



Neutral Citation Number: [2021] EWFC 35

Case No: GL20P00553

IN THE FAMILY COURT

Strand, London, WC2A 2LL

Date: 23/04/2021

Before :

THE HONOURABLE MRS JUSTICE JUDD DBE

Between :

A County Council	<u>Applicant</u>
- and -	
M	<u>1st Respondent</u>
and	
H (The Child)	<u>2nd Respondent</u>
(acting through a Children’s Guardian)	
and	
T	<u>Intervenor</u>

Mr J Sampson QC and Dr R George (instructed by the local authority for the **Applicant**
Mr N Goodwin QC and Mr S Miller (instructed by **Alsters Kelly**) for the **1st Respondent**
Mr P Storey QC and Ms J Sparrow (instructed by **Penmans**) for the Child through a
 Children’s Guardian)
Ms R Henke QC and Mr Ian Halliday (instructed by **Gwyn James**) for the **Intervenor**

Hearing dates: 29-31 March 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MRS JUSTICE JUDD DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment 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.

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 2:00pm on 23 April 2021. A copy of the judgment in final form as handed down will be automatically sent to counsel shortly afterwards

The Hon Mrs Justice Judd :

Introduction

1. In this case I am asked to determine two applications. The first is by a grandmother under section 10(9) Children Act 1989 for permission to apply for either a Special Guardianship Order or a Child Arrangements Order with respect to a child (H) who is now seven months old. The second is an application by the local authority under the inherent jurisdiction for permission not to carry out any assessment of her as a possible carer.

Background

2. The baby's parents are not married, and only the mother has parental responsibility. They met at university and were in a relatively early stage of their relationship when the mother discovered that she was pregnant – not just that but she was 34 weeks pregnant.
3. This was a surprise and terrible shock to them. For many, if not most people, the impending arrival of a baby is one of life's greatest gifts. For others, who have not planned it and are not at the right stage of life, it is extremely difficult if not frightening. To be a parent is a great privilege but it is also a huge responsibility. Some parents facing an unplanned baby adjust to, welcome and then love the child as much as any planned arrival. Others, however, do not feel that they can offer the child the love and care that he or she deserves. Many women in such circumstances (if they discover the pregnancy early enough) will seek terminations. There were over 200,000 terminations in the UK in 2019. Others will look to have the baby adopted. There may be a category of such parents who place the baby with a family member, although such a course of action will mean the retention of their ultimate legal status as a parent.
4. In this case both these parents decided that they were unable to take on the responsibility of being a parent at this stage of their lives, and that in those circumstances the best choice they could make was for H to be adopted. They approached the local authority before the birth and had a number of meetings with the social worker. The social worker also met the mother's family (who were supportive of the decision).
5. The father told the social worker that his own mother also supported the decision, and when asked to provide a telephone number for her, declined, saying that she did not wish to speak to her.
6. H was placed in foster care immediately after he was born. At a few days old maternal family members visited and held H. Some photographs were taken for the life story book. The social worker said that they left feeling confident and happy that the baby was being well cared for. At just over two weeks old, H was placed with 'foster to adopt' parents.
7. Just before the baby went to the foster to adopt placement the social worker received a telephone call from the paternal grandmother. She stated that she had only just

become aware of H's existence, and wished to care for the baby immediately. She told the social worker that her son had told her that if she went ahead with this he would never speak to her again.

8. Upon hearing from the grandmother the social worker spoke to the parents again. They were adamant that the baby should not be placed with her. The father said that his mother was a single parent with depression, unemployed and living in social housing. The parents were very upset at the grandmother's request and asked the local authority not to assess her as a potential carer – or indeed to share any further details of what was happening with her.
9. The grandmother in turn was also distressed and there was an exchange of numerous messages between herself and the parents. The grandmother simply could not understand the decision that these parents were making. She wondered whether it could be that the baby was not her son's. She also believed that the decision was one that was made in haste and in a situation of stress, and believed that her son would later bitterly regret the decision he had made. She stated in the messages that she was more than willing to bring up the baby until they were ready. The mother tried to explain in her messages in response that they had thought about a family placement but did not think that would be the best for the baby. As the messages demonstrated that the parents continued to be firm about the decision they had made, the paternal grandmother consulted a solicitor.
10. On 8th September the local authority issued an application asking the court 'to exercise its inherent jurisdiction to determine whether the parents' consent to the adoption should be accepted in accordance with section 19 Adoption and Children Act 2002'. The application stated that the parents did not want any assessments of family members to be carried out, and the authority was in agreement with this because it did not consider it to be in the best interests of the baby given the strong opposition to it by the parents. This application was followed by another under the inherent jurisdiction asking the court to make a declaration that it was lawful for the local authority not to assess the paternal grandmother.
11. The application was made to the family court, and was transferred to be heard by a High Court Judge in November and then listed before me for the first time in December 2020. The grandmother applied for permission to apply for Child Arrangements/Special Guardianship orders on 28th September 2020. Meanwhile, on 25th February 2021 both parents attended the CAFCASS National Business Centre and the mother gave her consent under section 20 Adoption and Children Act 2002 for the baby to be adopted. She also confirmed that she did not wish to be notified of an application for, or the making of, an adoption order.
12. The matter was listed before me to determine both the application for permission not to assess the grandmother and the application for leave to apply for an order under s 8 or 14A. In the meantime the parties agreed that the local authority would be permitted to gather some information about the paternal grandmother and indeed to speak to other members of the paternal family too.

The hearing

13. All parties agreed that the case should be argued on submissions only. The father has not applied to become a party, as he fully aligns himself with, and supports, the mother's case. I have had the immense benefit of detailed written and oral submission from Ms Henke QC and Mr Halliday for the paternal grandmother, Mr Sampson QC and Dr. George on behalf of the local authority, Mr Goodwin QC and Mr Miller for the mother, and Mr Storey QC and Ms Sparrow for the Guardian.

The law

Placement for adoption with consent

14. The law provides for what has been described as a 'fast track' process of adoption with parental consent. This allows a baby to be relinquished at birth, and then for the mother (and father if he has parental responsibility) to consent to adoption once the baby is more than six weeks old. Section 18 of the Adoption and Children Act 2002 ("ACA") provides for the local authority to place a baby under six weeks with prospective adopters, and Section 19 for placement with consent. Once the baby is placed for adoption pursuant to section 19 then a parent cannot apply for a Child Arrangements Order (CAO) unless an adoption application has been made and the court has given the parents leave to oppose pursuant to section 28(1).
15. The fact that there is such a procedure for a parent to relinquish a baby for adoption does not mean that there is no duty on the local authority or adoption agency to consider the wider family. First of all, a baby who is placed for adoption with a local authority comes within the definition of a child who is 'looked after' by them (s18(3)). This brings with it an expectation that the local authority will consider the child's family as potential carers of the child. In the case of *Re H (Care and Adoption: Assessment of Wider Family)* [2019] EWFC 10, Cobb J reviewed statutory and practice guidance to that effect. Section 17 CA 1989 imposes a general duty upon local authorities to (a) safeguard and promote the welfare of children within their area who are in need; and (b) so far as is consistent with that duty, to promote the upbringing of such children by their families. Section 22C(8) creates a preference for the placing of children with an individual 'who is a relative, friend or other person' connected with the child who is also a local authority foster parent amongst a hierarchy of options, if a placement with a parent is not possible.
16. The local authority in its capacity as an adoption agency is also required to apply section 1(4) of the Adoption and Children Act 2002 when coming to any decision relating to a child. So too of course is the court.
17. S.1(4) ACA provides 'The court or adoption agency must have regard to the following matters (among others) -
-
(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,
.....
 - (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"
18. These provisions are supplemented by the Adoption Agencies Regulations 2005. Those Regulations are to be read alongside FPR 2010 PD14C. A decision to place a baby for adoption requires the agency to be satisfied that the child ought to be placed for adoption (s18(3)) which requires the application of section 1(2), 1(3) and 1(4).
19. In *Re H* above, in paragraph 22, Cobb J concluded that whilst there are strong indicators of the importance of wider family engagement, there are no provisions in the CA, ACA, or accompanying rules or associated Practice Directions which absolutely require or place a duty on a local authority to inform, consult, assess or otherwise consider members of the wider family of a child in circumstances such as these.
20. In that particular case, where there were care proceedings relating to a five month old boy whose parents were seeking his return to their care, the judge ordered that the paternal family should be informed of the child's existence (against the wishes of the parents). In so doing, he relied upon the ethos of the CA 1989 which was plainly supportive of the involvement of the wider family in the child's life, save where that outcome was not consistent with the child's welfare. Given the absence of a de facto relationship between the child and grandparents, he did not make the decision based on Article 8 factors as he could not point to *'the real existence in practice of close personal ties'*; *Lebbink v The Netherlands Application Number 45582/99*; [2004] 2 FLR 463.
21. In the case of *Re JL and AO (Babies Relinquished for Adoption* [2016] EWHC 440 (Fam); [2016] 4 WLR 40, Baker J (as he then was) considered two cases of babies who had been relinquished for adoption. In one of the cases there was a clash between the wishes of the parents on the one hand which were for the child to be adopted in England and the Hungarian authorities and of the child's Guardian on the other, which were for the child to be sent to Hungary and placed for adoption there. Baker J concluded that in a case where the parents were consenting to an adoption, the approval of the court did not depend on the local authority or the court concluding that 'nothing else will do', because the degree of interference with family life rights was less than when the parent child relationship was severed against their wishes. In paragraph 55 he stated; "*Instead, they must approach the case by applying section 1 of the 2002 Act. making sure that they give paramount consideration to the child's welfare throughout his or her life, allocating such weight as they consider appropriate to the comprehensive list of factors within section 1(4). In such cases, the local authority and the court must consider the parents' wishes that their child be adopted in the context of all those factors, including the child's background, the likely effect on the child of having ceased to be a member of the original family and the ability and willingness of any of the child's relatives to meet the child's needs. As in the case of step-parent adoptions, the manner in which the statutory provisions are applied will depend upon the facts of each case and the*

assessment of proportionality". In paragraph 56 he stated "It follows therefore that in all adoption cases – non consensual and consensual – the local authority is under an obligation to carry out a thorough analysis of the realistic options for the child as highlighted in *Re B-S*. Indeed a thorough analysis of all the realistic options should surely be carried out in all cases where a local authority is making plans for the child's future".

22. In *Re A, B and C (Adoption: Notification of Fathers and Relatives)* [2020] EWCA Civ 41, Peter Jackson LJ reviewed the statutory material relating to children whose parent or parents wish them to be relinquished for adoption. At paragraphs 89 onwards, he set out the principles which should apply when a parent wishes to relinquish a baby confidentially without notice to other family members. One particular factor in the balancing exercise to be conducted is the likelihood of a family placement being a realistic alternative to adoption. At paragraph 89(4) he stated "*This is of particular importance to the child's lifelong welfare as it may determine whether or not adoption is necessary. An objective view, going beyond the say-so of the person seeking confidentiality, should be taken about whether a family member may or may not be a potential carer. Where a family placement is unlikely to be worth investigating or where notification may cause significant harm to those notified, this factor will speak in favour of maintaining confidentiality, anything less than that and it will point the other way*".

Applications for leave to apply for orders under section 8 and/or 14A CA 1989

23. S.10(9) of the Children Act 1989 provides as follows:

"Where the person applying for leave to make an application for a section 8 order is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to—

- (a) The nature of the proposed application for the section 8 order;
- (b) The applicant's connection with the child;
- (c) Any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and
- (d) Where the child is being looked after by a local authority—
 - (i) The authority's plans for the child's future; and
 - (ii) The wishes and feelings of the child's parents."

24. The leading authority with respect to such applications is *Re B (Paternal Grandmother: Joinder as Party)* [2012] EWCA Civ 737 Black LJ (as she then was) made clear that neither the paramountcy principle in s.1 CA 1989 nor the welfare checklist apply to such applications. In summary, she stated as follows:-

- (a) Section 10(9) does not contain a test, and by picking out some factors to which the court should have particular regard it acknowledges that there may be other factors that a court has to consider, which will vary infinitely from case to case;
- (b) One factor will be the prospects of success of the application that is proposed, as leave will not be given for an application which is not arguable;
- (c) The fact that a person has an arguable case may not necessarily be sufficient to entitle him or her to leave under s 10; as there may be situations in which, when the judge exercises his or her discretion, balancing all the relevant factors, the presence

- of an arguable case is outweighed by the other factor or factors that carry weight in a particular case;
- (d) There is room in cases concerning children for applications to be checked at a very early stage and without wholesale investigation. The court has a broad discretion to conduct the case as is most appropriate given the evidence involved and the evidence available;
 - (e) There is no absolute entitlement to an assessment with a view to caring for a child (see *Re T (Residential Parenting Assessment)* [2011] EWCA Civ 812);
 - (f) It is for the judge to ensure in each case that there is a fair determination of the claims of the parties and the issues in the case. The prospects of a grandparent taking over the child's care must always be looked into carefully because it can be greatly to a child's benefit to be kept within the family by such a placement. There are, however various levels of investigation into the possibilities which range from a full hearing with reports and oral evidence, to the other at which a careful but limited examination of the situation may disclose overwhelming reasons why care by a grandparent is obviously not an option;
 - (g) S 10(9)(c) is directed at the risk to the child of disruption occasioned by the proposed application rather than the making of any order arising from it. Delay occasioned by or associated with the application is an obvious source of disruption and harm, and must properly be considered under this heading.

25. All the parties are agreed that I should consider the two applications, that is the local authority application for a declaration that it is not obliged to carry out an assessment of the paternal grandmother and her application for permission under s10(9), together. They are also all agreed the decisions are not governed by the paramountcy provision in either the CA or ACA.

H's status

26. H was placed with the current carers (who are 'foster to adopt' carers) at the age of three weeks (as permitted by s18(1)). At the end of February the mother gave her formal written consent to adoption pursuant to s20 ACA. The father attended but as he does not have parental responsibility his formal consent is not needed. At this point pursuant to s19 C's legal status became that of a child 'placed for adoption'. This means that the local authority has parental responsibility, which is shared with the prospective adopters pursuant to s25 ACA.

The submissions of the parties

27. The local authority, mother and guardian all submit that the local authority application should be granted, and the grandmother's application should be dismissed. The father has not sought party status in these proceedings, nor has he applied for parental responsibility, but it is abundantly clear that he strongly supports the mother's position.

28. Central to all these arguments is the serious disruption that they argue would follow in the event of the grandmother being granted permission to make an application for a child arrangements order. The litigation would take a considerable period of time (the time required for an assessment for a Special Guardianship order, the impact of s14A and more recent Family Justice Council guidance are all cited). There would be a number of court hearings and there would have to be consideration of an order for contact. Although the prospective adopters accepted H into their care in the full knowledge that there could be further applications, the Guardian does raise the

possibility that they may decide they no longer wish to care for H if they are faced with the prospect of the grandmother being assessed as a Special Guardian. Any further litigation is likely to cause even more discord within the family than there is already. Mr. Storey QC and Ms Sparrow for H state that there is every likelihood that the mother and father will not cooperate with further assessment.

29. Mr. Goodwin QC and Mr Miller point out that the extent of the conflict in this case is very significant. They argue that the parents' reasons for not wishing H to be cared for by the grandmother are sound and reasonable, but in any event it is not so much what they say but the fact that they are saying it which is so important. The conflict is relevant not only to the question of the disruption that they argue would be caused to H as a result of the proposed application, but also to the prospects of success of the proposed application itself.
29. Although it is acknowledged that a parent does not have a right of veto concerning the placement of their child with a family member, or to put it another way, a right to have their child adopted, there is considerable focus in all the arguments as to the extent to which the grandmother's proposals are, or would be, an interference with the Article 8 rights of the parents to engage in the 'fast track' process provided for in the ACA so that the mother can completely relinquish her parental responsibility in favour of assessed and matched adopters. Mr Goodwin and Mr Miller set out in some detail the statutory provisions which enable a parent to consent to their child being placed for adoption and the effect upon their own ability to apply for a child arrangements order now that H is formally placed for adoption within the meaning of s 19 ACA.
31. It is argued that the prospective adopters have Article 8 rights themselves, and this must be so by dint of the fact that Baby H has been living with them for over six months and they now have parental responsibility albeit this is shared with the local authority. It is submitted that the grandmother, who has never met H (although of course this is no fault of hers at all), does not have existing Article 8 rights. Mr Sampson QC and Dr. George for the local authority argue that the case law following *Marckx v Belgium* such as *TS and JJ v Norway; Case 15633/15* focuses on the practicalities of a 'close relationship created by frequent contact'.
32. Ms Henke QC and Mr. Halliday on behalf of the grandmother point out how committed she had been to her grandchild from the moment she was aware of the birth. Indeed Ms Henke is right to say that there is nothing more that this grandmother could have done. In the first instance she tried to persuade the parents to reconsider their proposal to place H for adoption and demonstrated her willingness to care for H, either in the short term until their lives were more settled and they were ready for the responsibility of parenthood, or in the long term. They had a meeting to discuss their respective views but ultimately no agreement was achieved. The grandmother consulted a solicitor, and issued her application on 28th September. Such was the parents' objection to her application that they would not agree to the local authority discussing the baby with her, and it was only on 15th December that it was accepted that the local authority should be permitted to gather information as to the grandmother's health position, and an overview of the dynamics in the paternal family.
33. The grandmother is not working and is able to offer herself as a full time carer. She has brought up two sons successfully. She lives in her own home and has sufficient financial

resources to care for H. She is aged 58, and although her physical health is not perfect (she suffers from some high blood pressure and has some issues with her weight) it is sound. She has suffered from episodes of depression and is currently taking a reducing dose of Citalopram for anxiety. If this was a case where the parents were in agreement with her wish to care for H there would be no safeguarding or other issues to prevent this being a suitable option.

34. In those circumstances, Ms Henke and Mr. Halliday urge upon me the necessity of a full assessment of the grandmother. If this does not happen and her application under s10(9) is dismissed there is only one option for baby H and that is adoption. A decision now will deprive the court of the ability to analyse the competing options, and in fact would amount to a process of linear reasoning which is impermissible in accordance with the authorities. Given the life-long consequences for H if adopted, the change of status and the interference with H's Article 8 rights, it is imperative that the court obtains the information that an assessment would provide as to the grandmother's proposals. Although the views of the parents must be taken into account, Ms Henke points out that they are not entitled to veto consideration and assessment of wider family members. In A, B and C, one of the primary reasons that family members should be informed about the birth of a child unless there is good reason to the contrary, is so that placement within the family can be considered despite the wishes of the parent or parents.
35. Ms Henke and Mr. Halliday submit that the court should not accede to the gloomy prognosis as to the outlook for baby H if placed with her without the fullest possible assessment. She has an arguable case that should be fully explored. Such exploration, and the consequent delay, would not prejudice H's welfare for H will remain with the same carers until any final decision. If the ultimate decision is that adoption is in H's best interests and is necessary and proportionate, the placement will continue. Accordingly, the applications that the grandmother wishes to make will not disrupt H's life.

Discussion and conclusions

36. This is a very anxious and sensitive case for all involved, and there is no doubt that the parents and grandmother are genuine in their wish to do the best for H. Like so many other people, the grandmother had looked forward to becoming a grandparent. When she found out that the proposal was for H to be adopted she was instantly concerned that the parents were reacting to their immediate circumstances and would live to regret the decision they had made. She offered her services on a temporary basis, and then permanently. She is prepared to commit herself fully to bringing H up.
37. On the other hand, the mother and father were profoundly shocked last year to find out that the mother was 34 weeks pregnant, and were completely unprepared for the responsibility that parenthood requires. They made a decision at an early stage (before the birth) that the best thing for H was to be placed for adoption. The mother spoke to her own parents about it, and they supported, and continue to support her in her decision. The father on the other hand (perhaps knowing of his mother's likely response) first of all told the social worker that she too agreed with their decision. This of course was not so.

38. Since those early days, the position of the parties has never wavered. Their view about what is best for the baby has remained the same, if anything it has become more resolute. The father is very angry and upset at his mother's actions, and for the moment he is not on speaking terms with her. The mother too is very distressed.
39. I will, as has been suggested, look at the applications together. Just as parents do not have a right of veto of family members, or a right to have their child adopted, a family member does not have a right to an assessment, nor, without being granted leave, a right to make an application for the child to live with them. I have to make my decision in circumstances where, if the grandmother is not assessed or granted leave to apply, Baby H will be adopted. As Ms Henke states, if this happens, at the time of the adoption application the court will have no competing option to consider, despite the need to consider the welfare checklist under s 1(4)(c) and (f) ACA.
40. Looking at the factors as set out in section 10(9) CA, the first two can be dealt with swiftly. The nature of the proposed application is for either a Special Guardianship or Child Arrangements order so that H can live with and be brought up by the grandmother. The grandmother has a close connection with H regardless of whether or not she has Article 8 rights. This is obvious as a matter of fact and also because it is the very connection she has with H that drives her and gives her the commitment she has.
41. The question of possible disruption to H's life caused by either of the proposed applications is one of the central issues in the case. Any litigation would inevitably be lengthy and time consuming. It would also be bitterly contested by the mother (and the father, albeit through her), so that an already fraught situation would become worse. Although there is no evidence that the current carers will feel unable to continue with the placement during the course of litigation, the general level of uncertainty that an application would cause to them and which could be transmitted to H, cannot be ignored. The Guardian suggests that they may require additional support during such a time. There is likely to be consideration as to whether or not there should be contact. I note that in the mother's first statement she says this 'I know that if the court does order an assessment of [the grandmother] this may force my mother to make a different decision over baby. My mother is clear that she supports my decision, however if the paternal grandmother is to be assessed then she may feel she may have no choice but to ask for an assessment'. If this happened, there is a risk of yet further disruption because there would be competing claims. All of this is likely to cause H harm, because although H is very young the insecurity of those who are responsible for caring could well have an effect. The fact that the prospective adopters have taken this on willingly does not mean they would not find the whole process very difficult or that the effect upon them should not be considered.
42. H still remains a looked after child, and therefore I must have regard to the wishes of the parents and the plan of the local authority. The wishes of the parents could not be more clear cut and that is for H to be adopted. They made this decision before H was born and over many months this has not wavered. The parents have taken steps to try and limit their knowledge of H by trying not to know the name and sex. They have expressed views about the sort of family that they would wish for H to have and have expressed satisfaction that H is being well cared for. Although neither of them feels able to care for H, there is nothing about these parents to suggest that they have not got the best interests of their child at heart. As Baker J stated in *Re JL and AO* "It might

be thought that giving up a baby for adoption is a dereliction of responsibility. In many such cases – perhaps most – the truth will be very different. Anyone who has read the accounts of persons who have given up a baby in those circumstances will soon come to see that it is usually a decision taken only after a great deal of thought and anguish, by parents who realise that they cannot look after the baby and wish to give the baby the best chance to grow up in a loving home”.

43. Not only do both these parents consider it is in H’s best interests to be adopted, but they specifically do not think that the grandmother is the right person to bring H up. They have given reasons for this – that the grandmother is a single parent with limited means and has suffered from some episodes of depression. They believe H’s life chances would be better if placed with an adoptive family, assessed and matched by the local authority. Ms Henke suggests that the parents’ wishes for H to have something different amounts to some sort of social engineering. This point would have a better foundation if it was the local authority or the court which was making this assertion, but it is somewhat different when advanced by H’s parents. The local authority on consideration of the parents’ views has given effect to them in their decision making by allowing H to be placed with ‘foster to adopt’ carers with the effect of H becoming formally placed for adoption upon the mother giving her written consent.
44. As stated by Black LJ in *Re B*, a further consideration for the court is the prospect of success of the intended application. Permission should not be given for a case that is not arguable. Ms Henke argues persuasively that the grandmother’s case is arguable, or failing that the court cannot say that it is not without allowing for a fuller assessment. It is true that an assessment of the grandmother would allow for closer consideration of a number of matters, including her own health, her support network and her ability to weather and assist H to cope with the consequences of the acrimony caused as a result of H being placed with her against the wishes of her son and the mother.
45. The other parties submit that enough is known now for the court to say that the grandmother’s case has a very limited prospect of success. This is because the issue in the case is not so much about the grandmother’s ability to offer a reasonable standard of care, but the effect upon H not only of being moved from a placement of many months (and it would be many more if permission were granted), but also being exposed to the high level of acrimony amongst the family. Indeed H would be the very source of the problem and in the centre of it.
46. Looking at the evidence that I already have, I note that the position of the parents is very firm and I see no likely prospect of this changing if H is placed with the grandmother. I also note that the grandmother has limited support for her proposal from close members of H’s family. Her son (the father’s younger brother), who lives with her is obviously somewhat conflicted and says that he is neutral as to H’s future care. H’s paternal grandfather, who is divorced from the grandmother, does not support her proposal. As stated earlier, the wider maternal family do not support the grandmother’s application either.
47. If H did actually go and live with the grandmother I suspect that the position of some of the family members might become more accommodating, not least for H’s sake. I

think, however, this is unlikely to extend to H's own parents. This would mean that H's parents are likely to be largely absent despite the placement with the grandmother.

48. In the circumstances, some of the important advantages to H that would normally come with being placed with a member of the family (that it would enable H to retain or develop relationships with the parents and significant others) would not be available. The Guardian has carried out a very careful analysis of these factors and I note that despite the lack of an assessment of the grandmother has come to the view that the emotional harm caused by a placement with the grandmother would be greater than any harm caused as a consequence of being adopted. In carrying out her analysis it is important to note that the Guardian has been careful to consider the risks and difficulties that arise within an adoptive placement. She has not idealised that option, and nor do I.
49. Taking a step back and looking at the factors in this case together, including Ms Henke's powerful point that a refusal of any further assessment and the grandmother's application together will lead to only one possible outcome, I have nonetheless come to the conclusion that this is what I should do.
50. Granting the grandmother's application would risk disruption to such an extent that H would be harmed. Additionally, further assessment of the grandmother, no matter what the outcome, cannot take away the fundamental problem inherent in any decision to place H with her and the emotional harm that this is likely to cause, even with a high quality of care. If I either adjourn the application now for an assessment or grant her application it will lead to delay in a permanent outcome for H, with, in my judgment, very little likelihood of the grandmother's application being successful, even though it would be an alternative to adoption. As Mr Storey stated in his submissions, the grandmother's full application would not be determined for many months, and at that stage H will have been placed with the current carers for over a year.
51. The grandmother is entitled to have her case considered, just as H is entitled to have the court consider placement within the family of origin. As Black LJ stated, however, this does not by itself mean that there will have to be a full enquiry or assessment. It seems to me that there has been a consideration of the family views and the reasons behind the parents' decision. The parents and grandmother have been spoken to by the Guardian and social workers (albeit the grandmother was seen by a different social worker), and the Guardian has carried out a careful analysis of H's situation. I consider that I have sufficient information to determine the grandmother's application and any assessment is not likely to achieve a different result.
52. I therefore grant the local authority application and dismiss that of the grandmother. I know that this decision will be very distressing and disappointing for her, and particularly painful in the context of the rift with her son. I hope that with the decision today, and without H's continuing presence in the middle of it all, some steps can be taken towards reconciliation between them.
53. I wish to thank counsel for the great assistance they have given to me in this case. The quality of their written and oral submissions has been of the highest order.