[2025] IEHC 148

Record No. H.M. 2024 120

THE HIGH COURT

FAMILY LAW

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 54(2) OF THE ADOPTION ACT, 2010 AND IN THE MATTER OF J.N , A MINOR BORN ON [DATE REDACTED]

BETWEEN:

CHILD AND FAMILY AGENCY AND R.K. AND M.K.

Applicants

AND

THE ADOPTION AUTHORITY OF IRELAND, P.D. AND C. N.

Respondents

JUDGEMENT of Ms Justice Nuala Jackson delivered on the 3rd March 2025.

INTRODUCTION

1. This matter comes before me in circumstances in which the Applicants are seeking an Order pursuant to section 54(2) of the Adoption Act, 2010 ('the 2010 Act') authorising the First-Named respondent ('the AAI') to make an adoption order in relation to the child, J, in favour of the Second and Third Named Applicants and to dispense with the consent of the Second and Third Named Respondents to the making of the adoption order in this context.
2. The AAI made a Declaration pursuant to section 40 of the 2010 Act on the 5th March 2024 and a Declaration pursuant to section 53 of the 2010 Act on the 16th April 2024. The former decision relates to the eligibility and suitability of the Second and Third Named applicants to adopt and the latter decision indicates that the AAI is satisfied that it would be proper to make an adoption order in relation to J in favour of the Second

and Third Named Applicants subject to this court making an order pursuant to section 54(2) of the 2010 Act authorising such adoption order.

3. I have considered all of the papers herein. I have had regard to the three Affidavits of Ms H [social worker] sworn on the 3 October 2024, the 13 November 2024 and the 27 November 2024. I have also considered the Affidavit of the second named applicant sworn on the 2nd October 2024. I have also considered the Affidavit of BF [social worker] of the 3rd October 2024.
4. On behalf of the AAI, I have considered the Affidavit of Mark Kirwan of the 31st July 2024.
5. Most importantly, Affidavits were sworn by the Second and Third Named Respondents, the birth mother on a date in October 2025 and the birth father on the 22 January 2025. I also heard oral testimony from the birth mother, Ms. D.
6. No Notices to Cross-examine were served and no applications to cross-examine were made at the hearing.
7. The Third-Named Respondent, with the advice of Counsel and solicitors, determined to adopt the position that he would neither consent nor oppose the application. I recognise his interest in the proceedings and the appropriateness that he would have full and complete legal advice and adequate time in order to address the very serious matters arising. I adjourned this matter to ensure that this was so and I am satisfied that he adopted the position he did with the benefit of full legal advice. Of course, I must still be satisfied that the statutory proofs have been complied with.
8. The Second-Named Respondent, the birth mother, is opposing this application.

FACTUAL BACKGROUND

9. Many of the facts herein are not in dispute. J is the third of Ms. D's four children. He is 13 years old. K, the eldest, has been previously adopted by the Second and Third Named Applicants herein. Ms D's two other children, one a teenager and one a small child, continue to reside with her. One of these two children is a full sibling of J.
10. The Second and Third Named Respondents have each experienced challenges in life. These challenges led to J being voluntarily placed in the care of Ms. D's sister, the Second- Named Applicant herein, and her husband, the Third-Named Applicant, at a very young age. J was born in 2011 and has lived with his aunt and uncle since shortly

(2 days) after the time of his birth. The birth parents were married at this time but their relationship was under severe challenge and they separated shortly thereafter. It is unclear if they are divorced but it is amply clear that there have been irreconcilable differences between them for many years.

11. It is clear that the birth parents did not envisage that the arrangement would be permanent but no particular duration was envisaged. They were having coping difficulties and considered the arrangement one which would continue until these were resolved. It is clear that time passed and the situation continued. It would appear that the first care proceedings were brought a number of months after J's birth in order to regularise the previously voluntary situation. Thereafter, the care order was extended on a number of occasions. The first care order was the 30th July 2013 until the 5th September 2012. The extensions thereafter were to the 4th September 2013, the 19th September 2013 and 15th November 2013, the 5th November 2013 and the 21st October 2016. A Care Order until J was 18 years of age was made on the 19th October 2016. There is no evidence before me that any of these applications was contested in any meaningful way or at all or that any application was ever brought by the Second or Third Named Respondents to alter, vary or amend these Orders.

12. On the 19th October 2016, a full care order was granted. It is not disputed by anybody that J will continue to live with and be cared for by the Second and Third Applicants during his minority. His birth mother's evidence in this regard was clear. In her Affidavit she states:

    "I do not think the adoption is necessary. He is already in the care of the [K] family. He receives the love, care and attention he requires. I am incredibly grateful for the care he has received. But the level of care he will receive will not change by the adoption."

    She deposed, in addition, that:

    "I have no intention of taking J away from the [K] family when he turns 18. I want him to finish school. I do not want to do anything to disrupt his life. I want the best for him."

13. The first sentence of this averment is a little confusing as J will be an adult at 18 years and will have the legal autonomy which accompanies the attainment of his majority.

However, the balance of this averment makes supports a commitment to J's day to day living circumstances not being altered.

14. Her oral evidence at hearing was in similar vein.
15. While it is a positive aspect of this case that J was placed with family members of the Second Named Respondent, allowing him to maintain close relations with remoter family members, it is unfortunate that relations between his carers and his birth mother have been erratic and the relationship between them is now poor. This is understandable in all of the circumstances and particularly so when the Second Named Respondent is opposed to the adoption of J which the Second and Third Named Applicants seek to advance. However, it is important to recognise that they are all part of not only J's family but also of each other's family and it is to be hoped that relations between them can improve going forward, bolstered by their love and care for the children which they all wish the very best for.
16. J's birth father has had little role in his life since infancy and has had no access over many years. The access between J and his birth mother would appear to have continued but has not been without its difficulties. In this regard, I have had regard to the averments of Ms. D including:

> *"I say and believe that I never received any adequate support from the Child and Family Agency."*
>
> *"I believe that had I been allowed to care for my child by the Child and Family Agency I would have been able to do so."*
>
> *"Before Covid 19 I saw Isaac very regularly. I would say that I saw him approximately once a fortnight. After Covid 19 access has become very sporadic."*

17. These averments do not fully accord with those on behalf of the Child and Family Agency or with contemporaneous reports in the context of the care proceedings. The detailed averments of Mr. Fitzgerald were not contradicted by the Second-Named Respondent with any particularity. It would appear that access was relatively regular at the outset of the placement but became less frequent over the years. This has been detailed in the Affidavit of BF of the 3rd October 2024. I have also considered the Social Work Report prepared by Ms. B [social worker] for the District Court application on the 19th October 2016 (which resulted in the full Care Order to 18 years being made)

which describes the access as having been "chaotic". It reports that there was scheduled access every two weeks at that time but that this was not taking place due to non-attendance by the Second-Named Respondent. At the date of the report in October 2016, there had only been two access visits in the previous six months, one in October 2016 and one in August 2016. Prior to that, the most recent access occasion was in February 2016. This report and the Affidavit of Mr. BF support considerable efforts having been made by the Child and Family Agency up to and including the date of the court application in October 2016 to support access. There would appear to have been significant improvement thereafter (paragraph 31 of the Affidavit of BF) with deterioration during the Covid pandemic from which there would not appear to have been recovery. I reference this further below. It is clear that there has been very little contact in recent times (this is common case). This would appear to be significantly attributable to reluctance on the part of J to participate. It must be recorded that Mr. BF avers:

> *"I say that The First Named Applicants are satisfied that every reasonable effort has been made to support the parents of the child to whom the declaration under section 53(1) relates, as required under Section 54(1)(a) of the above entitled Act of 2010."*

18. In this regard, I note the decision of MacGrath J. in **Child and Family Agency v. Adoption Authority of Ireland (H and FR)** [2018] IEHC 515 :

> *"On my interpretation of that section it appears that this is a matter upon which the Child and Family Agency must satisfy itself before it makes the application which is now before the Court. Section 54(1) addresses issues and requirements which must be fulfilled before the application is made; section 54(2) concerns the jurisdiction of the court on the hearing of such application. Section 54(1)(a) therefore appears to stipulate that this is a matter within the competency of the Agency. It is not specified in section 54(2) that this Court must also satisfy itself that the Child and Family Agency has complied with the provisions of section 54(1) before it may consider the making of an authorisation order or an order dispensing with the consent of a person whose consent is required, or that the application under section 54(2) should act as an appeal from a decision, declaration or determination of the Child and Family Agency in that regard. On*

the face of it, therefore, it seems to me that any remedy or challenge to compliance with the provisions of s. 54(1)(a) may lie in a different forum."

19. It is fair to say that over the extensive period of time concerned, access has experienced challenges from two perspectives – (i) non- participation by the Second and Third Named Respondents would appear to have been an issue over a considerable period from relatively early in J's placement and, more recently, (ii) J has not as engaged with it and has grown away from it and relationship difficulties have emerged between the family members in the context of the desire of the applicant foster carers to adopt the children who have been living with them for many years at this time.
20. The perspective of both sides is understandable. The birth mother says that there is nothing wrong with the current situation and that adoption will add nothing to J's situation save to distance him further from her and his sibling/half-sibling. The Second and Third Named Applicants assert that J has now been part of their family for a considerable period, that they have been his *de facto* family for all his life, that his half-sibling has now been adopted into that family and that the granting of an adoption will give him security and certainty, will endorse his reality and lived experience and is something that he wants. The adoption is supported by the CFA and by the AAI.
21. Importantly, I spoke with J and my conversation with him indicated that, in a manner and according in an understanding consistent with his age, he wishes to be adopted. He sees the K family as his family and he views his home as being with them. This has been his full life experience and he expresses the desire that this would continue. I formed the view that this was more an expression of a sense of belonging and a desire to continue to belong than being related to his day to day care needs. His voice is also reflected in the Affidavit of Mr. BF (paragraphs 44 – 46).
22. I have fully considered the Affidavit of Ms D, much of which she repeated in oral evidence. She acknowledges that she handed J over to her sister to be cared for by her at the time of his birth. She acknowledges that she thought this to be temporary (and this appears to be common case). However, whatever the expectation, a couple of months has now turned into more than 13 years. J has been cared for by the Second and Third Named Applicants since birth and he has known no other home or caregivers. I truly believe from her evidence in court that she loves J and, indeed, that she loves all her children. The circumstances of her life have conspired not to permit her to care for K and J and to hand over their care to others, the Applicants herein. She has not been

involved in any aspect of his care. She has referenced a lack of adequate support from the CFA – I have considered this above and I will further reference this below. I do acknowledge the parental role which has been and is currently being discharged by the birth mother in relation to the other children but this application is about J, not about the other children, either the [children living with her] or K. Her Affidavit details concerns which she has in relation to voluntariness and also details lesser steps which she believes would address the situation arising.

23. On the evidence before me (in this regard I refer to paragraphs 44- 46 of the Affidavit of BF which has not been substantively contradicted) and having heard J's voice, I do not believe that J is being pressurised. In his interview with me, his communication appeared authentic and appropriate. I think he simply wants stability and predictability and confirmation that his lifetime family unit to date will remain such. Ms. D readily acknowledges that she wants what is best for J. I have been informed and I accept the assurances of the CFA that there will be no financial alteration to J's circumstances in the context of adoption. Ms D fears that adoption will change her relationship with J. I simply do not, indeed, cannot know if this is so or not – there are two perspectives in this regard both of which can be but conjecture. J might resent not being adopted and thus his relationship with Ms D might be further damaged. On the other hand, his adoption might give him the stability and security within his *de facto* family unit that he would be more comfortable in his relationship with his birth mother. It is simply impossible to predict. However, the current situation, which Ms. D accepts would continue absent the adoption, is that J continues to have his day to day life almost exclusively with his caregivers with very little contact with his mother. Regrettably, there is no evidence before me that this would alter in a positive manner if the adoption did not take place.

DECISION

24. My decision today is one which is determined by legislatively mandated tests. The language of the statute, as has been previously reflected in judgments in this area, is unfortunate and can be viewed as being negative in nature and attributing of unworthy blame.

25. The conditions of the legislation are numerous and comprehensive and they have been addressed by the Supreme Court in the B case in a most comprehensive manner (**Child and Family Agency and B v. Adoption Authority of Ireland and C and Z** [2023] IESC 12 ('the B Case') (Hogan J.)). It is acknowledged in that judgment that some of the legislative terminology is unfortunate and is such that can cause upset to birth parents in circumstances in which the legal definitions are at odds with normal parlance.

THE LEGAL PRINCIPLES

26. The six cumulative factors which must be proved pursuant to section 54(2A) of the 2010 Act are now considered.

(i) **Failure of duty for 36 months** –

This is addressed at paragraphs 58 to 63 of the judgment of Hogan J.. I am of the view that paragraph 63 is particularly relevant and pertinent in this case.

> *"63. Much the same can be said here. For a variety of reasons Ms. C has been unable to discharge her parental rights for virtually the entirety of Ms. B.'s life. While not in any sense ascribing personal blame to Ms. C for this state of affairs, the plain fact of the matter is that all decisions regarding the education, welfare, up-bringing and day-today care of Ms. B were in fact taken by Ms. A., the foster mother. While, again, to her credit Ms. C sought to maintain contact with her child and sought to visit her regularly, she was at most a form of aunt to her daughter: she never exercised any decision-making role regarding the education and welfare of her daughter.*

As in that case, there has been no exercise of any decision-making role by the Second and Third Named Respondents regarding the education and welfare of J. I am of the view that this statutory requirement is satisfied.

(ii) **Whether natural parents unable to care for the child to the extent that his safety or welfare would be prejudicially affected.**

This is addressed at paragraphs 64 – 67 of the judgment of Hogan J.. I am of the view that paragraphs 65 and 66 are particularly relevant and pertinent in this case:

> *"65. That, however, is not the relevant statutory test. It is not a question of parental capacity simpliciter because the sub-section goes on instead to*

stipulate that this parental care must be exercisable in a manner "that will not prejudicially affect…her safety or welfare." All the evidence is that Ms. B.'s welfare would be best served by leaving her to reside in the only house which she has known as her family home. This is where her centre of interests lies, and she has come to love and value the rural life and landscape which her foster home offers. She should not be uprooted from that home environment, not least given the nature of her disability and personal disadvantage.

66. Section 54(2)(b) is accordingly not concerned with parental capacity in the abstract. This statutory test is rather concerned with the concrete welfare and interests of the particular child in question. Given the circumstances of Ms. B.'s life to date, any arrangements in her living environment would cause a very significant rupture in her life and would be fraught with risk."

As in the B case, Ms D is also caring for other children. However, the test relates to J and potential for prejudice to him. I am of the view that in this case there is an inability to care for J such as would prejudicially affect J's safety and welfare.

(iii) Abandonment

This is addressed at paragraphs 68 to 70 of the judgment of Hogan J.. In the B Case, the Supreme Court endorsed the tests in **Southern Health Board v An Bord Uchtala** [2000] 1 IR 165 (Denham J.) and **Northern Area Health Board v An Bord Uchtala** [2002] 4 IR 252 (McGuinness J.). Hogan J. reiterated that the term as used in this legislative context does not necessarily mean abandonment in the sense of physical abandonment of a child but rather *"the abandonment of parental rights vis a vis the child"* . He addressed this legal meaning at paragraphs 68 to 70 of the judgment:

68. The question presented under this heading is whether the High Court could have been satisfied that Ms. C's failure "constitutes an abandonment on [her] part for all parental rights." (As it happens, Ms. O'Toole SC, counsel for Ms. C, conceded that there had been such an abandonment). As Denham J. (in Southern Health Board) and McGuinness J. (in Northern

Area Health Board) both respectively observed in the context of the similarly worded 1988 Act, this term must be accorded a meaning according to its statutory context and is has - as both of these judges in their respective judgments stressed - a "special legal meaning". While the word "abandon" has gloomy overtones reminiscent of the novels of Hugo and Dickens, and it is, moreover, a word which, as Denham J. said in Southern Health Board, is one which "in its ordinary meaning would distress parents" ([2000] 1 IR 165 at 177), it does not necessarily mean or imply abandonment in the sense of the physical abandonment of a child (although, of course, it could do so). The sub-section is rather directed at the question of the abandonment of parental rights vis-a vis the child.

69. In Northern Area Health Board, McGuinness J. said ([2002] 4 IR 252, at 276): "Here P.O'D has agreed to the continuing care of J. by Mr and Mrs H. over virtually J's entire life to date. She is, in addition, happy that this situation should continue. She has allowed and willingly continues to allow J. to become in a practical sense a member of the H. family. She has, in my view, abandoned the custody and care of her daughter to Mr and Mrs H. She has left and will continue to leave to them the crucial decisions regarding J's health and education and the carrying into effect of those decisions, together with the by no means insubstantial financial costs that arise from them. In my view this situation amounts in a real and objective sense to abandonment of her rights as a parent. As Walsh J. pointed out in the passage quoted above [from G. v. An Bord Úchtala [1980] IR 32 at 67-68] a parent may be deemed to have abandoned his position as a parent. In my view the infrequent visits by P. to her 27 daughter, largely initiated by others, are not inconsistent with the reality of her abandonment of her position as a parent. It is true that P. has consistently expressed her opposition to adoption. I would, however, agree that such opposition in itself does not contradict the fact of abandonment. The test of abandonment must be an objective one."

70. One can say as much in the present case as well. Ms. C agreed to the continuing care of Ms. B by Ms. A. She has left to Ms. A all the critical decisions regarding Ms. B.'s education and well-being. The fact that Ms. C

visited her fairly regularly during the course of her childhood cannot take from the reality of abandonment of parental rights vis-à-vis Ms. B.

I am of the view that this statutory requirement is satisfied in this case.

(iv) State should supply place of parents

This is considered by Hogan J. at paragraph 71 of the B Case judgment:

71. There can really be little argument regarding compliance with sub-section (d). This requires the High Court to be satisfied that it was necessary that the State, as guardian of the common good, should supply the place of the parents. The unfortunate reality in the present case was that Ms. C.'s marriage and, consequently, her ability to care for her children, was overwhelmed by a series of crushing vicissitudes. She herself was unable to cope and this is why Ms. B. was first admitted into care and then fostered. This is a clear case of where the State had to supply the place of the parents.

No issue arises in this regard in this case and it has not been disputed that this will continue to be the position for duration of J's minority.

(v) 18 months in the custody of the adoptive parents

There is no dispute in relation to this legislative requirement and that it is fulfilled in this instance.

(vi) Proportionality

This is addressed comprehensively by Hogan J. at paragraphs 73 to 81 of his judgment in the B Case. I had the greatest difficulty with this provision in this case. There are distinguishing features in all cases and there are such between this case and the B case. In particular,

A. **Age of J** – the child in B was on the cusp of adulthood and this, it was argued, supported the contention that adoption was not proportionate. Here the child is many years from adulthood. Does this make adoption more or less proportionate?

B. **Living with close family** – J already has a family bond with his caregivers. He will continue to have a family bond with his birth mother post adoption.

27. Why and when is adoption proportionate and, more particularly, is it proportionate for J in this case? I refer to paragraphs 75 and following of the judgment of Hogan J. in the B Case:

    75. I find myself in respectful disagreement with the reasoning in this passage. Adoption is an institution which is designed to meet the deep-seated human needs for family stability, security and the ties and love of a family in circumstances where – for whatever reason – the natural parents have been unable to provide such an environment for the child. Adoption is accordingly rather more than simply the question of a name or a right to inherit or even the entitlement to look to others for guidance and direction in the making of important life decisions such as might in the past have been provided by wardship or now (since 26 April 2023) by assisted decision-making. Adoption is rather a question of status which has lifetime consequences going well beyond the issue of care during the minority of the child. The making of an adoption order reflects the fact that a new family relationship has been created and this is one which is underpinned and supported by the State and its legal system. This point is underscored by the fact that this very institution is provided for and acknowledged by two separate constitutional provisions, namely, Article 37.2 and Article 42A.

    76. It is also worth observing that the ties created by an adoption do not cease when the adopted child attains his or her majority. This has been the position since the Adoption Act 1952. It 30 reflects a clear and consistent view on the part of the Oireachtas that there is a lifelong value to the relationship created by adoption.

28. There are particular factors in this case:

    a. J has never resided with either of his parents. His home has been with the Second and Third Named Applicants for the entirety of his life.

b. His return was not sought by his birth parents and it is accepted by the birth mother that he will remain in his current care arrangements for the duration of his childhood.

c. He is in a stable and loving home and his needs are being fully addressed within that family unit. Like all family units, there are undoubtedly ups and downs but these appear to me to be consistent with normal family life rather than inconsistent with it.

29. It seems to me that the important indicia of adoption over care orders are engaged here. My focus must be on J only – is adoption proportionate for J?
    - He has a deep-seated and expressed need for family stability;
    - Such family stability has been provided by the K family over a considerable period and this is most likely to continue;
    - This is the only family unit he has ever known and everyone else within this unit has had the ties and security it affords recognised;
    - Status "*has lifetime consequences*". In J's circumstances where he has been with the carers for the entirety of this life and it is recognised by all that he will remain there for the remainder of his minority, it seems proportionate to recognise his lived reality.

30. In this regard, I note that Ms D recognises that J's home will remain with the K to age 18. At that point he will be an adult and will make his own way in the world and have such connections with people as he chooses. The parental role will remain important but parental rights will cease. In this regard, I refer to paragraph 23 of Ms D's Affidavit. She talks of less drastic and ultimate steps being possible such that would allow her to exercise parental rights and ensure his welfare. However, it is acknowledged by her in paragraph 19 of the Affidavit that J will stay with the applicants for his minority. Therefore, it seems to me that parental rights and welfare issues will remain with the foster carers until 18 at which point their legal significance diminishes considerably.

31. The argument made against adoption being proportionate in B (i.e. the proximity to majority) is not at issue here. So, is adoption proportionate here in circumstances in which the child is younger but there is an acknowledgement that his current care arrangements will continue for the duration of minority? I have reached the conclusion

that in these circumstances it is. I refer to **paragraph 79** of the B judgment in this context. Here, J

> *"is entitled to enjoy the emotional and legal security of family membership which adoption entails. Any other conclusion would, on the facts of this case, be inconsistent with the obligation imposed upon this Court by Article 42A.4. As O'Donnell J. observed in Re JB and KB (minors) [2018] IESC 30, [2019] 1 IR 270, the 31 application of Article 42A requires it to be performed in a manner which is child-centred in which the paramount consideration is, in fact, the child's best interests. Posed in this manner this question really answers itself. "*

32. Again, in the context of the family relationship in this instance, it does not appear to me that such a placement should operate to the disadvantage of J or should operate to exclude him from becoming a secure and full participant in his *de facto* lifetime care unit. The words of Hogan J. above equally apply – what is proportionate must be child centred towards J and consistent with his best interests.
33. I have therefore concluded that adoption is proportionate in the circumstances of this case.
34. I have also had regard to the Constitutional rights of the birth parents and the child (section 54(2A)(3) of the 2010 Act), to the best interests (section 19 of the 2010 Act) and to J's voice (section 54(2A)(3)(b)). Having regard to the factual circumstances of this case as detailed previously in this judgment, I have formed the view that it is appropriate to make an Order pursuant to section 54(2) of the 2010 Act in the context of these requirements also.
35. I do not believe that this is about a surname but rather it is about an identity and a sense of belonging. J has already had these in fact with his caregiving family, today's order simply gives legal recognition to them. Ms D is and will remain and will always be his birth mother. As part of their entirely appropriate and committed care of J to date, it is to be hoped that the K family will recognise the continued importance of this role and the importance of Ms D's (and J's siblings) continued role in his life. In the longer term, these will be issues for J himself.

36. On the facts of this case, I am of the view that the conditions required by section 54 of the 2010 Act are fulfilled and I will make the Order sought by the Applicants.

CONCLUSION

37. In conclusion, I must reflect briefly on section 54(1)(a) of the 2010 Act which mandates that the Child and Family Agency make "every reasonable effort to support the parents". While fully accepting the judgment of MacGrath J referenced previously that this is a matter for the CFA and not for the Court in the context of a section 54 (2) order, I do wish to reflect on this issue which causes me concern in this case (and indeed in others). There were clearly very considerable challenges faced by the CFA in the context of the Covid 19 pandemic and in maintaining contact with birth families during this time. It is, unfortunately, all too common that access arrangements for children in care were hugely impacted upon during this time with consequent detrimental impact upon relationships with birth families. While this did occur in this case, it is also clear that there were considerable access challenges and shortcomings in this case long prior to the pandemic, through no fault of the CFA. However, it is important that the damage caused by the pandemic be proactively addressed and that it not be permitted to be an occasion of further disadvantage to families within the care system.