**OUTER HOUSE, COURT OF SESSION**

**[2019] CSOH 37**

**AD10/18**

OPINION OF LORD BRAILSFORD

In the petition

CDF and DCF

Petitioners

for

Authority to adopt the child MRFW

**Petitioners: Inglis, J K Cameron**
**Respondents: Party, both unrepresented**

23 April 2019

[1] A proof in this petition commenced on 19 March and concluded on 28 March 2019. The petitioners were the prospective adopters of the child MRFW who was born on 26 February 2014. The respondents were KL and JJW the birth parents of the said child.

**Procedural history**

[2] The petition was presented in May 2018 and in accordance with procedure stipulated by the Adoption and Children (Scotland) Act 2007 ("the Act of 2007") and Rule of Court 67.12, the court by interlocutor dated 17 May 2018 appointed a member of the bar to be *curator ad litem* to the child MRFW for the purpose of investigating and preparing reports

to the court. In terms of the same interlocutor intimation was ordered on the birth parents. Intimation to the child was dispensed with on account of her age.

[3] The case called by order on 21 June 2018 at which time both birth parents having received intimation of the petition were represented. It was intimated to the court that both parents resisted the prayer of the petition and wished to participate as respondents to the petition. They were ordained to lodge answers by 3 July 2018. In this opinion the parent KL will hereafter be referred to as the first respondent and the parent JJW as the second respondent. By interlocutor dated 5 July 2018 the parties to the petition were allowed a proof to proceed on 6 November 2018 and seven ensuing days. The same interlocutor ordained the parties to lodge affidavits in support of their respective positions by 11 September 2018 and to lodge a Joint Minute of Admissions by 9 October 2018. By interlocutor dated 11 October 2018 the court discharged the first day of the proof previously allowed and permitted proof to proceed on Wednesday 7 November and the ensuing six days. On Monday 5 November 2018, two days before the scheduled commencement of the proof, the case called on the motion of both respondents when counsel for both respondents indicated that they were no longer instructed on behalf of their respective clients. They were permitted to withdraw from the bar and the court continued proceedings until the scheduled diet of proof fixed for 7 November. On that date both respondents appeared, unrepresented, and after being heard the proof was discharged. The case was continued until 16 November 2018 to allow the respondents the opportunity to seek new legal representation.

[4] On 16 November 2018 both respondents again appeared unrepresented. Counsel for the petitioners moved to fix a new diet of proof and this motion was not opposed by either respondent. A fresh diet of proof was allocated to 5 February 2019 and seven ensuing days.

Parties were ordained to lodged affidavits by 18 January 2019 and a pre-proof by order fixed for 22 January 2019. Both respondents intimated to the court that they hoped to have obtained legal representation in time for the new diet of proof. At the pre-proof by order on 22 January 2019, both respondents appeared unrepresented but intimated to the court that they still intended to instruct solicitors and hoped to be represented at that proof.

[5] At the diet of proof on 5 February 2019 the first respondent appeared in person but the second respondent was represented by counsel. The proof proceeded but on 6 February, after sundry procedure, counsel for the second respondent withdrew from acting. The court having ascertained that both respondents continued in their opposition to the prayer of the petition discharged the proof diet. Proof had been adduced before Lady Wise and, for reasons arising from the proof hearing which are not relevant for present purposes, she recused herself from any further involvement in the case. She appointed the case to call by order before myself on 13 February. On 13 February 2019 both respondents indicated that they wished to personally conduct proceedings. A fresh proof diet was allocated for 19 March 2019 and seven ensuing days. A timetable for the lodging of affidavits and documents was fixed. Proof commenced as scheduled on 19 March 2019 and was conducted to conclusion by each respondent on their own behalf.

**Factual history**

[6] In light of the fact that following the discharge of the diet of proof on 6 February neither respondent was represented no order was made for a joint minute of agreed facts to be prepared for the diet of proof scheduled for 19 March. Having regard to that consideration counsel for the petitioners lodged a document entitled "Chronology" on

8 March 2019[1] the contents of which were not disputed by either respondent. It is appropriate that the germane facts in that Chronology be summarised in order to give a framework to the remainder of this opinion.

[7] The petitioners are a married couple domiciled in the United Kingdom. The child MRFW who is the subject of the petition has resided with them since 22 September 2016. The first and second respondents are the parents of the said child. They have resided together since 2014. The second respondent is registered on the child's birth certificate as her father. Both parents have parental rights and responsibilities in respect of the child.

[8] On 29 January 2014 South Ayrshire Council ("SAC") convened a Pre-Birth Child Protection Conference in respect of the then unborn child of KL. As a result of this conference, the unborn child was placed on the Child Protection Register and it was resolved that the child should not be placed in her parents care once delivered. On 19 February 2014 a social worker employed by SAC met with Aberlour Family Services ("Aberlour") and agreed the terms of an assessment plan which they were to prepare assessing and reporting on the parenting ability of the unborn child's parents. A report was then instructed by the said council. The child was born in hospital on 26 February 2014. Whilst the child remained in hospital on 28 February 2014 she was made the subject of a Child Protection Order at Ayr Sheriff Court and placed in the care of TM a female person who is KL's step-sister. On 4 March 2014 a Children's Hearing continued the Child Protection Order but provided for weekly supervised contact to both respondents. On 11 March 2014 the child was made the subject of an Interim Compulsory Supervision Order with conditions that she reside with TM and have supervised contact with the respondents

[1] No 34 of process

weekly. The Reporter was directed to make an application to the sheriff to determine grounds of referral. The Interim Compulsory Supervision Order was continued by the Children's Hearing on 1, 15 and 27 April 2014.

[9] On 6 May 2014 Aberlour began an assessment of the respondents as parents.

[10] On 15 May 2014 a Child Protection Conference continued the child's registration under the categories of domestic abuse, parental mental health, physical abuse and neglect.

[11] On 2 June 2014 TM informed a social work employee of SAC that she did not wish to be considered as a long-term carer for the child.

[12] On 27 June 2014 grounds of referral were established at Ayr Sheriff Court in respect of the said child and the Interim Compulsory Supervision Order was extended for 22 days without variation of the conditions previously imposed. On 11 July 2014 Aberlour recommended that the child should be found an alternative permanent placement as the respondents had been assessed as unable to meet her basic care needs without support and supervision.

[13] On 18 July 2014 the Children's Hearing declined to make a Compulsory Supervision Order in the absence of a report on contact and continued the Interim Compulsory Supervision Order. On 29 July 2014 South Ayrshire Permanence Panel determined that there was no prospect of rehabilitation of the child and that adoption served the child's best interests. The panel required the preparation of an assessment of two persons as prospective long-term carers for the child. These persons were the sister of the second respondent and that person's husband. At the same hearing a request by the paternal grandmother of the child to be assessed was rejected because of concerns in relation to her mental health and the relationship she had with the child's father, the second respondent. On 1 August 2014 the Children's Hearing made a Compulsory Supervision Order in respect

of the said child and at the same time increased the respondents' supervised contact to two hours each week.

[14] On 17 December 2014 the child began introduction to the persons previously identified as prospective long-term carers. On 18 December 2014 both respondents had direct contact with the child. This was the last direct contact the respondents had with the child. On 19 December 2014 the Children's Hearing terminated contact between the child and the respondents. On the same date the child was placed with the said persons being her paternal aunt and that person's husband.

[15] On 24 March 2015 the respondents appealed to the Sheriff Court against the placement of the child with the said carers. That appeal was unsuccessful.

[16] On 28 June 2016 a LAAC Review determined that the child should live with the petitioners for three days each week. On 22 September 2016 a LAAC Review decided that the child should live full-time with the petitioners. On 9 December 2016 a Children's Hearing varied the Compulsory Supervision Order in respect of the child and required that the child lived with the petitioners. The petitioners were on the same date deemed relevant persons. The respondents were to have letterbox contact with the said child.

[17] On 6 June 2017 South Ayrshire Permanence Panel resolved that the child should not be cared for by her birth parents and that her best interests would be served by adoption. She was formally matched with the petitioners. On the said date a Children's Hearing required South Ayrshire Council to conduct an assessment of whether the birth parents should have direct contact with the child.

[18] On 7 November 2017 a Children's Hearing appointed a Safeguarder. On 4 December 2017 the Safeguarder offered no recommendation in respect of contact. On 15 January 2018

the Children's Hearing directed that the child should continue to live with the petitioners but should have letterbox contact with the respondents.

**Curator's report**

[19] The curator's report was dated 20 June 2018[2]. The curator concluded that the petitioners were suitable persons to care for the child. She could identify nothing which would affect their ability to bring the child up. The curator was only able to contact the respondents by telephone. She was not permitted to visit their home and therefore had no opportunity to assess their living accommodation. By telephone interview she ascertained that both respondents were "broken hearted" that the child did not live with them, they loved her and wished her to live with them. They both felt they "had been kept in the dark" by social workers. They opposed adoption because "it was too draconian a remedy" and had "doubt" about the prospective adoption.

[20] In relation to the question whether it would be better for the child that the court should make the order (that is adoption) than it should not make the order, the curator noted that the Children's Hearing had declined to give advice to the Sheriff that an order for adoption be made. The curator herself expressed the view that it was "interesting that a permanence order had not been pursued in this case." Having regard to these considerations her stated view was that the child's placement with the petitioners could be supported but "... that something less than adoption could work for this family." Her overall conclusion was that she had "no hesitation" in recommending that the child remain

[2] No 13 of process

in the care of the petitioners. She did not however feel "... able to wholeheartedly support adoption as the best option."

**Relevant legislation**

[21] This petition is an application for an adoption order where the respondents are the prospective adoptive child's birth parents. The court in determining whether or not to make such an order is required to apply the conditions in section 31 of the 2007 Act. The relevant part of those provisions is as follows:

> "31(1) An adoption order may not be made unless one of the five conditions is met.
>
> (2) The first condition is that, in the case of each parent or guardian of the child, the appropriate court is satisfied —
>
> (a) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of the order (whether or not the parent or guardian knows the identity of the persons applying for the order), or
>
> (b) that the parent's or guardian's consent to the making of the adoption order should be dispensed with on one of the grounds mentioned in subsection (3).
>
> (3) Those grounds are —
>
> (a) that the parent or guardian is dead,
>
> (b) that the parent or guardian cannot be found or is incapable of giving consent,
>
> (c) that subsection (4) or (5) applies,
>
> (d) that, where neither of those subsections applies, the welfare of the child otherwise requires the consent to be dispensed with.
>
> (4) This subsection applies if the parent or guardian —
>
> (a) has parental responsibilities or parental rights in relation to the child other than those mentioned in sections 1(1)(c) and 2(1)(c) of the 1995 Act,

(b) is, in the opinion of the court, unable satisfactorily to —

(i) discharge those responsibilities, or

(ii) exercise those rights, and

(c) is likely to continue to be unable to do so.

(5) This subsection applies if —

(a) the parent or guardian has, by virtue of the making of a relevant order, no parental responsibilities or parental rights in relation to the child, and

(b) it is unlikely that such responsibilities will be imposed on, or such rights given to, the parent or guardian."

[22] In relation to the construction of those provisions I am bound by the decision *S* v *L*[3] where the UK Supreme Court in considering the appropriate construction of section 31 of the 2007 Act held at paragraph 27 of the opinion that:

> "Section 31(3)(d) then repeats the language of section 59(1)(b) of the 2002 Act. In its context, however, section 31(3)(d) has a narrower scope than the similarly worded English provision. It applies only where section 31(4) and (5) do not. It is therefore not, as in England and Wales, the general ground which the court has to consider when dealing with any parent whose whereabouts are known and who is of full capacity. Instead, it is relevant only where the court is dealing with the parent who, in addition to fulfilling these requirements, also falls within neither of the categories defined in section 31(4) and in (5)."

It follows from that decision that this court is required to consider the later provisions in sub-section (4) before any question arises under section (3)(d) of the 2007 Act. Only if the court finds that the evidence does not sustain a finding that the respondents are unable satisfactorily to discharge their responsibility or to exercise their rights, is the court able to consider whether to dispense with their consent to adoption on welfare grounds.

[3] 2013 SC(UKSC) 20

**Evidence**

***(i) Petitioners' evidence***

[23] The petitioners each gave evidence by way of affidavit.[4] Each respondent having considered the terms of these affidavits indicated prior to the petitioners' appearance in court that they did not require to cross-examine the petitioners. I accordingly proceeded on the basis of the whole terms of the petitioners' affidavits. In addition the petitioners adduced the evidence of three further persons. First, Gillian May Evans[5], a social worker employed by SAC; second, Elizabeth Paterson[6] a Co-ordinator of Children's Services employed by SAC; third, Dr Louise Potter[7] a Consultant Clinical Psychologist. Each of these witnesses adhered to the terms of their respective affidavits and were cross-examined by each respondent. It is appropriate I should interject at this juncture that the extent of cross-examination was limited and confined to a number of discreet areas. I will elaborate on this aspect of matters at a later stage in this opinion. In accordance with the views expressed in the UK Supreme Court in *S* v *L (supra)* the approach taken by counsel for the petitioners was to deal with evidence of parental incapacity habile to support a finding under section 31(4) of the 2007 Act initially and only subsequently to deal with evidence relevant to welfare issues. I follow this approach in dealing with the evidence.

[24] Evidence in relation to alleged parental incapacity was to be found, and was founded upon by counsel for the petitioners, in the affidavits of Gillian May Evans and Elizabeth

[4] Nos [21] and [22] of process

[5] Affidavit No 20 of process dated 17 October 2018

[6] Affidavit No [19] of process dated 18 October 2018 and supplementary affidavit No 32 of process dated 5 March 2019

[7] Affidavit dated 6 November 2018 No 25 of process

Paterson. The tenor of the evidence from both these witnesses was that SAC were alerted to the first respondent's pregnancy by midwives. Ms Evans deponed that midwives operate a referral system for vulnerable mothers. The first respondent fell into that category and caused Ms Evans to conduct inquiries and form her own assessment. She deponed that:

> "... I was able to identify the sources of that vulnerability which comprised a history of domestic abuse, [the first respondent's] poor mental health, a chaotic lifestyle, poor home conditions, the effects of the head injury to JW, the baby's father, JW's conviction for animal cruelty and poor budgeting"[8]

This evidence was not challenged in cross-examination.

[25] The child was made the subject of a Child Protection Order on 28 February 2014, that is two days after her birth, and was placed in the care of the first respondent's step-sister. Ms Evans' unchallenged evidence was that this placement was at that time agreed to by both respondents. At the same time it was arranged that the placement would be in tandem with continuing assessment of the respondents' parenting capacity. In implementation of that the evidence showed that SAC commissioned an assessment of the parents by Aberlour, an independent body. The report from that agency was dated 11 July 2014[9] and was spoken to by Ms Evans. The "Formulation" of the author of the report[10] was:

> "[The first and second respondents] are parents that through ... assessment have been assessed as being unable to meet [the child's] basic care and continuing development needs (feeding, changing, managing routines, recognising and encouraging developmental milestones) independently.
>
> [The second respondent] has been observed as being inconsistent in his parenting towards[the child] (as detailed in parental responsiveness) as a result [the child's] bond is not as strong with [the second respondent] as it is with [the first respondent]. [The second respondent] has demonstrated he is more practical in that he is able to

[8] Paragraph 3 of affidavit No 20 of process

[9] No 6/5/86A – 6/5/110 of process

[10] At No 6/5/109 of process

> look at a task and plan the stages however struggles to put this into practice when dealing with [the child].
>
> [The first respondent] is a loving mother who during contact will express her love and affection for [the child]. [the first respondent] has demonstrated that she is able to reassure and comfort [the child] when needed however is not comfortable letting her cry as a result [the child] is not being taught by [the first respondent] the importance of self-soothing. Due to [the first respondent's] inabilities to let [the child] cry routines such as feeding and changing take longer than they should and there have been occasions where without staff intervention the routine would not have been completed due to [the first respondent] comforting [the child] when she has started to cry.
>
> [The respondents] are reluctant to do anything with [the child] other than sit on the couch together with her or for [the first respondent] to walk around the room cuddling [the child] which is no longer appropriate to her age and stage of development. [The respondents] were given resources (Bookbug and Play@Home Baby) to read and learn about age appropriate activities to do with [the child], having shown no initiative in this area, they refused to sing the nursery rhyme supported by staff and did not read Play@Home Baby instead [the second respondent] told the writer he had been reading books about social work practice and ethics.
>
> [The second respondent] has expressed an unrealistic expectation of parenthood. When asked what he would do if he had to wind [the child] and [the first respondent] was not there, he replied this would not happen. When pushed further he stated that he and [the first respondent] would never be apart if they had [the child] full-time, the writer asked what would happen if one of them was ill and had to stay in, [the second respondent] stated they would just go out together still. [The second respondent] refused to acknowledge that there would be times when they were apart.
>
> [The second respondent] has been observed as making inappropriate statements, during contact on 6/6/14 he stated on several occasions that he would 'blow up Bookbug' (the teddy). He later said that 'pain can be controlled' in relation to [the child] having pulled on his beard. During contact on 12/6/14 [the second respondent] stated 'blank out emotion you won't feel pain' 'pain is emotion' in response to [the first respondent] talking about [the child] pulling his beard."

Similar concerns about the respondents' parenting were spoken to by Ms Evans.[11] During cross-examination the second respondent made it clear that he did not dispute the factual assertions made in the body of the report. His attention was brought expressly to the part of

[11] No 20 of process at paragraph 23

the report which I have just quoted. In particular he did not dispute the factual correctness of those parts I have directly quoted. Cross-examination in relation to these matters was essentially confined to the proposition that neither respondent had been provided with direction on how they might address admitted deficiencies in their parenting ability. The same stance was taken by the first respondent. She elaborated somewhat and asserted that the only parenting assistance which had been offered by SAC to her was the use of a "virtual baby" upon which she could practice certain parenting skills.

[26] At this point I should record that in addition to accepting deficiencies in parenting skills at the time the Aberlour assessment was being conducted both respondents accepted that this deficiency continued at the date of proof. Subject to the caveat that both respondents maintained that such deficiency was the result of a failure on the part of SAC to provide sufficient and appropriate instruction on parenting the position of the respondents was an acceptance that whilst they wished and hoped to be able to act as full-time parents for the child as some future date they did accept that they were not at the time of the proof in a position to fulfil that role. They further accepted they would not be able to state when in the future they would be able to fulfil that role. Having regard to the potential significance of those concessions and to the fact that the respondents were conducting the litigation on their own behalf, I noted each of these concessions, read them over to the respondents and asked, they having the benefit of hearing them again, whether they continued to adhere to them. They did and I caused a typed version of the concession to be placed in the Minute of Proceedings.

[27] In relation to welfare, counsel for the petitioners founded on the evidence already noted in relation to incapacity. Evidence of the petitioners' ability to care for the child was given by both Ms Evans and Mrs Paterson who had direct evidence of the petitioner's home

as a result of visits to that locus and to observing both petitioners in the exercise of their parenting skills with the child. Support was found in the affidavit of Dr Potter.[12] Dr Potter had originally been instructed by agents then acting for the respondents and had, in that capacity prepared a report in anticipation of giving evidence in the proof in this petition which had been scheduled to take place in November 2018. That report had never been provided to the petitioners nor had it been lodged in court. During the course of cross-examination of Dr Potter the second respondent indicated that the report contained material which, had the document been lodged, he would have used for the purposes of cross-examining Dr Potter. Counsel for the petitioners interjected to observe that he would have no objection to the lodging of the report notwithstanding the proof had commenced. Whilst I had no knowledge of the terms of the report (as I should make it clear, was the situation so far as counsel for the petitioners was concerned) I had concerns that it might be prejudicial to the respondents if the report was revealed at this late stage. I accordingly advised the second respondent if he was sure he wished to lodge the document and to exercise care when reaching a decision on that matter. He reflected on the matter for a period but still determined that he wished to lodge the document. There being no objection to the late lodging of the document, I allowed Dr Potter's report to be received.[13] The report concluded that the child's removal from the care of the petitioners would be detrimental to her.[14] The language used in the report was strong. In her oral evidence she reiterated that view observing that the child's possible removal from the present carers would be "catastrophic" to her development.

[12] No 25 of process at paragraphs 3 and 4

[13] The report is No [7/18] of process

[14] No 7/18 of process, paragraph 6.3

***(ii) Respondents' evidence***

[28] Each respondent produced a signed statement, the terms of which they adhered to. A signed statement was also produced from a Mr McCreadie[15] and a signed statement from the second respondent's mother.[16] Counsel for the petitioner indicated that he did not require to cross-examine Mr McCreadie on the second respondent's motion.

[29] The statement from Mr McCreadie was in the nature of a testimonial. Mr McCreadie was a friend of the respondents. He spoke to noticing an improvement in their general behaviour and ability to manage household affairs in the period between December 2014 when they last saw the child and the date of the proof.

[30] The second respondent's mother provided a number of statement where she raised various issues of an essentially legal nature. The legal arguments were in the main based upon English statutory provisions pertaining to child care and adoption or international conventions which are not directly incorporated into Scottish law. Beyond that the first respondent's mother confirmed that she had some direct experience of the petitioners' care of the child. She made no criticisms of this and indeed both praised and supported the petitioners' ability to look after the child. She offered herself as an alternative carer of the child and asserted that she would be able to fulfil this role. She confirmed that she did not consider that the respondents were, at the date of the proof, able to provide the necessary level of care for the child.

[31] So far as the evidence of the respondents was concerned, it was broadly consistent with the line they had adopted in cross-examination. In essence this was to accept that at

[15] No 36 of Process, dated 9 March 2019

[16] No 40 of Process

the time of the child's birth and in the period between that date and their last contact with the child in December 2014, they had not been in a position to provide the necessary level of care and parenting for the child. Further, as already noted, they both accepted that they were not at the date of proof able to provide the necessary level of care for the child. They yet further agreed that they could not say when they would be in a position to provide the necessary level of care. In relation to each of these matters the position was that the failure on their part to be able to provide the necessary level of care was a direct result of the inability of SAC to provide the instruction which would have enabled them to provide care for the child. The first respondent indicated that she had in the period since the child's birth made inquiries of North Ayrshire Council as to whether any instruction in parenting skills could be provided. She said that the council indicated they provided parenting skills classes but only to couples who had custody or direct care of a child. Had that been the situation the first respondent indicated that she understood that North Ayrshire Council would have admitted her and the second respondent to such classes. She also said that she had made inquiries of Women's Aid who had also indicated that parenting skills classes could be made available to the couple.

[32] The other matter to which both respondents adverted in evidence was to stress, repeatedly and forcibly that they considered their blood link with the child to be important, indeed vital in their view, to her future development. They both asserted that any deficiency in attachment which the child may have to them, a matter spoken to by Dr Potter, could be compensated by the love that they would give to her. They did not consider that any long-term damage would be occasioned to the child if the current placement was disrupted and the child returned, at some unknown date in the future, to their direct care. Likewise they did not consider there would be any long-term damage so far as the child was

concerned if in the period between them being in a position to provide adequate care and parenting for the child the child was looked after by the second respondent's mother.

**Analysis**

[33] The first task which the court must determine is whether or not the court is satisfied that the test set forth in section 31(4), that is that the first and second respondents are unable satisfactorily to discharge parental responsibilities in relation to the child, has been satisfied. That question is a factual issue and must be determined upon the evidence available.

[34] In the present instance that evidence is relatively straightforward and, moreover and importantly, unchallenged. Both petitioners accepted during the course of the proof that at the date of the child's birth and throughout the period between then and their last contact with the child in December 2014 they were not and could not offer appropriate parenting for the child. It was further accepted by both respondents that this inability to provide appropriate parenting for the child continued in the period between last contact in December 2014 and the date of proof. Moreover, the concession went so far as to accept that neither respondent was in a position to indicate when they would be able to provide adequate parenting and care for the child.

[35] Concessions of this sort are, in my opinion, sufficient to provide a determinative answer to the test adumbrated in section 31(4) of the 2007 Act. There is however additional evidence to assist the court in answering the question in that section. The paternal grandmother of the child provided evidence in the form of a signed statement. She was not cross-examined on that statement and I can therefore treat it as evidence. In terms of the statements the paternal grandmother stated her view that the respondents had not been able to provide adequate care and parenting for the child and that this remained the situation at

the date of proof. The two social workers who gave evidence on behalf of the petitioners, Ms Evans and Mrs Paterson both expressed the view that the respondents were not capable of providing adequate care and parenting for the child. They stated reasoned views for this decision. Counsel for the petitioners quite properly put those views and the reasons for them to the second respondent when cross-examining him and, candidly and fairly, he accepted that the views of these two witnesses on these matters were properly and correctly formulated.

[36] The opposition to an adverse finding in respect of the section 31(4) test was confined to both respondents maintaining that they had not been offered appropriate training in relation to parenting by SAC. Having regard to the breadth of the concession made by both respondents in respect of parenting capacity, I do not consider that this line of defence avails them. It should however be noted that both Ms Evans and Mrs Paterson dealt with that issue by indicating that at the time of the birth of the child, both respondents had been offered guidance in parenting from Aberlour who had been instructed to prepare the parenting capacity report. As spoken to by Ms Evans the report from Aberlour indicated that the respondents had not been able to properly engage with instruction in parenting given to them. After contact with the child by the respondents ceased in December 2014, both Mrs Paterson and Ms Evans deponed that there had been no effective contact with the respondents and indeed efforts by SAC to engage with the respondents had been rejected. In these circumstances I form the conclusion that the respondents have either been unwilling or unable to avail themselves of instruction in parenting offered or available to them.

[37] Having regard to the foregoing considerations I am satisfied that it has been established as a matter of fact that both respondents as parents of the child have been shown to be unable to discharge parental responsibilities in relation to the child.

[38] When I turn to consider the welfare grounds in section 31(3) of the 2007 Act, the evidence is again in relatively narrow compass. The child has never been cared for by the respondents. She has not seen the respondents since December 2014 at which date she was approximately 10 months old. It is plain that the child will have no direct recollection of the respondents, a fact confirmed by the *curator ad litem* in her report, the affidavits of the petitioners and the evidence of Dr Potter.

[39] On the evidence of Dr Potter the child has had a disrupted infancy and, in common with all children in such a situation, there is a concern in relation to attachment. She has no attachment to the respondents. By contrast, again primarily relying on the evidence of Dr Potter, she has developed attachment with both petitioners. She has to Dr Potter expressed her desire to be adopted and to continue to reside with the petitioners. Dr Potter's oral evidence, in amplification of her deposition in her affidavit and her report, expressed the view that it would be "catastrophic" if the child were to be removed from the care of the petitioners. I am bound to observe that the language employed by Dr Potter which I have just quoted is in extremely strong terms for a skilled witness giving evidence before a court. Beyond that, counsel for the petitioners founded on more generalised propositions in the nature of the need of this child to have the security and permanence of a family unit within which to be brought up. All the evidence in the case was clear that this would be provided by the petitioners.

[40] The situation is accordingly one where the child has no attachment to the respondents but secure attachment to the petitioners. Particularly having regard to the disrupted infancy the child has experienced the evidence available to the court was that disruption of the child's attachment with the petitioners would be "catastrophic". In these circumstances I am satisfied that the welfare test is answered in favour of adoption.

[41] I am of course required to consider having regard to the implications of adoption as to whether any lesser step would be satisfactory. The lesser step would be the making of no order. One consequence of this would be the fact that the child would remain subject to Compulsory Supervision Orders which would require annual review. A further consequence would be that parental rights and responsibilities would remain with the respondents. Having regard to the disruptive childhood experienced by the child and her need for security and permanence, I do not consider that those consequences would be satisfactory and, further, that they would be inimical to her wellbeing and welfare. In these circumstances I am satisfied that the need for an adoption order is made out.

[42] There remains the issue of contact. The respondents' position was that in the event that, contrary to their submission, an order for adoption is made they would wish regular direct contact. By contrast the position of the petitioners was that they were content for indirect contact to take place twice annually.

[43] On the evidence of Dr Potter, direct contact would be disruptive and threaten the attachment that has developed between the child and the petitioners. She was clearly of the view that it would not be in the child's interests for such contact. The respondents' primary argument in favour of direct contact rested upon what they characterise as the "blood link" between them and the child. There is now authority from the English Court of Appeal that there is no right arising simply from a blood link.[17] Moreover, the position of Ms Evans, Mrs Paterson and Dr Potter was to accept as a matter of general principle the importance of making an adopted child aware of her biological family and cultural and social roots arising therefrom was accepted. Their view that this was best facilitated by indirect contact and the

[17] In re W (a child) adoption: grandparents competing claim [2017] 1 WLR 889

use of memory boxes and such other tools. The evidence clearly demonstrated that both petitioners also accepted the importance of these factors and were wholly co-operative with their facilitation by means of indirect contact.

[44] Having regard to all the foregoing, I will grant the prayer of the petition. I will further order indirect contact in favour of the respondents on two occasions each year.