *Sarah Forster* for the second respondent

The third respondent was neither present nor represented

David Vavrecka for the fourth respondent

Julian Date for the fifth respondent

Cur adv vult

RYDER LJ:

[1] P-M is a 7-year-old child who was first placed with his foster carer, Ms D, on 12 August 2006 when he was 4 months old. She cared for him for over 4 years until he was placed with his paternal aunt and uncle on 7 October 2010. Sadly, that placement was not successful and Ms D, who had maintained regular direct and telephone contact with P-M, stepped into the breach when on 25 November 2011 she provided a temporary placement for P-M. On 30 August 2012 the local authority's agency decision maker decided to approve P-M's placement with her as permanent with a view to adoption. P-M has been with Ms D for most of his sentient life. This is Ms D's application for an adoption order in respect of P-M.

[2] P-M was made the subject of care and placement orders as long ago as 15 January 2008. On 22 January 2008 an order for weekly contact was made in favour of his maternal grandmother, Ms F. That contact was subsequently reduced to once a month. The first application in time is that of Ms F who wanted to increase her contact with P-M. Her present position is that she no longer seeks to increase contact but does pursue her wish to have a contact order.

[3] P-M's mother, Ms JP, supports the placement of P-M with Ms D but does not agree with an adoption order. She does not apply for leave to oppose the adoption order but her wishes and feelings will be considered as part of the statutory tests that this court must apply. P-M's maternal grandmother supports the placement and an adoption order and wishes for her contact to be maintained. P-M's father, Mr MM, takes no part in these proceedings. The local authority, the London Borough of Brent and the children's guardian, support the placement and an adoption order but differ on whether a contact order for Ms F is necessary; the local authority opposes an order and the guardian recommends an order. The prospective adopter, Ms D, does not want a contact order but is favourable to the idea of continuing contact between P-M and his maternal grandmother.

[4] The background to these proceedings is long and inevitably sad. Despite care and placement orders being made on 15 January 2008, an adoptive placement had not been found for P-M by September of the following year. In that circumstance, his mother was given leave on 25 September 2009 to apply to revoke the placement order. Ms JP's circumstances then changed with the consequence that she was granted

permission to withdraw her application on 19 February 2010. At the same hearing P-M's maternal grandmother was granted leave to apply to revoke the placement order and became the applicant in the proceedings. Within those proceedings the paternal aunt and uncle had been positively assessed as kinship or family and friend carers and on 27 August 2010 all parties then involved, including the paternal aunt and uncle who were joined as parties, agreed to the placement of P-M with them. P-M moved to his paternal aunt and uncle on 7 October 2010 and 2 weeks later on 21 October 2010 the placement order was revoked. The care plan then in place (because P-M remained subject to the care order in favour of the London Borough of Brent) was for a long-term placement with the paternal aunt and uncle with the intention that 12 months after placement, the paternal aunt and uncle would apply for an adoption or special guardianship order to secure P-M's future.

[5] I do not propose to rehearse the sorry tale of the efficacy of the placement with the paternal aunt and uncle. Suffice it to say, and I make no findings on any facts that are in dispute, their commitment to permanence for P-M came to be doubted by the local authority, there were concerns about the facilitation of contact with the maternal family and issues relating to P-M's consequential behaviour had arisen. The local authority took the decision to end the placement and it was in that circumstance that Ms D, who had resigned as a foster carer, came back into P-M's life.

[6] The paternal aunt and uncle remain relevant to the decisions to be made by this court in the sense that it is proposed by the local authority that P-M have direct contact with them once or twice a year during a half term and/or the summer school holidays. No one opposes this proposal and no one suggests that this arrangement need be the subject of a contact order.

[7] The position of the maternal grandmother, Ms F, is important. She cares for P-M's 17-year-old half brother, K, under a residence order, her own 13-year-old son (P-M's uncle) and P-M's sister who is 4 rising 5 years of age. On 30 November 2011 in parallel proceedings she was granted a special guardianship order to care for P-M's sister. She is, and has been regarded by the maternal family as, a nurturing guardian angel and were it not for the priority of the welfare interests of each of the children living with her, I have no doubt she would have wanted to care for P-M as well. She could not do the impossible and has instead taken a pro-active and positive role in trying to ensure that P-M's best interests are safeguarded and also that her relationship with him is maintained. Ms F's care of the other children has not, however, been without problems as I shall relate.

[8] Returning to the background history, P-M's 'case' was presented to the local authority's adoption and permanency panel on 19 December 2011 when a new care plan for adoption was agreed. At a court hearing on 26 April 2012 a further placement order was made in respect of P-M. The 'Annex B' report filed in support of the application was unequivocal. It stated that it was agreed that there would be monthly contact between P-M and Ms F and I infer that this agreement was intended to be 'with a view to the eventual adoption'.

[9] On 1 June 2012 Ms D was approved as a short-term kinship foster carer and on 20 August 2012 she was approved as a prospective adopter and then as a 'match' for P-M. The agency decision maker ratified the recommendation 10 days later. Meanwhile an interim contact order was made by the court on 26 April 2012 under s 26 of the Adoption and Children Act

2002 (the 2002 Act) whereby Ms F had direct contact with P-M once a month in her home with provision for the allocated social worker to supervise 2 hours of each session. That order was made with the support of the children's guardian and P-M's mother. The issue of supervision related to child protection issues that had arisen concerning P-M's half brother, K, who had been caught shoplifting with his mother on 24 April 2012 leading to concerns about Ms F's supervision and safeguarding. K was also the subject of a core assessment and a referral to the Child and Adolescent Mental Health Service (CAMHS) relating to his own mental health issues. Ms F undertook to ensure that K and her own son would not be present in her home when contact with P-M took place.

[10] Real issues were reported relating to the compliance of K with his CAMHS programme and his aggressive and sometimes violent outbursts. At the same time P-M's young uncle who has ADHD was missing his CAMHS appointments and needed one-to-one teaching at school because of his highly sexualised language and violent behaviour. P-M's sister did not always attend her nursery. On 30 November 2012 Ms F was evicted from her home where conditions were described as poor. She went to live with her disabled brother taking the children with her. P-M's sister was said to be a witness to an incident of domestic violence between her parents which led to Mr MM being arrested. The argument was said by the father to be the consequence of Ms JP's drug use which the mother denies pointing to her successful drug monitoring programme in the community. The eventual consequence was that on 9 January 2013 a child protection conference was held in respect of the three children who live with Ms F and they are now the subjects of child protection plans under the category of neglect. The court has not been asked to make findings about any of the issues that surround the children cared for by Ms F but the child protection context is important to the decision making of others.

[11] The local authority's care plan proposals for contact between P-M and his grandmother developed over time and were eventually crystallised in a care plan of 14 September 2012 which proposed unsupervised contact with the maternal family three times a year in the major holidays, on each occasion for a full day in the community, with K and P-M's uncle being able to attend the contact during the Christmas school holiday. In addition the local authority proposed letter box contact between P-M and his maternal grandmother twice a year. By the time the applications came to be heard in this court the local authority had changed their position so that they asked for the contact to be supervised. During the hearing, the local authority changed their position again, in fairness in response to the evidence that the court heard, and proposed unsupervised contact for Ms F provided the boys were not present. They continue to oppose the need for a contact order after adoption.

[12] The children's guardian is of the opinion that Ms D is an exemplary parent and that P-M is very fortunate to have her unconditional love, stability and care. She says that one of the important skills exhibited by Ms D is her knowledge of the expectations of the maternal family in relation to contact and her willingness to commit to future contact. She advises the court that it is important for P-M to maintain and develop a relationship with his sister and to benefit from the relationship he has had from birth with his maternal

grandmother which is characterised by consistent and regular contact. Taking both aspects together and, I infer, the guardian's fear that the local authority may not be as pro-active or supportive of the contact situation after an adoption order is made, the guardian recommends a contact order which provides for contact roughly every 2 months and which includes time for P-M and his sister on their own.

[13] Ms F continues to agree with an adoption order and asks for a s 8 Children Act 1989 order for contact once a month for the reasons expressed by the children's guardian and for that contact to be unsupervised. Ms JP supports her mother's position, ie that contact should be more frequent than proposed by the local authority and contained in a court order. She continues to say that she does not agree with an adoption order being made although she would consent to P-M changing his surname.

[14] I have read all of the papers in the care and placement proceedings and the adoption proceedings including the children's guardian's reports and the Annex A report for the adoption application. I have heard Ms F and Ms D in oral evidence, together with the local authority social worker and the children's guardian. The documents paint the following picture, which having heard the witnesses in oral evidence, I accept.

[15] P-M has thrived in the care of Ms D. She provides him with 'excellent care' and has a very strong relationship with him. He is described as happy, thriving, meeting all his milestones and developing appropriately. He is also described as an 'adorable and bubbly child who lives to smile ... very sociable ... has a secure attachment with his carer'. Ms D is described as being wholly committed to caring for him. She has cared for him for most of his life and her unconditional love for and commitment to him are patent and not in doubt. Ms D wants the permanence, certainty, security and stability that an adoption order can bring. She wants to be P-M's legal mother as well as being his psychological parent. In contrast, there are no members of his birth family who can offer him a permanent home.

[16] Ms D has already demonstrated her ability to promote P-M's sense of identity and has always promoted his heritage with the consequence that P-M sees himself as a black British boy with a positive self image. That is no doubt enhanced by the consistency of regular contact with his birth family, in particular his maternal grandmother, but also the positives which she engenders in him. In that regard the two women in P-M's life are at one; they both seek to promote P-M's best interests, ie his needs, background and personal characteristics. Ms D is very child focused and has a history of placing his needs above her own. She has exposed him to a positive, diverse and vibrant support network and has promoted contact with his birth family so that he has maintained 'meaningful relationships with his maternal family'.

[17] P-M has expressed his wish to have a 'forever mummy' and for that to be Ms D. He is unequivocal about Ms D being his permanent parent. He would like to continue to have direct contact with his birth family which he enjoys.

[18] The local authority social work evidence flags up the issue of loyalties which P-M will experience as he gets older. Too much contact just like an order other than adoption will blur his boundaries and run the risk of tensions arising between Ms D and P-M. Any potential disruption to his routines and lifestyle with Ms D and the relationship he has with Ms D, and hence his

attachment to her, is to be guarded against by careful planning. That planning should include sensible controls around the frequency of contact and not putting Ms D in a position where she can be dictated to by others. For contact to continue to work, Ms D has to continue to support it and that will not happen if an order is made that is inflexible and beyond that to which Ms D feels able to commit.

[19] In oral evidence Ms D impressed the court. She was quiet, determined and intuitive. The descriptions of her as an adopter and parent are, in my judgment, fully justified. Despite her support for continuing regular direct contact, she was hesitant and worried about the implications of contact and in particular a contact order. She was very concerned about what she had been told of recent child protection events in the maternal family and could give quite graphic examples of her own experience of the stark differences in lifestyle between her own home and the maternal grandmother's where, bluntly put, P-M would be the 'be all and end all' in her home and one of a group of competing children and adults at his grandmother's. Put another way, P-M's interests could not always predominate when at his maternal grandmother's simply by reason of circumstance. That was not intended to be and is not a criticism of the grandmother, whose personal dedication and motivation to do her best by her grandson are not in doubt.

[20] Ms D would prefer not to have an order for contact because she is uncomfortable with the idea that it would be inflexibly interpreted as a rule which would be seen as, and act as, a fetter on her parental responsibility. In an extreme circumstance, and should she and grandmother (or another maternal relative) come into conflict about circumstances that arise, whether relating to P-M or events in the wider birth family, she clearly felt that a fixed order would act to the potential detriment of P-M, requiring her to go to court so as not to be in breach of the order and to explain her exercise of parental responsibility to the court and the maternal family. On the facts of this case, that would be antithetic to the adoption order's purposes. She is not a member of P-M's wider family; she would be his exclusive parent.

[21] In summary, Ms D's motives and intentions are honourable and entirely consistent with P-M's welfare. Her anxieties about child protection issues and other potentially adverse circumstances are reasonable. She fears that contact which is too frequent will in effect generate a life of its own, with which she could not cope. She already has that feeling perhaps as a consequence of recent events and those have changed her view. In answer to questions put on behalf of the children's guardian she was less worried and more open to a greater frequency of contact than that recommended by the local authority. A fixed contact order carries with it a risk of prejudice to her control through the exercise of parental responsibility and to his routine and placement. My one concern about Ms D's evidence is that she may not recognise the potential importance to P-M of a relationship with his sister. That said I am satisfied she will respect the relationship and not interfere with it.

[22] Although very different and altogether more forceful, Ms F was an impressive advocate for her grandson and a warm individual who clearly tries to cope with anything thrown her way. She had in fact moved back into the original family home which is clean and tidy and appropriate and would like to remain there if arrangements can be made for the care of her disabled

brother. She was hesitant to the point of being reluctant in accepting that she is herself an educated, articulate woman who studied social work for 2 years until her own mother became ill and has a great deal of experience working in social care. She has a professional's ability to analyse should she ever find the time to be able to stand back from the multitude of pressures she faces. She makes the cogent point that she has always supported Ms D and the placement of P-M with her once the paternal family placement had proved to be less than satisfactory. She thinks that Ms D's care of P-M is excellent and that his placement with her is for the best. She supports an adoption. She agreed that the only issue was contact, how that is to be provided for, its frequency and whether it needs to be supervised.

[23] Ms F wants contact to stay as it is, ie monthly, and unsupervised at her home. She described the very positive relationship that P-M has with his sister which extends to intervening informal telephone contact. She points out that his sister will be the surviving family for P-M when both Ms F and Ms D are dead and gone. All of the contact that there has been has gone well. She understands that her own boys have been upset by and antagonistic to the idea of adoption but she described how she and the children's guardian have explained to them what is best for P-M. She agrees that it is vital that nothing should be allowed to interfere with P-M's placement nor can it be allowed to break down.

[24] Ms F's evidence was at its most impressive in her analysis of adoption. She thought it would give P-M a permanence he would not otherwise obtain and that Ms D would then (and should then) be able to say to P-M that 'You are mine now for keeps, you are not going anywhere any more, you are staying, this is your life, I am your forever mummy'. Ms F does not oppose this; she wants P-M to have someone to go home to for the rest of his life. Where Ms F's evidence becomes worrying is in her descriptions of Ms D and her intentions. Ms F is not yet prepared to accept that Ms D is committed to contact or to a meaningful relationship for P-M with herself or his sister. She feels it necessary to emphasise that the family are not a threat but acknowledges that this is all about trust. For all that Ms F wants there to be trust, she is as hesitant as Ms D and she identifies one factor which it is difficult to surmount. Despite her support for the adoption order, Ms F wants everyone to be a member of one happy family. In my judgment, that is unrealistic. It cuts across the expressed reasons why Ms F recognises that P-M needs to be adopted. I understand and sympathise with her genuine intentions but the implied threat was there in the evidence she gave to me: '[P-M] is my grandson – he will see that I have never stopped wanting or caring for him – he will get a new Mum but he will not lose his grandmother'. There remains a resentment and a distrust which will take time to resolve. Ms F is able to see how that resolution could occur but it is for the moment on her terms, particularly on the question of the frequency of contact.

[25] The local authority social worker summarised accurately, in my judgment, the evidence that I heard which she was able to put into context from her own experience of Ms F and Ms D. She agreed with the analysis that I have set out. She was the one who told P-M that he was going to stay with his mum for ever and ever: 'he hugged her and said I love you Mum'. As she remarked 'they are two powerful women, what they want is not incompatible but they need a mechanism'. She described the impressive services that will

be available to P-M after an adoption order is made which may help. She remained of the opinion that a contact order will fuel resentment and will be counterproductive. She warmed to the guardian's opinion about the frequency of contact which I regarded as being a very professional reaction to the evidence that everyone had heard in court. She added her own perspective which is that it is a delight to see the contact between P-M and his sister: 'they hug and nose rub'. The grandmother always tries to make it a special event. Ms D has not had the opportunity to see that and one of the benefits of the security of adoption is that she will be able to do so without fear of the consequence. The social worker confirmed that Ms D has a busy social life which includes P-M and that she travels a lot, thereby emphasising the need for flexibility and understanding. She felt that contact should not be an alternative family life but a special event.

[26] The social worker was extensively cross-examined about the local authority's change of position and in particular the move from monthly contact which was the plan when the second placement order was made. She agreed that it was changed as circumstances in Ms F's household changed and Ms D began to express the view that she felt she could not cope. The social worker was rightly concerned that Ms F has been overwhelmed at times (as she was when she felt it necessary to leave court and not return) and that she had not shared her need for help with the local authority. She thought that Ms D's anxieties were reasonable. A reduction in contact would not be to obtain any necessary respite for settlement; P-M is already very well settled with Ms D. It is to reflect an enduring balance of needs. She acknowledged that five or six contacts a year would be ideal if Ms D could cope. I came to the conclusion that the social worker was an impressive and informed witness.

[27] Finally in evidence, the children's guardian provided a pragmatic solution to the question of the frequency of contact which, as I shall explain, I intend to adopt. She reflected in her opinion almost all of the conclusions I have so far set out. By way of an aside, but on an important topic, she was of the opinion that the paternal aunt and uncle's contact should be once or perhaps twice a year and that it could include P-M's birth father. That contact is in the nature of a distant relative's contact with a child and should not be put into the form of an order. I agree. Turning to the maternal family's contact she was of the opinion that once a month was wrong and had not taken into account how Ms D would cope or the principle of adoption. Again, I agree. She was equally clear that three contact visits a year was insufficient for P-M. She came to her conclusion about the frequency of contact by considering a hierarchy of needs within which stability and permanence come first. My only disagreement with the impressive analysis that the guardian provided was in her rationale for the nature and extent of any contact order, if granted. She felt it would act to reassure Ms D whereas I have come to the conclusion having seen Ms D and Ms F in evidence that unless the court is very careful, an order could generate an anxiety of its own that could be antithetic to the hierarchy of needs that the guardian rightly identified which is the very reason for an adoption order.

[28] In considering whether an adoption order should be made I am required by s 1(2) of the 2002 Act to give paramount consideration to the child's welfare throughout his life. I must also have regard to whether the order is necessary, ie whether nothing else will do (see, for example, the

discussion in the Supreme Court in relation to care orders with a view to adoption in *Re B (A Child)* [2013] UKSC 33, [2013] 1 WLR 911, [2013] 2 FLR 1075. Among other factors are the following matters which I accept on the evidence I have heard and which are relevant to the s 1(4) welfare checklist in the 2002 Act:

- (i) *The child's wishes and feelings*: P-M is very happy to live with Ms D and enjoys contact with his birth family and wants to see them. He understands that Ms D will be his 'forever mummy' but has had reassurance that he will continue to see his birth family.
- (ii) *The child's particular needs*: P-M has lived for most of his 7 years with Ms D. She is his parental figure. The permanence and stability that P-M requires can only be provided by a permanent placement with Ms D. The very essence of the permanence he needs and the stability which Ms D can provide is in their relationship which needs to be recognised and protected from interference by anyone else, ie Ms D must have parental responsibility which should not be shared and P-M needs to have a person who has exclusive parental responsibility for him. On the facts of this case, that can only be provided by an adoption order. Nothing else will do. That said, P-M also has a clearly identified need to maintain a relationship with his birth family and in particular his maternal grandmother and his sister. That would best be provided by regular direct contact but in such a way that it does not adversely affect the paramount relationship which will be with Ms D. It is necessary that such contact be maintained and in respect of his sibling contact, I go further and am of the view that the success of adoption long term (and hence its necessity) depends upon and is conditional on the integration of a measure of contact with his new family life.
- (iii) *The likely effect on the child throughout his life of having ceased to be a member of his birth family*: Ms D is well known to the maternal family. P-M has maintained his close attachments to his maternal grandmother and attachments with other members of his extended family despite or perhaps because of the close attachment to Ms D and the unusual and consistent level of direct contact that has been provided for. Ms D's extended family, bar one relative, are in Brazil which necessarily restricts both P-M's ability to form close relationships with them and Ms D's own extended family support. In making an order now regard needs to be had of the position when P-M is an adult. As presently envisaged, P-M will have maintained contact with his birth family in circumstances where they will have no legal relationship with him. There is a balance to be struck between the benefits of permanence and exclusive parental responsibility and the positive attachments to others.
- (iv) *The child's age, sex, background and relevant characteristics*: Like most 7 year olds, P-M needs stability, security and

unconditional love. These factors are enhanced in a circumstance where they cannot be provided by a birth family and a child is already 7 years of age with a history of one placement breakdown and difficult birth family circumstances.

- (v) *Any harm the child has suffered or is at risk of suffering:* Ms JP accepts that she cannot care for P-M and that he is likely to suffer harm if he is returned to her care. She strongly supports the placement with Ms D. Ms F for very understandable reasons is not in a position to care for another child. Indeed, a placement with her would expose P-M to circumstances which may pose at least a risk of emotional harm. In fairness, Ms F does not seek that, instead she strongly supports the placement with Ms D and agrees to an adoption order. It is at least arguable that P-M would suffer emotional harm if the relationship with his maternal grandmother and sister were to cease.
- (vi) *The child's religious persuasion, racial origin and cultural background:* P-M's heritage is very different from that of Ms D. He is of Jamaican origin whereas Ms D describes herself as of white Brazilian and Italian heritage. Whether by direct contact or otherwise, P-M's welfare would best be promoted and safeguarded by maintaining his heritage.
- (vii) *The range of powers available to the court:* In order to secure permanent placement with Ms D, the court could make no order and allow the status quo under the care order to continue, make a residence order or a special guardianship order thereby discharging the care order or make an adoption order. All parties now support an adoption order except P-M's mother who argues for a special guardianship order. The key issue will be who exercises sole parental responsibility and which order(s) is/are best able to provide for the child's particular needs having regard to the effect on him during his life of ceasing to be a member of his birth family.
- (viii) *Contact:* s 46(5) of the 2002 Act imposes a duty on the court before making an adoption order to consider whether there should be arrangements for allowing any person to have contact with the child. Section 26(5) envisages situations like this case where a s 8 Children Act 1989 application is made for contact which is heard at the same time as the application for an adoption order. Contact is a matter for the court and I have regard to the court's approach to contact since the 2002 Act which is described in *Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535, [2008] 2 FLR 625 at paras [146]–[151] and *Re R (Adoption: Contact)* [2005] EWCA Civ 1128, [2006] 1 FLR 373 as reiterated by the Court of Appeal after the 2002 Act came into force in *Oxfordshire County Council v X, Y and J* [2010] EWCA Civ 581, [2010] 3 WLR 1746, [2011] 1 FLR 272. I have come to the conclusion that P-M's welfare throughout his life requires the maintenance of a relationship with his maternal grandmother and sister through whom there will be a relationship with his extended birth family.

Those relationships are important but must take second place to the primary relationship of parent and child which is the relationship between Ms D and P-M. The contact should contribute to the reassurance and stability of P-M, ie his feeling of identity without creating a risk of disruption. I accept the principle that there should be regular direct contact for P-M with his maternal grandmother and sister and the agreement come to between the parties that P-M would benefit from maintaining a relationship with his paternal grandparents.

[29] Will the severance of the legal ties with his birth family in the circumstances I set out above promote his welfare throughout his life? I have come to the conclusion that it will by giving to Ms D the exclusive attributes of a parent that P-M requires. No other order will provide for P-M's needs in the same way. Adoption is not antagonistic to contact on the facts of this case. They are complimentary concepts but there is a clear and unavoidable principle on the facts of this case. If the court had to choose between adoption and contact, which it does not, I would unhesitatingly choose adoption for this young man. That said, I have already considered in principle whether contact arrangements with others are in P-M's best interests and I have decided that they are. Accordingly, I conclude that an adoption order should be made. The next question is whether a contact order should be made.

[30] I have concluded that there should be continuing contact between P-M and his maternal grandmother and sister. I am of the view that absent a situation of crisis where I would expect Ms F to be open and honest with Ms D and the local authority, that contact need not be supervised. Ms F is quite capable of organising activities and providing a warm and nurturing environment. If she needs help she must ask for it. She must also include Ms D in some of the contact arrangements so that these two important women learn to work with each other. Ms F will remain a psychological and actual grandmother *without parental responsibility or legal rights* and Ms D will become a parent with exclusive parental responsibility.

[31] I detected the real sense of Ms D's position in relation to contact when she was cross-examined on behalf of the child. She was more flexible and less anxious than when she felt she was being exposed to examination or criticism. In my judgment she could cope with more contact than three visits a year and I have gratefully adopted an analysis by the children's guardian which is set out in a schedule and which amounts to contact every 6 or 7 weeks ie eight contact visits, each of which has a different character as explained by the guardian at para 5 of her final analysis. It should be noted that only three of those visits are full day contact visits with both Ms F and his sister, only the Christmas holiday visit includes the boys living with Ms F and at least two contact visits are for P-M and his sister on their respective birthdays.

[32] I am reassured by the contact that there has been since January 2013 when I intimated my decision on best interests. Everything has happened in accordance with the advice given to this court. Although it can be argued that this demonstrates that a contact order is not necessary, for the reasons I consider below, I do not believe that to be a comprehensive enough analysis of the facts in the context of the legal test which should be applied.

[33] I have considered long and hard the divergent views about whether a contact order should be made and if so, on what basis. On the one hand an order could expose P-M to instability and split loyalties arising out of the reasonable anxieties that Ms D would harbour with the risk that she would not be able to cope with what she says she can commit herself to voluntarily. A contact order could tend to be antagonistic to the rationale for the adoption order that I intend to make and everyone agrees that nothing must be allowed to put at risk the placement that P-M has with Ms D. On the other hand, Ms D must understand that it is my firm view that provided circumstances do not change for the worse, the contact that I have set out is in P-M's best interests and I expect him to be afforded the benefit of it. In particular, the contact between P-M and his sister is necessary for his welfare to be safeguarded throughout his life, ie in the long term.

[34] As the parties know only too well, I have changed my mind more than once. For what I believe to be good legal and evaluative reasons I intend to hold to the view with which I concluded the proceedings in January. I have decided to make a limited contact order alongside an adoption order. For me, they are inextricably linked on the facts of this case: both orders are necessary and the success of the adoption order is in part dependent upon a minimum level of contact with P-M's birth family, particularly his sister and maternal grandmother. The balance of contact though desirable should not form part of an order as in my judgment that would go too far and be potentially antagonistic to the exercise of Ms D's parental responsibility.

[35] Although this is not a part of the reasoning of the court, it has to be remarked that all too often adoption orders are made with all the best intentions for continuing sibling contact which are then thwarted for no particularly good reason. Too often the lack of post-adoption support or any pro-active communication causes parties to drift so quickly that the absence of contact over time becomes a barrier with the very understandable fear on the part of adopters that its recommencement will be so unsettling that it may damage a placement; a fear that may well be justified. Perhaps more often than hitherto, courts faced with agreed contact post adoption might consider whether an order can give reassurance to the child by keeping an enduring relationship that is important and for some children critical to their welfare throughout their lives.

[36] I shall make the adoption order and a limited contact order in the form suggested by the children's guardian. Insofar as one or more of the parties asked for a further review of the circumstances of the placement and contact, I have concluded that this is not appropriate. Absent a new application, the court's role has come to an end and the parties, and in particular P-M and Ms D, should be free from the pressures of litigation.

Order accordingly.

Solicitors: *Dowse & Co* for the applicant
A local authority solicitor
Powell Spencer & Partners for the second respondent
Osbornes for the fourth respondent
Mills Chody for the fifth respondent

SAMANTHA BANGHAM
Law Reporter