

**THE HIGH COURT
FAMILY LAW**

[2019/293 MCA]

**IN THE MATTER OF AN APPLICATION BY THE ADOPTION AUTHORITY OF IRELAND
UNDER SECTION 30(5) OF THE ADOPTION ACTS 2010 TO 2017**

-AND-

**IN THE MATTER OF A PROPOSED ADOPTION OF X
(A MINOR)**

**EX TEMPORE JUDGMENT of Mr. Justice Jordan delivered on the 22nd day of
November, 2019**

1. These proceedings concern an application by the Adoption Authority of Ireland (hereinafter 'the Authority') for an Order pursuant to Section 30(3) of the Adoption Act 2010-2017 approving the making of an Order for the adoption of the child, X without consulting the natural father.
2. The Authority has brought its application in circumstances where it is satisfied that having regard to the nature of the relationship between the natural father and the natural mother of the child, it would be inappropriate for the Authority to consult the natural father. In those circumstances, the Authority is required under s.30 sub. 3 of the Act to obtain the approval of the High Court before it can make an adoption order without consulting the natural father.
3. X was born in March 2008. The parents were not married to one another and the relationship between them both ended about five months after the birth of the child. The birth mother subsequently entered into a new relationship with Y around 2011 when the child was approximately three years of age. She married her new partner in 2013.
4. It is in circumstances that the child's stepfather has made a separate application to adopt the child, with the natural mother consenting to that application, that the matter arrives before this Court.
5. The declaration of eligibility and suitability in relation to Y was granted by the Authority on 19th June 2018. The circumstances are that the Authority is seeking an Order from this Court approving the step-parent adoption of the child by her stepfather without consulting the natural father in circumstances where the natural mother has made a statutory declaration asserting that she does not wish the natural father to be consulted in respect of the adoption of the child and where the Authority is satisfied, having regard to its investigations and having ascertained the true nature of the relationship between the natural father and the mother, and the circumstances of physical and emotional domestic violence that characterised that relationship, it would be inappropriate for the Authority to consult the natural father in relation to the proposed adoption.
6. X was born, that is the child, in the a maternity hospital in March 2008. The natural parents had met around the end of 2006. The relationship moved swiftly and they began cohabiting shortly after meeting. In June 2007 the natural mother became pregnant. At this point the natural mother states that the natural father began to be emotionally and

physically abusive to her. She was physically assaulted by him on many occasions. On one such occasion during her pregnancy while attending at the maternity hospital, bruising was observed on her leg. She disclosed that she was being subjected to domestic abuse and she was referred to the Medical Social Work Department of the hospital. It seems clear that the position is that the abuse escalated following the birth of the child.

7. In September 2008 or thereabouts the natural father severely assaulted the birth mother breaking her jaw. After that violent attack the mother ended her relationship with the natural father and he moved out of the home. She obtained a three-year barring Order against him on 25th November 2008. The position is therefore that the natural parents cohabitated from towards the end of 2006 until September 2008 or thereabouts when the child was about five months old.
8. The Authority, following its investigations and determinations, came to the view that the relationship between the natural parents of the child was one characterised by physical and emotional abuse perpetrated on the natural mother by the natural father. It is the position that on 25th December 2008 the natural father obtained an access order for two hours' access per week with the child supervised by the natural mother. The natural mother has stated that his access was sporadic from its commencement and in February 2009 access was reduced by the District Court from a weekly to a fortnightly basis.
9. The natural father was appointed a joint guardian of the child on 17th May 2010 but the position is as stated by the natural mother that the pattern of sporadic attendance continued with large periods of complete non-attendance by the natural father until 16th February 2014 when access ceased entirely.
10. It is stated, and I accept that it is so, that the child did not enjoy access and that she was scared of her father. He has not seen her since 16th February 2014 when during supervised access with her he was physically and verbally abusive towards the natural mother and to the young child, spraining the young child's arm and tearing ligaments in the mother's arm. He was convicted of assault arising out of this incident and on 30th September 2014 the natural mother was granted a five-year safety Order against the natural father.
11. From in or around September 2013, the child has been attending counselling with Barnardos to assist her cope with her fears and anxieties regarding access with the natural father.
12. A report exhibited of a project worker in Barnardos, Ms. Aoife O'Reilly details the child's views concerning access with the natural father and confirms the child's understandable views and wish that following the incident in February 2014 she did not want to see her natural father.
13. On 9th May 2014, an Order was made dispensing with the natural father's consent to the issuing of a passport for the child following his refusal to consent to it.

14. By further Order of 16th January 2015, the natural father was removed as a guardian of the child and the mother's husband, Y, was appointed as a joint guardian of the child instead of him.
15. The natural father was deported from Ireland in June 2018. Thus the position is that he has not seen the child since 16th February 2014 and he made no contact with the child prior to his deportation.
16. A court must adopt a cautious approach to applications such as this in circumstances where the father did cohabit along with the mother for a period and was a guardian of the child and did have access to the child.
17. In the case of *W.S. v. An Bord Uchtála & Ors.* [2010] I.R. 530, Ó'Néill J. while dealing with the case prior to the enactment of the legislation with which I am concerned, had the following to say in circumstances where his consideration of the then legislation involved a consideration of matters similar to what this Court has to consider.
18. In dealing with what the court needed to assess in terms of the nature of the relationship between the child and the father in determining whether or not he should be notified, Ó'Néill J. provided the following template to the Authority when considering what it had to do in arriving at a decision whether or not to notify - and he said, at 566: -

"Under the umbrella of the nature of the relationship, a critical important factor in deciding to notify or not would be the duration of any relationship between the father and the child and hence the degree of any engagement between the father and the child or the depth or lack of it of any commitment by the father to the child. If the duration of the relationship was so short as to be negligible in the sense of demonstrating that no parental filial bond could have been realistically formed between father and child, this would clearly be a factor which would sway the Adoption Authority towards a refusal of notification. If the relationship was one of some longevity, such that the normal parental bond was formed between father and child, unless there was present in that relationship an abusive element of some sort, such as to lead to a conclusion that the relationship should be terminated in the interests of the welfare of the child, then the Adoption Authority should be swayed towards notification."

19. The position here is that there was a relationship, of some short duration, between the parents and there was a period of time when the father was a guardian and was availing of access to the child, but it is clear on the evidence before me that the true position is that no parental or filial bond, no father-daughter relationship was formed between them both, rather a situation was arrived at whereby this young girl was afraid of the man who was her biological father.
20. It is also the position that there was, and it is what gave rise to that fear in the mind of the child, there was an abusive relationship, not alone between the father and the

mother, physical and emotional abuse directed by him towards her, but there was quite starkly physical and emotional abuse of the child herself.

21. It is clear from the decision of Ó'Néill J. that allegations of violence made by one parent against another should be corroborated or supported in some way by reliable independent evidence. There is an obvious need for some independent corroboration and support in circumstances where allegations are easily made of the nature made in this, and indeed in other cases, and in particular in situations where one is seeking to revisit these issues and consider their significance many years after the alleged incidents.
22. There is ample support for the allegations made by the birth mother in terms of the physical and emotional abuse in the evidence before the court, the affidavit evidence and the exhibits, including the report of Ms. Denise Shelly, Medical Social Worker, dated 21st November 2008, the Barring Order dated 25th November 2008, the report of Ms. Kate Burke, Medical Social Worker dated 11th April of 2014, the letter of Ms. Sandra McDonagh, Domestic Violence Support Worker dated 11th April 2017, the Safety Order dated 30th September 2014, email correspondence between Garda Danielle Cummins and Ms. Sarah Davis, Social Worker in relation to the conviction record of the natural father dated the 13th March 2018 and the report of Ms. Aoife O'Reilly, Project Worker in Barnardos dated 7th June 2017. There is substantial independent evidence supporting the natural mother's account of her abusive relationship with the natural father.
23. In summary format the following factors fall for consideration by the court: -
 - (1) The limited period of the cohabitation with the child;
 - (2) The lack of adherence by the birth father to Access Orders as granted by the District Court;
 - (3) The sporadic take-up of the access and the limited nature of that access which was required to be supervised;
 - (4) The violent incident which took place on 16th February 2014, which effectively ended the birth father's relationship with the child.

There are also the child's alarming fears and anxieties towards the father as set out in the documentation which I have referred to, and in particular the report of Ms. Aoife O'Reilly of Barnardos dated 7th June 2017. On top of all of that, there is the fact that the District Court decided to remove the natural father as a guardian of the child and the fact that at this stage it is some five years since the child has seen her natural father.

24. I am referred also in the written submissions to the requirement that I have regard to Article 8 of the European Convention on Human Rights. The question in that regard is whether family life exists within the meaning of Article 8 of the ECHR as between the natural father and the child - because if it does, then the natural father's Article 8 rights are engaged.

25. The implications of Article 8 were considered by Ó'Néill J. in *W.S.* In that case he made the point that family rights under Article 8 apply and any decision to exclude a natural father from participation in adoption proceedings will be in breach of Article 8, unless it is in accordance with the law in pursuit of a legitimate aim, and necessary in a democratic society, and in that vein he stated that it was clear that a child's interests may override that of a natural parent.
26. The E.C.H.R. has similarly highlighted the primacy of the best interests of the child and the balancing of rights in the case of *Eski v. Austria* [2007] 1 F.L.R., at 1650.
27. I am satisfied in this case that family life as such does not exist and did not exist in a way in which would engage Article 8 rights in favour of the father. In fact, the evidence proves, in my view, that the natural father unfortunately had very little understanding of what family life meant, or if he did have an understanding he had no commitment to having a family life with this mother and child. He abrogated his obligations as a father and ignored some very basic principles in terms of behaving as a father and as a partner in a way which might have created a family life for himself, his daughter, and the mother of his daughter.
28. In addition to that, I am very satisfied on the evidence before me, that in circumstances where I have to have regard by virtue of Article 42(a) of the Constitution and s.9 of the Acts, to the paramount consideration which is the best interests of the child, I am satisfied that this child, for good reason, does not have a relationship with her father and was traumatised by his physical assault on her and on her mother on the last occasion which she saw him some five years ago.
29. I am having regard to the paramount consideration namely the best interests of the child and I am satisfied that the statutory test as set out under s.30, sub. 3 of the Acts is met. It seems to me that it would be entirely inappropriate for the Authority to consult with the father in the circumstances and I think it is appropriate to grant the approval referred to in s.30, sub. 3 so I am making the order as set out at para. 1 of the originating notice of motion.