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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between

Ms BB

Applicant

and

Mr A and Mrs A

Respondents

O'HARA J

Introduction

[1] In order to protect the interests of the children who are referred to in this judgment, their identities and those of the other parties have been anonymised. Nothing is to be published or reported which may lead directly or indirectly to the identification of the children or the parties.

[2] This case involves an application for contact by Ms BB whose three children were freed for adoption in 2002. At that time no order was made for her to have any post-adoption contact with the children. That is the normal practice in this jurisdiction, then and now. In fact at the time when the freeing orders were made the prospective adoptive parents had not been identified. It was, however, understood between Ms BB and the Trust which applied for and obtained the freeing orders that it was in the best interests of the children that there should be some indirect contact in the future.

[3] Adoptive parents were found but the three children were not kept together. The youngest two were placed with one couple and the oldest (P) whom this case is about was placed with another couple. The arrangements for adoption were made through the Family Care Society (NI). P's adoptive parents were consulted about indirect contact as was the applicant. This led to an agreement in or about 2004 that the applicant would be sent a card each Christmas and a letter together with a

photograph of P at Easter. In this way she would be given a level of information about his progress in life. For her part the applicant was free to send letters, cards or presents which would go through the Family Care Society and which the new parents could share with P at their discretion.

[4] It is important to note the limits to this agreement which is better described as an understanding. Those limits include the fact that Ms BB was given no information about the identity of the couple who have now been P's parents for more than a decade. They also include the fact that it has always remained a decision for the parents who have full legal responsibility for P as to whether they would allow indirect contact to continue or develop and, if they did so, on what terms.

[5] In fact contact was not maintained. Apart from one card sent to the applicant in 2008 she received nothing from P's parents after December 2005. Contact with her other two children continued until 2010 and then stopped also. As a result she applied in July 2014 for leave to apply for a contact order with all three children.

[6] Although it is not a party to these proceedings the Family Care Society, through Ms J Coyle, assisted the court in relation to all three children. As a result of their efforts indirect contact has been restored for the applicant with two of her children but not with P. I granted leave to the applicant to apply for contact with P and joined the parents as respondents on an anonymised basis. The Trust was originally identified in the proceedings as a respondent but cannot be so because it has no legal responsibility for P. The parents have not been legally represented and have communicated to the court in writing through Ms Coyle. The Trust has attended various hearings to assist the court and has been represented by Ms M Smyth QC on some occasions and by Ms C Quinn, solicitor, on other occasions. It has no specific interest in this case but rather an overall interest in applications such as this. I am grateful to the representatives of the Trust and the Family Care Society for their assistance.

[7] Mr T Ritchie appeared for the applicant whose essential contention is that whether one describes it as an agreement or understanding the indirect contact, which was outlined at the time of the freeing hearing and which was then approved at the time of the actual adoption, should continue unless there is evidence that contact would be damaging to P. The rationale for this, he submitted, is that contact may be of fundamental importance to the long term development of the child for any or all of the reasons expressed by Lord Carswell in his decision in Down Lisburn Health and Social Services Trust v H [2006] UKHL 36 at paragraph [44]. Those reasons include the fact that contact can contribute to reassurance and security and the feeling of identity for adopted children. It can also help to dispel feelings of rejection. Mr Ritchie further submitted that contact should continue in order to protect the child's rights over and above those of the parents who might wrongly want to exclude the birth mother from their child's life even if that is not in the best interests of their child. The fact that the child's interests have to be prioritised as the

determining factor in every case reflects the provisions which are found in the Children (NI) Order 1995, Article 8 of the European Convention on Human Rights and Article 8 of the United Nations Convention on the Rights of the Child. It has also been recognised repeatedly in the judgments of courts at all levels in this jurisdiction and beyond.

[8] I accept Mr Ritchie's well-reasoned and presented analysis of the applicable principles in this type of case, which may become more common in an era of open adoptions. It follows that the focus of the hearing has been to examine the reasons advanced by the parents for refusing to continue contact notwithstanding a way forward which was identified in 2004.

[9] The parents set out their position in a statement received by the court on 19 March 2015. The main issues which they raised are as follows:

- (i) P is autistic, has ADHD and has moderate learning difficulties.
- (ii) P likes and needs a structure and order to his life.
- (iii) P can easily be thrown out of his established and settled routine.
- (iv) His limitations mean that he has difficulty in understanding anything about his past even though he knows that he is adopted.
- (v) When he has been shown cards or letters from the applicant he has shown no interest in them.
- (vi) It was his mother who made the cards and wrote to the applicant with very limited input from P.
- (vii) They have a particular concern that he would be recognisable to the applicant from photographs if they were updated annually.
- (viii) They themselves found the contact from the applicant and her pursuit of her claim both stressful and intrusive.

[10] It is relevant and significant that Ms Coyle, who met the parents in March 2015, wrote that they are parenting P 'exceptionally well despite his ongoing issues' and that she agreed with their decision. She also stated that should P 'wish to avail of contact with his birth family at any point in the future his adoptive parents will fully support him in doing so'.

[11] In response a request was made on 8 April 2015 on behalf of the applicant that the parents at least give her an additional update of P's progress. However, in the position paper a few days later on 13 April the applicant again sought a letter at least every Easter **with a photograph**.

[12] The parents' response through Ms Coyle on 30 April was firmly negative. They have agreed to the Family Care Society holding any further correspondence from the applicant so that they can share it with P in the future, if and when he expresses an interest in his past. Otherwise they stood by the position which had been set out on 19 March.

[13] At a short hearing on 8 May I heard oral evidence from the applicant. Unfortunately, in the course of that evidence she exposed the limitations which troubled her when the freeing orders were made and which still trouble her today. She challenged any suggestion that the parents might be upset by these proceedings, saying "they're not my son's parents, I am". She also asserted that telling P about her would not upset him and that he may have autism and ADHD because "he is not getting what he is entitled to get". Although she said she wanted what was best for P she showed little or no appreciation of the position of the parents and seemed not to have absorbed what the parents said about P or what the Family Care Society had said in support of the parents. At the end of that hearing Ms Coyle confirmed that P knows he is adopted but that he can be upset if that fact is raised with him.

Conclusions

[14] I have considered carefully the applicant's evidence and the submissions made on her behalf. Having done so I conclude that for the following reasons this is not an appropriate case in which I should make any order for contact:

- (i) I accept that the parents have honestly and fairly considered P's best interests.
- (ii) Their position is supported and endorsed by the Family Care Society which, it should be remembered, managed to facilitate the resumption of contact for the applicant with her two younger children.
- (iii) The applicant's oral evidence and her dismissive rejection of the position of the parents suggest to me that she has never come to terms with the adoption and that the parents are legitimately concerned about her actions. If P was to be identified from any photograph sent to the applicant there would, in my opinion, be a real threat to P's life with his parents from the applicant.
- (iv) Given P's limitations which are considerable, even limited indirect contact is potentially disruptive and unsettling.
- (v) Indirect contact between the applicant and P is not in P's best interests.

[15] During the course of these proceedings P turned 16. Article 9(7) of the Children (NI) Order 1995 provides that no court shall make a contact order with respect to a child who has reached the age of 16 "unless it is satisfied that the circumstances of the case are exceptional". I am not satisfied that there are any

exceptional circumstances in this case but the decision which is set out above would have been the same if P were younger than 16.

[16] In the event that further applications of this type are brought in other cases where children have been adopted, it will be helpful for the position of the parents to be articulated at the earliest opportunity through an organisation such as a Trust or the Family Care Society. In that way the grant of leave to proceed with an application can be made on an informed basis.