Neutral Citation Number: [2013] EWHC 1957 (Fam)

Case No : TE13C0001

HIGH COURT OF JUSTICE
MIDDLESBROUGH DISTRICT REGISTRY

Russell Street
Middlesbrough
TS1 2AE

Date: 22nd May 2013

B E F O R E:

MR JUSTICE BODEY

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Re W

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MISS MCKENZIE appeared for the APPLICANT LOCAL AUTHORITY
MRS ASKINS appeared for the **1ST RESPONDENT** (mother)
MISS GAMBLE appeared for the **2ND RESPONDENT** (father)
MR LEIGH appeared for the **CHILDREN'S GUARDIAN'S**

JUDGMENTMr Justice Bodey

1. This is an application relating to a girl, G, who was born in 2000 and is now aged twelve and a half. She is presently in foster care in circumstances to which I will come, under a series of repeating Interim Care Orders. The application is by the Local Authority for permission to invoke the inherent jurisdiction of the High Court, with a view to the Local Authority seeking the revocation of an Adoption Order regarding G. That Order was made in or about 2004, when she was aged four. Such revocation is supported by the adoptive mother, whom I will call Mrs Y and by (or at least not opposed by) the adoptive father, Mr Y. The application is supported by the Children's Guardian.

2. In 2005, not long after the Adoption Order was made, Mr and Mrs Y separated. G remained with Mrs Y and the two natural children of Mr and Mrs Y, who are her elder brothers. Thereafter, Mr Y had contact to G. To cut a long and unhappy story very short, the adoption proved unsuccessful; Mr and Mrs Y appear to have been unable to relate to, or respond to, or manage G's particular needs and / or behaviours. They reported her variously as "soiling", "lying", "hoarding food", "showing sexualised and risky behaviour", "having poor hygiene", "having inability to make suitable friends", and

"being malicious and vindictive". She was obviously a very troubled little girl with understandably low self-esteem and many problems, the precise causation of which does not matter and might well be difficult to determine. From time to time, the Child & Adolescent Mental Health Service became involved, as did Social Services, in their attempts to support the family; but to no avail. The parents felt they had "nothing left to give". Thus, a time came in November 2012 when, with the consent of Mr and Mrs Y, G was moved from their family and to foster carers. She has been there ever since and is doing very well. I am told that there are no behavioural problems any more at home nor at school and that the social worker is hopeful that this may be the final foster placement. That said, G still shows signs of attachment to the Y family and has told both the social worker and her Children's Guardian that she would like to return to live with them if possible. She has been told that it will not be possible. She has written a letter to the court, unaided, which is referred to in the Children's Guardian's report of Anne Hutson, dated 24th March 2013, where she says:

> "*My letter to the Judge: I think that I am allowed to see my mam and dad [Mr & Mrs Y] again. Because I miss them. But I never could understand why they didn't want to see me or ring me. I am very happy and settled with [the foster carers] because they are very kind to me and I feel loved and cared for …..*"

3. As for Mr and Mrs Y, they now want no contact with G and nothing more to do with her. Hence their positions as outlined at the outset of this Judgment. In the care proceedings which started on 28th December 2012, their response to the Local Authority's Threshold Statement was in the following terms:

> "*Threshold conceded by the first and second respondent parents [Mr and Mrs Y]; the first and second respondent parents accept that they were unable to meet their daughter's needs and that they have abandoned her care to the local authority*."

Those care proceedings are ready for determination and there has been discussion about the merits and possible de-merits of my making a Final Order today.

4. The Local Authority have thought long and hard about how best to provide for the emotional and psychiatric wellbeing of G. They have informally consulted a very well known child and adolescent consultant psychiatrist, a Professor Z. His informal advice has been that it would be in the best interests of G for all ties to be severed between herself and the "Y's". The Local Authority would like to be able to obtain a formal report from him to support the proposed revocation application. It is right to say that there is no CV of Professor Z available, nor any details about his charging rates, nor as to when he could produce a report, but those omissions are surmountable.

5. The Local Authority say that this rejection by the Y family has caused and is causing a unique form of significant emotional and psychological harm to G, and in so doing they rely on these opinions, informally obtained, from Professor Z. So it is that they wish to be permitted to apply for a revocation of the Adoption Order or removal of the parental responsibility of Mr and Mrs Y. The Local Authority also rely at page 6 of their Skeleton

Argument on a range of other grounds for removal of parental responsibility, to do with how Mr and Mrs Y might misuse their parental responsibility, were it not removed. However, I am quite clear that those sort of reasons would be wholly insufficient even to create a prima facie case for revocation or removal and I say no more about those aspects, concentrating therefore on the question of G's welfare.

6. It is common ground (a) that the only statutory ground for revocation of an Adoption Order under the Adoption & Children Act 2002 is inapplicable here and therefore (b) that the only possible vehicle for revocation would be the inherent jurisdiction of the High Court. It is also accepted that the inherent jurisdiction can be used for revocation, but only in exceptional circumstances. In the case of *Re B (Adoption Order: Jurisdiction to Set Aside)* [1995] Fam 239, Swinton Thomas LJ said:

> "*To allow considerations such as those put forward in this case to invalidate an otherwise properly made Adoption Order would in my view undermine the whole basis on which Adoption Orders are made, namely that they are final and for life, as regards the adopters, the natural parents and the child. In my judgment, counsel is right when he submits that it will gravely damage the lifelong commitment of adopters to their adoptive children if there is a possibility of the child, or indeed the parents, subsequently challenging the validity of the Order*."

Again, in ***Re W: Webster & Anor v Norfolk County Council*** **[2009] EWCA Civ 59**, Wall LJ stated:

> "*Adoption is statutory process; the law relating to it is very clear. The scope for the exercise of judicial discretion is severely curtailed. Once Orders for Adoption have been lawfully and properly made, it is only in highly exceptional and very particular circumstances that the court will permit them to be set aside*."

7. If permission were given, a variety of consequences would follow. I flag up two examples. First, issues would arise as to whether G should have her own representation, this being on the basis that her wishes and feelings, (not to lose touch with the Y family) do not correspond with the Children's Guardian's views as to her best interests (to create a 'fresh start'). It is suggested that Professor Z be instructed to see G and to assess her maturity and her ability to give instructions. That would mean, yet a further professional interview and involvement in her life.

8. Second, there is the thorny question of serving the natural parents with the application to revoke the Adoption Order. They have had nothing to do with G since before 2004. Enquiries have been made of the relevant Social Services who hold records relating to the birth parents. The natural father is said to be a Schedule 1 offender. His whereabouts are thought to be unknown. As regards the natural mother, enquiries of the relevant Social Services show that both her teenage children are in care, in separate foster placements; and that one of them is about to be rehabilitated back to her, although he does not wish to be so returned. The relevant social worker told the Local Authority that she, the natural

mother of G, had said she did not feel able to care for the other one of her two children, due to his behavioural problems. The social worker for one of the children spoke of the natural mother having significant stressors (as at April 2013), complaining of being unable to sleep, of worry about the finances, and of worry about two people close to her who were very unwell. That social worker was concerned about whether she would be able to cope additionally with the news of G's adoption breakdown. He also felt that the disclosure of information to the birth family would cause difficulties for one of G's birth brothers who has severe behavioural problems and is considered to lack the necessary skills and maturity to cope with learning about the adoption breakdown of G. It was feared there would be a detrimental effect on his wellbeing and behaviour. In short, the enquiries made by the Local Authority suggested that the birth family members would not be in a position currently to offer anything to G in the form of care or contact, due to their own particular circumstances.

9. The Children's Guardian submits that it would be inconceivable that the court could proceed with a revocation application without giving the natural family notice of that application. I understand that to have been also the view of the S9 Judge, who has case managed this case up to this hearing. It is borne out by an authority just put before me, ***Re W (A Child)* [2010] EWCA Civ 1535**, in which Thorpe LJ said at paragraph 12:

> "*The consequence of setting aside an Adoption Order seems to me self-evidently a reversion in law to the status quo ante*."

Since, in other words, the parental responsibilities of the natural parents would thus revive on the revocation of the Adoption Order, it is almost impossible to see how the Court could proceed without giving them the opportunity to be heard.

10. If the natural parents were to be served, there is no way of knowing what attitude they would take: whether they would support or oppose the application to revoke the Adoption Order, or whether they would remain neutral. If they supported it, there is no knowing what effect it might have on G, to know that information. She might be pleased, or fearful, or anything in between. Her wishes and feelings would presumably have to be ascertained, putting her under further stress. If they opposed the application, then again one asks what effect that would have on G, who might feel that she was being doubly rejected.

11. This brief synopsis forms the background to the decision regarding the application for permission to invoke the inherent jurisdiction. It could only be allowed if it were in the best interests of G. The pointer in favour of the application is the possibility, let us say probability, that it would help G to come to terms with what has happened in her life, by giving her a completely 'fresh start', although even if there is that probability, there is equally a risk of G's becoming the subject of ongoing litigation (for example, by the birth family, if they sought contact) which would itself be detrimental to her ability to settle down with her foster carers. On the other side of the balance sheet, the factors pointing against revocation are the fact that adoption is final and the damage which would be done by seeming to undermine that principle. I asked in argument what would happen when the next such case arises, where a child may be emotionally upset and disturbed by

rejection by his or her from adoptive parents, but not as much so as G? There is the problem of the birth family needing to know of the application and the potential consequences of that, both for them and for G. Then there is the fact that Professor Z would presumably have to be formally instructed to report on the perceived advantages to G of a revocation, about which he has thus far only spoken informally; and there is the possibility of an assessment being required of G's ability to instruct her own solicitors. Last, there is the considerable public expense, which this overall process would entail; not a ground in itself for not allowing a revocation, but a secondary consideration.

12. Balancing the advantages and disadvantages, I have come to the clear conclusion that I should refuse leave to invoke the inherent jurisdiction. It is far less likely than likely that a Revocation Order would ultimately come to be made and the 'process' would stir up all the sorts of potential problems at the human level which I have tried to envisage. In short, it is a Pandora's box and the court should in my view only go there if it seems proportionate, necessary and reasonably likely to be ultimately successful. I do not think that the application fulfils those pre-requisites.

13. The fact is that G is doing very well at the foster placement, a placement which may, if the Care proceedings are concluded sooner rather than later, be consolidated and made permanent for her. If everything is well explained to her by the social worker in child-appropriate language, it may well be that this whole issue will naturally resolve and that, like any non-adopted child removed from her parents to other carers, G will gradually settle down in her new environment. There must be a reasonable expectation that this is actually what will happen once the litigation process is withdrawn from her life.

14. Turning then to the Care proceedings, as I say it seems to me to be of the greatest benefit to the child and all concerned that these are now brought to an end. They have been running for getting close to what is now the 26 weeks 'deadline' under the new approach. I have read the Care Plan dated 19th March 2013; there is no issue about the Threshold being met. All parties agree that there is to be a Care Order and, in my judgment, the sooner it is made the better. I shall therefore make it today.