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Case No: NE18C00526

Neutral Citation Number: [2018] EWHC 3332 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
NEWCASTLE DISTRICT REGISTRY

Law Courts
Quayside
Newcastle-upon-Tyne
NE1 3LA

Date: 06/11/2018

Before:

MR. JUSTICE COHEN

Re: C

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Miss K. Barker for the Applicant local authority
Mr. T. Donnelly for the Respondent mother
Miss F. Munro for the Children's Guardian

Judgment Approved

MR. JUSTICE COHEN:

1. This case concerns a child who I shall call C, who is six months old today. She is the subject of care proceedings issued by the local authority in circumstances where the mother at birth made it clear that she was unable to care for the child and wished for C to be adopted.

2. As has been set out clearly in a number of cases, including *Re: RA* [2016] EWFC 25 and *Re: TJ* [2017] EWFC 6, this is unlikely to be the appropriate procedure for a child relinquished at birth. Even worse, the proceedings were not issued until 19th July 2018 when the child was already aged two and a half months. Thus, an application based on a threshold of dubious validity was applied for later than it should have been, and the delay has been damaging both to the child and to her mother. I accordingly gave leave to the local authority to withdraw the proceedings, which I shall formally dismiss at the end of this judgment, and to issue an application under Part 19 of the Family Procedure Rules 2010 as contemplated by Rule 14.2(1) of the FPR for the invoking of the inherent jurisdiction of the court and directions.
3. I directed that both the mother and child, who have been represented throughout these proceedings, should be made respondents to the application which is for directions as to whether the local authority should inform the father of C of her birth.

Background.

4. C's mother became pregnant with C when she was only 13 and was still under 14½ when C was born. The mother says that she was unaware that she was pregnant until her waters broke although – and the evidence is unclear – she may have had suspicions in the days before birth that she was pregnant. Practically and emotionally, she was completely unprepared for the birth.
5. C's father is about one year older than the mother and attended the same school as both the mother and her elder brother, which is how they met.
6. The birth came as a total surprise to the mother's family who knew nothing until the mother telephoned in great distress after her waters broke. The mother immediately concluded that she could not care for C and that the best outcome for C would be that she should be placed in a home where she would be loved and would flourish. That course of action was agreed by the maternal grandmother and her husband with whom live the mother, her older brother and the mother's young half brother, he being the child of the maternal grandmother and her second husband.
7. I am satisfied from everything that I have read that this course of action was one taken by the mother independently and with the support of but without pressure from her family, who are not in a position to care for another child.
8. The birth has led to turmoil within the mother's family, to which I will return. Currently the knowledge of the birth is limited, as I understand it, to the mother, the maternal grandmother and her parents, her stepfather, the maternal grandfather, the mother's elder brother and one close friend of the mother who lives at the far end of the country. That is just eight people along with the involved professionals. There is no evidence that this group has been other than watertight.
9. As a result of the decision made by the mother C has since her discharge from hospital been living with foster carers pursuant to an arrangement under section 20 of the Children Act and by all accounts C is doing well.
10. The mother's relationship with the father was extremely short-lived and it is said that they had just two occasions of sexual intercourse. They split up very shortly after the

second occasion. There was no reason for the mother to think she was pregnant at that time and thus none for the father to know. The mother says that throughout her pregnancy her body shape remained unaltered. None of her peers or teachers appears to have suspected that she was pregnant.

11. At some stage – I have not been provided with the date – the father was excluded from school and so the mother’s absence from school after the birth of C may well have been unnoticed by the father. Thus, the father and all his family remain ignorant of C’s existence.

The mother.

12. She is now aged 14, very soon to be 15. She has been the subject of two reports and an addendum from Dr. S, a consultant clinical psychologist. He has confirmed her capacity and her ability to fully engage in proceedings and give instructions. The mother has been present at and followed attentively all hearings. She is plainly a young woman of considerable potential. On the Wechsler intelligence scale for children on two of the six tests she produced a score of very high ability, two were high/average and two were average, all in the bracket between the 55th centile and the 96th centile for achievement. She is described by Dr. S as intellectually very capable and presented as articulate and thoughtful. She is still at school and wants to continue her studies and go to university. No other pupil knows that she has had a baby, the story having been given out that she has had and is recovering from appendicitis.
13. The mother has a history of anxiety. On at least three occasions over the last four years, all of them before C’s birth, she has cut herself. Dr. S was unaware of this when he reported but he said in oral evidence that that is likely to be more a symptom of distress or stress rather than an attempt on her own life.
14. The mother believes that if the news got out that she had had a baby her life would be changed irreparably. In particular, she is convinced that the father will harass her and her family if he was to discover. She is concerned that he might physically harm her. He has a bad history of anti-social and criminal behaviour, to which I will return. He has not been violent to her in the past but her perception is that he may be violent to her if he knows of the birth. Whether or not she is correct is speculation, but no one suggests that her fears are not genuine. Secondly, she would lose her privacy because the information would be leaked by the father or his family. She fears that he or they will tell people in the neighbourhood and at school. Her ability to study and achieve would be destroyed. Her hopes and dreams of returning to normality would be dashed and she would be unable to put the trauma behind her.
15. The counsellor employed by the local authority describes the mother as articulate and able but being on edge at home and constantly fearful of noises outside. She wondered whether the mother was suffering from PTSD. Dr. S describes the mother’s condition as worsening through the period from his first meeting to his second meeting and then his third discussion by way of telephone call. The mother is now on antidepressants. Her mood has declined, unsurprisingly says Dr. S, as anxiety thrives on situations of uncertainty.

16. The mother's pastoral tutor at school reports that she too has serious concerns for the mother's physical and emotional welfare if the father became aware of the birth. She says that knowing the father and his social circle.
17. The effect of the giving of the information on the mother's family is not to be overlooked. They have struggled with what has happened. The mother's elder brother, who was in the father's year at school, has been particularly affected and the relationship between the mother and her brother has severely deteriorated. The adults in her life feel let down by the mother. Relationships are gradually improving but they are likely to deteriorate if the father is told, not just because of their feelings and fears about him but also because of course if the mother had not innocently mentioned his name to a social worker none of these current difficulties would have emerged.
18. Dr S rightly reminds himself and me to be aware of the danger of over-egging the psychological factors relating to the mother out of sympathy to her but, he says, the court should not lose sight of these points:
 - i) The mother feels very guilty for what she has done and its effect on her family. She will feel more guilty if the father is told.
 - ii) It will be very difficult for her to continue in her education if knowledge gets out. If kept confidential she has, as he puts it, a good chance of survival but, if not, it will be a very big ask of her at such a very young age.
 - iii) She will need therapeutic help which she is currently getting. It is likely to be needed for a long time, even if not constantly. She is in any event faced with an enormous burden.
19. I would add that it should not be overlooked that two things may happen if the paternal family is told. Either the child will not be placed with the paternal family or will be. If not placed with the paternal family that may lead to anger within the paternal family towards the maternal family because (a) the child will not be placed with the paternal family because of what the maternal family have told people about the paternal family or, (b) of their anger that the maternal family is not stepping up to the mark as they perceive it. If the child were to be placed with the paternal family C will find herself in a situation where she is in a society and living close by her mother who will want nothing to do with her. What, it is asked, would the impact of that be on C?

The father.

20. Inevitably, I know only what the maternal family have said about him and also what social service records reveal. It is significant that the social service records support what the mother has said. There is no suggestion that the mother or her family have sought to damage the father's name irresponsibly. The records show that:
 - i) The father has fallen out with his own mother; he has nothing good to say about her. It is suspected that he has been violent to her on one occasion. He lives with his father and not with his mother.
 - ii) He abuses drugs and has done so over a long period. He also abuses alcohol.

- iii) He has had poor mental health and has been referred to the local equivalent of CAMHS.
- iv) He is reported as carrying a knife.
- v) He has been aggressive. He has caused criminal damage in a restaurant and committed a number of assaults.
- vi) He has been permanently suspended from school.
- vii) There have been at least 15 police child concern reports.

I should also record that it is unlikely that the father has positive feelings towards the mother. So far as girls are concerned, he has moved on to pastures new.

- 21. Within the paternal family there are drug issues with his own father. His father was reportedly violent and abusive towards his mother over a prolonged period. The father, with whom he lives, is unable or does not try to establish any effective boundaries for him.
- 22. The father's mother has a longstanding history of mental health issues.
- 23. In considering this matter it is important to remember that these two families, the maternal and paternal family, live in communities which are just 10 minutes' drive by car away from each other and that there are many people who have social links to the mother and her brother on the one side and the father on the other.
- 24. I need to assess, amongst other things, what is the realistic likelihood of the father or his family caring for C. All the professionals, including the Guardian, agree that the chances of any assessment of the father or the paternal grandfather being positive are very low. I agree. I cannot see any circumstances in which a placement with either of them is likely.
- 25. The Guardian hypothesised that the paternal grandmother might be positively assessed, but that seems to me equally unlikely. There is a long history of mental health issues and there is a relationship of animosity between the father and his own mother which makes a placement with her inherently unstable and unlikely, in my judgment.
- 26. That leaves the question of the extended paternal family of whom virtually nothing is known save that there is an uncle. The paternal family are relevant in two different contexts. First, of course, in their ability, or lack of it, to be able to provide an appropriate home for C. Secondly, whether there is sufficient knowledge for them to be properly presented to C through life story work and then a "later life letter" which is given to an adolescent adopted child which contains much more detailed information than is provided in the life story book and which, amongst other things, provides information which would enable a child to trace a parent if so desired.
- 27. The Guardian and social worker confirmed to me that in this case sufficient is known about the father and his family to enable life story work and the "later life letter" to be done. I, therefore, need say little more about that.

The parties' positions.

28. The mother is strongly opposed to any knowledge going to the father. The local authority is neutral. The Guardian says the matter is very finely balanced and that she has not had a case like this in 18 years of experience; but, she says, not enough is known about the paternal family to write them off now, and on her behalf counsel says this case, though very sad, is not exceptional, it is no different from any other teenage mother case. The mother faces ordinary difficulties that any young mother will have to face; and so it is argued there is no overwhelming reason not to tell the father. Of course, from the Guardian's perspective the more information that is available the better.

The law.

29. I have been referred to five cases which are particularly relevant in this area. They are respectively *Re: A* [2018] EWHC 1981, *Re: M and N (Twins; relinquished babies)* [2017] EWFC 31, *Re: RA (Baby relinquished for adoption)* [2016] EWFC 25, *A and AO* [2016] EWFC 36, *A and others* [2017] EWHC 1515, *A and JL v. AO* [2016] EWHC 440 and *Re: TJ* [2017] EWFC 6. I have read them all. To my surprise there is no reported case involving a child where the mother herself is a child. Most of the cases relate to domestic violence and certainly in my experience of cases not reported the likely context of an application is one of domestic violence between the grown-ups.
30. It was urged upon me that I have to look at a case involving what are two parents who are themselves children as being in a special category, but I do not think that is right. I must have regard, indeed considerable regard, to the wishes of the mother and the interests of both parents, and their youth will feed in to that; but I do not consider that there is a special test to be applied to that category of parent. My paramount concern is for the child who is the subject of the application, C.
31. There is unanimity that I should adopt the law as set out at paragraph 19 of *Re: A*, a decision of Cobb J, which summarises previous authorities as follows:

The law in this area is now well-rehearsed in a growing number of authorities, specifically Re JL & AO [2016] EWHC 440 (Fam), Re RA [2016] (see above), Re TJ [2017] EWFC 6, Re M & N (Twins: relinquished babies: Parentage) [2018] 1 FLR 293, and A Local Authority v the mother and another [2017] EWHC 1515 (Fam). I summarise the cardinal principles as they apply in this case as follows:

- i) Each case is fact-sensitive (Re RA at [31]);*
- ii) The outcome contended for here is "exceptional" (A Local Authority v the mother at [1]/[7])*
- iii) The paramount consideration is the welfare of A; section 1(2) Adoption and Children Act 2002 ('ACA 2002')*
- iv) The court must have regard to the welfare checklist in section 1(4) ACA 2002;*

v) *It is a further requirement of statute (section 1(4)(f)(iii) ACA 2002) that the court has regard to the wishes and feelings of the child's relatives;*

vi) *Respect can and indeed must be afforded to the mother's wish for a confidential and discreet arrangement for the adoption of her child, although the mother's wishes must be critically examined and not just accepted at face value; overall the mother's wishes carry "significant weight" albeit that they are not decisive (Re JL and AO at [47], [48] and [50], and see also Re RA at [43(vi)]);*

vii) *Article 8 rights are engaged in this decision; however, in a case where a natural parent wishes to relinquish a baby, the degree of interference with the Article 8 rights is likely to be less than where the parent/child relationship is to be severed against the will of the parent (Re TJ at [26]);*

viii) *Adoption of any kind still represents a significant interference with family life, and can only be ordered by the court if it is necessary and proportionate (Re RA at [32]);*

ix) *A high level of justification is still required before the court can sanction adoption as the outcome, and a thorough 'analysis' of the options is necessary (Re JL & AO at [32]); 'analysis' is different from 'assessment' – a sufficient 'analysis' may be performed even though the natural family are unaware of the process (Re RA at [34]). As I said in Re RA at [38]:*

"in order to weigh up all of the relevant considerations in determining a relinquished baby case it may be possible (it may in some cases be necessary) and/or proportionate to perform the analysis without full assessment of third parties, or even their knowledge of the existence of the baby. The court will consider the available information in relation to the individual child and make a judgment about whether, and if so what, further information is needed".

32. I respectfully agree with everything set out by Mr Justice Cobb. I would add though the following points. First, I fully subscribe to the principle that the remedy sought by the mother is exceptional and the circumstances needed to justify that outcome have to be exceptional, but that does not mean that there has to be one magnetic factor. The combination of circumstances, none in themselves exceptional, may, when aggregated, satisfy the test. Secondly, in considering whether the test is met one needs to conduct a holistic exercise considering all the circumstances. This includes an assessment, imperfect though it will necessarily be, of what the paternal family is likely to be able to offer. Thirdly, the fact that the mother could, if she had known, have declined to name the father and thus avoid this problem with which she and the court are now faced is not a relevant factor, although its impact on the mother may be relevant.
33. I have reached the clear view that the combination of factors in this case does not make it appropriate for the father to be informed of the birth, and I refer to the following in particular:

- i) The very young age of the mother at birth, bringing with it the most profound effect upon her life.
 - ii) The fact that, if the knowledge is imparted to the father, the strong probability is that the knowledge will not be confined but will spread around the community in which the mother studies and lives.
 - iii) If that happens the probability is that her education will be terminated and she will become socially isolated.
 - iv) The mother is psychologically vulnerable. She is on antidepressants and is struggling in a significant way. She has a history of self-harm although not of the highest degree. If the father knows she will become at more risk.
 - v) Her fears of what the father might do are genuinely held and, although speculative, cannot be dismissed as fanciful.
 - vi) The impact of knowledge will undoubtedly affect the stability of her family with whom she lives.
 - vii) In my assessment there seems no ground for a realistic belief that the paternal family would be able to offer C a safe and secure home. Neither the father nor his parents appear a realistic option. In my judgment, it is not part of the exercise that I have to conduct to consider what a relative who may be interested but of whom nothing whatsoever is known might possibly be an option. I have mentioned the uncle but not even his name or where he lives is known.
 - viii) I draw comfort from the fact that sufficient is known about the paternal family to provide details for a life story book and the later life letter. That means that C will have the means to seek out her father in the future if she wishes so to do.
34. In reaching this decision I have taken into account the Article 8 rights of both the parents but, most importantly, C. I have not taken the mother's objections to the father being told at face value without analysis and it is significant that the views of the harm that the mother might suffer are supported by Dr. S, by her school pastoral tutor and the counsellor with whom she works, and that her complaints about the father and his family have been supported by local authority social service files relating to the paternal family.
35. In all the circumstances, I therefore order and direct that the local authority is not obliged to tell the father of C's birth and should not do so.
