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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	04/02/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

A HEALTH AND SOCIAL CARE TRUST

-v-

A MOTHER

(Re KL (a child): Care Order; Freeing for Adoption)

Martina Connolly QC and Paula McKernan, of counsel (instructed by DLS) for the Trust
Moira Smyth QC and Colin Gervin, of counsel (instructed by Donaldson McConnell & Co.) for the Mother
Adele O'Grady QC and Tracy Overing, of counsel (instructed by Reid & Co.) for the Maternal Grandmother
Suzanne Simpson QC and Emma Sloane, of counsel (instructed by Deirdre Lavery) for the Guardian ad Litem

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SIMPSON J

[1] I have anonymised this judgment, including the identity of the Health and Social Care Trust involved. Nothing must be published which would identify the family or the children. I express my thanks to all counsel for the way in which, by discussion and agreement, they reached a sensible approach to the presentation of this case. The parties agreed that no oral evidence was required and the case proceeded by way of submissions.

[2] There are two applications before the court brought by the Trust: (i) an application pursuant to Article 50 of the Children (Northern Ireland) Order 1995 for a care order; if that order is made (ii) an application that the child be freed for adoption. There are other orders, the precise status of which is unclear — an

application by the Mother for an independent parenting assessment to be carried out; an application by the Maternal Grandmother to be joined into the proceedings; an application by the Maternal Grandmother for contact. The parties are agreed that these three applications be dismissed, and, insofar as such applications may still be live, I dismiss all three applications.

[3] The case relates to a female child, to whom I will give the initials KL. The initials are not hers. She has been in the Trust's care since her birth in July 2020, when an Interim Care Order was made. The Guardian ad Litem was appointed on 21 July 2020. The Trust's care plan for KL is permanency by way of adoption.

[4] It is important in this case to record from the outset, and I am happy so to do, that in her engagement with the Trust the Mother at all times has been polite and respectful. The evidence shows that the Mother is a very vulnerable woman, but all parties acknowledge that she has striven to do her best for KL, that she has great love and affection for her daughter and that she, within the limits of her abilities, wants to make it clear that she is fighting for KL, that she is not giving up on her daughter nor is she walking away. It is acknowledged that the difficulties faced by the Mother are not of her own making. She bravely attended the hearing of this case in circumstances which were clearly difficult and emotionally traumatic for her, and I commend her courage in doing so.

[5] The Trust lodged a very detailed statement of facts in support of the applications, which I have read and taken into consideration. In addition, I have read all the papers in the trial bundle and the report of the Guardian ad Litem, as well as material, including position papers, from the Mother and the Maternal Grandmother. I do not intend to rehearse all of the detailed facts which lead to the decisions I have made, but I have taken into account all of the material placed before the court.

[6] In relation to the application for a care order the following threshold criteria were presented to the court:

> "The Trust submits that on the 21 July 2020, being the date of intervention when an Emergency Protection Order was granted, that the child was suffering or at risk of suffering significant harm. In establishing this the Trust relies on the evidence as set out and contained within the documents and summarised in the following facts:
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> The factors as set out at (a) to (i) below evidence the respondent mother's impaired parenting capacity and ability to meet [KL's] needs:
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> (a) The respondent mother has a diagnosis of a Moderate Learning Disability which experts

conclude severely impacts upon her parenting capacity.

(b) The respondent mother has limited insight into the concerns of the Trust.

(c) The respondent mother has a significant history of neglect and trauma in her own childhood which led to social work involvement and registration. She has had a very poor experience of being parented herself.

(d) The respondent mother did not have a suitable support network to allow her to care safely for [KL].

(e) The respondent mother's first child was born in January 2018 and resides with her paternal grandmother under a Residence Order, after significant concerns arose about home conditions and general care offered to the child in the mother's family household. The hygiene concerns continued up to and after [KL's] birth, despite supports being implemented, to include industrial cleaners. Animal hair, animal waste and rubbish has been observed throughout the home.

(f) Five Adult Safeguarding Referrals were made between 2017 and 2020 in respect of the respondent mother, referencing poor and unsanitary home conditions, including concerns of vermin in the property. Concerns were also raised about sexual and financial exploitation of the respondent mother. Concerns have been raised about a number of unsuitable males visiting and staying at the family home and the risk to the respondent mother as a result.

(g) A Pre Birth Case Conference on the 16 June 2020 decided that the subject child would be added to the Child Protection Register under the categories of Suspected Neglect, Suspected Emotional Abuse, Potential Sexual Abuse and Potential Physical Abuse upon birth.

(h) [KL] was born in the family home three weeks prematurely. After being transported to the Ulster

> Hospital, hospital staff raised concerns about the respondent mother's poor personal hygiene."

[7] The parties agreed these criteria and having read the evidence in this case contained in the trial bundle and the other materials I am satisfied that these criteria are well founded and based on the evidence.

[8] Where material Article 50 of the 1995 Order provides:

> "(2) A court may only make a care or a supervision order if it is satisfied—
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> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
>
> (b) that the harm, or likelihood of harm, is attributable to—
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> (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him …"

[9] In light of the threshold criteria, and the other evidence in the papers, I am satisfied that the requirements in Article 50(2) have been met.

[10] The court must then decide whether it is proper to make a care order in relation to the child. The court needs to take into account the care plan which is proposed — in this case permanency by way of adoption — and the matters contained in the welfare checklist in Article 3(3) of the 1995 Order. Thus, whilst the parties may be agreed as to the best way forward, there is still an overriding duty on the court to scrutinise the matters put forward for its consideration. The court must also take into account article 8 of the European Convention on Human Rights and Fundamental Freedoms to ensure that it has accorded the right to respect for family and private life and that the order is proportionate to the legitimate aim of ensuring the paramount interests of the child.

[11] The court also has to bear in mind Article 3(5) of the Order which provides that when "a court is considering whether or not to make one or more orders under this Order with respect to a child" [which includes an order under Article 50], "it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all." In *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 Lord Neuberger said (para 76):

> "It appears to me that, given that the judge concluded that the … threshold was crossed, he should only have

> made a care order if he had been satisfied that it was necessary to do so in order to protect the interests of the child. By "necessary", I mean, to use Baroness Hale JSC's phrase in para 198, "where nothing else will do." I consider that this conclusion is clear under the 1989 Act, interpreted in the absence of the Convention, but it is put beyond doubt by article 8."

[12] In the circumstances of this case I am satisfied that it is necessary to make a care order in relation to KL.

[13] I then turn to the issue of whether KL should be freed for adoption.

[14] Material provisions of the Adoption (Northern Ireland) Order 1987 are, first, Article 9 which provides as follows:

> "9. In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall—
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> (a) have regard to all the circumstances, full consideration being given to
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> (i) the need to be satisfied that adoption, or adoption by a particular person or persons, will be in the best interests of the child; and
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> (ii) the need to safeguard and promote the welfare of the child throughout his childhood; and
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> (iii) the importance of providing the child with a stable and harmonious home; and
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> (b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding."

[15] Article 16 of the 1987 Order provides (where material) that an adoption order cannot be made unless the child is free for adoption and that each parent or guardian of the child either agrees or his/her agreement is dispensed with on a ground specified in paragraph (2). In this case the particular ground specified in Article 16(2) which is relied upon by the Trust is 16(2)(b): that the Mother is withholding her agreement unreasonably.

[16] Article 18, where material, provides:

> "18.—(1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of a child that his agreement to the making of an adoption order should be dispensed with on a ground specified in Article 16(2) the court shall make an order declaring the child free for adoption.
> …."

[17] McBride J, in *WHSCT v N and M* [2016] NI Fam 11 said:

> "[66] In an application for freeing for adoption, in the absence of parental agreement, the court is required to address three questions, namely:-
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> (a) Is adoption in the best interests of the child? — (Article 9 Welfare Test).
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> (b) If so, given that adoption represents an interference with article 8 rights, can this interference be justified on the basis it is —
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> (i) in accordance with the law;
>
> (ii) in pursuit of the legitimate aim; and
>
> (iii) is necessary/proportionate?
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> (c) If so, has it been established by the Trust that the parents are unreasonably withholding their agreement to adoption?"

[18] As Gillen J said in *Re L and O (Care Order)* [2005] NI Fam 18:

> "It is difficult to imagine any piece of legislation potentially more invasive than that which enables a court to breach irrevocably the bond between parent and child and to take steps irretrievably inconsistent with the aim of reuniting natural parent and child."

[19] The extreme consequences of adoption, and the proper approach of a court, has been dealt with both in domestic and European authorities. In its decision in the case of *In re B* [2013] UKSC 33, the Supreme Court considered this issue. Lord Wilson said:

> "33 In a number of its judgments the European Court of Human Rights, ("the ECtHR"), has spelt out the stark effects of the proportionality requirement in its

application to a determination that a child should be adopted. Only a year ago, in *YC v United Kingdom* (2012) 55 EHRR 33, it said:

> '134 The court reiterates that in cases concerning the placing of a child for adoption, which entails the permanent severance of family ties, the best interests of the child are paramount. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and secondly, it is in the child's best interests to ensure his development in a safe and secure environment. It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained.'

Although in that paragraph it did not in terms refer to proportionality, the court had prefaced it with a reference to the need to examine whether the reasons adduced to justify the measures were relevant and sufficient, in other words whether they were proportionate to them.

34 In my view it is important not to take any one particular sentence out of its context in the whole of para 134 of the YC case: for each of its propositions is interwoven with the others. But the paragraph well demonstrates the high degree of justification which article 8 demands of a determination that a child should be adopted or placed in care with a view to adoption. Yet, while in every such case the trial judge should … consider the proportionality of adoption to the identified risks, he is likely to find that domestic law runs broadly in parallel

> with the demands of article 8. Thus, domestic law makes clear that:
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> > '(a) it is not enough that it would be better for the child to be adopted than to live with his natural family (In *Re S-B (Children) (Care Proceedings: Standard of Proof)* [2009] UKSC 17, [2010] 1 AC 678, para 7); and
> >
> > (b) a parent's consent to the making of an adoption order can be dispensed with only if the child's welfare so requires (section 52(1)(b) of the Adoption and Children Act 2002); there is therefore no point in making a care order with a view to adoption unless there are good grounds for considering that this statutory test will be satisfied.'
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> The same thread therefore runs through both domestic law and Convention law, namely that the interests of the child must render it necessary to make an adoption order. The word "requires" in section 52(1)(b) "was plainly chosen as best conveying … the essence of the Strasbourg jurisprudence" (*Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535, [2008] 2 FLR 625, para 125)."

[20] Guidance is also to be gleaned from two recent ECtHR cases involving Norway. In *Strand Lobben v Norway* (2020) 70 EHRR 14 the court said (para 209):

> "As regards replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicants' legal ties with the child are definitively severed, it is to be reiterated that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests." It is in the very nature of adoption that no real prospects for rehabilitation or family reunification exist and that it is instead in the child's best interests that he or she be placed permanently in a new family."

[21] And in *ML v Norway* (Application No. 64639/16), judgment made final on 22 March 2021:

> "80. Furthermore, the court reiterates that in instances where the respective interests of a child and those of the parents come into conflict, article 8 requires that the domestic authorities should strike a fair balance between those interests and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents. Moreover, family ties may only be severed in "very exceptional circumstances" (see *Strand Lobben and Others*, cited above, §§ 206 and 207).
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> 89. The court finds reasons to stress, however, that an adoption will as a rule entail the severance of family ties to a degree that according to the court's case-law is only allowed in very exceptional circumstances (see paragraph 80 above). That is so since it is in the very nature of adoption that no real prospects of rehabilitation or family reunification exist and that it is instead in the child's best interests that he or she be placed permanently in a new family (see, for example, *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011)."

[22] Accordingly, as it seems to me, there is no difference in the approach between the domestic and the Strasbourg law.

[23] The court should adopt the least interventionist approach. This involves the court considering those options available which fall short of adoption.

[24] It is clear from the papers and accepted by the Mother that in the particular circumstances of this case rehabilitation with the Mother is not a viable option. She has been the subject of various expert assessments — all of which I have read — including, for the purposes of these proceedings, an assessment by Dr Jennifer Galbraith, Consultant Lead Clinical Psychologist. Dr Galbraith states that the Mother's

> "… intellectual limitations and poor insight are the main features. Sadly her own experience of being parented negatively impacts on her understanding of risk and the family's propensity to minimise Trust concerns only adds to the severity of risk."

KL has never lived in the care of the Mother. The Mother has a diagnosis of moderate learning disability and is currently supported by the Adult Learning Disability Team. She has no independent living skills. She continues to live in the household of the Maternal Grandmother, with all the problems there, some of which are alluded to in the threshold criteria and in paragraph [26] below. I am satisfied from all the evidence before me that KL would be at immediate risk of significant harm in the light of the Mother's inability to provide safe parenting.

[25] The father of KL has never been identified.

[26] No appropriate kinship placement has been identified. The Trust has considered whether placement with the Maternal Grandmother would be appropriate. Both the Mother and her sister had social services involvement between 2000 and 2004, when they were, themselves, children. Further, between March 2011 and February 2013 their names were placed on the Child Protection Register under the categories of confirmed neglect, confirmed emotional abuse, potential physical abuse and potential sexual abuse. Notwithstanding the provision of numerous services to the family, little or no improvement was made. There are very significant concerns about the Maternal Grandmother's household. Social services reports since 2001 record the household as being chaotic, untidy, unhygienic and unacceptable. Between 2017 and 2021 a number of Adult Safeguarding Referrals have been made in relation to the Mother and her sister, all referencing poor and unsanitary home conditions, including concerns about vermin and concerns about sexual and financial exploitation. Such concerns, which continue to the present day, make any potential kinship placement with the Maternal Grandmother wholly unsuitable to KL's interests, and I am satisfied from all the evidence that such a placement would result in KL being at immediate risk of significant harm. I note also that the Guardian ad Litem in her report of 19 January 2022 considers that such a placement is unsuitable.

[27] No other kinship placement has been identified.

[28] The trust has also considered long-term foster care. This would require KL to remain within the care system, with statutory involvement, until at least age 18 and the arrangements would be open to challenge at any time. She would remain a "looked after" child, with all the stigma of continuing social work involvement attached to that status and the bureaucracy which can attend regular decisions relating to her. She is likely to have to move a number of times during her young life, with resulting insecurity. The Trust is of the view, and I consider rightly so, that it is not in the long-term interests of KL to remain in foster care.

[29] KL has been with her present carers, and prospective adopters, since 22 July 2020. It is noteworthy that the Mother considers that if she cannot have KL to come and live with her, she is happy for KL to continue to live with them. The carers have provided, and will continue to provide, KL with a loving, stable and permanent home, where all her needs will be appropriately met; which is what KL needs. The Guardian ad Litem, who supports the Trust's application that KL be freed for adoption, records that KL is thriving with her current carers and that all her needs have been met at every level since she has lived with them. KL has

significant medical needs and these are being met by her present carers in a wholly appropriate way.

[30] Adoption would allow KL to have a sense of belonging and would enable her to become fully integrated into the family socially and emotionally, as well as legally. In short, she would have a "forever family."

[31] In all the circumstances of this case, considering the interests of KL and considering, as I have, the other options, I am satisfied that adoption is in the best interests of KL and that the order sought by the Trust in respect of her is proportionate and necessary.

[32] The approach to be taken in relation to the Mother's withholding of agreement was considered by Morgan LCJ in I*n the Matter of TM and RM (Freeing)* [2010] NI Fam 23. At paragraph [6], where material, he said:

> "The Trust asked me to find that the mother is unreasonably withholding her agreement to the adoption of children. The leading authorities on the test that the court should apply are *Re W (An Infant)* [1971] 2 AER 49, *Re C (a minor) (Adoption: Parental Agreement, Contact)* [1993] 2 FLR 260 and *Down and Lisburn Trust v H and R* [2006] UKHL 36 which expressly approved the test proposed by Lords Steyn and Hoffmann in *Re C*:
>
> > '…making the freeing order, the judge had to decide that the mother was 'withholding her agreement unreasonably.' This question had to be answered according to an objective standard. … The law conjures the imaginary parent into existence to give expression to what it considers that justice requires as between the welfare of the child as perceived by the judge on the one hand and the legitimate views and interests of the natural parents on the other. The characteristics of the notional reasonable parent have been expounded on many occasions: … The views of such a parent will not necessarily coincide with the judge's views as to what the child's welfare requires. As Lord Hailsham of St Marylebone LC said in In *Re W (An Infant)* [1971] AC 682, 700:
> >
> > > Two reasonable parents can perfectly reasonably come to opposite conclusions

> on the same set of facts without forfeiting
> their title to be regarded as reasonable.'
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> Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some embarrassment at having to consult the views of so improbable a legal fiction, we venture to observe that precisely the same question may be raised in a demythologised form by the judge asking himself whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invented to provide the answer to this question."

[33] As I have previously said, it is in a way unfortunate that the legislation uses the word 'unreasonably', conjuring up as it does in the public mind the concept of a selfish parent or a parent who is putting their own wishes ahead of the interests of the child or one who refuses to listen to reason. The Mother loves KL and genuinely wants the best for her. What she feels emotionally unable to do is to consent to the relinquishment of her parental rights forever.

[34] This is an entirely understandable position for any loving parent to take. Nothing in this judgment should be taken by the Mother, or anyone who reads it, as a criticism of her stance in withholding her agreement. It should be understood that there is a narrow, legalistic meaning to the concept of unreasonably withholding agreement.

[35] In light of the authorities cited above, I find that the Mother is unreasonably withholding her agreement to the adoption of KL. I will dispense with the consent of the Mother to the adoption KL on that basis.

[36] The present contact arrangements will be reduced gradually to the goal of 3 times per year until such time as an adoption order is made. The Mother has an aspiration that the Maternal Grandmother and the Mother's sister will be present for one of these contacts. Post-adoption the aim is for direct contact 3 times per year, and again the Mother would like one of these contacts to be attended by her mother and sister. She accepts the gradual reduction of contact. The Trust will take a photograph of the Mother with KL during each of the direct contacts and will provide the Mother with a hard copy, along with an annual update on KL. The

photographs are provided on the strict condition that none of them shall be used on any social media.

[37] The Guardian ad Litem supports the reduction of contact and, albeit reluctantly, agrees the suggested contact with the Maternal Grandmother. As to the contact with the Mother's sister, she advocates careful management. With the caveats identified by the Guardian, I consider that the suggested contact arrangements are appropriate.

[38] The Mother has strongly expressed her wish that KL should retain her forenames, which I will not identify, even though, as she accepts, KL's surname will be changed. None of the parties seemed to consider that this would prove to be a problem, but it is not a matter for me, save to say that it is to be hoped that the Mother's wish might be met.

[39] Accordingly,

(i) I make the care order sought by the Trust;

(ii) I make an order freeing KL for adoption, dispensing with the Mother's consent.

[40] I make no order as to costs save that the Mother's, the Maternal Grandmother's, and the Guardian ad Litem's costs be taxed under the appropriate legal aid Schedule. Finally, I discharge the Guardian ad Litem.