Neutral Citation Number: [2020] EWCA Civ 1287

Case No: B4/2020/1078

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT NORTHAMPTON
HH Judge Wicks
NN112/2019

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 October 2020

Before :

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE HENDERSON
and
LORD JUSTICE BAKER

- -

IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002
AND IN THE MATTER OF Y (LEAVE TO OPPOSE ADOPTION)

Between :

A LOCAL AUTHORITY	**Appellant**
- and -	
PROSPECTIVE ADOPTERS (1)	**Respondent**
A MOTHER (2)	
A FATHER (3)	
Y (by his children's guardian) (4)	

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Hannah Mettam and Paul Froud (instructed by **Local Authority Solicitor**) for the **Appellant**
Malcolm Macdonald and Jessica Purchase (instructed by **HCB Solicitors**) for the **Second Respondent**
Joanne Ecob (instructed by **Scott Beaumont Solicitors Ltd**) for the **Third Respondent**
Hena Vissian (instructed by **Borneo Martell Turner Coulston**) for the **Fourth Respondent**
The First Respondents were not represented

Hearing date: 3 September 2020

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals

Judiciary website. The date and time for hand down is deemed to be 10.30am on Wednesday 7 October 2020

LORD JUSTICE BAKER:

Introduction

1. This is an appeal by a local authority against an order in adoption proceedings concerning a child, Y, now aged 2 years 8 months, granting Y's parents leave to oppose the making of an adoption order.

2. Y's parents are profoundly deaf. Their participation in court proceedings requires the assistance of sign language interpreters and, in the case of the mother, a deaf-registered intermediary. Inevitably their participation in these proceedings has been made more difficult because the hearings before the judge and before this Court have been conducted remotely in accordance with the Covid 19 protocols. Unsurprisingly, there were some problems over the arrangements for the hearing of the appeal, which was the first remote hearing before this Court involving litigants with hearing difficulties. In a skeleton argument filed on behalf of the mother, we were invited to give updated guidance for managing cases involving litigants suffering from such disabilities in the new legal landscape of remote and hybrid hearings in family proceedings, building on the guidance given by this Court in *Re C (A Child)* [2014] EWCA Civ 128 which was based in part on my observations about assistance for disabled litigants in children's proceedings at first instance in *Wiltshire Council v N and others* [2013] EWHC 3502 (Fam). For my part, I do not think it would be appropriate to give such guidance in this judgment. The problems referred to above led to a delay in the start of the hearing, and legal argument was confined to the issues arising on the appeal. We heard no further submissions on the wider issues of practice. In those circumstances, I would prefer to deal with those wider issues by referring the matter to the President of the Family Division and to MacDonald J, who with the President's approval has published guidance on the conduct of remote and hybrid hearings in the family jurisdiction, to consider whether the guidance needs amendment to address the difficulties faced by disabled litigants in general and those with hearing loss in particular.

3. Meanwhile, I would reiterate the core aspects of the guidance given by this Court in *Re C* – that it is the duty of lawyers acting for a parent who has a hearing disability to identify that as a feature of the case at the earliest opportunity, that those lawyers and the local authority should make the issue known to the court at the time that the proceedings are issued, and that the court must grapple with the issue, including the support required and the funding of that support, at the first case management hearing with the aim of giving clear and detailed directions. A similar course should be adopted in this Court so that, if permission to appeal is granted, the single Lord or Lady Justice can give all necessary directions, either on paper or, if appropriate, at a preliminary hearing. In the case of remote or hybrid hearings, where the party, interpreter and/or intermediary are not together in the same room, it will be necessary to consider how they can communicate with each other separately from and alongside the platform through which the hearing is being conducted. That may or may not be a matter for a court direction but it will certainly be something to be considered and arranged by the parties' solicitors.

4. In the event, after initial problems on the day, the hearing of this appeal proceeded relatively smoothly. This Court is extremely grateful to the professionals involved –

the lawyers, interpreters and intermediary – for their assistance in enabling the hearing to proceed in a way which ensured the proper participation of the parents.

Background

5. I turn to the facts of this case which, for the purposes of this appeal, can be summarised shortly.

6. In March 2018, the local authority started care proceedings in respect of Y and his older half-siblings after Y, then a few weeks old, was taken to hospital and found to have sustained ten fractures of various ages to his ribs, both femurs and both tibias, and a number of bruises. In the course of the proceedings, the parents accepted that the injuries had been inflicted by Y's father. At a fact-finding hearing in April 2019, HH Judge Wicks made a series of findings some of which were agreed by the parents and others of which were not. They accepted that the fractures had been inflicted by the father, that he had been violent to the mother, and that the mother had failed to take appropriate action in response to his treatment of her, placing herself and the children at risk from his volatile and violent behaviour. In addition, the judge found on a balance of probabilities that the bruises had been inflicted by the father, that the mother knew that the father posed a risk of harm to Y but had failed to protect him, and that the father (though not the mother) had failed to seek timely assistance for Y. In reaching those findings, the judge concluded that the parents were willing to lie when it suited them and had lied to the court about a number of matters, in particular about their relationship. In addition, the judge made some further findings about members of the mother's extended family which it is unnecessary to consider in this judgment.

7. Importantly, it is clear from reading the fact-finding judgment that the judge looked carefully at the totality of the evidence relating to the findings he was being asked to make and in doing so considered with particular care the evidence given by the parents.

8. The final hearing of the care proceedings took place a few months later in July 2019. Y's half siblings were made subject to a full care order on the basis of a care plan providing that they be placed with a maternal great aunt and uncle. With regard to Y, the parents accepted that he could not be returned to their care and no other family members were put forward as possible carers. The judge therefore identified only two realistic options for his future – long-term- fostering, which was supported by the parents, and adoption, which was supported by the local authority and guardian. Having carried out an analysis of the advantages and disadvantages of each option, he accepted the local authority's case, approved the care plan, and made care and placement orders.

9. Again, it is important to note that in the course of this contested hearing the judge was required to look carefully at all the evidence before reaching his decision. It can therefore be said with confidence that by the conclusion of the care proceedings he was fully aware of the issues and the circumstances of the family and in particular of the parents.

10. By that stage, Y had been living with his foster carers for nearly 18 months. They subsequently indicated a wish to adopt him and the local authority embarked on a

process of matching him in accordance with the Adoption Regulations. On 6 September, the prospective adopters filed an adoption application. The parents then filed an application under s.47(5) of the Adoption and Children Act 2002 for leave to oppose the adoption. The hearing of the application was adjourned on two occasions, the second adjournment being due to the Covid 19 crisis. It was eventually listed for determination by written submissions on 17 April 2020. In addition to the application under s.47, the judge also considered an application by the father (who was at that stage acting in person) to re-open the fact-finding hearing. In his judgment handed down on 29 June 2020, the judge dismissed the application to re-open but granted the application for leave to oppose the adoption order and gave further case management directions. The local authority's application to the judge for permission to appeal was refused.

11. On 6 July, the local authority filed a notice of appeal to this court, citing the following grounds of appeal: that (a) the judge failed to apply the correct legal test for determining an application for leave to oppose an adoption; (b) he applied too much weight to the parents' assertion that changes had been made and failed to consider the broad canvas of the evidence; (c) there were no solid grounds for the parents' application; (d) the judge gave inadequate weight to the parents' failure to accept the findings in the care proceedings; (e) it was not possible to reconcile his assessment that change had been established with the father's position that he no longer accepted the findings; (f) the judge's reasons for his decision were inadequately detailed to support his conclusion; (g) he failed to conduct an adequate welfare analysis of the impact on Y of granting the application, failing to recognise that he had been placed with his proposed adopters since he was eight weeks old; (h) he failed to ensure that Y's welfare was the paramount consideration; and (i) failed to address adequately or at all the parents' prospects of successfully opposing the adoption.

12. On 13 July, I granted permission to appeal and the hearing was listed for 3 September. At the hearing, the appeal was opposed by the parents but supported by the guardian.

The judge's reasons

13. In his judgment, the judge, having summarised the facts and identified the issues, set out the legal principles to be applied on the two applications before him, observing that there was no dispute about those principles between the parties. With regard to the application for leave to oppose the adoption order, the judge correctly identified the legal principles by reference to the statutory provisions and to the recent decision of this court in *Re W (A Child: Leave to Oppose Adoption)* [2020] EWCA Civ 16 and in particular paragraphs 8 to 13 of the judgment of Peter Jackson LJ (in which he summarised the principles set out in the earlier decisions of this court in *Re P (Adoption: Leave Provisions)* [2007] EWCA Civ 616 and *Re B-S (Adoption: Application of s.47(5))* [2013] EWCA Civ 1146) which he recited in full. The judge added that he kept those principles firmly in mind in deciding the issues before him. He then considered the father's application for the reopening of the fact-finding and set out his reasons for refusing that application.

14. Turning to the application for leave to oppose, the judge (at paragraph 27) started by referring to the evidence on which the parents relied.

> "The mother has filed a witness statement, setting out the changes in circumstances since the placement order was made:
>
> (a) The parents have re-located since the conclusion of the care proceedings. They are happier where they live now, and their relationship has consequently improved. There have been no further instances of domestic abuse.
>
> (b) The mother has sought treatment for depression from her general practitioner and is now on a course of antidepressants.
>
> (c) The father has sought help from the team at [X], an organisation which provides domestic abuse support for deaf people. He has been referred for counselling sessions, which began in December 2019. I am not told whether the counselling has concluded; it was still in progress at the time when public health restrictions were introduced in March 2020, and it is therefore likely that there has been a delay in the father completing the course.
>
> (d) The father has been prescribed medication for low mood, depression and anger management, and has been consistent in taking this medication.
>
> (e) The parents have severed their links with the maternal family, in light of the risks posed by [other members of the family]. It is unclear whether the parents have severed links with the maternal great aunt who is caring for Y's older half-siblings, with whom the mother continues to have contact.
>
> (f) Y has continued to have direct contact with his half-siblings since the placement order was made in July 2019, a period of nearly a year. He has, it is said, formed ties with his older siblings and they with him, such that it would be distressing for both if the sibling tie was severed completely."

15. The judge recorded that the local authority and guardian were of the view that these changes were insufficient to justify granting the application. The judge continued (at paragraph 29):

> "I remind myself that the court should not set the bar too high, or discourage parents from making attempts to better themselves. Both parents have clearly taken steps to deal with their particular problems, and both should, as the local authority and guardian accept, be commended for that. On the face of it, their relationship has stabilised, and the father has taken steps to deal with his anger management. This is a particularly important step, because the father's ability to control his anger was clearly a key factor in the care proceedings. There have been no further instances of domestic abuse (although I am mindful that, at this stage, I only have the parents' word for that). In all the circumstances, I am satisfied that there has been a sufficient change in circumstances to justify a consideration of whether the court should grant leave to oppose the making of the adoption order."

16. The judge then reminded himself that, when considering whether to grant leave, Y's welfare throughout his life was his paramount consideration, that he should have regard to the matters in the welfare checklist in s.1(4) of the 2002 Act, that adoption is

the option of last resort to be sanctioned only when nothing else will do, and that what he was evaluating at that stage was the prospect of the parents successfully opposing the making of the adoption order, not the prospect of having the child returned to their care. He then summarised the pros and cons of refusing or granting leave. The pros of refusing leave were that an adoption order would be made swiftly, allowing the child to become part of his new family where he has settled well and is thriving. The con of refusing leave was that his ties with the birth family would be permanently and irrevocably severed. The judge continued:

> "33. If the court grants leave, it will in due course have to analyse, with the appropriate rigour, the various options for Y, of which adoption will be one. The court will need to weigh in the balance all the relevant factors, including the parents' abilities to care safely for Y, either immediately or in the future, Y's relationships with his wider family, in particular his siblings, his need for a stable and secure placement, and so on (this is not intended to be an exhaustive list). I am of course aware that I have already carried out that exercise once before, in considering the placement application, but nearly a year has passed since then, circumstances have changed, and Y has continued to have a relationship with his siblings. When I considered the placement application, I was of the view that the need to preserve a sibling relationship was outweighed by the greater degree of permanency, of 'belonging', that an adoptive placement offered. That may not be the case now, nearly a year on. Of course, I keep an absolutely open mind, but the advantage of granting leave is that these issues can be revisited, in the light of the changed circumstances, which must be to the benefit of Y when I consider his welfare throughout his life.
>
> 34. The granting of leave will inevitably mean further delay, but again that has to be considered in the context of Y's welfare throughout his life, a period of 80 years or more on present life expectancies. There remain real concerns about the parents, not the least of which is their completely contradictory approaches to the findings I made in the care proceedings. Although they are in a relationship, the mother is clear that she opposes any review of the findings (and is therefore presumed to accept those findings), whilst the father's very clear position is that he does not accept those findings, and does not accept that he was responsible for Y's injuries. The parents lied about their relationship in the care proceedings, and there must be a very real risk that they are putting their need to be in a relationship with each other above the needs of any child in their care."

17. At paragraph 37, the judge concluded:

> "This is a finely balanced case. However, I do not think that the parents' case lacks solidity. They have taken steps to deal with some of the concerns around their relationship, and I remind myself that, before Y's injuries, there had been no real concerns about the mother's parenting of the elder half-sibling who had been in her care. The parents ruled themselves out in the care proceedings, as they did not put themselves forward to care for any of the children. Further, the relationship between Y and his half siblings has continued and it is at least arguable that this needs to be re-evaluated as part of any welfare analysis of the competing options for Y. All of those factors lead me to conclude, on balance, that the parents have a solid case for opposing the making of an adoption order, and that leave should therefore be granted."

18. Following the judgment, the local authority submitted a "schedule of clarifications" of the judge's reasoning to which the judge subsequently responded. It is unnecessary to set out all of the questions posed by the local authority or the judge's responses. The important points to emerge from this process are as follows. First, the local authority enquired how the court reconciled its previous finding that the parents had lied about their continuing relationship, and evidence that they had continued to lie about it, with its conclusion that the relationship had stabilised. The judge responded that, as he observed in his judgment, there were real concerns about the parents' relationship which would require careful analysis, that he had kept in mind his previous findings about their lack of candour and noted the evidence that this had allegedly continued. He added, however, that what he was assessing was not the prospects of the parents having Y return to their care but "their prospects of successfully persuading the court that the draconian option of adoption is no longer justified." Secondly, the local authority enquired how the court reconciled the father's failure to accept the court's previous findings with his assertion that he had made changes. The judge responded by observing that the case law made clear that the legal test was not a high bar to cross and that the parents' contradictory positions as to the findings in the care proceedings would require careful analysis. Thirdly, the local authority informed the court that Y has had direct contact with his siblings on only three occasions since the making of the placement order and enquired whether that information changed the court's view. The judge retorted that this information did not change his conclusion and expressed concern that sibling contact had been so limited, adding

> "my welfare analysis in the care proceedings was in no small part based upon the fact that the local authority had committed itself to finding prospective adopters who would be willing to promote sibling contact".

Finally, the local authority enquired whether the court had assessed the fact that Y has remained in the care of the same foster carers for 27 months when analysing the second stage of the test. The judge responded by pointing out that he had referred to the security of the placement in his judgment but added that he had to set that against consideration of the child's welfare throughout his life.

Submissions to this Court

19. In helpful written and oral submissions, Miss Mettam and Mr Froud distilled the grounds of appeal into the following points.

20. First, it was contended that, although the judge had correctly directed himself as to the legal principles, he had misapplied them to the facts of the case. He had apparently accepted the evidence of the parents that the identified changes in circumstances were sufficient to justify the grant of leave. Although he had been right to observe, when clarifying his reasons, that the test should not be set too high, the reality was that such changes as the parents were able to point to were of such an inconsequential nature that they could not possibly cross the threshold. The matters identified by the parents, whether taken individually or cumulatively, could not form the basis of a solid change in circumstances.

21. By reference to paragraph 29 of the judgment, the local authority identified three particular areas where the judge appeared to conclude that there had been a sufficient change in circumstances, namely (1) that the parents' relationship had stabilised; (2)

that the father had taken steps to deal with his anger management and (3) that there had been no further incidents of domestic abuse. The local authority submitted that in none of those areas had there been any or any sufficient change. With regard to the parents' relationship, the court found during the care proceedings that they had sought to deceive professionals about their relationship, and the local authority relied on evidence to show that this deceitful behaviour had continued. It was therefore submitted that the court could not properly be satisfied that the relationship had stabilised and that such ongoing dishonesty fundamentally undermined the parents' position. With regard to anger management, it was submitted that there was no evidence that the father's limited attendance at counselling had addressed his problems. As for domestic abuse, there was no evidence to support the assertion that no further incidents had occurred and, given the ongoing doubts about the parents' honesty, the court should not have relied on the parents' mere assertion.

22. Although the judge had been entitled to carry out the assessment on the basis of written submissions, he was not entitled to proceed on the assumption that the assertions made by the parents as to change of circumstances were correct. Those assertions had to be analysed in the context of all the circumstances, including the earlier findings.

23. Secondly, it was impossible to reconcile the position adopted by the parents within these proceedings with the serious findings made in the care proceedings. The father's failure to accept the previous findings entirely undermined any assertion made on the parents' behalf that there was a sufficient change in circumstances.

24. Thirdly, the judge had wrongly concluded that the relationship between Y and his siblings had changed so as to justify reconsideration of whether the need to preserve that relationship was outweighed by the greater degree of permanency offered by adoption. Direct contact had only taken place on three occasions and there was currently no significant relationship between Y and his siblings. The judge had wrongly stated when clarifying his reasons that the level of contact which had occurred was in some way contrary to the care plan and that his welfare analysis in the care proceedings had been based "in no small part" on a commitment by the local authority to find adopters willing to promote sibling contact. Furthermore, in considering the feasibility of ongoing contact, the judge should have taken into account the statements by the father that he will seek out the child wherever he is placed.

25. Fourthly, the judge failed to attach sufficient weight to the impact of a further delay on the child. In assessing the child's welfare as his paramount consideration, the judge should have attached decisive weight to the fact that Y is settled with the prospective adopters with whom he has lived for the whole of his life, save for the first few weeks.

26. The children's guardian supports this appeal and adopts the arguments advanced on behalf of the local authority.

27. The respondent parents were separately represented before this Court. Their counsel each filed a skeleton argument, but inevitably there was considerable overlap between their arguments and it is convenient to consider them together.

28. The parents' overarching submission, as expressed on behalf of the father, was that the judge's conclusions were rooted in a long involvement in, and detailed knowledge of, the facts of this case and a careful analysis of the relevant legal principles and their application to the evidence before him. In the light of the matters in respect of which the judge found changes to have been made by the parents, he was entitled to find that the s.47 threshold had been crossed and, in conducting his evaluation and the proper exercise of his discretion, he was entitled to permit the parents to defend the adoption application. Those conclusions were well within the permitted ambit of his discretion and accordingly this appeal should be dismissed.

29. It was submitted that the judge plainly had the correct legal test and principles in mind. In conducting his analysis of the changes of circumstances on which the parents relied, he did not simply accept the changes advanced by the parents but rather conducted an independent evaluative assessment. In respect of the three matters referred to in paragraph 29 of his judgment, his analysis was clearly based on the evidence and submissions advanced by the parents, in particular on behalf of the mother. For example, his conclusion that the evidence of stabilisation in the parents' relationship amounted to a change of circumstances was based on a number of factors identified on behalf of the mother - a move to a better neighbourhood, the fact that there were no reports of domestic violence, the parents' engagement with mental health services and their adherence to a regime of education. In reaching his conclusion, the judge was drawing on his long experience of the case. He was best placed to understand the changes which were necessary and evaluate whether or not the changes relied on were relevant and material.

30. The parents submitted that the local authority's challenge to the judge's findings as to the three areas of change lacked merit. The argument that the assertion that the relationship had stabilised was undermined by the parents' previous dishonesty as to their relationship was said to be lacking in logic. The criticism of the parents during the care proceedings was that they were dishonestly denying they were still in a relationship. Their case now is that they *are* still in a relationship and that it has stabilised. The argument that the father's assertion as to his anger management counselling was unsupported by independent evidence was insufficient to displace the judge's finding. At the permission stage, it was unsurprising that the assertion was unsupported by such evidence, particularly when the father was unrepresented. Similarly, the fact that there was no independent evidence to support the parents' assertion that there had been no domestic abuse since the end of the care proceedings did not preclude the judge accepting the assertion in the qualified way that he did, noting that at this stage he only had the parents' word that this change had occurred. The local authority did not provide any evidence of continuing domestic conflict between the parents. The judge rightly recognised that at the final hearing of the adoption application there would need to be a careful investigation of whether the changes asserted by the parents have indeed occurred. A full investigation was neither necessary nor appropriate at the permission stage.

31. In response to the local authority's assertion that the judge attached too much weight to the parents' assertion of change and failed to consider the wider evidential canvas, including the earlier findings, the parents pointed to the judge's acknowledgement that the father does not accept the findings made against him in the care proceedings and that this would require careful investigation and assessment at the final hearing. It

was accepted on behalf of the father that, in assessing whether there had been sufficient change, his failure to accept the findings would have been more troubling if the court were assessing the parents' prospects of having the child returned to their care. That was not, however, the focus of the judge's assessment. Rather, he was assessing their prospects of successfully opposing the adoption application, thereby opening the door to a rigorous analysis of the various options for Y.

32. In response to the submission that there was no solid ground for the parents to oppose the adoption application, the parents submitted that the local authority's argument was based on a misunderstanding of the relevant principles. The law requires the parents' grounds for seeking leave to oppose the adoption application to be solid, as opposed to the change in circumstances. In this case, the judge gave cogent reasons for reaching the conclusion that the parents' case was solid. It was clearly an important part of his reasoning that Y was having contact with his half-siblings. On behalf of the mother Mr Macdonald acknowledged that the judge's observations in his response to the local authority's request for clarification included an erroneous recollection of what had been said about post-adoption contact during the final hearing in the care proceedings. Nevertheless, the fact that such contact has actually been taking place and the possibility that it could not be guaranteed to continue if Y were to be adopted were clearly important factors for the judge's consideration when determining whether the parents had solid grounds for seeking leave to oppose the application.

33. In response to the local authority's assertion that the judge's analysis of the impact of granting leave on Y was inadequate, the parents pointed out that the judge acknowledged that granting leave to oppose the adoption application would involve a further delay in the final decision about Y's future, but concluded that this was outweighed by the fact that the context for the decision was Y's welfare for the rest of his life.

Discussion and conclusion

34. I am satisfied that the judge was aware of and properly applied the correct legal principles when determining an application for leave to oppose an adoption order. The two-stage process has been reiterated by this Court on a number of occasions, most recently by Peter Jackson LJ in ***Re W*** (supra) at paragraph 9:

> "First, the court has to be satisfied that there has been a change of circumstances of a sufficient nature and degree. Only if there has been such a change will the court have a discretion to permit the parents to defend the proceedings, the child's lifelong welfare being the paramount consideration in that decision."

35. The judge determined the issue in this case on the basis of written evidence and submissions and did not hear any oral evidence. It is accepted on behalf of the local authority that he was entitled to proceed on that basis. In ***Re P***, supra, Wall LJ observed (at paragraph 56):

> "when deciding either limb [i.e. of the two-stage process], the judge has a discretion whether or not to hear oral evidence. It will be perfectly proper, for example, for the judge in an appropriate case to assume as true the facts asserted by the parents, and equally proper for him to dismiss the application on the ground that it was not in the interests of the child for the parents to be given leave

> to defend the proceedings. It is not necessary for the judge to conduct a full welfare hearing unless the issues which arise for decision positively require such a hearing, or require oral evidence in one or more particular respects."

36. On the other hand, Ms Mettam is right to say that, when assessing whether there had been a sufficient change in circumstances, the judge was not entitled simply to accept the parents' assertions of change at face value. He was required to carry out some evaluation of those assertions in the light of all the circumstances, in particular the history of the family and his findings in the previous proceedings.

37. It is clear from his judgment, however, that the judge plainly had his earlier findings in mind when considering the application and took them into account in considering whether the asserted changes of circumstances were sufficient. He was obviously aware that the father had resiled from his previous acceptance of responsibility for inflicting the fractures because at the same hearing he considered and rejected the father's application to reopen the fact-finding hearing. The judge also took into account the fact that most of the changes of circumstances asserted by the parents, as summarised at paragraph 27 of his judgment, were challenged by the local authority and at that point untested and would therefore require further investigation. Making due allowance for that point, however, he concluded that the evidence of change was sufficient to open the door to the exercise of his discretion whether to grant leave to oppose the adoption.

38. Given the judge's experience of the case and deep understanding of issues, I do not for my part think that it can be said by this Court that he was wrong to reach that conclusion. I accept the submission that, having conducted contested fact-finding and welfare hearings in the care proceedings, the judge was, as Ms Ecob put it on behalf of the father, uniquely placed to evaluate whether the changes of circumstances asserted by the parents were sufficient. It is plain from the judgments in the care proceedings that he had a deep and detailed understanding of the history of this difficult and sensitive case, of the characters and conduct of the parents, and the needs of this little boy.

39. When he turned to the second limb of the two-stage process, the judge emphasised that what he was evaluating was not the prospect of Y being returned to the parents' care but, rather, the prospect of the parents successfully opposing the making of the adoption order. His assessment of the second limb in that context as set out in paragraph 33 of his judgment seems to me to be a careful and balanced analysis. In short, he concluded that, having identified changes in circumstances sufficient to open the door, it was in the interests of Y's welfare throughout his life to have another look at the question whether the need to preserve family relationships, in particular sibling relationships, continues to be outweighed by the greater permanency which adoption would bring.

40. The local authority asserts that the judge was wrong to say, when responding to its request for clarification of his judgement, that the authority had committed itself in the care proceedings to finding adopters who would be willing to promote sibling contact. It does seem that the judge's recollection of what had occurred in the care proceedings may have been mistaken. The final care plan filed with the court for the hearing at which the care and placement orders had been made stated that, should Y's

half-siblings be placed with their maternal great aunt (as they have been) and Y be adopted,

> "it will be important for direct contact to be explored. If this is possible, it will be recommended for the sibling to have direct contact twice yearly. Should direct contact not be possible, it would be recommended for [the three siblings] to have twice yearly letterbox contact."

In her report for the final hearing in the care proceedings, the children's guardian reported that the father had told her that, if Y was adopted, he would not stop until he found the child and was certain that he will be able to do so as he wanted to ensure he was safe. The guardian observed:

> "This statement does concern me due to the disruption this could mean to any placement and has an adverse impact on my view of direct sibling contact post adoption."

In the conclusion to her report, the guardian made the following recommendation:

> "If a plan of adoption is endorsed for Y, the local authority proposed consideration of direct contact of twice yearly for [the siblings] or twice yearly letterbox if not. As previously discussed, it is my view that direct contact will not be possible, and I therefore support twice yearly letterbox contact."

In the judgment delivered at the conclusion of the final hearing of the care proceedings, there is nothing to indicate that it had been part of the judge's welfare analysis that the local authority had committed itself to finding adopters willing to promote sibling contact. The judge recorded the importance which the parents attached to the sibling relationship and added the observation that sibling relationships are enduring and important. He described the local authority's case as being that there should be letterbox contact and made no reference to the possibility of face-to-face contact. Having set out the parties' positions, he concluded that

> "while the sibling relationship is important, it is secondary to the importance and stability of being part of a family."

41. In my judgment, however, the judge's mistaken recollection in his response to the request for clarification about how this issue was treated in the care proceedings does not materially undermine his assessment of whether the issue should be reviewed again in the context of the adoption application. He concluded that, in the light of the change of circumstances, it would be in the interest of Y's welfare throughout his life for his parents to be given the opportunity to oppose the adoption application so that the question of whether adoption is the best option for his future should be reconsidered. In reconsidering that question, the court will of course have to look at the advantages and disadvantages of ongoing sibling contact, including the feasibility of such contact taking place in the light of the threats allegedly made by the father to trace where Y is living. In the circumstances of this case, I do not accept the local authority's submission that assessing the feasibility of contact was a matter to be determined at this leave stage.

42. It is right that a court considering an application for leave to oppose an adoption order must at all times bear in mind that in general any delay in coming to the decision is likely to prejudice the child's welfare: s.1(3) of the 2002 Act. In this case, of course, Y has been settled with his foster carers, now prospective adopters, for all of his life save for the first few weeks. Theirs is the only home he has ever known. It seems that the judge considered it extremely unlikely that Y will ever be removed from their care. I accept that delay in reaching a decision about a child's legal status may have an adverse effect on the child, but not to the same extent as a delay in deciding whether or not a child should move home. In those circumstances, although it was a factor for the judge to take into account, he was in my judgment entitled to conclude that, whilst the granting of leave would inevitably mean further delay, that had to be considered in the context of the child's welfare throughout his life.

43. Not every judge would have given leave in these circumstances but it does not follow that this judge was wrong to reach that decision. Given his knowledge and experience of the case, he was better placed than anyone to make that evaluation. The local authority has not persuaded me that he was wrong to grant leave and I would therefore dismiss the appeal.

44. I must emphasise, however, that it does not follow from the fact that the parents have been granted leave to oppose the adoption application and that this appeal has been dismissed that the parents will ultimately succeed in resisting the adoption application. The judge stressed that their arguments and assertions will require careful scrutiny. It is evident that in a number of respects their arguments and assertions will be strongly challenged by the local authority and guardian. It is also clear that there are strong arguments in favour of adoption in this case. All these are matters for the judge to take into account when reaching his ultimate decision.

LORD JUSTICE HENDERSON

45. I agree.

LORD JUSTICE UNDERHILL

46. I also agree.