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**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.**

**Neutral Citation: [2024] EWHC 1779 (Fam)  
Case No. LS78/24**

**IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION**

**IN THE MATTER OF: CB**

**BEFORE:**

**HIS HONOUR JUDGE HAYES KC**

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**Between:**

**A LOCAL AUTHORITY**

**Applicant**

**and**

**MB**

**First Respondent**

**and**

**HB**

**Second Respondent**

**and**

**THE CHILD (THROUGH HER CHILDREN'S GUARDIAN)**

**Third Respondent**

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**JUDGMENT OF HIS HONOUR JUDGE HAYES KC  
SITTING AS A SECTION 9 DEPUTY HIGH COURT JUDGE  
9 JULY 2024**

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**CAROLINE SHIELDS**, Counsel, for the Applicant  
**DEBORAH McBURNEY**, Solicitor, for the 1<sup>st</sup> Respondent  
**LOUISE NOBLET**, Counsel, for the 3<sup>rd</sup> Respondent  
The 2<sup>nd</sup> Respondent did not attend and was not represented

**HIS HONOUR JUDGE HAYES KC:**

1. This is an application issued in the High Court by A Local Authority (“the LA”). This published version of the Judgment has been anonymised to ensure the confidentiality of all concerned. The reasons for this are self-evident.
2. The proceedings concern a girl, CB, who is now 10 months old.
3. CB’s mother is MB.
4. The identity of CB’s father is unknown. MB and her husband, HB, have always maintained that he is not her father. This has been confirmed by a recent DNA test.
5. The Children’s Guardian in these proceedings is Ms C.
6. The matter comes before the court to address an application issued by the LA on 11 April 2024. The LA seeks a declaration that they are not required to notify wider family members of the existence of CB. If that application is granted, it would enable the LA to progress the adoption process for CB. MB is the only parent with parental responsibility. She consents to adoption.
7. The LA issued this application having in mind case law which encourages a court application in a situation where a mother has requested confidentiality but there are balancing considerations which mean the situation is not clear cut. The lead authority in how such applications should be considered is the Court of Appeal ruling in *Re A, B and C* (Adoption: Notification of Fathers and Relatives) [2020] 1 FLR 1157 in which Sir Andrew McFarlane, President of the Family Division, gave the Judgment of the Court. He cited numerous earlier cases and drew together the principles that govern these types of cases at paragraph 89 of the Judgment.
8. As is so often the case in the Family Courts, the decision I am tasked with making involves a balance of factors which do not all pull in the same direction. It is recognised in *Re A, B and C* that these are not easy decisions. Further, they need to be made without delay, on incomplete information and in the knowledge of the profound consequences for all involved. Comparison with the facts of other cases is not a particularly helpful exercise. It is axiomatic that each case that comes before a court is unique and turns on its own facts.
9. It is important to identify the facts as clearly as possible. These must include the reasons why MB seeks for CB to be adopted without her extended family being told of her existence. She has given a first-hand account of those reasons in her statement dated 9 May 2024. Her reasons must not be taken simply at face value. Rather, they

must be respectfully scrutinised so that the interests of others are protected. Any wider information that can be obtained without breaching confidentiality should also be gathered.

10. This process of piecing together the key facts should then enable broad conclusions about the weight to be given to the relevant factors which inform the decision. My ultimate task is to weigh up the relevant factors and strike a fair balance between the various interests involved. CB's welfare is a relevant consideration but it is not the paramount consideration.

### **The Key Facts**

11. I consider the key facts to be those summarised below.
12. MB and HB are married with two children, JB and KB.
13. According to MB's account, CB was conceived in highly unusual circumstances which were not known to HB. She says that family friends were unable to conceive and she made a spontaneous decision to go to a clinic to become artificially inseminated to help them. At no stage was it her wish or intention to have another child for herself. The friends then told her that they did not wish to have a child. MB has not been able to identify the clinic that she attended, nor name the friends she was trying to help out. She was unaware that she was pregnant until she was over 20 weeks gestation, and she did not tell her husband or anyone else in her support network when she found out that she was. HB only found out inadvertently about two weeks prior to CB's birth when KB opened a clinic appointment letter and handed it to his father. KB was too young to read and understand what the letter said.
14. When CB was born, MB made it known that she sought to relinquish her care. CB was voluntarily accommodated in foster care on discharge from hospital and she has been in foster care since that time. MB has chosen to have contact with her only once in October 2023 when she also met with her foster carers. A photograph of CB and her mother was taken for life story work purposes. MB has had no contact with CB since that time, now some 9 months ago. Her children and her extended family do not know of CB's existence. The only person in her family who knows this secret is her husband.
15. MB has been clear from the outset that she does not wish to bring up CB and she wishes her to achieve permanence through adoption. She has remained consistent and resolute in that view.
16. Likewise, HB has been clear throughout that he is not CB's father and his family is unaware of her existence. He has not attended any meetings about CB, and he has been notably frustrated by attempts to engage him. HB has produced evidence that he

has had a vasectomy and the recent DNA test has confirmed his assertion that CB is not his child. He accepts MB's explanation of how CB was conceived.

17. MB blames herself for the situation and worries about the impact on her family. She states:

“I have clearly made some very poor decisions which have impacted upon my family a great deal already. My husband has been extremely upset to be served with the papers and to be, as he sees it, dragged into a situation which is not anything to do with him. CB is not his child and whilst we have made the commitment to move forward as a family unit together, the constant delays and the need to serve him with proceedings is causing distress which is impacting not only upon our marriage but on what was before this a very happy settled life.”

18. She also explains how her parents would be unable to care for CB. Her father is unwell and has been having tests for cancer and her mother acts as his carer. She states:

“To inform them in relation to the birth of CB now would simply cause quite unnecessary distress and further delay. There are no circumstances in which my parents could care for CB and it would cause a great deal of unnecessary anxiety and distress for them and for myself and our entire family”.

19. MB has a brother who lives a long distance away. He is single and works full time and she states:

“He is equally unaware of CB's birth and I am very clear that he is not in a position where he would, as a single man, wish to care for CB and be able to provide a home for her”.

20. She concludes her statement in this way:

“My mental health has suffered considerably as a result of this entire situation and, whilst I accept my part in this, I could not have ever imagined that having made the difficult decision to relinquish my daughter there would be such a difficult process. I understand that CB's welfare needs have to be thought about and One Adoption have spoken to me about the issues, which I accept [have] some complexities, in light of the fact that CB has two half siblings. I will liaise with One Adoption as it is felt appropriate in relation to life story work.

I plead with the court to grant the declaration sought by the local authority which will as I understand it allow CB's adoption to proceed and bring a conclusion to this currently distressing process”.

## Analysis and Conclusion

21. The LA's position throughout these proceedings has been to support MB in her desire to maintain confidentiality. Until recently, the Children's Guardian had not committed to a conclusive view, but in her addendum analysis dated 5 July 2024, she aligns her position with that of the LA. The result is that I am now presented with a consensus of view which has been helpfully elaborated in the Skelton Arguments by Ms Shields and Ms Lennon. I agree with this consensus and can state my reasons relatively concisely.
22. The circumstances in which MB asserts that CB came to be conceived are, on any view, very unusual. It is unsurprising that professionals question the veracity of her account. However, it is not the role of the Court to investigate and make any findings about how CB was conceived. I weigh in the balance that there would be a welfare benefit for CB when she is older to be able to access information about her biological father. At the same time, there are many children who grow up not knowing who their biological father is. The state – through the courts – does not compel their mothers to give such details. There is no good reason why this mother should be treated any differently. The circumstances which led to CB's conception are private to her. Further questioning or enquiry into such personal details would constitute an unwarranted interference with her Article 8 right to respect for her private and family life.
23. If MB is not being truthful about how CB was conceived, it does not follow that she is lying about other matters, including the details she has provided about her wider family. The court must be careful to bear in mind that a person may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. If a person has lied about some matters, this does not mean that he/she has lied about everything. These principles derive from the case of *R v Lucas* [1981] 1QB 720, decided in the criminal jurisdiction but of equal application in the Family Court. Some of the recognised reasons why a person may not tell the truth have a resonance in this case. If MB has not been truthful about how CB was conceived due to fear, shame or embarrassment, then the court must be careful to allow for this rather than drawing negative inferences from what she has said. The court must also strive not to compound her difficult situation, not least because I must weigh the adverse impact this may have on her marriage and family life with her husband and her two older children.
24. In this regard, it is too simplistic, I find, to categorise this as “merely” a case of shame or embarrassment and then go on to reason that this is outweighed by the need to notify relatives of CB's existence and enquire whether they might wish to care for her. Rather, the court must pause and ask itself what taking that step will mean for this established family unit. I must also weigh whether there is any likely benefit to

CB. She is now 10 months old. Delay is prejudicial to her welfare. The LA ought to have issued an application sooner than 11 April 2024 when she was 7 months old. The court process has, regrettably, added to delays. Extending this litigation any further is plainly not in CB's welfare interests. This is now accepted by all parties. The legal process itself is causing distress and anxiety to MB and HB, and risks creating an intolerable strain on their relationship. It would be hugely disadvantageous to these parents and their two children if any decision made on this application were to lead to the breakdown of the marriage and the family unit. The two older children do not know of CB's existence, and to be told about her is likely to cause them confusion and upset at this time. I accept that there is a risk that they may come to learn of this later in life, or through such information somehow leaking to them sooner, and that this may have them same (or worse) effect then if that should arise. However, I consider that the Children's Guardian is being too harsh when she describes MB and HB as being "very naïve" to think their secret will not come out. A less critical analysis of their position is to recognise the dilemma that they are faced with, and to acknowledge and respect that their wish for confidentiality is driven by their joint desire to preserve their marriage and their family unit.

25. Framed in legal terms, I find that the Article 8 right to respect for private and family life of MB and HB and their two children outweighs the Article 8 rights of the extended maternal family. The latter have no existing relationship with CB and I am prepared to accept MB's account that, were they to come to learn of her existence, they would not be in a position to care for her. They would also have to be told of MB's own strongly held wishes and feelings that CB should be adopted. This would be likely to influence any decision they might make. Even if they were to seek to care for CB, then this would be likely to have the negative welfare consequences that the Children's Guardian rightly highlights in her most recent report. CB could then find herself cared for in the wider family but ostracised from her mother and half siblings. That would not achieve the emotional security for CB that she so plainly needs.
26. As to the impact on MB and HB, the distress that this situation has caused already is obvious. It needs to end for the sake of the whole family. Any disadvantage to CB which flows from respecting her mother's wish for confidentiality is far outweighed by the need to avoid the breakdown of the marriage of MB and HB with the likely harmful impact on their children, JB and KB. It is also outweighed by the welfare benefits to CB of planning for her without further delay. A prospective adoptive placement has been identified for her, and the process of placing her should now take place. I very much hope that MB and HB can move on with their lives and, most importantly of all, CB can move on with hers.
27. It follows that I make the following declarations:

- a. HB is not the father of CB. Therefore, his consent is not required to place CB for adoption, nor for her to be adopted, pursuant to ss. 19 and 20 of the Adoption and Children Act 2002 (“ACA 2002”).
- b. MB is the only parent with parental responsibility for CB. She has given consent pursuant to s.19 of the ACA 2002 for the placement of CB with any prospective adopters chosen by the Adoption Agency. She has also given advance consent pursuant to s.20 of the ACA 2002 to the making of a final adoption order for CB and she has given notice under s.20(4) of the ACA 2002 that she does not wish to be informed of any adoption application.
- c. The Local Authority Adoption Agency should not notify wider family members as to the birth or existence of CB, whether to ascertain their views regarding wishing to care for her or otherwise.
- d. No party has permission to provide notification of CB’s birth or existence to any other individual against the wishes of MB.

**HHJ Hayes KC**  
**9 July 2024**