

THE HIGH COURT

[2020 No. 197 MCA]

**IN THE MATTER OF AN APPLICATION BY THE ADOPTION AUTHORITY OF IRELAND
(THE APPLICANT HEREIN) UNDER SECTION 18(6) OF THE ADOPTION ACT 2010 (AS
AMENDED)**

– AND –

**IN THE MATTER OF A PROPOSED PLACEMENT FOR ADOPTION OF M (A MINOR, BORN
[STATED DATE])**

JUDGMENT of Mr Justice Max Barrett delivered on 13th October, 2020.

I

Some Law

i. Údarás Uchtála na hÉireann

1. Údarás Uchtála na hÉireann (or, in the English language, the 'Adoption Authority of Ireland') stands established under s.94 of the Adoption Act 2010. Under s.96 of the Act, its functions include "(a)...performing the functions in relation to adoptions that...were [historically] performed by An Bord Uchtála...(f) maintaining the register of accredited bodies; [and] (g) maintaining the register of intercountry adoptions".

ii. Welfare of Child

2. Section 19 of the Act of 2010 provides, *inter alia*, as follows:

"(1) *In any matter, application or proceedings under this Act which is, or are, before...(b) any court...the court...shall regard the best interests of the child as the paramount [not the sole, but 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 court...shall have regard to all of the factors or circumstances that it considers relevant to the child who is the subject of the matter, application or proceedings concerned including –*

- (a) *the child's age and maturity,*
- (b) *the physical, psychological and emotional needs of the child,*
- (c) *the likely effect of adoption on the child,*
- (d) *the child's views on his or her proposed adoption,*
- (e) *the child's social, intellectual and educational needs,*
- (f) *the child's upbringing and care,*
- (g) *the child's relationship with his or her parent, guardian or relative, as the case may be, and*
- (h) *any other particular circumstances pertaining to the child concerned.*

- (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...court...shall ascertain those views and such views shall be given due weight having regard to the age and maturity of the child."*

iii. Nature of the Within Application

3. By originating notice of motion of 4 September 2020, the Adoption Authority comes to court seeking *"an Order pursuant to s section 18(6) of the Adoption Act 2010 (as amended) granting approval to the Applicant to authorise the child...being placed for adoption without consulting the child's father, where all reasonably practicable steps to obtain the cooperation of the mother have been taken, and where the applicant and/or an accredited body have been unable to and have no other means of ascertaining the identity of the child's father"*.
4. Section 18 of the Act of 2010 provides, *inter alia*, as follows:
- "(5) *If the identity of the father, referred to in paragraph (a) of the definition of "relevant non-guardian " (in this section referred to as "that father"), is unknown to an accredited body and the mother or guardian will not disclose the identity of that father, the accredited body shall — (a) counsel the mother or guardian concerned in order to attempt to obtain his or her or their, as the case may be, co-operation, advising such person or persons — (i) that the adoption may be delayed, (ii) the possibility of that father of the child contesting the adoption at some later date, (iii) that the absence of information about the medical, genetic and social background of the child may be detrimental to the health, development or welfare of that child, and (iv) such other matters as the accredited body considers appropriate in the circumstances, and (b) where the mother or guardian concerned, after counselling, will not disclose the identity of that father, furnish the Authority with a written report of the counselling that the accredited body has so provided.*
- (6) *Where the Authority receives a written report referred to in subsection (5)(b), and is satisfied that the accredited body — (a) has taken such steps as are reasonably practicable to obtain the co-operation of the mother or guardian, and (b) has no other practical way of ascertaining that father's identity, then — (i) the Authority may, after first obtaining the approval of the High Court, authorise the accredited body to place the child for adoption, and (ii) the accredited body may, at any time after being so authorised, if it has not ascertained the identity of that father, place the child for adoption"*.
5. The term "relevant non-guardian" is defined in s.3(1) of the Act of 2010 as meaning, *"in relation to a child", inter alia, "(a) a father of the child who is not a guardian of the child pursuant to the Act of 1964"* (with the phrase *"the Act of 1964"* being itself defined in s.3(1) to mean the Guardianship of Infants Act 1964).

II

Facts

6. The background to this application has been recounted in the following terms by a senior staff member of the Adoption Authority:
 - "3. *The within application is instituted in circumstances where the Mother will not disclose the identity of the child's father and where the Authority and/or Túsla – the Child and Family Agency...have no other means of ascertaining the identity of the father. The child's father does not know of the child's birth. As such, the Authority and the Child and Family Agency have been unable to inform the child's father of the proposed adoption....*
 8. *Pursuant to section 11 of the 2010 Act, the Child and Family Agency is an "accredited body" within the meaning of the 2010 Act. Pursuant to section 18(5)(b) of the 2010 Act, the Authority is obliged to obtain a report from an accredited body where it is proposed that a child will be placed for adoption and where a mother will not disclose the identity of a child's father.*
 9. *The Child and Family Agency furnished a report to the Authority...('the Social Work Report')....*
 13. *From the time of the child's birth, the mother expressed her wish for the child to be placed for adoption. The mother declined to see or hold the child following [the child's]...birth and the child was taken to...[place stated]...while...[the child] awaited a foster care placement.*
 14. *The Social Work Report further details that the mother declined to name the child's father....*
 15. *The mother has historically had depression and anxiety, and she has previously been treated [for same]....*
 16. *After carrying out a psychiatric assessment...[a psychiatrist] confirmed the mother did have mental capacity and could make formal decisions....*
 18. *The mother signed a voluntary admission to care form in respect of the child and [the child]...was placed with foster carers on...[date stated]. The child has remained with the same foster carers since that date; however it is intended to be a short-term placement....*
 19. *The Social Work Report details that the mother has been very engaged in the consultation and counselling process, and she has been open when discussing all elements of the child's proposed adoption. The social worker assigned to this case...has met with the mother in person or by telephone (due to restrictions arising as a result of the Covid-19 pandemic) on seventeen occasions....*

20. *As detailed in the Social Work Report the mother has at all times presented as being certain that she wishes for the child to be placed for adoption. The mother has repeated her wish for the child to have two parents to love and care for her and has discussed how she never wanted to be a mother. The mother has spoken warmly about the child and her wishes for [the child's]...future and has been fully engaged in exploring alternatives to adoption....*
21. *The mother is fully satisfied that her family are supportive of her decision to place the child for adoption.....*
24. *While the mother's anxiety and depression is well managed, social stressors can exacerbate its. However, the mother reports that her decision to place the child for adoption has not been a source of increased anxiety and she is firm and satisfied that it is the correct decision. The Social Work Report details that the mother is still engaged with mental health services....*
28. *[The social worker] detailed that she and the mother have explored the prospect of revealing the identity of the child's birth father in great detail. The mother has confirmed that she is not in a position to name the birth father.*
29. *[W]hile the mother has been willing to discuss the circumstances of the child's conception and has advised [the social worker]...that she knows the birth father as a work colleague, she has not had any contact with the birth father...since the child's birth....*
33. *The mother has completed a background report on the child's father which was furnished to the Authority....The Report provides the following details: a) The father does not know of the child's birth; b) The father is not registered on the child's birth certificate; c) The father is not married; d) The mother and the child's father were friends who had sexual intercourse on two occasions; e) The relationship between the mother and the child's father ended prior to the child's birth; f) The mother and the father did not live together; g) The father has not been informed of the proposed adoption; h) The father is not a guardian of the child; i) There have never been any formal or informal arrangements in place in respect of guardianship, access, custody and/or maintenance for the child; j) the father and the child do not have an ongoing relationship.*
34. *The mother has also sworn a statutory declaration which sets out relevant details falling under section 18 of the 2010 Act....[including, inter alia, that] l) the reason that the mother is not in a position to name the child's father is due to a concern that her privacy will be compromised if he was to be informed of the child's birth and the proposed adoption....m) the mother alludes to her belief that the father is a gambler and that he uses drugs and her opinion that it would not be in the child's best interests to inform him [the father] about the birth or the proposed adoption....*

BEST INTERESTS....

37 [T]he Authority has considered the child's best interests and/or whether it would be possible to ascertain the views of the child. In circumstances where the mother has confirmed that neither she nor any of her family are in a position to care for the child now or at any time in the future, it is the respectful opinion of the Authority that it is in the child's best interests that [the child]...be placed for adoption in order to seek to provide [the child]...with the care and stability that [the child]...requires as a young child.

38 Neither the Authority nor the Child and Family Agency have any other way of ascertaining the identity of the father. Any further attempts to ascertain the identity of the father from the mother would either delay or prevent the adoption of the child and, in my respectful opinion, neither situation would be in the child's best interests and may be detrimental to [the child's]...welfare."

7. The Authority, as is clear from the above-quoted affidavit evidence, has concluded that, in all the circumstances presenting, "it is in the child's best interests that [the child]...be placed for adoption in order to seek to provide [the child]...with the care and stability that [the child]...requires as a young child...Neither the Authority nor the Child and Family Agency have any other way of ascertaining the identity of the father. Any further attempts to ascertain the identity of the father from the mother would either delay or prevent the adoption of the child and, in my respectful opinion, neither situation would be in the child's best interests and may be detrimental to [the child's]...welfare."
8. The court sees nothing in the evidence before it that would prompt it to depart from the just-mentioned conclusions. In truth, unless there was an odd set of circumstances presenting it is difficult to envision the court ever readily/lightly departing from the shared views of the Authority and Túsla (both bodies with considerable and relevant professional expertise/experience) as to where the best interests of a child lie in terms of whether or not s/he should be placed for adoption; a degree of judicial humility (albeit well short of acquiescence) is called for in the face of professional knowledge and competence. Here, the possibility that by not proceeding as the Authority wishes "may be [actively] detrimental to [the child's] welfare" has to be, and has been, a weighty factor in the court's considerations, especially where (as here) the considered view of the social worker working with the natural mother is that she (the natural mother) "has presented as committed to the process throughout and personally committed to acting within [the child's]...best interests" and there is no reason presenting in the evidence now before the court as to why, in this case, the court should doubt the mother's good faith.

III

Other Legal Aspects

(i) Case-Law

9. The court has been referred by the Authority to *Adoption Authority of Ireland v. Proposed Adoption of K.S.H. (a minor)* [2015] IEHC 772. There, as here, a natural mother declined to reveal the identity of the natural father and the Adoption Authority made application under s.18 seeking an order of the High Court approving the placing of K.S.H. for adoption, without notifying the natural father. Notably, Abbott J. did grant the approval

sought on the facts before him in that application. In the course of his judgment, Abbott J. observes, at para.4, that he had indicated at the hearing of the application:

"[i] [that he had] *very serious reservations regarding the failure to notify the natural father....*[ii][that he] *found the application to be a serious matter, and* [iii] *that making an order, without notifying the natural father would appear to be against the interests of the child and of the father....*[iv] *This Court also stated that it was uncomfortable with the fact that the child was a secret....that the problem with secrets* [is]...*that they are frequently found out"*.

10. In this regard, the court would make a number of respectful observations:

as to [i], a natural human sympathy might present that a natural father would not know that he is a father and not know that actions are being taken in respect of the child of which he is a father. However, the Oireachtas, with all the experience that its members bring to matters, recognises in s.18 that, in life, instances will present where a natural mother elects, for whatever reason, not to disclose the identity of her child's father. In such instances, the Oireachtas is clear that a s.18 approval may issue, though, notably (and, if the court might respectfully observe, rightly) subjecting the court to the obligation which presents under s.19(1) to "*regard the best interests of the child as the paramount consideration in the resolution of such matter, application or proceedings*". This last obligation, of course, falls to be (it can only be) discharged on such facts as are known to the court, even though additional facts (the identity and certain details of the father) are known to the natural mother but not to the court.

as to [ii], each adoption application is a serious matter.

as to [iii], insofar as there is reference to "*the interests of the child and of the father*", it is perhaps appropriate to note that s.19(1) of the Act of 2010 imposes an obligation on the Authority/court, as appropriate, to "*regard the best interests of the child as the paramount consideration*". Paramount means paramount. Given that s.18 contemplates that an adoption placement may proceed where all that is truly known to the Authority/court of the father is that he is known to the mother, it does not seem to the court that the Oireachtas contemplates that when an application for a s.18 approval comes before the High Court, the court can in any practical sense have regard to the interests of the father (for the simple reason that all but nothing is known of the natural father by the court). Even if a father's interests could be (vaguely) factored in as a 'particular circumstance' to which regard should be had under s.19(2), it seems to the court that nothing meaningful flows from this fact because nothing meaningful is known about those interests or the father. (Here, for example, all that is known is that at a point in time a father must have existed – the court does not know for a fact that he continues to exist – and that he may have worked in an office in a particular urban area, and the court, with all respect, does not know for a fact that he did work in such an office, let alone in that particular urban area. There is, quite simply, nothing in those

extremely limited facts – and the fact that there was a man who fathered the child is the only fact truly known – that meaningfully could be or has been ‘factored in’ by the court to its considerations in this application).

as to [iv], in truth the mother in *K.S.H.* did not keep her pregnancy/child fully “secret”, to borrow from the wording of the judgment in that case. Thus, Abbott J., at para.6, indicates that “*the birth mother...left home in the latter stages of pregnancy and moved into an apartment with her sister, so that she could conceal the pregnancy [from the natural father]*”. So it may be that whoever lived at home knew of the pregnancy/child and it was certainly the case that the sister knew. How a woman proceeds in terms of disclosing her own pregnancy is, of course, a matter for her. If she wishes for no people, a small number of people, or lots of people to know about her pregnancy that, and the choice of people, if any, whom she, in her discretion, elects to tell of the pregnancy, is a matter for her. There is no obligation on her to tell the natural father, there is no obligation on her to tell anyone (though for the sake of her own health one would hope that she would confide in a medical professional), and there are any number of legitimate and lawful reasons why a woman who, as here, has an unplanned pregnancy and chooses to proceed to birth (another choice that is hers to make), might thereafter reach the decision to place her child for adoption. For example, she may consider that she is not at a time in her life when she is ready for all the responsibilities of motherhood, and/or she may not wish to raise a child, and/or she may consider that she cannot provide the kind of home environment that she wants a child of hers to have, and/or she may be facing personal challenges that she considers to impact upon her ability to parent, and/or she may not have a good relationship with the child’s father and/or she may be in a relationship with someone other than the father, etc. There is nothing unlawful in a mother proceeding to place for adoption a child whose existence is not known to the natural father: s.18 of the Act of 2010 expressly contemplates that such a position may arise and regulates how matters are how to proceed in such circumstances.

(ii) Mother’s Views

11. In passing, the court should observe that here the natural mother, in proceeding on the fuller facts that are known to her has, in good faith and as a competent adult, reached the conclusion that she has reached as to where the best interests of her child lie. That, it seems to the court, is a factor of significance which, although not determinative, falls, in the circumstances presenting, to be factored into the court’s consideration of the child’s best interests, especially given (i) the considered view of the social worker working with the natural mother that she (the natural mother) “*has...personally committed to acting within [the child’s]...best interests*”, and (ii) that there is nothing in the evidence before the court which suggests that the court should doubt the mother’s good faith.

(iii) The Natural Father

12. Again, at a human level, one might feel for a natural father who does not know that he is a father and who does not know that actions are being taken in respect of the child of which he is a father. However, the practical reality (as recognised by the Act of 2010) is

that if a natural mother elects not to disclose the identity of the natural father but wishes to place her child for adoption, there is a practical limit to what the Irish people (through their laws, agencies or courts) can do to protect the (unknown) father. In this regard, the court would respectfully associate itself, *mutatis mutandis*, with the below-quoted observations of Munby J. in *Re L (Adoption: Contacting Natural Father)* [2008] 1 F.L.R. 1079.

13. *Re L* was a case where the mother became pregnant during a brief relationship with the father. The mother did not disclose the fact of her pregnancy to the natural father or to her own family. Before and after the birth the mother was resolute that the child should be adopted. Within two hours of giving birth, she left the hospital without seeing the child and the child was placed in the voluntary care of the local authority. The mother had provided certain information about the father, but nothing that would enable him to be identified or traced. The authority sought guidance from the court as to whether it should attempt to contact the natural father or the maternal family. In accordance with the recommendation of the guardian, the judge ordered that the authority need not contact the maternal family but required the mother to attend court to disclose key information about the father, such information being necessary in the child's interests. The child was now one year old. The mother duly attended court but said that no further information about the father could be provided. The local authority and the guardian strongly argued the many benefits to the child of identifying the father.

14. In the High Court, Munby J. ordered that the local authority did not need to, and should not, take any further steps to seek to identify the father or the paternal family or to inform/consult same regard the child. In the course of his judgment, Munby J. observed, *inter alia*, as follows, at paras. [33]-[41]:

"[33] Patient explanations have been given to the mother, both out of court and in court, as to why it is so important from L's point of view that we learn who her father is. The mother's position remains as it has been throughout. There is very little prospect – in truth, virtually no prospect – that she is going to volunteer any further information about L's father.

[Court Note: The same applies here.]

[34] It may be, and the mother is steadfast in the assertion, that there is in fact nothing more to disclose. The local authority and the guardian...suspect there is more she could tell us if she chose to.

[Court Note: Here, the mother knows the identity of the father.]

[35] Let me assume that this is so....Where does it take us?

[36] In the first place, although one can only speculate as to why the mother should be adopting such a stance (if indeed she is), I would not want to assume that she is acting otherwise than properly by her own lights....

[Court Note: There is no question of some (presumably rebuttable) assumption/presumption arising. All the evidence here points to the mother acting in good faith. Because, unfortunately, she has a history of mental ill-health, she has undergone a psychiatric assessment to make sure that there is no issue presenting, *inter alia*, as regards her competency and/or understanding of matters; and the results of that assessment point to the mother being competent to understand and understanding the adoption process and the consent that she is giving to the adoption. A court proceeds on evidence and the evidence here all points to the mother knowingly proceeding, to borrow from Munby J., “*properly by her own lights*”. No countervailing assumption/presumption presents.

[37] *But what am I to do? The mother has told me...that there is nothing more she can tell us. There is no reason to believe that she would say anything different were she to be required to go into the witness box....*

[Court Note: Here, the mother could reveal the identity of the father, but she has resolved not to do so. No-one has suggested (and the court is certainly not suggesting) that she should be called to give evidence in this regard, and even if there had been suggestion of this from any quarter (and there was not), the court would not have acquiesced to such a suggestion, not least though not only because the court confidently expects, given the history of this matter, that the mother would continue to remain close-lipped as to the father’s identity, exposing her to entirely needless stress for no good purpose (not that there could be a purpose which would properly justify the needless).]

[39] *And in any event, where would cross-examination get us? It is possible that the mother would in fact make further disclosures, though I rather doubt it...I might, for all I know, be left with a powerful impression that she was not telling the truth, but that of itself would get us nowhere. Contempt could not be proved unless I was satisfied to the criminal standard – satisfied so that I was sure; satisfied beyond reasonable doubt – that the mother was telling lies. That, I suspect, is an unlikely outcome. And suppose that I was satisfied to the criminal standard that she was telling lies. Could it seriously be suggested that she should be punished, even sent to prison? Surely not....*

[Court Note: No-one has suggested (and the court is certainly not suggesting) that the mother here should be called to give evidence in this regard, and even if there had been suggestion of this from any quarter (and there was not), the court would not have acquiesced to such a suggestion, not least though not only because the court confidently expects, given the history of this matter, that the mother would continue to remain close-lipped as to the father’s identity, exposing her to needless stress for no good purpose (not that there could be a purpose which would properly justify the needless). Any notion, not advanced at any point in these proceedings, that a court would in the circumstances described by Munby J. make a finding of

contempt and/or impose a fine and/or a sentence of imprisonment is so absurd as to be preposterous.]

[40] *The whole process smacks too much of the Inquisition to be tolerable. And it is not to be justified merely because we believe, however strongly, that what we are doing is being done in the best interests of a child....*

[Court Note: From an Irish-law perspective, what Munby J. is (unwittingly) touching upon here, is that while the interests of a child are the “paramount” consideration under s.19(1) of the Act of 2010, there may be occasional practical boundaries to paramountcy, practical boundaries that circumscribe the extent to which a child’s best interests may be realisable, such circumscription presenting here in the manner identified by Munby J.].

[41] *We can reason with someone in the mother’s position. We can seek to persuade. But we should not seek to force or to coerce – and how else in this context could one sensibly characterise the threat of cross-examination or the threat of punishment for contempt. Of course...the matter is not to be determined on the say-so of a mother, but we have to face the realities. And the reality here, in the particular circumstances of this case is, I am quite satisfied, that we have to accept what the mother has told us. It would be wrong to push matters any further.”*

[Court Note: This Court respectfully expresses its full and complete accordance with these sentiments/conclusions of Munby J., while again noting that no suggestion that force or coercion might be brought to bear has been suggested here by any party, let alone the court, nor would the court have acquiesced to same.]

15. One point that the court should flag, in watching out for the best interests of the child, is its concern as to what is to happen if, at some future point, the here to-be-adopted child presents with a genetic condition/ailment that has descended through the paternal line and the child’s doctors then indicate that it would be beneficial to have knowledge about the paternal line. The senior member of the Authority who has sworn an affidavit for the Authority indicates in this regard that “*The mother has informed [the social worker]...that she would be open to revealing the father’s identity should there be a serious risk to the child’s health.*” It is not clear to the court what is to happen in this regard, should the mother at that time be incompetent/dead (and one hopes that she would not). *Quaere* whether consideration should be given to the possibility that an arrangement could or ought to be put in place in cases such as that now presenting whereby the court could be informed in writing of the father’s identity, even if only by way of sealed letter, so that the letter could be opened and the details accessed, if for health reasons they are ever needed in the future – with such an arrangement, for the reasons identified by Munby J. in *Re L*, only ever to be effected if a natural mother, in her discretion and following such counselling by Túsla as the mother may be willing to accept, is satisfied freely to elect to provide that detail to the court in the manner just described or some like confidential manner.

IV

Conclusion

16. The various factors to which the court is required to have regard, under s.19 of the Act of 2010, when assessing the best interests of the child, have been comprehensively addressed in the affidavit evidence of the Authority and the Túsla report. The court accepts that evidence, and, having considered same and the entirety of the pleadings, is satisfied, in all the circumstances presenting and for the reasons stated herein, to accede to the application made and make the order sought.