

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
 [2019] EWHC 3683 (Fam)



No. ZC193/19

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 1 November 2019

Before:

MRS JUSTICE THEIS

(In Private)

B E T W E E N :

LONDON BOROUGH OF LAMBETH

Applicant

- and -

M

Respondent

MR STUART SCOTT (instructed by Legal Services) appeared on behalf of the **Applicant**.

MS MAGGIE JONES (instructed by Goodman Ray) appeared on behalf of the **Respondent Mother**.

**J U D G M E N T**

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MRS JUSTICE THEIS:

- 1 This matter concerns an application by the Local Authority dated 1 August 2019 relating to a child, L, who is under a year old, seeking a declaration that they are not required to make any enquiries with the wider maternal family relating to future placement options for this young child
- 2 The mother is a Rwandan national, who entered this country on a student visa, which is valid until September of this year. The mother has confirmed today that she has made an application herself for asylum to be able to remain living here.
- 3 The application is made by the Local Authority, the London Borough of Lambeth, represented by Mr Scott.
- 4 The mother is here represented by Ms Jones through instructions from Ms Dally from Goodman Ray. Ms Jones and Ms Dally are acting pro bono for which the court is enormously grateful as it ensures the mother has the benefit of expert representation.
- 5 When the matter was last before me, the hope and intention was that public funding would be available for the mother; it appears that that has not been possible. Mr Scott has helpfully agreed to a recital going on the face of this order that the Local Authority will consider any request for funding at public funding rates made by Ms Dally and Ms Jones for the advice and representation they have given to enable the mother's position to be set out so clearly today. I hope that such application - if it is made to the Local Authority - is considered favourably.
- 6 One thing that shines out about the documents that this court has seen is the very sensitive and thoughtful way this Local Authority has dealt with the mother's situation. They first became aware of it following the mother's attendance at St Thomas' Hospital earlier this year. That thoughtfulness and sensitivity has continued, and will continue as is evident through the submissions Mr Scott has given about the way the matter is going to be managed going forward. The Local Authority rightly deserve the admiration of the court as to how they have dealt with this case.
- 7 The identity of L's father is not known. The mother describes in her evidence that L was conceived following what she says was a serious sexual assault on her. She did not report that matter to the police and there is no other way on the information the court has for him to be identified or located.
- 8 The only other family member who is present in this jurisdiction is the mother's sister. She has been communicated with by the Local Authority but has said that she does not want to be put forward to care for L. In any event that is not something that the mother supports. The remaining maternal family live in Rwanda.
- 9 As I have indicated, the Local Authority first became aware of the mother's position when she presented herself at St Thomas' Hospital on or around 28 February in the relatively late stages of pregnancy; initially, the mother sought a termination. She was informed that it was too late.
- 10 The circumstances in which she attended the hospital, as described by the mother, raised concern with the Local Authority because it was said that her mother was due to visit this

jurisdiction the following day, 1 March. She was due to come here for a month, however it transpires that as a result of the difficulties that arose on the maternal grandmother discovering that her daughter was pregnant and her unwillingness to be able to proceed with a termination the maternal grandmother cut short her stay here and went back to Rwanda.

- 11 In her discussions with the Local Authority, and more recently in her statement dated 30 October, the mother describes in some detail the pressure placed on her by her family as a result of phone calls she received seeking for her to return back to Rwanda and for the pregnancy to be terminated, irrespective of the risks to her health. As a result of that position, there has been no ongoing contact between the mother and the maternal family in Rwanda and, as far as I am aware, they are not even aware of L's birth or the placement arrangements that have been made since then.
- 12 The mother indicated during her discussions with the Local Authority that she would relinquish her care of L when he was born. L was placed with foster carers at birth and the process has been instigated within the Local Authority to find a suitable adoptive placement for L.
- 13 As a result of that process, the Local Authority considered that it was appropriate for them to issue the application they have made to this court seeking a declaration that would absolve them from taking any further steps in relation to investigation with the wider maternal family as part of their process they have to undertake to consider the placement options for L, before settling on a care plan in relation to adoption.
- 14 Their application first came before His Honour Judge Tolson Q. C. for paper directions and was listed before me on 8 October. He made directions which resulted in this hearing being fixed today, one of which was for L to be joined as a party to these proceedings and to be represented through a Children's Guardian. I am asked today to discharge that direction which I will do for reasons I will set out shortly.
- 15 When the matter came before me on 8 October just the Local Authority were present in court. It was apparent from the information the court was given there was some communication with the mother. As a result of the court making contact with Ms Dally at Goodman Ray, she had capacity, if the mother so wished, to be able to take instructions from the mother. As a result of that arrangement the mother is represented today.
- 16 The mother has filed a statement dated 30 October where she sets out the background to her family, the circumstances of her arrival here, details of L's conception, her decisions and actions since then in relation to L's care and the enormous difficulties that she has experienced with her own family.
- 17 The mother has also had, as a result of the Local Authority process, communication with the CAFCASS officer as a result of the placement. Ms Cole has been in contact with her and her report is filed within the papers. As set out in her statement, the current position is that, whilst the mother consents to L being placed for adoption, she does not at this stage consent to adoption. She wishes to participate within that process to understand and ensure, so far as she can, that L's placement is a placement that has as much support as is appropriate and knowledge about her circumstances. So, the continuation and involvement of the mother will be included in the Local Authority plans.

- 18 In terms of the legal framework it is clear the Local Authority are under a duty to undertake a welfare-based investigation of the child's circumstances and to consider the matters relevant in the welfare checklist under s.1(4) of the Adoption and Children Act 2002. In doing so, there is a need for them to consider whether there are any realistic placement options in the extended family and for them to then undertake a holistic analysis of the placement options for L in accordance with the principles set out in *Re B-S*.
- 19 What is quite clear (as set out in paras.20 and 26 of the Local Authority's first position statement where there is a helpful analysis in relation to the legal principles) is that the Local Authority can, in appropriate circumstances, make an application to the court for a declaration that they are absolved of those obligations, if the particular facts of the case support that conclusion.
- 20 In this case the Local Authority and the mother join forces in submitting that this is such a case, where there are clear and cogent reasons for this court to make a declaration that the Local Authority are not obliged to take any further steps to make enquiries with the maternal family and also for them not to notify the Rwandan Authorities in relation to the child's position. The reasons are based largely on the attitude of the maternal family to the news of the mother's pregnancy; the actions of the maternal grandmother in cutting short her visit and in placing pressure on the mother to have a termination; and the description by the mother of the subsequent contact with her family based in Rwanda where their views were very clear that she should return to Rwanda for the pregnancy to be terminated, whatever the risks that caused to her own health.
- 21 Since that time the evidence demonstrates the maternal family have cut off the mother, including financial support for her. There has been no contact by them with her and they have no concern in relation to the mother or the child's welfare. Her views are that any enquiries that are made with the maternal family will not only put her at increased risk but will also potentially put L at risk and that, in any event, it is quite clear by the wider maternal family's action that they will not on any view be able to offer a realistic placement option for L.
- 22 The same applies in relation to her position regarding the Rwandan Authorities; she has made an application for asylum here. Although I have not seen this it is said it is likely to be based in part on the risk that would be inherent for her if she were returned back to Rwanda as a result of the attitude by her family to her pregnancy.
- 23 The Local Authority supports the mother's position. From their own enquiries, her account to them has been consistent over the period of time they have been involved with her and they are satisfied that engaging the maternal family and the Rwandan Authorities would defeat the purpose of doing so. It would heighten the potential risks to both the mother and the child and likely to lead to significant delay in achieving a permanent placement for this very young child.
- 24 This court is acutely aware of the need for the Local Authority to undertake the holistic evaluation as set out in *Re B-S* in considering placement options for a child in their care, in particular when one of those options may be an adoptive placement. However, that is not a holistic evaluation done in a vacuum, if the evidence demonstrates the investigation of such placement options themselves would put a child and a mother at risk. In this case it does and the Local Authority are, in my judgment, justified in seeking the declaration that they do. In addition, I am satisfied on the evidence that I have seen that, even with those enquiries being

made, there is no realistic chance of the maternal family providing a realistic placement option for this young child.

- 25 This is a case where the evidence from the Local Authority and the mother demonstrate that those enquiries would put the mother and child at risk at an unacceptable level with the likelihood of there being no corresponding benefit in determining the right placement options for this young child.
- 26 Therefore, for those very brief reasons I grant the declaration that is sought where the Local Authority are absolved from making any further enquiries with the maternal family and/or notifying the Rwandan Authorities.
- 27 In relation to the issue about the Children's Guardian, I am satisfied that both through the actions of the Local Authority and the mother they have taken sufficient steps to be able to safeguard this child's welfare, including safeguarding the need for this child to be able to have some information and knowledge in relation to the wider maternal family. This is not a family that have exercised any Art.8 rights; there is no evidence of the right to family life in relation to the wider maternal family in relation to L by virtue of their actions.
- 28 I am satisfied that this court can determine this case today without the need for any input by way of a Children's Guardian and the child's welfare is sufficiently safeguarded by the Local Authority and the mother. Therefore, I agree with the direction to discharge any previous direction that joined L as party to these proceedings.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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**This transcript has been approved by the Judge.**