



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 the 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.

Neutral Citation Number: [2021] EWHC 33 (Fam)

Case No: FD20P00566

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 January 2021

Before :

MR JUSTICE PEEL

Between :

A LOCAL AUTHORITY

- and -
JK

and
W

(Through his Guardian)

Applicant

First Respondent

Second Respondent

Kate Lamont for the Applicant (instructed by A Local Authority)
Malcolm Chisholm for the First Respondent (instructed by Philcox Gray Solicitors)
Susan George for the Second Respondent (instructed by Freemans Solicitors)

Hearing date: 10 December 2020 (by MS Teams)

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE PEEL

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 children 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.

Mr Justice Peel:

Introduction

1. These proceedings concern W who was born on 19 February 2020 and is now 10 months old.
2. The Mother decided to relinquish W for adoption before he was born. She believes that she cannot give him the care he needs. Further, she does not want the Father, or any member of the wider families, to be told of W's birth or the adoption proceedings, or to be considered as possible carers.
3. On 8 September 2020 the Local Authority applied for;
 - i) An order under FPR Part 19 and rule 14.21 endorsing its decision not to disclose W's existence to his Father in proposed adoption proceedings, or at all; and
 - ii) An order under the inherent jurisdiction endorsing its decision not to disclose his existence to the maternal grandparents.

The Mother supports the applications. The Guardian opposes the applications.

4. That the power exists to take a step of this nature is not in doubt but, as the jurisprudence makes plain, it is a power that should be exercised only after very careful consideration. After all, the consequences of the applications, if granted, will shape this child's future for the rest of his life. The Father will not know of W's existence, let alone have the opportunity to participate in the decision-making process or put himself forward to play a role in his life. The wider families

similarly will forever be in the dark. Adoption will surely follow and W's relationship, or potential relationship, with his birth families will be permanently severed. On the other hand, the Mother may be profoundly, and detrimentally, affected by the notification to the Father and her family of the existence of a child whom she wanted to keep secret from them, and who she believes would not want or be able to be carers for him.

5. I do not underestimate the enormous strain on the Mother of her decision to relinquish W for adoption, the steps required to put in train the adoption planning, and participation by her in these proceedings which, for reasons I will explain, were wholly unanticipated. Notwithstanding the enormous pressures on her, she attended the remote hearing before me with great dignity.

Family Division or Family Court

6. At paragraph 86 of **Cases A, B and C [2020] EWCA Civ 41** Lord Justice Peter Jackson said:

“In relation to a putative father, [the] application will be under Part 19 unless issues of significant harm have made it necessary to issue proceedings for a care or placement order; I would suggest that an equivalent application under the inherent jurisdiction can be made where a local authority has doubts about notification of a close relative.”

7. By 19.2(c), the Part 19 procedure is mandated for applications under rule 14.21 (directions regarding fathers without parental responsibility).
8. At the date of the handed down judgment in **Cases A, B and C** (29 January 2020) rule 14.21 provided:

Inherent jurisdiction and fathers without parental responsibility

“Where no proceedings have started an adoption agency or local authority may ask the High Court for directions on the need to give a father without parental responsibility notice of the intention to place a child for adoption”.

9. By SI 2020/135 rule 14.21 was amended with effect from 6 April 2020 so as to vary both the heading and the rule. The reconstituted rule reads:

Notice to fathers without parental responsibility

“Where no proceedings have started an adoption agency or local authority may ask the court for directions on the need to give a father without parental responsibility notice of the intention to place a child for adoption”.

10. The explanatory notes to the SI explain that the change was effected to
“...clarify that directions under rule 14.21 FPR 2010 can be given by the Family Court as well as the High Court”.
11. Ordinarily, applications of this nature in respect of a father without parental responsibility should be therefore be made to the Family Court rather than to the Family Division of the High Court under the inherent jurisdiction.

12. What of a non-notification application in respect of close relatives? There is no rule specifically designed for such persons and accordingly the dicta of Lord Justice Peter Jackson (cited at para 6 above) continue to hold good, namely that such an application must be made under the inherent jurisdiction.
13. The consequence is rather unsatisfactory. Frequently a local authority will seek directions both in respect of the father without parental responsibility and close family. The position is that the application in respect of the putative father should be made to the Family Court under Rule 14.21. The application in respect of close relatives should be made under the inherent jurisdiction. Two different jurisdictions are invoked for applications which are inextricably intertwined and should be heard together. There is even, conceivably, a risk that the applications will be issued in different courts (a local Family Court and the High Court).
14. I suggest that the Rules Committee may wish to look at Rule 14.21 to consider whether it can be enlarged to include other persons, such as close family members, thus enabling all relevant applications to be brought before the Family Court.
15. In practice, whether on application to the Family Court or under the inherent jurisdiction, I suggest that the words of Lord Justice Peter Jackson at para 88(1) of **Cases A, B and C** should continue to be followed so as to enable all applications of this nature to be heard together by the same judge:

“Identity of judge: If the application is under Part 19, it must be heard in the High Court and appropriate listing arrangements must be made. Upon issue, the application should immediately be referred to the DFJ for consultation with the FDLJ as to whether the application should be allocated to a High Court Judge or a section 9 Deputy High Court judge.”

The law

16. On 29 January 2020 the Court of Appeal delivered judgment in **Cases A, B and C** which directly addresses the issue before me. That was three weeks before W’s birth. This decision was available to the relevant decision makers at the Local Authority after his birth and would have been, or should have been, in their minds.
17. Before turning to the statements of principle, I will touch on the facts of Case A and the outcome of the appeal. As a preliminary observation, I am struck by the similarities between Case A and the case before me.

“5. A is a boy born in February 2019. When he was born, his mother relinquished him to the care of her local authority and asked it to place him for adoption. A was placed with early permanence carers who would like to adopt him. On 22 May, the mother signed forms under sections 19 and 20 of the Adoption and Children Act 2002, consenting to his placement for adoption and giving advance consent to his adoption by his carers.

6. A’s mother is aged 21. She is a student. Out of term time she lives with her mother and brother. On her account, A’s father is a student elsewhere. They

were in a relationship lasting 4½ years and, though no longer together, remain friends. The mother did not tell her family, or the father or his family, about her pregnancy or A's birth. She has not named the father but the information she has given to the local authority probably enables him to be identified. Her own family is identifiable.

7. The mother gave these reasons for wanting A's birth to be kept secret and for him to be adopted:

- She has a history of depression for which she takes medication and did not feel physically or emotionally capable of caring for him.
- The father has also suffered with mental health issues.
- She had terminated two previous pregnancies, both by A's father, with his agreement.
- He would agree with the decision for A to be adopted as he would not want to be involved in the child's life.
- Her own mother would agree with the decision to adopt A. She too has mental health issues, and her brother has learning difficulties. Other maternal family members are too old to care for A.

8. On 28 June the local authority belatedly issued an application under Part 19 of the Family Procedure Rules 2010 (FPR 2010) seeking a decision as to whether it should identify the putative father and members of the extended maternal and paternal families and offer to assess them as prospective carers. The application was determined by HHJ Marston on 16 August. He directed that the local authority was under no obligation to inform the father or wider family members of A's birth, or to seek to assess them as prospective carers. He declared that the lack of notice would not be regarded as a reason not to make an adoption order in due course. The Guardian applied for permission to appeal on 24 September and permission was granted on 16 October.”

18. The Court of Appeal reversed the decision. The reasoning was as follows:

“95. Having heard the arguments, we informed the parties that the appeal would be allowed. We endorsed the Guardian's suggestion that the father should be told of A's existence, by the mother if she prefers. The parties should then take stock of whether notification of the wider families is appropriate, with any issue about that being resolved by HHJ Marston.

96. Procedurally, the local authority adopted the correct procedure by issuing a Part 19 application. Unfortunately, it only did so after a delay that has had two consequences. Firstly, A has naturally been strengthening his ties with his carers, for whom the delay and the outcome of the appeal is bound to be very difficult. Secondly, the local authority had made its own mind up by deciding

that adoption is in A's best interests long before it placed the issue of family notification before the court.

97. A further aspect of the process in this case was that it carried on without the mother's direct participation, even to the extent of her filing a statement. There will, no doubt, be cases where there are good reasons why a parent cannot participate. The court will then have to make the best of hearsay evidence. But it is already a characteristic of these cases that the court is making an important decision on incomplete information. However, the court did not seek to engage directly with the mother so as to obtain the best evidence available.

98. As to the substance of the decision, it is not entirely clear whether the judge considered that the father had rights under Article 8. On the one hand, the parents were no longer in a relationship, but on the other their relationship had lasted for several years and they apparently remained on friendly terms. That would not make a very persuasive case for the father having Article 8 rights, but he clearly had an interest that needed to be considered and I would on the whole accept that this was the judge's view.

99. However, although the judge directed himself on the law, his decision does not in my view identify sufficient reasons to justify the father being kept in the dark about the birth and adoption of A. The reasons given for non-disclosure concerned the risk to the mother's wellbeing and her account of the improbability of a suitable family placement. As to the first, disclosure would be likely to be difficult for the mother, but there was no convincing evidence to support the judge's conclusion that it might be "disastrous". The rejection of the possibility of a family placement was based on the mother's account without there being any objective basis for believing that the father and the wider families were very likely to have nothing to offer. Nor was any real weight given to the potential benefits to A of growing up in his birth family if that is a realistic possibility, or of his adoption having his father's participation, and even his blessing, if it is not. I would not accept the local authority's characterisation of the process of notifying a father of the birth of his child as "opening a can of worms" where the characteristics of the father or wider family raise no particular cause for concern. The judge was entitled to note the delay involved in notification, but as the child had already been placed with prospective adopters, little weight could attach to that aspect of the matter. In summary, while the judge rightly gave significant emphasis to the mother's point of view, he did not sufficiently balance it against the other important considerations bearing on A's lifelong welfare and the position of family members, and his decision cannot therefore stand.

100. After this passage of time it would not have been in anyone's interests for the decision to be remitted and it therefore fell to this court to remake it. As to the balance to be struck, I bring forward my observations from the preceding paragraph. While I would not myself attribute Article 8 rights to the father, he has an interest to be considered. The mother's account does not provide a strong objective basis for discounting him as a suitable carer without further investigation. The difficulties that notification is likely to cause to the mother do not outweigh the considerations relating to the interests of the father and the

child in the context of a plan for adoption. This interference with the mother's right to respect for her private life is necessary and the staged approach proposed by the Guardian is proportionate. For these reasons, I agreed that the appeal should be allowed.”

19. I turn to the statements of principle set out by Lord Justice Peter Jackson. At paragraphs 1 to 3, the court set the scene:

“[1] These three appeals concern babies whose mothers concealed their pregnancies and did not want the fathers and other relatives to know of the births. Should the local authorities and the court notify the fathers or relatives before plans for the children's future are made and put into effect? In each case the plan may involve adoption and in two cases that is what the mother wants.

[2] Respect is due to the position of any mother who goes through pregnancy without family support and then chooses to relinquish the child at birth in the belief that it is for the best. Respect is also due to the position of the unsuspecting relatives. Some may have been a fleeting presence in the mother's life, but others may be more significant figures who have been kept in the dark and would be astonished to find that a baby (their child, sibling or grandchild) had been born and adopted without their knowledge, particularly if they were in a position to put themselves forward as carers. Most of all, the notification decision has life-changing implications for the baby. It may influence whether adoption happens at all and, even if it does, a sound adoption has its foundations in the integrity of the process by which it is achieved.

[3] For social workers and courts these are not easy decisions. They have to be made without delay, on incomplete information, and in the knowledge of the profound consequences for everyone concerned. The law aims to distinguish those cases where a 'fast-track' adoption without notification of relatives is lawful from the majority of cases where the profound significance of the decision for the child demands that any realistic alternatives to adoption are given proper consideration. But in the end each case is unique and the outcome must depend on the facts.”

20. At paragraphs 45-84 Lord Justice Peter Jackson considered the general approach adopted thus far in the authorities, both European and domestic and concluded that the approach taken to date is sound and requires no major revision. It is unnecessary to repeat his comprehensive survey, but I propose to select two paragraphs of general application:

“[59] Pausing at this point, this body of authority at first instance and on appeal affirms that there is a discretion to be exercised by the local authority and by the court as to whether fathers and other relatives should be notified of the birth of a child. The discretion requires the identification and balancing up of all relevant factors. While the mother's right to confidentiality is important it is not absolute. The presence or absence of family life is an important, though not a decisive feature and where it exists strong countervailing factors are required to justify withholding knowledge of the existence of the child and the proceedings. The

tenor of the authorities is that in most cases notification will be appropriate, and the absence of notification will be the exception; but each case will in the end depend on its facts. In each case, the welfare of the child was regarded as an important factor but, significantly, there is no suggestion that the exercise of the discretion is governed by the paramountcy principle.

[84] For these reasons I conclude that while child welfare, prompt decision-making and a comprehensive review of every relevant factor, including those mentioned in the checklists, are all central to the notification decision, the decision is not one that is formally governed by the provisions of s.1 of the CA 1989 or of the ACA 2002 and the welfare of the child is not the paramount consideration of the local authority and the court in this context.”

21. At paragraphs 86 to 88, the Court of Appeal recorded the need for both urgency and thoroughness of procedure. This case has highlighted starkly the importance of following this guidance and in my view should be closely adhered to by any local authority faced with this situation.
22. At paragraph 89 the governing principles are summarised as follows:

“[89] The principles governing decisions (by local authorities as adoption agencies or by the court) as to whether a putative father or a relative should be informed of the existence of a child who might be adopted can be summarised in this way.

1. The law allows for 'fast-track' adoption with the consent of all those with parental responsibility, so in some cases the mother alone. Where she opposes notification being given to the child's father or relatives her right to respect for her private life is engaged and can only be infringed where it is necessary to do so to protect the interests of others.
2. The profound importance of the adoption decision for the child and potentially for other family members is clearly capable of supplying a justification for overriding the mother's request. Whether it does so will depend upon the individual circumstances of the case.
3. The decision should be prioritised, and the process characterised by urgency and thoroughness.
4. The decision-maker's first task is to establish the facts as clearly as possible, mindful of the often limited and one-sided nature of the information available. The confidential relinquishment of a child for adoption is an unusual event and the reasons for it must be respectfully scrutinised so that the interests of others are protected. In fairness to those other individuals, the account that is given by the person seeking confidentiality cannot be taken at face value. All information that can be discovered without compromising confidentiality should therefore be gathered and a first-hand account from the person seeking confidentiality will normally be sought. The investigation should enable broad conclusions to be drawn about the relative weight to be given to the factors that must inform the decision.

5. Once the facts have been investigated the task is to strike a fair balance between the various interests involved. The welfare of the child is an important factor but it is not the paramount consideration.

6. There is no single test for distinguishing between cases in which notification should and should not be given but the case law shows that these factors will be relevant when reaching a decision:

(1) *Parental responsibility*. The fact that a father has parental responsibility by marriage or otherwise entitles him to give or withhold consent to adoption and gives him automatic party status in any proceedings that might lead to adoption. Compelling reasons are therefore required before the withholding of notification can be justified.

(2) *Article 8 rights*. Whether the father, married or unmarried, or the relative have an established or potential family life with the mother or the child, the right to a fair hearing is engaged and strong reasons are required before the withholding of notification can be justified.

(3) *The substance of the relationships*. Aside from the presence or absence of parental responsibility and of family life rights, an assessment must be made of the substance of the relationship between the parents, the circumstances of the conception, and the significance of relatives. The purpose is to ensure that those who are necessarily silent are given a notional voice so as to identify the possible strengths and weaknesses of any argument that they might make. Put another way, with what degree of objective justification might such a person complain if they later discovered they had been excluded from the decision? The answer will differ as between a father with whom the mother has had a fleeting encounter and one with whom she has had a substantial relationship, and as between members of the extended family who are close to the parents and those who are more distant.

(4) *The likelihood of a family placement being a realistic alternative to adoption*. This is of particular importance to the child's lifelong welfare as it may determine whether or not adoption is necessary. An objective view, going beyond the say-so of the person seeking confidentiality, should be taken about whether a family member may or may not be a potential carer. Where a family placement is unlikely to be worth investigating or where notification may cause significant harm to those notified, this factor will speak in favour of maintaining confidentiality; anything less than that and it will point the other way.

(5) *The physical, psychological or social impact on the mother or on others of notification being given*. Where this would be severe, for example because of fear arising from rape or violence, or because of possible consequences such as ostracism or family breakdown, or because of significant mental health vulnerability, these must weigh heavily in the balancing exercise. On the other hand, excessive weight should not be given to short term difficulties and to less serious situations involving embarrassment or social unpleasantness, otherwise the mother's wish would always prevail at the expense of other interests.

(6) *Cultural and religious factors*. The conception and concealed pregnancy may give rise to particular difficulties in some cultural and religious contexts. These may enhance the risks of notification, but they may also

mean that the possibility of maintaining the birth tie through a family placement is of particular importance for the child.

(7) *The availability and durability of the confidential information.*

Notification can only take place if there is someone to notify. In cases where a mother declines to identify a father she may face persuasion, if that is thought appropriate, but she cannot be coerced. In some cases the available information may mean that the father is identifiable, and maternal relatives may also be identifiable. The extent to which identifying information is pursued is a matter of judgement. Conversely, there will be cases where it is necessary to consider whether any confidentiality is likely to endure. In the modern world secrets are increasingly difficult to keep and the consequences, particularly for the child and any prospective adopters, of the child's existence being concealed but becoming known to family members later on, sometimes as a result of disclosure by the person seeking confidentiality, should be borne in mind.

(8) *The impact of delay.* A decision to apply to court and thereafter not to notify will inevitably postpone to some extent the time when the child's permanent placement can be confirmed. In most cases, the importance of the issues means that the delay cannot be a predominant factor. There may however be circumstances where delay would have particularly damaging consequences for the mother or for the child; for example, it would undoubtedly need to be taken into account if it would lead to the withdrawal of the child's established carers or to the loss of an especially suitable adoptive placement.

(9) *Any other relevant matters.* The list of relevant factors is not closed. Mothers may have many reasons for wishing to maintain confidentiality and there may be a wide range of implications for the child, the father and for other relatives. All relevant matters must be considered.

7. It has rightly been said that the maintenance of confidentiality is exceptional, and highly exceptional where a father has parental responsibility or where there is family life under Article 8. However exceptionality is not in itself a test or a short cut; rather it is a reflection of the fact that the profound significance of adoption for the child and considerations of fairness to others means that the balance will often fall in favour of notification. But the decision on whether confidentiality should be maintained can only be made by striking a fair balance between the factors that are present in the individual case.”

Background

23. I turn to the facts which I take from (i) three statements by allocated social worker and (ii) a statement by the Mother. I am conscious that the narrative background is essentially based on the Mother's perception of events, unfiltered and uncorroborated. There is no evidence from the Father or the wider families to assist in giving me a wider canvas.

24. The Mother is in her early twenties. She is an only child with two paternal half siblings. She says her childhood was unhappy, and her relationship with her father in particular was difficult. She was raised in a small market town. Upon completing secondary education, she obtained a degree followed by a Masters. She has recently started full time employment.

25. The Mother and Father first met in 2016 when they were both working at the local pub. The Father is also from the same small town. He is about 10 years older than the Mother. The Mother has not identified him, referring to him simply as "J", which may not be his real name.
26. The Mother and Father had an on/off casual relationship for some 3 ½ years. They usually met up when the Mother returned from university for holidays. She met his father and brother on a handful of occasions. In 2018, the Mother became pregnant. She chose to terminate the pregnancy. Having made that decision, but before the medical procedure, she informed the Father whose response was to block her on social media. She concealed the pregnancy and the termination from her family.
27. In December 2019, the Mother found out that she was again pregnant. She concealed the pregnancy from the Father, her family and friends. Having decided to terminate the pregnancy, she attended a clinic in January 2020. There she discovered, I suspect to her considerable distress, that she was beyond the legal time limit for abortion and the procedure could not take place.
28. On 31 January 2020, the Mother contacted the Local Authority, resolving to place her anticipated child for adoption.
29. On 3 February 2020 the Mother met the allocated social worker, Ms M and confirmed her wish for her child to be adopted.
30. From that point onwards the Local Authority commenced its planning with a clear direction towards adoption.
31. On 12 February 2020 the Mother met Ms M and an adoption social worker Ms H. Ms H commented that the Local Authority should apply for a Part 19 declaration "overriding the Mother's consent". It is not wholly clear to me what this meant or what the Mother understood by it.
32. On 13 February 2020 Ms M informed the Mother that "the decision not to inform the Mother's family was revisited". Again, the meaning of this is unclear to me, but the Mother took it to mean that a Part 19 application was not needed. Although the record of precisely what was said over these 2 days is confused, what seems clear is that after the conversation on 13 February 2020 (i) the Mother understood that neither the Father nor her family would be told of W's existence and (ii) the Local Authority was not planning to make a Part 19 application.
33. On 19 February 2020 W was born. On the subsequent completion of the birth certificate, the Father was not named and accordingly does not have parental responsibility. Consistent with the Mother's wishes, W was immediately placed by the Local Authority with foster carers. He has, by all accounts, thrived and is happy and stable in his placement.
34. On 3 April 2020 Ms M told the Mother over the telephone that the Local Authority was clear no Part 19 application would be made. This was confirmed to the Mother

by a text message and an email from Ms M on 7 April 2020 stating "...the Local Authority will not be pursuing a Part 19 application".

35. No sufficient explanation has been offered by the Local Authority as to why it decided against a Part 19 application. Although **Cases A, B and C** was at that time a recent authority, the preponderance of authority prior thereto, rehearsed compendiously in **Cases A, B and C**, made it clear that the decision on non-notification is usually for the court, and not for either the Local Authority or the Mother.
36. On 1 May 2020 the Mother signed the s19 and s20 forms as part of the continuing work towards adoption being undertaken by the Local Authority, and on 18 May 2020 the Best Interests Panel concluded that W should be placed for adoption.
37. It came as a very considerable shock to the Mother to be told on 1 September 2020, for the first time and over 6 months after Ws birth, that the Local Authority intended to apply to court for orders endorsing its decision not to seek to notify the Father or the wider maternal family. This followed a Care Planning Meeting, at which legal advice had been given.
38. Thereafter, the Mother did not engage with the Local Authority and, in particular, did not participate in the non-notification proceedings which were issued on 8 September 2020. She says that she felt let down, upset, and withdrawn. The only contact from her for some time was one email dated 16 October 2020 to the social worker in which she said:

"I just wanted to write this to explain what's been going on. These past few weeks for me regarding the hearing have been debilitating. I haven't been sleeping or eating properly which has in turn caused a kidney infection which I am currently recovering from. I have been anxious and depressed and have had suicidal thoughts. I can't do this anymore I just can't. I'm sorry. No one understands what this is like for me. I never wanted any of this. From knowing I was pregnant for 5 weeks to this, it's too much it's just too much. Back in April I was promised all of this wouldn't be happening from the social services. It's just taken a massive toll on me physically, mentally and emotionally to go through this confusing process. I never wanted any of this from start to finish".
39. After an initial case management hearing, the application came before me for final determination on 30 October. I acceded to the Guardian's application for an adjournment so as to enable further steps to be taken to see whether the Mother wished to participate in the proceedings. I also took the view that the Local Authority should file evidence setting out what it had told the Mother about the adoption process, and when.
40. The Mother was served with a copy of my order and obtained legal advice. She has filed a statement and been represented. The matter returned before me on 10 December 2020.

Local Authority and Mother's case

41. The cases of the Local Authority and the Mother are broadly the same:
- i) W is now 10 months old. To notify the Father and/or the wider family members, and embark on the resultant inquiries and investigations, would inevitably lead to a delay before his future is settled.
 - ii) The prospective adopters have indicated that they are presently still willing to be considered, even if notification takes place, but they make no guarantees for the future if there is significant delay.
 - iii) The Mother's views are clear. She wishes for W to be adopted, and for the facts of her pregnancy, the birth, and his adoption to be kept confidential and not notified to the Father or the wider families.
 - iv) The impact on the Mother of notification to the Father would be deeply damaging. She would suffer very considerable anxiety and would be exposed to a significant risk of mental health deterioration. She continues to feel anxious and overwhelmed and experiences suicidal thoughts.
 - v) The relationship of the Father and Mother was at its highest a string of casual liaisons and not one of real substance. The Mother says: "Looking back, I can now see that my relationship with J was abusive although not physically abusive", although little specific detail is given of the Father's behaviour to the Mother.
 - vi) The Father is not a realistic potential carer. He lives with his parents, has an irregular income and was a drug user when the Mother knew him. His reaction to the pregnancy in 2018 suggests he would have no interest in W. There is some suggestion of mental health issues, although no details are given.
 - vii) The Mother's wider family are not likely to be potential alternative carers. Her mother is 58 and in full-time employment. Her father, aged 67, is retired but works part time. The Mother has a difficult relationship with her parents and considers that there is a risk of a complete breakdown between them.
 - viii) Similarly, the Father's parents do not represent a realistic alternative. His mother has diagnosed schizophrenia and is cared for by her husband. She and her husband are said to be in financial difficulties.

The Guardian's position.

42. The Guardian does not support the application. In summary her position is:
- i) W's Article 8 rights entitle him to exploration of the possibility of being cared for by, or knowing, his birth family.
 - ii) The relationship between the Mother and the Father was not so limited as to justify non-notification.
 - iii) The maternal grandparents cannot be entirely ruled out as carers at this stage, although the paternal grandparents may be less viable.
 - iv) The Father's personal difficulties are not such as to rule him out as a potential carer.
 - v) Alternatives to adoption cannot be excluded at this stage.

My conclusions

43. Having carefully considered the written evidence, as well as the written and oral submissions, I have come to the clear view that the Local Authority's applications should be refused for the following reasons:

- i) There was an unacceptable delay in issuing the application until W was about 7 months old. That had unfortunate consequences:
 - a) The Mother believed, based on what she had been wrongly told by the Local Authority, that there was no question of the Father being identified and notified. The longer the passage of time, the less reason she had to think otherwise and the greater the shock when told that the court would be invited to make the relevant decision.
 - b) The Local Authority formed the early view that adoption was the only realistic option for this child. The passage of time simply reinforced that view. I quite understand that it attempted to assist the Mother at an immensely difficult time for her, and has throughout been guided by what it believe is in the interests of W, but in my view there has been a loss of focus. In particular, the Local Authority did not sufficiently appreciate the importance of the notification issue, **Cases A, B and C**, and the competing rights and interests of the Mother, W, the Father, and wider families.
- ii) The evidence presented about the Father is limited, but in my view, even on the Mother's presentation, it is not sufficient for him to be excluded on a summary basis from being a possible carer, or if not a carer, from playing some other more limited role in W's life. The concerns raised by the Mother are not of such gravity as to remove him entirely from the equation now. It seems to me that in the circumstances of this case to proceed to adoption (the "last resort"/"where nothing else will do" as it was described in **Re B (Care Proceedings: Appeal) [2013] UKSC 33**) without (a) conducting a thorough inquiry into his circumstances and (b) permitting him to advance a case as to how he might make a meaningful contribution in W's life and (c) permitting him to put forward options which fall short of adoption, would be disproportionate and unjust.
- iii) Similarly, I do not consider that the evidence justifies either the maternal grandparents or (conceivably, albeit rather less likely) the paternal grandparents being summarily excluded from consideration at this stage, whether as carers or as people whom W should have the opportunity of seeing, and with whom he may benefit from developing a relationship.
- iv) The Mother's relationship with her parents, in particular her mother, does not appear to be irredeemably broken down. She told the Guardian that had she known how these 10 months would unfold, she would have had the company of her mother at the birth. I have also been told that during lockdown the Mother lived with her parents, albeit because her tenancy had come to an end. These are positive relationship indicators.
- v) The relationship between the Mother and Father was casual, but it lasted for some 3 ½ years, taking place in their local village. It was not wholly insubstantial. I note also that although her parents did not meet the Father, the Mother told them of the relationship.
- vi) There is a lingering concern that if the Mother at some point were to tell her parents (or perhaps a friend) about the birth and adoption, it is possible that the Father and his family would in turn find out. I emphasise that the Mother has made plain she would do no such thing but, however unlikely, an unplanned, unexpected, unmanaged event like this could cause incalculable distress to many people.

- vii) There is the possibility that the prospective adoptive parents might elect to withdraw from the process, although they have not yet ruled themselves out and are not likely to do so imminently. But that, while an important consideration, does not in my judgement outweigh the considerations pointing the other way. The Guardian considers that W is the type of child who will be easily adopted, and an alternative adoptive family should be readily found. In the meantime, he is securely placed with foster carers.
- viii) I accept that the Mother is experiencing considerable distress and anxiety, although according to the evidence this has been the position since she discovered that she was pregnant in December 2019, well before she was aware of this possible application. In other words, the anxiety, profound though it may be, appears to be primarily a consequence of the birth and giving her son up for adoption rather than the non-notification proceedings per se. These proceedings will no doubt have exacerbated her distress, but I regard the difficulties as manageable rather than representing a significant mental health vulnerability. There is no expert evidence as to any particular mental health issues or diagnosis on the part of the Mother, nor has the Mother accessed any specialist mental health services. True, she has recently been to a GP and been referred for counselling, but beyond that there is little to satisfy me of a substantial risk to her mental health. I conclude that the impact on the Mother, while distressing and unsettling, is unlikely to be disastrous and I would hope and expect that proper support will be offered by the Local Authority to address any issues.
- ix) Finally, I bear in mind that a determination in the Local Authority's favour inevitably will lead to a total severance of W's relationship with his birth families, without any of them (bar the Mother) having any say or being considered beyond the merest superficiality. Should this come to the attention of the Father and/or wider family at some later date, they would, in my view, legitimately complain of having been completely written out of W's welfare decision making.

44. In my view the Article 8 rights of the Mother and W are clearly engaged. The Father's casual relationship with the Mother and lack of parental responsibility militate against a conclusion that he has formal Article 8 rights, but he clearly has an interest which must be weighed in the balance. The wider families, particularly the maternal family, are also interested persons. Weighing up all the relevant and competing considerations, I conclude that the Father should be identified and notified, and the wider families considered.
45. The applications are therefore dismissed. Of course, adoption may yet be the outcome, but if so, it must be reached after all realistic options are explored.
46. I am aware that this decision will be difficult for the Mother. I hope she will appreciate that it has been reached after very careful consideration and is not in any way a reflection on her or the decisions she has taken. She has behaved with great fortitude and is motivated by the best interests of W as she sees them.
47. The Local Authority must now consider how best (i) to seek to identify the father and, if identified, to notify him and (ii) to notify the maternal grandparents. This will have to be done carefully and sensitively. Some preliminary contingency

planning is in place, but it will require the input of the Mother and the Guardian. I will give no direction at this stage about the way forward. If further specific direction is sought, the parties may jointly apply to me.

Lessons for the future in non-notification cases

48. In **Cases A, B and C** the Court of Appeal emphasised the urgency required in making a Part 19/Rule 14.21 application. I have noted that in Case A the application was made 4 months after birth and was described as “belated”. Here the application was made 7 months after birth. This was an utterly unacceptable period of delay. Had the application been made promptly, the various difficulties which were explored during this hearing would not have arisen. Worse, the Local Authority appear not to have considered properly or at all the legal requirements in a case of this nature or, if it did, it inexplicably did the exact opposite. And piling error upon error, the Local Authority assured the Mother that it did not need to make a non-notification application, only to do so several months later.
49. It is obvious that in a case of this nature, a Local Authority should ensure that it explains carefully, and sensitively, to a mother every staging post of the proposed adoption process and the non-notification procedure, setting out the competing factors and considerations.
50. The exhortation in **Cases A, B and C** not to give a mother false assurances should be scrupulously followed. This case has shown the harmful consequences of failure to do so.
51. If an application is pursued swiftly and granted on the merits (as in Cases B and C), then the Local Authority and a mother will have early certainty which will enable swift planning and progress to adoption.
52. If, however, the application is pursued urgently but rejected, then little time will have been lost in pursuing adoption proceedings in the usual way. Put simply, everyone will know where they stand at the outset. By contrast, the delay here has caused the prospective adoptive parents to question their involvement, and set back the public law proceedings, which will determine W’s welfare, by months.
53. It has been said time and again that delay in proceedings usually runs contrary to the needs of a child. Sometimes, delay is unavoidable. Sometimes it is planned and purposeful and the delay leads to the greater goal of an outcome consistent with the child’s welfare. But delay in notification proceedings is usually avoidable and unnecessary, absent good reason to the contrary.
54. It would not be appropriate for me to offer any more than tentative guidance as to how swiftly an application of this nature should be brought. Lord Justice Peter Jackson at paragraph 86 of **Cases A, B and C** suggested that the decision should be taken “at a very early stage”. The variety of possible circumstances does not lend itself easily to a one size fits all formula. It may be, for example, that a mother after birth is beset by physical and/or mental health problems which demand breathing space before a Local Authority embarks on a non-notification application. But I suggest that, absent good reason to the contrary, a non-notification application

should ordinarily be brought within a matter of weeks of the birth, rather than months.