IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. LS439/19 & LS440/19

N/C Number [2020] EWHC 3781 (Fam)

1st Mezzanine
Queen's Building
Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 16 December 2020

IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002

Before:

SIR ANDREW MCFARLANE

(President of the Family Division)

(**In Private)**

I N T H E M A T T E R O F :

Re Y and Z (Children) (Adoption from Scotland)

MR M DOBKIN appeared on behalf of the Mother

The Father of Y appeared in person

MS S. ANNING appeared on behalf of the Prospective Adopters.

MS H HENDRY appeared on behalf of the Children's Guardian.

MS M HASTINGS attended the hearing on behalf of West Dunbartonshire Council

---

J U D G M E N T

(Transcript prepared without the aid of documentation)

THE PRESIDENT:

1 This judgment, which was given orally on 16 December 2020 at the conclusion of the hearing, has been subsequently amended to include reference to the relevant provisions under Scottish law.

2 These proceedings concern the welfare of two children: A girl, Y, who was born in February 2013, and who is now aged seven and a half years; and a boy, Z, born in September 2016 and now just over four years of age. The children have the same mother: a single woman, who resides in Scotland; but they have different fathers. In particular the father of Y, the elder of the two, is Mr A, a native of Ghana, whose business interests bring him very regularly to the United Kingdom and, certainly at the time of his close relationship with the children's mother, he was a regular visitor to her home and the Glasgow area.

3 The children have two older siblings: W, born in December 2004, and so two days away now from her sixteenth birthday; and X, born in May 2007, now aged thirteen. For some years now, those two children have lived with their father, and out of the mother's care.

4 The proceedings in relation to the need to protect the children have been conducted entirely through the Scottish system. The social services in West Dunbartonshire have been involved in monitoring and then supporting the children's care with their mother for a very significant period, and it is surprising to English eyes, but it is a very positive surprise, that the same social worker, Miss McF, and the same senior social worker, Miss McD, have been involved really throughout the life of these two young children. There is, therefore, a wealth

of consistent social work knowledge of the struggle that this mother undoubtedly had in providing good or adequate or safe care for her four children.

5 In the event, her struggle came to an end on 6 December 2016. Social services had for some time been contemplating the removal of the children to foster care. In the end, on 6 December 2016, the mother seems to have accepted the reality, and she consented to their removal. I am sure that she will have done so with a very heavy heart. She is a woman who plainly loves all four of her children, and has done what she has felt able to do to care for them in her way over the years.

6 The children proceeded through the Scottish court process. Significantly on 11 January 2017 the case was referred up to the Sheriff's Court where formal findings of fact were recorded with the mother's agreement as to the background history. I will turn to those in more detail shortly. Following those findings, plans were made for the permanent care of the children, and the Scottish Children Panel formally approved the plan for them to move to an adoptive placement. That move took place in October 2018.

7 The placement that was found was not in Scotland but was in England, and thus the resulting adoption application has come before the Family Court in England and Wales. It is an application made by the couple with whom the children have lived since October 2018. The application for adoption is opposed by both the mother and Mr A. In their separate ways, but in many ways they are united in this, both of them wish to see the two children, and in Mr A's case his primary focus is on Y, living with either the mother or with Mr A or, in some way, in their joint care.

8 The court must approach the application in accordance with the law of England and Wales, as contained in the Adoption and Children Act 2002. The yardstick by which the court must

determine the application is set out in section 1(2): "The paramount consideration of the court must be the child's welfare throughout his life".

9 Pausing there, those words are a reminder to the court that the decision that I make today is not just for today. It is not even a decision about looking after young children for the time being. It is a lifetime decision. I have to regard their welfare throughout their life, and part of that is to consider that the decision is not just about caring for children, it is about bringing up individual human beings who will, in a very short time, become individual, independent adults. It is important for them when they are in their twenties, in their thirties, middle-age and beyond, for them to have had as stable and secure a childhood as is possible, for them to feel comfortable about themselves, including about their race and their culture and their identity, as they go forward. These are key and important elements in their lives, and the decision I have to make has to pull together thoughts of these long-term important aspects of their upbringing, just as I must consider issues concerning their immediate safety and wellbeing.

10 The court is assisted by being required to have regard to the adoption welfare checklist set out in section 1(4):

> "The court or adoption agency must have regard to the following matters (among others)—
>
> (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
>
> (b) the child's particular needs,
>
> (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
>
> (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child."

11 The most important elements in the checklist seem to me to be subsection (4)(c), the likely effect on the child (throughout his or her life) of having ceased to be a member of the original family, and having become an adopted person; and (4)(f), the relationship which the child has with relatives and with any other person in relation to whom the court considers the relationship to be relevant, including (i) the likelihood of any such relationship continuing, and the value to the child of it doing so; (ii) the ability and willingness of the child's relatives to provide the child with a secure environment in which the child can develop, and otherwise meet the child's needs; and (iii) the wishes and feelings of the child's relatives regarding the child.

12 ACA 2002, s 1(4)(c) and (f) describe the balance to which I have to have regard when determining whether to make an adoption order. What is the impact on these two children of an order being made which, if it is made, will take them legally out of the family of the mother and the family that involves Mr A, and make them as if born to the adopters? What will be the impact on these individual young people of such an order? On the other side of the balance, in subsection (f), what can the mother and Mr A, either together or individually, offer in terms of the relationship they may have in the future with the children, and their ability to provide "a secure environment in which the child can develop"?

13 Before any adoption order can be made, the court needs to have the consent of each parent who has parental responsibility. In this case only the mother has parental responsibility. The court can only proceed to make an adoption order without her consent if, under section 52(1)(b), "The welfare of the child requires the consent to be dispensed with". That is, again, a welfare test, and I have to be clear that the child's welfare 'requires' adoption as opposed to any lesser order, before I can proceed with making an adoption order against the wishes, and without the consent, of the mother.

14 There is a deal of authority about the application of this test. In *Re B (A Child)* [2013] UKSC 33, the Supreme Court established that the court should hold that "nothing else will do" other than making an adoption order in order for the test to be satisfied. Subsequently courts have held that there is a need for an overall assessment to be undertaken of the realistic options in the case; it is to be an holistic assessment. In the present case that means balancing the welfare of the children if they go to live with their mother and/or Mr A, or if they remain in the care of the adopters, and only if the balance tips, so that really nothing else will do, in favour of the adopters can the mother's consent be dispensed with.

15 Mr A is a father who does not have parental responsibility. There is a need to spell the significance of this aspect of the case. Mr A was seemingly in the area and in touch with the mother for the first three months or so of Y's life. He was not however registered as her father on the birth certificate, and he therefore did not obtain parental responsibility automatically in that way. Various explanations have been offered as to why that did not happen.

16 Subsequently it seems that Mr A remained in touch with the mother, and he told the court that he came to Scotland two or three times around the early period in his daughter's life,

and also around 2017. It has always been the case, it seems to me on the evidence, that he has had at least an amiable relationship with the mother, and yet there has been no further attempt by him to obtain parental responsibility. I make full allowance for the fact that people in their ordinary lives do not worry necessarily about parental responsibility and legal niceties.

17 However, in these proceedings, by an order made by the court in August of this year, it was spelled out that if Mr A wished to have parental responsibility, and if the mother wished to allow him to share parental responsibility with her for Y, then she could make an agreement to that effect, and that would give him parental responsibility, or she could agree that the birth certificate should be amended so that he would be recorded as the father. At that time the mother already had the benefit of legal advice to help her should she wish to undertake either of these steps. It is therefore of note that neither the mother nor Mr A have taken any step to afford him parental responsibility for his daughter.

18 Although I have spelled the situation out to explain it, it is not for me a very important matter. It simply means that Mr A's consent is not required for the making of an adoption order. But I would not make an adoption order unless I was fully satisfied that it was in his daughter's best interests to do. So, I simply point out the history, and point out the impact of it, as I will do in short course, on in the factual analysis.

19 If there is no adoption order made today, it is clear to me that the court could not simply order that the children be removed from the applicants. That would require a wholly different, additional, and further process. The court, whilst I have read the reports about the applicants, has not had anything other than general evidence about them. There has been no assessment of them carried out by an Independent Social Worker or any other expert. There

has been no opportunity for the mother and the father to challenge what is said about the applicants, and the applicants have played no part in the proceedings.

20 Thus, for the court to come to a sophisticated and comprehensive conclusion that the children's needs require their removal from the applicants, there would have to be further court proceedings. Because of the way that the process must be conducted, all that I can do today is either make or not make an adoption order. The focus is, therefore, on the mother and Mr A, and the question really is whether the case that they have put before the court is sufficient to avoid the making of an adoption order, and establish at least a *prima facie* case that it might be in the children's interests to have the welfare issue further investigated with a view to one or both of the children moving to live away from the applicants. The finding of such a *prima facie* case would be sufficient to prevent me holding that the children's welfare "requires" adoption.

21 Turning then to the way the matter is put before the court, I deal with Mr A first. What I say initially in this regard will be seen by him as disrespectful, and I suspect he will disagree with what I say. It is not meant to be disrespectful or indeed confrontational, but my assessment of his case is that he is not putting forward a fully considered or even realistic option for the care of Y, let alone Z.

22 It is not plain, in what he has said to the various social workers who have questioned him, or to the court, what his plan is. He has identified a number of options, but only in sketchy form. He might live in Glasgow, he might be based in Newcastle. He might want to move Y back to Ghana. He may have members of his family in the United Kingdom who could help. On my reading of the papers, those have not been mentioned as options before he gave his evidence, and made submissions to the court. And so, in terms of him being able to establish a viable ‘Plan B’ for these children, he is a long way even from the starting blocks

and I am concerned with the welfare of two children who are in the middle of their childhood. Y is seven and a half. If there is to be a radical change in her life, we really need to know what it is in detail now, and be able to contemplate it as a choice for her, but Mr A is not able to put a concrete option before the court.

23 Secondly, it also has to be acknowledged that Mr A has failed to step forward and assert himself as Y's father, and asked to have a role in her care, before this year. I repeat what I have said so far about parental responsibility, but it was only this year that it was confirmed that he was Y's father. A lot of life has been lived by Y in the intervening period, and she has done that without him asserting himself.

24 But, and it is a big 'but', I respect his position. He, it seems to me, is a proud man, and he has a good deal to be proud of. He is proud of his family in Ghana and the family in this country. He is proud of the education that they have had, and he wishes for his family to be known to Y, and for her to have the benefit of being part of that family.

25 I am also impressed by what he says he wants for Y. He wants her to have a good childhood. He wants her to progress and develop. He wants her to access educational opportunities at every turn. He has strong and positive desires for Y, and that is impressive, and I respect his position in that regard, although I have said what I have felt I have to say about his ability to put himself forward now. That, however, is the position and he is not currently able to put forward a realistic option for her care.

26 Equally, as he is the father of just one of the two children, it is not at all clear whether he would be involved in just her care, or whether it might involve him also caring for Z. There is therefore the prospect of the two children being separated which, given that all the twists and turns of their lives have been undertaken together, would be a very substantial change

for them. They have been together through thick and thin throughout the last four and a half years since Z was born.

27 In looking at the possible options for the children, in my view it therefore boils down to the proposals that the mother puts forward. Hers are the only potentially realistic options as against adoption.

28 In approaching what I say about the mother, I do so with full regard to the fact that she has not been dealt a good hand in the game of life. She had, in the early years certainly, a difficult childhood prior to her adoption into what was a big family. She has significant learning disabilities. She has struggled throughout her adult life, as I read it, with difficulties with her mental health. Those difficulties are, happily, now moderated by the fact that she is able to take the right medication, and that she does take it, but that has not always been the case, and during the time that the children were in her care, that was not the case for significant periods.

29 Her ability to look after herself and make decisions has not played well in the choice of partners, with the singular exception of Mr A, about whom nothing negative is said. But in terms of the father of her two older children, and the father of Z, it is plain from what she says and from what the social workers observed, that these were abusive relationships conducted by men, certainly in terms of Z's father, who themselves had significant mental health difficulties, and in his case alcohol addiction and involvement in criminality.

30 The social work statement in this case runs to some forty-one pages, which detail, without spending more than a sentence or two on each incident, a range of episodes that occurred in the mother's life in her care of the children from 2013 through to their removal in 2016, and beyond.

31 The social work statement is hard reading. Living the life that was being led by the mother, and by the children, that is recorded in that statement must have been truly hard. The factfinding decision of the Sheriff's Court on 11 January 2017 summarises this background. I will not read it all out, but certain parts are important. Having described the mother's difficulties with her mental health, and indicating that she struggles to manage the care of all the children effectively, it gives an example which is that:

> "Her presentation can at times appear erratic and unpredictable. She has difficulty organising and prioritising her responsibilities as a parent, and her responses to the children's needs, particularly when under pressure, can be inappropriate."

32 There is a record of the children being at times unsupervised, and to W being left in the care of an inappropriate male. In terms of the father of Z, Mr M, the history that I have in relation to his behaviour is set out, and his inability to stick even to bail conditions is recorded. And then this:

> "Despite significant intervention and supports from the social work department over the last year, little improvement has been sustained in the level of care the children receive, which has result in W and X moving to stay with their father. The mother has not always been honest and truthful with professionals supporting the family. She at times minimises or fails to appreciate the concerns raised by professionals, and she does not always cooperate or engage fully with the support services offered, to the detriment of the children."

33 And then, the conclusion is that:

> "The facts recorded in this document indicate that the children are likely to suffer unnecessarily or their health and development is likely to be seriously impaired due to a lack of parental care."

34 Now, none of that is to blame the mother. I hope I have said enough about the poor hand, as I have called it, that she was dealt, to indicate the understanding that I have. Nothing that I have seen indicates that she has ever failed in her love for her children, but this is a catalogue running over the course of years, of highly neglectful and harmful parenting. It was a chaotic, dysfunctional, and abusive home. I use the word "abusive" because of the role of Mr M there and because of the inevitable impact of neglect and chaos on the children's development.

35 This court understands fully that it is impossible to be a child in a home where domestic abuse is the norm, and for that child not to be affected by it. Whether a child actually sees a particular event, actually witnesses it, or is even injured, is not necessarily the point. Living in a household controlled by an angry, abusive man is itself abusive to a child. Directly abusive and also indirectly because it diverts their mother from being able to focus on the difficult task of caring for them. I am fully satisfied that the basis for the social work conclusion about suffering and serious impairment of development was made out.

36 In these proceedings the mother has not put forward a detailed case to challenge the social work file, and the summary of it contained in the social work statement. I am sympathetic to her position in the court case now, in 2020, being able to do that, but the reality is there is just so much detail there that it would be difficult for any court to hold that there was no reason to be very concerned about these children when they were in her care.

The Scottish Legal Proceedings and the Scottish Law

37 It is necessary at this stage to pause in the factual narrative and consider the legal proceedings that were taken in Scotland relating to the children and their impact on the adoption process once the children were placed in England.

38 On the 11th January 2017, the Dumbarton Sheriff Court held that the facts were sufficient to satisfy Children's Hearings (Scotland) Act 2011, s 67(2)(a) and (f) ['CH(S)A 2011'], namely that:

> (a) (s)he is likely to suffer unnecessarily or his/her health or development is likely to be seriously impaired due to lack of parental care;
>
> (f) (s)he has, or is likely to have, a close connection with someone who has carried out domestic abuse.

39 At a hearing before the Children Panel in Dumbarton on 1st February 2017 compulsory supervision orders were made under CH(S)A 2011, s 83 for 12 months with a condition that the children should continue to reside in foster care. That order has been extended from year to year and remains in force.

40 At a hearing before the Children Panel on 9th October 2018, in addition to the compulsory supervision orders being continued, they were varied to include a requirement that the children be placed with the prospective adopters and that arrangements for a final face-to-face contact visit with their mother should be made.

41 The children were placed with the prospective adopters on the 28th October 2018. In an opening note prepared by their counsel, Ms Anning, the applicant's state of knowledge as to the underlying legal position is described:

> 'At the time the children were placed no adequate explanation was provided to the applicants of the legal basis of that placement, the knowledge of the mother's continued Parental Rights and Responsibilities and/or the absence of any legal order dispensing with her consent to adoption was a matter that came to the attention of the applicants only at the time that they made their application within the jurisdiction of England to adopt Y and Z.'

42 Pausing there, it is necessary to understand the central structure of Scots law in relation to child protection and adoption. Fortunately this ground has been well and thoroughly

explained by Mostyn J in *Re Z (Adoption: Scottish Child Placed in England: Convention Compliance)* [2012] EWHC 2404 (Fam); [2013] 1 FLR 618, and by Sir James Munby P in *Re A (Children) (Adoption)* [2017] EWHC 35 (Fam); [2017] 2 FLR 995 and in *Re A and O (Children: Scotland)* [2017] EWHC 1293 (Fam); [2018] 1 FLR 1. The relevant statutory context is set out in detail in each of these three decisions. No issues of law were raised by any party in the present proceedings and it is not therefore necessary to assemble all of the relevant references here. The difficulties that have arisen in the present case have done so because of the impact of the children's status under the Scottish system upon the English proceedings, rather than as a result of any legal controversy over the nature of that status in Scots law. It is, however, helpful to set out the key provisions which may be deployed to authorise a child's placement for adoption in the Scottish system as it appears that there is a choice to be made between two separate avenues that may be followed which, in turn, will have a different impact upon a child's status before the courts in England and Wales in the event that an application is made here to adopt a child who has been placed by a Scottish local authority.

43 The first route is the one followed in the present case and involves the child being authorised for placement for adoption within the terms of a compulsory supervision order. Before a compulsory supervision order (other than an interim order) may be made, it is necessary for one or more of the 'grounds' set out in CH (S)A 2011, s 67(2) to be established. In broad terms a finding that one or more of the 17 specified 's 67 grounds' is established equates to a finding that the 'threshold criteria' in Children Act 1989, s 31 are met in care proceedings in England and Wales. Where s 67 grounds sufficient to justify making a compulsory supervision order are accepted by a child's parent(s), the case may proceed before a Children's Panel (CH(S)A 2011, s 91). In other cases, the determination of what, if any, grounds are established is referred for determination before a Sheriff's Court (CH(S)A 2011, s 93).

44 A ‘compulsory supervision order’ is an order that includes one or more of the 9 measures set out in CH(S)A 2011, s 83(2) regulating the arrangements for the care of a child. For example, s 83(2)(a) provides that a measure may be ‘a requirement that the child reside at a specified place’. A compulsory supervision order will also specify which local authority is required to give effect to the order and will specify the period during which it is to have effect (CH(S)A 2011, s 83(1)).

45 As Sir James Munby observed in *Re A and O* at paragraphs 9 and 10, none of the measures that may be specified within a compulsory supervision order affects the existence of either ‘parental responsibilities’ or ‘parental rights’ under Scottish law, which are retained by the child’s parent(s) and are not invested in the named local authority.

46 Once a compulsory supervision order is in force, a Children’s Hearing may authorise placement of the subject child for adoption under CH(S)A 2011, s 83(2)(a). In *Re A and O* [at paragraph 6] Sir James Munby accepted that, under Scottish law, the ‘specified place’ in s 83(2)(a) need not be in Scotland and could be in England, but that the placement would be governed by Scottish law. Thus, in contrast to the placement of a child for adoption in England following the making of a ‘placement for adoption’ order under ACA 2002, s 21, when parental responsibility for the child will be held (under s 25) by the adoption agency, the prospective adopters, and the child’s parent(s) (subject to the control of the adoption agency), parental responsibilities and rights for a child placed in England under a Scottish compulsory supervision order will be held by the parent(s) alone.

47 The alternative route to adoptive placement under Scottish law is where a ‘permanence order’, made under Adoption and Children (Scotland) Act 2007, s 80 (‘AC(S)A 2007’), includes ‘authority for the child to be adopted’. As this route was not followed in the present

case there is no need to reproduce the extensive provisions relating to permanence orders in ss 80-83 of the 2007 Act and which are set out in *Re A* at paragraphs 20 to 25.

48 A Scottish court may only make a permanence order which includes authority for adoption if, in the case of each parent or guardian of the child, the court is satisfied either that the parent consents to the making of an adoption order or that their consent to adoption should be dispensed with on one of the grounds mentioned in AC(S)A 2007, s 83(2), which are, in summary:

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 the parent or guardian is unable to satisfactorily discharge parental responsibility or rights with respect to the child and is likely to be unable to do so;
d. That the parent or guardian has no parental responsibility or rights in relation to the child as a result of an existing permanence order and it is unlikely that such responsibility and rights will be afforded to the parent or guardian; or
e. That, where neither (c) nor (d) above apply, the welfare of the child otherwise requires the consent to be dispensed with.

49 The effect of a permanence order granting authority for a child to be adopted is that, in the event that an application is made for an adoption order under AC(S)A 2007, s 31, the issue of parental consent does not fall for re-consideration and, unlike the position in England and Wales under ACA 2002, s 47, there is no provision for a parent to apply to the court for leave to oppose the adoption. The relevant parts of AC(S)A 2007, s 31 provide:

> '(1) An adoption order may not be made unless on of the five conditions is met.
>
> …
>
> (7) The second condition is that a permanence order granting authority for the child to be adopted is in force.'

Impact of the position under Scottish Law

50 It follows from the decisions of the Sheriff's Court in January 2017 and the Children's Hearing in October 2018 that the s 67 grounds for state intervention have been satisfied under Scottish law and there are compulsory supervision orders in force under which authority has been given to place the children for adoption, but the issue of parental consent to adoption has not been determined as no permanence order has been made granting authority for the child to be adopted. An application for adoption has been made to the Family Court in England and Wales. For the reasons given in *Re A and O* (paragraphs 33 to 46), and notwithstanding that the Scottish court retains jurisdiction were an adoption application to be made to it, the court in England and Wales has jurisdiction to hear this application for an adoption order pursuant to ACA 2002. The task of the English court is to determine whether adoption is in the best interests of these two children by affording paramount consideration to the welfare of each throughout their life. The English court must also determine whether the consent to adoption of each parent with parental responsibility (in this case the mother alone) is dispensed with on the ground that each child's welfare requires adoption.

51 The situation under a compulsory supervision order, as here, is in stark contrast to that which would apply to an adoption application made in England where the child is the subject of a Scottish permanence order with authority for the child to be adopted. In such a case the 'third condition' under ACA 2002, 47 would be satisfied and, as in Scotland, the English court would not be concerned with parental consent. The relevant provisions in ACA 2002, s 47 are as follows:

> '(1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; …
>
> …
>
> (6) The third condition is that the child:

(a) is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted, …'

52 In terms of its impact on the human beings at the centre of these proceedings, the absence of a permanence order with authority for adoption is significant:

a. The parents, and particularly the mother, has had to face and potentially challenge social work evidence covering the period of over five years up to 2016, nearly five years ago. Further, the successful placement of her children with chosen adopters over two years ago has led to them establishing a substantial and settled home with new 'parents' such that there is now a strong 'status quo' argument against rehabilitation.

b. The prospective adopters, who had apparently been told nothing of the uncertain legal position under Scottish law at the time of placement, have been placed in the position of 'applicants' in contested legal proceedings in which they have been required to marshal and prosecute a case against the parents, relying on social work evidence from the Scottish local authority. The adopters, understandably, have not welcomed being drawn into a direct contest with the parents in this manner. They have been unsettled to understand that only the parent(s) currently hold parental responsibility and parental rights for the children and that they, prior to the making of an adoption order, do not. They will have found the extended period of delay, occasioned by the need for this court to deal with the issues that have been raised, rather than experiencing a more straight forward process before a circuit judge in their local Family Court, most unwelcome.

53 To English eyes, this case recalls a much earlier time, over 40 years ago, prior to the implementation of the Children Act 1975, which introduced 'freeing for adoption' orders

which was then superseded some 15 years ago by the introduction of 'placement orders' on the implementation of the ACA 2002. The application therefore has, to use Mostyn J's phrase deployed in the similar circumstances of *Re Z*, 'a traditional feel about it'. These statutory developments, particularly the latter, were introduced to England and Wales by the UK Parliament in order to bring the key adoption and consent decisions forward by front-loading them to a stage before a child is placed for adoption. It is of significant note that, by the AC(S)A 2007, the Scottish Parliament introduced provisions with very similar effects in the same period by the introduction of child permanence orders with authority to adopt. These provisions were not, however, deployed in the present case.

54 Decisions about individual children who come within the child protection system in Scotland are, of course, entirely and properly a matter for the relevant Scottish authorities. I would, however, make a strong plea to Scottish local authorities, courts and tribunals, based on the experience of this court in the present case, but also that of the cases that came before Mostyn J in 2012 in *Re Z* and Sir James Munby in *Re A and O* in 2017, that where a child from Scotland is to be placed under Scots law for adoption in England and Wales earnest consideration is given to applying for a child permanence order with authority to adopt before any placement is made, rather than, as here and in those two earlier cases, making the move under a compulsory supervision order so that a full adoption hearing may then be required in England, with the prospective adopters pitted against the parents, relying on evidence of events in Scotland some significant time in the past.

55 As a matter of law, I am not bound by the findings made by the Sheriff's Court on 11 January 2017, but I can take account of them, as I readily do. They must form the basis for any evaluation of whether now the mother can offer a safe, stable and reliable home for the children going forward.

Discussion and decision

56 To return to the narrative, the children were removed from the mother's care, as I have described. They were made the subject of a compulsory supervision order, and placed for adoption.

57 One aspect of the Scottish system that I have learned about only today, but it is a matter of record, is that under the Children Panel Rules, Rule 84.4, the identity of the adopters chosen for the placement of any child must be disclosed to the parents, and the Panel will only decline to disclose that information if there is proof that disclosure would cause significant harm to the child.

58 That may be a surprising provision to English eyes. Be that as it may, that is what happened. The mother was told the names and the then address of the adopters before the children were placed. The adopters were not told that, and I think they only learned that today, as I learned it also. But it is to the mother's credit that she has not taken any steps to use that information to take action directly, and make contact.

59 Following the approval of the Children's Panel, the children moved to live with the adopters, as I have indicated, in October 2018. The adopters are in a solid relationship. They had been together for some five years or so prior to the placement. They have taken to the children from Day 1. They love these two children. They are fully committed to them. One only has to understand what the adopters have been through in the last year, in terms of hanging onto these two adoption applications, and facing all the hurdles that they have faced, to see proof of their commitment to the children. People who were not so committed may well have thrown their hands up and said, "Enough", and tried to walk away, but these two adopters could not and have not because of the strong bond that is said to exist between them and the children.

60 Both the adopters are well educated. I am saying this particularly so Mr A hears me. They place education as a primary objective in their lives, and for the lives of these two children, if they remain in their care. There is a racial concurrence between the adopters and the two children. The two children are said to be thriving in their care. The children were led from the moment of placement to understand that this was their "forever home", and that is how they have approached the two years and more that they have lived with this couple. They regard them as their mother and father, their mum and dad. Whether that is right to happen, or not as the mother says, that is the reality for the two children, and to consider moving them now would be to move them from people that these two children regard now as their parental figures.

61 No good reason has been identified by those who know of the circumstances of the applicants to question the children's placement with them. The only good reason to move them now would be if their mother could present a strong and sound case, relying upon her status as their blood relative, as their mother, to have them in her care. But for her to justify moving the children from this placement, her case would have to be very strong. That is the reality.

62 The fact that the children are so settled is an unfortunate consequence of the fact that this hearing takes place two years after the children have been placed, rather than before they were placed, as would be the case in England. But this court cannot ignore the passage of the last two and a quarter years in making its decision. And unless there is a good reason, a strong reason, presented by the mother's case for moving them, there is no other reason for suggesting that they should do anything other than remain in the care of this couple.

63 What is the mother's case now? It is one thing to have caused her pain, as I am sure I did, by going through a catalogue of her circumstances in 2014, 2015, 2016 and 2017. But she would say, and she is entitled to say, that that was “then”, and her life has changed significantly since that time. It is, indeed, very plain, and I rely on the evidence not only of the mother but also of the social worker Miss McF, and her superior Miss McD; the Independent Social Worker Miss Bates, who has looked at the files, and then met the mother very recently; and the Children's Guardian: that the mother is now much more settled than she was in those earlier years.

64 The mother has plainly sought to turn her life around, and she has made a number of significant steps forward in doing so. She is proud of what she has achieved, and she deserves to be so. She now has a stable and safe lifestyle. In her helpful closing submissions, Ms Hendry on behalf of the Guardian used the phrase that there has been "a substantial settling" in the mother's life, and I think that neatly encapsulates what has been a significant achievement for the mother.

65 She is able to identity her, as she calls them, "big mistakes". Largely, this is in the choice of the two abusive partners that I have already mentioned. She says she has learned from that experience, and I accept that she will at least have learned something from that experience. She has done what she can to learn about what will be needed were she to take up the care of these children once again. She has watched television programmes about childcare, and I was impressed, as I said at the time, by her evidence to the court, in which she listed a range of topics and issues that she would be required to consider as a parent, and also giving examples of how she would deal with them on a day to day basis if the children were in her care.

66 All of that is good. It is easy for a judge to list positives, and say, "Yes, that's good", but I really think it is good. I think she has taken substantial steps to improve herself, and she should, as I have already said, feel proud of what she has done. She is, I suspect, in some important respects a different person from the person who had the care of the children.

67 In addition, as I have already mentioned, but you cannot speak of it too often, her love for them is plain. That has never been in doubt. No one has ever suggested that she has not wanted to care to the best of her ability for the children, and that comes through very clearly in her evidence. She is a victim in many ways. She was a victim of her circumstances and the choices that she made, and she could not cope with the children's care. There is no indication that she caused them deliberate harm or was a deliberately abusive parent to them. She just could not cope and, as a spiral developed, the lives of the children disintegrated into the neglect and chaos that I have already described.

68 I therefore understand what she has done, I understand why she has done it in recent years, and I respect her efforts, and her plea now is to be given another chance to have the care of her children once again so that she can be a mother. I hear that plea loud and clear.

69 But, and it is a very big "but", the court has to decide the case not just on impressions of parents and others, the court decides the case in part on professional evidence from, in this case, social work professionals who have known and investigated the circumstances of the children and the mother, and reported on it. And here, all of that evidence points away from the children returning to the mother's care.

70 The social worker's evidence benefits from being able to stand and look at the "before and after", at the way things were in the children's early lives and the way they are now. That evidence, whilst accepting the changes that have been made by the mother, indicates that

they are by no means changes that are deep enough or profound enough to justify taking a chance by moving the children back to her care now.

71 The court, at the invitation of the mother and, as I recall it, against the submission of some of the other parties, granted permission for an Independent Social Worker to meet the mother now, and Mr A, to carry out an assessment of the mother's proposals to care for the children. The result is a very impressive report from an experienced social worker, Julie Bates, dated as recently as 2 December 2020.

72 The ISW report, both in its written form and in the oral evidence given in support of it shows the degree of detail into which Ms Bates went before forming her opinion. She read the social work evidence. She catalogues a lot of the depressing detail that I have summarised, in the early stages of her report. And then, she went up to Scotland, and spent three days there, seeing the mother for half a day on three consecutive days. She immersed herself in the detail of the case, and encountered a mother who was willing to engage with her in the assessment process, and that will have given Ms Bates a very good observation point from which to conduct her assessment.

73 Interestingly, Ms Bates also met the mother’s mother, herself a foster parent in earlier years before her retirement. It was interesting to read that the mother’s mother does not accept the criticisms that were made of the mother, and does not accept that the mother lacks insight in the case now.

74 The Independent Social Worker's assessment focusses on insight. Despite her willingness to change, Ms Bates's considered view is that the mother just simply has not got the ability to understand in any depth what she did that caused harm in the past, and what she would need to do now in order to meet the children's needs.

75 I am not going to go through Ms Bates's report in detail. In many ways it speaks for itself, and I have read it again during the course of the short adjournment before giving this judgment. One of the factors that Ms Bates relies upon is the absence of any history of the mother being able to work effectively with professionals. Indeed, during her time with Ms Bates there were occasions when she became angry when challenged. That is an important matter because on any view there would need to be professional input from the social services to chaperone, control and monitor any move of the children into the mother's care.

76 More significantly, Ms Bates's conclusion was that despite her current lifestyle, which is stable, single and safe, the mother remains vulnerable. The underlying vulnerabilities that were there are unaddressed, and they are not accepted by the mother, and so it would be difficult for any professional to work with her.

77 The court was provided with a small snapshot of what was described there in terms of vulnerability by the mother's own evidence at this hearing, when she was asked whether she was engaged to be married to Mr A. Mr A was in the same room as her, at her home in Scotland, when she was giving her evidence over a video-link. The mother was unable to answer the question. She kept turning to Mr A to ask him whether she was engaged to him or not. She seemed unable to give her own answer to that important question.

78 Equally, and from the children's point of view this is particularly important, Ms Bates identifies that the mother is unable to contemplate the impact on the children of being moved now into her care. At paragraph 182 of her report, Ms Bates says this:

> "The mother believes that Y and Z will settle into her care with relative ease. She does not envisage any issues with this which may require professional input. I attempted to explore this through several different

> suggestions of how the children may feel or may struggle to adjust. Sadly, due to her own limitations and naïve view of life, the mother was unable to consider this from Y and Z's perspective."

And then, moving on:

> "I spent some considerable time trying to explore how a move from their prospective adoptive parents will possibly affect Y and Z. The mother was unable to relate any of the possibilities I raised with the children's emotions, welfare or potential for disruption."

79 Well, that is important. I refer to it not to blame the mother. I hope I have stressed enough that what I am describing is an inability rather than any deliberate action on her part. But these are important gaps in her ability and in her capacity to care for the children. No matter how much self-help she may have given to herself, as she has over recent months, such steps can only have scratched the surface of the gulf in the lack of understanding that apparently existed in the past and on Miss Bates's evidence still exists. At paragraph 233 Miss Bates also says this:

> "Upon reading the papers in this matter, and making my own enquiries, and based on information contained within this assessment, I do not feel that the mother, even as a sole carer, or alongside Mr A, is equipped to meet Y and Z's long-term needs. I am of the view that the mother remains extremely vulnerable, and that this is reflected in her inability to fully comprehend the status of her relationship with Mr A."

That observation repeats my own made a short time ago.

80 The conclusion of Ms Bates is very firm and clear. It is that it is simply not possible to contemplate the children returning to their mother's care, and for that to be in their best interests. This is an important report, it is up to date, it is comprehensive, it is well evidenced in the detail it lays out before giving a thorough professional analysis. Orally, Ms Bates was an impressive witness. Despite the sympathy that she clearly had, and the warmth that she indicated when talking about the mother and, for example, the episode of the cat that was discussed, this is a properly child-focussed report. Ms Bates' conclusion is

that from the children's point of view, it is simply not possible to contemplate a move now back to their mother's care.

81 Ms Bates' conclusion was also the conclusion of the very experienced Children's Guardian Ms Charlesworth. She has been involved in this case for longer, and she endorses the Scottish local authority evidence and that of the Independent Social Worker, and she has formed her own view that it simply is not possible to contemplate a move for the children. In addition, looking beyond the detriments in the mother's ability to care, the reality is that she has not got a settled plan; she would have to move house; she would have to build a relationship with the children; she would have to develop support networks to help her with the care of the children; and there is no basis in the evidence she has been able to put before the court to indicate that that is about to happen, or that it would work. The mother's proposal is, therefore, at best an experiment, and it is not possible to contemplate experimenting with the lives of these two children, who are now so well settled in the care of the applicants.

82 The professional opinions of Ms Bates and the Guardian are therefore at one with the considered, evidence based, assessment conducted by Miss McF and Miss McD that caused them to seek the removal of the children and their subsequent placement for adoption. Although she may not have thought so at the time, it is clear that the mother and the children were well served by Miss McF who has stuck with this case over the years and who plainly strived in the earlier times, over a period of years, to support this mother's continuing care of her children. The professional conclusion of these two experienced and insightful social workers that the children had to be removed is unassailable, as is their opinion now that there has been wholly insufficient change to justify contemplating halting the adoption process and sending either or both children back to their mother's care.

83 Drawing matters together, and reminding myself, as I did at the beginning of this judgment, that I should only make an order if it is in the best interests of each of these two children separately, to meet their welfare needs throughout their life, I am satisfied that adoption is the only option that can do that for them.

84 They will, if they remain with the applicants, continue to benefit from the commitment of that couple and their aspirations, which are very similar, I suspect, to those of the mother and Mr A, for the development and nurturing of these children. To give these two children the best chance to be solid, stable and thriving young adults is for them to remain in the care of the adopters, and for that to be fully endorsed by and enclosed within the security of an adoption order, which is recognised by the courts as being the only way to provide the sort of security and long-term stability that children need as they get on with the difficult task of simply growing up as a child.

85 I am satisfied that the mother's consent should be dispensed with on the basis that the children's welfare requires adoption, and I therefore propose to make an adoption order.

86 There has been debate during the hearing about the level of contact that there should be. No one suggests that the court should make a contact order. Equally, there is acceptance that any contact will have to be indirect contact. The issue boils down to whether that indirect contact, which is agreed to be at least in letterbox form, should include once a year the mother being shown photographs of the children, not so that she could take them away, because it is thought there may be a risk of, inadvertently at least, the photographs then becoming current on social media.

87 It seems to me, and there has not been a deal of evidence about this, that the adopters have not been included in the professional discussion about indirect contact. The effect of the

adoption order is to make this couple the legal parents of these two children, and no one else has parental responsibility for them. The primary decision makers therefore are the adopters, and it is for them to decide this issue about photographs rather than me.

88 I anticipate that they will want to be exposed to the research, which I am aware of, which indicates that it is likely to be in a child's interests to know that their parents have been interested in them, although they have been adopted, and that some level of link with the parents has been maintained. Quite what that is, whether it involves photographs or not, is a matter that needs to be looked at in more detail.

89 I suspect that once the adoption order has been made, as it has been now, the adopters will feel more comfortable and confident about matters, and over the course of some time from now will be able to discuss with the social workers what is proposed and why, and then the decision about it should be theirs. I therefore make no statement in this judgment expecting photographs to be transmitted or not. I leave the issue entirely open. I can see the argument both ways.

90 So, in a rather longer form than I had anticipated, that is my judgment.

CERTIFICATE

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

Transcribed by ***Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

This transcript has been approved by the Judge / is subject to Judge's approval