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Case No: ZC58/14

IN THE SINGLE FAMILY COURT
(SITTING AT THE HIGH COURT)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/10/2014

Before :

MRS JUSTICE PAUFFLEY

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Re LRP (A child) (No. 2) (Leave to oppose adoption application)

Between :

CH	**Applicant**
- and -	
The London Borough of Merton	**Respondent**

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Philip Squire for the mother, CH
Helen Soffa for the London Borough of Merton

Hearing date: 2nd October 2014

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Approved Judgment

I direct that copies of this version as handed down may be treated as authentic.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Pauffley :

Introduction

1. CH's application – for permission to oppose the adoption application relating to her 8 month old daughter LRP – was listed on 2nd October with a time estimate of one hour. Several important documents were filed at about 10.30 as I was about to begin my list which included four other cases. The two judgments from the care proceedings relating to CH's two older children as well as LRP were not in the court bundle though had been supplied on the morning of 2nd October. The hearing occupied the greater part of the morning. Unusually, I heard oral evidence.

2. One of the reasons I did not give judgment at the end of the hearing was because a significant number of other litigants, some with commitments elsewhere during the afternoon, were waiting to be heard. I also needed time to properly reflect upon documents supplied that morning.

3. An additional reason for adjourning before delivery of my judgment was because the application inevitably has, as Mr Squire suggests, "huge implications." Either the adoption application will proceed unhindered towards final determination or it will become a dispute of considerable proportions. Whatever my decision, the impact upon CH as well as LRP's prospective parents will be immense.

Legal framework

4. The legal framework is well known. As Mr Squire accepts, Miss Soffa's exposition of the applicable law is masterful. My intention is to summarise the essential themes emerging from *Re P (Adoption: Leave Provisions) [2007] 2FLR; Re B [2013] 2FLR 1075; Re B-S (Adoption: Application of s.47(5)) [2013] 2FLR 1035; Re W(Adoption Order: Leave to Oppose) Re H (Adoption Order: Application for Permission to Oppose) [2014] 1FLR 1266.*

5. The grant of leave is a two stage process. The first question is whether there has been a change of circumstances. The change must be relevant or material to the questions of whether leave should be granted. It must be of a nature and degree sufficient to reopen consideration of the issue but the statute does not require that the change be significant. Whether or not there has been a relevant change in circumstances since the placement order must be a matter of fact for the good sense and sound judgment of the tribunal hearing the application (*Re P supra).*

6. The bar should not be set too high because parents should not be discouraged from bettering themselves or from seeking to prevent the adoption of their child by the imposition of a test which is unachievable (*Re P; Re B-S supra).*

7. If a change in circumstances is established, the court must go on to consider whether leave should be given. It will be necessary to evaluate the parent's ultimate prospects of success in opposing the adoption application. Are they more than just fanciful? Do they have solidity? In that connection, the judge must remember that the child's welfare throughout her life is paramount. The judge will bear in mind events from the past, the current state of affairs and what will or may happen in the future. There will be cases where despite the change in circumstances, the demands of the child's

welfare are such as to lead the judge to the conclusion that the parent's prospect of success lacks solidity (*Re W; Re H [2014] 1 FLR 1266).*

8. When performing the welfare evaluation, weighing and balancing the parent's ultimate prospects of success as well as the impact upon the child if the parent is or is not given leave to oppose, ten points should be borne in mind.

- Prospect of success relates to the prospect of resisting the making of an adoption order not the prospect of ultimately having the child restored to the parent.

- The two issues – change in circumstance and solid grounds for seeking leave – almost invariably will be intertwined.

- Once a change of circumstances as well as solid grounds for seeking leave have been established, the judge must give very careful consideration indeed to whether the child's welfare really does necessitate the refusal of leave. Adoption is of "last resort" and "where nothing else will do."

- The judicial assessment must take into account all of the risks as well as the advantages of each of the two options.

- The court must have proper evidence but this does not mean judges will always need to hear oral evidence. Typically, an application under s.47(5) can fairly and appropriately be dealt with on the basis of written evidence and submissions.

- The greater the change in circumstances and the more solid the parent's grounds for seeking leave to oppose, the more cogent and compelling the arguments based on the child's welfare must be if leave to oppose is refused.

- The mere fact that a child has been placed with prospective adopters cannot be determinative nor can the mere passage of time.

- What is paramount in every adoption case is the welfare of the child "throughout his life." The court should take a medium and a long term view of the child's development and not accord excessive weight to what appear likely to be short term or transient problems.

- Judges must be careful not to attach undue weight to the argument that leave should be refused because of the adverse impact upon the adopters, and thus on the child, of their having to pursue a contested adoption application. In appropriate cases the disruptive effects of an order giving a parent leave to oppose can be minimised by firm judicial case management.

- Judges are urged to bear in mind the wise and humane words of Wall LJ in *Re P (supra) – "the test should not be set too high because ... parents ... should not be discouraged either from bettering themselves or from seeking to prevent the adoption of their child by the imposition of a test which is unachievable."*

The background

9. The background, essential to an understanding of my decision on this application, is set out in two judgments from 2013. The first, dated 1st March Re CtL, CmL, TLP, ARP, MM and JB (Children) (Fact finding: Protection from Sexual Harm) [2013] EWHC 2133 (Fam), comprised my conclusions both in relation to fact finding and welfare determination for the two older children of CH and RP, TLP and ARP, who were then 19 months and 6 months old respectively. Their brief history is set out between paragraphs 18 and 24 of the March judgment. CH's early history is very briefly summarised in paragraph 44. My overall findings in relation to the P/C family home – where CH was living until 29th July this year – appeared between paragraphs 78 and 87. CH's attitude towards RP's father who had been charged with and pleaded guilty to possessing 152 indecent images of children – between levels I and V – is described between paragraphs 89 and 91.

10. In a discrete section of the March judgment, between paragraphs 117 and 123, headed "*Can CH separate herself from the influences of RP and RC,*" I set out the pertinent evidence on that issue as well as my conclusions.

11. The welfare determination for TLP and ARP appeared between paragraphs 158 and 172 of the March judgment.

12. The entirety of the judgment given on 12th December Re LRP (a child) (care proceedings: placement order) [2013] EWHC 3974 (Fam) is relevant to this application as the backdrop to CH's application.

13. Neither parent attended the final contact visit with LRP which had been scheduled for 16th December. On 19th December, LRP was placed with prospective adopters. There was no communication between the parents of LRP and the local authority between December 2013 and March 2014.

14. On 5th March, CH made contact with the local authority by telephone. She explained she had separated from RP in January although they continued to live in the home of RP's parents. CH asked the allocated social worker specifically whether information about her would be shared were she to move out of the area. A male voice could be heard in the background. CH confirmed it was that of RP.

15. On 24th June, LRP's prospective adoptive parents lodged their application to adopt. The first hearing was in the Central Family Court on 18th August when the mother appeared in person "to appeal the adoption" of her daughter. The proceedings were transferred to me, as was entirely appropriate.

CH's case

16. CH's case is set out in a number of written statements notably her own of 18th August, a second in preparation for the hearing on 2nd October and a third in response to the allocated social worker's written evidence. In addition, CH is supported by her sister and brother in law with whom she lives, as well as her brother and his partner each of whom is described as a member of CH's family support network. All of those mentioned has made at least one written statement.

17. The key element of CH's case is that the relationship she had with RP, LRP's father, "broke down irrevocably in January 2014, after losing LRP." She refers to the fact

that over a period of some three hours she has made an 11 page statement to the police in relation to domestic violence and has agreed to attend court in the event of prosecution. CH maintains that she has no contact whatever with RP's family and she has moved herself "completely away from the London area." Moreoever, says CH, she has a fully supportive family network in place.

18. It is CH's belief, as she explained in her first statement, that she has made the changes and with the healthy, loving support of her family, "there is no longer any risk to (herself) or (her) daughter; and therefore no need for (her) daughter to be adopted or with anyone other than (her) and (her) family." CH goes on to explain that she was "never the risk or seen as an unfit parent." According to her, there was never a problem with her or her parenting skills.

19. CH explained in her second written statement that RP had moved on with his life, had met a woman with two children and moved in with her. CH had remained living with his parents because RP's mother had allowed her to stay. RP had used CH, so she maintains, "like a punch bag" when he visited his mother. CH had known she had to get away, but she also knew she had nowhere to go. She had needed time to make sure her family would accept her back in to their lives. CH had been so sure she was hated by her family. It had taken her a while to trust and believe she would be welcome.

20. The mother suggests she is no longer "that weak girl" who sat before me in the past. She has suffered, she says, what no woman should ever have to suffer but she has "come out fighting and stronger than ever." CH believes she is "better, stronger and more equipped than ever to be a good solid and strong parent" to her daughter.

21. In her final written statement for this hearing, CH blames RP for all the decisions about the lack of contact between herself and LRP saying that he "dealt with it" and she was "never informed." CH also provided a date for her move to Ramsgate – 29th July – saying that she was "still very much being manipulated by RP and his family"; she was "still being abused" and she had been "scared to walk away" but she had "got there in the end and not before it was too late." CH continues, "I done it and that is all that should matter now." She also relates that she is "getting therapy, going to a domestic violence support group and about to start college."

22. Towards the end of her final statement, CH disagrees that she abandoned LRP saying the records would confirm that the previous social worker believed she was unstable, unfit to be a mother and it had been on her advice that she had left the mother and baby placement. CH suggests social services "were going to take LRP away no matter what (she) did." CH also contends that she has proof from a qualified person that AG's assessment (the independent social worker who gave evidence in December last year) was "very wrong and so far from the truth." CH says she has had a mental health assessment which proves that her condition is of a mild nature and can easily be resolved. She complains that she was never offered therapy; and that an assessment by a social worker is not a medical or mental health assessment.

23. When she gave her oral evidence, CH developed the themes comprised within her written statements. She said that RP would return to the home she shared with his parents and that she was "getting regular beatings from him." His mother had manipulated her by persuading her not to report her son to the police. The last time he

had assaulted her she "did not think (she) would live." CH had been "tortured in to believing no one would love (her) and it was the life (she) deserved. So (she) didn't fight. (She) stayed and suffered that torment and torture rather than change (her) life." CH said she had gone to Ramsgate because she "feared for (her) life." Later she added that RP had treated her as a punch bag between January and July. He had come to his mother's home weekly to take her money and give her beatings. She had been "frightened (she) was going to end up dead. He had all the actions and mannerisms of a perpetrator." She continued, "When he's got you in his hands, he'll crush you."

24. CH gave further details of the support services she has been involved with since arriving at her sister's home – 4 sessions so far at the Freedom Programme; therapy sessions with a psychologist in the Intervention and Prevention team; engagement with KCA which provides therapeutic help to those with alcohol and drugs problems; six sessions have been offered by an agency, Rainbow, which helps parents deal with sexual factors and identify sexual risks; and there is proposed involvement with Turning Point to deal with issues arising from cannabis use as from 7th October.

25. CH explained that she is committed to achieving change and that the things she has done are not for her daughter's well being but for her own sake. She says she will do "whatever it takes." She has, she said, "come to admit (her) faults and to be as honest as (she) can be."

26. In addition to those matters mentioned within his Position Statement, Mr Squire, on CH's behalf, submits she is not the woman I saw in the previous proceedings; that she really is "pushing back" and her level of insight is above that of the general population. He argues that CH is able to synthesise new thoughts, acknowledges the findings made against her and that decisions made in the past were appropriate. Mr Squire suggests there is a subtle and nuanced decision to be made and that I am now faced with a very different situation – a changed woman with a definite support system around her. In all the circumstances, submits Mr Squire, I can and should find there has been a change of solidity; that the mother is motivated in a way rarely seen; and that although it took her a long time until "the dam broke" she has finally understood how much of a danger RP is.

The first question – assessment of change in the mother

27. I have welcomed the opportunity to reflect as to whether there has been a change in circumstances of a nature and degree sufficient to reopen consideration of the placement order issue. It has been helpful to recall how CH has presented at the various court hearings not just when she was giving evidence, as she did in February 2013, but also when she interacted with me at the interlocutory and final hearings in relation to LRP.

28. The phrase which best describes my overall assessment is that although in some respects there would appear to be early signs of change, in so many others, the situation remains the same. The answer to the first question, sadly from CH's perspective, is in the negative and decisively so. I must explain.

29. CH is an intelligent though, unhappily, a profoundly damaged individual. Her intelligence is innate; she is articulate, a quick thinker and forthright. But her childhood experiences of shocking sexual abuse perpetrated by her father –

experiences I should say which were shared, so it is reported, by siblings – have left their imprint upon her functioning as an adult, as a partner and as a parent. Her difficulties in that regard have not been wiped away as the result of the events from January this year. They will remain with CH until such time as she has engaged, over a lengthy period, and derived real benefit from a programme of counselling and therapy as suggested by AG, an exceptionally impressive independent social worker, during the placement order proceedings.

30. Only then will CH be in a position to make wise judgments about those with whom she intends to form relationships of whatever kind. Only then will she be able to develop an understanding of how she herself has been and may still be at fault. There is no quick fix. Though the work may have begun, it will not be capable of producing beneficial results in only a few weeks.

31. CH, supported fulsomely by her sister, asserts that she is "innocent, never hurt or harmed the children," her only problem was her relationship with RP. Now that no longer exists, she says "there is no legal or ethical reason for LRP to be adopted." Notwithstanding her undoubted intelligence, CH lacks insight and understanding of what the care proceedings centred upon so far as she was concerned. It was not that her "only problem" was her relationship with RP – my findings went a great deal wider than that.

32. What became so plainly obvious during the time that CH was in the witness box on 2nd October, was that she continues – just as before – to cast blame on others; and she will do so using every weapon at her disposal. In order to defend herself, she attacks others perhaps in order to deflect attention away from her own shortcomings. In the previous proceedings, for example, she was vociferous in her quite aggressive criticisms of the local authority for having failed to provide her with accommodation, thus making it impossible for her to separate from RP.

33. The same phenomenon emerges from CH's most recent statements. She does not feel social services did enough to keep her daughter with her family; and although CH accepts she was vulnerable she considers "a lot more should have been done." In similar vein, she maintains she was "made to feel inadequate and forced to believe that (she) was a bad parent and (LRP) was best off adopted." She goes on to complain that "social services took advantage of the weak and vulnerable state (she) was in at the time."

34. CH invites me to accept there is change in that previously she was "a vulnerable mess of a woman … was suffering in so many ways … and did not have the strength left to fight." Now CH argues, she is better, stronger and more equipped than ever to be a good, solid and strong parent." Mr Squire submits the change is real but accepts the comparison exercise is for me, the judge who heard evidence in the earlier proceedings.

35. CH has never seemed to me to represent a "vulnerable mess of a woman." She is feisty. She uses her natural intelligence to argue with vigour for whichever cause she is pursuing at the time. She is unafraid of confronting social workers and others in authority with her strength of feeling especially when she perceives she is being criticised. The contents of paragraph 161 of the 1st March judgment where, amongst

other things, she accuses the allocated social worker of having written "a book of dirt," demonstrate the point.

36. At this hearing, CH's striking descriptions of "being used like a punch bag", being "tortured" and "fearing for (her) life" seemed to me to be characteristic of the overly dramatic tone which she has been prone to assume throughout these two sets of proceedings. CH is not a physically feeble woman. It's hard to conceive of her being assaulted regularly and often by RP over several months this year because she would not agree to hand over a proportion of her state benefits. CH is infinitely more powerful and resourceful than that.

37. Throughout the first and second substantive hearings in relation to her three children, CH has presented alongside and supportive of RP and he of her (see paragraph 120 of 1st March judgment). She never appeared to be in the least bit frightened of or controlled by him. They had a bond, a friendship and also a sexual relationship which each was prepared to deny for their own purposes. Their partnership has always appeared to me to be that of equals though RP was unquestionably capable of flaring into violence, as he did on 18th January 2012, leading to the reception into care of TLP.

38. It is also relevant to consider that there have been separations in the past as between CH and RP, though not of the length which, it is claimed, applies to their most recent relationship breakdown. CH suggests this separation resulted from the loss of LRP and yet her own and RP's stance at the December 2013 hearing had been united. They had wished me to know that they "had fought to the end … and were not giving up." With great dignity, both parents attended together to listen to my December judgment.

39. Whether this separation between CH and RP began in January, April or July this year, or at some other time, is very difficult to know. I am bound to remind myself that in February last year CH told me a blatant lie as to the nature of their relationship. She did so, without question, to improve her chances of having her sons restored to her care. She is, I am sorry to say, just as capable now as she was then of lying about matters of importance to assist her in this application.

40. CH is adamant in her desire that RP should know nothing of this application or what she seeks to achieve by it. Asked for her reasons at this hearing, CH said she does not want him to have any information "to put her at risk;" and she added that she has "a number for a 24 hour injunction." I remind myself that when CH and RP met in 2010, they lived together in Margate before moving to South London. In April 2012, they were living in Ramsgate, near CH's family. The notion that CH is or could be at physical risk because RP knows about this application is more than curious. It makes no sense at all. I am as sure as I can be that there is some other reason which CH is unwilling to divulge. There is a level of obscurity surrounding her separation from RP.

41. It should also be emphasised that CH's move away from what I found to be a profoundly unhealthy household in which it was impossible to ensure the safety of any child against the risk of sexual exploitation dates back to only 29th July.

42. The final matter for mention in relation to change is as to whether CH has undergone an alteration in relation to her capacity for engagement with professionals. I am afraid to say I perceive no change at all.

43. In the earliest days of LRP's life, I made strenuous efforts to ensure that CH and she were placed together. On 14th October, at a time when she was living with LRP in a specialist foster home, CH appeared in court behind Mr Squire and she was beaming. At that stage, she was cooperative, compliant and engaged with the local authority social workers. One week later, on 21st October, CH left the foster home, returning to live with RP in London.

44. The message sadly, from all that has happened in the period since July 2011, when TLP was born, is that repeatedly CH has been shown to be unable to put her children first. The reason for that, almost certainly, stems from her psychological limitations, her emotional vulnerability and her dependencies upon others. Parker J and I afforded her significant opportunities to demonstrate commitment towards her children. On each occasion, CH has put her own need for the comfort and reassurance of her relationships with RP and his family ahead of her children's well being.

45. In a case of this kind, the examination has to be for signs that the parent has begun to understand how her own failings have contributed to what has gone so badly wrong for her children. CH remains intent upon placing blame upon others – the local authority, RP, his mother.

The second stage of the exercise

46. In the light of my findings in relation to the first question, it is unnecessary to go on to the second stage – to evaluate CH's eventual chances of successfully resisting the making of an adoption order. Had I been required to do so, then I should have conducted the discretionary exercise envisaged in *Re B-S (supra)*. I can say, without hesitation, that I would have assessed CH's prospects of success as nil. Exposing her to the considerable ordeal of a contested adoption application would be nothing short of cruel in circumstances where she would be bound to fail.