



Neutral Citation Number: [2019] EWHC 1572 (Fam)

Case No: ZE/40/19

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/06/2019

Before :

THE HONOURABLE MR JUSTICE HAYDEN

Between :

London Borough of Tower Hamlets

Applicant

- and -

Mother

1st Respondent

- and -

Father

2nd Respondent

- and -

T (a child)

3rd Respondent

(by the child's Guardian)

Mr Chris Barnes (instructed by **London Borough of Tower Hamlets**) for the Appellant

Mr Dingle Clark (instructed by **Lillywhite Williams & Co**) for the Mother

Father acting in person

Katy Rensten on behalf of the child's guardian (instructed by Freemans Solicitors)

Hearing dates: 12 June 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE HAYDEN

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.

Mr Justice Hayden :

1. During the course of the last two days I have heard applications by F, supported by M: to reopen previous findings of fact; for leave to apply to revoke the placement order (a second application, the first having been heard by Baker J, as he then was, 25th June 2018); for permission to appeal my decisions in both applications. Each of the ex-tempore judgments has been transcribed and approved. This is, accordingly, the fourth judgment in this two-day hearing. I do not understand it to be subject to any application for permission to appeal.
2. An important issue has arisen during case management. The child T, born in the Spring of 2019, is the subject of care proceedings. There is an interim care order in favour of London Borough of Tower Hamlets. The child and parents are presently subject to a Residential Assessment, under the aegis of Section 38 (6) Children Act 1989. The birth of T has not been registered. It is important to clarify that this is not by omission but by design. F is fundamentally opposed to registration for reasons which I will endeavour to explain below. The position of M, as explained by her counsel, Mr Clark, is that whilst she is not prepared to register T's birth herself, she is not opposed to somebody else registering it on her behalf. F is philosophically opposed in principle.

The Father's beliefs as to the legal framework.

3. F has strong beliefs surrounding the concept of "*sovereignty*". This is a very particular concept for him. It has nothing at all to do with contemporary debate. It is essentially a personal ideology. F believes that central to the concept is the power and writ of the individual. '*We are each...*', he says, '*our own sovereign. We come from the Earth, we are the creations of the universe. We are governed by a Common Law but only to the extent that we depart from three principles. These three imperatives are: to do no harm; to cause no loss; to inflict no injury.*' In circumstances where they are proved to have occurred, to the criminal standard of proof, F asserts that what he calls the Common Law is then triggered.
4. He places great emphasis on The Cestui Que Vie Act 1666. In the 1666 Act Section 1, F tells me, there are provisions which state '*that if a title or living being does not prove themselves alive after 7 years they are considered lost at sea. This is the means for government to take control of the dead entity's property.*' F believes this to be the route by which the government '*help themselves to money and property.*' We are in such circumstances considered '*dead entity in the eyes of the law.*' In a graphic and powerful metaphor F states to me that we '*come to life and are temporarily risen from the dead when summonsed to court*'. The requirement to '*all rise*' when the judge enters the court is symbolic of rising for the resurrection. These views may sound unusual and somewhat eccentric. They are, however, genuinely held and I have done my best to summarise them.
5. It is in this context that when a birth is registered, F considers this to be the equivalent of an '*entry into a ship's manifest*', in which the child becomes '*an asset to the country which has boarded a vessel to sail on the high seas.*' This facet of admiralty and maritime law is pervasive in F's thinking. The essence of F's objection is his belief that registration will cause his son to become controlled by a State which he perceives to be authoritarian and capricious.

6. T has been given a name and surname but F strenuously resists registration. This is notwithstanding that a failure to do so is, in a variety of practical ways, likely to serve as an impediment to the promotion of T's welfare as well as to have an adverse impact on F's own legal status.
7. In *Re C [2016] 3 WLR 1557* King LJ considered the applicable legislative structure, which she described as 'a maze'. In that case the judge was restricting the parent's choice of name, which was peculiarly offensive, as well as manifestly burdensome to the child. Having reviewed the applicable legal framework the judge concluded that M and F are under a legal duty to register the birth of their child as a facet of their parental responsibility. King LJ cited *Re H-B (Contact) [2015] EWCA Civ 389*, there the President of the Family Division, Sir James Munby P, quoted with approval the judgment of McFarlane LJ in *Re W (Direct Contact) [2012] EWCA Civ 999* in which he said the following concerning parental responsibility:

"[72] I wish to emphasise this, parental responsibility is more, much more than a mere lawyer's concept or a principle of law. It is a fundamentally important reflection of the realities of the human condition, of the very essence of the relationship of parent and child. Parental responsibility exists outside and anterior to the law. Parental responsibility involves duties owed by the parent not just to the court. First and foremost, and even more importantly, parental responsibility involves duties owed by each parent to the child."

8. It is necessary to consider the **Birth and Deaths Registration Act 1953** (BDRA), the purpose of which is to create a document of public record, relating to all births and deaths in England and Wales. Section 1 (1) BDRA 1953 provides:

"Subject to the provisions of this Part of the Act, the birth of every child born in England and Wales shall be registered by the registrar of births and deaths....by entering in a register kept for that sub-district such particulars concerning the birth as may be prescribed."

Section 1(2) BDRA 1953 sets out who is qualified to provide the necessary information to the Registrar; these people are known as "qualified informants":

"(2) The following persons shall be qualified to give information concerning a birth that is to say-
(a) the father and mother of a child;
(b) the occupier of the house in which the child was to the knowledge of the occupier born;
(c) any person present at the birth;
(d) any person having charge of the child."

9. The timescales for the provision of information are found in *Sections 2, 3 and 6* of the *BDRA 1953*. *Section 2(1)* provides that:

"(i) In the case of every birth it shall be the duty – (my emphasis) (a) of the father and mother of the child: and

(b) in the case of death or inability of the father or mother, of each other qualified informant, to give the registrar, before the expiration of a period of forty-two days from the date of birth, information of the particulars required to be registered concerning the birth, and in the presence of the registrar to sign the register:

Provided that-

(i) the giving of information and the signing of the register by any one qualified informant shall act as a discharge of any duty under this section of every other qualified informant;

10. Section 4 BDRA 1953 provides that where, after the expiration of forty-two days, ‘*the birth of the child has, owing to the default of the persons required to give information concerning it, not been registered...*’, the Registrar can require any **qualified informant** (my emphasis) to attend at a place appointed by the Registrar to give the required information and to sign the register in the presence of the registrar. (Section 6 BDRA 1953 makes a similar provision for circumstances in which, for whatever reason, the birth of a child has not been registered after three months but before the expiry of twelve months post birth).

11. That the father and/or mother are under a legal obligation to register the birth is, to my mind, self-evident from the wording of Section 1 (1) BDRA 1953 (see para 8 above), which is expressed in mandatory terms. King LJ unambiguously concluded: ‘*the important point is in my judgment, that the mother and father are under a duty to register the birth*’ (para 39).

12. Though the Court of Appeal was primarily focusing on the name preferred by the parents in that case, King LJ took considerable care to identify the interrelationship of statutory duty and parental responsibility. Thus, at para 53:

“As set out at [23] above, by section 3(1) CA 1989 parental responsibility is defined as the "rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child". Further, as already noted, under section 2(1) BDRA 1953 a parent is under a statutory duty to provide the required information to the Registrar within 42 days. It is hard to see how the duty to register the birth of a child under section 2(1) BDRA 1953 can be viewed as other than a "duty" which, by "law, a parent has in relation to a child" under section 3(1) CA 1989 and therefore as an act of parental responsibility. Such a conclusion would also accord with the view of the Court of Appeal in Re D,L and LA.”

13. Inevitably, in the light of the above, King LJ concluded as follows:

“i) the choosing of a name (forename and surname) for a child by a parent with parental responsibility; and

ii) thereafter the act of complying with the duty of the mother and the father to give to the registrar " information of the particulars required to be registered concerning the birth, and in the presence of

the registrar to sign the register" (section 2(1) BDRA 1953) are each acts of parental responsibility."

14. It is axiomatic that the effect of the making of a care order or interim care order, pursuant to *section 33(3) CA 1989*, grants a Local Authority Parental Responsibility. *Section 33(3)(b)* goes further, as it not only allows a local authority to share Parental Responsibility with a parent, but, additionally, gives it the power to:

"determine the extent to which a parent may meet his parental responsibility for the child."

15. That power is always subject to *section 33(4) CA 1989* which states:

"(4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare."

16. A Local Authority is enabled, pursuant to *section 33(3) CA 1989*, to restrict the power of a parent to make decisions, across a broad spectrum, regarding a child's life. The Local Authority may take over the reins, in the decision-making process in relation to a child in care subject to *section 33(4) CA 1989* where there is a welfare or safeguarding imperative. An example of the use to which this power is routinely (and appropriately) put is in deciding where and with whom a child in care is to live.

17. In *Re C* (supra), King LJ reached the following conclusion at para 77:

"In my judgment notwithstanding that a local authority may have the statutory power under section 33(3)(b) CA 1989 to prevent the mother from calling the twins "Preacher" and "Cyanide", the seriousness of the interference with the Article 8 rights of the mother consequent upon the local authority exercising that power, demands that the course of action it proposes be brought before and approved by the court."

18. Having concluded that the Local Authority had a statutory power to intervene pursuant to *Section 33 (3) (b) CA 1989* the Court of Appeal took the view that the seriousness of the interference with what it identified as 'the Article 8 Rights of the mother' demanded that the proposed course of action be brought before and approved by the Court. Here I am concerned with parental obligation to comply with a statutory duty as required by law. This does not require, in my judgment, the oversight or approval of the Court. With respect to the father, it is a simple requirement in law. Nonetheless, in the light of the very disturbing history to this case and as there were various applications before the Court in any event, the Local Authority has chosen to seek the Court's approval regarding the registration of T's birth.

19. One of the anomalies, as I understand it, that came to light in *Re C* is the fact that *Section 33 (3) CA 1989* provided a procedural route to the Court only in respect of surnames and not in respect of forenames. It was necessary to consider whether there was an alternative statutory route to redress this anomaly. This is the '*locus classicus*' for the application of the inherent jurisdiction. King LJ concluded:

“In my judgment, the local authority took the correct procedural route when they made an application under section 100 CA 1989 seeking “the intervention of the High Court in order to exercise its powers pursuant to section 100 Children Act (CA) 1989 and/or its Inherent Jurisdiction” (sic).”

20. In this case, the forty-two-day period for registration has ended. It is manifestly in T’s best interest for his birth to be registered, in order that he may be recognised as a citizen and entitled to the benefits of such citizenship. It is also in his interests that his father should, especially during the course of these proceedings, have Parental Responsibility for him. F’s previous behaviour towards HHJ Atkinson resulted in both he and his partner receiving a custodial sentence. This does not prevent him from obtaining Parental Responsibility, it is an order that reflects T’s rights. I am satisfied that the Local Authority may intervene to assert its own Parental Responsibility as a ‘qualified informant’ to register the birth and that the Interim Care Order embraces them as ‘any person having charge of a child within the meaning of s.1 (D) of BDRA 1953’. In these circumstances the Local Authority is the institutional parent.
21. Mr Barnes, on behalf of the Local Authority, suggested that the Court may wish ‘to augment this’ by making an order authorising the Local Authority to register the birth under Section 100 of the Children Act 1989. He suggests this may in effect be a ‘safety net’ if the above reasoning is in doubt in some way. It requires to be stated that such an order is inconsistent with my conclusion that Section 33 (3) CA 1989 is apt to address the requirement for registration. In *London Borough of Redbridge v SNA [2015] EWHC 2140 (Fam)* I made it clear that the inherent jurisdiction of the High Court is not, as I termed it there, ‘a lawless void’ permitting judges to do all that which we consider to be right and helpful. Its power is only available through the gateway of Section 100 CA 1989. It is perhaps helpful to reiterate what I said in *London Borough of Redbridge v SNA* (supra):

“33. The concept of the ‘inherent jurisdiction’ is by its nature illusive to definition. Certainly, it is ‘amorphous’ (see paragraph 14 above) and, to the extent that the High Court has repeatedly been able to utilise it to make provision for children and vulnerable adults not otherwise protected by statute, can, I suppose be described as ‘pervasive’. But it is not ‘ubiquitous’ in the sense that its reach is all-pervasive or unlimited. Precisely because its powers are not based either in statute or in the common law it requires to be used sparingly and in a way, that is faithful to its evolution. It is for this reason that any application by a Local Authority to invoke the inherent jurisdiction may not be made as of right but must surmount the hurdle of an application for leave pursuant to s100 (4) and meet the criteria there.”

22. It is also important to highlight that *The Family Proceedings Rules 2010, Practice Direction 12D 1.1 (FPR 2010)* reinforce the limited circumstances in which the inherent jurisdiction of the court should be invoked, but also underline the breadth of the powers of the court once the court has decided to exercise its inherent jurisdiction:

“It is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and

properly taken care of. The court may in exercising its inherent jurisdiction make any order or determine any issue in respect of a child unless limited by case law or statute. Such proceedings should not be commenced unless it is clear that the issues concerning the child cannot be resolved under the Children Act 1989."

23. As I understood it, following exchanges, Mr Barnes accepted the force of this and did not pursue an application under the inherent jurisdiction. Accordingly, I approve the Local Authority's plan to register the birth of T pursuant to the statutory power I have identified.