Neutral Citation Number: [2021] EWFC 31

Case No: LS20C00743

IN THE FAMILY COURT
IN LEEDS
(Sitting remotely)

As if from: Coverdale House
East Parade
Leeds

Date: 12/04/2021

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between:

A LOCAL AUTHORITY	**Applicant**
- and -	
Miss S	**Respondents**
Mr T	
F	
(A child, by her Children's Guardian)	

- -

Re F (Assessment of birth family)

- -

Ms Reagan Persaud (instructed by **Local Authority Solicitor**) for the Local Authority
Ms Sara Anning (instructed by **Wilkinson Woodward Solicitors**) for the Mother
The father was not present or represented.
Ms June Kelly (of **JWP Solicitors**) for the child, by her Children's Guardian

Hearing date: 1 April 2021

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Approved Judgment

THE HONOURABLE MR JUSTICE COBB

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

The Honourable Mr Justice Cobb:

1. Within ongoing public law proceedings, the Local Authority has issued an application under *Part 18 Family Procedure Rules 2010* seeking determination of a single issue, namely:

> Within these public law proceedings, is there any obligation on the Local Authority to assess members of the 'original family'[1] (i.e., the biological/birth family) of the mother of the subject infant child (F), where the mother herself was adopted as a child and raised by adoptive parents?

2. The issue was considered at a short case management hearing. Given its significance to the future planning of the case, I reserved judgment for a short time to consider the arguments and the caselaw.

3. For the reasons set out in this judgment, and on the particular facts of this case, I am of the view that the Local Authority is under no obligation to assess members of the mother's original / birth family. For those reading this judgment searching for statements of wider application, I would say that the answer to the question posed above in any given case will depend to a very great extent on the individual facts and circumstances of that case, taking account of the guidance offered:

   i) by the Court of Appeal in an analogous situation involving notification of wider family of a baby who a mother/parent wishes to relinquish for adoption (*Re A, B, C (Adoption: Notification of Fathers and Relatives)* [2020] EWCA Civ 41) ('*Re A, B, C*')

   and

   ii) in a previous decision of mine, concerning family assessment more generally, namely *Re H (Care and Adoption Assessment of Wider Family)* [2019] EWFC 10 ('*Re H*').

   I return to this briefly in conclusion at [32] below.

Background

4. The subject of this application is a girl ('F') aged 15 months. Her mother is Miss S. Her father is Mr T; he has played no part in this hearing as the issues do not directly affect him. He has no current relationship with Miss S and does not wish to care for F.

5. F is currently in foster care and has been so for the last six months; she has had regular contact with her mother, and with her maternal grandparents (Mr M and Ms N). Within the last few days, the Local Authority has given notice of its plan for F to return to the care of her mother (Miss S: "the mother") in a highly supported community setting, where it is intended that the mother will receive intensive

[1] Using the terminology from *section 1(4)(c) Adoption and Children Act 2002*

therapeutic support to address her mental ill-health and emotionally unstable personality disorder.

6. The mother is 19 years old; she was born in late 2001. She has a brother and number of half-siblings; she spent the first four years of her life in the care of her birth mother and (so I believe) birth father; these were said (by the Local Authority) to be "turbulent" years in which the mother suffered "significant neglect". The mother was received into care and after one failed attempt at rehabilitation, she (together with her brother) was made the subject of a placement order and adopted by Mr M and Ms N when she was six years old (in 2008). Mr M and Ms N are, and have been since that time, her parents – legally, psychologically, and emotionally.

7. The mother has suffered mental ill health (depression and anxiety) since she was about 11 years of age and is now assessed to suffer "from complex mental health difficulties"; the expert opinion filed in the proceedings indicates that she should be regarded as suffering from an emotionally unstable personality disorder. It is said that she would be likely to benefit from reasonably long term (12 month, plus) psychological interventions (including but not limited to DBT, Dialectical Behavioural Therapy; schema-focussed therapy) addressing her personality disorder.

8. The mother reports that her adoptive placement began to break down when she was 13. The difficulties in the placement intensified when the mother reached out to her birth mother on social media, and they exchanged messages; Mr M and Ms N indicated that they "did not know how to deal with this". In or about November 2017, the adoptive placement finally broke down, and the mother was accommodated in foster care under *section 20 Children Act 1989* ('CA 1989'). The mother unsurprisingly experienced strong feelings of isolation, and depression at that point, and she made further and renewed efforts to contact birth family. In 2019, the mother visited her birth family, over several weekends, and on one occasion it is said that she stayed for approximately one month. She met members of her birth family of whom she had had no prior connection or knowledge. It was during one of these visits that the mother discovered that she was pregnant (she herself was 17 at the time; this was an unplanned pregnancy), and reports that "the response to me discovering I was pregnant … was extremely negative. I was not supported at all".

9. F was born in January 2020. Two months later, the mother took F to see her birth family. During this visit, F fell out of her pram and sustained a fractured skull, which resulted in her being admitted to hospital. Neither the mother nor members of her birth family sought immediate medical attention; indeed, it was only through the actions of a nearby shopkeeper who had observed the incident on CCTV that the emergency services were notified. A *section 47* investigation was initiated, and a Child Protection Case Conference held in respect of F, where it was agreed she would be made subject to a Child Protection Plan under the category of neglect. Significantly, the professionals involved in the mother's life at that time advised the mother not to visit her birth family again; the mother commented on this:

> "To me, this shows the high level of risk that was associated with myself and [F] being around my birth family and the understanding that the family dysfunction was a negative impact on both [F]'s and my own, health and wellbeing… From my discussions with the Social Worker and other

> professionals up until now, it has been acknowledged that my birth family are not part of my support network and are not positive influences for myself and [F] and therefore, I have disassociated myself from them. I understand that the social worker has told my birth mother not to have contact with me because the relationship was toxic, which is what the Social Worker also told me".

10. Following a deterioration in the mother's home living conditions over the summer of 2020, a decline in her mental health (leading to an overdose), and her engagement in a relationship with a partner who was abusive to her, F was accommodated in September 2020. Proceedings were issued some weeks later.

11. In the course of the proceedings, the mother has been assessed by the Local Authority for her capacity to care for F; the assessment has some worrying features but is cautiously positive. In order to prepare contingencies, the Local Authority has approached other family members to assess their willingness to offer a home to F: Mr M and Ms N do not feel able to offer a home to F "due to their age, work commitments and on-going difficulties with both Miss [S] and her brother who remains in their care" and have declined to be assessed. A maternal aunt has declined to be assessed. The mother's former foster carers are currently being assessed. It was in this regard that on 11 March 2021, the Local Authority issued their *Part 18* application, in order for the court:

> "… to determine whether the Local Authority should elicit the mother's birth family views as to the plans for [F]'s future and if relevant, assess them to ensure that there are no gaps in the evidence and that it can tick the "nothing else will do" box".

12. The mother summarises her current feelings about this application, and specifically her birth family in a recently filed witness statement, thus:

> "I had a difficult relationship with my birth mother especially, we argued regularly, mainly due to me having questions about her past and the reasons for my adoption and she was not willing to answer them."
>
> "During the time that I spent in [name of town] with my maternal birth family, my birth mother encouraged me to use alcohol and smoke cannabis mainly. My aunt … encouraged me to take cocaine on one occasion."
>
> "This was an extremely difficult time in my life. I was a teenager whose adoptive placement had broken down and I felt lost and not sure of what to do with myself. I did lean on my birth mother because I felt she was the only person who I had a 'link' to at that time. However, this was not a positive experience and I was drinking alcohol and smoking cannabis heavily during the time that I 'lived' there, up until I found out that I was pregnant … I do feel I was negatively influenced by their chaotic lifestyle and

> the people who my birth family associated with, which lead me to behave in such a way to try and fit in".
>
> "I fear that should [F] be placed within (sic.) any of them in the future, [F] would not be encouraged to have a continued relationship with me. I experienced my mother trying to poison my relationship with my birth father and she has told what I believe to be lies about him. Due to the behaviour she has already shown in relation to [F] and myself whilst proceedings have been ongoing and prior to issue, I am concerned that she would try to poison my relationship with [F] should she be placed with her or any other members for my birth family".
>
> "I do not feel in the light of all the issues that [F] would be safe with my birth family as they lead chaotic lifestyles and are all intertwined with each other. I do not believe that one member of my birth family would be able to safeguard [F] from the any other family member. My opinion in relation to this issue relates to [F] and what I think is best for her. I understand from speaking with the Social Worker and [aunt] that my mother has made her intentions clear, that she wants a relationship with [F] but not with me. I do not understand why this is and I cannot see how any placement with my birth family would work and be sustainable moving forward".

13. The mother reports that she has had regular phone and text contact with her birth father but has not physically seen him for more than 14 years; she believes that he drinks heavily and uses cocaine. She speaks of the division which would be caused with her own (adoptive) family, and the difficulty for them if the original/birth family were to be involved in F's life, bearing in mind that they continue to care for the mother's brother.

The arguments of the parties

14. Ms Persaud argues that it is incumbent on the Local Authority to assess members of the birth family; she essentially argues:

    i) they are bound to the mother and to F by a relationship of consanguinity; the legal severance of the family relationship has been "socially undone" by their recent contact;

    ii) they know of F's existence;

    iii) they are interested in F; at this stage, F's 'birth' maternal grandmother has not indicated any wish to care for F, but wishes to have contact;

    iv) the birth maternal grandmother apparently successfully cared for a child after the adoption of the mother and her brother;

    v) the mother continues, even now, to maintain some relationship with her birth father by text and phone;

vi) there are members of the wider family in respect of whom it is understood there are no social work concerns and who appear to be caring adequately for their own children.

She further argues that I could not/should not make the decision now but should await further outline information from local authorities in which members of the birth family live (they are scattered around the country) in order to reach a more informed view.

15. Ms Anning on behalf of the mother strongly opposes this approach. She argues that the decision should be made now, and that there should be no assessment of her client's birth family. She makes the following points:

i) The mother strongly opposes any assessment of the birth family; she sees her adoptive family who raised her since she was six as her 'family'. The mother's view must weigh heavily in the evaluation of the issue;

ii) The mother contends that the birth family would be wholly unsuited to care for F; she relies on their historical failure to care for her, and what she knows of their current lifestyles; her relatively brief re-engagement with them has adversely affected her;

iii) The mother has in fact currently 'fallen out' with her birth mother; the prospects of any family placement within the birth family being free from conflict or drama is small;

iv) The mother feels sufficiently strongly about the issue of assessment that were it to go ahead, she fears that it could destabilise her currently reasonable mental health, and jeopardise her own chance to care for F; she does not feel that she is in a psychologically strong place, and feels anxious about embarking on the next phase in which she will be assessed in the community with F with this 'hanging over her head'; I have in mind the expert opinion which suggests that if the mother engages successfully in psychological therapies, she may well be in a position safely and appropriately to care for her daughter;

v) Any assessment of the birth family would create divisions within her family – her parents who adopted her many years ago; and with her foster parents;

vi) The birth family, as a matter of law, ceased to be legally the mother's family when the mother was adopted; there are no recognisable enduring legal rights;

vii) The *Article 8 ECHR* rights of the birth family are non-existent, or at best highly tenuous, given the lack of legal rights and the limited relationship between the birth family and the mother and particularly F; Miss Anning understandably relied in this regard on the comments which I made in *Re TJ (Relinquished Baby: Sibling Contact)* [2017] EWFC 6, and those of Peter Jackson J as he then was in *Seddon v Oldham MBC (Adoption: Human Rights)* [2015] EWHC 2609 (Fam) at [2](1), to the effect that the making of an adoption order brings pre-existing *Article 8* rights as between a birth parent and an adopted child to an end.

16. Ms Kelly, on behalf of the Children's Guardian, is, first and foremost, critical of the Local Authority for the delay in bringing this issue to the court many months after it first accommodated F. She further contends that no obligation falls on the Local Authority to assess the birth family in this case, and indeed that given the mother's opposition to this course, it would be counter-productive for it to do so. In this, she aligns herself with the position taken, and the arguments advanced, by Ms Anning on behalf of the mother. She makes the additional point that one of the key philosophies which underpins a family placement for a child who cannot be cared by his/her parents is to ensure the continuity for the child of blood ties within established networks, where a parent may be able to continue to play a normal/natural role; this, she submits, would not truly be available here for although blood ties would be restored/preserved, the current difficult and tenuous emotional ties between the mother and her birth family, and the absence of legal relationship which was of course dissolved by the adoption many years ago, would make any placement very problematic indeed.

Legal Principles

17. Although I was not specifically addressed on the relevance of *Part III CA 1989*, the issue in the case can essentially be traced back to the qualified obligation on local authorities "to promote the upbringing of [children in need] by their families" (*section 17* ibid.) (emphasis by underlining added), and *section 22C* ibid. which imposes an obligation on a local authority to place a looked after child with (among others) "a relative, friend, or other person connected with [the child]". This approach – and the ethos of the *CA 1989* which is supportive of wider family involvement in the child's life, save where that outcome is not consistent with their welfare – is mirrored in guidance and regulations which I comprehensively reviewed in *Re H*[2], which I do not propose to rehearse here.

18. In this case, adoption for F is not currently the care plan, nor indeed is it actively under consideration, but it appears to be in the mind of the Local Authority given the vulnerability of the mother and her current and recent circumstances. The infelicitously worded reference in the application to ensuring "that it can tick the "nothing else will do" box" perhaps exposes a somewhat formulaic and mechanical approach to the task facing a court in these circumstances; it should be remembered that the suite of cases which followed the Supreme Court's decision in *Re B (A Child)* [2013] UKSC 33 underline the importance of a holistic evaluation of the "*realistic*" options where adoption is being considered, so that an adoption agency, and/or a court can satisfy itself, before pursuing adoption, that "nothing else will do". I infer that the Local Authority has in mind that were adoption to be 'on the cards', the statutory checklist in *section 1* of the *Adoption and Children Act 2002* ('*ACA 2002*') and specifically *section 1(4)(f)(ii) ACA 2002* would come into play viz. "the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs".

19. The Respondents seek to meet these points by reference to the following statute and case law.

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[2] See inter alia at §26) guidance published some four years ago by the Family Rights Group (FRG) ('*Initial Family & Friends Care Assessment: A Good Practice Guide*')

20. First, Ms Anning and Ms Kelly make the powerful point that the mother's birth family are *not* 'family' and are *not* 'relatives' of F, and have not been for many years. They point to the fact that *Sections 46* and *Section 67* of the *ACA 2002* have the combined effect of having extinguished the parental responsibility of the mother's birth parents at the time of her adoption, and that the mother is and has been since her adoption order treated in law as if born to Mr M and Ms N and no other person. When the adoption order was made in relation to the mother, the court effectively approved and actioned the 'permanent severance of family ties' (*YC v United Kingdom* (2012) 55 EHRR 967) between the mother and her biological family, creating new a new family for the rest of her life.

21. Secondly, even if (contrary to that primary submission) the birth family could be said to be 'family' because of their blood ties:

> "… …there are no provisions of either the *CA 1989* or the *ACA 2002,* the *AAR 2005,* or associated Practice Direction, which absolutely require or place a duty on a local authority to inform, consult, assess or otherwise consider members of the wider family of a child in circumstances such as these" (see *Re H* at §22) emphasis in the original).

22. This was a point confirmed by the Court of Appeal in *Re A, B, C*, to which I was referred:

> "There is no statutory obligation upon a local authority to make enquiries in every case, and the issue of notification is a matter of discretionary judgment in the light of all the facts of the case." (Peter Jackson LJ in *Re A B C* at §66);

23. Both Peter Jackson J in *Re A. B, C,* and I, in *Re H,* had cited the Court of Appeal's judgment in *Re C v XYZ County Council* [2007] EWCA Civ 1206, [2008] 1 FLR 1294 in which Arden LJ said:

> ""there is no duty to make enquiries which it is not in the interests of the child to make, and enquiries are not in the interests of the child simply because they will provide more information about the child's background: they must genuinely further the prospect of finding a long-term carer for the child without delay" (at §3).

24. Thirdly, even if the mother's birth family could be regarded as "other person[s] connected" with F, or "any such person" in the role of relative, evaluation is only truly required of "realistic" options, as I have sought to accentuate above. As I said in *Re H* (at §32) and I repeat here:

> "… the courts have been keen to emphasise that if family members are identified as potential carers, it is not contemplated that the local authority duty to consider them extends to a duty to "uncover" every stone nor "exhaustively examine" the ground before concluding that a

> particular option is not realistic (*Re R* at [65]). The cases make clear that the court is concerned only with "realistic" options. In *Re R*, at [59], it was said:
>
> > "*Re B-S* does *not* require that every conceivable option on the spectrum that runs between 'no order' and 'adoption' has to be canvassed and bottomed out with reasons in the evidence and judgment in every single case. Full consideration is required only with respect to those options which are "realistically possible"."

25. Fourthly, they maintain that *Article 8* almost certainly does not apply to the birth family in this case (see also [15](vii) above). The existence or non-existence of "family life" for the purposes of *Article 8* is essentially a question of fact and degree, depending upon the existence in the individual case of a relationship and/or personal ties which have sufficient constancy and substance to create *de facto* "family ties" see: *Lebbink v The Netherlands* [2004] 2 FLR 463, ECHR. On these facts, they submit (and I can confirm that I agree) that it does not apply.

26. Fifthly, while they accept that I should treat the mother's comments about her birth family with some care, I can undertake an 'analysis' of the information and reach a conclusion; I am not required to perform a full assessment in order to do so; (*Re JL & AO [*2016] EWHC 440 (Fam), [2017] 1 FLR 1545); I bear in mind what Peter Jackson LJ said in *Re A, B, C* at §89(6)(4):

> ""*The likelihood of a family placement being a realistic alternative to adoption.* This is of particular importance to the child's lifelong welfare as it may determine whether or not adoption is necessary. An objective view, going beyond the say-so of the person seeking confidentiality, should be taken about whether a family member may or may not be a potential carer. Where a family placement is unlikely to be worth investigating or where notification may cause significant harm to those notified, this factor will speak in favour of maintaining confidentiality; anything less than that and it will point the other way".

27. Finally, the relevance of the mother's own vulnerability. It was recognised by Peter Jackson LJ in *Re A, B, C* that if there would be a psychological impact on the mother of notification being given this "must weigh heavily in the balancing exercise" (§89(6)(5)). I made a similar point in *Re H* at §49:

> "There will be cases (if, for instance, there is a history of domestic or family abuse) where it would be unsafe to the child or the parent for the wider family to be involved in the life of the child, or even made aware of the existence of the child. There will be cases where cultural or religious considerations may materially impact on the issue of disclosure. <u>There will be further cases where the mental health or well-being of the parent or parents may be</u>

> imperilled if disclosure were to be ordered, and this may weigh heavy in the evaluation".

Conclusion

28. For the reasons articulated clearly and comprehensively by Ms Anning and Ms Kelly (summarised at [15] and [16] above), and further elaborated on in the section above addressing 'legal principles', I am satisfied that the Local Authority should not embark on any assessment of the birth family in this case.

29. I am satisfied that the mother's birth family are her 'original' family (as per *ACA 2002*) but are not her current 'family' nor are they her 'relatives' as those terms are used in *Part III* of the *CA 1989*. In that respect, their status (if any) in relation to F is materially different from the status of the extended or wider family as discussed in the caselaw referred to above, namely *Re A, B, C* and *Re H*. Furthermore, the birth family's limited experience of F during a short visit in March 2020 (which culminated in a *section 47* investigation as a result of the serious injury to F) falls a long way short of supporting any finding that they had acquired *Article 8* rights to a family life with F. This right is not established on the basis of biological kinship alone.

30. Even if the birth family could bring themselves within the definition of 'family' for the purposes of the statute/caselaw, this does not place upon the Local Authority any obligation under statute to inform, consult, assess, or otherwise consider them in circumstances such as these (see [21]/[22]/[23] above). In that regard, I have assessed what the mother says about her birth family and have done so objectively and critically. In this context, I have been able to undertake the necessary 'analysis' of their potential as 'realistic options' as long-term carers of F at this stage, without undertaking or commissioning a fully-fledged 'assessment' (see *Re JL & AO* at §92(2)). On the evidence presented, there are at least four clear pointers steering away from the birth family as a *realistic* option to care for F: (a) the fact of the mother's adoption 14 years ago following her upbringing characterised by turbulence and significant neglect (see [6] above); (b) the events surrounding the injury to F in March 2020, and their failure to report the same (see [9] above); (c) the accepted fact that the mother and her birth mother have a difficult relationship (see [12] above), and (d) the current view of the professionals that the mother should avoid contact with her family (see [9] above).

31. Quite apart from those considerations, I accept that the mother has a strong opposition to the birth family being assessed; this carries significant weight in my assessment (see *Re A, B, C* at §89(6)(5), *Re JL & AO* at §50, *Re H* at §37). In this case, I am further satisfied that involving the birth family in assessment would be likely to have a deleterious effect on the mother's fragile mental health, at a critical time when she herself is being assessed in the community as a long-term carer for her daughter. It would also, I am satisfied, cause unwelcome and avoidable division in the relationship between the mother and her parents (Mr M and Ms N).

32. I should add that I could see a situation in which a birth family *could* properly fall to be assessed in circumstances such as these, where for instance the previously adopted parent (the mother or father of the subject child) had re-connected successfully with his/her birth family, and this had been a wholesome and successful reunion. But that is plainly not the case here.

33. That is my judgment.