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Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats de Veulle, Maret-Crosby
Judgment Date:	02 July 2010
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Text

[2010] JRC 120

ROYAL COURT

(Samedi Division)

Before:

J. A. Clyde-Smith, **Esq., Commissioner, and** Jurats de Veulle **and** Maret-Crosby.

Between
The Minister for Health and Social Services
Applicant
and
(1) B
(2) C
(3) Advocate Heidi Jane Heath on behalf of Anthony Williams (the child's guardian)
Respondents

Advocate C. R. Dutôt **for the Applicant.**

Advocate H. J. Heath **for the Guardian.**

Advocate M. J. Haines **for B.**

Advocate C. Hall **for C.**

Authorities

Children's (Jersey) Law 2002.

Re G and B (Children) [2007] EWCA Civ 358.

Adoption (Jersey) Law 1961.

Re D (a Minor) (Adoption: Freeing Order) [1991] 1 FLR 48.

Re B [2002] JRC 124.

Re JS & BS [2005] JRC 108.

Re TS, LS, CaS, Children's Service and ThS (No 2) [2005] JRC 178.

THE COMMISSIONER:

1 On the 8th June, 2010, the Court granted the Minister's application for a final care order in respect of A, ("the child"), and an order freeing the child for adoption, having rejected an application by the father for the matter to be adjourned to enable the father and his aunt to be assessed as long term carers. We now give our reasons for those decisions.

Background

2 The mother is described by Mr James Kingsley, an independent social worker instructed by her lawyers, as follows:-

> *"It is appropriate to feel the very greatest concern and sympathy for B.* She is the product of her home, her family and her environment. She was probably a neglected child whose physical, educational, emotional and developmental needs were not met. As a teenager she was not adequately cared for or supervised and, in addition to her evident learning difficulties, she was a vulnerable and "at risk" child. In many ways, B is still a vulnerable child who continues to be failed by her parents, her family and the authorities."

3 The child was born two months premature by caesarean section. Professional concerns

were expressed with regard to the chaotic lifestyle that the mother had whilst pregnant continuing once the child was born.

4 On 29 th September, 2008, the child's name was placed on the Child Protection Register under the category of “emotional abuse”. At this time the mother was living with her own mother (“the grandmother”) and step-father.

5 On 16 th January, 2009, and by agreement with the mother, the child was placed with Mr and Mrs D. Mrs D is the sister of the partner of the mother's elder sister.

6 On 27 th January, 2009, the child was made the subject of an interim care order and was placed into foster care.

7 In his viability assessment of 27 th January, 2009, Mr Kingsley supported the child being placed under an interim care order but said this:-

> *“Whilst it is not easy to be hopeful that B will, at the eleventh hour, cooperate with a process of intense assessment, it is in the interests of her child that such assessments take place before B is positively excluded as a permanent carer for her child.”*

8 The child was brought each day to The Lodge at La Chasse by the foster carers to have contact with both the mother and father who appeared then to be in a more consistent relationship and for them to receive guidance, advice and support and be assessed on their parenting skills.

9 Despite a somewhat pessimistic report by Mrs Irene Hansford, a senior social worker in the Children's Service, dated 27th March 2009, Dr Jayne Moran, a chartered clinical psychologist instructed to assess both the mother and father, expressed the view in her report of the 5th May, 2009, that both mother and father had the capacity to implement parenting advice in order to improve the level of care afforded to the child. Despite the difficulties being encountered with both mother and father in engaging with professional support, she believed there were good reasons for these difficulties and that there was a way of engaging both parents in order to support them in providing adequate parenting to the child. She therefore advised a further parenting assessment to be undertaken.

10 In May of 2009 two family meetings were held by the Children's Service attended by the wider maternal and paternal families who offered their full support financially, practically and emotionally to both the mother and the father. Mrs Hansford reports that this did not transpire as they all had a number of their own issues to cope with.

11 The grandmother put her name forward to be assessed as kinship carer if the child could

not remain in the care of the mother. She said she would need the support of her own daughter E and of the father's paternal aunt, F. However by the time she had completed the application form and returned it to the Children's Services, the support she was going to rely on had changed. She would now be relying on Mrs D for support. A viability assessment was undertaken by the Fostering Team but it was not recommended that a kinship assessment be conducted as there were too many concerns with regard to the grandmother's care of her own children as recently as 2006 and also her lack of understanding as to the neglect that the child was suffering whilst in the care of the mother.

12 In August 2009 the mother and father were given the opportunity to move into social services accommodation, namely The Lodge, where the child would be re-introduced into their care. The father left after a week. The child was gradually introduced until full time residence at The Lodge commenced with the mother from the 31st August, 2009. The father has since gradually distanced himself from both the mother and the child, so that at the time that Mrs Hansford prepared her report of the 12th May, 2010, and as far as she was aware, he had had no contact at all with the child through his own choice.

13 The mother and the child stayed at The Lodge for almost three months. After a short stay with her family, the mother and the child moved into housing accommodation in the week beginning the 24th November, 2009.

14 A final hearing was originally set down for the week of the 25th January, 2010, but was adjourned by agreement so that a parenting assessment of the mother could be prepared. In addition a contract of expectations was entered into by the mother and the Children's Service dated 28th January, 2010, setting out those areas in which the Children's Service wished to see improvement.

15 The parenting assessment of the mother was undertaken by Mr Kingsley but his report of the 14th March, 2010, was adverse. He reported concerns at a style of care on the part of the mother which was emotionally neglectful, developmentally harmful and not of a consistently good enough standard. He recommended:-

> *"that A be removed from the care of the mother and placed permanently with an alternative family."*

16 By agreement with the mother the child went to live again with Mrs D on 9 th April 2010 and on the 13th April, 2010, was placed again in foster care.

17 The Permanency Panel met on the 11th May, 2010, and recommended that adoption was in the child's best interests and that there would be no difficulty in finding suitable permanent carers for the child. In its care plan of 12th May, 2010, the Children's Service proposed a permanent placing of the child within an adoptive home.

18 On the 18th May, 2010, Mrs D telephoned Mrs Hansford, having heard that the child was going to be adopted, and asking if she could be assessed as a kinship carer. She subsequently met with the Children's Service and after discussion decided not to pursue her application.

19 On the 26th May, 2010, the mother signed a statement in which she consented both to the making of a full care order and a freeing order for adoption as follows:-

> *"My Position in relation to the Full Care Order Sought*
>
> *After very careful consideration, and wishing only the best for A and having taken account of the legal advice given to me, and taken account of what my mother has said to me, and that set out in the draft threshold document [the Minister's position on the threshold], I give my consent to the making of a full Care Order in this matter.* For the avoidance of doubt, I consent to the content of the said draft threshold document in that it identifies what took place leading up to and at the date of the ICO, and what took place after the date of the ICO.
>
> *My Position on the Care Plan and Freeing Orders Sought*
>
> *The Minister is seeking a Freeing order now and a reduction of contact between me and A. I only want what is best for A. Therefore, subject to what I say below, I give my consent to the care plan and the making of a freeing order, in the knowledge that A will move soon to a new forever family.*
>
> *I support fully the application by my sister E for her to be assessed for kinship care and/or adoption of A."*

20 In his report also of the 26th May, 2010, the guardian expressed the firm opinion that the child had suffered significant harm:-

> *"Whereas A's developmental delay is beginning to be overcome, the emotional damage to the child will be long lasting and A will need a secure and nurturing family environment with carers who will have some insight into the effects of early childhood poor attachment."*

21 He supported the care plan. On the 26th May, 2010, Mr Haines, representing the mother, asked for E (the elder half sister of the mother) to be assessed as a long term care for the child. E and her partner met with Mrs Hansford and Ms J Waugh, Senior Worker in the Fostering and Adoption Team, on the 27th May, 2010, where a number of issues were discussed. At the request of Miss Dutôt, acting for the Minister, they were told that if they were serious about being put forward as carers they needed to obtain legal representation immediately and intervene in the proceedings. The Court had been asked to set aside Tuesday 1st June at 10am for such an application. However due to the significant issues raised at the meeting, Ms Waugh felt unable to recommend a further assessment and F has not pursued her application.

22 In view of the father's disengagement both from the child and from the proceedings, the Court released Viberts from acting for him on the 28th January, 2010. However official contact with the father was maintained as follows:-

(i) Mrs Hansford wrote to him in May asking him to come and see her. He attended on the 11th May and signed the section of the Permanency Report headed “Views of the birth father” agreeing with what had been written in relation to him and indicating that he had nothing further to add.

(ii) On the 24th March and 12th May, 2010, Miss Dutôt wrote to him to inform him of the procedural steps being taken and the final hearing due to commence on the 7th June, 2010. He was offered copies of the experts' reports and other documents filed and to be filed in the proceedings and was asked to inform Miss Dutôt whether he intended to be present for the final hearing on the 7th June, 2010. No response was received.

(iii) The more recent steps taken by the Children's Service to communicate with the father are best set out in this email from Mrs Hansford to Miss Dutot dated 3rd June, 2010:-

> *“I invited C in to the Children's Service to meet with me on May 24th.* I explained what the plan was that would be presented to Court on June 7th in respect of A and asked if he would be prepared to sign a consent to adoption form. He advised me that he would do whatever B decided to do so would not commit himself at that time.
>
> *Following the Directions Hearing on June 1st, I arranged with C to again come in and see me and explained that I had been given permission to disclose B's statement for him to see what she has agreed to.* C agreed to come in at 4:30 that day.
>
> *C did not come in to meet me at 4:30 as agreed and after several phone calls to him, I had not been able to make contact with him.*
>
> *I eventually managed to speak to C this morning, only because his mother telephoned me about her own young children, and during the conversation I was made aware that C was at her house.*
>
> *G told me that she had told her son not to come to the office and not to sign anything.*
>
> *I spoke to C and said that I would like him to come to the office to read B's statement, as he had said he would accept whatever she decided.*
>
> *Then if he agreed to the plan after reading her statement he could attend a notary public and sign the consent for adoption.* I asked him if he wished to come into the office and he said no.”

23 On the 1st June, 2010, the Court gave directions that the hearing on the 7th June should proceed “on the papers” on the basis that both the guardian and the mother consented to the Minister's applications and the father was playing no part in the proceedings. In particular the experts Mr Kingsley, and Doctors Moran and Datta were released from attending. Miss Dutôt filed a skeleton argument in support of the Minister's application to have the father's consent to adoption dispensed with.

24 Prior to the final hearing Viberts informed the Court out of courtesy that Miss Hall would not be attending, having been released from the proceedings and not having had any communication from the father.

25 However the father attended the final hearing on the 7th June 2010. He spoke to Miss Dutôt and informed her that he would not agree to any orders being made. He wanted to be the sole carer for the child and to be assessed for that purpose. The Court adjourned the proceedings to enable Miss Hall to attend and represent him. After taking initial instructions, Miss Hall indicated that in addition to himself, he would like his aunt, F (his mother's half sister) assessed as a possible carer. Miss Hall asked for and was granted an adjournment until 2:30pm that day in order to consider the documents filed with the Court.

Application for adjournment

26 Having considered the documentation and taken further instructions, Miss Hall applied on behalf of the father for the Minister's application to be adjourned, so that the father and F could be assessed as long term carers. The application proceeded on the assumption that the threshold criteria under Article 24(2) of the Children's (Jersey) Law 2002 (“the Children's Law”) would be met and the Court would be dealing with the second stage of its decision making process, namely whether an order should be made.

27 The father gave evidence in support of his application. Asked by Miss Hall why he had not engaged with the child for some six or seven months, he accepted that he should have helped out with the child's care but had left it all down to the mother. He wanted the child to have a good upbringing and although the Children's Service had never helped him in his life, he would be prepared to work with them albeit that he didn't think they were capable of a good relationship with him. It was important to him that the child should be brought up by family. He had seen the child the previous week and didn't accept that A had not recognised him. He had also seen A by chance some two weeks earlier. The fault for his lack of contact with the child lay with the mother who wouldn't let him see A.

28 The father accepted he had no work and nowhere to live and that in his two meetings with the guardian he had not raised the possibility of his caring for the child. He asserted that he had informed Mrs Hansford that this was his intention but there was no record of him having done so. He admitted that he had been involved in incidents of violence in the past and had

an issue with alcohol and anger management, for which he had completed both drugs and alcohol and anger management courses. He had decided to make this application a week prior to the final hearing but accepted that he had taken no steps to advance it, other than to appear on the day of the hearing. In particular he had not consulted Viberts, available to him under the legal aid scheme. Although he was not aware of the child's current needs, he was competent to look after A – his current girlfriend, he told us, trusts him with her baby. If he was unable to cope with the child then he would expect help from his wider family.

29 Miss Hall invited the Court to hear evidence from F, who was available, but we declined for the reasons which we explain below.

30 Miss Hall submitted that without an assessment of the father and F as potential carers, the care plan was inchoate and should not be approved. She submitted, and the other counsel present agreed, that if the Court was not satisfied about material aspects of the care plan, it should decline to make a care order. The matter should therefore be adjourned so that this defect in the care plan could be remedied.

31 The application was strongly resisted by the Minister, the guardian and the mother. Miss Dutôt, citing *Re G and B (Children)* [2007] EWCA Civ 358, submitted that there were two issues for the Court:-

> (i) If a family member wishes to be considered as a potential carer, he or she should put themselves forward for an assessment at the earliest opportunity and
>
> (ii) In assessing the impact of any consequent delay, the Court should consider the prospect of a positive assessment being provided.

32 In G and B the mother's foster sister put herself forward for the first time as a potential carer for the children concerned in the course of the final hearing. The care plan was that they should be placed for adoption. The judge made the care orders; he considered adjourning the making of the placement orders for assessment of the foster sister, but declined to do so, going on to make the placement orders on the basis that the adoption would be in the children's best interests. The mother did not appeal against the care orders but did appeal against the orders placing the children for adoption. It was held that it was open to the judge to exercise his discretion to make the placement orders: the judge had had objective evidence that the foster sister was not a suitable carer; the judge had seen and heard the foster sister, and had not formed the impression that she was suitable; and that the foster sister should have put herself forward earlier. The judge had been entitled to weigh the advantage to the children of being brought up with their natural family against the permanence and security brought about by adoption, taking into account the delay that would be occasioned by an adjournment and the likelihood that the assessment of the foster sister would be negative. The judge had had sufficient material on which to make a decision. It was further held that available options for a child should be teased out as early as possible, and that if a family member wished to be considered he or she should come

forward at the earliest opportunity.

33 One of the criticisms of the local authority in G and B was that no family conference had been held. In contrast in the case before us two family conferences were held by Children's Services attended by the wider paternal and maternal families and the Children's Service assessed all of the candidates put forward as potential carers, firstly the grandmother and subsequently Mrs D and E. F had attended the first family conference on the 7th May, 2009, and had offered to play a support role with the grandmother but had never put herself forward for consideration as the child's carer until (through the father) the day of the final hearing on the 7th June, 2010.

34 The father had already been given the opportunity of being assessed as a long term carer in 2009 when he and the mother were offered the social services accommodation. He left within a week. He had taken no part in the child's care for some six or seven months. He had no employment or home. Miss Dutôt was at a loss as to how he could in practice be assessed in such circumstances. Accommodation would have to be found for him again and the child re-introduced for the second time. Taking into account his admitted issue with alcohol and his failure to engage with the services, we agreed with the guardian that there was no prospect at all of a positive assessment.

35 Miss Hall acknowledged that F would not have seen the child for some considerable time. We declined to hear evidence from her because, discounting the perhaps remote possibility that her suitability could be discounted by us simply by hearing her on oath, we do not have the expertise to assess a person as a long term carer. It is an involved, lengthy and careful process to be carried out by an appropriately trained professional. What we did know was that apart from attending the one family conference on the 7th May, 2009, she had not kept in contact with the child or with the Children's Services. Over the one and a half years that the child had been under the interim care order and in and out of foster care, she had never once put herself forward as a potential long term carer other than on the day of the final hearing.

36 The guardian's view was unequivocal. The next move for the child, who had been in and out of foster and parental care for 18 months, should be planned and be to a permanent placement where A can settle and flourish. Any further delay or uncertainty was in his view damaging and must be avoided. A was benefiting from the excellent foster care that was currently being given but there was a danger that if A stayed in that care for too long the bond would become too strong and a further change in A's care confusing and distressing. It was in his view “imperative” that A be moved to adoption placement.

37 We were told that if freed for adoption the child could be placed by this July. A kinship assessment of F would take at least three months. It would involve the child remaining with the current foster parents and being introduced to yet another carer for the purpose of the assessment and then potentially removed again.

38 Miss Hall submitted that the Children's Service had a duty to exhaust all avenues for the child's potential care. Just because the father had disengaged from the process did not mean the Children's Service should disengage from his wider family. They should have in effect hunted out F and had her assessed as a potential carer. Failure to so do rendered the care plan inchoate.

39 We do not accept this criticism of the Children's Service. Family conferences were held with both the paternal and maternal families and any potential carers from the wider families put forward were duly assessed. Even after the father had disengaged from the process both the Children's Service and the Crown Officers had kept in touch with him. If there were a member of his family willing and able to care for the child then he should have put her forward a long time ago; he had lawyers at his disposal under the legal aid scheme to assist him in this process. To wait as he did until the very day of the final hearing was inimical to the child's welfare.

40 There was no failure on the part of the Children's Service as alleged and its care plan of the 12th May, 2010, could not properly therefore be described as inchoate. In our view the Court had sufficient material upon which to make the decisions before it.

41 We concluded that to delay the case at this very late stage would be to gamble the child's future welfare and security on the possibility that a member of the father's family, who was now a stranger to the child and who had not put herself forward as a long term carer over the 18 months that the child had been under an interim care order, might prove suitable. To have taken such a step would have been grossly irresponsible in our view and we therefore rejected the application for an adjournment.

Care Order

42 Following the Court's decision to reject the father's application for an adjournment, more time was granted to allow Miss Hall and the father to go through the reports before the Court. Miss Hall did not seek to challenge any of the expert reports and there were no questions which she wished to put to either Mrs Hansford or the guardian who were proffered for that purpose. She did not contend that the threshold criteria were not satisfied in this case. The only submission on behalf of the father was that he could not agree to a care order as he maintained his position that his aunt F should be considered as a carer. For this part of the hearing he did not maintain his assertion that he too should be assessed.

43 The Minister, guardian and mother agreed, and the Court was satisfied, that at the relevant date, namely the 27th January, 2009, when the interim care order was imposed, the child was suffering significant harm and this attributable to the care of both the mother and the father. The evidence was clear that the child's cognitive, emotional, physical and educational development had been compromised by neglect, which could be categorised

under three headings, namely the lack of consistent emotional warmth, lack of stability and security and a lack of stimulation. The Minister, guardian and mother also agreed, and the Court was also satisfied that the child would be likely to suffer significant harm if returned to the care of either parent. In this respect we noted the advice of the guardian at paragraph 23 of his report:-

> *"Having read the numerous reports relating to A and A's birth parents and wider family it is evident that remaining with either parent is not only not feasible but dangerous to the child's health and well being.* Seeing A now in the foster home and reading the latest developmental assessment reports (10/05/10) it is remarkable how with good and consistent parenting A is beginning to thrive. A's remarkable progress has been achieved through the excellent and skilled efforts of the foster parent who has supported A in exploring A's world in a secure environment. A was placed in the current placement on 13th April and yet in that short time has made remarkable progress."

44 Accordingly both limbs of the threshold criteria were satisfied in this case.

45 As to the second stage of the decision making process namely whether an order should be made and if so what type of order, there were three options on the facts of this case (the Court having rejected an adjournment):-

(i) No order;

(ii) A supervision order; or

(iii) A care order.

46 The Minister, guardian and mother submitted and we agreed that a care order was the only order that could be made. Making no order would be to leave the child in the care of parents who were not able to care for the child. A supervision order assumed that there was a third party, usually the parents, who would continue to care for the child with the oversight of the Minister. Neither order would permit a permanent placement through adoption.

47 Having considered the submissions of the parties and

The Court concluded that a care order should be made.

(i) applying the principle that the child's welfare is of paramount consideration (Article 2(1) of the Children's Law);

(ii) applying the statutory welfare checklist (Article 2(3) of the Children's Law);

(iii) being satisfied that making an order was better for the child than making no order at all (Article 2(5) of the Children's Law);

(iv) considering the proposed arrangements for contact with the child and having invited comment upon them (Article 27(11) of the Children's Law) and upon which we comment below; and

(v) Having scrutinised the care plan,

Freeing for Adoption

48 As previously mentioned, the guardian's advice was that the next step for the child should be planned and permanent. In evidence before us he explained that the care order should be seen as a means to securing that permanent placement.

49 A care order on its own was not permanent – it could be discharged on the application of either parent. Thus it would not give the child or the carers any security. The child would become an “administered child” with no sense of belonging. A will be subject to periodic visits from social workers who would inevitably change from time to time as would the foster carers. A would differ from peers at school and thus be stigmatised. A needed to be “normalised”.

50 Significantly the mother agreed with the Minister and guardian that the child should in her words “move soon to a new forever family”. The Court was moved by her statement made on legal advice and a decision that, notwithstanding the criticism of her as a mother, must have caused her great anguish.

51 For the purposes of Article 12(1) of the Adoption (Jersey) Law 1961 (“the Adoption Law”) we were satisfied that the mother had freely and with full understanding of what is involved agreed generally and unconditionally to the making of an adoption order.

52 By Act of Court dated the 27th January, 2009, the father had been granted parental responsibility for the child and his agreement was also required. He did not give his agreement on the ground that there was a viable alternative to adoption, namely for the child to be cared for by F. Accordingly the Minister applied for his consent to be dispensed with on the following ground set out in Article 13(2) of the Adoption Law namely that he was withholding his consent unreasonably.

53 The legal test to be applied when considering whether to dispense with a parent's consent can be found in the case of In *Re D (a Minor) (Adoption: Freeing Order)* [1991] 1 FLR 48. It is a two stage test:-

(i) Is the adoption in the best interests of the child? If so, then,

(ii) Is the natural parent unreasonable in withholding his or her consent?

54 This test has been adopted as part of Jersey law, being applied in such cases as:-

(i) *Re B* [2002] JRC 124.

(ii) *Re JS & BS* [2005] JRC 108 and

(iii) *Re TS, LS, CaS, Children's Service and ThS (No 2)* [2005] JRC 178.

Stage 1: Is adoption in the best interests of the child?

55 In considering whether adoption is in the child's best interests the Court must have regard to the provisions of Article 3 of the 1961 Law which require the Court (or as the case may be the Minister) to give first regard to the need to safeguard and promote a child's welfare throughout his or her childhood.

56 Article 3 of the 1961 Law is as follows:-

> ***"In reaching any decision relating to the adoption of infants the Court or the Minister shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the infant throughout the infant's childhood, and shall, so far as practicable, ascertain the wishes and feelings of the infant regarding the decision and give due consideration to them, having regard to the infant's age and understanding."***

57 We had no doubt that it was in the child's best interests to be adopted and therefore turned to the second stage of the test namely whether the father is unreasonably withholding his consent.

Stage 2: Is the father unreasonably withholding his consent?

58 It is evident from the authorities cited in this section that the two key considerations for the Court in applying this test are (i) the welfare of the child and (ii) the prospect of rehabilitation to the parents.

59 In *Re D* the Court referred to the earlier case of *Re W (An Infant)* and stated:-

> ***"It is clear that the test is reasonableness and not anything else.*** It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness and reasonableness in the totality of circumstances. But although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor… It is not confined to culpability or callous

indifference.

***In** Re D **the Court held that the question of whether a child was likely to return to the parent in the foreseeable future was important in deciding whether it was in his best interests to be adopted, saying:- "This was a matter of importance in applying both the first and second tests.** The undisputed evidence before him was that the child would remain with the prospective adopters whatever the outcome of the application, even if they had to be re-designated as long term foster parents".

60 In *Re B* [2002] JRC 124 the Royal Court stated at paragraph 18 of its judgment the following in respect of the second question:-

***"We turn to the second question which is: is the mother unreasonable in withholding her consent to the adoption?** The test which we have to apply is an objective test. We have to ask ourselves whether a reasonable mother in the circumstances of this case would grant her consent to the adoption. We understand, of course, the anguish which the mother feels in relation to this application. She is the birth mother of B…..on the other side of the coin, we have to take into account the fact that B has not lived with his mother since April 2001….There is no real possibility of rehabilitation in the foreseeable future."

61 In the later case of *Re JS & BS* [2005] JRC 108 the then Deputy Bailiff reviewed the case law relating to the second stage of the test, stating at paragraph 26:-

"An authoritative explanation of the word 'unreasonably' in this context is to be found in** Re W* (1971) 2 All ER 49. ***The head note of that case reads:-

***'In withholding his consent to the adoption of his child a parent may be acting unreasonably with the meaning of S5(1)(b) of the Adoption Act 1958 even if there is no element of culpability or reprehensible conduct in his decision to withhold consent.** The test of whether the refusal to give consent is unreasonable is an objective one to be made in the light of all the circumstances of the case and, although the welfare of the child is not the sole consideration, it is a fact of great importance.'"

62 The Learned Deputy Bailiff continued at paragraph 27:-

"The House of Lords approved a passage from the judgment of Lord Denning MR in** Re L* (1962) 106 Sol Jo 611 ***where he said:-

***"But I must say that in considering whether she is reasonable or unreasonable we must take into account the welfare of the child.** A reasonable mother surely gives great weight to what is better for the child. Her anguish of mind is quite understandable; but still it may be unreasonable for her to withhold consent. We must look and see whether it is reasonable or

unreasonable according to what a reasonable woman in her place would do in all the circumstances of the case.”"

63 Applying these principles to this case we agree with the Minister, the guardian and the mother that a reasonable parent would consent to a freeing order in this case as indeed has the mother. The child is just under two years of age. If the child is not freed for adoption it is likely that A will spend the rest of his or her childhood in care. There is no real possibility of rehabilitation in the foreseeable future to the father and indeed the father did not contend in this part of the hearing that there was such a possibility.

64 The father would appear to accept that the child needs long term care by someone other than himself and the mother but withholds his consent to an order allowing that to happen, so that a particular member of his family who has not put herself forward before now as a potential carer, can be considered for that position; his prime motive, as made clear in his evidence, being to keep the child within the family.

65 What, objectively, would a reasonable father do on the facts of this case? He has had minimal contact with the child for six or seven months and disengaged from the proceedings concerned with A's care during that period. There is no prospect of the child being rehabilitated to him. The Children's Service and the child's own independent guardian have advised powerfully that having suffered neglect and having been in and out of parental and foster care over the last 18 months, the child now needs a permanent and secure placement. Significantly the mother, whose decision the father had previously said he would accept, agrees that A should be freed for adoption. In our view a reasonable father, on these facts and putting the child's welfare first, would consent and that to withhold that consent was unreasonable.

66 We therefore dispensed with the father's consent and made an order freeing the child for adoption.

Contact

67 The care plan makes provision for a planned reduction in contact between the mother and the child pending an adoptive family being identified. Before the child is introduced to the adoptive family the mother will be offered a “goodbye” contact with A and the family will be offered the opportunity to attend part of this contact. Post adoption annual letterbox contact is recommended which will continue to provide the child with links to the birth family and identity.

68 Not surprisingly the care plan completed in May 2010 makes no provision for contact with the father. However in view of the fact that the father has now appeared at the final hearing and it transpires has seen the child on some two occasions recently, the Minister proposed, the guardian agreed and the mother did not oppose the father (and his family) being

afforded a “goodbye” contact with the child and annual letterbox contact for the father post adoption. We approved those proposals.