



Neutral Citation Number: [2020] EWHC 3140 (Fam)

Case No: FD20P00400

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/12/2020

Before :

MR TEERTHA GUPTA QC
Sitting as a Deputy High Court Judge

Between :

THE LONDON BOROUGH OF HOUNSLOW **Applicant**

- and -

EL **First Respondent**

- and -

OL and FL **Second Respondent**
(By their Children’s Guardian)

Anna Walsh (instructed by the **London Borough of Hounslow**) for the **Local Authority**

Mr Jasvir Degun (instructed by **Messrs Sweetman Burke and Sinker**) for the **First Respondent Mother**

Ms Martha Cover (instructed by **Messrs Russell Cooke**) for the **Second and Third Respondent Children by their Children’s Guardian**

Hearing date: 13 November 2020

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.

.....

MR TEERTHA GUPTA QC

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 TEERTHA GUPTA QC sitting as a Deputy High Court Judge

1. This hearing has been relatively short; the application by the local authority is supported by the mother (Mrs L) and the guardian. However this is an exceptional application and requires unique facts for me to approve it. The issues are of vital importance to these two twins, who are 5 months old and for the person who is not here and has no knowledge of these proceedings, namely the mother's husband, "Mr L." or as I shall refer to him "H", who lives in Poland. Hence it is necessary for me to go into some detail in scrutinising the application and considering whether I should grant it or not. The application has been made under Part 19 of the family procedure Rules 2010 and FPR 14.21, it is by the local authority, who seeks an order dispensing with the need to notify and seek the consent of the husband of the twins' mother, to their adoption, together with a family in England.

2. The reason is that the mother states he is not the biological father of the children, but rather they are the product of the briefest of extra marital affairs, commonly known as a 'one night stand' which took place in London after a chance meeting with an Indian stranger in bar. The mother's husband ('H') did not even know that his wife was pregnant leading up to her arrival back in England earlier this year and the day the twins were delivered by caesarean section on 15 June 2020. Mr L's name does not appear of the twins' birth certificates. On the 29th July 2020, Mr Nicholas Goodwin QC sitting as a deputy High Court judge was satisfied that the children were habitually resident in the jurisdiction and gave directions in the matter.

3. I have read the trial bundle and skeleton submissions and authorities, and the mother gave oral evidence on affirmation from Poland during this hearing. She had the services of a Polish interpreter. I have repeatedly reminded myself that the evidence and legal argument, has gone unchallenged and hence I need to treat them with caution.

4. I am grateful for the detailed legal and factual submissions that have been filed on behalf of the parties. Ms Walsh represents the local authority, Mr Degun represents the mother (who had the prescience to attend from Poland on two devices to ensure that simultaneous translation was possible by the court appointed Polish interpreter) and Ms Cover represents the children by way of their Children's Guardian Ms Poienar. I have read the three skeleton arguments and the addendum submissions on behalf of the children.

5. I am also grateful to the Polish Embassy (which has rightly been notified of this case and this hearing in the spirit of 'transparency and openness' as set out by Munby P in **Re N [2015] EWCA Civ 1112**,) for the following missives, sent to the solicitor for the local authority:

*From: Embassy of the Republic of Poland in London-RPZOM Section
<london.cp@msz.gov.pl>*

Sent: Friday, November 13, 2020 10:29:46 AM

Dear Suzannah,

Thank you for your email.

I would like to inform you that regrettably, we are unable to be present at the hearing today due to multiple commitments however I would like to take this opportunity to express our interest in the case and despite our absence today we would like to assure you of our readiness to assist the Court and the Parties should this be considered as helpful. As such please do not hesitate to contact our department on 07825610587/02078228973 if required. I would also be very grateful if at your earliest convenience you could update us of the outcome and share a relevant court order with our office subject to court permission.

In the view of the mother's wishes we would like to bring to your attention that as the children are Polish nationals adoption in Poland is also available therefore it

may be in the children's best interest to conduct parallel search for adopters in Poland (intercountry adoption) - I attach relevant guidance herewith.

In line with the provisions of the art 8 and art 20 of the UN Convention on the Rights of the Child we would welcome if all efforts are made for the adopters to be of Polish heritage so that the children are able to preserve their heritage. Should this be impossible, as per our previous email, please note that in case of the adopters not being Polish nationals, a child can retain its Polish citizenship, however it takes place upon request of the parental responsibility holders – guidance attached in the previous email.

Should you have any queries or seek our assistance please do not hesitate to contact our office.

I would be grateful if you could acknowledge the receipt of this email.

Kind Regards

CARE PROCEEDINGS UNIT
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Anna Perumall
Senior Care Proceedings Specialist
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Agata Górecka
Legal Specialist
Head of the Care Proceedings Unit

And earlier the previous day:

From: Embassy of the Republic of Poland in London-RPZOM Section
Sent: 12 November 2020 15:05

Dear Suzannah,

Thank you for your email in relation to the Polish family. I would be very grateful if you could confirm the time of tomorrow's hearing as we may wish to attend subject to our availability.

We understand that the mother is a Polish national. We further acknowledge that the children were relinquished by their mother and that she consented the children to being placed in an adoptive placement and she did not wish for the family in Poland to be considered as prospective carers. Consequently, we would like to invite the Court to consider possible provisions in relation to promotion of their heritage post final orders.

Additionally, I would like to inform you that in case of the adopters not being Polish nationals, a child can retain its Polish citizenship, however it takes place upon request of the parental responsibility holders. Please find the attached information regarding Polish nationality – I draw your attention to the part on “Polish citizenship and full adoption by foreign nationals” which you may find helpful.

Should there be such matters that needed consultation please do not hesitate to contact our office.

Kind regards,

Agata Górecka
Legal Specialist

CARE PROCEEDINGS UNIT

6. I have heard oral evidence from the mother only, who adopted her written statement that I have read as part of the trial bundle. The key issue is whom she conceived the twins, who are now 5 months old and who have lived in foster care (placed voluntarily under s.20 of the Children Act by the mother) since birth and their discharge from hospital. I am pleased to hear that they are doing well and are thriving. If what the mother tells me is true, the biological father cannot be identified and I am satisfied that everything that could be done, has been done by the local authority to try and find the father (again I state-if I find that it is not H).

The Law

a) Statutes:

- i) s.26 of the Family Law Reform Act 1987 and the corresponding Note states as follows at page 940 of the Family Court Practice 2020:

“Rebuttal of presumption as to legitimacy and illegitimacy

Any presumption of law as to the legitimacy or illegitimacy of any person may in any civil proceedings be rebutted by evidence which shows that it is more probable that not that that person is illegitimate or legitimate, as the case may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption.

(Note 2.640.[1]): **Standard of proof**.....The ‘civil standard’ is required here as explained for example in *Re B (Children) (Care Proceedings: Standard of Proof)* [2008] 2FLR 141 HL.”

ii) The Legitimacy Act 1976 (A1(2)) refers to “*The presumption of common law that a child born to a woman during her marriage to a man is also to be the natural child of her spouse...*”

7. The question for me is whether I find that the presumption has been rebutted.

iii) S. 2(1) of The Children Act 1989 states as follows:

“Where a child’s father and mother were married to ...each other at the time of his birth, they shall each have parental responsibility for the child.”

But although the word ‘father’ or ‘parent’ is not defined , in the commentary to 10(4) in The Family Court Practice 2020 it states as follows:

“The meaning of ‘parent’ (10(4))-This term is not defined in the Act. A child’s natural mother and father...are his parents unless he has been adopted.”

By ‘natural’, I interpret it to mean ‘*biological*’.

8. I therefore can see that if it can be proved that a married man is not the natural or *biological* parent of his wife’s child, (who has been born in England and for whom no name appears on the birth certificate under the heading ‘Father’), the presumption of legitimacy is rebutted and therefore he has no parental responsibility for the child.

b) Relevant Case law:

9. I am grateful to counsel for setting this out clearly in their submissions, I have read them in detail, and I extract the following from them:

A, B and C (Adoption: Notification of Fathers and Relatives) [2020] EWCA Civ 41 is now the leading case on applications not to disclose the fact of a child's birth to the father, whether legal, biological, or both, and/or to other members of the child's biological family. The case contains a comprehensive survey of the legal framework and the case law.

Summary of principles to be applied

- i. The Court of Appeal heard 3 appeals on the issue of the approach the court and local authorities should take in circumstances where a mother asks for her child to be adopted without notifying the father and/or wider family of the child's existence. Peter Jackson LJ set out the competing interests which arise in such cases at [2]-[3]:

“2. Respect is due to the position of any mother who goes through pregnancy without family support and then chooses to relinquish the child at birth in the belief that it is for the best. Respect is also due to the position of the unsuspecting relatives. Some may have been a fleeting presence in the mother's life, but others may be more significant figures who have been kept in the dark and would be astonished to find that a baby (their child, sibling or grandchild) had been born and adopted without their knowledge, particularly if they were in a position to put themselves forward as carers. Most of all, the notification decision has life-changing implications for the baby. It may influence whether adoption happens at all and, even if it does, a sound adoption has its foundations in the integrity of the process by which it is achieved.

3. For social workers and courts these are not easy decisions. They have to be made without delay, on incomplete information, and in the knowledge of the profound consequences for everyone concerned. The law aims to distinguish those cases where a 'fast-track' adoption without

notification of relatives is lawful from the majority of cases where the profound significance of the decision for the child demands that any realistic alternatives to adoption are given proper consideration. But in the end each case is unique and the outcome must depend on the facts.”

- ii. Having set out the legal framework in detail, Peter Jackson LJ summarised at [89] the principles governing decisions in this area, to be applied whether decisions are being made by the court or local authorities:

“The principles governing decisions (by local authorities as adoption agencies or by the court) as to whether a putative father or a relative should be informed of the existence of a child who might be adopted can be summarised in this way.

- 1. The law allows for 'fast-track' adoption with the consent of all those with parental responsibility, so in some cases the mother alone. Where she opposes notification being given to the child's father or relatives her right to respect for her private life is engaged and can only be infringed where it is necessary to do so to protect the interests of others.*
- 2. The profound importance of the adoption decision for the child and potentially for other family members is clearly capable of supplying a justification for overriding the mother's request. Whether it does so will depend upon the individual circumstances of the case.*
- 3. The decision should be prioritised and the process characterised by urgency and thoroughness.*
- 4. The decision-maker's first task is to establish the facts as clearly as possible, mindful of the often limited and one-sided nature of the information available. The confidential relinquishment of a child for adoption is an unusual event and the reasons for it must be respectfully scrutinised so that the interests of others are protected. In fairness to those other individuals, the account that is given by the*

person seeking confidentiality cannot be taken at face value. All information that can be discovered without compromising confidentiality should therefore be gathered and a first-hand account from the person seeking confidentiality will normally be sought. The investigation should enable broad conclusions to be drawn about the relative weight to be given to the factors that must inform the decision.

5. *Once the facts have been investigated the task is to strike a fair balance between the various interests involved. The welfare of the child is an important factor but it is not the paramount consideration.*

6. *There is no single test for distinguishing between cases in which notification should and should not be given but the case law shows that these factors will be relevant when reaching a decision:*

(1) Parental responsibility. The fact that a father has parental responsibility by marriage or otherwise entitles him to give or withhold consent to adoption and gives him automatic party status in any proceedings that might lead to adoption. Compelling reasons are therefore required before the withholding of notification can be justified.

(2) Article 8 rights. Whether the father, married or unmarried, or the relative have an established or potential family life with the mother or the child, the right to a fair hearing is engaged and strong reasons are required before the withholding of notification can be justified.

(3) The substance of the relationships. Aside from the presence or absence of parental responsibility and of family life rights, an assessment must be made of the substance of the relationship between the parents, the circumstances of the conception, and the significance of relatives. The purpose is to ensure that those who are necessarily silent are given a notional voice so as to identify the possible strengths and weaknesses of any argument that they might make. Put another way, with what degree of objective justification might such a person complain if they later discovered they had been excluded from the decision? The answer will differ as between a father with whom the

mother has had a fleeting encounter and one with whom she has had a substantial relationship, and as between members of the extended family who are close to the parents and those who are more distant.

(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.

(5) The physical, psychological or social impact on the mother or on others of notification being given. Where this would be severe, for example because of fear arising from rape or violence, or because of possible consequences such as ostracism or family breakdown, or because of significant mental health vulnerability, these must weigh heavily in the balancing exercise. On the other hand, excessive weight should not be given to short term difficulties and to less serious situations involving embarrassment or social unpleasantness, otherwise the mother's wish would always prevail at the expense of other interests.

(6) Cultural and religious factors. The conception and concealed pregnancy may give rise to particular difficulties in some cultural and religious contexts. These may enhance the risks of notification, but they may also mean that the possibility of maintaining the birth tie through a family placement is of particular importance for the child.

(7) The availability and durability of the confidential information. Notification can only take place if there is someone to notify. In cases where a mother declines to identify a father she may face persuasion, if that is thought appropriate, but she cannot be coerced. In some cases the available information may mean that the

father is identifiable, and maternal relatives may also be identifiable. The extent to which identifying information is pursued is a matter of judgement. Conversely, there will be cases where it is necessary to consider whether any confidentiality is likely to endure. In the modern world secrets are increasingly difficult to keep and the consequences, particularly for the child and any prospective adopters, of the child's existence being concealed but becoming known to family members later on, sometimes as a result of disclosure by the person seeking confidentiality, should be borne in mind.

(8) The impact of delay. A decision to apply to court and thereafter any decision to notify will inevitably postpone to some extent the time when the child's permanent placement can be confirmed. In most cases, the importance of the issues means that the delay cannot be a predominant factor. There may however be circumstances where delay would have particularly damaging consequences for the mother or for the child; for example, it would undoubtedly need to be taken into account if it would lead to the withdrawal of the child's established carers or to the loss of an especially suitable adoptive placement.

(9) Any other relevant matters. The list of relevant factors is not closed. Mothers may have many reasons for wishing to maintain confidentiality and there may be a wide range of implications for the child, the father and for other relatives. All relevant matters must be considered.

7. It has rightly been said that the maintenance of confidentiality is exceptional, and highly exceptional where a father has parental responsibility or where there is family life under Article 8. However exceptionality is not in itself a test or a short cut; rather it is a reflection of the fact that the profound significance of adoption for the child and considerations of fairness to others means that the balance will often fall in favour of notification. But the decision on whether confidentiality

should be maintained can only be made by striking a fair balance between the factors that are present in the individual case.”

- iii. ***Re L (Adoption Order: Identification of Possible Father) [2020] EWCA Civ 577*** was decided after ***A, B and C*** by the same court.

It concerned a mother who had concealed her pregnancy and, upon birth, said she wished the child to be adopted. M initially claimed that F, who was the father of her two elder children and had PR for the eldest, was also the father of the subject child. M subsequently told the social worker that F was not the child’s father, but rather had been conceived as a result of a one-night stand with a stranger. The LA sought a declaration that it need not take any further steps to identify/locate the child’s father/paternal family, however also sought an order for DNA testing to establish paternity. M’s position was that she and F were no longer together, she feared F’s response, and that she was certain that he was not the father. M suggested sibling DNA testing; the judge refused and directed M to provide F’s contact details.

- iv. M appealed. The Court of Appeal, in dismissing M’s appeal, held that:

“21. In a case where a mother wishes a child to be placed for adoption without notifying the father, but where there is uncertainty about the identity of the father, the issues of notification of the birth of the child and paternity testing are interlinked. The approach identified in Re A, B and C at para [89] contemplates an individual being a putative father, although in one of the two cases where the issue concerned notification of a father, paternity had not been confirmed. A putative father is a person thought to be the father, although paternity has not been formally confirmed. The present case concerns a possible father, someone who may or may not be the father. Such uncertainty about paternity is to be regarded as one of the other relevant matters referred to at subpara 6(9) of the summary at para [89] in Re A, B and C. If the court, on all the

available information, considers that there is a substantial possibility that a person may be the child's father, that will be a factor to be taken into account alongside other factors bearing on the decision concerning notification. The weaker the possibility, the less likely the court will be to direct an investigation of paternity that compromises the mother's wish for privacy.”

- v. At [25], Peter Jackson LJ in dismissing the appeal concluded that:
- a. The judge was right not to order sibling DNA testing, as this would be a disproportionate interference with the Article 8 rights of the other children and the father.
 - b. M’s argument that standard paternity testing was unnecessary therefore fell away.
 - c. The judge took a balanced view of the evidence when he refused to endorse adoption without clarification of paternity. He found there was “*a substantial possibility*” that F was the child’s father and that the overriding factor was for the child to know as much about her parentage as possible “*so she can know throughout her life whether she has siblings and whether their father is her father*”

Preceding case law

10. These three Court of Appeal cases, decided before **A, B and C**, have assisted me as some of the factual issues are similar to those in this case.

Court of Appeal

- vi. In *Re AB (Care Proceedings: Service on Husband Ignorant of Child's Existence)* [2003] EWCA Civ 1842 M claimed to have become pregnant as a result of a rape by a stranger. She asked the LA to arrange an adoption. She was married with two children, and had concealed the pregnancy from her husband, whom she said could not be the child's father. The LA sought directions as to whether the husband should be notified of the child's existence and the care proceedings in relation to her. The CoA upheld the trial judge's decision that M's evidence was wholly unreliable and that the balance was decisively in favour of notifying the husband. The Court also held that the responsibilities of a public authority, the rights of the child, the rights of the husband and the rights of the mother's other children could not be minimised or suppressed. The Court would be exceptionally slow to grant a relaxation of the rules of service in any circumstances except the most extreme. Thus, Thorpe LJ commented at [3]: "*it is clear that the court has a general discretion to grant exception from the requirements of the rules but that power is on the authorities only to be exercised in highly exceptional circumstances.*"
- vii. In *Re C v XYZ County Council* [2007] EWCA Civ 1206 M was a young, unmarried woman, who had conceived the subject child following a one-night stand. M kept the pregnancy a secret and wished for the child to be placed for adoption. At first instance, the judge had directed that the LA disclose the existence and identity of the child to the extended maternal family and, if he could be identified, the putative F and his extended family. M appealed. In allowing M's appeal, the Court of Appeal found that the first instance judge had misdirected himself in holding that the LA was compelled under the ACA 2002 to disclose the existence and/or identity of a child to the wider maternal/paternal family in such circumstances:
- a. The ACA 2002 did not impose a duty on the LA to make such enquiries. There is only a duty to make such enquiries as are in the interests of the child and what was in the interests of this child was to find a long-term carer without delay. Enquiries are not in the child's

interests simply because they will provide more information about that child's background.

- b. This finding did not violate F's right to respect for his family life. F had no established family life with the child (Article 8) and it was not a violation to deprive him of the possibility of obtaining a right to respect for family life with the child [32].

viii. In *M v F* [2011] EWCA Civ 273 M and F were married with three adult children. F had mental health issues and had previously been violent towards M and one of their children. M became pregnant by F and had concealed from him both the pregnancy and the child's birth. She claimed to be concerned for the child's welfare if F were to find out, and that to reveal the truth would damage the family unit.

ix. At first instance, Mostyn J had found that the case did not satisfy the high threshold of 'exceptionality' required to deprive F of the right to be informed of his legitimate child's birth and of the existence of the proceedings, in circumstances where he had parental responsibility. M appealed. The Court of Appeal, in dismissing M's appeal, held that a high degree of exceptionality was required to prevent F from being informed [37]. M had failed to demonstrate a sufficient likelihood of harm so as to justify depriving F of the knowledge of his child's existence.

The High Court and European jurisprudence

- x. The existence of 'family life' for the purposes of Article 8, will depend on the circumstances in the individual case. In *Lebbink v The Netherlands* [2004] 2 FLR 463, the ECHR commented at [36]:

"The existence or nonexistence of "family life" for the purposes of Art.8 is essentially a question of fact depending upon the real existence in practice of close personal ties. Where it concerns a potential relationship which could

develop between a child born out of wedlock and its natural father, relevant factors include the nature of the relationship between the natural parents and the demonstrable interest in and commitment by the father to the child both before and after its birth” (also see Nylund v Finland for reference to “demonstrable interest in and commitment by”)

- xi. “Family life” may also be established between a child and his/her wider family. In **Marckx v Belgium (1980) 2 EHRR 330**, the court held at [45] that:

“Family life”, within the meaning of Article 8, includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life”

- xii. In **Re H (Care and Adoption: Assessment of Wider Family) [2019] EWFC 10, [2019] 2 FLR 33** both parents wished to keep the birth of a child a secret from the father's family. Cobb J considered the statutory provisions and the authorities concerning family life and confidentiality. In concluding that the paternal family should be informed of the child's existence, he made the following observations:

"45. ... none of the provisions of statute, regulations or rules to which I have referred, impose any absolute duty on either the local authority or the Children's Guardian, or indeed the court, to inform or consult members of the extended family about the existence of a child or the plans for the child's adoption in circumstances such as arise here. However, the ethos of the CA 1989 is plainly supportive of wider family involvement in the child's life, save where that outcome is not consistent with their welfare.

48. ... the court, and/or the local authority or adoption agency, is enabled to exercise its broad judgment on the facts of each individual case, taking into account all of the family circumstances, but attaching primacy to the welfare of the subject child.

49. *In exercising that broad discretion, I would suggest that the following be borne in mind. 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. There will be further cases where the mental health or well-being of the parent or parents may be imperilled if disclosure were to be ordered, and this may weigh heavy in the evaluation. But in exercising judgment – whether that be by the local authority, adoption agency or court – I am clear that the wider family should not simply be ignored on the say-so of a parent. Generally, the ability and/or willingness of the wider family to provide the child with a secure environment in which to grow (section 1(4)(f)(ii) ACA 2002) should be carefully scrutinised, and the option itself should be "fully explored" (see [28]). The approach taken by Sumner J in the Birmingham case more than a decade ago, to the effect that "cogent and compelling" grounds should exist before the court could endorse an arrangement for the despatch of public law proceedings while the wider family remained ignorant of the existence of the child (see [29] above), remains, in my judgment, sound. This approach is in keeping with the key principles of the CA 1989 and the ACA 2002 that children are generally best looked after within their own family, save where that outcome is not consistent with their welfare, and that a care order on a plan for adoption is appropriate only where no other course is possible in the child's interests (see *Re B (A child)* and *Re B-S*).*

...

54. *I am satisfied that if H were to be adopted ... would further benefit from knowing that his wider birth family – his grandparents – were aware of his existence, and were given the opportunity to claim him and care for him, even if in the event they are unable to do so. While there is a risk that*

he may feel abandoned or let down by a family unable or unwilling to claim him, I am of the view that it is better for H if he is adopted that he knows they were aware of his situation and considered it than they lived in ignorance of him. In my judgment the worst outcome for H is that he would learn, many years down the line, that his father was too awkward or ashamed or embarrassed to reveal his existence to his family, and that the court – without cogent or compelling reason – condoned arrangements to keep his birth a secret from those who would have had an interest in him and might actually have claimed him.

...

*57. The line of 'relinquished' baby cases discussed above ([33] et seq.), where the court is prepared to offer discreet and confidential arrangements for the adoption of a child, all emphasise the exceptionality of such arrangements; in those cases, the court is only ever likely to authorise the withholding of information in order to give effect to a clear and reasoned request by a parent to have nothing to do with the child, usually from the moment of birth. In those cases, the local authority, adoption agency and the court seek to maintain the co-operation of the parent in making consensual arrangements for the child (a key feature of the decision in *Z County Council v R (Holman J)*) which is greatly to the child's advantage."*

11. The above is from Ms Cover's compendious analysis for which I thank her. In addition to this is the following extracted from the Local Authority's submissions:

Citing *Cohen J in Re C (Adoption: Father Unaware of Birth)* [2019] FLR 930: "There must be exceptional circumstances to justify not giving a parent notice of their child's existence. This does not mean that there has to be one "magnetic factor" and a combination of unexceptional circumstances can satisfy the test; The court must

conduct a holistic exercise in considering all the circumstances. This includes an assessment of what the paternal family could offer, even if this is limited. The court is further reminded that no provisions of statute, regulations or rules impose any absolute duty on the local authority to inform or consult members of a child's extended family about that child's existence or plans to place that child for adoption, although the ethos of the CA 1989 supports wider family involvement save where it is inconsistent with the child's welfare: *Re H (care and adoption: assessment of wider family)* [2019] EWFC 10."

The Mother denies that Mr L is the children's biological father. Whilst he is her husband, he is not named on the children's birth certificates. Whilst there is a presumption in law that a husband is the father of any child born to a mother to whom they are married, on the facts of this case the Local Authority will invite the court to rebut that. The Local Authority considers that Mr L does not have parental responsibility by virtue of the marriage when paternity is denied (s2(1) Children Act 1989). Whilst the term 'parent' is not defined within the Children Act 1989, the commentary at s10(4) assists in terms of referring to a parent as a natural mother or father. On the mother's case it cannot be said that Mr L is so."

Factual Background

12. The facts are not in issue and having heard oral evidence from the mother , who was agitated and suitably upset during her testimony (which I heard on affirmation), I entirely accept her account. She comes from a Catholic community. She told me that if she knew these twins were the product of her husband then she would without hesitation have ensured that they were brought up within her family. The fact that they are not fills her with dread

as to what would happen if their presence is known. She feels , with justifiable trepidation, that her marriage would be over and her four children’s family lives would be decimated beyond repair. I take the following agreed summary from the skeleton submissions (filed on behalf of the twins) with slight underlined alteration and anonymisation from me:

- i. *“The first respondent mother (‘M’) is EW, of Polish nationality. The factual background is taken from M’s account to the social worker, hospital staff and the Guardian, and from her statement filed in these proceedings , as well as from the social worker’s statement in support of this application.*
- ii. *M is now 37 years old. She is married to XY (‘H’) aged 46 years. Both M and H are of white Polish descent. They have 4 children together: A (a boy aged 19), B (a boy aged 16) , C (a boy aged 9), and D (a girl aged 7). F and the 4 older children reside in Poland, together with the paternal grandparents (“PGPs”). The paternal grandfather is aged 74 and the paternal grandmother is aged 68.*
- iii. *Due to their difficult financial circumstances and H’s lack of employment, M has lived and worked in the UK from 2017 until July 2020, returning to Poland regularly every 2-3 months to stay with her husband and children. F and the children have also visited M in London. M is currently living in Poland with F, the PGPs, and her four older children. Her current plans to return are unclear and are in any event affected by travel restrictions due to the Covid-19 pandemic.*
- iv. *By virtue of the marriage, because of the legal presumption of legitimacy H is the legal father of the twins and holds PR for them: section 2(1) Children Act 1989. In her (unsigned and undated)*

statement, M states (C15-16) that F is not in fact the biological father of the twins, but rather that they were conceived as a result of a “one-night stand” in October 2019, with a man of Asian appearance whom she met in a pub. M reports that she does not know the identity of this man or where he lives, and that she has no means by which to contact him.

- v. *M reports that she only became aware of her pregnancy in March 2020, when she felt the babies’ movements. She was in Poland with her family at the time, but concealed her pregnancy from F and everyone else. She did not receive any antenatal care until very late in the pregnancy. She confided only in her female friend and sometime flatmate in London. She sought a termination on 2 June 2020, by which point it was estimated by ultrasound scan that she was 35 weeks pregnant. The hospital records note that M was very emotional and distressed about the lateness of her pregnancy and about placing the babies for adoption (C3). The twins were delivered by Caesarean section on the 15th June 2020.*

- vi. *Following the birth of the twins, M signed a Section 20 agreement. From the moment of birth onwards, she declined to have any contact with the boys [C4 - 3.6]. M provided the boys with some clothing, but arranged for her friend to deliver these items. Following their discharge from hospital, the twins were placed in foster care, where they remain. One of the foster carers is Polish speaking.*

- vii. *M visited the hospital on 8 June 2020, and told professionals that F was the biological father of the twins and discussed adoption [C3 - 3.2]. M gave birth on the 15 June 2020 and was seen beforehand by a duty social worker and a social worker from Adopt London West. M informed both professionals that F was the father of the*

twins [C3 - 3.4]. She said that she wished for the twins to be adopted without F's knowledge, stating that he would be upset that she did not have a termination, and that they cannot afford to care for 2 more children. She was also worried that F would think the children were not his [C4 - 3.5].

- viii. *M denied that there was any domestic abuse in her relationship [C13]. In her statement at paragraph 10, M describes her marriage as loving and stable. She states that there has never been any form of abuse or violence in the relationship, and that F is a very decent and caring man.*
- ix. *On 19 June 2020, M for the first time told the SW that she had lied, and that she had in fact had a one-night stand. M's position was, and is, that if F were to find out about the circumstances surrounding the twins' conception, this would lead to the breakdown of their marriage and potentially the loss of her relationship with the 4 eldest children. Although F was visiting M in London around the time of conception, M has stated that she has not had sexual intercourse with F for 2 years, due to F's declining mental and physical health [C13]. M also told professionals that she believed she could not have more children as she had had part of her cervix removed in 2006; she has however given birth to C and D since 2006.*
- x. *M has not identified any wider family members or other individuals to be put forward as alternative carers for the twins; she has stated that she does not wish to be connected with them in any way [C7 - 4.4]. She has informed the local authority that she has no siblings, has a poor relationship with her own mother [C12], and that her husband's parents are elderly with health problems [C16].*

- xi. The local authority made a Part 19 application for a declaration that it need not notify F of the birth of the twins and that his consent is not required to their adoption. The local authority's position was that there would be no benefit to the twins if F is notified of their birth, and that the consequences for M's marriage and her relationship with her other 4 children could be catastrophic.*

- xii. The matter came before the court on 29 July 2020. M did not attend the hearing as she was in Poland at the time, with F. The children were joined as parties, directions were made [B5-B7] and the final hearing was listed.*

- xiii. The boys have been described by the Guardian as being of "white Polish and Asian" heritage [E2], as a result of M's belief that the biological father is Asian [C15].*

- xiv. On the 6th November 2020, and pursuant to section 19 of the Adoption and Children Act 2002, the Guardian remotely witnessed M's signature to forms providing her consent to the placement of both boys with prospective adopters chosen by the local authority, in their role as the adoption agency. The signed forms are in English and M was offered an interpreter but declined. The Guardian therefore read over the forms to M and ensured that she understood the contents. M's spoken English is good.*

- xv. There are additional procedural requirements when any form of consent is executed outside the UK. Rule 14(10)(6) of the Family Procedure Rules 2010 provides that any form of consent outside the UK must be witnessed by a person authorised to administer*

oaths in that jurisdiction, or by a notary public, or by a British Consular officer....”

13. I have read the statement of the social worker Shanie Dhoother dated 29.6.20 and this accords with the above summary . She adds this conclusion

“The Local Authority is of the view that there are no other alternative care options for the L twins through which to establish permanency save for adoption. The local authority considers that, given the circumstances surrounding their conception and the implications for her family life with her husband and children in Poland, the mother’s clearly expressed wish to place the twins for adoption should be respected. The local authority is satisfied that, based upon the account provided by the mother, there is no realistic prospect of identifying the biological father of the twins and, in any event, under section 19 of the Adoption and Children Act 2020, his consent is not required. The complicating factor is the mother’s marriage and the fact that her husband is the legal, though not biological, father of the children. His consent must therefore be given if the adoption is to proceed, unless the court declares that notification and consent are not necessary in the particular circumstances of this case.

The local authority is sympathetic to the mother’s fears regarding the breakdown of her relationship with her husband and the potential loss of her relationships and contact with her children. The local authority considers that these are realistically foreseeable consequences of the mother’s husband discovering her infidelity and the existence of the twins and that it is reasonable for the mother to hold these fears. If the husband had to be informed of the twins’ birth the consequences for the mother could be catastrophic and lifelong. Furthermore, the local authority does not envisage that informing the husband would be of any benefit to the twins as it would seem highly unlikely that he will want to claim them and bring them up as his own children. On the

contrary, it would seem likely that the husband would concur with the mother's wish that they should be placed for adoption. "

14. Added to this is the oral evidence of the mother- I accept what she says, she was distraught and one can see why. She explained why she initially said that her husband was the father of the twins, I accept that she was lying about that (she explained that it was out of sheer embarrassment) and the truth that their father is (as she put it orally) an "Indian man", who she has not seen before or since the night of conception and for whom she has no contact details. The truth is that she and her husband no longer have sexual intercourse and have not done so for a number of months, if not years. The mother is willing to assist with the DNA testing of the twins , so that their racial/ethnic heritage can be confirmed and to attend the British Embassy in Warsaw to sign the requisite adoption forms.

15. I ask myself, what possible motive could this mother have for lying about the paternity of her children? Having seen her give evidence I am sure that if she could she would have kept them in her family with her other children. But she cannot. I have born in mind the fact that the twins have half siblings (on their mother's side) but a 19 year old by (their eldest half-sibling- A) would, I find, be unlikely to be able to offer care to twin babies, that he had no prior knowledge of and who are the product of his mother's extra marital sexual liaison. There is no doubt some extended family, but the local authority's duties only cover notification of the husband of the mother, i.e. the one who is the twins' father because of a legal presumption.

16. On the subject of other relatives, Ms Cover has submitted the following on behalf of the twins and their best interests:

"M's father is deceased. She has no siblings and limited contact with her own mother, whom she states struggles with alcohol dependency. She has some support from F's extended family in Poland, however his

parents are elderly, and F's brother is reported to be unlikely to be able to offer care. It is the Guardian's view that F's family are more likely to support F's position than M's, in the event that he is notified. If F were to reject the twins, the Guardian is concerned that his wider family would be unable or unwilling to support M or the twins. The prospect of a successful and stable placement with F's extended family is therefore unlikely. The only other possible option would appear to be placement with M's 19 year old son, who still lives at home with his parents and continues to receive support from them. This option is not realistic and would clearly not provide the same level of safety or security as an adoptive placement."

17. This is also a convenient place for me to add the following written submission for Ms Cover when I am looking at the 'fair balance' I should strike between the competing interest of all involved.

"The Guardian is of the view that if, as is very likely, F is not the twins' biological father, then there are compelling and exceptional reasons to conceal their birth. If he is not their father, then he and his family will be highly unlikely to wish to provide care, and adoption will remain the only viable plan for the children.

Although the children's welfare is not paramount, it is a very important consideration, as is the question of delay.. M's fear of the serious consequences for her and her other children if the F is informed are in the Guardian's view genuine. She considers it highly improbable that F is the biological father of the twins, and that he and his family would therefore be very unlikely to wish to care for them. There is in any event the M's opposition to such a course. There is in the Guardians' view no realistic possibility of a family placement in Poland. M's fear of serious disruption to her marriage and family life with her four oldest children appears to be genuine and must be

respected. The Guardian observes that fault-based divorce is still the law in Poland, and that the “guilt” of a parent may be a factor in the court’s decisions about the children. In any event, M fears that her older children will be angry with her and may reject her. The serious risk of disruption to that family must be weighed against the unlikelihood of a family placement for the boys.”

18. The mother’s counsel has filed a skeleton argument supporting the application. I am grateful for her engaging with these proceedings. She obviously wants the best possible life for her twins. She has had to make the most difficult decision a parent can make. She wants to know as much as possible about her twin boys and their placement and this will all be excruciating for her.

My finding of the facts

19. I find as a fact that the mother’s husband is not the biological father of the twins. There is no uncertainty in my mind about that. I find on the civil standard of proof that the presumption of legitimacy is rebutted by virtue of the mother’s written and oral evidence and what would have been likely if she knew that her twins were the legitimate issue of her husband.

Applying the law to the facts

20. What this means is that H is therefore not the biological or ‘natural’ father of the children. This means that he does not have parental responsibility for the twins. Bearing in mind all the circumstances of the case and the statute and case law that has been presented to me, I find that the exceptionality criterion is satisfied in an individual fact (lack of biological paternity) and

'holistic' sense. I have decided therefore that the local authority's application can and should be granted.

END