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**Case No: BH63/2021**

**IN THE FAMILY COURT SITTING AT BOURNEMOUTH**

**Courts of Justice**

**Deansleigh Road**

**Bournemouth**

**BH7 7DS**

**Date: 24/01/22**

**Before:**

**HIS HONOUR JUDGE DANCEY**

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**Between:**

**A step-mother**

**Applicant**

**- and -**

**A father**

**1<sup>st</sup> Respondent**

**-and-**

**A birth-mother**

**2<sup>nd</sup> Respondent**

**-and-**

**The child**

**3<sup>rd</sup> Respondents**

**(by her Children's Guardian Leanne Wilkinson)**

**The step-mother in person**

**The father in person**

**The birth-mother in person**

**Alex Hodge (instructed by Battens) for the 3<sup>rd</sup> Respondents**

**Hearing date: 14 January 2022**

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**JUDGMENT**

## **His Honour Judge Dancey:**

### **Introduction**

- 1) Ellie [*name changed*], you are 17 and you really want to be adopted by your step-mum. Although she is the person who is applying to the court for an adoption order, the idea has been very much yours over a number of years.
- 2) You were at the hearing on 14 January when your step-mum, dad and birth-mum told me their views. A barrister, Alex Hodge, represented you separately and spoke on your behalf. You also told me your views directly. I also heard from a social worker, Nicky Elmes, and the guardian Leanne Wilkinson and they were questioned.
- 3) You, your step-mum and dad are all strongly in favour of adoption. Your birth-mum is strongly against it. Each of you described being devastated if I did or did not make the order. Nicky Elmes and Leanne Wilkinson say quite firmly that I should not make an adoption order.
- 4) Because you have been so centrally involved in the adoption application and taken a full part by writing to me, making a written statement and being at the hearing and putting your views, I thought it right that I should write this judgment to you directly.
- 5) So you don't have to read right to the end of this judgment to find out I will tell you now that I am going to make the adoption order.
- 6) Although I am addressing this judgment to you, your mum in particular is entitled to know why I have decided to make an adoption order when she is opposed to it and when Nicky Elmes and Leanne Wilkinson, who are very experienced professionals, said I shouldn't.
- 7) And so I need to set out the reasons why I am making an adoption order enough so that everyone can understand my thought process.

### **How the court approaches step-parent adoption**

- 8) I am going to start with the things I have to consider when dealing with cases like this.
- 9) The starting and finishing point is that your welfare throughout your life is my overriding concern. That trumps everything else.
- 10) When looking at your welfare I need to consider a number of matters:
  - a) your wishes and feelings about the decision, having regard to your age and understanding
  - b) your needs in the widest sense
  - c) the likely effect throughout your life of no longer being your birth-mum's child and becoming adopted by your step-mum, who becomes your mother for all purposes

- d) your age, gender and background and any relevant characteristics you have
  - e) any harm you have suffered or might suffer
  - f) any relationships you have with relatives and others and the value of them continuing and their wishes and feelings.
- 11) I should not make an order unless it is better for you for an order to be made. And I should not delay in making a decision.
- 12) Your mum does not consent to the making of an order. I should only override her consent if your welfare requires it.
- 13) The need to listen to your wishes and feelings is important. Article 12 of the United Nations Convention on the Rights of the Child 1989 makes clear that adults (including courts) must listen to children and young people when making decisions about them. Listening is not the same as agreeing though. In the end, while I listen carefully to your views, the decision I make has to be based firmly in what I consider to be in your best long-term interests.
- 14) Article 8 of the European Convention on Human Rights says that everyone has a right to respect for family and private life. The court respects that by interfering with that right only if it is necessary and proportionate.
- 15) In this case I need to consider the family life that you have with your mum and half-siblings as well as with your dad and step-mum and step-siblings. If your Article 8 rights conflict with those of others, it is your right that I treat as more important.
- 16) In a case called *Re P (Step-parent Adoption)*<sup>1</sup> the Court of Appeal gave guidance to courts about how to approach step-parent adoptions.
- a) the key is proportionality, both when looking at your welfare and considering whether to put aside your mum's consent;
  - b) I need to consider the role your mum plays in your life (as well as your half-siblings) and what you might lose if an adoption order is made;
  - c) I also need to think about the benefits that adoption would bring to you now and into adulthood and weigh those against potential losses;
  - d) adoption gives a status that cannot be achieved by any other type of order;
  - e) it would also extinguish any legal status and parental responsibility that your birth-mum holds;
  - f) the decision therefore has to be proportionate – where a birth parent has a more active role and relationship with a child there is more to be lost and adoption is less likely to be proportionate than where there has been no role or relationship for a long time, or ever.

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<sup>1</sup> [2014] EWCA Civ 1174

## Your family

- 17) Your mum has two adult sons and a daughter (your half-siblings) by another relationship. Your sister (as you see her) has recently had a child to whom you are aunty.
- 18) You spent the early years after your parents separated living with your birth mum. You spent time with your dad but things were difficult and there were lengthy court proceedings over a number of years. I remember being involved in the decision-making at one point. It was clear that the disagreement between your parents meant that they found it really difficult to work together. That remains the position. Although they say they tried to protect you from their disagreement it is obvious from what you have told me that you were caught up in it. You have told me that, while your dad and step-mum have never 'bad-mouthed' your birth-mum, your birth-mum has said negative things to you about them.
- 19) About ten years ago you gradually moved to live with your dad and step-mum. They met in 2010 and married in 2016. Your step-mum has a daughter and two sons (your step-siblings) who are all adult, who you get on really well with and who you see as your brothers and sister. Your sister also has a baby to whom you are seen as aunty. You would like to be her aunty legally.
- 20) The order I made in 2014 made when you moved was what is called a 'shared live with order'. In fact over time the amount of time you spent with your birth-mum reduced. As you saw it you felt she did not treat you as she did her other children. You were not happy with how she behaved towards you and you felt side-lined. Things seem to have come to a head on your 16<sup>th</sup> birthday when you felt she didn't make an effort. You pointed out that she has only sent you four texts over the last year. You don't think she shows a real interest in you or your feelings. She says things that embarrass you.
- 21) You have for the last five years called your step-mum 'mum' and your birth-mum by her first name. You regard your step-mum as your mum in all respects in place of your birth-mum. You compare your step-mum and birth-mum in very strong terms – essentially your step-mum has done everything for you and your birth-mum does nothing.
- 22) When you wrote to me you said that you did not want to have any contact with your birth-mum and there would not be any relationship between you. You said she is not your mum.
- 23) Your birth-mum sees things rather differently. She accepts she has been far from perfect and would not win any 'Mother of the Year' contest (as she put it to Nicky Elmes). But she felt pushed out as a mother and struggled to know how to stay involved in your life. Recently, jobs you took on seemed to clash with time she should have been spending with you.
- 24) She was well aware that your step-mum was meeting all your needs really well and giving you "*fantastic care*" and she is very grateful for that. She describes your step-mum as one of the nicest people and she wouldn't want to get in the way of the relationship you have with her.

- 25) Over the last year or so your birth-mum told me she has had a number of things to deal with which have got in the way of her being in touch with you more than she has:
- a) Your sister had a baby and she has been involved with that.
  - b) Sadly your older brother had a serious accident resulting in really serious life-changing injuries. I was really sorry to hear you say that you only learned about that from Nicky Elmes' report. Your birth-mum explained that with everything else going on they didn't want to upset you with the news. But I agree it was no way for you to find out and I imagine Nicky Elmes thought you already knew. Your brother is now living with your birth-mum and her partner and needs 24/7 care.
  - c) She told me has struggled with knowing how to build bridges with you. She has not heard how you are doing at school or that you had been having counselling.
- 26) Your birth-mum told me that you are beautiful and intelligent and she is proud of you. She said she "*loves you to pieces*" and is devastated that you could think of her as you do.
- 27) Everyone agreed I should only hear evidence from Nicky Elmes and Leanne Wilkinson. Otherwise I have everyone's written statements and what you said to me during the hearing. You told me you don't find it easy talking about your feelings. Talking to me in front of your family as you did was a gutsy thing to do.

### **Your welfare**

- 28) I am going to look at the arguments for and against adoption by going through the welfare considerations I set out at paragraph 10 above.

### *Your wishes and feelings*

- 29) Everyone agrees, and it is obvious, that you are an intelligent, articulate and highly talented young person. You are a matter of months away from adulthood. Mr Hodge suggested I should effectively treat you as though you had reached 18. While I don't think I can treat you as fully adult (because you are legally still a minor) what you say to me must be given a lot of weight.
- 30) Your wish to be adopted is not a recent thing. It has developed over a number of years. I accept it has been the subject of much discussion with your dad and step-mum and I accept that your dad has talked with you about the potential negatives. It seems that the idea crystallised during counselling you were having.
- 31) Your feelings on the question are obviously passionate. I remember a colleague telling me about a young man of about your age who came into court and, standing at 6' 3" slammed his motorcycle helmet down and announced loudly: "*I want to be adopted*". I think he got his wish. It is a bit like that in your case. You have told me in no uncertain terms, both in writing and verbally, that not being adopted is causing you emotional upset. Until it happens you say you cannot be clear that your step-mum is your mum and your birth-mum is not.

And that is what you want. Although you know that emotionally and mentally your step-mum will always be there for you, in your mind you don't think you will have a mum if you are not adopted.

- 32) You made clear to me that whatever your half-siblings' legal status might be they would always be your brothers and sister. You have also I think adjusted your position so far as your birth-mum is concerned so that you would be prepared to consider a relationship with her at some point in the future, just not as mother-daughter.
- 33) In about April or May 2021, during the first lockdown, you had a minor falling out with your dad and step-mum about something and it was to your birth-mum that you turned. You called her because you needed somebody to talk to. You talked to her on the phone for about an hour and a half having, as you put it, "*a rant*". This suggests to me (as it does to Nicky Elmes and Leanne Wilkinson) that your birth-mum was still of relevance to you at least then.
- 34) However, your feelings are so strong about wanting to be adopted that you have said to me you don't know what you will do if an order is not made. You feel you will be an emotional wreck.
- 35) Nicky Elmes and Leanne Wilkinson are agreed in their concerns and I can take what they say together. They are worried that although you are articulate and mature in many respects, you are emotionally immature. They worry that you were caught up in the trauma of the high level of disagreement between your parents (which has continued) and, although you have had some counselling, there is still something which needs to be emotionally 'unpacked'.
- 36) Nicky Elmes felt that the idea of adoption had started and got out of hand over time so that it had become 'point-scoring'. She and Leanne Wilkinson worry that how you feel at 17 may well not be the same as how you feel in your mid 20s or 30s. They think if you are adopted in accordance with your views now you may come to regret it later and even feel some guilt at pushing your birth family away.
- 37) And they are worried about just how negative you are about your birth-mum and how that contrasts with the unconditionally positive view you have of your step-mum. Both they and I find it very sad to read what you say about your birth-mum and how difficult it is for you to find any positive in her.

#### *Your needs*

- 38) Everyone agrees that your primary need is for emotional stability and security. You are embarking on your A levels and clearly need to be in a good place emotionally so that you can focus on them. You make the point that not being adopted will leave you in emotional turmoil at a critical point in your life which might have long-term consequences.
- 39) Nicky Elmes and Leanne Wilkinson point out that all your needs are being met by your dad and step-mum and that will continue whether or not you are adopted into adulthood. I agree there is no reason to think that will not happen.

- 40) But your point is not really about the emotional and practical support that your step-mum will continue to give you, but the status of her as your mother going forward not just over the next few months but also into your adulthood. I think this is an important point which is not fully addressed by Nicky Elmes and Leanne Wilkinson. They make the point that I could make a step-parent parental responsibility order or a 'live with' order which would give your step-mum parental responsibility. But of course that would only last for the months until your 18<sup>th</sup> birthday. What you seek seems to me something more fundamental and important than that. It is really based on this point that I do not agree with the professional recommendation.

*The likely effect on you of becoming adopted*

- 41) In many ways adoption would not bring about much change, certainly not in practical terms. Your life would go on much as it does now.
- 42) The important change would be one of status. That brings losses and benefits.
- 43) Your legal ties to your birth-mum and half-siblings would be extinguished. That may or may not have practical consequences (see continuing relationships below).
- 44) At the same time you would gain what you so crave – the person you have seen as being your mother over the last ten years being acknowledged by the court and the law as being your real mum. You would also become legally half-siblings with your step-siblings as they currently are. That for you would cement those relationships which are beneficial.
- 45) It was pointed out that you would no longer legally be aunty to your half-sister's baby. You pointed out that you would become legal aunty to your step-sister's baby. It was also suggested that if and when you come to have children your birth-mum would not be their grandmother. Your response to this was that you would want your children to have somebody they could look up to as their grandmother and that would be your step-mum, not your birth-mum.

*Age, gender and relevant characteristics*

- 46) I have largely dealt with this but would just add here that I do see the force in what the professionals are saying about the possible downsides of going along with your views at this point. I too worry that your very 'black and white' views about your birth-mum at the moment may soften over time as you mature into adulthood.

*Harm*

- 47) I don't doubt that you have been emotionally harmed by the trauma of your parents' disagreement. Your loyalties to your parents have been pulled one way and another and you have found it difficult, you have said, to know what you can say to one or the other. In the end you have become aligned to your paternal family at the expense of your relationship with your birth-mum from whom you have become alienated. When I say alienated, I do not mean that you have been alienated by the actions of your dad or step-mum (which is what Mr Hodge thought was meant), just that, as a matter of fact, that is the position.

- 48) I agree with Nicky Elmes and Leanne Wilkinson that this aspect of your upbringing has been emotionally harmful for you. It may well be, moving forward, that you will want some help 'unpacking' this, as it has been put.
- 49) I also agree with the professionals that this harmful experience impacts on how you form and express your views.
- 50) I also think there is a risk of emotional turmoil for you if you do not achieve your wish for adoption which potentially could be harmful. And that turmoil would come at a particularly important point in your life and development, not least important exams.
- 51) And there is a risk of emotional harm if you get what you want now but later decide perhaps it was not the right thing after all.

#### *Continuing relationships*

- 52) Nicky Elmes and Leanne Wilkinson worry that adoption cuts off options around relationships. Without adoption you would continue to have a dad and step-mum (and wider step-family) who love you very much and will care for you. You would also have the potential for re-building bridges with your birth-mum which might be lost if you are adopted.
- 53) At the moment your relationships with your half-sister and younger half-brother are not good. Both have been upset by your decision to go ahead with adoption and see you as cutting them and your mother off. Your older brother has, you told me, been rather more understanding.
- 54) The question is whether there is any likelihood of these relationships continuing. This is difficult to predict whether or not an adoption order is made. Nicky Elmes and Leanne Wilkinson are probably right when they say it is naïve to think these relationships could survive adoption. There is a risk that, even if you reach out to them, after adoption they would see themselves as no longer legally related and not respond.
- 55) On the other hand, as you point out:
  - a) if an adoption order is not made you will feel that it was your birth-mum's opposition that blocked what you so wanted, confirming in your mind that she does not listen to you and so making it much less likely that you will want to respond to any attempts by your birth-mum to build bridges let alone you reaching out to her;
  - b) the die is already cast by you pressing adoption as hard as you have to a final hearing – if an adoption order is not made it would not be because of any change of attitude on your part and your birth family would know that;
  - c) it might be easier in fact for you to reach out to your birth-mum if you have the emotional stability and security that you believe adoption will give you and a non-mother/daughter relationship might be easier to handle.

#### **My decision**

- 56) I have to confess to finding this a really difficult decision. It really is finally balanced, with powerful arguments on both sides.



- 57) Although I have not heard evidence and cannot come to any clear conclusions about what did or didn't happen in the relationship between you and your birth-mum, I can safely say this:
- a) I accept that your birth-mum has not been the mother to you that she could have been (as she accepts);
  - b) that has contrasted starkly for you with the obvious love and care you have received from your step-mum;
  - c) I do not think your dad and step-mum have actively undermined your relationship with your birth-mum but you have, collectively, formed a negative view of her;
  - d) in fact, everyone has positives and sometimes genuine reasons for not doing all they could, but it may have been difficult for you to see that at times.
- 58) So it may be that your view of your birth-mum now is not what it might be in years to come when you can look back perhaps with a more balanced perspective. That is not to be critical of how you feel at the moment, just to recognise that time can change things, even if you think at the moment that it won't.
- 59) I also accept that there are potential losses with adoption:
- a) I know you say that your birth-mum's actions don't match her words, but I do believe she is genuine in the positive things she said about you and her earnest wish to repair her relationship with you, if not now at some point in the future;
  - b) there is a risk that adoption will 'burn bridges' and make it more difficult to maintain relationships with your birth-mum and half-siblings.
- 60) Against that I accept that the relationship with your birth-mum has been limited and is not of good quality. I also accept that there are risks in not making an adoption order that other barriers to re-building relationships with your birth family may be thrown up. Perhaps there is the chance, if you feel happier about your step-mum having legal status as your mother, that you will reach out when otherwise you might not and that, over time, your birth family might come to understand why you felt as strongly as you did when you did and be prepared to work with you to build bridges.
- 61) The need for you to have a mother, who is the person giving you love and care and acting as your mother, who has legal status as such, not just during the short remainder of your childhood but through in to adulthood and later years, is powerful. Putting aside for a moment the questions and whys and wherefores about your relationship with your birth-mum, the fact is that your step-mum has effectively been your mother for the last ten years.
- 62) Whether or not your view of your mother is adversely affected by perspectives that might change with time, it is not in my view irrational for you to want your mother, as you see her so clearly, to be your mother in every sense –

emotionally, psychologically, practically and legally. And it is the last of those that only adoption can afford.

- 63) And although courts are perfectly used to making decisions where people say they will be 'devastated', and hint at dreadful consequences, if they don't get what they want, I do have to take seriously the impact on you emotionally if you do not achieve your passionate wish for adoption at a crucial point in your life.
- 64) There are two other things to mention:
  - a) Although nobody has suggested it, I have considered whether to defer the decision until after you are 18 with encouragement to try and re-build a relationship with your birth-mum and to see whether you still felt the same way. That would continue a state of uncertainty over a crucial time for you, getting in the way of your A levels. It might also actually work against you reaching out to your birth-mum if you thought it might adversely affect the possibility of adoption. It would also be contrary to the no-delay principle I have mentioned.
  - b) If I refuse the application there would be nothing to stop a further application being made shortly before your 18<sup>th</sup> birthday provided it is heard before your 19<sup>th</sup> birthday. If that happened the court would be dealing with your wishes and feelings as an adult. It would also prolong litigation and uncertainty for you, which would be a bad thing.
- 65) So I have come to the conclusion that a decision does need to be made for you now. I have decided that your welfare throughout your life is best served by having a mother who you can look to as such and who has legal status as such. Although there are potential losses of relationships it may be those can be saved. The benefits of cementing other your relationships in my view outweigh those potential losses. I consider it would be proportionate to make an order that you be adopted by your step-mum.
- 66) I appreciate this is a serious interference with your birth-mum's right to respect for family life, in fact as serious as it can get. However, I also have to consider that in reality your main family life is with you dad and step-mum and you and they are entitled to respect for that too. As I have said, if there is clash between those rights, yours prevail.
- 67) Adoption also marries up your legal relationships with your actual relationships and respects that, in reality, your family has for some time been seen by you as with your dad and step-mum.
- 68) I am very conscious that in reaching that decision I am disagreeing with the strong recommendations of two extremely experienced professionals. I don't do that lightly. I respect and agree with many of the points they have made and share their worries about you. The crucial point on which I part company from them though is on the relative importance of the status of your step-mum moving forward across your lifetime.

- 69) Because I have decided that it is in the best interests of your welfare across your lifetime and proportionate to make an adoption order, I dispense with your birth-mum's consent.

**Next steps**

- 70) I am sending this judgment out in draft on 16 January. I will fix a time for the judgment to be given very shortly. I will defer making the adoption order for 28 days after I give the judgment to give the birth-mother time to seek permission to appeal (conscious that I am disagreeing with the professionals in what I consider to be a finely balanced case). Adoption is transformative and irreversible and it would not be responsible I think to create a risk of it having to be undone in the event of a successful appeal. I will ensure that the appeal procedure is fully explained to the birth-mother before judgment is given.
- 71) I intend publishing this judgment on BAILII. I have anonymised it. In the judgment I have sent out to you I have used your real name, [*name*]. I need to change that for the purpose of publication. Perhaps you would let me know whether for that purpose you would prefer that I use a fictitious name (and, if so whether you would like to choose one) or whether I should just use an initial.
- 72) That is the end of this judgment. I finish, Ellie, by thanking you for your very full engagement in these proceedings and wishing you the very best for your future.