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Neutral Citation Number: [2023] EWFC 10

IN THE FAMILY COURT
IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002

Date: 20/01/2023

Before :

MR JUSTICE PEEL

Between :

Mr and Mrs C

Applicants

- and -

D

- and -

E

- and -

T

Respondents

Bansa Singh Hayer (instructed by **Burnetts Solicitors**) for the **Applicants**
The First Respondent in person
The Second Respondent did not attend and was not represented
Patrick Gilmore (instructed by **Bendles Solicitors**) for the **Third Respondent**
Michael Jones (instructed by **the Local Authority Legal Department**) for the **Local Authority**, who were not a party to the proceedings but were invited to attend

Hearing dates: 19-20 January 2023

Approved Judgment

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MR JUSTICE PEEL

Mr Justice Peel :

Introduction

1. This is an adoption application on unusual facts. The relevant child, T, was born in 2004 and is now an adult, aged 18 and a half. The application for adoption was issued ten days before she turned 18. At the time of the application, she was living in a property managed by the applicants who run a business providing supported residential accommodation and education services for children. On turning 18, T moved to live with the applicants in their own home, and has therefore lived with them for about 5 months. The applicants are married, but have no children of their own. It was their idea to seek adoption for T, who has enthusiastically embraced the application and actively seeks to be adopted. T lived with her mother (“M”) until February 2019, and maintained contact with her, and her older sister (“S”) until June 2022.
2. M, who appeared in person, opposes the application. She conducted herself with dignity throughout the hearing, and told me that she was worried about escalation of difficulties between herself and T as a result of these proceedings. It was notable in her submissions to me that she repeatedly returned to discussing her former partner, T’s father (“F”) and his family who she described to me as a “curse” hanging over her head.
3. F was not married to M but has parental responsibility. T has not seen F for many years. He has not participated in these proceedings.
4. T is separately represented and supports the application.
5. The Guardian in her written and oral evidence endorses the making of an adoption order.
6. This is a non-agency application, and the Local Authority (“LA”) accordingly does not advance a case either way. It has, however, provided an Annexe A report dated 19 November 2022 in accordance with FPR 14.11, and, as directed by the court, an updated social worker report. Although it does not have formal locus, and has not been joined to the proceedings, the LA was requested at earlier case management hearing to remain involved, and it has attended this hearing. The view of the social worker, as set out in some detail in the Annexe A report and her update, is that an adoption order should not be made.

Procedural history

7. The procedural chronology is convoluted. The relevant statute is the Adoption and Children Act 2002 (“the Act”). An adoption order may be made in respect of a child under 19 years of age (s47(9) of the Act), provided that the adoption application is made before a child turns 18 (s49(4) of the Act).
8. A first hearing took place before Morgan J. The judge gave leave to the applicants to proceed with the adoption application notwithstanding that:

- i) The requirement by s44(3) of the Act to give 3 months notice of an intention to adopt had not been given by the applicants; indeed, no notice at all had been given.
- ii) T had not lived with the applicants for 3 years during the 5 years preceding the application as stipulated under s42(5) of the Act; in fact, she had not lived with them at all.

The judge made it clear that she was taking a pragmatic approach given that T was about to turn 18 and there was a degree of urgency, on the basis that leave could be reconsidered at a later date.

9. Immediately after that hearing, notice of intention to adopt was given by the applicants.
10. At a subsequent hearing which took place before the same judge on 26 October 2022, M initially submitted that the permission previously granted should be revoked, but on reflection agreed that her application should be adjourned until after completion of the Annexe A report and the Cafcass analysis.
11. Thus, before me are two applications:
 - i) An application by M to revoke the leave granted at the first hearing before Morgan J.
 - ii) An application by the applicants for an adoption order to be made, and parental consent be dispensed with.
12. I treated both applications on a rolled up basis and heard the case in full. Having listened carefully to the evidence and submissions, I am satisfied that the original decision to grant leave should stand, and the revocation application should be dismissed. I will go on later in this judgment to consider the substantive adoption application.
13. In respect of T not having lived with the applicants for the stipulated period of time under the Act, s42(6) expressly provides that subsection (5) (the relevant one for these purposes) does not “prevent an application being made if the court gives leave to make it”. In **Re A [2007] EWCA Civ 1383** Wilson LJ (as he then was) said this at para 10:

“10. The researches of counsel do not reveal any reported decision referable to the grant of leave to apply for an adoption order under s.42(6) of the Act. But counsel were in agreement at the hearing before the judge as to the proper approach to any such application; and the judge accepted and endorsed the approach which they commended to him. Equally, before this court, counsel remain in agreement as to it; and, in turn, I consider that we should accept and endorse it. For, notwithstanding the absence of a decision referable to the grant of leave under s.42(6), there is a recent reported decision of this court referable to the grant of leave to apply for revocation of a placement order under s.24(2) of the Act. It is *Re M and L, Warwickshire v. M*, [2007] EWCA Civ 1084. I would accept and hold that the legal principles relevant to the exercise of the discretion whether to grant leave pursuant to each of the subsections is identical. Thus the welfare of the child is a relevant consideration but, by virtue of s.1(7) of the Act, is not the paramount consideration: see [22] and [24] of my judgment in *Re M and L*. Another relevant consideration is whether the proposed application has a real prospect of success: see [29] of that judgment. Indeed I there observed:

"My view is that the requisite analysis of the prospect of success will almost always include the requisite analysis of the welfare of the child. For, were there to be a real prospect that an applicant would persuade the court that a child's welfare would best be served by [the substantive order sought], it would surely almost always serve the child's welfare for the applicant to be given leave to seek to do so. Conversely, were there not to be any such real prospect, it is hard to conceive that it would serve the welfare of the child for the application for leave to be granted. But I hesitate to suggest that analysis of welfare will always be satisfactorily subsumed within an analysis of prospect."

14. It seems to me that in circumstances where T herself strongly supports the adoption application, and where the Guardian is in favour of an adoption order, there is a real prospect of success and all the circumstances, including the welfare of T, militate in favour of a full consideration of the application.
15. As for the time limits, there is no equivalent express leave provision under s44 to that under s42(6). Keehan J in **Re A [2020] EWHC 3296**, faced with a similar non-compliance with the stipulated time limit for the notice of intention to adoption, concluded that he was not barred from permitting the adoption application to proceed because:
 - i) Read purposively, Parliament cannot have intended that s44(3) would have the effect of completely barring an adoption order application.
 - ii) Alternatively, the child's Article 8 rights required s44(3) to be read down in accordance with s3 of the Human Rights Act 1998 so as to enable the court to extend the time limits. To do otherwise, and deny the child the benefits of an adoption order, would be nonsensical and an affront to public policy.
16. I respectfully agree with Keehan J's comprehensive overview of the legal principles, and his conclusion that the court has the power to vary time limits. The court, when considering s44(3), will have regard to all the relevant circumstances but I suggest that Wilson LJ's dicta cited above, being ordinarily the most relevant considerations, are likely to apply to s44(3) in similar vein to s42(6).
17. I am satisfied that time can be varied by the court (indeed, it seems to me that the notice of intention could be dispensed with by the court if exceptionally such a course was justified). On the facts of this case, it should be so varied for the same reasons as giving leave to apply under s42, i.e a consideration of all the circumstances with particular reference to the welfare test and prospects of success. As with s42, I am satisfied that the combination of T's wishes and the Guardian's analysis justifies this course, and I will not disturb the leave order made by Morgan J.

The evidence

18. I heard from the social worker and the Guardian. M also entered the witness box to confirm her written evidence, but was not asked any questions by the advocates although I asked her one or two brief questions.
19. I did not hear from T. Although she is an adult, she understandably did not want to give evidence and her views are set out in crystal clear fashion by the LA and the Guardian. At her request, and with no opposition from the other parties I met her over CVP. Her solicitor was in attendance, as was a member of court staff, but nobody else. She told me she had only wanted to put a face to my name. We did not discuss

the substance of the case or anything which remotely approached being categorised as evidence or submissions. I explained the process and the meeting ended after a few short minutes.

The law on an adoption application

20. It is useful to bear in mind the dicta of Sir James Munby P explaining the nature and effect of an adoptive order at para 54 of **Re X [2014] EWHC 3135**:

“A parental order, like an adoption order, has an effect extending far beyond the merely legal. It has the most profound personal, emotional, psychological, social and, it may be in some cases, cultural and religious, consequences. It creates what Thorpe LJ in *Re J (Adoption: Non-Patril)* [1998] INLR 424, 429, referred to as "the psychological relationship of parent and child with all its far-reaching manifestations and consequences." Moreover, these consequences are lifelong and, for all practical purposes, irreversible: see *G v G (Parental Order: Revocation)* [2012] EWHC 1979 (Fam), [2013] 1 FLR 286, to which I have already referred. And the court considering an application for a parental order is required to treat the child's welfare throughout his life as paramount”.

21. I am required to have regard to s1 of the Act.

1 Considerations applying to the exercise of powers

(1) Subsections (2) to (4) apply whenever a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.

(3) The court or adoption agency 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.

(4) The court or adoption agency must have regard to the following matters (among others)—

(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),

(b) the child's particular needs,

(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

(d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

- (ii) 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,
- (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

(5) [omitted]

(6) In coming to a decision relating to the adoption of a child, a court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

(7) In this section, "coming to a decision relating to the adoption of a child", in relation to a court, includes—

(a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 26 [F5 or 51A] (or the revocation or variation of such an order),

(b) coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an adoption agency or individual under this Act,

but does not include coming to a decision about granting leave in any other circumstances.

(8) For the purposes of this section—

(a) references to relationships are not confined to legal relationships,

(b) references to a relative, in relation to a child, include the child's mother and father.

22. By s47(2)(c) and s52 of the Act (parental consent), the court must be satisfied that parental consent should be dispensed with as a precondition for making an adoption order, and the test is that "the welfare of the child requires the consent to be dispensed with". In **Re P (Placement Orders: Parental Consent) [2008] 2 FLR 625** the Court of Appeal held that the word "requires" denotes a connotation of the imperative, not merely optional or desirable.

23. It is well established that adoption is an outcome of last resort. This proposition has often been stated, but perhaps most famously so by Baroness Hale in **Re B [2013] UKSC 33** at para 34:

"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, where nothing else will do."

24. That said, these dicta do not constitute a short cut. In considering the welfare of the child, the court must weigh up the realistic options, framed within comprehensive

evidence and analysis. It should undertake a global, holistic evaluation of all the options leading to the ultimate welfare decision. The court must carefully consider whether the step which it proposes to take is justified as both necessary and a proportionate interference with Article 8 rights. These propositions are drawn from a number of well known authorities including **Re B-S (Children) [2013] EWCA Civ 1146**, **Re R (A Child) [2014] EWCA Civ 1625** and **Re W (A Child) [2016] EWCA Civ 793**.

25. Each case is fact specific. There is a world of difference between, say, (i) a new-born baby placed for adoption with complete strangers to be removed permanently from abusive parents, and (ii) a step-parent adoption. The legal provisions under s1 and s52 apply equally to all adoption applications, but the necessity and proportionality of an adoptive placement will depend upon a careful analysis of the context and the degree of interference with Article 8 rights which will vary depending upon the nature of the proposed placement. For authority on this point, I need look no further than **Re P (Step-Parent Adoption) [2014] EWCA Civ 1174**.

The factual background

26. I have read a full bundle which includes papers from public law proceedings in 2016 and 2017. I have not conducted a fact finding exercise on many of the allegations made in the papers. I did not think it necessary to do so, and no party invited me to take such a course. Counsel approached this case with commendable focus and proportionality. I have, therefore, reminded myself that although some facts are undisputed, there are some parts of the written evidence which should be approached by me with care. However, I am quite satisfied that the circumstances are sufficiently clear for me to make a reasoned decision.
27. T was born in 2004. M and F separated when she was 4 or 5 years old, after which F played very little role in her upbringing. F has a 2013 conviction for sexual assault on a minor and is a registered sex offender. I am quite sure that the knowledge of this has had a traumatising impact on the family, including T. T describes an unhappy childhood, characterised by an abusive relationship between her parents, and verbally and physically abusive behaviour by her parents towards her. M denies many of the historic allegations, which I do not consider I need to make findings on in respect of the early years. M, for her part, felt that she was undermined by F and F's parents, for whom she has no good words to say; her relationship with them was described by the social worker in earlier proceedings as "toxic". T describes a dysfunctional relationship with S, who she portrays as domineering and intimidating. As time went by, S started to "get in with a bad crowd", particularly from 2015 onwards when she is described as becoming aggressive and bullying, absconding from home and using drugs. S was beyond parental control. My sense is that although there may have been issues in early childhood, much of the intra-family relationships between T, S and M deteriorated sharply from about 2015, as S's behaviour deteriorated, and S approached teenage years. A substantial accentuating factor must have been F's conviction in 2013, and his release from prison a year afterwards. M, in my judgment, has not recovered emotionally and psychologically from these events, and it seems clear that she had difficulty coping with S, and protecting the children from F.
28. Public law proceedings were brought by the LA in 2016, although children's services had first been involved (albeit for only a short time) in 2008. A full care order was

made in respect of S, who was placed away from the family home, and a 12 months supervision order in respect of T. Although the threshold document from that time has not been located, the court would not have made a supervision order without being satisfied that the s31 threshold were met. Piecing together the various documents, the main areas of concern were S's behaviour, a dysfunctional relationship between M and S, and M's inability to protect the children from F. A July 2016 parenting assessment by the LA was positive in respect of M's care of T, and there was no adverse mental health finding in respect of M. That said, she was found to be limited in her capacity to control the children and protect them from possible sexual exploitation by F.

29. In 2018, T met the applicants upon being referred to them for educational services. In February 2019, by when she was 14 years old, T left M's house and, until September 2020, lived a peripatetic, and chaotic lifestyle. She stayed with a variety of friends and foster carers. She returned to M in March 2020 for two months. In May 2020 she briefly lived with S. To the consternation of M, T stayed with F for a few days, and with F's mother for some time. In the midst of all this, a Child Protection Conference was convened on 18 July 2019 which recorded that T's emotional needs were not being met consistently by her parents and grandparents, there was a history of relationship issues between T and M, and there were concerns about M's ability to manage T. It also recorded that F (with whom T had spent some time shortly before the CPC) had directed seriously inappropriate comments towards T, and any relationship of trust between them had broken down.
30. In September 2020, T requested housing of her own and was accommodated under s20 in a supported property managed by the applicants.
31. It is clear that T came to know well the applicants who were "hands on" managers, and started to spend significant social and leisure time with them. Their personal relationship developed. Over time, she began to be treated as part of their family, spending time during the day at their home. Although, being under 18, she was not permitted to live with them, she went away with them for weekends (with LA permission), and it is obvious that they formed a close, loving and affectionate bond. After a while she started working for them during the day under, as I understand it, an apprenticeship scheme, being picked up from the placement, taken to the office and then returned by the applicants at the end of the day.
32. T continued to stay in contact with, and occasionally see, M and S. In November 2021, T and M went on a shopping trip to Glasgow. I have read some text messages between T and M between April and May 2022 which are light-hearted and affectionate. On the other hand, I have seen text messages, and heard voice recordings, in which T and M communicated with each other in intemperate, abusive and angry manner. The picture is mixed, suggestive of a volatile relationship between T and M, frequently unpleasant and hostile, but punctuated by occasional calm and good natured times together. In June 2022, all communication between T and M and S came to an end. It seems to me that this coincided with the strengthening of bonds between T and the applicants, such that she had no real need or desire to speak to M and S.
33. Almost immediately after reaching 18, T moved to live with the applicants and currently lives in a self contained area at their house. She is working in their business.

T experiences, I have no doubt, a warm and happy life with the applicants, with whom she enjoys day to day interaction, in addition to which they have spent time abroad on holiday, and have gone on camping trips and the like. The professionals in the case have nothing but praise for the applicants and how they have supported, loved and nurtured T. T has become very close to them, refers to them as Mum and Dad, and has taken their surname by deed poll. The applicants in their written evidence describe T as a remarkable young woman and I am satisfied that they are devoted to her, and want the very best that they can provide for her.

Analysis

34. This is an unusual case. The delicacy of the evaluation exercise is shown by the differing views of the professionals; the social worker who, whilst describing it as finely balanced, does not support an adoption order, and the Guardian who does, regarding it as a reasonably clear cut decision to take. Both professionals, in my view, have behaved impeccably in the way they have approached this case, the care taken, the sensitivity displayed and the thoroughness of their approach.
35. A highly influential factor is T's own wishes. She is now 18. She is articulate, mature and intelligent. She has spoken to professionals and to her own lawyers. I am satisfied that she fully understands the nature, meaning and consequences of an adoption order. She appreciates that it constitutes the severing of legal ties with her birth family, essentially foregoing one family for another. She understands what she would be leaving behind. She says in her written evidence that even thinking about her birth family causes her unhappiness. She attaches considerable significance to an adoption order which, for her, is about her family status. She says living with the applicants makes her feel more secure, and they meet her physical and emotional needs. She now sees herself as a member of a different family, and yearns for the stability, security and permanence which would be afforded by an adoption order. In my judgment, this would enhance her own sense of identity, not just now but for ever, drawing a line under an unhappy past, and reflecting the reality on the ground that she treats the applicants as her parents, and they treat her as their daughter. She has drawn on her lived experiences with her family, in particular, I suspect, the events of the past few years. It seems to me that she has no wish to be associated with her sex offender father, and an ongoing legal relationship with F and M would maintain that association. She contrasts the dysfunctional relationships with her birth family, the chaotic lifestyle, and the exposure to her sex offender father with her happy, stable and secure relationship with the applicants with whom she has lived for 5 months but known well for much longer.
36. When M made her submissions to me, I sensed that she respected T's views, but, as she told me, her real concern is if the relationship with the applicants breaks down. That is a relevant factor; if that were to happen, she would have lost two families. However, she has known the applicants well since 2020 and there is no reason to anticipate a complete breakdown of relations; the reverse seems likely. And, again, this is something which T has considered, and her views are clear and consistent. It seems to me that the essence of what T desires, and needs, is emotional and psychological permanence. Physically, she may move away from the applicants as she acquires a greater degree of independence in adulthood. But what she requires is a sense of belonging, which can only be fully achieved emotionally and psychologically under an adoption order, for I am quite sure that her relationship with her birth family

has come to an end. An adoption order would stabilise, and enhance, her own sense of identity. I consider that for her to be able to present herself to the outside world as the child of the applicants would be a powerful benefit to her. I acknowledge that T was in contact with M until June 2022, but the overall picture of their relationship has not been a happy one in recent years and T has decided to sever all communication. It is notable how she has blossomed since living with the applicants, in terms of eating better, becoming more confident and happier. She is aware of the contrast between living with the applicants, and her lived experience with her birth parents.

37. I have great sympathy for M. She has been profoundly hurt and affected by the behaviour of F which, so it seems to me, has deeply fractured the family. To sever T's ties with her and S, in particular, is not a step to be taken lightly. I hope that if T's status, and sense of family permanence, is settled by an adoption order, she, M and S may be able to resume a level of cordial contact. The applicants, to their credit, would have no objection to T, as an adult, doing so. I suspect that for all concerned that would be desirable, particularly if and when T, or S, in time have children who may want to explore their own identities. I am of the view that T will find that process much easier if an adoption order is made, separating her formally from her birth family. I do not discount the possibility that over time T may come to regret an adoption order being made, but on balance this seems to me to be an improbable scenario, and comfortably outweighed by the social, emotional and psychological benefits for the rest of her life.
38. I have considered all the factors under s1 of the Act in the round, and weighed them up individually and collectively. I have come down in clear favour of an adoption order which in my judgment is appropriate, necessary and proportionate. I will therefore make the adoption order, and, for the avoidance of doubt, dispense with parental consent as required by the Act.
39. I appreciate that this will be a grave disappointment to M, but I sincerely hope that this decision will enable T, M and S to draw a line and attempt, over time, to restore their fractured relations.