

THE HIGH COURT

[2022] IEHC 304
[2021 No. 46 M]

**IN THE MATTER OF AN APPLICATION BY THE ADOPTION AUTHORITY OF
IRELAND (THE APPLICANT HEREIN) UNDER SECTION 54 OF THE ADOPTION
ACT 2010 (AS AMENDED)**

– AND –

IN THE MATTER OF MASTER D, A MINOR BORN ON [STATED DATE]

BETWEEN:

CHILD AND FAMILY AGENCY AND MS H AND MR I

APPLICANTS

– AND –

THE ADOPTION AUTHORITY OF IRELAND

FIRST NAMED RESPONDENT

– AND –

MS A

SECOND NAMED RESPONDENT

– AND –

MR J

THIRD NAMED RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 25th May 2022.

SUMMARY

This judgment concerns a successful application for an order pursuant to s.54(2) of the Adoption Act 2010, as amended, (i) authorising the Adoption Authority to make a particular adoption order, and (ii) dispensing with the consent of the natural mother to the making of the adoption order.

I

Nature of Application

1. This is an application for, amongst other matters, (i) an order pursuant to s.54(2) of the Adoption Act authorising the Adoption Authority to make an adoption order in respect of Master D in favour of Ms H and Mr I, and (ii) an order pursuant to s.54(2) of the Act of 2010 dispensing with the consent of any person whose consent is required to the making of an adoption order.

II

Background

2. The background to this application is helpfully outlined by counsel for Ms A in his written submissions:

“5. *Master D was born on Date 1 and has been in the care of his foster carers since Date 2 [one calendar month after his birth]....He is [Stated Number 3] years old [which, for the benefit of the reader I note is a few years short of ten years old]....*

6. *Master D has three elder siblings by Ms A....*

7. *It is accepted by Ms A that she has had issues with drugs. These issues have led to her children being in care. Ms A did not oppose the making of care orders in view of her drug issues. However, she has also had periods of stability....*

8. *The period of Ms A's pregnancy with Master D and his infancy was particularly difficult. Ms A's grandmother who had cared for Ms A for much of her childhood became ill during the pregnancy with Master D. Ms A's drug use escalated and Master D was born with Neonatal Abstinence Syndrome [a syndrome the details of which I return to later below]. Ms A [I am very sorry to recount] was raped in December 2013 by two men. Ms A's grandmother died the following year. Her grandfather then died in 2015. This led to a crisis in her mental health and a spiralling drug problem and inconsistent attendance at access, which was suspended on 19th January 2015. Ms A did, however, continue to request access on a number of occasions after that date.*

9. *Ms A was in prison from March 2017 to August 2017, from October 2017 to September 2019. Six weeks after her release she was back in prison until August 2020. Ms A was drug-free while in prison. [In the witness box she said that she actually saw prison as something of "a blessing in disguise" as it gave her the space in which to try and turn her drug habit around – a continuing effort which, if I may be so bold, I respectfully applaud]. She requested access with Master D while in prison, including video access. This was not granted by the Child and Family Agency. [There was good reason for this, as will become apparent in my consideration later below of the affidavit evidence furnished by the Child and Family Agency].*

10. *Ms A made contact with the social work department seeking access again in March 2021 and attended meetings with the social work department. Access was postponed for a number of reasons...but ultimately happened on 21st December 2021. It is common case that it was positive for all concerned. In January 2021 Ms A sought access again and was told that it would not happen until Easter 2021....[In July 2021] Ms A went to Dolphin House to talk to the District Court Office about how she would bring an access application under s.37 of the Child Care Act 1991.*
11. *Ms A is concerned that if the adoption proceeds she will not be able to apply to a court to seek access.*
12. *Ms A is also concerned that if the adoption proceeds, sibling access may not occur. It is currently organized by Ms A's aunt...who is foster carer to [Child E, another of Ms A's children]. It happens approximately six times a year. Ms A wants to ensure that Master D and his siblings know each other....*
13. *Ms A has only one sibling, her younger sister, Ms B, who is a [professionally qualified person]....Ms B has access with Children E, F and G [the three other children of Ms A]. She sees Child E most weeks and has regular telephone calls [with Child E]. She has taken Child E to New York on holiday. She has had overnights with Children F and G and has brought them on outings. These have been arranged directly with their foster carers. By contrast, she has not seen Master D since Halloween 2017 [despite various good faith efforts to do so]....Ms A would like for Ms B to have access to Master D but is concerned that this will not happen or be sustained if the adoption order proceeds.*

[Ms B gave evidence in court and impressed me as a well-intentioned person who genuinely cares for her sister's children and wishes the best for them, including that they should know of their birth family's background. She has even prepared 'memory boxes' for them in which she has sought to include material about their blood background. I must admit that I was also struck during her evidence as to what Ms A might have achieved professionally if her drug dependency had not come about. Both Ms A and Ms B, if I might respectfully observe, are intelligent people and Ms A – I understand from Ms B's testimony – has a talent for art which might have taken her who knows where had she not been overtaken by her misfortunes. Drug dependency is a terrible affliction.]

14. *The Child and Family Agency has not proposed adoption in the case of any of Master D's other siblings. [I understand from the evidence in court that this is because the Child and Family Agency acts responsively in this regard: if application is made for an adoption order it assesses and, if and as appropriate, progresses such application as is made.]*

15. *Master D has behavioural issues....*

19. *Ms A is concerned that if the adoption order is made, but despite the best efforts of his carers, it subsequently breaks down, this may be experienced as a double loss by Master D. Further, it is argued that a care order offers the child – and his foster parents – protections that are important given his level of need.”*

III

Evidence of Foster-Mother

3. Ms H, the foster-mother of Master D has sworn an affidavit in these proceedings in which she avers, amongst other matters, as follows:

“2. *I say that we reside in [Stated Place] with Master D, the child in the within proceedings, born on Date 1. I say that we were approached to foster Master D...and were introduced to him when he was eight days old. He was suffering with extreme [drug] withdrawal symptoms and was being cared for in...[Stated] Hospital. We visited him throughout his hospital stay and finally we were permitted to take him home on 20th December 2013. It was a challenging Christmas as he was in significant discomfort and it was difficult to see him in such pain. He had some difficulties in early life and often became distressed with sensory overload.*

3. *We have worked hard to accommodate his needs over the years. When he had issues at playschool, we reduced his hours of attendance and ultimately we moved him to another playschool closer to home. His behaviour improved and he made many friends. He commenced school and is in [stated] class. He has been doing well at school and is engaged in play therapy throughout.*

4. *In the initial period of his placement we became attuned to his behaviours and were aware of the signals that he was over-tired or too stimulated or needed to be taken out of a situation.*

5. *Master D attends access with his siblings but has no access with his Ms A as this ceased around the time of his first birthday. We see the benefit that he derives from these meetings and we would like that he would have a relationship with his birth parents. We are happy to have contact or even letter-box contact in the initial stages and would share photos in an age-appropriate*

manner with Master D. We will fully support Master D should he express a wish to re-establish contact in the future.

6. *Master D understands that we are not his birth parents and that he has siblings that don't live with us. He also understands that they don't live with his birth parents. He shows pride in having siblings, particularly coming to an access visit.*
7. *He is a lovely bright, friendly boy who enjoys kicking football. He likes tennis and karate and plays with jigsaws, Lego, and on the trampoline. He says he would like to be a policeman, firefighter or drive an ambulance when he grows up.*
8. *Master D has become an integral part of our family. His relationship with us has developed and we dearly wish for his adoption to proceed. It seems to us that he identifies completely with our family unit.*
9. *We are very anxious to secure his relationship and status within our family unit. We have provided Master D with a happy and stable home for the formative years of his life and look forward to continuing to do so in the future. I say that we are committed to his needs and nurturing his interests and enabling him to grow in a loving and caring environment. I say that he is an integral part of our family and we look forward to the development of this relationship between us for the rest of his life.*
10. *I say that we fully and earnestly wish that the adoption order be granted, I say that from the time we first met him at eight days old we have fulfilled the role of parents to him in every respect and it is my firm belief that he views us as his parents in everything but law.”*

4. The fosterers (proposed adoptive parents) in this case have done a remarkable job on rearing Master D and helping him through his various troubles. It is clear from the evidence before the court that they love Master D greatly. I note the separate averment by one of the social workers from the Child and Family Agency that Master D's "*foster carers are his greatest advocates. They have pushed for assessments and interventions on his behalf. They have worked hard with him to provide the 'security, predictability and trusting relationship' that was recommended by [a primary care psychologist]*".

IV

Evidence of Social Workers

5. A social worker with the Child and Family Agency has furnished affidavit evidence in the proceedings. She was (for understandable reasons) unavailable for cross-examination on her affidavit; however, another social worker familiar with matters was proffered. Her evidence tallied with the affidavit evidence. She did not consider that postponing the adoption to some future time would be in Master D's best interests.

6. Three aspects of the affidavit evidence furnished by the Child and Family Agency are of particular interest: (i) those averments that concern Ms A's actions in the days, weeks and years following Master D's birth, (ii) certain concluding averments as to the case presenting, and (iii) the averments in a later supplemental affidavit that highlight the really very strenuous efforts made by the Child and Family Agency to cultivate a relationship between Ms A and her children, including Master D – that these efforts have not succeeded cannot be laid at the door of the Child and Family Agency and of course cannot be attributed to Master D.

Ms A's Actions

7. A social worker employed by the Child and Family Agency has averred, amongst other matters, as follows:

"4. Master D's birth family first came to the attention of the applicant agency in or about 2007, following the birth of Ms A's...first child. Outreach workers in [Stated Place] had notified

social workers of issues grounding the care of her children. Master D's siblings were the subject of interim care orders and ultimately a full care order in 2010 in respect of the older children was granted.

5. *Ms A engaged in sporadic access to her children throughout 2007, 2008, 2009 and 2010 and had periods where she attended consistently. However, she remained unable to commit to access despite continuous supports and assistance.*
6. *She gave birth to her third child in...[Stated Year]. For a period following his birth, she cared for him in her grandmother's house and ultimately in supported accommodation. Sadly, an emergency care order and interim care order was granted owing to her persistent drug use.*
7. *In or about April 2013, Ms A advised the social work department that she was pregnant with her fourth child, Master D. Thereafter, the social work department reported [that] Ms A was presenting under the influence of drugs and access with her elder [child] was inconsistent. She was admitted to [Stated Place] in...2013 to stabilise her drug use and she agreed that she would demonstrate a six-month drug-free period in the community following his birth, while not caring for him. A committed support team was identified to provide assistance to Ms A in this plan.*
8. *Following Master D's birth, he was admitted to the Special Care Unit with symptoms of withdrawal. He was commenced on Oromorph at the highest recommended dose to ease his withdrawal symptoms from the combined use of benzodiazepines and opiates during pregnancy. On her discharge from hospital on 25th [of Stated Month in 2013]... Ms A visited the child on 27th, 29th [of that month]...and [the] 1st and 7th [of the following*

month]. However, concerns about her presentation continued to be reported and she declined to attend a support meeting.

9. *Master D was discharged from hospital on [Stated Date] and remained on medication for his withdrawal on discharge. Ms H and Mr I were appointed as his foster carers when he was eight days old and advised on administration of his medication following his discharge.*

10. *Weekly access visits between Ms A and Master D were scheduled. However, out of twelve scheduled visits between December 2013...and April 2014 she attended four. In May...access was reduced to monthly. Ms A's attendance at access remained inconsistent for the remainder of the year....*

11. *Following sporadic access visits, Ms A attended a meeting on 16th December 2015 seeking Christmas access but was advised [that] she would need to demonstrate consistent engagement before access would be resumed. She had not had access for a period of over a year at that point. A meeting was arranged to discuss further engagement. However, she did not attend at the meeting.*

12. *In 2016, access continued between the four siblings but Ms A did not engage and could not be contacted. In or about January 2016, Master D's foster carers began discussing the question of adoption.*

13. *In or about February 2017, Ms A presented seeking access to her children. A meeting was arranged to attempt re-engagement and she attended at this meeting on 3rd March 2017. She advised the social work department that she had had a difficult year and had attempted to self-detox from drugs. Regrettably, this had been unsuccessful. Adoption was discussed at this meeting and*

the social work department recorded that the Ms A was happy that Master D was well looked after and that his placement was the best thing for him. She did not rule out adoption at this point but wished for more information.

- 14. Ms A attended three scheduled meetings with the social work department in May 2017 and advised [that] she would be happy to meet the adoption social worker. Sadly, attempts to engage with her over the following months were unsuccessful. She was incarcerated in...prison and she was visited by social workers in this time. She expressed a lack of understanding of the adoption process and had worries around same. Social workers engaged repeatedly with her in an effort to clarify any queries [that] she had surrounding adoption. She has remained consistent that she is objecting to the process.*
- 15. On or about 17th May 2021 Ms A made contact with the children's allocated social worker for the first time since her release from [prison] in September 2020. Ms A advised that she had not seen her children in 7 years and requested a meeting with the social work department.*
- 16. On 20th May 2021, Ms A attended a scheduled meeting with the social work department and she advised that she was not in a stable place upon her release from [prison]...and was not in a position to meet with the social work department or to be involved with her children. Ms A advised that she is now doing well and is living with her new partner and his mother. Ms A advised that her partner is also drug-free and that she is done with her past lifestyle and would like to be part of her children's lives. She acknowledged that she would need to demonstrate consistent engagement before access arrangements could be made. She also acknowledged that introducing her into her children's lives would need to be a slow process, and that the*

children's views would be the primary consideration. She was open to the social work department contacting her support services to gauge her engagement with same and [to] determine her stability. She advised that she is still opposed to Master D being adopted.

17. *When I met with her on 20th May 2021, I informed Ms A that the case was listed on the 14th June 2021 for directions and...[she provided various contact details]....*

18. *On 4th June 2021, Ms A attended a scheduled meeting with the social work department. She acknowledged that she had smoked a 'joint' prior to this meeting given her anxieties about meeting with the social work department. She again stated her desire to see the children and agreed to work alongside the social work department to achieve this goal. She stated that she had had two 'slips' after her release from [prison]...on one occasion taking prescription pills, and on the other using crack cocaine. She advised that she lives between her partner's mother's house and her own mother's home. She engaged in discussion with the social worker around ways to slowly introduce herself back into the children's lives via photos or letters. She signed consent for the social work department to contact her support services....*

21. *Family access with Master D's...birth siblings is arranged informally between the three sets of foster parents for the four children and takes place four to five times per year. Master D attends all such occasions.*

22. *The applicant agency has made repeated and committed efforts to nurture a relationship between Master D and Ms A. The social work department had previously facilitated the return of Master D's sibling to the care of Ms A. Regrettably, Ms A was unable to consistently care for that child. Prior to the birth of*

Master D..., she had unfortunately returned to heroin use such that Master D's development was severely damaged due to withdrawal from opiates and benzodiazepines. The social work department scheduled weekly access visits following the child's birth but Ms A attended only one third of the scheduled visits. Thereafter, access having been reduced to monthly, her attendance was sporadic. She did not attend access between August 2014 and January 2015 when it was suspended. When she requested reintroduction to the children, she was advised that she needed to show consistent engagement but she did not attend the scheduled meeting to plan the path towards re-engagement."

8. A later affidavit from the same social worker indicates that an access meeting took place between Ms A and her children in the presence of the social worker on 10th December, 2021, included a visit to a popular fast food venue and seems to have gone well.

Certain Concluding Averments

9. Also of interest in the affidavit evidence furnished by the Child and Family Agency are the following concluding averments:

"23. I say that Master D...has spent almost his entire life in the care of and living with the family of Ms H and Mr I. He had significant needs following his birth. He exhibited severe forms of withdrawal from opiates, benzodiazepines and methadone having been exposed to these in utero and required medication to help ease his discomfort. The phenobarbitone was subsequently increased such was the extent of his symptoms. He was feeding poorly and a nasogastric tube was inserted. The second- and third-named applicants were introduced to Master D on [Stated Date] when he was eight days old in the Special Care Baby Unit and immediately accepted responsibility for this day-to-day care. During this time they learned about the daily

care needs of a new-born, particularly one experiencing severe withdrawal symptoms. He did not like to be held, he was not able to tolerate bright lights or loud noise and experienced these symptoms to excess at certain times of the day. He continues to experience sensory overload at times. The second and third-named applicants engaged fully in learning and understanding how to best care for him. He continues to present with emotional needs and they are attuned to his sensory triggers and are equipped to manage situations to best suit the child.

24. *The Social Work Department has discussed the question of guardianship as an alternative to adoption with them. However, it is the considered and professional opinion of those involved in his care, including the social work department, that this will not meet his needs and that adoption is the proportionate measure to provide the security he requires.*
25. *The social work department has carried out work with Master D to determine his understanding of the adoption process. He is aware that his carers are not his birth parents. He understands that the concept of his siblings and can identify them as the Ms A's other children. He calls his carers 'mom' and 'dad'. He is very settled in his placement and helps his foster carers in their family business doing small tasks. He is too young to appreciate the nature and effect of the concept of adoption. However, those involved in his care firmly believe that it is in his best interests.*
26. *Master D's birth parents have failed to fulfil any parental responsibilities in any meaningful way or to exercise their parental rights to date in respect of the...child and there is no reasonable prospect of them doing so now or into the future.*
27. *The applicants earnestly want the respondent to make an adoption order in the terms sought. Master D's foster-parents*

are most anxious to provide some legal and emotional certainty for the child into the future.

28. *From the initial placement, Master D...has resided with the second and third-named applicants herein. He is very settled in his placement, having spent all of the life that he can remember with them. Aside from the wishes of the prospective adoptive parents that this application proceed, the application is strongly supported by professionals involved in Master D's care.*

- i) For a period of not less than 36 months immediately preceding the time of the making of the application, the parents of the child to whom this application relates, have failed in their duty towards the child to such extent that the safety or welfare of the child is likely to be prejudicially affected.*
- ii) There is no reasonable prospect that the parents will be able to care for the child in a manner that will not prejudicially affect his safety or welfare.*
- iii) This failure constitutes an abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise, with respect to the child.*
- iv) By reason of the failure, the State, as guardian of the common good, should supply the place of the parents.*
- v). The child has, at the time of the making of the within application, been in the custody of, and*

has a home with, the applicants, and has so been for a continuous period of not less than 18 months immediately preceding the date of the within application.

vi). *...[T]he adoption of the child by the applicants is a proportionate means by which to supply the place of the parents.”*

10. I note in particular the averment concerning the consideration given to the possibility of adoption and also the fact that *“it is the considered and professional opinion of those involved in [Master D’s]...care, including the social work department, that this will not meet his needs and that adoption is the proportionate measure to provide the security he requires.”*

Agency Efforts to Cultivate Mother-Child Relationship

11. In a more recent affidavit, a social worker employed by the Child and Family Agency highlights the very strenuous efforts that have long been made by the Child and Family Agency to cultivate a relationship between Ms A and her children, including Master D. That these efforts have not succeeded cannot be laid at the door of the Child and Family Agency, the fosterers or, of course, Master D. The social worker avers, amongst other matters, as follows:

“[Prior to Master D’s Birth]

5 *...[The ‘Chronology/Engagement Report’] sets out that [Stated Social Worker]...was assigned to offer ‘intensive support’ to the Ms A. It is clear that this was successful....*

6. *I say that the social work notes recorded the referral from [Stated] Drugs Team in September 2008. The notes record that following this, the social work department contacted [Stated] Hospital and was advised that the Ms A’s urines were positive*

for opiates, cocaine and benzodiazepines....[T]he Ms A disputed this....

- 8 *...[T]he report details the extensive and repeated efforts made by the social work department over [the] years from 2007 onwards to seek to re-establish a relationship between the Ms A and her children that would be to the benefit of all and would have the best interests and the welfare of the children at its heart. From as early as 5th October 2007, emergency strategy meetings sought to allow that [Stated Child]...would remain with her maternal grandmother. Unfortunately that failed. Following this, in 2008, [Stated Social Worker] was appointed to provide intensive support to the Ms A. That succeeded for a time and the case closed.*
9. *Following [Stated Child's]...birth, the social work department engaged with the Ms A with a view to her making positive progress towards a discharge for [Stated Child] to her care.*
10. *When the Ms A was discharged from [prison]...in March 2010 and sought access with her children, the social work department sought to arrange meetings to discuss same. I say that the purpose of these meetings is to ensure that when access recommences it will be consistent, meaningful and in the interests of the children as well as the Ms A. The social work department must have safeguards in place to guard against haphazard and sporadic engagement as this can be very difficult for children to manage emotionally and psychologically. I say it is noteworthy that in October 2011 a plan to resume access was made, and in November an access visit took place followed by two visits in December. I say this illustrates the approach of the social work department. This continued into 2012.*

11. *Again, I say that in 2012 the liaison of the social work department is evident following the report from Miss Carr's. I say that whatever the Ms A's recollection of her engagement with this agency, the social work files note [that] it was Miss Carr's agency that advised on the day that [one of Ms A's children]...was born that heroin had been found in Ms A's...room on [Stated Date] and that staff in that agency continued to express concerns around her presentation on [Stated Date]...I say that the files show the efforts made by the agency to collaborate with [Stated Hospital], Miss Carr's staff, Gardaí, her GP and [Stated Hospital]...to coordinate supports for the Ms A.*

12. *I say that the efforts of the Agency are clear that the preferred choice for [Stated Child]...was that he remain in voluntary care. To facilitate this, they met with her twice weekly and liaised with the parties set out above and with the Ms A's public health nurse and [Stated Child] returned to her full-time care in November 2012. Unfortunately an ECO followed by an ICO was granted in late-December 2012. The notes record that the ultimate goal of the social work department was reunification between mother and child.*

...[Post-Master D's] birth

13. *The period leading up to Master D's birth is set out in the report. Again, this shows the efforts made by the social work department. A core group including a medical doctor, drug liaison midwife, keyworker and two social workers were identified to support the Ms A. Following his birth, Ms A was offered daily visits. She attended 5 days after he was born and on two dates in December 2013. It is apparent [that] she had relapsed into drug use. The efforts to provide support in relation to her drug use were declined by her.*

14. *In 2014, the files record that the Ms A's access was inconsistent. This was a crucial period in Master D's life for her to establish a relationship with him, in particular where he had not been discharged to her care following birth. In my professional opinion, this period is critical in the child's life as a child in care.*
15. *It is noted in the file notes that...access was offered to the Ms A repeatedly. She attended on occasion but was sporadic and inconsistent. From her replying affidavit it is apparent that this period coincided with the death of her grandmother with whom she was very close and she advises that she spent every day in hospital with her between February and August 2014.*
16. *The Ms A avers to her attendance at the social work department in December 2015 with a view to reinstating access. At this time Master D was [an infant]....An appointment was set up for 8th January 2016. She did not attend this appointment. She did not attend a further appointment in May 2016 and did not engage in sibling access which took place throughout 2016.*
17. *She re-engaged a year later in February 2017 seeking access when Master D was [a toddler]....She attended a meeting in March 2017 and again in May 2017. However, from July to September 2017 all attempts to contact her were unsuccessful and it is apparent now that she was in prison for some of that time.*
18. *I say that it is clear to me from reading the social work files prior to my involvement with the case that the social work department made consistent and obvious efforts to engage with the Ms A. The Agency liaised with numerous stakeholders that might be in a position to assist the Ms A, including GP, midwife,*

key workers, public health nurse. It is most unfortunate that she was not able to accept that assistant and to engage in a meaningful way with a view to establishing some level of consistent access with Master D....Unlike with her other children, Master D had never spent a consistent period of time with her. He had had limited access to her throughout his life. When she sought video access with him during her incarceration in 2020, it was incumbent on the social work department to consider this from his viewpoint as well as hers. He had no meaningful relationship with her to that point that might have assisted him in comprehending the video access. In addition to this, Master D's experiences during Covid were a matter of focus for the social work department and for his foster carers. These factors were a further consideration for the Agency. On her release from prison Ms A...did not make contact with the social work department to follow up.

19. *I say that from my engagement with the Ms A, I believe [that] she was always aware that she could apply to the courts for access pursuant to s.37 of the Child Care Act 1991. I have always tried to have a collaborative relationship with her and work alongside her for access planning so that we would have the same goal. At times when she was dissatisfied with access arrangements, she has stated that she would apply for an access order. She has not done that but I say and believe that she has always been aware that it was an option that was open to her.*

...[Master D's] medical needs

20. *Against this backdrop, Master D's medical needs were a factor. His early years were incredibly difficult and he was reviewed regularly at [Stated] Hospital with feeding issues, poor vision, low muscle tone, sensory difficulties. He struggled with mainstream school and is in a Montessori school now which is*

funded by his foster carers. He continues to have toileting issues....There have been no physiological findings for this and it is believed [that] it is psychological. He is being assessed for ADHD...and he has ongoing issues with poor concentration.

21. *The Children's Disability Network Team conducted an individual family support plan for Master D in February 2022 which was completed in March 2022....This Plan identifies the issues that Master D is currently experiencing and highlights the efforts of his foster carers to address same. I say that these issues must be borne in mind by social workers when considering changes to his schedule and to his daily patterns. His earlier school and psychological reports from 2019 detail that he found it difficult to concentrate and his emotional, social, behavioural and academic progress was noted to be of concern....*

22. *I say that Master D...was referred for psychological consideration in June 2019....[The primary care psychologist in her ensuing report]...records [amongst other matters] as follows:*

'Master D's early life is highly likely to have impacted on the course of his development. Therefore Master D's needs and presentation must be understood in this context. Research suggests that NAS (neonatal abstinence syndrome) negatively impacts executive functioning – impacting on impulse control, attention and concentration, planning and organization, memory and emotional regulation. Individuals who have undergone adverse childhood experiences (ACEs) need to feel safe and supported before they will be ready and able to learn. They have a need for security, predictability

and trusting relationships and can often come across as defiant and controlling.'

[It is impossible to read the psychologist's report and not feel sorry for Master D as regards the challenges that he faces and will face in life.]

23. [A clinical psychologist]....wrote with recommendations to the school and to the foster carers on 17th December 2018. I say that Master D's issues on transition to primary school were noted by [this psychologist]...who suggested a plan for ongoing engagement for both school and foster carers. In addition, Master D was reviewed by...[a senior occupational therapist] and she outlined a sensory diet for his school day.....Again, I say that the child's ongoing psychological and emotional issues are factors for the social work department when considering the Ms A's request for access. Any engagement with his Ms A requires careful planning. As his social worker, I am extremely conscious of the advice of all professionals involved in his care that the need for consistency is key. It is for these reasons that all steps towards access and engagement must be carefully planned. It is apparent from my experience with the child that inconsistent and irregular, unplanned actions have very negative consequences for him and serve to set back his progress.
24. I say that Master D was moved to [Stated] Montessori school to help address his psychological needs....
25. I say and believe that his foster carers are his greatest advocates. They have pushed for assessments and interventions on his behalf. They have worked hard with him to provide the 'security, predictability and trusting relationship' that was recommended by [the primary care psychologist].

26. *I say and believe that these matters are issues of which the court should be aware when assessing how the applicant agency engaged with the Ms A and when considering the question of proportionality in relation to the adoption application.”*

V

Evidence of Adoption Authority

12. An officer of the Adoption Authority has sworn affidavit evidence for the purpose of these proceedings. Perhaps the most pertinent of his averments are the following under the heading “*Section 53 Declaration*”:

“18. *The Board considered the application at a meeting on 9th February 2021....*

19. *I say and believe that the evidence adduced at the hearings made clear [that] Master D was not in a position to express his own views on being adopted by his foster parents. I say that Master D...has spent almost his entire life in the care of and living with the family of the second and third-named applicants. He had significant needs following his birth. He exhibited severe forms of withdrawal from opiates, benzodiazepines and methadone having been exposed to those in utero and required medication to help ease his discomfort. The phenobarbitone was subsequently increased such was the extent of his symptoms. He was feeding poorly and a nasogastric tube was inserted. The applicants were introduced to Master D on [Stated Date] when he was eight days old in the Special Care Baby Unit and immediately accepted responsibility for his day to day care. During this time they learned about the daily care needs of a new-born, particularly one experiencing severe withdrawal symptoms. He did not like to be held; he was not able to tolerate*

bright lights or loud noise and experienced these symptoms to excess at certain times of the day. He continues to experience sensory overload at times. The Applicants engaged fully in learning and understanding how best to care for him. He continues to present with emotional needs and they are attuned to his sensory triggers and are equipped to manage situations to best suit the child.

20. *I say and believe that the social work department of the Authority has carried out work with the child to determine his understanding of the adoption process. He is aware that the carers are not his birth parents. He understands the concepts of his siblings and can identify them as Ms A's other children. He calls his carers 'mom' and 'dad'. He is very settled in his placement and helps his foster carers in their family business doing small tasks. He is too young to and, given his particular circumstances, does not appreciate the nature and effect of the concept of adoption. However, those involved in his care firmly believe that it is in his best interests. The evidence indicates that Master D is an integral part of the applicants' family and that the proposed adoption will give Master D long-term security, having regard to his difficult early childhood experiences. I say, therefore, that the evidence indicates that the child's best interests are strongly served by the adoption order being made.*

21. *I say that the Authority had regard to the position taken by the Ms A in relation to the proposed adoption, and her objections in respect of same. .*

22. *I say further that the Authority considered the concept of abandonment within the meaning of the Act, which centres not on the intention of the birth parents, but rather must objectively be assessed in the strict legal sense, as determined by Denham CJ in Southern Health Board v. An Bord Uchtála [2002] 1 IR*

165....I say that the Authority had regard to the full history of the matter, the care order made by the District Court on 23rd April 2014, the lack of parental involvement since that time and the fact that the child has been in the care of his foster parents since he was 8 days old. Finally, it considered the best interests of the child, which remain the paramount consideration in such applications.

23. *I say that having considered all matters in this case, the Authority concluded that it would be proper for the adoption order to be made in respect of the child if a s.54(2) order is granted....*

24. *I say therefore that a s.53 declaration was granted by the Authority, dated 9th February 2021. It confirms that the Authority is satisfied that, if an order is made under s.54(2) of the Adoption Act 2010 by [the High Court]...in favour of the prospective adoptive parents, it would be proper to make the adoption order.”*

VI

Some Points Arising

13. Some points arising from the foregoing might usefully be noted at this juncture (in no particular order):

- (1) the Child and Family Agency and the Adoption Authority are clearly of the view that the proposed adoption is in Master D’s best interests.
- (2) the foster parents have fulfilled all parental duties during Master D’s life in an exemplary manner.

- (3) it is clear that as a result of the toxins to which he was exposed before he was born, Master D presents with some behavioural difficulties. The foster parents have ensured that he has received all the assistance necessary to address those issues. (There was some effort at the hearing to contend that if Master D remained in care he would have priority access to all the care that he needs but it seemed to me that that point was essentially moot when he has been getting all the care that he has been identified to need and when there is no indication that this will not continue, with the necessary supports being procured by his fosterers - publicly and/or privately).
- (4) Master D has never been in the care of his birth parents at any time in his life.
- (5) the natural father is consenting to the adoption.
- (6) with the exception of a small number of infrequent access visits, Master D has never spent time in the company of his natural mother.
- (7) as was clear from her affidavit evidence and her testimony before the court (and this is notable) Ms A does not seek to resume her parental duties; she is satisfied that Master D should remain in the statutory care of the Child and Family Agency until he attains the age of majority and that his foster parents should remain his primary carers. Though she has not greatly availed of access in the past she is concerned about access in the future. In this regard, I note as I noted previously above, the averment of the foster mother that:

“We see the benefit that he [Master D] derives from...[sibling-]meetings and we would like that he would have a relationship with his birth parents. We

are happy to have contact or even letter-box contact in the initial stages and would share photos in an age-appropriate manner with Master D. We will fully support Master D should he express a wish to re-establish contact in the future.”

I note also that the view of the Child and Family Agency is and remains that any (if any) potential advantage to Master D of remaining in care is far outweighed by the disadvantages of not becoming a legal member of the only family that he has known.

VII

Constitution, Convention, Statute and Case-Law

14. I have been referred to Article 42A of the Constitution, Art.21 of the United Nations Convention on the Rights of the Child, and, amongst other statutory provisions, ss.19 and 54 of the Adoption Act 2010 (as amended).

15. I am mindful that Article 42A(4) of the Constitution and s.19 of the Adoption Act require that in an application such as that now presenting the best interests of the child shall be the paramount consideration. When it comes to the meaning of paramountcy I have been referred to the still-helpful comments concerning same in *G. v. An Bord Uchtála* [1980] I.R. 32 and also to the helpful judgments in such cases as *Child and Family Agency et alia v. E.M. et alia* [2018] IEHC 172, *A Foster Mother v. The Child and Family Agency* [2018] IEHC 762, and *In the Matter of the Adoption Act 2010, s.49(2)*, and *In the matter of JB (a minor) and KB (a minor)* [2018] IESC 30.

16. In considering what is in the best interests of Master D, s.19(2) of the Adoption Act requires me to consider all of the factors and circumstances that I consider to be relevant to Master D and also identifies some particular factors that require consideration. Thus, per. s.19(2):

“In determining for the purposes of subsection (1) what is in the best interests of the child, the Authority or the court, as the case may be, shall have regard to all of the factors or circumstances that it considers relevant to the child who is the subject of the matter, application or proceedings concerned including (a) the child’s age and maturity, (b) the physical, psychological and emotional needs of the child, (c) the likely effect of adoption on the child, (d) the child’s views on his or her proposed adoption, (e) the child’s social, intellectual and educational needs, (f) the child’s upbringing and care, (g) the child’s relationship with his or her parent, guardian or relative, as the case may be, and (h) any other particular circumstances pertaining to the child concerned.”

17. I note in this regard that the evidence of the Child and Family Agency is that the best interests of Master D are served by the making of the adoption order, particularly in light of the following factors which the Agency (and I respectfully concur in its view) consider to be of especial significance: (i) Master D has lived with his foster parents since within a very short time after his birth (one calendar month – and in truth they were visiting him and involved with him even in the very first month), (ii) he has never lived with either of his birth parents, (iii) the only family life that he has ever known is that which has been provided by his foster carers, and that (iv) the stability and permanency of a lifelong adoptive relationship with them is in his best interests.

18. Section 54(2A) of the Adoption Act 2010 requires me to be satisfied of various matters before I make an order under s.54(2) of that Act whereby “...*the High Court by order may authorise the Authority to make an adoption order in relation to the child in favour of the applicants and to dispense with the consent of any person whose consent is necessary to the making of the adoption order.*” I list the said matters in Bold text hereafter and insert my comments in plain text under each block of Bold text:

19. “[F]or a continuous period of not less than 36 months immediately preceding the time of the making of the application, the parents of the child to whom the declaration under section 53(1) relates, have failed in their duty towards the child to such extent that the safety or welfare of the child is likely to be prejudicially affected”.

20. In this regard I note the distinction between parental duties and parental rights that was drawn by McGuinness J. in *Northern Area Health Board v. An Bord Uchtála*, [2002] 4 I.R.

25. In this case, following on Master D being taken into care immediately after his birth Ms A has never fulfilled, nor even sought to fulfil any of her parental *duties*. Her occasional efforts at access involved the exercise of parental *rights*. I do not see how the complete *non-exercise* of parental duties could not yield a likelihood (in truth a certainty) of prejudicial effect (which effect has only been minimised through the intervention of the Child and Family Agency and, more particularly, the fosterers).

21. “[T]here is no reasonable prospect that the parents will be able to care for the child in a manner that will not prejudicially affect his or her safety or welfare”.

22. When one has regard to all of the facts as recounted above, to the pattern of Ms A’s past difficulties, and to what the Child and Family Agency has referred to in its written submissions, “*somewhat chaotic nature of Ms A’s...lifestyle*”, I do not see that any such reasonable prospect presents. Indeed Ms A’s own satisfaction that care orders should remain in place for Master D until he attains the age of majority suggests most strongly (and I respectfully commend her for her honesty) that she herself does not consider such a reasonable prospect to present.

23. “[T]he failure constitutes an abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise, with respect to a child”.

24. I note the special meaning to be attributed to the word “*abandonment*” by virtue of, e.g., *Southern Health Board v. An Bord Uchtála and F O’D* [2000] 1 I.R. 165. In particular that decision makes clear that (i) there does not need to be an intention to abandon, and (ii) the term embraces a situation where the parents have failed in their duties to such an extent that their failure constitutes an abandonment of parental rights. Here, Ms A has never fulfilled, nor even sought to fulfil any of her parental duties, nor has she ever shown an ability to parent Master D. So I must unfortunately conclude that “*abandonment*” in its legal sense presents.

25. “[B]y reason of the failure, the State, as guardian of the common good, should supply the place of the parents”.

26. The Agency is satisfied that the place of the parents will more than satisfactorily be supplied by the present foster carers.

27. “[T]he child...at the time of the making of the application, is in the custody of and has a home with the applicants, and...for a continuous period of not less than 18 months immediately preceding that time, has been in the custody of and has had a home with the applicants”.

28. This is so and is not contested.

29. “[T]he adoption of the child by the applicants is a proportionate means by which to supply the place of the parents”.

30. I treat separately with the issue of proportionality later below.

31. Turning to s.54(3) of the Adoption Act 2010 (as amended) it requires me, when considering an application for an order under s.54(2) (as quoted previously above) to have regard to the two matters listed in Bold text below (again my views on these matters are set out in plain text immediately thereafter:

32. ***“The rights, whether under the Constitution or otherwise of the persons concerned (including the natural and imprescriptible rights of the child”.***

“Any other matter which the High Court considers relevant to the application.

33. As I hope this judgment shows, I have had regard to the said rights and I have considered above and below all matters that I consider relevant to the application.

34. Section 54(3) of the Adoption Act 2010 additionally requires that:

“In so far as practicable, in a case where the child concerned is capable of forming his or her own views, give due weight to the views of that child, having regard to the age

and maturity of the child, and, in the resolution of any such application, the best interests of the child shall be the paramount consideration”

35. In this regard I note the following averment in the extract from the affidavit evidence furnished by the Child and Family Agency and quoted previously above:

“The social work department has carried out work with Master D to determine his understanding of the adoption process. He is aware that his carers are not his birth parents. He understands that the concept of his siblings and can identify them as the Ms A’s other children. He calls his carers ‘mom’ and ‘dad’. He is very settled in his placement and helps his foster carers in their family business doing small tasks. He is too young to appreciate the nature and effect of the concept of adoption. However, those involved in his care firmly believe that it is in his best interests.”

VIII

Proportionality

36. When it comes to the question of whether adoption of Master D by the applicant foster-parents is a proportionate means by which to supply the place of the parents, I would make the following respectful observations:

- Ms A has never fulfilled, nor sought to fulfil any of her parental duties, nor has she shown an ability to parent Master D, nor has she sought reunification with Master D at any point. These deficiencies present notwithstanding that the Child and Family Agency brought resources and efforts to bear in terms of seeking to cultivate an attachment between Ms A and Master D and to ensure that she would place his interests first. That these failed was not through any want of effort on the part of the Child and Family Agency.
- in the quite awful situation that presented after Master D was born in which he immediately showed serious withdrawal symptoms from all manner of toxins and

was suffering from neonatal abstinence syndrome, the Child and Family Agency took the thoroughly proportionate interventions that have been described above. Regrettably, despite thereafter bringing resources and efforts to bear in terms of cultivating a mother-and-child relationship, Ms A failed to commit to the process and did not avail of access in such manner as would have improved the prospects of such a relationship developing between herself and Master D.

- in the early months of Master D’s life the evidence before me shows that Ms A visited her then ailing grandmother in hospital on a daily basis. Unfortunately, at the same time she managed only four access visits with Master D between end-December 2013 and start-April 2014, a period in which he too was ailing. Again, I cannot but conclude that any failure to achieve reunification between mother and child cannot properly be attributed to the Child and Family Agency, the fosterers or, of course, Master D.

37. I make the comments that I have made in the above bullet-points because I am mindful in this regard of the following observations of the European Court of Human Rights in *R and H v. UK* [2011] ECHR 844, para. 88:

“[I]t is in the very nature of adoption that no real prospects for rehabilitation or family reunification exist and that it is instead in the child's best interests that she be placed permanently in a new family. Article 8 does not require that domestic authorities make endless attempts at family reunification; it only requires that they take all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her parents....Equally, the Court has observed that, when a considerable period of time has passed since a child was originally taken into public care, the interest of a child not to have his or her de facto family situation changed again may override the interests of the parents to have their family reunited”.

38. The evidence in this case shows that there are no real prospects of rehabilitation or family reunification: all previous efforts have failed and the Child and Family Agency is not required to engage in “*endless attempts*” in this regard; it has taken all necessary steps that

can reasonably be demanded. Additionally a *very* considerable period of time has passed since Master D was taken into care and I must regretfully conclude that (again not that there is real prospect of rehabilitation or reunification) the Rubicon has long been crossed in terms of arriving at a point where the interests of Master D not to have his family situation changed again override the interests of Ms A to have her family reunited – and again I must note in this regard that Ms A is not actually seeking reunification, she is concerned about ongoing access, though this concern, it should be recalled, is being expressed in circumstances where the foster mother has, amongst other matters, averred as follows (as quoted previously above):

“We see the benefit that he derives from these [sibling-]meetings and we would like that he would have a relationship with his birth parents. We are happy to have contact or even letter-box contact in the initial stages and would share photos in an age-appropriate manner with Master D. We will fully support Master D should he express a wish to re-establish contact in the future.”

39. There is no reason to doubt the good faith of the fosterers in this regard.

40. As to the issue of alternative options, perhaps five points might be made in this regard:

- (i) the evidence of the Child and Family Agency is that adoption is very much the preferred option for Master D (both now and into the future) in circumstances where he is thriving in his present family arrangement with the only family that he has ever known;
- (ii) substantive good faith efforts have been made by the Child and Family Agency to assist Ms A in the care of all of her children but she has neither risen to the task nor shown herself capable of doing so (with full care orders being extant in respect of all four of her children);
- (iii) for Master D to continue in a care arrangement (notwithstanding the ostensible comparative advantages claimed for such an arrangement by counsel for Ms A but unfounded in the evidence before the court) would mean that he would continue

as a child in care with a legally weak relationship with his foster carers (the only family that he has known thus far in his life);

- (iv) by contrast, adoption gives him an unequivocal legal place with his foster (soon to be adoptive) parents as their adopted child, will yield a related sense of identity, and will allow the full exercise of parental rights and duties in respect of him by his adopters;
- (v) while Ms A has shown a degree of commitment to Master D in terms of manifesting a desire to retain some level of access to him (a desire that will not be frustrated by the adoption order), her opposition to the adoption falls to be weighed against the very considerable advantages that will accrue to Master D from the proposed adoptive relationship; to allow the adoption to proceed in his best interests; all the evidence before the court points to adoption being in Master D's best interests.

41. Some specific submissions made by counsel for Ms A might usefully be treated with at this juncture. To each of them I give the specific response detailed below; all of them can be met by the fact that all of the professionals who have inputted into this case are of the view that adoption is very much the preferred arrangement and none of them favour any form of care or enhanced rights short of adoption.

- *first, counsel for Ms A submitted that the certainty and security that will be afforded to Master D by an adoption order has been overstated, that Ms A is supportive of the existing care arrangements and if she sought a discharge of the existing care order would be confronted with her own averments in this case.* However, the prospect of such an application is itself evidence of the lack of certainty and security that would present for Master D on an ongoing basis absent an adoption order. Moreover, it is the considered view of the Child and Family Agency that adoption will cement Master D's place in his foster family, will provide him with a sense of identity, and will allow his fosterers (as his adoptive parents) to exercise fully their parental rights and duties.

- *second, counsel for Ms A contended that if an adoption order is made Master D’s fosterers become his adoptive parents they will lose a fostering allowance that is presently available to them.* There is no suggestion anywhere in the evidence that the loss of such allowance will in any way affect Master D or the level of care that he receives from his fosterers as his adoptive parents.
- *third, counsel for Ms A contended that Master D would benefit from having a social worker as a child in care.* Again, all of the professionals who have inputted into this case – which includes the social workers within the Child and Family Agency – are of the view (as is the Child and Family Agency itself) that adoption is very much the preferred arrangement. None of them favour any form of care or enhanced rights short of adoption.
- *fourth, counsel for Ms A suggested that placing a child into adoption removes the potential for orders to be sought and made under s.47 of the Child Care Act 1991.* But that would be a basis for never making an adoption where the child the subject of such an adoption is in care, and such adoptions are not only permitted but in fact take place.
- *fifth, counsel for Ms A noted that if Master D is adopted now he likely will not be eligible for aftercare payments.* There is no suggestion anywhere in the evidence that this will in any way adversely affect Master D.
- *sixth, counsel for Ms A noted that if Master D is adopted he will be the only one of four siblings who is presently adopted.* As a matter of fact this is true. However, I do not, with all respect, see how this changes matters when all of the professionals who have inputted into this case are of the view (as is the Child and Family Agency itself) that adoption is very much the preferred arrangement, when none of them favour any form of care or enhanced rights short of adoption, and when (again) the foster-mother has averred, amongst other matters as follows:

“We see the benefit that Master D ...derives from...[sibling-]meetings and we would like that he would have a relationship with his birth parents. We are happy

to have contact or even letter-box contact in the initial stages and would share photos in an age-appropriate manner with Master D. We will fully support Master D should he express a wish to re-establish contact in the future.”

- *seventh, counsel for Ms A noted that while the foster carers have stated that they will facilitate access, the State has chosen a closed system of adoption and cannot escape the consequences of that choice. There is simply no reason to doubt the good faith averments of the foster-parents regarding access. While counsel for Ms A pointed to alleged difficulties encountered by Ms A and Ms B in getting access to Master D over the years those alleged difficulties would have occurred (if they occurred – and I am not persuaded that they did occur) with the Child and Family Agency. The reason I am not so persuaded is that not getting what one wants when one wants it does not necessarily equate, and here I do not see that it does equate, to the Child and Family Agency being obstreperous; in truth, all the evidence points to the Child and Family Agency having – to use a colloquialism – ‘bent over backwards’ to promote a relationship between Ms A and all of her children. Nor is there any question of the behaviour of the fosterers having been anything other than unimpeachable. Ms A repeatedly indicated herself to be satisfied with the fosterers. Ms B indicated in her testimony that until very recently she had no idea who the fosterers were; moreover, she never sought any access rights to Master D (she indicated in her testimony that she did not know that she could but she never sought any legal advice or even the advice of the Child and Family Agency in this regard), she did not seek to be joined to these proceedings, and she did not seek to be involved in the proceedings before the Adoption Authority. (That said, I do not wish to be seen to make any criticism of Ms B who has gone above and beyond the call of familial duty in terms of trying to do right by her sister’s children). Additionally, every iota of evidence before the court points to the fosterers being well-intentioned people who love Master D, have his best interests at heart and will do whatever it takes to parent him well, including facilitating contact in the manner referred to in the above-quoted averment.*

- *eighth, counsel for Ms A submitted that “placements” break down and that a placement breakdown post-adoption would be an additional woe for Master D.* If Master D is adopted (and he will be adopted) by the fosterers the law will recognise Master D to be their child. That will not change if the fosterers’ relationship breaks down; and it will not change if the relationship between the fosterers and Master D should at some point become strained. If the suggestion is that the Adoption Authority and the court should wait until presented with prospective adopters whose relationship with each other will never encounter any degree of strain and/or whose relationship with Master D will never encounter any degree of strain, then no adoptions would ever take place. It is in the nature of all human relationships that they have their ‘ups and downs’. I expect that the fosterers in their future relations with each other and with Master D will have their ‘ups and downs’ like anybody else; they would not be human if they did not. But that is life. It is not a reason to avoid allowing an adoption to take place in circumstances where all of the professionals who have inputted into the proposed adoption are of the view that it is very much the preferred arrangement and none of them favour any form of care or enhanced rights short of adoption.

42. I have been referred in the context of the question of proportionality to such cases as *Heaney v. Ireland* [1994] 3 I.R. 593, *Lobben v. Norway* (Application No.37283/13), *Child and Family Authority v. Adoption Authority of Ireland* [2018] IEHC 172, *Child and Family Agency v. Adoption Authority of Ireland and Ors* [2018] IEHC 515, *Child and Family Agency and Ors v. Adoption Authority of Ireland and Anor* [2019] IEHC 312, *Child and Family Agency and Ors v. Adoption Authority of Ireland and Anor* [2020] IEHC 419, and *Child and Family Agency and Ors v. Adoption Authority of Ireland and Ors* [2022] IEHC 269. I note in particular the following observations of the European Court of Human Rights in *Lobben*, at para.209:

“As regards replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicants’ legal ties with the child are definitively severed, it is to be reiterated that ‘such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an

overriding requirement pertaining to the child's best interests'....It is in the very nature of adoption that no real prospects for rehabilitation or family reunification exist and that it is instead in the child's best interests that he or she be placed permanently in a new family".

[Emphasis added]

43. It seems to me that as part of the assessment of proportionality, three questions can usefully be asked (albeit that the exercise involves a consideration of factors and a weighing of respective rights that goes beyond these questions):

- Are the reasons being advanced by the applicants as a justification for the orders sought rational and *not* arbitrary, unfair or based on irrational considerations?
- Do “*exceptional circumstances*” of the type contemplated by the European Court of Human Rights in *Lobben* present?
- Is the proposed adoption motivated by an overriding regard for the best interests of the prospective adoptee?

44. If the answer to any of the above questions is ‘no’, I do not myself see how a finding of proportionality could properly ensue. In this case the answer to each of these three questions is ‘yes’.

45. All the professionals who have inputted into this case are of the view that adoption is very much the preferred arrangement and none of them favour any form of care or enhanced rights short of adoption. It seems to me that their views in this regard are rational and not arbitrary or unfair or based on irrational considerations. Moreover, it seems to me that the “*exceptional circumstances*” to which the Court of Human Rights points in *Lobben* do present in this case. And it is clear that all the agencies and professionals who have come to this matter (this court included) are motivated by an overriding regard for the best interests of Master D.

46. In undertaking my proportionality assessment, I also respectfully adopt the following observations of counsel for the Adoption Authority in their written submissions, which observations pertain to the weighing exercise that falls to be undertaken by the court:

“36.... Master D has been in the continuous and unbroken care of the prospective adoptive parents from less than a month after his birth and it is submitted that he deserves the consistency and security that adoption will provide him with. The engagement and behaviour of the Ms A is such that she has abdicated the protections and privileges bestowed upon her as a consequence of having birthed the child.

37. *The Agency, and through the Agency the prospective adoptive parents have supplanted the place of the birth parents as of the date he was released into their care on [Stated Date 2].... Master D has been, since that date, in their custody and care. They have provided him with an excellent home and provided for his special needs since that time. They have provided him with stability. Master D is entitled to have stability and consistency which can only be achieved by the order being made whereby the child is given the opportunity of being adopted into the family unit of the prospective parents. Ms A does not seek to resume care of the child. She does not seek to separate Master D from the prospective adoptive parents. Merely seeking to have access with Master D where there has been a history of default in this regard should not warrant the child being deprived of being a full member of the household of the prospective adoptive parents. To accept such an argument would not be proportionate to the benefit to be achieved for Master D. This child has special needs which many carers may not be able to manage; however the prospective adoptive parents have risen to each challenge that has arisen in relation to his care needs.”*

47. When one has regard to the foregoing, when one has regard to the entirety of this judgment, when one has regard to all the evidence before the court, they all point to what seems to me to be, with all respect, the unavoidable conclusion that however difficult it is for Ms A (and I do not doubt that it is and will be difficult) the adoption of Master D by the applicants is a proportionate means by which to supply the place of his natural parents.

IX

Re B and Re BS

48. I was referred by counsel for Ms A to the decisions of the English courts in *Re B* [2013] UKSC 33 and *Re BS* [2013] EWCA Civ. 1146. Those of course are persuasive authorities only and issued in the context of the UK's adoption regime. The UK has its adoption system; we have ours; both systems seek to conform in their own way to international norms and standards but (quite legitimately) they do so differently. There is now an abundance of detailed, informed and binding Irish case-law on the interaction of the Constitution, the Convention, and the Adoption Acts and I am not myself convinced that it is necessary to look beyond that case-law in this case. Also, having taken the time to look at the persuasive authorities in question – and noting again that they are crafted within the context of the English legislative regime – I am not persuaded that they throw any light on the facts or law at play in this case. Specifically, it is clear from *Re BS* (para.27) that the need, under English law, to have regard to all options before coming to a decision as to adoption flows from the specific wording of s.1(3)(g) of the Children Act 1989 and, more particularly, s.1(6) of the Adoption and Children Act 2002, which latter provision requires that “*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)...*”. I must admit, however, that I dislike getting even into this level of consideration of English statute-law as (i) there is simply no reason presenting in this case to look beyond the ambit of the Constitution and Irish statute and case-law, and (ii) to look further afield even in this limited respect unnecessarily complicates the already challenging. There is of course no problem looking at foreign case-law when it aids in one's understanding of Irish law as it does or should apply. However, in this case, with every respect, the above-mentioned English cases serve more to obfuscate than to illuminate and are of no assistance in deciding the issues that fall to be decided.

X

Conclusion

49. For the various reasons identified above, the court will make an order pursuant to s.54(2) of the Act of 2010 (i) authorising the Adoption Authority to make an adoption order in relation to Master D in favour of the second and third-named applicants, and (ii) dispensing with the consent of Ms A to the making of the adoption order.

***TO MS A, MR H, MR I:
WHAT DOES THIS JUDGMENT MEAN FOR YOU?***

Dear Ms A, Ms H, Mr I

I have written a long judgment about the adoption application that was heard last week in respect of Master D. The judgment contains a lot of legal language which can be challenging to read.

I am aware that family law judgments touch on important matters in people's lives. So I now add a note to my judgments explaining in plain English what I have decided. That seems to me to be the least that you all deserve.

This note is a part of my judgment. However, it does not replace the text in the rest of my judgment. It is merely meant to help you understand what I have decided. Your lawyers will explain my judgment in more detail.

I have referred to you in my judgment by various initials, so that no-one else who reads this judgment should recognise who you are. I am sorry if that feels impersonal but I think it is for the best.

As I indicated in court, my sense is that the various legal tests which require to be met in order that the adoption of Master D might proceed are satisfied. No reason presents why the adoption of Master D should not proceed and it is in his best interests that it should proceed.

I know that my decision will occasion unhappiness to Ms A and I am sorry that this is so.

I wish all of you, and most especially Master D, the very best in the future.

Yours sincerely

Max Barrett (Judge)