

THE HIGH COURT

[2022] IEHC 269

[2022 No. 16 M]

**IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 54 OF THE ADOPTION ACT 2010 (AS AMENDED)
AND IN THE MATTER OF CHILD X, A MINOR, BORN ON DATE A**

BETWEEN:

CHILD AND FAMILY AGENCY AND MR E AND MS F

APPLICANTS

– AND –

THE ADOPTION AUTHORITY OF IRELAND

FIRST NAMED RESPONDENT

– AND –

MS B

SECOND NAMED RESPONDENT

– AND –

MR C

THIRD NAMED RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 10th May, 2022.

SUMMARY. *This is a successful application for adoption.*

A. Introduction

1. The child in these proceedings (Child X) was born on Date A and is the natural child of Ms B (the ‘birth mother’) and Mr C (the ‘birth father’). The child, who is in his mid-to-late teenage years, will turn 18 years of age on Date D.

2. Ms B was a teenage minor at the time of Child X’s birth. Mr C was in his mid-20s. The Social Work Department was naturally very concerned about an ongoing sexual relationship between a teenage minor and an adult. Ms B also complained that she was the victim of sexual abuse by a third party and was considered by a social worker involved with her as showing “*vulnerability to further abuse*”. There were concerns about Ms B’s drug use, her repeated abscondments from her family home, and a lack of engagement with the Social Work Department. Since Child X’s birth, Ms B has had two further children, both of whom are in the care of the Child and Family Agency.

3. Mr C’s behaviour raised various concerns. As well as being in an ongoing sexual relationship with a teenage minor, he was involved in drug use, was supplying Ms B with illicit drugs, and was also perceived to display controlling conduct in respect of Ms B’s behaviour. There were also concerns about sexual abuse on Mr C’s part: certain allegations were made against him (which he denies) and he has been determined to present a medium risk of future sexual abuse. Both natural parents are now on methadone treatment.

4. It is not necessary to recount Child X’s upbringing in detail. He was placed in care a couple of days after his birth with his foster-parents (the would-be adopters in this case). That initial placement lasted just short of four months. Thereafter Child X was returned to Ms B for just over four months. A number of difficulties presented with this placement so at the end of this period, Child X was returned to his foster-parents and has remained with them ever since. It would be fair to say, as a result, that they are the only people he has ever had a typical parent-child relationship with. They wish to adopt Child X. Their application, as will be seen, has met with the approval of the Adoption Authority.

B. Access History and Evolution of Child's Wishes

5. In terms of access over the years by the natural parents to Child X and the evolution of his desire to be adopted, this might be summarised as follows:

- 2008-2009. Ms B availed of the majority of the access visits. Some issues were noted concerning the manner of access. Mr C attended the majority of access visits.
2010. Access reduced to one visit per month. Ms B's attendance was haphazard. Some issues were noted concerning the manner of access. Child X began reacting badly to the access visits.
- 2011-2012. Access visits continued to present with difficulties. At one such visit in 2012, Ms B threatened self-harm and claimed to Child X that he was not her son. Child X was naturally distressed by this and thereafter did not want access with his birth family.
2013. Child X had access to Mr C but did not want access to Ms B.
2014. Ms B indicated that she wished to resume access with Child X but he did not want this.
2015. In or about September 2015, Child X expressed a desire to be adopted. He was advised by the Social Work Department to wait until he was older to make such a decision.
2016. At some point access appears to have tapered off. However, in 2016 Child X's foster-mother contacted the Social Work Department and indicated that Child X wished to see his birth parents. After some initial difficulties, access to the natural parents occurred in June 2016. In July 2016, Child X indicated that he did not want to see his birth parents again and expressed a renewed wish to be adopted.

2017. In April 2017, Child X again indicated to a social worker that he wished to be adopted by his foster-parents. His last access to both Ms B and Mr C jointly was in that month. In July, he had an access visit with Mr C. In August, he had an access visit with Ms B. In the same month a planned access visit with Mr C did not proceed as Mr C failed to attend. Child X was annoyed about this. Later that month he enquired about whether his adoption was proceeding and was advised that his mother would not consent to this. In October, Child X's foster-mother indicated that Child X had expressed unhappiness that he was not an adopted member of his foster-family. In the same month he received a letter of apology from Mr C concerning the missed access and an access visit with Mr C then took place. At that visit Mr C indicated that he would not consent to Child X being adopted but would be satisfied for Child X to change his surname.
2018. In July, Child X had a short access visit with Mr C. In August he learned that his birth parents were not consenting to his adoption, became annoyed about this, and requested a meeting with them. A meeting with the birth mother occurred at the end of August 2018 at which she eventually agreed to allow the adoption to proceed after initially refusing. This consent was withdrawn the following day and in December 2018 Ms B wrote a note to Child X indicating that she had withdrawn her consent. Since that time Child X has refused all contact with Ms B. He has, however, had contact with one sister which has been facilitated by the Social Work Department.
- 2019-2020. Child X has two access visits with Mr C.

6. As can be seen, Child X at this time does not have (and for some time has not had) access with his natural parents. The last occasion of joint access was in 2017, the last access with the birth mother was in 2018 and the last access with the natural father was in 2020.

C. Affidavit of Mr E

7. Mr E, the adoptive father in the course of these proceedings has averred, amongst other matters, as follows, in his affidavit evidence:

“9... [Child X] *was placed with us as a small baby. I say that we are fully committed to him and he is totally integrated into our family. I say that we see the application to adopt him as the official expression of the psychological and emotional ties that have existed for us for many years.*

10...*I say that from the time he arrived in our home we have fulfilled the role of parents to him in every respect and it is my firm belief that he views us as his parents in everything but law.”*

D. My Meeting with Child X

8. I met Child X in advance of the adoption hearing. This meeting took place in court in the presence of Child X’s foster-parents, the court registrar, and the judicial assistant. I sat at one of the benches for counsel and Child X and his foster-parents sat on the other side. I advised Child X and the foster-parents (both of whom struck me as nice people) that it was a confidential meeting but that the microphones in the court remained on, that we were therefore being recorded, and that I could not guarantee that if there was ever an appeal that the recording of the meeting between us would not be disclosed. The parties were satisfied to proceed on this basis.

9. Child X struck me as a very pleasant and mature child, perhaps a little shy – as one would instinctively expect him to be in the unfamiliar surroundings of a courtroom – but well able to speak for himself once he got going. It was a privilege and a pleasure to meet him. Child X was clear that he wished to be adopted, gave the impression that he understood what this meant, and expressed a particular desire to be fully part of his foster-family. He also expressed a concern

about his parent's history of drug-taking. I thanked him for meeting with me, indicated that I placed a very real value on what he had to say and that I would raise the issue of drug-taking at the hearing (which I did). I also indicated that I would need to listen to all that was said at the hearing before I could reach a decision on the adoption application.

E. Ms B Neither Consenting Nor Refusing Consent

10. Neither of the birth-parents attended the hearing, though both sent their apologies. Counsel for Ms B indicated that her client was neither consenting to the adoption nor refusing her consent. The reason for her taking this position (and this is a thoroughly understandable reason) is that Ms B does not want Child X ever to feel that he was given away by his birth mother, still less 'abandoned' by her. (The word 'abandon' appears in the adoption legislation and is causing unnecessary hurt and difficulty in many adoption proceedings. I will return to this point later below).

11. Beyond her natural and understandable desire not to be seen as having 'walked away' from her child, Ms B offered no further objection to the adoption. She did however express a concern that if Child X goes from being 'in care' to being an adopted child he will lose out on an array of 'after care' State benefits that are extended to children who emerge as young adults from a care arrangement. It did not seem to me that there was enough in this to counter the desirability of making the adoption order sought; however, this is not the first adoption proceeding in which such a contention has been made and it may be that the Executive might wish to visit whether there is any disadvantage being occasioned to adopted children in this regard following what are often lengthy periods in foster-care. I expect that the point having arisen here, and previously, it will arise again in some future case.

F. Mr C's Refusal of Consent

12. Mr C had sworn up an affidavit which his counsel read out in court. The principal key points in that affidavit were the following:

- *Mr C complains that the only contact that he has been able to have with his son was through arrangements with the Social Work Department team "and always at their behest".*

One of the social workers gave evidence at the hearing and it seems to me that they have always acted in a thoroughly professional manner, seeking to facilitate access in an appropriate manner.

- *Mr C complains that certain disorders from which he suffers makes it difficult for him to communicate and did not assist in his dealings with the Social Work Department.*

I am sorry that Mr C suffers from the disorders in question. Respectfully, I do not see on the evidence before me that they have in any way impacted on the Social Work Department's dealings with him. As I mentioned above, one of the social workers gave evidence at the hearing and it seems to me that they have always acted in a thoroughly professional manner, seeking to facilitate access in an appropriate manner. The social worker who gave evidence was surprised to see his relations with Mr C described in Mr C's evidence as "*particularly fraught*" as his impression was that they were amicable.

There was an upsetting episode for Mr C in the past in which certain presents that he gave to Child X were thrown away by Child X but the social worker explained that this was done by Child X solely because he had outgrown the type of toy that was gifted to him. I understand why Mr C's feelings were hurt by this episode but I do not see that there was anything untoward in the actions of the Social Work Department or any of its staff. And with children one sometimes has 'to take the rough with the smooth'; that is just the way children are – they are neither adults nor 'mini-adults'.

- *Mr C observes that while it is true he never applied for guardianship of Child X, he never had adequate knowledge of the law "or legal representation outside of my advocates".*

13. Notwithstanding that Mr C now has legal representation and despite the fact that (per the affidavit evidence from a member of the Adoption Service Department of the Child and Family Agency) Mr C has since at least June 2018 known that he could apply for a guardianship order and has indicated since at least August 2018 that he intended to make an application to the courts regarding guardianship, access and custody (which shows that he has known of what avenues were open to him from a legal perspective since at least that time), Mr C has never in fact done so. Moreover, there is, unfortunately, no way of getting around the fact that apart from intermittent access visits with Child X, Mr C has played no part whatsoever in Child X's upbringing. And regrettably, as will be seen later below, there are certain concerns about the entirety of Mr C's behaviours when viewed in the round that would have had to be taken into

account had he ever made any of the court applications that he indicated himself in August 2018 to be minded to bring.

- *Mr C is concerned that the adoption will see a severance of the bond that he considers to exist between himself and Child X.*

It was made clear at the hearing that if it is possible to continue some form of access with the birth parents this will be done, should that be what Child X wishes. However, it was explained to me at the hearing that because Child X has a particular disability he has struggled (in a way that another child might not) with the present arrangement in which he has in effect two sets of parents (natural and foster-parents), with intermittent (and latterly no) access to the natural parents, and that he very much wishes to be a part of one family with one set of parents. Just to show the good faith of the proposed adoptive parents in this regard, I note the following averments from an affidavit sworn by Mr E, the proposed adoptive father:

- “6. [Child X]...*is aware of his life story and his admission into the care system. We are very much aware of his roots in another family and we believe that this forms a very important part of his identity. We are very supportive of nurturing those relationships into the future. The child sees his paternal grandparents and aunt regularly and is very happy in their company. At present he does not wish to engage with his birth parents but if and when he chooses to re-establish contact with them, we will support him and help him to develop those relationships.*
7. ...[Child X] *has advised us for some time that he does not wish to have contact with his birth parents. I say that the option of guardianship has been explored with [Child X]...and he is firm in his view that this is not what he wants.*
8. *I say that we have always encouraged his relationship with his birth family and been open and honest with him when talking about his care history and why this was necessary.”*

- *Mr C contends that the proposed adoption is disproportionate.*

This is a point to which I will return later below.

14. As with Ms B, Mr C is concerned that Child X does not fully understand what adoption entails and he also does not want Child X ever to feel that his natural parents “*sign[ed] him away*”. All the evidence before me suggests that Child X fully understands what adoption entails and wishes for it. As I hope this judgment makes clear in no sense have Child X’s natural parents “*sign[ed] him away*”.

G. Some Concerns Expressed Regarding Ms B and Mr C

15. There are some particular concerns presenting as regards one or other (or both) of Child X’s natural parents and their ability properly to parent for Child X that have been summarised in the following manner in the affidavit evidence before me:

“31. *The report of [a named social worker]...sets out additional concerns of the Social Work Department in respect of the parents’ ability to properly care for [Child X]....[A] psychological assessment completed in November 2017....diagnosed the birth father with [a particular disability]. The psychologist]....stated that the birth father, possibly owing to his [disability]...and childhood trauma has difficulty in ‘understanding the emotional, physical and safety needs of children adversely impact[ing] on his parenting capacity. She further notes that his ‘ability to consistently prioritise the physical and emotional needs of his child, being able to safely care for her, being impaired as a consequence’. This report was in respect of the birth of the child’s sibling.*

32. *[The psychologist]...sets out recommendations including a Parent Assessment Manual Assessment (PAMS). The birth mother engaged to some degree with the psychotherapy offered to her. However, the birth father advised that he did not wish to attend counselling. In or about September 2018, he began block therapy sessions. However, out of eleven arranged sessions, the birth father attended two.*

33. *In addition to the above, the birth parents have a history of substance abuse and are in receipt of methadone. Positively both parents appear stable on their methadone programme.*
34. *The history of the birth parents' relationship with their other children is also of concern to the Social Work Department. In February 2017, a decision was made temporarily to stop visits between the birth father and his daughters following access visits where his behaviour and language was considered highly inappropriate. The birth mother's scheduled visits with her daughters continue and she requires emotional supports throughout the visits. Her attendance at counselling has brought about a marked improvement in the quality of the interactions between the birth mother and her daughters. Unfortunately that has not been replicated in the relationship with [Child X]....There have been concerns regarding the use of derogatory language towards the children by both birth parents. The children have been subjected to a high level of verbal abuse by, in particular, the birth father. The applicant agency considers that there is a high risk of emotional abuse in this case.*

Risk of Child Sexual Abuse

35. *The birth father has been assessed as posing a medium risk of sexual abuse in the future. The attached report detail the allegations in respect of the birth father, which allegations he denies. [I do not consider it necessary to enter into further detail in this regard in this judgment]. The birth mother's view on the effect of such allegations on her children has vacillated over the years. On occasions, she has accepted that they exist, while on other occasions indicating that she did not believe the allegations. The Social Work Department is concerned that without consistent acknowledgement of the potential risk that he*

[the birth father] *poses to their children, she [the birth mother] cannot fully protect them from potential harm.*”

H. Adoption Authority Favours Adoption

16. The Adoption Authority favours the making of the adoption order sought in this case. In an affidavit sworn by an officer of the Authority details are provided as to the careful way in which the Authority proceeded with the application and then makes the following averment:

“Having considered the evidence together with the materials submitted in advance of the hearing, the Board concluded that it would be proper for the adoption order to be made if a section 54(2) order was made by this Honourable Court. In reaching this conclusion, the Board took full account of the expressed opposition of the birth parents and to their statutory and constitutional rights in this regard. The Board also had regard to the fact that the evidence strongly indicated that an order would be in the best interests of the child, especially with regard to his personal welfare, emotional well-being and sense of identity and self; to the views of the child in this application, giving due weight to his age and the considerable maturity indicated by the evidence before it; to the history of the child’s case; to the length of time the child has been with the applicant family; to the absence of any evidence that the respondents would be willing or able to care for him; to the effective abandonment by the parents of their rights with respect to the child; and to the necessity for the State to supply the place of the parents of this child. Taking all these matters into account and notwithstanding the opposition of the second and third named respondents the Board’s conclusion was that, giving due weight to her views and to the statutory and constitutional requirement to treat his best interests as the paramount consideration an adoption order would be appropriate for this child.”

I. Reliefs Sought and to be Granted

17. By summary summons of 21st February 2022, the applicants in these proceedings have come seeking, amongst other matters, the following reliefs: (i) an order pursuant to s.54(2) of the Adoption Act 2010 authorising the adoption order to make an adoption order in respect of Child X in favour of Mr E and Ms F; and (ii) an order pursuant to s.54(2) of that Act dispensing with the consent of any person whose consent is required in the making of an adoption order.

18. Section 54(1)-(3) of the Act of 2010, as amended by s.24 of the Adoption (Amendment) Act 2017 and so far as relevant to these proceedings, provide as follows:

“54.— (1) Where applicants, in whose favour the Authority has made a declaration under section 53(1), request the Child and Family Agency to apply to the High Court for an order under this section— (a)¹ if the Child and Family Agency is satisfied that every reasonable effort has been made to support the parents of the child to whom the declaration under section 53(1) relates, and (b) if, within the period of 3 months from the day on which the request was given, the Child and Family Agency either— (i) by notice in writing given to the applicants, declines to accede to the request, or (ii) does not give the applicants a notice under subparagraph (i) of this paragraph in relation to the request but does not make an application under paragraph (a) for the order, the applicants may apply to the High Court for the order.

(2)² On an application being made under paragraph (a) or (b) of subsection (1), the High Court by order may authorise the Authority to make an adoption order in relation to the child in favour of the applicants and to dispense with the consent of any person whose consent is necessary to the making of the adoption order.

(2A)³ Before making an order under subsection (2), the High Court shall be satisfied that— (a) for a continuous period of not less than 36 months immediately preceding the time of the making of the application,

¹ As inserted by s.24(1)(a) of the Adoption (Amendment) Act 2017.

² As substituted by s.24(1)(b) of the Adoption (Amendment) Act 2017.

³ As inserted by s.24(1)(c) of the Adoption (Amendment) Act 2017.

*the parents of the child to whom the declaration under section 53(1) relates, have **failed** in their duty towards the child to such extent that the safety or welfare of the child is likely to be prejudicially affected, (b) there is no reasonable prospect that the parents will be able to care for the child in a manner that will not prejudicially affect his or her safety or welfare, (c) the **failure** constitutes an **abandonment** on the part of the parents of all parental rights, whether under the Constitution or otherwise, with respect to the child, (d) by reason of the failure, the State, as guardian of the common good, should supply the place of the parents, (e) the child— (i) at the time of the making of the application, is in the custody of and has a home with the applicants, and (ii) for a continuous period of not less than 18 months immediately preceding that time, has been in the custody of and has had a home with the applicants, and (f) that the adoption of the child by the applicants is a proportionate means by which to supply the place of the parents.*

(3) In considering an application for an order under subsection (2), the High Court shall—(a) have regard to the following: (i) the rights, whether under the Constitution or otherwise, of the persons concerned (including the natural and imprescriptible rights of the child); (ii) any other matter which the High Court considers relevant to the application, and (b) in so far as is practicable, in a case where the child concerned is capable of forming his or her own views, give due weight to the views of that child, having regard to the age and maturity of the child, and, in the resolution of any such application, the best interests of the child shall be the paramount consideration."

[Emphasis added].

19. Having regard to all that I have mentioned in the preceding pages, I am satisfied as to the various matters referenced in s.54(2A), I have had regard to the matters identified in s.54(3), I have given the requisite due weight to the views of Child X having regard to his age and

maturity, and I also consider it in the best interests of Child X that the adoption should now proceed.

20. Given that the issue of proportionality was expressly raised by Mr C, I note that I am satisfied in all the circumstances “*that the adoption of the child by the applicants is a proportionate means by which to supply the place of the parents*”. Since infancy the foster-parents have exercised a parental role to Child X and he is a part of their family. Child X understands what adoption means and yearns for it. As mentioned above, it was explained to me at the hearing that because Child X has a particular disability he has struggled (in a way that another child might not) with the present arrangement in which he has in effect two sets of parents (natural and foster-parents), with intermittent (and, for some time now, no) access to the natural parents, and that he does not wish for a guardianship arrangement but very much wishes to be a part of one family with one set of parents. I note also the willingness of the foster (soon-to-be adoptive) parents to facilitate access with the natural parents in the future should that be what Child X wants and that they also continue on an ongoing basis to facilitate access to his paternal grandparents and a sister. I respectfully do not see, when one has regard to all of the foregoing, to the other factors touched upon in this judgment, to the difficulties that the natural parents present with, and to the fact that there has been a non-exercise of parental duties on their parts for a very protracted period, that to allow what Child X wants and what is in his best interests is other than a proportionate response.

21. I wonder if I might briefly touch on the highlighted words in s.54(2), *i.e.* “*failed*”, “*failure*” and “*abandonment*”:

- as to the words “*failed*” and “*failure*”, those are powerful and harsh words to use and I am surprised that they continue to be used in a family law statute. One could reach precisely the same conclusion by deploying terminology, such as that there had been ‘non-performance’ of parental duties. If one takes, for example, the parents in this case, they have, if I might use a colloquialism, their own ‘crosses to carry’ in life, and I respectfully do not see why one has to add to their difficulties by having a High Court judge state that they have ‘failed’ – with the obvious related conclusion that they are somehow failures. Regrettably, on the facts presenting I cannot but conclude that the requisite failure presents but it irks greatly to have to use such wording and perhaps thereby to inflict hurt when more sensitive wording

could so easily be deployed in statute. It is hard enough to see one's child being adopted without also being told 'You have failed'.

- as to the word "*abandonment*", I know that this is not a test of parental intention (see *Southern Health Board v. An Bord Uchtála* [2000] 1 I.R. 165, 177 *et seq.*) but in everyday speech the word "*abandonment*" – however it falls to be approached in legal terms – is typically used to refer to someone casting away a child, perhaps by leaving that child on a doorstep or by the wayside. As Denham J., as she then was, noted in the relatively long-ago case of *Southern Health Board* (at p.177) "*It is understandable that the word 'abandonment' in its ordinary meaning, would distress parents....[for] it raises images of deserting or forsaking a child*". And it does not matter, with every respect, that, as deployed in statute, "*the word...is used as a special legal term*" (*Southern Health Board*, p.177). The word is typically understood by non-lawyers as having a particular colloquial meaning and the meaning *is* upsetting. And a certain reality falls to be brought to bear. If some 'smart-aleck' in a pub says to a parent whose child is adopted: 'That means you abandoned your child, doesn't it?', the answer 'Yes, but the word 'abandonment' has a special legal meaning when used in the adoption context' is not going to be used and, if used, is not going to be believed. There are other words that connote much the same meaning that the Oireachtas intended to connote through its use of the word "*abandonment*" in this context – *e.g.*, a 'disclaimer', 'disavowal' or 'relinquishment' of one's parental rights – all words (and there are other like words) which do not have the unpleasant meaning that the word "*abandonment*" possesses in every-day English. I said at the hearing of this case that 'One sometimes wishes the Oireachtas had chosen a different noun to "*abandonment*" and I was struck by just how vigorously *everyone* present in the courtroom agreed with this, some even speaking up their agreement – which suggests that practitioners also find that the word is causing needless upset in practice. Again, it is hard enough to see one's child being adopted without also being told 'You know you abandoned your parental rights' – while that sentence means one thing legally, what natural parents who are not lawyers take from that conclusion is that they elected to cast aside their child and that is a quite awful thing for them to have to bear.

22. Words count and judgments endure. Why needlessly hurt the feelings of people whose child is adopted? Why require a High Court judge to reach findings which, as worded in statute, cause hurt now and may cause further hurt when a child who has been adopted comes to read a judgment in the future and finds that it contains (as it must, thanks to statute) words that suggest that the child was ‘abandoned’ or that the child’s natural parents ‘failed’ and were likely to continue to fail? More nuanced wording that is less censorious and that has less potential to hurt, I would respectfully contend, should be deployed in statute and would then inevitably permeate into case-law.

23. In any event, on the facts of this case and for all of the reasons stated the various statutory requirements are met and adoption is in the best interests of Child X. In this regard my conclusions respectfully chime with those of the Adoption Authority. I will therefore make the orders sought.

**TO THE PARTIES:
WHAT DOES THIS JUDGMENT MEAN FOR YOU?**

Dear All

I have written a long judgment about the adoption application. The judgment contains legal language which can be challenging (and boring) to read.

I am aware that family law judgments touch on important matters in people's lives. So I now add a note to my judgments explaining in plain English what I have decided. That seems to me to be the least that you all deserve.

This note is a part of my judgment. However, it does not replace the text in the rest of my judgment. It is merely meant to help you understand what I have decided. Your lawyers will explain my judgment in more detail.

I have referred to you all in my judgment as Child X, Ms A, Mr B, etc. so that no-one else who reads this judgment knows who you are. I am sorry if that feels impersonal but I think it is for the best.

As I mentioned in court when I consider the various legal tests that apply to an adoption I am satisfied that:

- *those tests have been met, and*
- *it is otherwise in the best interests of Child X that he now be adopted.*

I note the willingness of the foster-parents (now the adoptive parents) to facilitate access to the natural parents in the future should that be what Child X wishes.

Finally, I should mention to Child X that it was a privilege and a pleasure to meet you. You're a great fellow and I wish you all the best in what I expect will be a bright future.

Yours sincerely

Max Barrett (Judge)