

THE HIGH COURT

[2022] IEHC 389
[2022 No. 31 M]

**IN THE MATTER OF AN APPLICATION PURSUANT TO S.54(2) OF THE
ADOPTION ACT 2010 (AS AMENDED) AND IN THE MATTER OF MISS B, A
MINOR, BORN ON [STATED DATE]**

BETWEEN:

CHILD AND FAMILY AGENCY AND MS A

APPLICANT

– AND –

THE ADOPTION AUTHORITY OF IRELAND

RESPONDENT

– AND –

MS C

RESPONDENT

– AND –

MR Z

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 27th June 2022.

SUMMARY

This is a failed application for an order under s.54(2) of the Adoption Act 2010 authorising the Adoption Authority to make an adoption order in relation to a child and to dispense with the consent of any person whose consent is necessary for the making of the order.

I

Application and General Note

1. The Child and Family Agency has applied to the High Court for orders pursuant to s.54 of the Adoption Act 2010, as amended, (a) authorising the Adoption Authority to make an adoption order in respect of Miss B and (b) dispensing with the consent of any person whose consent is required. Neither natural parent consents to same. The natural father has never played any meaningful part in Miss B's life and has placed no affidavit evidence before the court. So although I touch upon his refusal of consent later below, the real focus of this application is the well-intentioned refusal of consent by Ms C, a demonstrably competent mother, who has raised her other children well.

2. As will be seen in the pages that follow this is a case in which the Child and Family Agency has not done a good job. I wish to emphasise by way of general note before proceeding further that:

(i) Ms A, the foster-carer, has had Miss B in her care since Miss B was four months old. She has done a remarkable job caring for Miss B and I respectfully salute her for that. It is obvious that Ms A loves Miss B hugely and that that love is returned. A life-affirming feature of this case has been to see how much Miss B is so clearly loved by so many people.

(ii) I make no criticism whatsoever of the social worker who gave evidence at the hearing of this application. She came very late to this case and has done the best that she can. Counsel for Ms C likewise emphasised at the hearing that he was not seeking to criticise the social worker who gave evidence. He had to ask her the questions he did because she was the witness proffered.

II

Key Elements of Ms C's Affidavit Evidence

3. Ms C swore an affidavit on 1st June in which she avers as follows:

“4. I was born on [Stated Date].

5. I have four children. They are: a. Ms E [born in the late 1980s]...b. Mr F [born in the mid-1990s]...c. Ms G [born at the turn of the century]...and Miss B [who will turn 18 years of age in the autumn].

6. Ms E's father was my first boyfriend....We had a good relationship. However, I was [very young]...at the time and he [was not much older]. We were too young and not really compatible. We parted amicably.

7. I met my husband, Mr Z (the third respondent herein), when I was about 23 and we got married on [Stated Date] and had three children together. We lived in Dublin until [the turn of the century]...when we moved to County X.

8. I am currently in the process of obtaining a divorce from Mr Z....

11. There was only one time that I was physically abused before we moved to County X. Mr Z wanted me to go to his mother's house to collect washing but I could not carry it back so I decided to get a taxi. He punched me because of this. I was pregnant with Mr F at the time. I warned him that if he ever punched me again that I would call my brothers. He also punched Mr F once when he was 16 months old after Mr F had broken a model aeroplane. I warned my husband that he was never to hurt my child again.

12. At the time Mr Z had a good job with [Stated Employer] in [Stated Place]. He told me that he had a transfer to County X. So we moved to County X [at the turn of the century]....

13. When we got to County X, I realised that he had no job there. In retrospect, I think he wanted to move to County X to isolate and control me and my children. In Dublin I had the support of my family and indeed his family. In County X, I was in the middle of a rural area ten miles from [Stated Town] and had nobody. There was only one bus a week that would bring you to [Stated Town]. We had no transport of our own. That was when the abuse really started for me and my children.

14. In County X, Mr Z limited my contact with my family. He controlled what I bought. While I was able to ensure that my children were properly fed, he would take my meals away and eat them himself. He beat me up, including in public. He constantly raped me after I had had a miscarriage and even when there was a child standing at the door. He would slap them and punch them and deliberately trip them up.

[Ms C's allegations of marital rape are, sadly, not unusual. Indeed one of the more disturbing aspects of hearing family law cases is that this is one of several cases in which I have had women swear to such serious allegations.]

15. My husband drank huge amounts. He would sometimes drink with a plastic basin beside him so that he could throw up and then he would drink some more.

16. The house we lived in was cold and damp with concrete floors. I had no money to do it up. Mr F had a lot of colds. He also got asthma attacks and, as a result, missed a lot of school.

17. Over time I also drank more alcohol to help me deal with the abuse that I was suffering and my guilt over the physical abuse that my children were suffering. I was also dealing with the grief of losing my mother...and, as previously mentioned, the miscarriage....Weighed down by all this I started to drink four cans of Dutch Gold Beer slowly throughout the day – every day – to keep my nerves calm....

18. I had been using contraception but getting to the chemist regularly was not easy in a rural area with no transport and a controlling husband. Sometimes I missed my pill. I did not realise that I was pregnant with Miss B until I was four months into the pregnancy. By then the damage was done in terms of foetal alcohol. By contrast, I had not drunk during my previous three pregnancies when I was in Dublin and not facing the same level of abuse.

19. In March [of a year in the early 'noughties'] Ms E was staying with my aunt on a holiday. She disclosed to my sister that she was being sexually abused by Mr Z. I had not suspected this. I did know that he was a bad man, but I was being raped so consistently that it did not occur to me that he could be sexually abusing anybody else.

20. When Ms E told me of the sexual abuse, I knew that I had to get Mr Z out of our lives. I contacted the Garda Síochána. Garda [Stated Name] came to the house and told Mr Z that he had to leave and that if he did not he [the garda] would take the children. My husband said that he [the garda] should take the children. But in the end Mr Z left anyway.

21. I beg to refer to [the Child and Family Agency affidavit]...where it is stated that to the knowledge of the social work department my husband had no further involvement with the family after he left the family home. This is untrue. My husband kept coming back and threatening us. On two occasions, he kicked the door and forced his way in. I eventually persuaded him to leave by threatening to call the Gardaí. When I was expecting Miss B I saw him when in a shopping

centre in [Stated Town] and I fainted. I was taken to hospital and was let home the next day because it was stress rather than a physical reaction. When I got home he was there. He threatened that he would punch me in the stomach to get rid of Miss B. Ms E and Mr F helped me to get him out of the house on that occasion. A week after I had Miss B, he knocked me to the ground in a car park in [Stated Town] in front of Ms E and her partner....I went to the Gardaí with...an advocacy group for children in care and I reported him to the Gardaí. Because of all these difficulties I succeeded in getting a barring order....He was living in [Stated Town] when I got this and it was known to the social work department that I obtained it. Indeed it is recorded [in a stated social work report]....Further it was known to the social work department that I obtained it because I was at continuing threat from Mr Z. They knew this because I told them....

22. Miss B was born prematurely on [Stated Date]. Contrary to what is asserted in [the Child and Family Agency Affidavit Evidence] she was born with six holes in her heart rather than three. Four healed up. She had a heart operation...which successfully resolved the other two holes.

23. I beg to refer to paragraph 12 of [a stated CFA Affidavit] wherein she avers that...I only visited [Miss B at the hospital where she was born] three times in four months and that they had funded a taxi service.

24. First of all, I had a very difficult birth with Miss B....I stopped breathing for about two minutes and had to get three pints of blood transfused as well as an emergency Caesarean section. As I was very thin and frail at the time, it took me the best part of six months to recover.

[At the hearing there was an exchange between counsel for Ms C and the social worker who gave evidence for the Child and Family Agency in which the social worker indicated that it should take 6 weeks to recover from a Caesarean section. I am inclined to prefer Ms C's

evidence that in her case (whatever the general experience may be) it took her the length of time that she indicates it took for her to recover].

For about two months moving around hurt and I was unable even to shower myself. There were only three taxis in [Stated Town], the nearest town, and it was not always possible to find one available to travel to [Stated City], [who] also had two young children at home who had high levels of need because of all that they had witnessed as children. The taxi that I used to get was driven by a Mr [Stated Name]. He would give me an hour, not 15 minutes as averred. I would say that I went twice a week from the start, despite the pain I was in. Further, it was more than five times that I telephoned. I say that my father attended the hospital in [Stated City] on a number of occasions.

25. Social workers told me that Miss B needed constant care, that I had no transport and two other young children and that she was very sick and they thought [that she] would die in my care. I was given the choice of voluntary care or care proceedings being initiated. Owing to my drinking I was not in a position to care for Miss B at that time so I signed voluntary care in December 2004.

26. Slowly. I started building my life together. Ms E was angry with me – correctly saying that I had married the man who had abused her.

[While I very much understand why Ms E was angry, I note that Ms C had no knowledge of the alleged abuse until she was advised of same by Ms E.]

Contrary to the foster care report [exhibited as part of the Child and Family Agency evidence]...Ms E did not take on the main role of caring for the children. On the contrary, Ms E was so angry due to the abuse that she was suffering that she kept away from the family as much [as] she could and often stayed with friends.

27. *Ms J was my social worker at the time. Contrary to the [Child and Family Agency Affidavit Evidence]...I was not admitted to [Stated Addiction Centre K] in 2004....In fact I was admitted [on Stated Date in 2005]...for a 28-day treatment programme. This is important because it explains why Mr F and Ms G came into care [around that time]....They did so in order to facilitate me going to rehab the next day....I think it important to note that I asked my cousin, Mr L, to look after the children. He was willing to move into the house and to do so. Social workers rejected this on the basis that he was a single man. Ms J told me that they would look for a court order unless I agreed to voluntary care. I had no real choice in the matter but resent to this day that the children were unnecessarily [per Ms C] put into the care system, especially since [there are many awful moments in this case but this is a strikingly awful one] they were placed with a foster carer who – as explained below – was a risk to children.*

28. *There have never been any child protection concerns about Mr L. He continues to have a good relationship with my children who are adults.*

[So, unfortunately (and that is undoubtedly putting matters too mildly), the man to whom the Child and Family Agency entrusted Mr F and Ms G (in preference to Mr L) turned out to be someone who has had child sexual abuse allegations made against him (unlike Mr L).]

29. *I successfully completed the 28-day programme and I have never had a drink of alcohol since then. The social work department asked me to do two parenting courses, which I did, one for small children and one for grown-up children. I also did a psychological assessment. It concluded that I was [of] average intelligence but [that] with education I could go further. The social work department asked me to go to therapy with [the psychologist]....I did two years of therapy with her. I also attended AA meetings and did two years aftercare with [Stated Addiction Centre K].*

[Unclear to me is why it was thought necessary to run an intelligence test on Ms C. However, as she has since gone on to obtain a university degree from one of the top universities in the State, I suspect myself that she is a woman of above average intelligence.]

30. In County X, my housing conditions improved. The social workers were very helpful in advocating on my behalf with the Community Welfare Officer. As a result, we got heating and proper flooring and other necessities to create a home.

31. I wanted all my children back. My first priority was to get Mr F and Ms G. I wanted Miss B back too but I was told by [Stated Social Worker] that I would never get her back. Indeed [the said social worker]...stated at a meeting with me and other professionals at [Stated Addiction Centre K] that Miss B would die in my care.

32. On [Stated Date in 2006] Mr F and Ms G were returned to me. This was a reflection not only of how I had worked to turn my life around but also of a crisis for the social work department. As set out in [the evidence before the court]...the children were returned 'following concerns in respect of alleged sexual abuse in their foster home'. It appears that the foster father had sexually abused another foster child in the placement, but thankfully not my children. I was told very nicely by [Stated Social Worker]...that there was no need to make a big issue regarding this and that they would not want to bring Mr F and Ms G back into care. The children were under the auspices of a care order when they [were] returned to me so I was too frightened of the social care workers and what they could do to my family to pursue the matter.

[This is a serious allegation. What Ms C is saying in effect is that it was indicated to her by the Child and Family Agency that she should not make a fuss about the risk of sexual abuse to which her children had been exposed whilst in care, with her silence being extracted by an

intimation that Mr F and Ms G might be brought back into care if she did not stay quiet. If this allegation were true it would be a most serious matter. In fairness, however, I should note that the social worker who gave evidence in court at the hearing of this application (and who was not the social worker about whom complaint is made) indicated that she had spoken with the social worker who is alleged to have made the 'big issue' comment and that the latter does not recall having ever said anything of the sort alleged by Ms C, though obviously that is hearsay evidence.]

33. I subsequently applied to discharge the care order in respect of Mr F and Ms G and succeeded. The care order was discharged [in 2007] and I consented...to a supervision order [that] was granted for one year. Mr F and Ms G have remained in my care ever since. No further supervision order was sought or granted and the social work department closed their cases. [As mentioned, both are in paid employment and one of them will be embarking on a college career in the autumn]...Ms E is a [professionally qualified individual] and lives...not far from where I [now] live.

34. [In 2007]...a care order in respect of Miss B to the age of 18 was made in...[the] District Court. Up until then I had always said that I did not want her to go into long-term care. I was told by social workers that I should concentrate on Mr F and Ms G. I was also told that I could not provide her with the care she needed. In fact she made a good recovery from her operation on her heart in 2006 and went on to become a healthy girl, but I did not know this at the time. I was also told that I did not have the transport to bring her to medical appointments – and this was true.

[I have to query whether the absence of transport should have been the factor that it was. Surely the State could have funded the necessary bus/train-fares?]

I was also told that if I had been more careful and had not drunk when I was pregnant she would not have been born the way she was. Although I had legal representation, I felt pressurised and riddled with guilt. I consented to the care order.

35. *[In 2008]...I moved to Dublin. There were a number of reasons for this.*

36. *First, I was totally isolated in County X. I was a single parent. I felt that I needed the practical and emotional support of my family who were in Dublin.*

37. *Second, I was acutely aware that my husband knew where we lived. As previously averred, in the past he had come back to harass us and assault me. I found it hard to love with the fear that he might be over my shoulder at any time and I wanted to ensure that Mr F and Ms G were safe.*

38. *Third, children in Mr F's class were making smart remarks to him, They were asking where his father had gone. They also knew that he had been in care and slagged him for this. To make matters worse for him, [the children discovered that Miss B was in foster-care]...and Mr F got slagged over this too. Mr F came home constantly crying, wanting to know why his baby sister was not living with us. It really upset him.*

39. *Fourth, I knew that the whole neighbourhood was talking about me and my family. I remember one day being at the school to collect Ms G and a woman asked me if I had heard about the 'sl***er' who had four children in care. The woman stated that they all had different fathers. I did not want my children to be exposed to this cruelty. I knew that what was being said by parents was only making what my children were experiencing worse.*

40. *Fifth, in or about [Stated Date in 2006]...I got a visit from two social workers, including [Stated Social Worker]. They said that there had been a social work complaint. Ms G had run out to play and Mr F went out to get her as it was getting dark. He pulled her by the jacket and she started fighting him – in the way that children do....I was shocked that [the complaint and visit ensued]....*

41. *I determined that it would be safer for the children in my care to move back to Dublin. This took a long time to arrange because I had [to] plead and prove my circumstances and show that I was not simply making myself and the children intentionally homeless. Finally, after endless contact with Dublin City Council, we made the move in...2008.*

42. *This was a terribly hard step to take, I knew that I would see Miss B less often. I also knew that I would see my daughter, Ms E – and her daughter, my granddaughter... less often – as they continued to live in County X for a further three years and took over our tenancy. But I had to put Mr F and Ms G first to ensure that they would become the happy and mature children that they were.*

Access

43. *I beg to refer to [the Child and Family Agency Affidavit Evidence]...I say that the details set out regarding access are at times wrong and at other times incomplete, To begin with, it omits the fact that I had access throughout 2005 (except for the 28 days that I was at [Stated Addiction Centre K]). This was once a week in the home of the foster carer every Wednesday for two hours. This continued until October 2006 when Mr F and Ms G moved home to me. At that point, access moved to my home, which was in good condition by then. I have checked this with my children who are quite clear that this is when access moved. Further, we are all quite clear that access continued in my home until we moved up to Dublin in...2008 every week. Further, it was not just for two hours. Ms G came home from school at 2pm and*

Mr F at 3pm. They both remember Miss B being in the house when they got home and later when they were hungry for dinner in the evening. The access was arranged between myself and Ms A. Further it was at all times unsupervised. For this reason, I am far better placed to say when access was than the social work department is. Further, the [CFA Witness] has only recently been allocated as a social worker and therefore is not in a position to give evidence on this point.

44. I say that in the three years after I moved to Dublin, Ms E continued to live in County X. This meant that I was able to stay with Ms E when I went on access. I therefore only needed help with transport for myself (and sometimes Mr F and Ms G) which I normally got from the Community Welfare Officer....As a result, for those three years, I was able to have regular access. But it was not as regular as I would have liked as Mr F and Ms G had school. Further, whereas I went to see Ms A and Miss B at that time, they did not travel to Dublin.

45. Things became more difficult in November 2011 when Ms E moved back to Dublin. As a result there was no longer anywhere for me, Mr F and Ms G to stay when we went to see Miss B. Further around that time due to the financial crisis, the Community Welfare Officer was no longer able to fund my travel for access. The situation is accurately recorded in the minutes of the Child in Care Review for 2012:

'Miss B's visits with her mother are going very well. Ms A facilitates much of the contact. Because the HSE can no longer provide train tickets anymore and also due to the fact that Ms E no longer lives in County X, it is not easy for Ms C to attend for access in County X presently. Both Ms C and Miss B really enjoy the contact when they meet. The last visit was in February and Ms A hopes to go up at the start of the summer and maybe visit the zoo with Ms C as Miss B loves animals''

[I must respectfully admit to a degree of scepticism that even at the very worst lows of the financial crisis there was not the money in the national ‘kitty’ for a couple of return tickets for Ms C from Dublin to County X.]

46. From this point on things became more difficult because I was reliant on Ms A to bring Miss B to Dublin. I felt very excluded from Miss B’s life and began to find the situation hopeless. I wrote to Ms A and suggested that she adopt Miss B. I regretted sending that letter soon afterwards. Although the situation was difficult, I wanted to keep on fighting to have a relationship with my child.

[The choice of verb in the last sentence is telling. Why should a mother have to be “*fighting*” to have a relationship with her child? That is something which the State should be actively facilitating. I cannot but recall in this regard the observation of the European Court of Human Rights in *Strand Lobben v. Norway* (Application No. 37283/13), para.207, that

“Generally, the best interests of the child dictate, on the one hand, that the child’s ties with its family must be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to ‘rebuild’ the family”.

In this case, there appears to have been no effort at reunification and consequently no prospect of that type of ‘rebuilding’ which the Court of Human Rights contemplates.]

47. Things got worse in 2014 when, unbeknown to me at the time, there ceased to be any social worker for three years. At this time, I stopped

being notified of Child in Care Reviews. These had already been difficult for me to attend because they were usually held at 10am in [the county town of County X]. There is a train link...which gets you to [the county town] at 10...if it is on time. Often, it is not – and even when on time it is not possible to get to where the Child in Care review is held [several kilometres from the train station] for 10 a.m. For this reason, I often sent my apologies but filled out the child in care review form. But after [Stated Social Worker] ceased to be allocated, I did not know of the Child in Care reviews at all. It was at this time also – when there was no social worker oversight at all – that it became even more difficult to see Miss B. That is one of the reasons why I am opposed to the adoption now.

[A number of points arise from this last paragraph:

- first, it is wrong that Ms C was left without a social worker for three years, despite her child being in foster-care.
- second, Ms C was never told that she was being left on her own. The social worker who gave evidence at the hearing of this application indicated that it is her practice when, for whatever reason, she departs from a case, to write out and explain this to her clients, which seems the courteous and right thing to do. The social worker who had been liaising with Ms C appears not to have done this. This omission eventually led to Ms C trying to contact the social worker who was no longer working on the case with a view to improving the access, *etc.* that she was getting with her daughter.]
- third, the social worker who gave evidence in the case indicated that the thinking behind Ms C being left to her own devices may have been that all was going well between Ms C and Ms A and that they could be trusted to arrange

access between themselves. As it happens, there was a degree of tension in that Ms C (a perfectly competent mother) did not consider that she was getting enough access. There seems no more to this than the difficulties/misunderstandings that can sometimes arise between foster parents and natural parents, and I cannot emphasise enough that the foster-mother has done a 'top notch' job in terms of looking after Miss B, is to be applauded for that and falls in absolutely no way to be criticised in any respect for any of her actions. The Child and Family Agency should have been the medium between both sides in such situations or at the very least told them expressly how they could 'loop in' the Child and Family Agency in the event of disagreement/misunderstanding.]

- fourth, I do not understand why the Child and Family Agency was holding Child in Care reviews without notifying the mother of the child that such a review was being held.
- fifth, as to scheduling meetings at a time when a person just cannot get there on time, it is not clear to me why 'dial in' attendance at the meetings was not possible (if it was not possible). As to the suggestion by the witness from the Child and Family Agency that Ms C could always have told the Agency that there was a timing difficulty and a meeting would be re-scheduled, that, with every respect, is hard to do when one does not know that a meeting is being held in the first place. And, when Ms C did know that a meeting was taking place, did nobody at the Child and Family Agency in County X think that a 10am meeting would pose a difficulty for someone getting to the county town by train and then out the several kilometres to the Agency offices, *i.e.* did they *really* have to be told this before they could

realise it for themselves? I do not want to give away where County X is but it is not exactly beside Dublin. A consistent feature of the argument by the Child and Family Agency in this case was ‘If Ms C had just told us...’, ‘If Ms C had just commenced discharge proceedings...’, ‘If Ms C had just done this or that...’, but with every respect the Child and Family Agency is expected to show some level of pro-activity, not simply to respond when prodded. For example, it is the State (here in the guise of the Child and Family Agency) that is supposed to be looking to the possibility of reunification.

- sixth, the tragic irony of this case is that if Ms C had *not* done such a good job on getting her life in order then, it seems, she would likely have retained a social worker with whom access and reunification would have been matters to be discussed; it is *because* she did such a good job in getting her life in order that she lost a social worker and the possibility of discussing concerns re. access and reunification with that social worker. So she was almost incentivised to do worse, not better. It is testament to her qualities as a person that she chose to do better and has done strikingly well.
- seventh, the abiding impression that arises from this case is that if only Ms C had fought her corner harder, things might have gone better for her in terms of getting greater access and perhaps some effort at reunification. But the State is supposed to protect the poor and the weak (for the rich and the strong can look after themselves). Ms C should not have been required to get up and go to battle every day to get what she wanted. Better access and a close/r relationship with her child, and more active involvement in the child’s rearing is something which the Child and Family Agency

should have been seeking to cultivate (along with a *Strand Lobben*-informed effort at reunification if feasible).

- eighth, as just touched upon I cannot but recall in this context the type of ‘rebuilding’ that the Court of Human Rights contemplates in *Strand Lobben*. In this case, Ms C has and had shown herself to be a perfectly competent mother *vis-à-vis* her other children, yet the Child and Family Agency (through carelessness, not calculation) did not engage in that type of ‘rebuilding’ which the Court of Human Rights contemplates as appropriate and required.]

48. I became excluded from Miss B’s life. For example, on Miss B’s tenth birthday she stopped breathing and was rushed to hospital. Nobody rang me to let me know what had happened to my daughter. Members of my family who were Facebook friends with Ms A rang me to tell me that they had read it from Ms A’s Facebook.

49. Because of my concern I wrote a letter in 2016 to [Stated Social Worker] who I believed was the allocated social worker [because rudely and wrongly Ms C appears never to have been told otherwise]...In my letter I wrote:

‘I feel excluded from my child’s life, I believed that while she was in care that I would have progress reports on how she was doing but I don’t. I don’t know my daughter. I feel I shouldn’t have to ask for this as it is such an important matter. I am Miss B’s mother and we are her family. We saw her last summer briefly and she does not know us at all. It is not just me that wants to see her or have a relationship with her but all of her extended family here in Dublin. I am not telling tales or arguing with anyone. I simply want you as her social worker to let me know how she’s doing, what

year she's in. I do not want to ask her foster family as a I rarely get a reply or am left waiting.'

[With every respect, this is a sorry position for the Child and Family Agency to have placed Ms C in. The just-quoted letter was a letter from Miss B's *natural mother* asking for the simplest and most elementary of details about *her* daughter. This was and is a woman who had and has proven herself to be a competent mother with her other children literally *begging* for a relationship with her own child, *begging* for that child to have a relationship with her own family, *begging* for assistance in dealing with the foster family (of whom I make no criticism; difficulties can arise in relations between foster-parents and natural parents; that is where the Child and Family Agency should be assisting –that is its job). Six years ago, Miss B was 11 or 12 years of age. Who knows what type of access or progress towards reunification might have been attained had the Child and Family Agency just done its job, and proceeded with efforts at rebuilding the family relationship between a demonstrably competent mother (Ms C) and her natural daughter, Miss B? Yet most unfortunately there was no (or no direct) response to Ms C's letter.

At the hearing of this application the Child and Family Agency contended that the above letter was written in 2017, not 2016. The doubt arises because although the letter is dated 2016 it was date-stamped by the Child and Family Agency as having been received in 2017. But, with every respect, this seems completely beside the point. For when a new social worker was belatedly appointed to the case in 2017 she never directly answered Ms C's letter in any event (despite the Child and Family Agency, on its own account, being in possession of the letter at that time). So it makes no difference whether the letter issued in 2016 or 2017. The Child and Family Agency did nothing meaningful about it in any event. (I should perhaps add, however, that my own sense is that on the balance of probabilities the letter issued in 2016. It would be odd for a person to date a letter one year out of date, save perhaps in the very early days of each new year; however, anyone who has worked in

an office environment knows that it is not unknown for a date-stamp to be wrong; but again it does not really matter when the letter was written if the end-response, as here, is that the recipient does nothing meaningful after receiving the letter.]

[Ms C continues:] *I also wrote:*

'I do not want Miss B to grow up confused or not knowing where she comes from. I know she has a learning disability but she should know by now that I am her mother and not [here Ms C states her name] from Dublin. I understand that seeing each other can be difficult as with her in school and me in college but perhaps she could call me or video message me herself once a week or so and tell me her news. I will be requesting that Miss B come to stay with me in the future, it will be a slow process as she does not recognise me as her real mother. This upsets me immensely.

I am requesting that you let me know her medical history from here on and everything else. Please rectify this situation as my family are very cut up about it. I would appreciate if you could keep the contents of this letter within the social work department.'

The last line of this letter was important. For years, the arranging of my access was delegated by the social work department to the foster carer, Ms A. So it was left to me to arrange access. I wanted the social workers to do their job and leave it for me to have to ask for basic things by grace and favour.

[Ms C is right in this. She should not have been left on her own in the way that she was. The State has created an agency to assist in such situations – the Child and Family Agency – and, with every respect and as already touched upon above, it was not acting as it should have done

vis-à-vis Ms C and her daughter. There is, however, a further significance to the letter that Ms C does not touch upon. Among the contentions made by the Child and Family Agency at the hearing of this application were that Ms C never expressly sought to be reunified with her child and never did enough to help herself, *e.g.*, in seeking to have the care order discharged. There are a number of points in this regard:

- first, as is clear, for example, from, *e.g.*, *Strand Lobben*, the State is supposed to take a pro-active stance in terms of rebuilding family relationships.
- second, it seems clear to me from the above letter that Ms C was looking to rebuild the relationship between Miss B and herself, Miss B’s siblings and Ms C’s wider family. The letter makes clear that she wants to be much more involved. And she expressly states that “*I will be requesting that Miss B come to stay with me in the future, it will be a slow process as she does not recognise me as her real mother.*” Certainly if I read that sentence one of my first questions to Ms C if I were a social worker meeting with her after receiving that letter would be ‘When you say you want Miss B to come stay with you, do you mean on an overnight visit or is it some sort of reunification you have in mind?’ There is, I accept, an ambiguity in the letter as to whether it is some sort of enhanced access or reunification (or both) that Ms C wants but what exactly she wanted could have quickly been discovered by just asking her. Yet most regretfully there was never any meaningful response to the letter.
- third, to the extent that this was contended for (if it was contended for) it is not appropriate for the Child and Family Agency to operate what might be called an ‘Open Sesame’ style approach to the issue of reunification, *i.e.* that a natural parent should have expressly to use the verb ‘reunify’ or

expressly to contemplate reunification before the Child and Family Agency will consider reunification. This was not a case in which a natural mother was continuing to show herself to be (to borrow from *Strand Lobben*, at para.207) “*particularly unfit*”. It was a case in which a demonstrably competent natural mother was crying out, unheeded, to be allowed to play a greater part in the life of *her* daughter, a part which her rearing of her other children showed herself to be thoroughly competent to play.

- fourth, it is all very well for the Child and Family Agency to state ‘Ms C never sought a discharge of the care order.’ Ms C is a financially poor woman who was liaising with the Child and Family Agency, trying to get what she wanted. In the real world, most people do not have the money to be running off to court and most people do not want to get involved in financially and emotionally draining court proceedings in any event. What people *do* want and what they can properly expect is that a State agency such as the Child and Family Agency will do matters right, and here the Child and Family Agency, most regrettably, went badly wrong. Thus, it failed to ensure that there was an allocated social worker at critical times, it failed to hold Child in Care reviews at a time when Ms C could attend, it failed adequately to (financially) support access or to bring Miss B to Dublin for access, it failed to follow up on critical correspondence, it failed to provide increased access and access plans, it failed initially to allow access plans which later proved successful, and it completely failed to support the relationship between natural mother and natural child notwithstanding Ms C’s remarkable and successful efforts to turn her life around. It is, with all respect, courageous indeed for the Child and Family Agency to turn to a mother in circumstances where *it* has failed so badly and say to her

in effect, 'You could have done more'. I cannot but respectfully note that the Child and Family Agency could have done more, was under a legal obligation to do more, and failed to do all that it should have done. Had it done as it ought, greater access seems likely on the facts of this case to have followed on and who knows how the chances of reunification would have gone? Thanks to the most unfortunate manner in which the Child and Family Agency conducted itself in this matter no-one will ever know.]

50. In the year that followed, I did not get any video calls. I did not get any updates. I did not get Miss B's medical history. I did not even get the courtesy of a reply from the social work department to my letter. Instead, the first correspondence that I received from the social work department was a year later when [Stated Name] wrote to me to tell me that she was Miss B's new social worker. But there was no response to the issues I raised in my letter.

[Suffice it to note that the above litany of failings is, to put matters at their mildest, and with every respect to the Child and Family Agency, deeply regrettable.]

51. I travelled to [County X] for the 2017 Child in Care Review. I requested more access at that review and financial assistance with travelling to [County X] for access. At that Child in Care Review, [Stated Social Worker] reported back on a visit that she made to the foster placement. Miss B told [the said social worker] that she would like to see more of [her] family and is happy that we were attending the review....As a result access was increased from once a year to a mere twice a year in 2017 and I did get financial support for that year. I also got financial support to visit [County X] for access in 2018 because it was held the same date as a Child in Care Review, which I attended. As a result contrary to the [Child and Family Agency's affidavit evidence

in this case]...*I did have access twice in that year, once in Dublin and once on the day of the Child in Care Review in County X....*

52. I say that the social work minutes of the Child in Care Review in 2019 record that I sent Miss B birthday cards and gifts for her birthday and Christmas. But the minutes record that 'they do not have phone contact as Miss B would not benefit from this.' I am at a loss to understand why this would be. The minutes of the Child in Care Review for 2013 record that 'Ms A said that she [Miss B] has a very good relationship with Ms C and there is good phone contact between them.' Normally children enjoy telephone contact as they grow up. But in this case 'good phone contact' was something from which Miss B 'would not benefit'. Yet when telephone contact was introduced during the Covid pandemic...[the] Foster care to Adoption report...states that 'contact between Miss B took place via Facebook and phone calls which Miss B enjoys'....

[It is difficult to understand how Miss B could have been stated as unlikely to benefit from phone calls when the evidence since 2013 is that Miss B has enjoyed these calls.]

53. During Covid video calls were introduced. This was something that I had requested in 2016 but never got. The video calls have gone really well. They happen every fortnight and continue to this day.

54. In or around November 2019 I had a meeting with the then social worker....She proposed that a schedule of access would be drawn up and suggested Easter, Summer, Halloween and Christmas. However, no schedule was ever drawn up and I never got four accesses a year.

[It is not clear why this revised access did not occur.]

55. I submitted a report for the Child in Care Review on 10th February 2020. In that report I again expressed my upset at not having enough access with Miss B and asked for an access plan going forward

56. I say that at the Child in Care Review in 2021, I again requested more access once Covid restrictions were lifted....

[It is not clear to me why Ms C's repeated requests for increased access – frankly she was begging for access and a mother should not be reduced to begging for access to her child – was not yielding practical results in all the circumstances presenting.]

57. I currently see Miss B for video calls every fortnight and I have access twice a year.

58. I fear that if the adoption proceeds, I will not see my child again. I base this on the situation that existed when there was no social worker from 2014 to 2017; it became much harder for me to see my child then and I got no information about how my child was doing. I also base this on the fact that I have always had to push for access to get it. Also, I tried to buy a mobile phone for Miss B so that we could send messages now and then and send pictures and photographs. However. Ms A was not agreeable to this....

59. The relationship between me and my child is a positive and important one. I know this because I attend access. By contrast, no social worker has observed access since I left County X in 2008. At the same time I acknowledge that my relationship would be stronger with Miss B if it had been adequately supported by the social work department, which it was not. For example, I did not get financial support to attend access between 2012 and 2017 and between 2019 and 16th April 2022.

60. *I say that I have turned my life around. [Details of the remarkable turn-around that Ms C has achieved have already been touched upon above and are reiterated in this paragraph of her affidavit.]*

61. *I want to acknowledge the care that Ms A has provided to Miss B. I am grateful for that. But I would like to care for Miss B now. I have the time to do so and would be supported by my children, including Ms E who is a special needs assistant....I know that the transfer to my care would be slow and incremental and I am willing to do this. I am also willing to ensure that Ms A gets to see Miss B regularly.*

62. *Currently, I am a carer for...and work with the elderly and with those with special needs. I have training in HAACP (hygiene control), first aid and manual handling. I feel that these skills would stand to me if Miss B were to return to my care. I say that I can care for Miss B properly and that it is in her best interests to be cared for by her family.*

63. *I know that Miss B has stated that she would like to stay with Ms A but I do not believe that she has any real understanding of adoption. I also do not believe that she has been given enough access to make an informed choice. For example, I proposed overnight access in Dublin at the last Child in Care review. This was not agreed.*

64. *Even if Miss B is not to return to my care, I say that adoption is disproportionate and that wardship would be a more appropriate step in light of her moderate intellectual disability and care needs. This would also mean that I have some means of ensuring access.”*

4. Where I respectfully struggle a little with Ms C’s affidavit evidence is that Miss B is now about 10 weeks from turning 18 years of age. Nobody is suggesting that she would be returned to Ms C in that 10-week period. Once Miss B turns 18 years of age she can elect to do what she wants to do; and she appears to want to live with Ms A. So the mention of returning to live with Ms C and being cared for by Ms C seems more a desire than something which is immediately likely to occur. I note the mention of a possible wardship application and I make

no observation on whether or not it would succeed. It might or might not, and the committee that would be appointed might or might not comprise Ms C and/or Ms A – I do not know what would be decided. But where my views align with those of Ms C is that I do not see what adoption at this time (about 10 weeks before Miss B turns 18 years of age) will achieve. As will be seen from Ms A's affidavit evidence later below, Miss B is genuinely loved by her foster-family and that love does not rest on Miss B's standing as a foster-child rather than as an adopted child. (Love is not determined by legal links). If Miss B wants the surname of her foster-family she can change her surname by deed-poll when she turns 18 years of age. And if Ms A wants to bequeath property to Miss B, her adult children are now raised and 'gone from the nest' and no longer dependants so she can bequeath her property however she wants. So all that adoption would undoubtedly achieve at this time is to cut the legal link between a loving natural mother and a much-loved natural child with whom the natural mother has fought and sought to retain the closest contact over the years (with a disappointing want of assistance from the Child and Family Agency). I do not see that to cut that 'natural mother-natural child' legal link at the very moment when a child is about to enter adulthood, when I can see no particular advantage to the adoption, and when that adoption seems unlikely to have the slightest effect on Miss B's day-to-day existence is somehow in Miss B's best interests – and I note that those interests, while paramount, are not the sole interests at play. I am allowed also, without in any way compromising the paramountcy of Miss B's best interests, to have regard to the interests of Ms C in wishing to retain both natural *and* legal bonds with her child (a wish which in this case seems to me to be compatible with Miss B's best interests)

III

Key Elements of Ms A's Affidavit Evidence

5. Ms A, the foster-carer, is a divorced single lady with two adult children. She has had Miss B in her care since Miss B was four months old. She has done a truly remarkable job caring for Miss B and I respectfully salute her for that. It is obvious that Ms A loves Miss B hugely and that that love is returned.

6. There is a slight dissonance between the affidavit evidence of Ms A and that of Ms C in that Ms A considers that access with Ms C has always been facilitated to the greatest extent, whereas Ms C thinks that this has not been so. Had the Child and Family Agency actively

managed this case and not succumbed to the various failings outlined above and later below, I suspect that any such dissonance (which I suspect is no more than can sometimes occur between the best of foster-parents and the best of natural parents) could have been resolved and overcome. Instead the Child and Family Agency took the regrettable *laissez-faire* stance whereby access was for many years left to the foster-mother and natural mother to arrange without the Agency acting as a medium or offering any useful support in this regard.

7. In terms of her reasons for seeking to adopt Miss B at this time, Ms A has averred as follows:

“13. I say that I wish to adopt Miss B because she is a part of our family since she came to live with us when she was four months old...and we love her dearly. I say that I want her to have all the legal rights and security in the family which adoption would grant her. I say and believe that adoption will legally reinforce the relationship that already exists between Miss B, my two daughters and the extended family. I say and believe that it is in Miss B’s best interests to be cared for in the loving and stable home that she has always known. I say that I wish to provide Miss B with the same security and permanency that my two daughters have enjoyed. I say that I have ensured that all of Miss B’s needs are met and that she has every opportunity to reach her potential across all areas of her life. I say that Miss B is very much a part of our immediate and extended family.

14. I say that I am very much in favour of and see the importance of Miss B’s contact with her birth family. I say that I have facilitated contact throughout her childhood and without social work involvement. I say that I will continue to support Miss B to have contact with her birth family in the future.

15. I say that I believe that Miss B sees this deponent as her family and I want this relationship formalised. I say that the social workers discussed an application for guardianship with me. I discounted this as I believe that Miss B is very close to 18 years and guardianship will cease at this point.

16. I say that I fully and earnestly wish that the Adoption Order be granted. I say that from the time she arrived in our home, aged four months old. I have fulfilled the role of parent to her in every respect and it is my firm belief that she views me as her parent in everything but law.

17. I wish to advise this Honourable Court that it is my long held wish to adopt the child herein and accordingly, ask this Honourable Court to grant the Authorisation sought for that purpose.”

8. Where I struggle with this affidavit evidence is that Miss B is now about 10 weeks from turning 18 years of age. Nobody is suggesting that she would be returned to her natural mother in that 10-week period. Once she turns 18 years of age Miss B can elect to do what she wants; and she appears to want to live with Ms A. It is obvious from Ms A's affidavit evidence that Miss B is genuinely loved by her foster-family and that that love does not rest on Miss B's standing as a foster-child rather than as an adopted child. If Miss B wants the surname of her foster-family she can change her name by deed-poll when she turns 18 years of age. And if Ms A wants to bequeath property to Miss B, her adult children are now raised and 'gone from the nest' and no longer dependants so she can bequeath her property however she wants. There is no suggestion that if adoption does not occur there will be any meaningful (still less any detrimental) impact on Miss B's well-being. All that adoption would undoubtedly achieve at this time is to cut the legal link between a loving natural mother and a much-loved natural child with whom the natural mother has fought and sought to retain the closest contact over the years (with a disappointing want of assistance from the Child and Family Agency). I do not see that to cut that 'natural mother-natural child' legal link at the very moment when a child is about to enter adulthood, when I can see no particular advantage to the adoption, and when that adoption seems unlikely to have the slightest effect on her day-to-day existence is somehow in Miss B's best interests – and I note that those interests, while paramount, are not the sole interests at play. I am allowed also, without in any way compromising the paramountcy of Miss B's best interests, to have regard to the interests of Ms C in wishing to retain both natural *and* legal bonds with her child (a wish which in this case seems to me to be compatible with Miss B's best interests).

9. In passing, I note that, rightly or wrongly, Ms C does not believe that Ms A will allow her unimpeded access to Miss B if the adoption proceeds. However, I do rather wonder whether her concerns in this regard are more imaginary than real. Certainly, it is not clear to me how any form or level of access that Miss B may desire with Ms C could possibly be impeded once and after Miss B turns 18 years of age in a few weeks' time.

IV

Miss B, Her Wishes, and My Meeting With Her

10. Ms A has helpfully summarised Miss B's health history in her affidavit evidence. I have read that history and, out of deference to Miss B's privacy, I do not propose to recite the full detail here. Suffice it to note here that she has, amongst other matters, Foetal Alcohol Syndrome (FASD) and associated global developmental delay and a moderate general learning disability. She has never presented with any behavioural issues.

11. Miss B has indicated a desire to be adopted by Ms A.

12. Miss B asked to meet with me and I met with her in the company of her social worker. She is a very pleasant child with a sunny disposition and it was a privilege to meet with her. It would be fair to say that she is still very much an innocent child (and I mean that in a good way). So, for example, when I walked Miss B out of the courtroom to return her to her foster-mother, she quickly snuggled into Ms A's legs (Miss B is not especially tall) and started crying. When I spoke with her in the courtroom, with the social worker listening on, Miss B indicated that she would like to be adopted. However, I must admit that despite pushing Miss B a couple of times on the point I was not *entirely* persuaded that she fully understood the significance of what adoption means in terms of her legal relationship with her natural mother. As I returned into the courtroom alone and resumed my seat at the bench, I could not but recall the averment of Ms C in her affidavit evidence that:

“63. I know that Miss B has stated that she would like to stay with Ms A but I do not believe that she has any real understanding of adoption. I also do not believe that she has been given enough access to make an informed choice.”

Key Affidavit Evidence of the Child and Family Agency

13. In the Agency's affidavit evidence, the following averments, amongst others, appear:

“23. I say that Miss B is aware that she is in care but has a limited understanding of why she was admitted to care. She is aware of her birth-mother....She is also aware of her siblings and half-sibling but does not understand that they are her siblings. I say that Miss B is aware of Ms A's wish to adopt her and her understanding of this is that so she can stay with Ms A forever.

[I cannot but respectfully note the childish dimension to this desire. I do not mean to deprecate Miss B in any way in so observing; she is a great child. However, there is no 'forever' in our earthly existence. Also, Miss B will presumably at some point wish to form some level of adult life of her own]....

24. I say that [a social worker]...spoke to...Miss B in her home on three occasions...She also spoke to her [once] by phone...[The social worker] asked Miss B to name 'Who is important to you?' I say that Miss B named 'My Mum [Ms A]...my sisters and my nephews'. I say that Ms A explained to [the social worker]...her understanding of adoption which is 'mummy [Ms C] would not be my mum but Ms A is my mum. I would like this to happen'.

[This seems, with respect, a somewhat confused notion of adoption. Ms C would continue to be Miss B's mother, albeit that in legal terms the link would be broken. It seems a concept of adoption that one might perhaps associate with a considerably younger child.]

She also stated what were for her the positives to adoption 'I can still meet Ms C at any time....I can go shopping with Ms C and have a chat with her. I'd like to change my surnames....I will live in [Stated Place] forever with [Ms A], 'I can play with my nephews every day and go on adventures with my sister'.

[Again, I respectfully do not see a proper understanding on Miss B's part of what adoption means for her. Regardless of whether or not she is adopted she will be free to meet Ms C; indeed, once she turns 18 years of age (in just a few weeks' time) she will be freer than ever before to do this. Regardless of whether or not she is adopted she will be free to go shopping and chat with Ms C; indeed, once she turns 18 years of age (in just a few weeks' time) she will be freer than ever before to do this. If she wishes to change her name she will be able to do that by deed poll. As to living forever in a particular place with Ms A, again there is no 'forever' in our earthly existence. Also, Miss B will presumably at some point wish to form some level of adult life of her own. As to playing with her nephews every day and going on adventures with her sister, there is no suggestion at this time that even if Miss B were not adopted that she would move from her present home so these desires will continue to be met (albeit that I am not entirely clear what is meant to by going on adventures; perhaps what is meant is 'holidays'; if so, any promise of same seems unlikely to be withdrawn). Miss B's description of adoption to the social worker compounds my sense after meeting with Miss B that I am not *entirely* persuaded that she fully understands the significance of what adoption means in terms of her legal relationship with her natural mother.]

I say that when asked about negatives to adoption Miss B responded 'I cannot think of anything not good about it.'

[I note and have had regard to this response and indeed to the entirety of the evidence before me.]

VI

Key Affidavit Evidence of the Adoption Authority

14. The Adoption Authority considers that it would be proper for an adoption order to me made in respect of Miss B if an s.54(2) order is made. It did so, noting that “*the evidence of the CFA was that the Child’s understanding of the adoption is somewhat limited...but she is aware of the proposed adoption and understands that this will involve her residing with the Applicant forever – which is something that she desires*”. Miss B may desire this, but I must regretfully observe that it is a desire that cannot be met; there is no ‘forever’ in our earthly existence.

15. I admit to some surprise at the Adoption Authority acknowledging a child’s understanding of adoption to be “*somewhat limited*” and then moving on in the very next part of its sentence to demonstrate that the child’s understanding is not just “*somewhat limited*” but would involve the attainment of a practical impossibility – there is no ‘forever’ in our earthly existence, so an understanding that adoption “*will involve...[Miss B] residing with Ms A forever*” is just a completely wrong understanding on the part of Miss B; the whole notion of ‘forever’ in this context is, with all respect, mis-grounded.

16. In passing, I note that the use of the “*forever*” phraseology is not just a slip by the Adoption Authority. The Authority is echoing Miss B’s own remarks to the Child and Family Agency (as considered above) when she was asked to describe adoption and indicated that it means that she will live at [Stated Place] with Ms A “*forever*”. Even if Miss B meant ‘for the foreseeable future’ when she stated “*forever*” (and there is nothing to indicate that she did), there is no suggestion at this time that if the adoption does not proceed there will be any change whatsoever in Miss B’s day-to-day existence unless she wishes for same after she turns 18 years of age. And again this talk of “*forever*” compounds the sense I have had since meeting with Miss B whereby I am not *entirely* persuaded that she fully understands what adoption means either in terms of her personal relationship with her foster-mother or in terms of her legal relationship with her natural mother.

VII

Legal Analysis

17. Section 19(1) of the Adoption Act 2010 (as amended) requires me to have regard to the best interests of the child as the “*paramount consideration*” (albeit not the sole consideration) in the resolution of any matter, application or proceedings under the Act of 2010. I note and of course accept the observations on the meaning of the word “*paramount*” in the judgment of Walsh J in *G v. An Bord Uchtála* [1980] I.R.32 and, *e.g.*, in such cases as *CFA and Ors v. EM and Anor.* [2018] IEHC 172. In determining what is in the best interests of Miss B, over the preceding pages I have (i) had regard to all the factors/circumstances that seem relevant to Miss B, including those expressly iterated in s.19(2) of the Act of 2010 and, (ii) pursuant to s.19(3) of the Act of 2010, ascertained and had regard to the views of Miss B.

18. I do not see what adoption at this time (about 10 weeks before Miss B turns 18 years of age) will achieve. As is clear from Ms A’s affidavit evidence, Miss B is genuinely loved by her wider foster-family and that love patently does not rest on Miss B’s standing as a foster-child rather than an as an adopted child. (Love is not determined by legal links). If Miss B wants the surname of her foster-family she can change her name by deed-poll when she turns 18 years of age. And if Ms A wants to bequeath property to Miss B, her adult children are now raised and ‘gone from the nest’ and no longer dependants so she can bequeath her property however she wants. So all that adoption would undoubtedly achieve at this time is to cut the legal link between a loving natural mother and a much-loved natural child with whom the natural mother has fought and sought to retain the closest contact over the years (with a disappointing want of assistance from the Child and Family Agency). I do not see that to cut that ‘natural mother-natural child’ legal link at the very moment when a child is about to enter adulthood, when I can see no particular advantage to the adoption, and when that adoption seems unlikely to have the slightest effect on Miss B’s day-to-day existence is somehow in Miss B’s best interests – and I note that those interests, while paramount, are not the sole interests at play. I am allowed also, without in any way compromising the paramountcy of Miss B’s best interests, to have regard to the interests of Ms C in wishing to retain both natural *and* legal bonds with her child (a wish which in this case seems to me to be compatible with Miss B’s best interests).

19. Also, for the reasons outlined above and following on my meeting with Miss B I am not *entirely* persuaded that she fully understands the significance of what adoption means in terms of her legal relationship with her natural mother.

20. Turning next to s.54 of the Act of 2010, the Child and Family Agency is clearly satisfied that every effort has been made to support the parents of the child to whom the declaration under s.53(1) relates. I do not myself see how the Child and Family Agency can properly be so satisfied when one has regard to the patent deficiencies in its dealings with Ms C (as addressed by me in the consideration of her affidavit evidence). However, this is not a judicial review application and I merely note that the Child and Family Agency is (strangely) so satisfied.

21. Turning next to s.54(2A), I must be satisfied that:

(a) for a continuous period of not less than 36 months immediately preceding the time of the making of the application, the parents of Miss B have failed in their duty towards Miss B to such extent that the safety or welfare of the child is likely to be prejudicially affected.

Miss B's natural father has failed completely. A question *perhaps* arises as to whether there comes a point where the Child and Family Agency does such an appalling job in terms of managing reunification, in a case which involves parental failure, that a parent (here that parent would be Ms C) can no longer properly be said to be failing. I emphasise that I do *not* see, however, that that question, if it presents at all, arises to be answered here. I proceed on the basis that the above-mentioned failure presents but I do not in any event see, for the various reasons stated herein, that the proposed adoption would be in Miss B's best interests.

(b) there is no reasonable prospect that the parents will be able to care for Ms C in a manner that will not prejudicially affect her safety or welfare.

There is no such reasonable prospect in the case of Miss B's natural father. However, I cannot conclude that there is no reasonable prospect that Ms C (a demonstrably competent mother) would not be able to care for Ms C in a manner that would not prejudicially affect Miss B's safety or welfare. There is of course no question of any change to who will have the day-to-day care of Miss B in the roughly 10 weeks before she turns 18 years of age. Even so, I do not see

that I can properly conclude that there is no such reasonable prospect in the case of Ms C were Miss B to be entrusted to her.

(c) the failure (referred to at (a)) constitutes an abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise with respect to Miss B.

I note and of course accept the definition/consideration of the concept of abandonment in, e.g., *Southern Health Board v. An Bord Uchtála* [2000] 1 I.R.165 (including that there is no need for an intention to abandon) and *Southern Northern Area Health Board v. An Bord Uchtála* [2002] 4 I.R. 252. There has been complete abandonment by Miss B's natural father. A question *perhaps* arises as to whether there comes a point where the Child and Family Agency does such an appalling job in terms of managing reunification, in a case which at some point involves abandonment, that a parent in abandonment (here that parent would be Ms C) can no longer properly be said to continue to be in abandonment. I emphasise that I do *not* see, however, that that question, if it presents at all, arises to be answered here. I proceed on the basis that the above-mentioned abandonment presents but I do not in any event see, for the various reasons stated herein, that the proposed adoption would be in Miss B's best interests.

(d) by reason of the failure, the State as guardian of the common good, should supply the place of the parents,

There is no doubt that the place of Miss B's absent natural father could be supplied by the State. However, I am not persuaded that this standard is met in the case of Ms C. She is a demonstrably competent mother (as evidenced by her thoroughly competent rearing of Mr F and Ms G). Were, for example, the existing foster-arrangements to collapse in the morning (and they will not but were they to do so) I have no doubt on the evidence before me but that Ms C would be perfectly able to function as a competent and loving mother to Miss B and that it would be over-reach by the State to supply her place.

(e) Miss B, at the time of the making of the application is in the custody of and has a home with Ms A and for a continuous period of not less than 18 months immediately preceding that time has been in the custody of and has had a home with Ms A.

Both of these requirements are satisfied.

(f) that the adoption of Miss B by Ms A is a proportionate means by which to supply the place of the parents.

Again, I do not see what adoption at this time (about 10 weeks before Miss B turns 18 years of age) will achieve. As is clear from Ms A's affidavit evidence, Miss B is genuinely loved by her wider foster-family and that love patently does not rest on Miss B's standing as a foster-child rather than as an adopted child. (Love is not determined by legal links). If Miss B wants the surname of her foster-family she can change her name by deed-poll when she turns 18 years of age. And if Ms A wants to bequeath property to Miss B, her adult children are now raised and 'gone from the nest' and no longer dependants so she can bequeath her property however she wants. So all that adoption would undoubtedly achieve at this time is to cut the legal link between a loving natural mother and a much-loved natural child with whom the natural mother has fought and sought to retain the closest contact over the years (with a disappointing want of assistance from the Child and Family Agency). I do not see that to cut that 'natural mother-natural child' legal link at the very moment when a child is about to enter adulthood, when I can see no particular advantage to the adoption, and when that adoption seems unlikely to have the slightest effect on Miss B's day-to-day existence is somehow in Miss B's best interests. All the foregoing being so I do not see that I can safely conclude that the adoption by Ms A is a proportionate means by which to supply the place of both parents (or even of Ms A alone).

22. Section 54(3) of the Act of 2010, as amended, requires me, when considering an application for an order under s.53(2) to take into account Miss B's constitutional rights and any other matter that I consider relevant. In doing so I must, insofar as practicable, in a case where the child concerned is capable of forming her own views, give due weight to the views of that child, having regard to the age and maturity of the child. Additionally, in the resolution of the within application the best interests of Miss B must be paramount. I am mindful that in *G v. An Bord Uchtála* [1980] I.R. 32 the Supreme Court held that a child has a natural right to have her welfare safeguarded. However, there is not the slightest suggestion that in the circa. 10 weeks until Miss B turns 18 years of age or at any time thereafter that Ms A (should Ms B elect at all times in the future to stay with her after she turns 18 years of age) has the slightest intention of not looking after Miss B. And were Miss B to decide sometime after she reaches the age of 18 years that she wishes instead to live with her natural mother (and she has manifested no such intention but were she ever to do so) it is obvious that Ms C is willing and

able to provide her with a home and look after her to the extent that Miss B requires looking after as an adult. So regardless of whether or not she is adopted, Miss B's right as a child to have her welfare safeguarded is secure for the remaining period of her childhood (and, indeed, her welfare will continue to be protected thereafter).

23. Added to that, I do not see what adoption at this time (roughly 10 weeks before Miss B turns 18 years of age) will achieve. As is clear from Ms A's affidavit evidence, Miss B is genuinely loved by her wider foster-family and that love patently does not rest on Miss B's standing as a foster-child rather than as an adopted child. If Miss B wants the surname of her foster-family she can change her name by deed-poll when she turns 18 years of age. And if Ms A wants to bequeath property to Miss B, her adult children are now raised and 'gone from the nest' and no longer dependants so she can bequeath her property however she wants. So all that adoption would undoubtedly achieve at this time is to cut the legal link between a loving natural mother and a much-loved natural child with whom the natural mother has fought and sought to retain the closest contact over the years (with a disappointing want of assistance from the Child and Family Agency). I do not see that to cut that 'natural mother-natural child' legal link at the very moment when a child is about to enter adulthood, when I can see no particular advantage to the adoption, and when that adoption seems unlikely to have the slightest effect on Miss B's day-to-day existence is somehow in Miss B's best interests – and I note that those interests, while paramount, are not the sole interests at play. I am allowed also, without in any way compromising the paramountcy of Miss B's best interests, to have regard to the interests of Ms C in wishing to retain both natural *and* legal bonds with her child (a wish which in this case seems to me to be compatible with Miss B's best interests).

24. Before closing, I consider a miscellany of other matters that might usefully be touched upon at this juncture.

25. First, I recall the observation of MacGrath J. in *CFA v. AAI and PW* and AW [2018] IEHC 515, para.96 that:

“Article 42A of the Constitution makes it clear that it is only in exceptional cases, where parents fail in their duty towards their children to such extent that the safety or welfare of a child is likely to be prejudicially affected, can the State intervene to supply the place of

those parents. Such intervention must be by proportionate means. It is clear, therefore, that it is only in exceptional cases that an application such as this, to dispense with the consent of the birth parents of the child to the adoption of that child, may succeed.”

26. The rigour that arises to be brought to bear in this regard is borne out in such cases as *Strand Lobben* as treated with previously above. Regrettably, the only exceptionality that I see to present in this case is, with all respect, the exceptionally poor manner in which the Child and Family Agency at points discharged its obligations in this case. But of the very different type of exceptionality to which MacGrath J. refers in the above-quoted text, I do not, for the various reasons stated previously above, see such exceptionality to present here. Nor do I see that, to echo the European Court of Human Rights in *Strand Lobben*, everything was done by the Child and Family Agency to preserve the personal relations between Ms C and Miss B, still less to rebuild the natural familial arrangement between them. On the contrary, as I have already mentioned, the Child and Family Agency failed to ensure that there was an allocated social worker at critical times, failed to hold Child in Care reviews at a time when Ms C could attend, failed adequately to (financially) support access or to bring Miss B to Dublin for access, failed to follow up on critical correspondence, failed to provide increased access and access plans, failed initially to allow access plans (which later proved successful) and failed to support the relationship between natural mother and natural child in light of Ms C’s remarkable and successful efforts to turn her life around.

27. Second, I note the granting of a late-childhood adoption by my colleague, Jordan J., in *Child and Family Agency v. ML* [2020] IEHC 419, another case where the Child and Family Agency had not had its finest hour. There, Jordan J. took the failures of the Child and Family Agency’s handling of matters into account but concluded that the best interests of the child favoured adoption. Here, the situation is very different for all the reasons described above and including the fact that (i) in *ML* the child the subject of the proceedings had refused access for a long number of years; here Miss B knows her mother (indeed refers to her sometimes as ‘mummy Sandra’),* has in-person access with her, and has frequent video access with her; (ii) Ms C has a greater capacity to care for Miss B; (iii) I do not see (for the reasons stated previously above) how the proposed adoption could be viewed as being in Miss B’s best

* Sandra is not Ms C’s real first name.

interests; (iv) I do not see (for the reasons stated previously above) how the adoption of Miss B by Ms A could properly be viewed as a proportionate means by which to supply the place of Miss B's natural parents.

28. Third, I was referred by counsel for Ms A to the decisions of the English courts in *Re B* [2013] UKSC 33 and *Re BS* [2013] EWCA Civ. 1146. Those of course are persuasive authorities only and issued in the context of the UK's adoption regime. The UK has its adoption system; we have ours; both systems seek to conform in their own way to international norms and standards but (quite legitimately) they do so differently. There is now an abundance of detailed, informed and binding Irish case-law on the interaction of the Constitution, the Convention, and the Adoption Acts and I am not myself convinced that it is necessary to look beyond that case-law in this case. Also, having taken the time to look at the persuasive authorities in question – and noting again that they are crafted within the context of the English legislative regime – I am not persuaded that they throw any light on the facts or law at play in this case. Specifically, it is clear from *Re BS* (para.27) that the need, under English law, to have regard to all options before coming to a decision as to adoption flows from the specific wording of s.1(3)(g) of the Children Act 1989 and, more particularly, s.1(6) of the Adoption and Children Act 2002, which latter provision requires that “*In coming to a decision relating to the adoption of a child, a court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989)...*”. I must admit, however, that I dislike getting even into this level of consideration of English statute-law as (i) there is simply no reason presenting in this case to look beyond the ambit of the Constitution and Irish statute and case-law, and (ii) to look further afield even in this limited respect unnecessarily complicates the already challenging. There is, of course, no problem looking at foreign case-law when it aids in one's understanding of Irish law as it does or should apply. However, in this case, with every respect, the above-mentioned English cases serve more to obfuscate than to illuminate and are of no assistance in deciding the issues that fall to be decided.

29. I note that in referring me to the above-mentioned English case-law, counsel for Ms C was relying on certain observations as to the potential usefulness of same in *CFA v. AAI and PW and AW* [2018] IEHC 515, para.121. Maybe there is a case in which this foreign case-law might be useful (maybe), but this is not such a case. My own respectful sense is that I am essentially being invited to import into the Irish arena legal concepts and precepts formulated and iterated

in the context of a different and foreign regime. This I must respectfully decline to do: I cannot and will not make new law and I fear that is the path down which consideration and application of the above-mentioned English case-law would inexorably lead me in this case.

VIII

Decision

30. Ultimately, notwithstanding the Child and Family Agency's manifold and serious failings in this case, it is the best interests of Miss B, as matters stand at this juncture in time, that are the paramount consideration in the resolution of this application. I have already repeatedly indicated above why I do not consider that for me to accede to this application at this time would be in Miss B's best interests. I must therefore for that paramount reason, and for all of the various other reasons outlined above, decline to accede to this application.

**To Ms A, Miss B, Ms C:
WHAT DOES THIS JUDGMENT MEAN FOR YOU?**

Dear Ms A, Miss B, Ms C

I have written a long judgment about the adoption application that was heard the week before last. The judgment contains a lot of legal language which can be hard (perhaps even boring) to read. I know that family law judgments are about important matters in people's lives. So I now typically add a 'plain English' note to my judgments saying in simpler terms what I have decided.

This note is a part of my judgment. However, it does not replace the text in the rest of my judgment. It is written to help you understand what I have decided. Your lawyers will explain the rest of my judgment in more detail.

I have referred to everyone in my judgment by initials (for example, 'Ms A', 'Miss B', 'Ms C'). That way no-one who reads this judgment should be able to tell who you are. It can be a bit confusing at first but I think it is for the best.

The Child and Family Agency wants me to allow Miss B to be adopted without Ms C consenting to this. Having considered matters carefully I do not believe that this is in the best interests of Miss B. So I have said 'no' to the Child and Family Agency.

I was very pleased to meet with Miss B. I know that my decision may cause her (and Ms A) some upset and I am genuinely sorry that this is so.

I have made clear in my judgment and I do so again here that Ms A (the foster-mother) has done a great job in bringing Miss B to this point in her young life. I respectfully salute Ms A for all she has done.

I wish all of you, but most especially Miss B, the very best in the future.

Yours sincerely

Max Barrett (Judge)

Date: 27th June, 2022.