[2019] IEHC 312

THE HIGH COURT

[2019/19 M]

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 54 92)

OF THE ADOPTION ACT, 2010 (AS AMENDED)

AND

IN THE MATTER OF T., A MINOR

BETWEEN

CHILD AND FAMILY AGENCY AND X.X. AND Y.Y.

APPLICANTS

AND

THE ADOPTION AUTHORITY OF IRELAND AND Z.Z.

RESPONDENTS

JUDGMENT of Mr. Justice Jordan delivered on the 12th day of April, 2019

Background

1. The first named applicant is a statutory authority established pursuant to the provisions of the Child and Family Agency Act, 2013 and it discharges functions to, *inter alia*, Part 7 of the Adoption Act 2010.

2. The second and third named applicants are a married couple who reside together and they are foster carers and prospective adoptive parents of T., the minor named in the title of these proceedings.

3. The first named respondent is the Adoption Authority of Ireland and it was established and carries out statutory functions under the Adoption Act, 2010 (as amended). The second named respondent is the birth mother of T. and she resides in a part of Ireland. T. will turn eighteen soon. Her birth father, W.W. is deceased.

4. T. is the fourth of six children born to the second named respondent and W.W. (deceased). Her birth family was known to the social services since the birth of the eldest child. Her older sister was placed in voluntary care when she was five months old. The child care services had concerns about the birth mother's behaviour towards her children and her ability to meet their needs. The second named respondent has a mild learning difficulty.

5. A pre-birth assessment was carried out before the birth of T. and supports were put in place to assist her coping with a newborn. However, the concerns persisted.

6. T. suffered from persistent encopresis (soiling) which resulted in hospitalisation for twenty-eight days at which time her condition progressed to a serious bowel condition. The second named respondent refused to co-operate with, or act on the advice of the medical staff. She also refused to implement the treatment prescribed by the child's medical team, the combination of which resulted in her being placed in voluntary care. The care order was granted due to a significant risk of harm to the child's health.

7. While access arrangements were put in place, the second named respondent's attitude towards the access visits was not helpful and the child became reluctant to attend. The second named respondent continued to display inappropriate behaviours and a lack of adherence to boundaries.

8. T. has developed and thrived in the care of the second and third named applicants and she has integrated very well into their family. Their wishes are to establish her as a recognised permanent family member in law and to ensure her future security and care and in order that there can be no uncertainty about their mutual enjoyment of each other. They acknowledge the link with her birth family and her continued relationship with her birth sister and it is their wish that T. would benefit from two families, while they would become her legal family.

9. T.'s family was known to the social services since 1992 or thereabouts. As stated above, a care order was granted which was extended over the following years until a full care order was granted.

10. Following the initial placing, access arrangements were put in place. There were persistent problems with access visits – including erratic attendance patterns, frequent last minute cancellations and a failure on the part of the second named respondent and the father whilst he was alive to the needs of T. before other matters. Following her father's death, the second named respondent told T. that it was revealed at post mortem stage that he had died of a broken heart due to her refusal to visit the family. This had a profound effect on T. and she was devastated by this assertion. She refused to attend access after that point. She does have regular contact with her younger birth sister, who is also in care. They meet regularly, supported by both sets of foster parents.

11. On 12th February 2019, the first named respondent made a declaration, having received an application from the second and third named applicants for a declaration as to their eligibility and suitability to adopt, having had regard to a report from the first named applicant, pursuant to s. 40 of the Adoption Act, 2010 that it was satisfied:-

> 1) that the second and third named applicants are eligible to adopt by virtue of s. 33 of the Adoption Act 2010, and
>
> 2) that they are suitable to adopt by virtue of s. 34 of the Adoption Act, 2010.

12. This declaration which was given under the official seal of the Authority on the 12th February, 2019 applies only in relation to an adoption effected during a period of twenty four months of its date. In passing, it is worth noting that the declaration will be moot long before then as T. attains her age of majority in early course.

13. On 29th March, 2019 the first named respondent declared pursuant to s. 53(1) of the 2010 Act (as amended) that if an order is made by this Court pursuant to s. 54(2) of the 2010 Act, make an adoption order for the adoption of T. by the second and third

named applicants.

14. In accordance with s. 54(1) of the 2010 Act, the second and third named applicants requested the first named applicant apply to this Court for an order pursuant to s. 54 of the 2010 Act.

15. The second and third named applicant's family have previously adopted T.'s brother in 2017. One of her birth sisters was adopted by her foster family in 2013, just prior to her eighteenth birthday.

16. The applicants are seeking an order pursuant to s. 54(2) of the 2010 Act (as amended) authorising the first named respondent to make an adoption order in relation to T. in favour of the second and third named applicants.

17. The applicants are also seeking an order pursuant to s.54(2) of the 2010 Act, dispensing with the consent of the second named respondent in the making of an adoption order.

18. T. has attended a senior clinical psychologist since April 2016 and it is clear that that her input has assisted her greatly in dealing with her life history.

19. T. has strongly pursued the option of adoption and has voiced this wish. The second and third named applicants acknowledge the link with the birth family and her continued relationship with her birth sister and it is their wish that she would benefit from two families, whilst she would be adopted by them and become part of their family in the legal sense. Unfortunately, access and engagement with the younger brothers of T. has not been possible due to the actions of the second named respondent.

20. It is clear from the affidavit evidence that T. has a complete grasp of her situation and position in life and a complete understanding of adoption and of the adoption order which she hopes is made in respect of her. At the suggestion and agreement of the parties I met with and spoke to T. in the course of the case. The court was cleared and I spoke to her somewhat informally in the presence of the registrar and with the DAR operational. She is an intelligent and articulate young lady and she expressed her views in very clear and ordinary language. She was anxious to point out that she does not want to do anything to cause upset to her birth mother but that she does want the adoption order made so that the second and third named applicants can adopt her legally. There is no question that she wants the adoption order to go through. At the end of the brief chat which took place, I inquired of her if there was anything else she wanted to say in terms of expressing her views. She said she just hoped she had pushed it hard enough – or words to that effect.

21. The history of the placement of T. and her reception into care illustrates an inconsistent engagement on the part of the second named respondent with the applicant agency in its efforts to address her relationship with T. The first named applicant appreciated the cognitive difficulties and general mild intellectual difficulties of the second named respondent. Owing to these intellectual difficulties it sought to address the second named respondent's parenting ability and identify support to assist her. However, the agency's efforts to facilitate and encourage such supported parenting were thwarted by the second named respondent's failure to meaningfully engage in the process.

22. The needs to T. in terms of stability and security in respect of access arrangements has been of concern to the first named applicant for some years. The second named respondent has had a history of cancelling access at the last minute. On [a date], the second named respondent expressed a view that she did not want to see T. anymore and would not be attending further access visits.

23. In 2010, access took place in January, February, March, April and May. It broke down at that point following a visit by T. home for her birthday. Following access, T. expressed a wish not to see or have telephone contact with her birth mother and she had no contact between May and November 2010 when access was re-established.

24. In 2011 access appears to have been positive until in or around June 2011. A number of broken access arrangements at short notice meant that T. did not see her mother between June and October 2011. The access arrangements which were cancelled by the second named respondent at short notice had a detrimental effect on T. It is also the position that the second named respondent was often dismissive, abrupt and abusive in her dealings with the first named applicant in their efforts to arrange access. Ultimately it was agreed that access take place every three weeks.

25. Access was then increased from three weeks to fortnightly from February to April of 2012 when access broken down following a number of broken access arrangements at short notice. There was no access between May 2012 and September 2012. Attempts made by the first named applicant to arrange access in June, July and August were not successful. In the course of 2012 it was agreed that access going forward would take place on a regular basis even if the second named respondent was not available.

26. Regular access was re-established in 2013 following the birth of another child to the second named respondent and this access progressed without noted difficulty until October of 2013. On this visit, the second named respondent was overheard telling T. to seek overnight access. T. advised that she felt pressurised. Following this visit the second named respondent cancelled another visit, advising that she was not in the mood for it. The next visit which took place was in December of 2013 and it apparently went well.

27. At the end of 2013, T. had access on the 31st of December, 2013 and then not again until 9th of April 2014. The access arrangements in January, February and March were cancelled by the second named respondent. By November, 2015 T. had only three access visits with her birth mother. It is clear that the first named applicant made consistent efforts to re-establish a positive access arrangement with the second named respondent, including attempting to meet with her on 21st August, 2015. Unfortunately, the second named respondent failed to attend this meeting.

28. It is clear on the evidence that the first named applicant made every effort and went to considerable lengths to endeavour to ensure that the relationship between the second named respondent and T. was consistently encouraged. It is also clear that the first named applicant was conscious of and fulfilled its duty to explore whether or not the second named respondent could have adequately parented T. but it was frustrated in its efforts in this regard by reason of the non-engagement of the second named respondent. It is also the position that the second named respondent has chosen not to attend the child in care reviews which have taken place regularly in the last number of years.

29. Mr. X.X. (the second named applicant) swore an affidavit which is before the court in relation to this application and also gave evidence. It is quite clear from his evidence that T. is and always has been a huge part of the family of the second and third applicants. It is clear from his evidence and from speaking to T. that she feels totally integrated in and part of the family of the second and third named applicants. I accept that T. knows her own mind and has her own plans and ambitions. She is interested in

sport, fashion and music. She plays for her local football team and her school. She has a boyfriend and enjoys a good social life. She is treated as all other children and completely accepted within the extended family of the second and third named applicants. The second and third named applicants believe it is very important that she understands and does not forget about her birth family, including the second named respondent. The second and third named applicants have throughout been supportive and open in this regard.

30. The access arrangements and the efforts in that regard on the part of the first named applicant were frustrated by the conduct of the second named respondent and I do not accept that the first named applicant or indeed the second and third named applicants, behaved at all negatively in that regard. On the contrary, they tried their best to arrange consistent and regular access and to support same but they were frustrated in that regards by the second named respondent.

The Law

31. Article 42A of the Constitution provides:-

> *"1 The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.*
>
> *2 1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.*
>
> *2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.*
>
> *3 Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.*
>
> *4 1° Provision shall be made by law that in the resolution of all proceedings–*
>
> > *i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or*
> >
> > *ii concerning the adoption, guardianship or custody of, or access to, any child,*
>
> *the best interests of the child shall be the paramount consideration.*
>
> *2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child."*

32. Section 54 of the Act of 2010, as amended, provides, inter alia:-

> *"(1) Where applicants, in whose favour the Authority has made a declaration under section 53(1), request the Child and Family Agency to apply to the High Court for an order under this section—*
>
> > *(a) if the Child and Family Agency considers it proper to do so and an application in accordance with paragraph (b) has not been made by the applicants, the Child and Family Agency may apply to the High Court for the order, and*
> >
> > *(a) if the Child and Family Agency is satisfied that every reasonable effort has been made to support the parents of the child to whom the declaration under section 53(1) relates,*
> >
> > *(b) if, within the period of 3 months from the day on which the request was given, the Child and Family Agency either—*
> >
> > > *(i) by notice in writing given to the applicants, declines to accede to the request, or*
> > >
> > > *(ii) does not give the applicants a notice under subparagraph (i) of this paragraph in relation to the request but does not make an application under paragraph (a) for the order, the applicants may apply to the High Court for the order.*
>
> *(2) On an application being made under paragraph (a) or (b) of subsection (1), 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.*
>
> *(2A) Before making an order under subsection (2), the High Court shall be satisfied that—*
>
> > *(a) for 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,*
> >
> > *(b) 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 or her safety or welfare,*
> >
> > *(c) the 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,*
> >
> > *(d) by reason of the failure, the State, as guardian of the common good, should supply the place of the parents,*

(e) the child—

(i) at the time of the making of the application, is in the custody of and has a home with the applicants, and

(ii) 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,

and

(f) that the adoption of the child by the applicants is a proportionate means by which to supply the place of the parents.

(3) In considering an application for an order under subsection (2), the High Court shall—

(a) have regard to the following:
(i) the rights, whether under the Constitution or otherwise, of the persons concerned (including the natural and imprescriptible rights of the child);

(ii) any other matter which the High Court considers relevant to the application,

and

(b) in so far as is 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."

33. The effect of the insertion by s. 24 (1) (a) of the Adoption (Amendment) Act 2017 is that there are two para. (a) in s.54 (1)

34. Also of relevance is s. 19 of the Act of 2010 which provides:-

"(1) In any matter, application or proceedings under this Act, which is, or are, before—

(a) the Authority, or

(b) any court,

the Authority or the court, as the case may be, shall regard the best interests of the child as the paramount consideration in the resolution of such matter, application or proceedings.

(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–

(i) the child's age and maturity

(ii) the physical, psychological and emotional needs of the child,

(iii) the likely effect of adoption on the child,

(iv) the child's views on his or her proposed adoption,

(v) the child's social, intellectual and educational needs,

(vi) the child's upbringing and care,

(vii) the child's relationship with his or her parent, guardian or relative, as the case may be, and

(viii) any other particular circumstances pertaining to the child concerned.

(3) In so far as practicable, in relation to any matter, application or proceedings referred to in subsection (1), in respect of any child who is capable of forming his or her own views, the Authority or the court, as the case may be, shall ascertain those views and such views shall be given due weight having regard to the age and maturity of the child."

35. Thus, section 54(3) obliges the court considering an application for an order under s. 54(2) to have regard to the rights, whether under the Constitution or otherwise, of the persons concerned including the natural and imprescriptible rights of the child, and any other matter which the High Court considers relevant to the application. Section 54(3)(b) provides that in so far as it is practicable, in a case where the child concerned is capable of forming his or her own views, the court shall give due weight to the views of that child, having regard to the age and maturity of the child. In the resolution of any such application, s. 54(3) provides that the best interests of the child shall be of paramount consideration.

36. The balance of constitutional rights of the parents under Art. 40.3 of the Constitution and those of the child were addressed to a certain extent by the Supreme Court in G. *v. An Bord Uchtála* [1980] I.R. 32. A mother, or indeed as a corollary, a father, has a natural right to the custody of his or her child, which right is a personal right within the meaning of Art. 40.3 but this right is not absolute. Similarly, a child has a natural right to have his or her welfare safeguarded, which right is also a personal right within the meaning of Art. 40.3. O'Higgins, C.J. stated in this regard as follows:-

'Having been born, the child has the right to be fed and to live, to be reared and educated, to have the opportunity of working and of realising his or her full personality and dignity as a human being. These rights of the child (and others

which I have not enumerated) must equally be protected and vindicated by the State. In exceptional cases the State, under the provisions of Article 42, s. 5, of the Constitution, is given the duty, as guardian of the common good, to provide for a child born into a family where the parents fail in their duty towards that child for physical or moral reasons. In the same way, in special circumstances the State may have an equal obligation in relation to a child born outside the family to protect that child, even against its mother, if her natural rights are used in such a way as to endanger the health or life of the child or to deprive him of his rights. In my view this obligation stems from the provisions of Article 40, s. 3, of the Constitution.'

37. The dicta of Walsh J. in *G. v An Bord Uchtála* is often cited as authority for the proposition that paramount is not by any means an indication of exclusivity and that (at p 76):-

> *'The use of the word "paramount" certainly indicates that the welfare of the child is to be the superior or the most important consideration, in so far as it can be, having regard to the law or the provisions of the Constitution applicable to any given case.'*

38. In *Re Art.26 and the Adoption (No. 2) Bill 1987* [1989] IR 656, Finlay, C.J. in considering the provision of s. 3 of the Bill, (subsequently the Act of 1988) emphasised that each of the requirements of that section had to be fulfilled before the Court could make an authorising order. He stated at pp. 663 to 664:-

> *'In section 3 the provisions of sub-clause (I (A) to II (B) inclusive provide a series of matters which seriatim must be established to the satisfaction of the Court. They are not merely matters to be taken into consideration by the Court in exercising a general discretion but are framed in the much more stringent form of being absolutely essential proofs requiring separately to be established. Failure in any one of these proofs absolutely prohibits the making of an authorising order, no matter how strong might be the evidence available of its desirability from the point of view of the interests of the child.'*

39. Similarly, considerations apply to an application under s. 54(2) of the Act of 2010 in so far as the requirements specified therein are concerned. Each of the requirements specified in that subsection must be fulfilled before a court may make an order dispensing with the consent of any person whose consent is necessary to the making of the adoption order. To adopt the *dicta* of Finlay, C.J. there are not merely matters to be taken into consideration by the court in exercising a general discretion., but are framed in the much more stringent form of being absolutely essential proofs requiring separately to be established.

40. Nevertheless, following the constitutional amendment and the adoption of Art. 42A of the Constitution there is now an overarching constitutional imperative, as statutorily enacted in s. 54(3), that in a consideration of an application under section 54(2) and having regard to the rights of all persons concerned, the court is obliged to consider the best interests of the child as being the paramount consideration. In this case, the rights to be considered are those of the birth mother, her family and the natural and imprescriptible rights of the child. Further, in considering what is in the best interests of the child, I must in so far as practicable give due weight to the views of the child having regard to her age and maturity. The provisions of s.54(3) reflect the constitutional requirement that in the resolution of proceedings concerning the adoption, guardianship or custody of, or access to any child, the best interests of the child shall be the paramount consideration.

41. The evidence illustrates a failure of parental duty on the part of the second named respondent for both physical and moral reasons. The child was taken into the care of the State at seven years of age due to neglect. She was not properly toilet trained. She suffered relapses of encopresis on a continual basis, even following long period of engagement with the Social Work Department and with day fostering with the second and third named applicants. The birth mother's limited capacity, of itself, is a failure 'for physical reasons'.

42. McGuinness J. in *Northern Area Health Board v. An Bord Uchtála* [2002] 4 I.R. 252 held that there did not have to be blame in relation to a person who by reason of mental handicap was not able to look after her child. However, that failure was nonetheless considered by the court to be a failure for physical reasons. She relied on the decision of Ellis J. in *P.W. v. A.W.* (Unreported, High Court, 21st April, 1980) where, at p. 72, he stated:-

> *"In my view the word physical as used in Article 42.5 need not include intentional or purposeful reasons, and would include reasons of health, and hence would and thus include the illness and all its detrimental effects and consequences already fully described which have combined to prevent and render her unfit or unable to carry out her required duty or duties towards A. and hence to have failed in such respect."*

43. Reynolds J. in *In the matter of R. (a minor)* [2018] IEHC 172 considered the case of a birth mother with intellectual difficulties. At para. 15 of her judgment, she states:-

> *'This Court accepts that the birth mother has had very challenging personal issues to deal with over the years together with mild intellectual disability which rendered her unable to care for her child. Further, it is clear that she has had no active role in terms of parenting the child since she was seven years of age, albeit that she has maintained regular access with the child on a monthly basis since her placement with her foster carers'*

44. In *Southern Health Board v. An Bord Uchtála* [2000] 1 I.R. 165, Denham J., at p. 177, considered the legal meaning of the term "abandonment" in the context of the Adoption Acts and noted as follows:-

> *'The section does not require that there be an intention to abandon. While there may well be cases under s. 3 where there is simple abandonment of a child and an intention to abandon a child, these are not the only circumstances where s. 3 may be applied. The legal term "abandon" can be used also where, by their actions, parents have failed in their duty so as to enable a court to deem that their failure constitutes an abandonment of parental rights. The parents in this case did not abandon F O'D. in the sense of deserting him physically in a place, but that does not preclude the operation of the section. The word "abandon" has a special legal meaning.'*

45. In the instant case, it is clear from the evidence that there was no intention by the birth mother to neglect or abandon her child, she simply did not have the capacity to adequately and properly care for her. However, in applying the "special legal meaning" as referred to by Denham J., it is clear that the failure of parental duty in this case constitutes "abandonment" of parental rights in the legal sense.

46. It is accepted that the second named respondent has availed of some access arrangements over the period of the child's

placement. She has, however, displayed an inability to be consistent in relation to the access and this inconsistency and the lack of stability and certainty has had a significant effect on the child and her ability to rely on the actions of her birth mother. In particular, the birth mother has made no efforts to renew contact with the child in the recent past. This has led her to feel rejected.

47. From the time of the child's reception into care in 2008, the second named respondent has not fulfilled any parental duties. Her attendance at access was the exercise of her parental rights. The second and third named applicants have, since April 2008, carried out normal day to day care of the child and in that regard, have fulfilled the role of parent to her.

48. Here, the foster carers have carried all the parental duties in respect of the child. They have taken actual responsibility for her and have provided for her physical and emotional care, her education and her welfare. The second named respondent has failed in her parental duties towards the child.

49. The child is turning eighteen in the near future. The child has not had a home with the second named respondent since she was seven years of age. Her birth mother has, in addition, deprived her of access to younger brothers during this time. The second named respondent has not had any active role in caring for her day to day needs in that time. A full care Order is in place since 2014. This failure will clearly continue to the age of eighteen.

50. The application is wholly proportionate and necessary in the circumstances of this case. The child has spent the past eleven years or so of her life in the permanent care of the second and third named applicants, having previously had day fostering care with them in 2006. The second and third named applicants have been solely responsible for her care during these formative years of her. She identifies completely with them and has a real and tangible bond with them. They have assisted her through very difficult times in her life, including the death of her birth father and have supported her through counselling for a number of years.

51. In light of the evidence adduced before me, and having regard to the constitutional provisions and the statutory provisions I am satisfied that;-

> (a) For a continuous period of not less than thirty-six months immediately preceding the time of the making of this application, the second named respondent, the mother of T., has failed in her duty towards T. to such an extent that her safety or welfare is likely to be prejudicially effected.
>
> (b) There clearly is no reasonable prospect that the second named respondent, the mother of T., will be able to care for T. in a manner that will not prejudicially affect her safety or welfare.
>
> (c) The failure constitutes an abandonment on the part of the second named respondent of all parental rights, whether under the Constitution or otherwise, with respect to T.
>
> (d) T. is presently in the custody of and has a home with the second and third named applicants and did at the time of the making of this application. T. has been in the custody of and has had a home with the second and third named applicants for a continuous period of not less than eighteen months immediately preceding the time of the making of this application.
>
> (e) The adoption of T. be the second and third named applicants is a proportionate means by which to supply the place of the parents.

52. In considering this application, I have had regard to the rights, under the Constitution and otherwise, of all the persons concerned with this application, including the natural and imprescriptible rights of T. and the rights of *Z.Z.* and her family. I have also spoken informally with T. in the privacy of a cleared courtroom and in the presence of the registrar. T. is clearly capable of forming her own views and she has done so. I have had regard to her age and maturity and I am giving due weight to her views in this matter.

53. The best interests of T. are the paramount consideration in so far as the resolution of this application is concerned.

54. In addition to the age and maturity of T., I have had regard to her physical, psychological and emotional needs in the light of the evidence adduced. I have had regard to the likely effect of the adoption on T. in addition to her views on the proposed adoption. I have had regard to her relationship with her birth mother, the second named respondent, and I have had regard for the fact she is shortly to attain the age of majority. I have had regard to her relationship with her foster parents and her life to date.

55. I have carefully considered the Constitution and the legislative provisions and all relevant matters before deciding whether or not it is appropriate to grant the orders sought. At para. 12 of the affidavit it of Mr. Colm Roberts (solicitor), sworn on behalf of the second named respondent, reliance is place on the European Convention on Human Rights Act 2003 and the U.N. Convention on the Rights of Persons with Disabilities. While these points were not pressed at the hearing, I have nonetheless had regard to the argument raised. In my view there has been no breach of the second named respondent's rights under the U.N. Convention on the Rights of Persons with Disabilities.

56. I have also been careful to ensure compliance with s. 55 of the 2010 Act in circumstances where it is obviously desirable that the evidence of a birth parent, or parents, be heard by this Court before making an Order under s. 54. However, in the circumstances which have arisen it seems to me that it is fit and proper that I make an order under s.54(2) notwithstanding the absence of the evidence of the second named respondent.

57. Having regard to all of the evidence adduced and the body of law governing applications such as this, it seems to me that it is appropriate to grand the order sought by the applicants and accordingly I make;-

> (i) An Order pursuant to s. 54(2) of the Act 2010 (as amended) authorising the first named respondent to make an adoption order in relation to the child, T. in devour of the second and third named applicants herein;
>
> (ii) An Order pursuant to s. 54(2) of the Act of 2010, dispensing with the consent of the second named respondent to the making of an adoption order.