Neutral Citation Number: [2018] EWHC 3795 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Case No: LV18C00527

Thursday, 13th December 2018

Before:
HIS HONOUR JUDGE PARKER
SITTING AS A JUDGE OF THE HIGH COURT
(pursuant to section 9 Senior Courts Act 1981)

B E T W E E N:

Re A (a child)

MS O'NEILL appeared on behalf of the Applicant
MS DEANS appeared on behalf of the First Respondent
MR MATTHEWS appeared on behalf of the Second Respondent
MR MCKENNA appeared on behalf of the Third Respondent
MS BURNELL appeared on behalf of the Fourth Respondents
THE FIFTH RESPONDENTS appeared In Person

APPROVED JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

HHJ PARKER:

1. I am concerned with the child A, born on (redacted), presently aged (redacted). The Local Authority are represented by Ms O'Neill. They have made an application for a care order, in respect of the child.
2. The case has a tragic history. The child's father, F, took the life of the mother, M, on (redacted). A was placed in the care of the maternal grandmother on (redacted). The father was arrested and charged with murder and placed on remand on (redacted). He ultimately pleaded guilty to murder and was sentenced to life imprisonment on (redacted). On (redacted) , an interim care order was made in respect of A. On (redacted), positive special guardianship assessments were filed in respect of the maternal and paternal grandparents. The maternal grandmother is represented by Ms Deans and the paternal grandparents by Ms Burnell. The father is represented by Mr Matthews. The child appears through the Children's Guardian (PW) and is represented by Mr Mckenna.
3. An order was made by HHJ O'Leary sitting as a judge of the High Court on (redacted), placing the child in the care of the maternal grandmother. By consent, she made a Special Guardianship Order, with a supervision order for 12 months, in favour of the Local Authority. The paternal grandparents had been assessed, but – for reasons which I am satisfied were entirely child-focussed – decided not to contest the matter in the face of the positive assessment of the maternal grandmother. The maternal uncle (U) and his Partner (V), were also assessed, but withdrew for similar reasons.
4. Sadly, the placement with the maternal grandmother broke down, due to issues around alcohol and the recommencement of contact with a male (Z). The maternal grandmother was arrested for driving under the influence of alcohol, following a road traffic accident on (redacted). On 19 January 2018, a Section 20 agreement was reached that A should live with the paternal grandparents, whilst the Local Authority undertook assessments and the child has been placed with the paternal grandparents since January 2018. On 16 February 2018, an Interim Care Order was made in respect of A.
5. On 25 September 2018, U and V were approved by panel as foster carers and on 28 September 2018, the agency decision-maker endorsed that approval. The paternal grandparents were not approved, by panel, on 25 September 2018 and the maternal grandmother was not approved by the panel on 9 October 2018.
6. Throughout these proceedings, the maternal grandmother, the paternal grandparents and the maternal uncle and his partner have all put themselves forward as potential permanent carers for A. The Local Authority, following full assessments, have concluded that the maternal uncle and his partner are best suited to provide full-time care for A moving forwards and are supported in that view by Dr F, the consultant psychiatrist, who says at E417 in the bundle:

> 'I think it is difficult for the three grandparents to accept that their roles, for A, should remain that of grandparents. They are grandparents who have stepped in to help care for a young child who was effectively orphaned, but I do not think that they are best positioned to provide her ongoing care for the rest of her childhood. In contrast to this, U and V want to parent A. They do not share the qualms of the grandparents, that in doing so they would be dismissing A's biological parents'.

They are supported too, by the Children's Guardian, who says at E479:

> 'I agree with Dr F and the Local Authority, that the respective grandparents are not best positioned to provide for A's long-term psychological and emotional needs. I would argue that the static risks are less considerable and that the family unit would be a source of support and strength to prepare for challenges ahead. I agree that the respective grandparents will struggle to meet the emotional needs of A, until they have come to terms with their own loss and grief. In other words, I agree that U and V have presented as more focussed on what is right and what is in A's best interests'.

The Guardian also referred to research by Harris- Hendriks, J., Black, D., & Kaplan, T. (1993 and 2000). *When father kills mother: Guiding children through trauma and grief.*' In his report he set out the following:

:

> 'All children deserve to know about their biological parents and it raises welfare concerns about their – the paternal grandparents' – ability to promote the identity needs of A, if she is placed in their care. Also, there would be likely a resurgence of grief and anger when the perpetrator is released from prison and that would have to be negotiated within a paternal family setting…'

> 'The research work of Hendriks et al found that 35% of children went on to live with maternal family members, compared to 17% in the parental family (page 198). In a follow-up study to the substantive research that was concluded in 1993, they found children who were initially placed in the perpetrator's family were doing proportionately worse – in respect of emotional and behavioural difficulties – than children in other placements (page 209). Children placed in the maternal family were rated as better socially adjusted with peers than children placed in the paternal family, though the quantitative analysis was not statistically significant (pages 210 and 215). The placement of children within the victim's family appeared more stable (page 213). I note the finding that children placed with maternal family, rather than paternal family, are less likely to develop psychological problems, and that may assist in decision-making when advantages and disadvantages of placement are fairly balanced (page 214)'.

7. It is fair to say that tensions have been running high amongst maternal family members. In particular between the maternal grandmother and her sons U and C. The three parties generally have also felt as though matters have become more adversarial. As Dr F put it – at page E115:

> 'My impression is that inevitably, they have felt that they are pitted against each other and have been pulled into an adversarial situation. It

> has been a long process and that has made it increasingly difficult for them'.

My clear impression is that, as far as the maternal uncle and his partner and the paternal grandparents, that was significantly ameliorated over the course of this hearing. Also, the process appears at least, to have generated insight into issues with the use of alcohol by the paternal grandfather and the maternal grandmother and for all three grandparents, a path to bereavement counselling. In addition, the maternal uncle and his partner have benefitted from the fostering course.

8. The final hearing was listed for an eight-day hearing, commencing on 4 December 2018.

Legal representation for the maternal uncle and his partner.

9. At the commencement of the hearing, my attention was drawn to the fact that the maternal uncle and his partner were not legally represented – they had not qualified for Legal Aid. I was invited by one of the parties to consider whether the Local Authority should fund legal representation for the maternal uncle and his partner, as the Local Authority were proposing them as the permanent carers for A. The Local Authority had offered very limited provision, by way of initial advice, but were not willing to fund representation for the duration of the final hearing, on the grounds that it was too expensive.

10. My attention was drawn to the decision of MacDonald J, in *HB v A Local Authority and Anor (Wardship - Costs Funding Order)* [2017] EWHC 524 (Fam), reported in 2017 1WLR at page 4289. At paragraph 112, MacDonald J said:

> 'Within this context, I am satisfied that the limits that are properly imposed on the exercise of the inherent jurisdiction for the sake of clarity and consistency, and of avoiding conflict between child welfare and other public advantages in this case are those that must be applied when considering the nature and extent of the court's jurisdiction to order a public authority to incur expenditure. As Lord Sumption JSC pointed out in *Prest v Petrodel Resources Ltd* [2013] 2 AC 415 at paragraph 37:
> *"Courts exercising family jurisdiction do not occupy a desert island in which general legal concepts are suspended or mean something different. Imposing the limits that I am satisfied must apply, I regret that I cannot accept the submission of Mr Hale and Mr Barnes that the inherent jurisdiction of this court is wide enough to encompass a power to order a public authority to incur expenditure in order to fund legal representation in wardship proceedings for a parent who does not qualify for legal aid because that parent does not satisfy the criteria for a grant of legal aid laid down by Parliament, notwithstanding the considerable benefits that would accrue to the parent, and to the child, from such funding"'.*

I respectfully agree with the views of MacDonald J and I ruled that I did not have jurisdiction to order the Local Authority to fund legal representation for the maternal uncle and his partner in the final hearing and consequently, they have represented themselves.

11. On 4 December, the maternal grandmother stated – through her barrister, Ms Deans – that she no longer wished to put herself forward as a potential carer for A and now supported her son U as the full-time carer for her granddaughter.

12. On 5 December 2018, the paternal grandparents also confirmed that they no longer wished to put themselves forward as full-time carers for A and also supported the maternal uncle and his partner as the appropriate full-time carers.

13. It was suggested by Ms Burnell, on behalf of the paternal grandparents, that they were concerned that their changing position would appear to be a lack of commitment to the best interests of their granddaughter. In my judgment, nothing could be further from the truth. I cannot begin to imagine the level of pain and sorrow felt by the family members in this case. The history is utterly tragic and the emotional sequelae for extended family members, following the terrible events of [a date in] 2017, are lifelong.

14. It is to their eternal credit that the grandparents and the maternal uncle and his partner have worked as well as they have done in the aftermath of the terrible events. It is not surprising that the second set of proceedings and the events surrounding them have tested that spirit of cooperation and led to tension and a more adversarial atmosphere, certainly at the start of the final hearing. The fact that the paternal grandparents and the maternal uncle and his partner fell in behind the maternal grandmother in the original proceedings – concluded by HHJ O'Leary – was a clear indication, in my judgment, that they were entirely child-focussed and able to push self-interest to one side, in favour of the best interests of A.

15. Whilst the ability to do the same has perhaps been tested to an even greater extent by the second set of proceedings, the actions of the maternal grandmother on 4 December and the paternal grandparents on 5 December have shown, yet again, that these grandparents have a deep and enduring love for their granddaughter and are focussed entirely on trying to do what is best for her. Rather than being concerned that they are demonstrating a lack of commitment towards their granddaughter, they are to be congratulated for demonstrating an absolute commitment to their granddaughter and her welfare, by standing aside and supporting the maternal uncle and his partner.

16. It would also be remiss of me to fail to acknowledge that both the maternal grandmother and latterly, the paternal grandparents, have been full-time carers for A and in so doing have once again demonstrated their profound love for their granddaughter. The fact that they were prepared to continue to do so bears testament to their ongoing commitment to her.

17. Clearly, moving forwards and as she grows up, A will have a lot of very difficult emotional issues to deal with. She will need to try to make sense of how unkind history has been to her. The best chance that she has of being able to deal with all of that, is if the extended family members can continue to work together and present a united front.

This is the first and very important step along that path.

18. The parties agreed that the placement with the maternal uncle and his partner should be under the auspices of a Care Order. I am invited, by the Local Authority and the mother's counsel, to make findings set out in a document headed 'Proposed Section 31 Threshold', dated 12 December 2018, and to make those findings on the basis of the written evidence and the oral evidence that the court has heard. Therefore, I set out those findings in the body of this judgment.

19. I am satisfied that, at the time when proceedings were commenced, the child was suffering, or likely to suffer, significant harm and that harm or likelihood of harm is attributable to the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give to her and the following are the findings of fact:

> '1. The maternal grandmother accepts that she consumed alcohol to excessive levels, from around August 2018 onwards. This has placed A at risk of physical and emotional harm, whilst in her sole care.
> 2. The maternal grandmother has a problem with managing her alcohol intake. This has placed A at risk of physical and emotional harm.
> 3. The maternal grandmother failed to inform the Local Authority, or other professionals, that her use of alcohol had significantly increased, towards the end of 2017 and has failed to consistently prioritise the needs of A and failed to enable the Local Authority to monitor actively and support A's placement. This has placed A at risk of physical and emotional harm.
> 4. The excessive alcohol use of the maternal grandmother resulted in a road traffic accident on (redacted), when the maternal grandmother was driving her car, four times over the legal alcohol driving limit. This placed A at risk of physical and emotional harm, because A was due to be returned to her care later that day.
> 5. The maternal grandmother has placed the child at risk of physical and/or emotional harm by: a. from April 2017 onwards and whilst A was in her care, having telephone and written communication – by way of her sending him birthday and Christmas cards – with Z who, at the time, was serving a custodial sentence for armed robbery and who also has convictions for violence, whilst he was in prison; b. agreeing to meet up with him, on his day-release from prison, on 17 January 2018, knowing that he posed a risk of violence and/or harm, at a time when A was placed in her full-time care; c. drove him to the probation office and waited for him on 17 January 2018; d. drove him to the pub, on 17 January 2018, and had a drink of alcohol with him; e. when, on 18 January 2018, Z attended the maternal grandmother's home, that she and A usually resided in, whereupon being asked to leave, there was violent altercation between Z and C.
> 6. The maternal grandmother accepts that she has made poor decisions in respect of her relationships and alcohol use, whole A was in her care, placing A at risk of physical and emotional harm.
> 7. The father is currently serving a life sentence in prison, for the murder of the mother.

20. The Local Authority, once placement had been agreed between the parties, then sought a short adjournment, overnight, to present a detailed care plan, including a support package

for the maternal uncle and his partner that would enable them to set out their position in terms of the transition of A, from the paternal grandparents into the care of the maternal uncle and his partner and also for contact, working forwards, with the grandparents.

21. There was a consensual application made in the face of the court, by the parties, on the afternoon of 5 December 2018, for the court to adjourn the case until 11 December 2018, to enable mediation to take place, over three days, to enable the family members to try to reach agreement in the face of the Local Authority case. I declined that application for the following reasons: (a) the High Court had been convened for eight days, with a total of five advocates and at great expense to the public purse; (b) I did not consider that that course was consistent with the overriding objective; (c) whilst I felt, and do feel, that there is a role for mediation, moving forwards, to, amongst other things, improve communication lines between family members, I did not feel that it was cost-effective and proportionate to try to parachute in a mediator, in the middle of a final High Court hearing, particularly as I was prepared to, and indeed did, give provisional and tentative indications on any issues between the parties and to afford to them the opportunity, with their lawyers, to negotiate outside of the courtroom. Whilst I recognised the concern of The Guardian, at being asked to perform a mediator role, for fear of compromising his position with the parties, he would be able to move between the parties, in an attempt to help to facilitate agreement, bearing in mind his special position within these proceedings and without compromising his own position; (d) I was able to accede to the request that a mediator be lined up to attend court on the afternoon of 6 December, in the event that that might help the parties to come to terms on the residual issues, whilst maintaining the structure of the court hearing, so that the parties had access to a judge, to seek indications, where appropriate; (e) whilst there was a real risk that the parties may be exposed to an adversarial contest, where placement was at issue, I did not feel that there was the same magnitude of risk on the residual issues, such as transition and contact, in that sense, exposure to the courtroom is of less consequence; (f) I was concerned that the family members may exposed to three days of meditation, reaching an agreement between themselves, only for it to be rejected by the Local Authority and/or the court, in any event.

22. As events turned out, the days spent at court appear to have been beneficial to the relationship between the maternal uncle and his partner and the paternal grandparents and I received reports of them sitting together and talking and agreements were reached on significant issues.

23. The court heard evidence from the maternal uncle on 7 December and adjourned over the weekend to continue with evidence the following Monday. Unfortunately, matters took a turn for the worse over the weekend. The maternal grandmother had contact with the maternal uncle's children and took them to a carvery. When the maternal uncle returned

to collect the children, he formed the opinion that the maternal grandmother had been drinking and there was a dispute between them as to what the maternal uncle said. It was suggested by the maternal grandmother's representative that the maternal uncle had suggested that she would not get contact to A moving forwards and nor would the paternal grandparents. That was denied by the maternal uncle, when he was recalled to give evidence. He said that he had made no suggestion that the paternal grandparents would not get contact to A and had only suggested that the maternal grandmother would not get unsupervised contact.

24. The maternal grandmother has not attended court since the weekend. There was a worrying report on 10 December that she was in her house and not answering the door. Concern was heightened by the social worker's observation that medication could be seen on the side in the house. Police and ambulance were called. Whilst there are concerns about her current mental health, physically it seems that the maternal grandmother was unharmed. The fostering social worker stayed with her, once entry into the house was obtained, for some time.

25. The clear view expressed by the maternal uncle, when giving evidence, was that the maternal grandmother's drink problem was at the root of tension between the maternal grandmother and her two sons. It had also led to her making bad choices. Having had the opportunity to hear and see him give evidence, I am satisfied, on the balance of probability, that the uncle did not threaten to prevent contact for any of the grandparents, maternal or paternal, with A. I am satisfied on balance that his letter, submitted to the court on the Monday of the second week of the hearing, which appeared to present different views on contact, to those which he had expressed in giving evidence the previous Friday, was written in haste and in the heat of the moment and as a reaction to the maternal grandmother's behaviour and really amounted to a request for flexibility to reduce the impact of contact arrangements on his own family life and that of his family.

26. I have enormous sympathy for the maternal grandmother. Only two weeks ago, she lost her own mother and unfortunately, her two sons did not attend the funeral, for fear of being exposed to family tensions, heightened and fuelled by alcohol at the wake. I have no doubt that the maternal grandmother would have felt their absence very keenly. She is still having to come to terms with the nightmare scenario for any parent, to outlive one of their own children. Her grief will still be profound. She will also be wrestling with her conscience around the events that led to the breakdown of the placement of A with her. She will need considerable help, moving forwards, to deal with the enormous issues surrounding bereavement and also the psychological crutch of alcohol that she has and probably continues to employ. It has been agreed that her contact provision with A will be visiting contact and not overnight contact, until such time as the Local Authority can be satisfied that she has brought her use of alcohol under control. Such contact provision

must also be buttressed by a very strict contract of expectations and a risk assessment will be undertaken, following the events of last weekend and her non-attendance at court this week. It is not, in my judgment, necessary and proportionate to try the allegations made by C, her other son.

27. By Tuesday 11 December 2018,The Court having approved of the plan to place A with the maternal uncle and his partner under the auspices of a care order a care order as being consistent with A's welfare and an analysis under section 1 of the Children Act 1989, the following issues remained: (a) the transition plan for A moving to the maternal uncle, there being a relatively modest disagreement between the Guardian and the Local Authority, the maternal uncle preferring the Local Authority plan, whereas the paternal grandparents preferred the Guardian's plan; (b) whether the father should receive a photograph of A annually whilst in prison; (c) whether the father should receive annual updates, in writing about A; (d) following clarification by the local authority, over 10 and 11 December 2018, the Local Authority's application, made in the face of the court, that A's name should be changed to a double-barrelled surname.

28. After court on 11 December 2018, the social worker and the Children's Guardian had a joint discussion, following a provisional and tentative indication from me, on the outstanding issues relating to transition and they were able to reach an agreement. A schedule was prepared and sent to me. All parties agreed with the schedule and I am certainly able to approve the transition plan as being entirely consistent with the welfare of A.

29. At the hearing on 12 December 2018, the Local Authority informed the court that they no longer wished to pursue a change of name for A. The social worker had argued that it was in A's best interests that her surname was changed to the double-barrelled name and the reasons advanced for that were primarily (a) it would enable A to integrate in the new family unit, with the maternal uncle and his partner and she would have, at least in part, the same surname as the uncle and his two children and they, of course, are her cousins; (b) if she had a different surname to other members in the family unit, that would be likely to cause children to ask why she had a different name and then she would be put in a position of having to explain how she came to be in the family unit, which may then cause a situation which spiralled into Internet searching.

30. It was argued by the other parties that the name should not be changed and the reasons advanced were (a) having her current surname, which is the paternal grandmother's maiden name, provided for her a degree of anonymity in any Internet search around the murder of the mother by the father; (b) this was a surname that was chosen by her birth parents and in that sense was an important part of her identity; (c) that should not be interfered with, at least without her consent.

31. When dealing with any application to change the name of the child, I must be satisfied

that such a decision is consistent with her welfare and in her best interests and that, by definition, involves a consideration of the Welfare Checklist. As I indicated in court, this is a balancing exercise, because there are competing arguments in favour of each. However, in my judgment, the magnetic factor in this case is the fact that the chosen surname was not shared by either the mother or the father, at the time of the mother's death. The social worker, in giving evidence, said on several occasions that she was concerned about an Internet search. It can be seen by simply inserting the mother's name into a Google search, that a whole host of information around her death is revealed. There are several newspaper reports which go into great detail and indeed, on more than one occasion, the child is named, albeit Christian name only. In my judgment, the surname should not be changed, at present, although I recognise that, as time goes on, circumstances may change. We are currently less than two years post the mother's death and it may become consistent with A's best interests that some recognition of her position in her placement with the maternal uncle and his partner, by taking on his surname and that of the cousins, in a double-barrelled form, may help her to feel fully integrated, but that will be a judgment to be made later on and perhaps when A has a greater understanding of her history.

32. In terms of the issue as to whether the father should be sent a photograph of A, on an annual basis, the Local Authority and the Children's Guardian maintain that that should not happen until such time as A is able to articulate her own view in favour of it. That is also a view shared by Dr F.

33. The father argues that he should be sent a photograph. It is recognised, on his behalf that, in the previous proceedings before HHJ O'Leary, the father did not pursue any form of active parental responsibility and did not seek the provision of any photographs. Now, he wishes to receive them. It is argued, on his behalf, that he is committed to his daughter, albeit from his prison cell. He sends letters regularly, which are kept in a memory box, by the paternal grandparents. It is argued that if he has greater information about A when he writes his letters that the letters will be of greater import to A when, and if, she reads them.

34. The father adopts a similar argument in his request to receive annual written reports about A's progress. The father is supported in that by Dr F, who suggests that if the time comes when A wishes to see the father, then that may assist in the process. That could be done without any invasion of A's privacy. The Guardian and the Local Authority disagree. Their position is that A should be able to choose when, and if, any material about A is sent to the father. The Guardian argued that, at present, he does not know how A will react to the information about A's history, the loss of the mother and effectively the loss of the father and if she discovers that the decisions were taken for her, without her having any say that the father should receive any information, then that may have an

adverse impact upon her emotional wellbeing. In other words, the Guardian argues that the potential benefits of providing the father with information are outweighed by the risks to the child.

35. There was a constant theme to the Guardian's case, that the child should consent to anything like provision of information for the father, or any name change.

36. The paternal grandparents set out their position in a position statement, drafted by Ms Burnell:

> 'I. The court has to consider A's best interests as paramount when making an order and it is submitted as proving a positive act, for the care plan.
> II. Providing a photograph to the father of A annually cannot be said to confer any benefit on A. This is about meeting the father's interests and understandable wish to have to have a photograph of daughter.
> III. The provision of photographs does have a risk of causing significant harm to A in the long term. Namely, emotional distress and upset if A does not consent to the provision of photographs in future and does not agree with the decisions made on her behalf, by professionals.
> IV. Should A determine, in future, that her father should have photographs, these could be provided later, including photographs from her at a younger age.
> V. There is a positive benefit in the provision of a welfare report to the father, as this controls the information that he is provided with and it is submitted that this information could be as limited, or detailed, as the professionals consider appropriate and in due course, in line with A's wishes and feelings.
> VI. Providing some update avoids, or at least reduces the father's – perhaps irresistible – need to try and obtain information about his daughter and ensures that he is provided with accurate and appropriate information'.

The view of the Guardian was that he did not think that the risk of the father pursuing information, if he did not get annual reports, was significant. The view of the Local Authority was that any reports would have to be done in a way that was so anodyne as to be meaningless, to prevent Internet tracking.

> 'VII. The Local Authority shares parental responsibility with F alone. Providing some information to him permits the limited exercise of his parental responsibility, which is an important check and balance on the Local Authority's exercise of parental responsibility'.

This, I consider to be a point of little substance.

> 'VIII. Birth parents of adopted children routinely receive an annual update on their child's progress, post-adoption, whatever the circumstances that have led to their adoption'.

Whilst I can understand that this analogy is drawn, I do not find it particularly helpful, in the exceptional circumstances of this case.

> 'IX. It is submitted that the court should have regard to the authorities, regarding termination of parental responsibility. See *A v D (Parental Responsibility)* [2013] EWHC 2963 (Fam). Whilst an order to terminate

> the father's parental responsibility is not being sought in this case, in the present circumstances – given the father's lengthy prison sentence – if he is provided with no information regarding the child at all, he cannot exercise his parental responsibility in any way and therefore, the practical effect would be the same'.

The Guardian's position, and that of the Local Authority, is that the father should receive information that is of serious consequence. For example, a significant medical issue. Ms Burnell continues:

> 'The court must also take into consideration the Article 8 rights of the father and child. The court will have to consider whether the father's Article 8 are, in fact, engaged in this case and whether the relationship between F and A amounts to family life'.

37. The authorities make it clear that this is a question of fact, depending on the real existence – in practice – of close personal ties. The case law is summarised in *Re CD: A Child (Notice of care proceedings to father without parental responsibility)* [2017] EWFC 34, by HHJ Clifford Bellamy.

38. In *Singh v Entry Clearance Officer New Delhi* [2005] 1 FLR 308, The Court of Appeal had to consider whether family life, within the meaning of Article 8, had been established between the appellant, a six-year-old Indian boy, and his adopted parents, who settled in the UK. Munby J, as he then was, considered what constitutes family life:

Paragraph 73:

> "The Strasbourg case law recognises that in some instances family life arises ipso jure', (which means, 'by operation of law). That is so in the case of a lawful and genuine marriage, both in respect of the relationship between husband and wife and also the relationship between the parents and their children. The same principle applies in relation to the children of de facto unions. As the court said in *Lebbink v The Netherlands* (unreported – 1 June 2004) at paragraph 35:
>
> > "*The Court recalls that the notion of family life under Article 8 of the Convention is not confined to marriage-based relationships and may encompass other de facto family ties where the parties are living together out of wedlock. A child born out of such a relationship is ipso jure part of that family unit from the moment and by the very fact of its birth. Thus, there exists between the child and the parents a relationship amounting to family life"'.*

Paragraph 74:

> 'Where there is no family life ipso jure then one has to look to all the circumstances. In many cases cohabitation will be a relevant consideration and in certain contexts it may be more or less important. But it can never be determinative. As the Commission said in *Boyle v United Kingdom* 26269/07 [2011] ECHR 790 at paragraph 15(43):
> *"Cohabitation is ... not a prerequisite for the maintenance of family ties which are to fall within the scope of the concept of family life. Cohabitation is a factor amongst many others, albeit often an important*

one, to be taken into account when considering the existence or otherwise of family ties."'.

Paragraph 75:

'Take the question of whether there is family life as between the partners in a de facto relationship outside marriage. As the Court observed in *Lebbink v The Netherlands* at paragraph 36:
"Although, as a rule, cohabitation may be a requirement for such a relationship, exceptionally other factors may also serve to demonstrate that a relationship has sufficient constancy to create de facto family ties."'.

Paragraph 77:

'Family life arises ipso jure as between father and child where the child was conceived either in wedlock (*Berrehab v The Netherlands* 10730/84 [1988] ECHR 14, at paragraph 21) or during the course of a stable relationship between unmarried parents (Keegan v Irelandat para 44). However, sometimes the relationship between the child's unmarried parents will be so exiguous that there will be no ipso jure family life as between the natural father and his child. But family life may nonetheless be shown to exist. As the Court said in *Nylund v Finland* (unreported – 29 June 1999) at page 14:
"*The Court considers that Article 8 cannot be interpreted as only protecting family life which has already been established but, where the circumstances warrant it, must extend to the potential relationship which may develop between a natural father and a child born out of wedlock. Relevant factors in this regard include the nature of the relationship between the natural parents and the demonstrable interest in and commitment by the natural father to the child both before and after the birth".*
The court made the same point in *Lebbink v The Netherlands* at paragraph 36:
"*The existence or non-existence of family life for the purposes of Article 8 is essentially a question of fact depending upon the real existence in practice of close personal ties. Where it concerns a potential relationship, which could develop between a child born out of wedlock and its natural father, relevant factors include the nature of the relationship between the natural parents and the demonstrable interest in and commitment by the father to the child both before and after its birth."'.*

Paragraph 79:

'I agree with Lord Justice Dyson that what he calls the core principle is to be found in *Lebbink v The Netherlands* at paragraph 36:
"*The existence or non-existence of family life for the purposes of Article 8 is essentially a question of fact depending upon the real existence in practice of close personal ties."*
Typically, the question will be, as the court put it in the same case at paragraph 37, whether there is a close personal relationship, a relationship which has sufficient constancy and substance to create de facto family ties."'.

39. In my judgment, the key factors in this case are: (a) the mother and father were not married when A was born; (b) some six and a half weeks after A was born, the father took the life of the mother; (c) the father was arrested and ultimately pleaded guilty on the

first day of his trial, and was sentenced to life imprisonment, with a minimum term exceeding (redacted) years . That means that his earliest release date is (redacted). A will then be (*almost an adult*); (d) he and A are effectively strangers to each other; (e) realistically, the father does not pursue direct contact.

40. There are, in my judgment, no close personal ties in practice between the father and A, there is not a close personal relationship which has sufficient constancy and substance as a matter of fact and there is no family life that triggers rights under Article 8 for the father. In my judgment, the court should exercise its inherent jurisdiction to limit the scope of the obligation on the Local Authority to heed and observe the father's parental responsibility, such that the father should only receive information from the Local Authority about A that amounts to a significant event in A's life. That would encompass a significant medical condition, or any other life-changing event.

41. I direct that the Local Authority should not provide a photograph annually, or otherwise, of A to the father. Nor should they provide an annual update, by way of welfare report.

42. In my judgment, and on the facts of this particular case, the court should approach the issues of change of name, provision of photographs and annual welfare reports consistently and on the basis that none of them should take place, until such time as A's wishes and feelings can be factored into the determination.

43. I acknowledge the very brief answers provided by Dr F, on 11 December 2018, wherein she stated that she was in agreement with the father receiving an annual progress report, in respect of A, but not in favour of the father receiving an annual photograph, because A should be allowed to consent, or not, to A's photograph being shared with the father. However, in my judgment, that is an inconsistent approach, without sufficient justification.

44. I agree with the view of the Guardian and his risk-benefit analysis. The potential benefit of providing an annual report, is that it would assist any process leading to re-establishing any form of contact. That would be achieved, in any event, following preparatory work, leading to the re-establishment of any form of contact. In any event hat is outweighed by the risk to A's emotional harm, in discovering that information about A has been provided to the father, without A being involved in the decision-making process. It is impossible to predict at this stage, how A will react to learning about the tragic events surrounding the mother's death and, in those circumstances, there is a need for the court to exercise great caution, in making decisions about what information is provided to the father, about A.

45. I struggle to understand Dr F's view that an annual progress report about A, provided to the father, need not compromise A's privacy. The provision of any information about A compromises her privacy and therefore it is a question of degree. To minimise any compromise of A's privacy, I agree with the social worker that the report would have to be so anodyne as to render it of no real benefit.

46. Whilst it is argued that the provision of a little information may prevent the father from searching for more, it is equally the case, in my judgment, that the provision of a little information may cause frustration at its limited nature, and thereby lead to curiosity getting the better of the father's judgment, leading to him searching for more.

47. I do recognise that, in the future, A's own curiosity and/or desire to try to understand and make sense of the events surrounding the death of the mother, at the hands of the father, and the effective loss of a father-figure from A's life as well, may lead A to wish to contact, see, or speak to the father. However, that is some way down the road, if indeed it happens at all and an awful lot of work will need to be done by the professionals in seeking to mitigate the effects of the tragedy in A's life and in very difficult circumstances.

48. I also make a Section 34(4) direction, in respect of contact with the father, on the basis that it is consistent with A's welfare and an analysis under section 1 of the Children Act 1989 .The order will enable the Local Authority to refuse contact between child and father.

49. The manner in which A is given information about what happened to the mother is crucial and the Local Authority will have to work extremely hard to try to ensure that A receives information in a controlled manner, so that it has the least detrimental effect upon A's emotional welfare. The sources of passing on information outside of that controlled process through extended family members, friends and those who know, simply by coming into contact with A, for example in the school playground, are numerous and all that the professionals can do is to try to control the situation, through education, advice and guidance. It will undoubtedly be a tough task.

50. The provision for contact for the grandparents is agreed and I approve the agreement reached as being entirely consistent with A's welfare. The contact arrangements will need to be underscored by contracts of expectation and it is to be hoped that, moving forwards, the parties are able to work together, to afford the degree of flexibility that the maternal uncle and his partner wish to achieve, as I am sure that the grandparents do too. Should there be any teething problems, then the local authority will be on hand, through the auspices of the Care Order, to provide further advice and guidance.

51. I end this judgment by expressing my genuine admiration for the maternal grandmother, the paternal grandparents and also the maternal uncle and his partner. They, each of them, have suffered a profound loss and I cannot begin to imagine the pain that each of them will have been through and, for that matter, continue to endure. What shone out to me, throughout my dealings with this case, is the deep love and affection felt by them all, for A together with their extraordinary ability, which was led from the outset by the maternal grandmother, to put A's welfare first and to work together in A's best interests.

52. That concludes this judgment.

End of Judgment

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