RE CB (A CHILD) (NO 1) (ADOPTION APPLICATION: PERMISSION TO OPPOSE)
[2014] EWHC 4532 (Fam)

Family Division

Moylan J

19 December 2014

Public law children – Adoption application – BIIA, Art 15 – Application for permission to oppose – Whether there had been a sufficient change in the mother's circumstances

The now 6-year-old child was accommodated under s 20 of the Children Act 1989 in 2010 after she was found at home alone in a severe state of neglect when she was 22 months old. A medical assessment revealed that she was suffering from significant global delay possibly as a result of sensory deprivation and neglect. Care and placement orders were made in 2012 and the child was subsequently placed with prospective adopters. The mother's applications to appeal and for judicial review were refused. The prospective adopters now applied for an adoption order but the mother remained firmly opposed to the child's adoption. She claimed that her own circumstances had now improved and she sought the child's return to her care. The guardian's opinion was that, if the child were moved from her current carers, the distress to her would cause such damage that she would be at significant risk of suffering significant emotional harm. The mother, supported by the Latvian authorities, applied for: a transfer of the proceedings to the Latvian court under Art 15 of Council Regulation (EC) No 2201/2003 of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIA) (2003) OJ L 338/1 (BIIA); permission to oppose the adoption application; and contact. The applications were opposed by the local authority, the prospective adopters and the guardian. Relevant documents had been disclosed to the Latvian authorities and representatives were present at the proceedings.

Held – dismissing the mother's applications –

(1) The application to transfer the proceedings to Latvia under Art 15 of BIIA had to fail because BIIA did not apply to decisions on adoption or to measures preparatory to adoption. It was clear that Art 15 did not apply to this case or the applications before the court, save, possibly, the contact application. However, it would make no sense to transfer that application alone even if it was otherwise merited (see paras [105], [109]).

(2) In any event, England was now clearly the more appropriate forum. The courts and State authorities here had been involved with the child and making decisions about her welfare since March 2010. In those circumstances, there was no basis for concluding that the Latvian courts would be better placed to make decisions concerning her welfare (see para [110]).

(3) Applying the two-stage test set down in s 47(5) of the Adoption and Children Act 2002, the mother had not demonstrated a sufficient change in her circumstances. Even if there had been a sufficient change of circumstances, she had failed to satisfy the second stage of the test: she realistically had no prospect of successfully challenging the adoption application (see paras [122], [123]).

(4) Adoption was in the child's best interests. There was no other option available to the court because every other option would introduce an element of instability which would cause the child significant harm. The evidence established that the child was particularly vulnerable and she had a compelling need for long-term security and

stability. The only outcome in this case which could provide such long-term stability and security was adoption (see paras [123], [125]).

(5) For the same reasons, contact with the mother would be contrary to the child's best interests. It remained the case that the risk of disruption which contact would be likely to cause was too great to permit it. The mother's powerful opposition to any course other than one leading to the child's reunification with her would inevitably result in contact being emotionally confusing and harmful (see para [128]).

Statutory provisions considered

Family Law Act 1986, Part I, s 5(2)
Children Act 1989, ss 1(1), 20, 31(2)
Adoption and Children Act 2002, ss 1(2), 22, 47(5), 52(1)(b)
European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Art 8
Vienna Convention on Consular Relations 1963, Art 37
United Nations Convention on the Rights of the Child 1989, Arts 20(3), 21, 30
Council Regulation (EC) No 2201/2003 of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIA) (2003) OJ L 338/1, Arts 1(3)(b), 15, 47(5)

Cases referred to in judgment

B (A Child) (Care Proceedings: Threshold Criteria), Re [2013] UKSC 33, [2013] 1 WLR 1911, sub nom *Re B (Care Proceedings: Appeal)* [2013] 2 FLR 1075, [2013] 3 All ER 929, SC

B-S (Children) (Adoption Order: Leave to Oppose), Re [2013] EWCA Civ 1146, [2014] 1 WLR 563, sub nom *Re B-S (Adoption: Application of s 47(5))* [2014] 1 FLR 1035, CA

C and B (Care Order: Future Harm), Re [2001] 1 FLR 611, CA

E (A Child) (Care Proceedings: European Dimension) Practice Note, Re [2014] EWHC 6 (Fam), [2014] 1 WLR 2670, sub nom *Re E (Brussels II Revised: Vienna Convention: Reporting Restrictions)* [2014] 2 FLR 151, FD

J and S (Care Proceedings: Appeal), Re [2014] EWFC 4, [2015] 1 FLR 850, FC

Keegan v Ireland (Application No 16969/90) (1994) 18 EHRR 342, ECHR

LB v London Borough of Merton and CB (A Child) [2013] EWCA Civ 476, [2014] 1 FLR 1066, sub nom *Re CB (A Child) (Adoption Proceedings: Lack of Care Order)* [2013] All ER (D) 29 (May), CA

M (Brussels II Revised: Art 15), Re [2014] EWCA Civ 152, [2014] 2 FLR 1372, sub nom *Nottingham City Council v LM and* Others [2014] All ER (D) 193 (Feb), CA

P (A Child) (Adoption Proceedings), Re [2007] EWCA Civ 616, [2007] 1 WLR 2556, sub nom *Re P (Adoption: Leave Provisions)* [2007] 2 FLR 1069, CA

R (A Child) (Adoption: Judicial Approach), Re [2014] EWCA Civ 1625, [2015] 1 WLR 3273, sub nom *Re R* [2015] 1 FLR 715, CA

Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 460, [1986] 3 WLR 972, [1986] 3 All ER 843, [1987] 1 Lloyd's Rep 1, HL

V (Forum Conveniens), Re [2004] EWHC 2663 (Fam), [2005] 1 FLR 718, FD

W (A Child) (Adoption Order: Leave to Oppose), Re; Re H (Children) (Adoption Order: Leave to Oppose) [2013] EWCA Civ 1177, [2014] 1 WLR 1993, sub nom *Re W (Adoption Order: Leave to Oppose); Re H (Adoption Order: Application for Permission for Leave to Oppose)* [2014] 1 FLR 1266, CA

Christopher Miller for the applicant
The respondent appeared in person
Melanie Carew for the guardian
Ian Griffin for the prospective adopters

Cur adv vult

MOYLAN J:

[1] These proceedings concern CB who was born in April 2008, so is now aged 6½. The parties to the proceedings are: the London Borough of Merton, represented by Mr Miller; the mother, who has acted and is acting in person; CB represented, through her guardian, by Miss Carew; and the prospective adopters of CB, who have made an adoption application, represented by Mr Griffin.

[2] There have also been present in court during the course of the hearing His Excellency the Ambassador of the Republic of Latvia, the Latvian Consul and Mr Skudra, from the Latvian Central Authority, which is part of the Latvian Ministry of Justice. Mr Skudra and the Central Authority have made representations or submissions, both in writing and orally. CB's half-sister was also present during the course of the hearing.

Application

[3] This hearing has been listed for the determination of three applications:

(a) an application under Art 15 of Council Regulation (EC) No 2201/2003 of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIA) (2003) OJ L 338/1 (BIIA) for jurisdiction to be transferred to Latvia. This application was made by the mother on 16 October 2014;
(b) an application by the mother for permission to oppose the adoption application, also made by her on 16 October;
(c) for determination or directions, an application made by the mother on 30 September 2014 for contact.

[4] The mother's applications are supported by the Latvian authorities. They are all opposed by the local authority, the prospective adopters and the guardian.

Summary of proceedings

[5] I set out the history in more detail later in this judgment, but the history of proceedings concerning CB is, in summary, as follows.

[6] Care and placement orders were made on 10 July 2012. This followed CB having initially been accommodated by the local authority in March 2010, and placed in foster care, under s 20 of the Children Act 1989 (CA 1989). The care and placement orders were made by District Judge McPhee. By that date CB had been in foster care since 5 March 2010.

[7] These orders were appealed by the mother and also by CB's half-sister. The appeals were dismissed by His Honour Judge Cryan on 8 October 2012.

[8] On 29 October 2012, the mother applied to revoke the placement order. This was dismissed on 30 November 2012.

[9] The mother made an application for judicial review of the care and placement orders. Permission was refused by Keith J on 6 December 2012. The mother renewed her application to the court and a hearing took place on 10 April 2013. Mr Charles George QC, sitting as a deputy High Court judge, gave a detailed judgment dismissing the mother's application for permission to apply for judicial review on the basis that it was misconceived as the proper route to challenge District Judge McPhee's orders was by way of appeal.

[10] The mother appealed to the Court of Appeal from the judgment of His Honour Judge Cryan. Her appeal was dismissed on 1 May 2013.

[11] CB was placed with the prospective adopters on 22 May 2013. She has been living with them since then.

[12] CB last had contact with her mother on 6 March 2013.

[13] On 17 April 2013, the mother made an application for contact which was determined, again, by District Judge McPhee, on 17 June 2013. In the course of his judgment, he refers to the mother's application for permission to appeal from the Court of Appeal to the Supreme Court as having been refused and also to her application to the European Court of Human Rights for interim measures as having been refused. District Judge McPhee dismissed the mother's application for contact.

[14] On 16 July 2014, the prospective adopters issued their adoption application. On 27 August, this application was allocated to a High Court judge. At the same time the mother was ordered to file and serve a statement by 29 September setting out the change in her circumstances on which she relied in support of her proposed application for permission to oppose the adoption application.

[15] The hearing on 27 August 2014 was attended by His Excellency the Ambassador and the Latvian Consul. District Judge McPhee gave permission for the relevant judgments and other documents to be disclosed to them and for them to attend future hearings.

[16] In September and October 2014 the mother made the applications referred to above.

[17] The applications came before me for directions on 29 October 2014. That hearing was attended by the Ambassador, the Consul and Mr Skudra from the Latvian Central Authority. I also gave them permission to attend future hearings. In addition, I joined CB as a party and directed that she should be represented by a member of the High Court Cafcass team.

[18] As the mother had not filed her statement pursuant to District Judge McPhee's order, I extended the time for her to do so to 13 November 2014. I listed the applications for further directions on 7 November. I also listed the substantive applications for hearing on 15 and 16 December 2014. I ordered CB's guardian to file and serve a report which was completed on 11 December 2014.

[19] On the first day of this hearing, in other words, Monday, 15 December, the mother produced her statement. She also said that she had not been able to

print some of the documents which she had been given by the local authority. Accordingly, the first morning of the hearing was taken up with the parties reading the papers.

[20] When the hearing started in the afternoon, I raised with the parties whether any of them were asking me to hear any oral evidence. All the parties, save for the mother, invited me to determine the applications made by the mother on the written evidence and after hearing submissions. The mother asked me to hear oral evidence, largely, by her being given the opportunity to ask questions of a number of witnesses from the previous proceedings.

[21] I decided, after hearing submissions from the parties, that it was not necessary for me to hear any oral evidence. In coming to this conclusion I decided that I could fairly determine the applications without hearing oral evidence, applying what Sir James Munby P said in *Re B-S (Children) (Adoption Order: Leave to Oppose)* [2013] EWCA Civ 1146, [2014] 1 WLR 563, sub nom *Re B-S (Adoption: Application of s 47(5))* [2014] 1 FLR 1035, at [74](v). I considered that I would not be assisted by oral evidence. The hearing continued on Monday and Tuesday with each of the parties making submissions. I am giving judgment, today, 19 December 2014.

History

[22] The factual history behind these proceedings has been extensively considered in a number of judgments. I propose to summarise the history from these judgments, but, in doing so, I acknowledge that I am not including all relevant events.

[23] The mother is a Latvian national and is aged 49. She came to live in England in January 2008 when she was pregnant with CB. Shortly before CB was born, the mother was joined by CB's half-sister, who also came to live in England.

[24] CB's father has had no involvement in her life. During the course of the substantive proceedings he said that he could not care for CB and, as I understand it, indicated that he did not formally oppose her adoption.

[25] CB was cared for by her mother until September 2009. On 4 September 2009, the mother was found, in the middle of the night (at 1 am), walking down the middle of a road with CB in a buggy. The police had been called. The mother was found to be drunk and was arrested. Social services were called. The mother was cautioned for being drunk whilst having the care of a child under the age of 7. CB was placed in the care of her half-sister.

[26] The local authority undertook an assessment and concluded that the mother's behaviour had been out of character and that CB was usually well cared for by her mother and sister.

[27] On 5 March 2010, the police were again involved. They were called to the family home by the landlord. CB, then aged 22 months, was found at home on her own. There is a powerful description of CB's situation as recorded by the police officer who attended at the home. He recorded as follows – and I quote from District Judge McPhee's judgment:

> 'I then heard a whimpering sound from a door directly in front of me. Once I had opened the door, I saw a room. In the left-hand corner of the room was a wardrobe and there were toys all over the floor. In the right-hand corner of the room against the window was a double bed that

> looked very soiled. On the wall beside the bed was a large area of damp and the wallpaper was coming away. There was a very strong and overpowering smell of urine and faeces in the room. I saw the child curled in an almost foetal position on the bed lying on a pillow. She sat up when we came into the room and she was holding an empty pink bottle. I went towards the child and she stood up and came towards me. I saw that her clothes were wet and that she was wearing a nappy that was falling off between her legs. Once in a different room, I could see that the child's clothes were wet and she was shivering. The strong smell was coming from her and it was clear that she had not been changed or cleaned all day. I removed the child's nappy to find dried and fresh faeces. The nappy was so swollen with urine that the child was unable to walk properly. There were also dried faeces on the child's body and her skin was soaked in urine that had leaked from her nappy and gone through her clothes.'

[28] CB was taken into police protection. She was taken to hospital where, on examination, she was found to have contact dermatitis relating to her soaking condition.

[29] The mother agreed to CB being voluntarily accommodated by the local authority pursuant to s 20 of the CA 1989, although she has raised questions during the course of this hearing, as she did previously, over the circumstances in which this occurred.

[30] In August 2010, a paediatric medical assessment was undertaken. This found that CB's development was significantly delayed in all areas. The doctor questioned how this developmental delay had been caused and 'raised the issue of sensory deprivation and neglect'. Despite this, the local authority planned to return CB to her mother's care based on a report from a family centre that the mother was able to meet CB's care needs and that the relationship between them now appeared to be warm and loving. The mother said that she needed to obtain new accommodation before CB could be returned to her care.

[31] In December 2010, the mother was detained by the police on suspicion of being drunk and disorderly.

[32] In March 2011, the mother's home was found still to be in a poor state and she was continuing to look for new accommodation.

[33] In April 2011, another paediatric assessment was undertaken. CB was found to have made progress in all areas of her development, but continued to have speech and language needs.

[34] The mother asked for CB to be returned to her care in May 2011 and care proceedings were commenced in June 2011. In those proceedings, the local authority sought a care order under s 31 of the CA 1989 and a placement order under s 22 of the Adoption and Children Act 2002 (ACA 2002). A placement order is an order authorising a local authority to place a child for adoption with prospective adopters.

[35] As a parent and as a party to care proceedings, the mother was immediately and automatically entitled to legal aid. She was entitled to and obtained legal representation which comprised a solicitor and, at least at the final hearing, a barrister. In addition, again pursuant to the provisions which apply to care proceedings, CB was automatically made a party to the

proceedings and was represented by a guardian, a professional childcare expert, and by a lawyer. In the circumstances of this case, CB's half-sister was also made a party and she was legally represented as well.

2012 Judgments

[36] On 10 July 2012, District Judge McPhee gave separate judgments in respect of the application for a care order and of the application for a placement order. These followed a 4-day hearing which had taken place in June 2012. During the period between the commencement of proceedings June 2011 and June 2012, the court and the parties were engaged in obtaining the evidence necessary to enable the proceedings to be fairly and justly determined.

[37] At the final hearing in June 2012 the judge heard oral evidence from social workers, a chartered clinical psychologist, a child and adolescent psychiatrist, the guardian, the mother and CB's sister.

[38] The judge first had to determine whether the local authority had established the criteria set out in s 31 of the CA 1989. A court cannot make a care order unless these criteria are established. The burden is on the local authority. It is a substantial and substantive threshold.

[39] Section 31(2) of the CA 1989 provides:

> 'A court may only make a care order or supervision order if it is satisfied—
>
> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
>
> (b) that the harm, or likelihood of harm, is attributable to—
>
> (i) the care given to the child, or likely to be given to her if the order were not made, not being what it would be reasonable to expect a parent to give to her …'

[40] A court cannot make a placement order unless the court has determined that such an order is justified in the child's best interests. Further, the court cannot dispense with a parent's consent to a child being placed for adoption unless, as set out in s 52(1)(b) of the ACA 2002: 'the welfare of the child *requires* [my emphasis] the consent to be dispensed with'.

[41] The district judge found that the threshold criteria were established. He found, specifically, that CB was suffering significant physical and emotional harm which was attributable to the care given to her by her mother.

[42] Once the threshold criteria have been established, in determining what orders to make the court's paramount consideration is specified by s 1(1) of the CA 1989, in respect of the application for a care order, and by s 1(2) of the ACA 2002, in respect of the application for a placement order. Both provide that the judge's paramount consideration is the child's welfare, in the latter case the child's welfare throughout her life.

[43] In the course of his judgments, District Judge McPhee expressly referred to Art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention). He said:

> 'When considering whether to make a care order, I must have regard to the provisions of the European Convention on Human Rights and, in particular, Article 8, which requires me to ensure the maintenance of family life, in other words, to keep this family together unless separation is necessary in the best interests of the child. It can only be necessary if the plan of the local authority to separate the child from the parents is a proportionate response to ensure the welfare of the child.'

[44] The district judge also referred to what Hale LJ, as she then was, said in *Re C and B (Care Order: Future Harm)* [2001] 1 FLR 611. When considering the scope of the principle of proportionality, Hale LJ said:

> '[31] … The principle has to be that the local authority works to support and, eventually, reunite the family unless the risks are so high that the child's welfare requires alternative family care …
> [34] … Intervention in the family (must be proportionate), but the aim should be to reunite the family when the circumstances enable that and the effort should be devoted towards that end. Cutting off all contact in the relationship between the child and (their family) is only justified by the overriding necessity of the interests of the child.'

[45] The local authority's applications for a care order and a placement order were supported by the guardian, who, as I have said, is an independent expert appointed to represent the child and whose task is to protect and promote the child's best interests during the course of the proceedings.
[46] During his judgment, the district judge points to the 'appalling condition' in which CB was found on 5 March 2010. He understandably remarks that the danger in which the mother had placed her mobile 22-month-old daughter 'cannot be overstated'.
[47] The chartered clinical psychologist whose evidence was, effectively, not contested, was of the opinion that the mother did not have a personality disorder but did have maladaptive personality traits.
[48] The consultant child and adolescent psychiatrist, whose evidence the judge accepted although contested by the mother, considered that CB had a disorganised attachment to her mother. The psychiatrist attributed the global developmental delay, reported in August 2010, to the care given to CB by her mother and as being caused by neglect, both physical and emotional.
[49] District Judge McPhee described the psychiatrist's evidence as compelling:

> 'His evidence was compelling when he said that observation of CB with the foster carer and with her mother was clinically dramatic for him, such was the difference in her presentation. I found his analysis of the available evidence persuasive and compelling and unshaken in examination.'

[50] A parenting assessment had been undertaken by a social worker who concluded that the mother:

'demonstrated very little insight into her past circumstances and has little insight into CB's needs and does not recommend the return of CB to her care. The author was cross-examined but was unshaken, knew her assessment very well and was an impressive witness. I find no reason to doubt the content or the conclusions of her report.'

[51] Later in his judgment, the district judge refers to the mother's early life experiences and the deep harm, particularly psychological harm, which they caused.

[52] The mother's position, as stated in the judgment, was that she did not accept the evidence and allegations which were critical of her or her care of CB.

[53] The district judge summarised his conclusions as follows:

'The ascertainable wishes of CB are indicated by the way in which she has interacted with her mother. Her ambivalent and avoidant attachments show a disorganised attachment to her mother. She does not, of course, verbalise this, but her feelings are demonstrated. The comparison between her interaction with the foster carer and her interaction with her mother were described as dramatic in their difference by (the psychiatrist).

It is clear that CB enjoys contact with her mother and her sister, but in a safe and structured environment and in circumstances where she is now securely attached, after 27 months, to her foster carer. At her age her physical and emotional and educational needs are for safety and security, nurture and stimulation. She has an additional need to ensure that the progress which she has made, in the transition from the pre-August 2010 of global developmental delay to April 2011 and subsequent assessments of her significant progress in all developmental areas, is maintained and enhanced. This will have to be undertaken not by adequate parenting but by a parent skilled in dealing with emotional responses, able to give and receive appropriate guidance. The likely effect on CB of a change in her circumstances would be the transfer of her attachment.

The clear evidence of (the psychiatrist), which I accept, is that it needs to happen only once and without delay. It means that no chance can be taken with CB's next placement. It will need to be a forever placement as she will initially feel the loss of her foster care intensely. At four years of age the decision needs, for these reasons, to be taken now. A failure in placement for CB would be dramatic in view of her disorganised attachment history.

CB has suffered significant harm in the care of her mother. I find that CB has been subjected to significant neglect, both physical and emotional, causing her physical harm, emotional harm in respect of her primarily attachment and causing her to be developmentally delayed in all areas of her development. This I find is attributable to the care given to her by her mother.

I find that her mother is in no better position now to prevent harm to CB than she was when CB was removed from her care on 5 March 2010. The personality traits and psychological deficits identified by (the

> psychologist) will still be present: one can follow her avoidance of issues throughout these proceedings and see her denial in action. I have no doubt that if CB was to be returned now to her care, that CB would continue to suffer harm through emotional and physical neglect.'

[54] In his judgment, dealing specifically with the placement order application, the district judge concluded that a placement order was the solution. It is clear that he considers this to be the *only* solution which would provide properly for CB's welfare needs. He specifically addresses whether and concludes that it is an order which is proportionate.

2012 Appeal and judgment

[55] The mother and CB's sister appealed the district judge's decisions. The appeal was heard by His Honour Judge Cryan. The mother appeared in person while CB's sister was represented by counsel. After a 4-day hearing, His Honour Judge Cryan gave judgment on 8 October 2012. He gave a very full, 48 page, judgment. He dealt with all the matters raised by the mother and by CB's sister in support of their appeals and rejected them. He also was referred to and refers to Art 8 of the European Convention.

Application to revoke

[56] On 30 November 2012, District Judge Jenkins determined an application by the mother and her then partner for leave to apply for the placement order to be revoked. The mother was relying on her relationship with her partner as a change of circumstances. They had been together since August 2012 and intended to marry. The district judge rejected the application on the basis that there had not been a sufficient change of circumstances to justify revoking the placement order.

Appeal to the Court of Appeal

[57] The mother appealed from His Honour Judge Cryan's decision to the Court of Appeal. Her appeal was dismissed for the reasons set out in a judgment given on 1 May 2013: *LB v London Borough of Merton and CB (A Child)* [2013] EWCA Civ 476, [2014] 1 FLR 1066. In his judgment, Ryder LJ refers to District Judge McPhee's conclusions as 'unassailable'.

[58] Ryder LJ refers to the assessments and then says, in para [11]:

> 'CB was assessed to have significant delays in all aspects of her development. The issue of the causation of this delay, whether by sensory deprivation and neglect or otherwise, was squarely before the court.'

I refer to this because, during the course of the hearing before me, questions were raised by the mother (and the Latvian Central Authority) as to whether the cause of CB's developmental delay had been properly addressed by the court during the proceedings. It is clear that, as Ryder LJ says, the issue of causation was squarely before the district judge and he expressed his conclusions on this issue, which I have referred to above.

[59] Continuing with para [14] of Ryder LJ's judgment:

'In a closely argued, detailed and most careful judgment, District Judge McPhee considered all of the evidence. He made findings of fact and exercised his discretion in a way which is clear. He identified the correct legal principles to apply and applied them to the facts as he found them. I can detect no error of law and nothing that can be described as plainly wrong. The conclusions he came to, both as respect the witnesses and their evidence, are coherent, consistent and well within the broad ambit that is afforded to a first instance judge.

[15] The same level of care is evident in the conduct of the appeal by His Honour Judge Cryan. He, likewise, took four days and reserved judgment over a weekend. The judgment is a model of clarity and analysis. It takes every ground asserted, analyses the evidence, sets out all of the positives and the negatives and applies the appellate test to the findings and to the exercise of discretion by District Judge McPhee. Both appeals were dismissed and Thorpe LJ refused permission to CB's sister to bring a second appeal to this court.

[16] It is important to understand that neither judge accepted the local authority's case without criticism. There was expressed disquiet of the local authority's management of the case and a careful critique of the, apparently, encouraging assessments. These assessments were described as over optimistic, superficial, lacking analysis and insight and insufficiently rigorous in the context of the medical evidence about the child and the mother's approach to her daughter's best interests whilst in care.

[17] It is appropriate to observe that the medical and psychological evidence relied upon by District Judge McPhee was, effectively, unchallenged and was described as compelling. The child and adolescent psychiatrist's opinion was that CB's developmental delay was attributable to the care given to her by her mother, ie it was caused by physical and emotional neglect.

[18] It is unsurprising, therefore, that before this court the attempt by the mother to characterise both District Judge McPhee and His Honour Judge Cryan as being plainly wrong on the facts or in the exercise of discretion had no prospects of success. Likewise, there is no discernible error in the principles of law identified or their application by either judge.

[19] That is not to say that the mother, ably assisted by her *McKenzie* friend, did not avert to their complaints about the previous decision making. The court had a very significant volume of materials expressing their strong opinions on the factual evidence, the opinions of the experts, the validity of the section 20 accommodation agreement, the pre-proceedings poor practice of the local authority, various internet based conclusions on the psychologist's opinions and their assertions that procedurally and substantively the judges were plainly wrong and thereby erred in law. I regret that, in light of the conclusions of District Judge McPhee which were not dislodged on appeal by His Honour Judge Cryan, these complaints taken individually or together do not survive scrutiny. The conclusions of District Judge McPhee are unassailable and His Honour Judge Cryan was right to uphold them.'

Accordingly, the mother's appeal was dismissed.

2013 contact application

[60] On 17 April 2013, the mother applied for contact. Her application was determined, again by District Judge McPhee, on 7 June 2013. He dismissed it. In the course of his judgment, District Judge McPhee referred to the fact that CB had moved to her new family and needed to become settled there and become attached to her new primary carers. If he acceded to the mother's application, in his view, CB would have to be reintroduced to her mother and sister. In dismissing the application, he said:

> 'The need for CB is now to settle in her new home without fear of further court cases. I am firmly of the view that face-to-face contact for her now and in the foreseeable future would be positively harmful in the likely emotional disturbance and upset it would cause to her. The mother has shown herself to be persistent and resourceful and it is clear that she will leave no stone unturned in her effort to reverse the earlier decisions. Sadly, that stance simply now underlines how far apart her case is from the factual situation of her daughter trying to settle in a new home with a new family. It is often said – and it is particularly apposite to this case – that, where a birth parent cannot be supportive of a child moving on to a new life and to a new family, it would be inappropriate to order face-to-face contact because the risk of disruption is too great. The entire process has lasted three years, two of those in court. It could not possibly be right after that length of time to take any action which might undermine the best progress that the child has had in those three years of moving to a permanent prospective adoptive family.'

Summary of legal provisions

[61] I deal with the legal framework and relevant authorities in more detail later in this judgment, but, before turning to the evidence and the party's submissions, I need to set these in context.

[62] The mother's application for the transfer of the proceedings is made pursuant to Art 15 of BIIA, namely Council Regulation (EC) No 2201/2003. Article 15 provides that jurisdiction to determine a case can be transferred from the court which has substantive jurisdiction (under Art 8) to the courts of another Member State with which the child has a particular connection when those courts are better placed to hear the case and when it is in the best interests of the child to do so.

[63] By Art 1(3)(b), the Regulation does not apply to 'decisions on adoption, measures preparatory to adoption or the annulment or revocation of adoption'.

[64] In addition, the court has power under s 5 of the Family Law Act 1986 to stay an application in this jurisdiction (for a Part I order) if it appears to the court that it would be more appropriate for the matters to which the application relate to be determined in proceedings to be taken outside England and Wales.

[65] The mother's application for permission to oppose the making of an adoption order is under s 47(5) of the ACA 2002. This provision has been considered in a number of authorities, including in particular *Re B-S*. There is

a two-stage process. The first stage is that the court has to consider whether there has been a change of circumstances. The second, if there has been a change of circumstances, is that the court has to consider whether leave to oppose should be given. This requires the court to assess the parent's ultimate prospects of successfully opposing the adoption application if permission is given. In assessing the mother's prospects of success, CB's welfare throughout her life is the court's paramount consideration.

[66] I have also been referred to the United Nations Convention on the Rights of the Child 1989 (UNCRC 1989), in particular Arts 20, 21 and 30. Article 20 refers to care outside the family, including adoption, and provides in subpara (3):

> 'When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.'

[67] Article 21 of the UNCRC 1989 provides:

> 'States Parties that recognise and/or permit … adoption shall ensure that the best interests of the child shall be the paramount consideration.'

[68] Article 30 of the UNCRC 1989 addresses the protection to be provided to minorities.

[69] Additionally, I have been referred to Art 37 of the Vienna Convention on Consular Relations 1963 (Vienna Convention). I do not propose to set out its content in this judgment.

Evidence and submissions

[70] I now propose to summarise the evidence and the parties' respective submissions.

[71] The mother makes her position plain both in her written statement and in her oral presentation. She is seeking the reunion of CB with herself and with her other daughter. She appreciates that this will take time and, as she said, it would be very emotional and very tough for CB to be separated again from her current carers. That is why, in her statement, she says that she is asking the court to commence the steps required to effect this reunion.

[72] The mother says that her circumstances have changed in that she now has a great supportive network. This consists of international support from around the world and includes Latvian and other authorities and also support from local friends in London. Their support has given her strength, both emotional and physical.

[73] The mother intends either to stay in London or, alternatively, to return to Latvia. After nearly 7 years in London she feels settled here. She has stable accommodation and a flexible job, working as an interpreter. The mother moved to her present home when her former partner had to return to Sweden in January 2014 and her other daughter moved out. Alternatively, as I have said, the mother would return with CB to Latvia. She, that is the mother, is now reunited with her mother and has the support of her mother, her brother and other family members, including cousins. She visited her mother in June and she is very supportive.

[74] In her presentation to me, the mother focused significantly on what she contends were significant failings in the evidence and the process during the course of the care proceedings. She described in emotive language how she felt she had been treated. She also pointed to evidence, such as a core assessment in January 2010 and another assessment in August 2010, which were positive, and to a proposed rehabilitation plan in November 2010. She showed me contact notes from 2011 and 2012.

[75] The mother, clearly, has powerful deep-seated views about the wrongs that she considers she, her daughter and CB have suffered. It is clear that she does not, at any level, accept that the care and placement orders were justified or that there is any good reason why CB should not be returned to her care. She refers to the loss to CB of her Latvian heritage and identity – the loss of her nationality, language and culture – as well, importantly, of the loss of her birth family, if she were to be adopted.

[76] In addition, the mother relies on the fact that the Latvian authorities are willing to assume jurisdiction in this case, which would thereby help to maintain CB's Latvian heritage and identity by maintaining her connection with her country, her language, her religion and culture. The mother relies on Art 8 of the European Convention, Art 20 of the UNCRC 1989 and Art 37 of the Vienna Convention.

[77] Finally, the mother submits that the decision of *Re B-S* amounts to an additional change of circumstances.

[78] The mother referred me to a number of other decisions when dealing with the respective cases advanced by the other parties. The mother seeks contact, both because she contends that there is no justification in contact not taking place and also, as I have described, as the first step to CB being returned to her care.

Latvian authorities

[79] The Latvian Embassy first contacted the local authority in, it appears, October 2012. This was, of course, before Sir James Munby P's decision in *Re E (A Child) (Care Proceedings: European Dimension) Practice Note* [2014] EWHC 6 (Fam), [2014] 1 WLR 2670, sub nom *Re E (Brussels II Revised: Vienna Convention: Reporting Restrictions)* [2014] 2 FLR 151, in which he referred to good practice requiring that the relevant consular officials should be given notice of care proceedings concerning a child who is a foreign national. In these circumstances, the Latvian Embassy was entitled, as it did, to express concern that it had not previously been informed about the case. The Embassy requested information regarding the proceedings. The local authority responded on 8 November 2012 giving the history of the proceedings to that date.

[80] I do not have a complete history but there were further communications received by the local authority, and subsequently by the court, both from the Latvian Embassy and from the Latvian Central Authority, which led, as I have referred to earlier in this judgment, to the substantive judgments given during the course of the proceedings and other documents and information being disclosed to the Latvian authorities. There was also a meeting at the Embassy in May 2014 which was followed by further exchanges of correspondence.

[81] The Embassy was, as requested, informed of the issue of the adoption application. Since then the Latvian authorities have been actively engaged in the case. In particular, as I have indicated, through presence and representation at hearings including, during the course of the hearing before me, by the involvement of Mr Skudra from the Latvian Central Authority.

[82] In my view, the Latvian Embassy and the Latvian Central Authority have taken all steps reasonably available to them to assist and support the mother and to protect what they see as the interests of CB as a Latvian national.

[83] On 26 August 2014, the Latvian Embassy wrote to the court expressing concerns and stating that Latvia was ready to assume jurisdiction in this case. This was followed by a letter from the Latvian Ministry of Justice dated 19 September 2014. This refers to the Court of Appeal's decision of *Re B-S* and decisions of the European Court of Human Rights, including *Keegan v Ireland* (1994) 18 EHRR 342.

[84] The Latvian Central Authority has provided me with a very helpful written summary of its position dated 11 December 2014. In addition, Mr Skudra made oral representations at this hearing. He informed me that the Latvian Central Authority receives a significant number of requests through the English Central Authority asking for assistance in ascertaining whether there are relatives in Latvia who can care for a child and also asking the Latvian authorities to undertake assessments of identified individuals. He pointed out, and I agree, that there is an obligation on state authorities to investigate possible options.

[85] It is acknowledged by the Latvian Central Authority that the European Regulation, BIIA, does not apply to decisions on adoption or measures preparatory to adoption as specifically stipulated by the Regulation. However, Mr Skudra suggests that, if the mother is given permission to oppose the adoption application, the proceedings could become proceedings which concern parental responsibility and, therefore, fall within the Regulation. He also argues that an Art l5 transfer is the better way of seeking to preserve CB's culture, religion, language and Latvian identity. Indeed, he expresses concern that these matters have not been given sufficient weight and also refers to Art 20 of the UNCRC 1989.

[86] Additionally, Mr Skudra questions whether the conclusions reached in the judgments of District Judge McPhee and His Honour Judge Cryan were accurate. He asks whether developmental delay, as seen in CB, might not have been due to factors other than the mother's care, such as the care given to her when she was looked after by foster carers or the fact that she was not placed with a Russian speaking family. I have already addressed this submission when dealing with the Court of Appeal's determination of the mother's appeal in May 2013. The Court of Appeal referred to the conclusions reached by the district judge as 'unassailable'. There is no new evidence, in respect of his specific conclusion as to the cause of CB's developmental delay, which might undermine this conclusion.

[87] The Latvian Central Authority submits that the short-term risks of CB suffering, what is referred to as 'traumatic experiences' if she were to be removed from her prospective adopters, do not outweigh or are not

proportionate to the loss which she will sustain from losing 'her identity, belonging to her family, national community and rights to language and religion'.

[88] Mr Miller, on behalf of the local authority, submits that Art 15 of BIIA does not apply and that, in any event, it would not be in CB's best interests for jurisdiction to be transferred to Latvia. He has addressed whether jurisdiction could, in effect, be transferred under the common law principles of forum non conveniens, but submits that England is clearly the more appropriate forum.

[89] In respect of the mother's application for permission to oppose the adoption application, Mr Miller submits that there has not been a change of circumstances. He argues that neither Latvia's willingness to assume jurisdiction nor the decisions of in *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, [2013] 1 WLR 1911, sub nom *Re B (Care Proceedings: Appeal)* [2013] 2 FLR 1075 or *Re B-S* amount to a change of circumstances. The former, that is the Art 15 application, is a separate issue which must be determined, he submits, by reference to the relevant criteria and principles. As to the latter, he submits: (i) that these decisions did not change the law; and (ii) that the judgments in this case, in particular those of District Judge McPhee, applied the principles identified in those decisions.

[90] Mr Miller additionally submits that the changes referred to in the mother's statement do not demonstrate any change of circumstances which would warrant permission being given. There has been no change of substance because the mother's reliance on her support network, her family and her more settled position in England are little more than mere assertion. They do not address changes in the circumstances which led to the care and placement orders being made.

[91] Finally, on the mother's application under s 47(5) of BIIA, Mr Miller submits that she has no prospect of successfully opposing the adoption application. He submits that the evidence demonstrates that CB has a particular need for stability and consistency deriving from the consequences of the care she received from her mother.

[92] In respect of the application for contact, Mr Miller submits that to reintroduce contact now would have a significant and disruptive effect on CB. It would be likely to undermine her current placement. The mother would not be able to manage contact in a way which would promote CB's stability in this placement, rather, the very opposite. He refers to the expert evidence given by the psychiatrist and the psychologist in 2012 and submits that contact would be likely significantly to undermine CB's emotional well-being.

[93] Mr Griffin, on behalf of the adoptive parents, supports the submissions made by the local authority and the guardian. In his submission, there has not been any change of circumstances which would justify the mother being given permission to oppose the adoption application. The mother is, he submits, effectively seeking to appeal the previous decisions. He also submits that there is no real prospect of the mother being successfully able to oppose the adoption application.

[94] The guardian opposes the mother's applications. As I have described, she is an independent expert whose sole task is to investigate and recommend what she considers to be in CB's best interests. It is the guardian's opinion

that, if CB were to be removed from the care of the prospective adopters, 'the distress would cause such damage that she would be at significant risk of suffering emotional harm'.

[95] It is clear from the guardian's evidence that she considers the emotional harm would itself be significant. CB has built an attachment to her prospective adopters, which is growing in strength, but her sense of stability is still fragile and she continues to need a great deal of reassurance.

[96] In para 17 of her report, she says:

> 'If CB were moved from her current carers, she would struggle to build new attachments as she would have lost any belief in them lasting. She would be more likely to defend herself from making new attachments with the resultant deterioration in her emotional health and the development of behavioural problems.'

[97] On the issue of contact, the guardian does not consider that direct contact would meet any of CB's needs nor would it be in her best interests. CB would not understand why contact was resuming. She would be confused and would question whether it meant that she was going to be returned to her mother's care. The last time she saw the mother she was frightened and clung onto her foster carer. The guardian concludes by saying in para 26:

> 'CB has an attachment disorder from which she is slowly recovering. Reintroducing her mother now without a good therapeutic reason, I believe would be detrimental, delay her recovery and cause her great distress.'

[98] Before turning to the guardian's submissions, I have also read the report prepared by social workers for the purposes of the adoption application. The report describes CB generally as a happy young girl who is settling with her prospective adopters. It also refers to her getting anxious that she might be moved again and expressing insecurity. She has spoken about fears that she will be taken away from her prospective adopters.

[99] It is the opinion of the authors of the report that direct contact with her mother would be likely to be significantly detrimental to CB's well-being. They point to the psychiatrist's evidence during the course of the substantive proceedings when he said that he was concerned that 'any direct contact with her mother would militate against her settling in a new placement as well as exert a continuing and complicating effect on her development'. He had advised that contact should come to an end as she moved into the adoptive process. They also refer to the mother's distress at the last contact on 6 March 2013, when she was screaming and holding on to CB, and to the fact that there has been no contact since then. In their opinion, reintroducing CB to her mother through contact would cause 'greater instability and anxiety' in her.

[100] In respect of the application for transfer under Art 15, the guardian also submits: (a) that the Regulation does not apply; and (b) that, in any event, it would not be in CB's interests for the proceedings to be transferred. She is a particularly vulnerable child, because of her life experiences, and has a

powerful need for stability and security. Indeed, the guardian submitted that delay in making final decisions about her future care would be 'unconscionable'.

[101] The guardian does not accept that there has been any real change of circumstances which would justify the mother being given permission to oppose the adoption application. In her view, the mother's situation has, in reality, not developed at all.

[102] In expressing these opinions, the guardian says that she has given careful consideration to the effect of adoption for CB and the impact that this would have on her identity, her cultural and linguistic roots and her connection with Latvia. She acknowledges that there will be a significant loss in this respect for CB. Nevertheless, it is her clear conclusion, driven by her assessment of CB's needs, that adoption is the only option that will secure and promote CB's best interests. The significant benefit of a *secure* placement – I emphasise – combined with the likely negative consequences for CB, if this is not achieved, outweigh the fact that CB will no longer be part of her birth family and will have lost her direct Latvian connections.

[103] The guardian also opposes the application for contact. The prospect of disturbing the progress that CB has made and of the harm which, in her view, this would cause CB are of significant concern to her.

Legal framework and determination

[104] I now turn to address in more detail the legal framework, including some of the authorities to which I have been referred, and my determination of the applications.

Article 15

[105] First, the application for transfer. In my view the application to transfer the proceedings to Latvia under Art 15 of BIIA must fail, because the Regulation does not apply to decisions on adoption or to measures preparatory to adoption. It is clear to me that Art 15 does not apply to this case or the applications now before the court, save, possibly, the contact application.

[106] An application for the transfer of proceedings was made in similar circumstances in the decision of *Re J and S (Care Proceedings: Appeal)* [2014] EWFC 4, [2015] 1 FLR 850. Care and placement orders had been made in respect of two children who were nationals of the Slovak Republic. The father and the mother had applied for permission to oppose the making of adoption orders and for the transfer of the proceedings under Art 15 of BIIA to the Slovak Republic. Sir James Munby, President, dismissed the application on three grounds, the third being that 'the proceedings have now progressed beyond the point at which (the Regulation) applies'.

[107] He does not refer to s 5(2) of the Family Law Act 1986 which provides that:

> 'where at any stage of the proceedings on an application made to a court in England and Wales for a Part I order or for the variation of a Part I order, it appears to the court … (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside England and Wales, the court may stay the proceedings.'

I doubt that the provisions of this section apply in the circumstances of this case. In any event, the principles applicable would be the general principles applicable when it is contended that there is a more appropriate forum where, to quote from *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460: 'the case may be tried more suitably for the interests of all the parties and the ends of justice'. In this exercise the child's welfare is not paramount, but it is, nevertheless, very important: *Re V (Forum Conveniens*) [2004] EWHC 2663 (Fam), [2005] 1 FLR 718.

[108] In the case of *J and S*, Sir James Munby additionally dismissed the parents' Art 15 application because 'it is, in any event, far too late to be contemplating a transfer under Art 15'. He then refers to a previous decision of the Court of Appeal, *Re M (Brussels II Revised: Art 15)* [2014] EWCA Civ 152, [2014] 2 FLR 1372, at [32] and [58].

[109] In coming to the conclusion that Art 15 of BIIA does not apply, I have taken fully into account the points raised by the mother and by the Latvian Central Authority. I have to deal with the case as it is now, not as it might be in the future. Simply stated, BIIA does not apply to these proceedings, because they are adoption proceedings. The only application to which it might arguably apply is the mother's application for contact. However, it would clearly make no sense to transfer just this application, even if it were otherwise merited, which, for the avoidance of doubt, in my judgment it is not.

[110] In my judgment, England is now clearly the more appropriate forum. The courts and state authorities here have been involved with CB and making decisions about her welfare since March 2010. She is now aged 6½. In these circumstances, I can see no basis for concluding that the Latvian courts would be better placed to make decisions concerning her welfare.

Section 47(5)

[111] Turning next to the mother's application for permission to oppose the adoption application made under s 47(5) of the ACA 2002. The correct approach to this provision was considered in *Re B-S (Children) (Adoption Order: Leave to Oppose)* [2013] EWCA Civ 1146, [2014] 1 WLR 563, sub nom *Re B-S (Adoption: Application of s 47(5))* [2014] 1 FLR 1035. In the judgment of Sir James Munby, President, he said:

> '[73] There is a two stage process. The court has to ask itself two questions. Has there been a change in circumstances? If so, should leave to oppose be given? In relation to the first question, we think it unnecessary and undesirable to add anything to what Wall LJ said.'

This is a reference to what Wall LJ, as he then was, said in *Re P (A Child) (Adoption Proceedings)* [2007] EWCA Civ 616, [2007] 1 WLR 2556, sub nom *Re P (Adoption: Leave Provisions)* [2007] 2 FLR 1069, at [30] and [32], where he said:

> '[30] … The change in circumstances since the placement order was made must … be of a nature and degree sufficient, on the facts of the particular case, to open the door to the exercise of the judicial discretion to permit the parents to defend the adoption proceedings …

> [32] We do, however, take the view that the test should not be set too high, because, as this case demonstrates, parents in the position of S's 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. We, therefore, take the view that whether or not there has been a relevant change in circumstances must be a matter of fact to be decided by the good sense and sound judgment of the tribunal hearing the application.'

Returning to the judgment in *Re B-S (Children) (Adoption Order: Leave to Oppose)* [2013] EWCA Civ 1146, [2014] 1 WLR 563, sub nom *Re B-S (Adoption: Application of s 47(5))* [2014] 1 FLR 1035:

> '[74] In relation to the second question – if there has been a change in circumstances, should leave to oppose be given? – the court will, of course, need to consider all the circumstances. The court will, in particular, have to consider two interrelated questions: one, the parent's ultimate prospect of success if given leave to oppose; the other, the impact on the child if the parent is, or is not, given leave to oppose, always remembering, of course, that at this stage the child's welfare is paramount. In relation to the evaluation, the weighing and balancing, of these factors, we make the following points:
>
> (i) Prospect of success here relates to the prospect of resisting the making of an adoption order, *not*, we emphasise, the prospect of ultimately having the child restored to the parents' care.
> (ii) For the purposes of exposition and analysis, we treat as two separate issues the questions of whether there has been a change of circumstances and whether the parent has solid grounds for seeking leave. Almost invariably, however, they will be intertwined. In many cases, the one may very well follow from the other.
> (iii) Once he or she has got to the point of concluding that there has been a change of circumstances and that the parent has solid grounds for seeking leave, the judge must consider very carefully indeed whether the child's welfare really does necessitate the refusal of leave.
> (iv) At this, as at all other stages in the adoption process, the judicial evaluation of the child's welfare must take into account all the negatives and positives, all the pros and cons of each of the two options. That is either giving or refusing the parent's leave to oppose.
> (v) [I have referred to this paragraph above.]
> (vi) As a general proposition, the greater change in circumstances (assuming, of course, that the change is positive) 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 to be refused.
> (vii) The mere fact that the child has been placed with prospective adopters cannot be determinative nor can the mere passage of time. On the other hand, the older the child and the longer the

child has been placed, the greater the adverse impacts of disturbing the arrangements are likely to be.

(viii) The judge must always bear in mind that what is paramount in every adoption case is the welfare of the child throughout his life …'

[112] Then, in para [74](ix), the judgment addresses the impact of giving permission and, as a result, of having a contested adoption application on the child. In para [74](x), the President urges judges 'always to bear in mind the wise and humane words of Wall LJ in *Re P*', as referred to above.

[113] The second stage of the court's determination was further considered by the Court of Appeal in *Re W (A Child) (Adoption Order: Leave to Oppose); Re H (Children) (Adoption Order: Leave to Oppose)* [2013] EWCA Civ 1177, [2014] 1 WLR 1993, sub nom *Re W (Adoption Order: Leave to Oppose); Re H (Adoption Order: Application for Permission for Leave to Oppose)* [2014] 1 FLR 1266. In para [20], Sir James Munby, President, said:

> 'In addressing the second question, the judge must first consider and evaluate the parent's ultimate prospects of success if given leave to oppose. The key issue here (*Re B-S*, paragraph 59) is whether the parent's prospects of success are more than just fanciful, whether they have solidity. If the answer to that question is no, that will be the end of the matter.'

Then in para [21]:

> 'In evaluating the parent's ultimate prospects of success if given leave to oppose, the judge has to remember that the child's welfare is paramount and must consider the child's welfare throughout his life. In evaluating what the child's welfare demands the judge will bear in mind what has happened in the past, the current state of affairs and what will or may happen in future. There will be cases, perhaps many 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 prospects of success lack solidity.'

[114] Part of the argument advanced in support of there having been a change of circumstances in the present case is that the Court of Appeal's decision in *Re B-S* – and also the Supreme Court's decision in *Re B* – have effected a change in the law or otherwise undermined the judgments in particular of District Judge McPhee.

[115] On the second day of the hearing before me, the Court of Appeal gave judgment in *Re R (A Child) (Adoption: Judicial Approach)* [2014] EWCA Civ 1625, [2015] 1 WLR 3273, sub nom *Re R* [2015] 1 FLR 715. In para [44] of his judgment, Sir James Munby says:

> 'I wish to emphasise with as much force as possible that *Re B-S* was not intended to change and has not changed the law. Where adoption is in the child's *best* interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption,

> placement orders and adoption orders. The fact is that there are occasions when nothing but adoption will do and it is essential in such cases that a child's welfare should not be compromised by keeping them within their family at all costs.
> [45] The fact that the law in this country permits adoption in circumstances where it would not be permitted in many European countries is neither here nor there. I do not resile from anything I said either in *Re E (A Child) (Care Proceedings: European Dimension) Practice Note* [2014] 2 FLR 151 or *Re M (A Child)* [2014] EWCA Civ 152, [2014] 2 FLR 1372, but for present purposes they are largely beside the point. The Adoption and Children Act 2002 permits, in the circumstances there specified, what can conveniently be referred to as non-consensual adoption. As long as that remains the law as laid down by Parliament, local authorities and courts, like everyone else, must loyally follow and apply it. Parliamentary democracy, indeed the very rule of law itself, demands no less.'

In para [50] he said:

> 'The fundamental principle as explained in *Re B*, is, and remains, that where there is opposition from the parent(s), the making of a care order with a plan for adoption, or a placement order, is permissible only where, in the context of the child's welfare, "nothing else will do". As Baroness Hale of Richmond said in *Re B* paragraph 198:
>
> > "the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by *overriding requirements* pertaining to the child's welfare, in short, when nothing else will do."'

[116] In the present case, additionally, it is clear from District Judge McPhee's judgments that he applied the approach required as set out in *Re B* and, in particular, in the judgment of Baroness Hale of Richmond, from which I have just quoted. District Judge McPhee expressly referred to what Baroness Hale said in *Re C and B* (as set out above), which is, effectively, in identical terms to what is set out in *Re B*, namely 'overriding necessity'.

[117] Turning now to address the two-stage assessment required under s 47(5) of the ACA 2002. First, has there been a change of circumstances of a nature and degree sufficient in this case to open the door to the exercise of the judicial discretion?

[118] As described earlier in this judgment, much of the mother's case was focused on seeking to demonstrate that she had been treated badly during the course of the proceedings and that the court's earlier judgments were flawed. She sought to demonstrate this by reference to events and evidence which predated the hearings before District Judge McPhee and His Honour Judge Cryan.

[119] I am not rehearing the care proceedings. I am not considering whether the judgments were wrong or whether the judges' assessment of the evidence was wrong. In any event, the Court of Appeal, as I have already described,

said that there was no discernible error in the principles of law identified and applied by either judge and that District Judge McPhee's conclusions were unassailable.

[120] I must assess whether there has been a sufficient change of circumstances by reference to what has happened since 2012 and, in particular, by reference to the current circumstances. The key elements of District Judge McPhee's judgments were:

(a) the circumstances in which CB was found on 5 March 2010, coupled with the previous incident in September 2009;
(b) that the mother had been found by a chartered clinical psychologist to have maladaptive personality traits;
(c) the conclusion of a child and adolescent psychiatrist that CB had a disorganised attachment to her mother and that her developmental delay was due to neglect, both physical and emotional, whilst in the care of her mother. The psychiatrist referred to CB's disturbed emotional and behavioural presentation;
(d) a parenting assessment which concluded that the mother had very little insight into her past circumstances and limited understanding of CB's needs;
(e) the evidence from the psychiatrist that CB had a particular need to move only once and without delay and to a placement which would provide long-term stability.

[121] As referred to above, the district judge concluded that CB, whilst in the care of her mother, had suffered significant harm due to significant neglect, both physical and emotional. He referred to the psychiatrist's emphatic evidence about the 'dramatic effect' on CB which would follow the breakdown of a family placement and his evidence that CB required skilled parenting. To quote again:

> 'The placement needs to be one which understands and recognises the harm which she has suffered and is able to deal with her more complex emotional needs.'

District Judge McPhee concluded that CB needs to receive care which will 'remedy significant deficits in her early childcare and (enable her to) move towards her majority better equipped to deal with adult life'.

[122] I have, regrettably, come to the clear conclusion that the mother has not demonstrated a sufficient change of circumstances. Indeed, I cannot see any real change from 2012 other than the passage of time. There is no evidence to suggest that any of the key elements of the district judge's judgments, to which I have just referred, have changed. Rather, the mother's sustained efforts to challenge the evidence and the judge's conclusions serve to demonstrate, in my view, that nothing of substance has, in fact, changed. The mother's reliance on having a wide support network, the support of her family and on her being more settled do not address the reasons why care and placement orders were made in 2012 and the circumstances which led to and justified those orders being made.

[123] If I were persuaded that there had been a sufficient change of circumstances, I would next have to assess the mother's prospects of success. Having regard to the 2012 judgments and the evidence in the guardian's report for these applications, it is clear to me that the mother's prospects of success lack any 'solidity'. In my view, the mother realistically has no prospect of successfully opposing the adoption application. I appreciate that it will be extremely painful to the mother to hear this, but my decision on this part of the case has to be governed by my assessment of what is in CB's best interests throughout her life. There is, in my judgment, no other option available to the court because every other option would introduce an element of instability which would cause CB significant harm.

[124] In coming to this conclusion, I accept the guardian's opinion that, if CB were moved from her current carers, the distress to her would cause such damage that she would be at significant risk of suffering significant emotional harm. The guardian also refers to the resultant deterioration in her emotional health and the development of behavioural problems. This is not a free-standing piece of evidence, but can be linked with the evidence given during the course of the care proceedings, in particular as to CB's attachment disorder and the consequences of the parenting she had received.

[125] The evidence establishes that CB is a particularly vulnerable child who has a compelling need for long-term security and stability. The only outcome in this case which can provide that long-term stability and security is adoption. Every other option introduces instability and uncertainty which would, inevitably, destabilise CB in a way which would be likely to cause her significant emotional harm.

[126] In 2012 the psychiatrist's opinion was that no chance could be taken with CB's next placement because of the likely harmful consequences if that were not to succeed. The guardian's opinion is that, even the reintroduction of contact would be detrimental.

[127] In the circumstances of this case, I see no prospect of the mother being able successfully to oppose the adoption application and, accordingly, I dismiss her application for permission to do so.

Contact application

[128] I have also come to the conclusion that contact would be contrary to CB's best interests. In June 2013, District Judge McPhee said that the risk of disruption which contact would be likely to cause was too great to permit it. This remains the position. The mother's powerful opposition to any course other than one leading to CB's reunification with her would inevitably result in contact being emotionally confusing and harmful, as described by the guardian.

[129] In determining these applications, I have borne well in mind the loss which CB will sustain in terms of her national and cultural identity and, critically, her connection with her birth family. CB's welfare needs, both in the short term and, critically, throughout her life, come down powerfully in favour of my dismissing the mother's applications because of the emotionally damaging consequences of any outcome other than adoption. This conclusion is, in my judgment, necessitated by the overriding requirements of CB's welfare.

[130] I dismiss the mother's applications.

Order accordingly.

Solicitors: *Local authority solicitor*
Cafcass Legal for the guardian
Children and Families Law Firm for the prospective adopters

SAMANTHA BANGHAM
Law Reporter