SHERIFF APPEAL COURT

2018 SAC (Civ) 25
[PHD-AD7-17

Sheriff Principal DL Murray
Sheriff Principal MW Lewis
Appeal Sheriff W Holligan

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL D L MURRAY

in the appeal by

FIFE COUNCIL

Appellants

against

KPM

Respondent

Appellant: Scott QC
Respondent: Wild Advocate

Edinburgh 18 September 2018

[1] Fife Council made two applications pursuant to the Adoption and Children (Scotland) Act 2007 ("the 2007 Act") seeking permanence orders with authority to adopt in relation to two children: ALM born 30 October 2013 and WAM born 29 December 2014. They are brothers. The applications were opposed by the father of the children (known in the proceedings before the sheriff as "KPM"). The matter went to proof. The sheriff refused the applications. Fife Council appeal against the refusal.

[2] Proof was heard by the sheriff on 7 and 8 December 2017. Affidavits were lodged and adopted by all witnesses. For the appellants, three social workers gave evidence together with one of the foster carers. The respondent gave evidence. The mother of the children (SM) did not participate in the hearing before the sheriff or in these proceedings. Her present whereabouts are unknown. The sheriff produced a judgment extending to some 69 pages, including 72 findings in fact, two findings in fact and law and an extensive and careful analysis of the evidence heard. The focus of the appeal relates to his second finding in fact and law in which he concluded that a return to residence with either the father or the mother would not be seriously detrimental to the welfare of the children.

[3] The appellants made an application to the procedural appeal sheriff for the matter to be remitted to the Court of Session. The application was refused and the matter was heard by this court. A curatrix ad litem was appointed to prepare and lodge a report in respect of the welfare and circumstances of the children prior to the hearing. The report was made available to this court (*West Lothian Council* v *McG* 2002 SC 411).

Factual position

[4] In this appeal neither the appellant nor the respondent (father) takes any issue with the findings in fact of the sheriff. The sheriff, quite properly, issued a judgment in relation to each child. On all material matters the judgments are identical.

[5] In summary the material facts are as follows. The parents of the children were married in March 2013. They separated in August 2016. Their relationship was described as being "on/off". The mother is also the mother of KLM, a female child, now aged nearly eight. She is subject to compulsory measures of care and is in foster care with an intention that a permanence order is progressed. The respondent is also the father of two female

children – KM aged 11 and BM aged 7. KM was the subject of compulsory measures of care. The respondent has no contact with either child.

[6] The social work department first became involved with the family in October 2010. Throughout 2011 and 2012 the home conditions were extremely poor. The home was extremely dirty with bags of rubbish lying about the home leaving no space on the floor. The children's beds did not have appropriate bedding. On occasions social workers were refused entry to the home, principally by the respondent. KLM's development was delayed. KM was unkempt and dirty at school. The respondent and the mother did not want to engage with assessments for KM and were reluctant to accept support. Although the parents were able to make short-term improvements in living conditions they were unable to sustain the improvements in the longer term. There were concerns as to the children being exposed to domestic violence. KPM in particular displayed aggressive behaviour and was often threatening and aggressive towards social workers, sometimes in the presence of children.

[7] In May 2012 the names of KM and KLM were placed on the Child Protection Register for Fife. In January 2013 KM was made the subject of a compulsory supervision order with a condition of residence with her mother. When she lived with the respondent and his wife she often appeared unkempt and dirty. (She was taken into local authority care in May 2014 and is the subject of a permanence order.) In February 2013 although grounds of referral had been established, the children's hearing considered that, as her parents had made some positive changes and there were improvements in the home conditions, KLM should not be the subject of a compulsory supervision order. KM and KLM were removed from the Child Protection Register for Fife. In November 2014, although not unanimously, the social work

department decided to close the cases of the children, with a recommendation that they be reported back if the parents did not work with the professionals.

[8] However, as early as December 2014 there were new concerns that the children were being cared for by a person (SG) thought to have a history of sexual offending. In December 2014 WAM was born and was discharged from hospital to live with his parents. In January 2015 child protection orders were sought and granted. The catalyst for this was the breach by the respondent of an undertaking given by him to the social work department that the children would not have unsupervised contact with SG. On 7 January 2015 child protection orders were granted and the children removed to live with foster carers. The child protection orders contained a condition providing for contact in favour of the parents. The sheriff records in his judgment that, after the child protection order was granted, a paediatric forensic medical examination was carried out on both ALM and WAM. ALM was found to have a tear to his anus but the cause of that injury was never established. On 16 January 2015 interim compulsory supervision orders were made in relation to KLM and ALM requiring them to reside with foster carers. Contact was allowed. The interim orders were continued until 26 June 2015; compulsory supervision orders were made with the same conditions. The orders were continued with variations. On 17 March 2017 the orders were further varied to delete the condition of contact in favour of the mother. The supervision orders continue with these conditions.

[9] In relation to WAM, on 20 January 2015 an interim compulsory supervision order was made requiring him to reside with the foster carer and not to have contact with the respondent (a similar order was made in relation to KLM and ALM). On 26 June 2015 a compulsory supervision order was granted and, again, on 17 March 2017 the order was varied to delete the condition of contact in favour of the mother.

[10] After grounds of referral were established on 5 June 2015, the respondent attended few LAAC reviews. He attended one children's hearing. He did not appeal any decision of the children's hearing or order of the sheriff.

[11] The sheriff found the respondent's relationship with his wife to be volatile and abusive. They would separate and live apart. They would reconcile. Angry exchanges took place in the presence of ALM. The respondent took little if any interest in the upbringing or welfare of his children. He did not accept the involvement of the social work department. He did not accept any criticism the social workers made about how he and his wife were parenting the children. He did not accept criticism of the conditions that the family lived in. He was described as being "aggressive" and "uncooperative" with the social workers. He breached an undertaking given to the social work department that the children would not be in the presence of SG. The respondent has not seen ALM since 9 January 2015 or WAM since 12 January 2015. After separating from his wife in August 2016 he began a new relationship and moved to Wigan from which he has since returned. The sheriff found that the respondent failed to maintain contact with the social work department. He did not inform them of any change of address. When he relocated to a different address he used his mother's address as a "care of" address. The sheriff also found that the respondent deliberately failed to inform the social work department of (a) his new relationship and (b) his address in Wigan.

[12] The sheriff made a number of findings in relation to the placements of ALM and KLM with their foster carer. It is sufficient to say that the children, and KLM in particular, displayed concerning behaviour, including, but not limited to, delayed development.

The approach of the sheriff

[13] At paragraphs [244]-[248] the sheriff set out his analysis of what he described as the legislative tests. We will return to the legislation in more detail. For present purposes the sheriff began by referring to section 84(5)(c) of the 2007 Act which the sheriff described as the threshold test. The sheriff (at paragraph [247]) described the threshold test as being a "very high bar" for the respondent "to attain". This because it is a particularly serious matter for parents of a child to be deprived of their parental rights and that should only be done if the strict legislative conditions are satisfied. The sheriff then addressed the credibility and reliability of the witnesses. He described the respondent as being "out for himself". He went on to say that the respondent had the greatest difficulty seeing another person's point of view and that he has little, if any, understanding of how his behaviour can affect and impact on others. The respondent sees himself as being the victim and does not take responsibility for his actions and blames others. The sheriff did not find the respondent to be a credible or reliable witness. In reviewing the chronology of events, the sheriff recorded that after a contact session on 9 January 2015 the respondent disappeared. He embarked upon a new relationship. The sheriff concluded that there is no prospect of any of the children returning to live with the respondent. He recorded that "in so many respects [the respondent] has made it almost impossible for social work to do their job". The respondent has a reputation for aggressive behaviour; inability to work with the social work department; failure to keep in touch with the social work department; refusal to let the social work department know where he is staying; and apparent lack of interest or concern for his children; his view is that he is a victim. He was in a position to address these issues but failed to do so. Yet, as the sheriff went on to say, at paragraph [280], the respondent complains that they have failed to attempt to rehabilitate him with his children. He

describes this as "verging on the impertinent". The sheriff concluded that the respondent had done nothing to show he has any interest or concern, let alone love, for his children. The sheriff went on to say that it was difficult to know what more social work could have done.

[14] The sheriff concluded (at paragraph [291]) there is no prospect of either child returning to live with their parents as a couple. The question then arose whether it would be seriously detrimental to the welfare of either child to reside with either parent. The sheriff accepted that the respondent has an unenviable history of hostility and aggression but he concluded that there was a "cut-off point" of 7 November 2014 (paragraph [295]) and this he described as "an evidential barrier for the petitioner". We take that to be a reference to the 2014 report by the social work department to recommend case closures. The sheriff went on to say:-

> "[299] The true mischief in [the respondent's] position is that social work had no contact with him during the period of "second chapter". Not having contact and not knowing where he is and what he is doing does not assist the petitioner evidentially in attempting to satisfy the serious detriment test.
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> [300] There is some force in Mr Jackson's submission that the petitioner has led no expert evidence from a child psychologist or like qualified person as to what impact there might be if ALM or WAM were returned to either of their parents. Such an assessment, I believe, could have been of assistance to me in making my determination. It could have provided evidence relevant to deciding whether the test for making permanence orders have been met".

[15] The sheriff then went on to conclude:

> "[304] Accordingly, on the evidence, I find myself in some difficulty in determining what the nature of the detriment was likely to be if ALM or WAM or either of them was to reside with either of their parents. In the absence of an expert report as to what the likely detriment would be for ALM and WAM it would not be safe to determine, and it does not necessarily follow, that as feared by social work there would be a return to delayed development for ALM and a risk that WAM's development would be adversely affected".

[16] The sheriff accordingly concluded that, taking the evidence as a whole, he was not satisfied that the appellant had established that it would be to the serious detriment of the welfare of the children to live with either of their parents. The serious detriment test was therefore not satisfied.

Submissions for the parties

[17] Both counsel lodged written submissions. There was no major disagreement between the parties as to the relevant law; the issue is its application to the facts and in particular the sheriff's approach to matters pre November 2014. We were referred to the following authorities:

Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] 1WLR 1911;
In Re S-B (children) [2010] 1 AC 678;
R v *Stirling Council* 2016 SLT 689;
West Lothian Council v *B* 2017 SC (UKSC) 67;
CE & EE v *Glasgow City Council* [2018] SAC (Civ) 3;
Walker & Walker, Law of Evidence in Scotland (4th Edition);
Davie v *Edinburgh Corporation* 1953 SC 34;
Kennedy v *Cordia (Services) LLP* 2016 SC (UKSC) 59;
West Lothian Council v *McG* 2002 SC 411.

[18] For the appellant, its case was summarised as containing the following propositions. (1) It is for the sheriff to evaluate whether on the basis of the facts found there is a possibility that cannot sensibly be ignored that returning to live with a parent would be seriously detrimental to the welfare of the child. (2) Residence with a parent who has seriously physically and emotionally neglected his or her children, who is aggressive and incapable of cooperating with social workers trying to assist, has no emotional attachment to the child and whose absence from the child's life is beneficial to the child, is manifestly seriously detrimental to the child's welfare. (3) It is for a parent asserting a change in capacity to parent his or her children to show that this has taken place. The sheriff erred in law because:

(1) he has not carried out the necessary evaluation required by section 84(5)(c)(ii) of the 2007 Act;

(2) he has not had regard to his own findings which are redolent of serious detriment to the children residing with their parents in the past;

(3) he has failed to have regard to the failure of the parents in this case to show a change in their capacity;

(4) he was in any event plainly wrong to find in fact and law that a return to residence with either parent would not be seriously detrimental to the welfare of either child as this conflicts with his findings and his note.

The appellant then went on to expand these propositions by reference to the authorities referred to and the facts found by the sheriff.

[19] For the respondent, it was submitted that the sheriff had correctly interpreted and applied the threshold test. If the threshold test is not satisfied no permanence order can be made. A real possibility that a parent caring for a child harmed another child in the past was not by itself sufficient to establish that the child now being cared for was "likely to suffer" harm in the future. Furthermore a prediction of future harm had to be based on findings of actual facts on the balance of probabilities. Depriving parents of a child of their parental authority at common law is a most serious matter and it should only be done if strict criteria are satisfied. Mere detriment to the welfare of a child is not enough to satisfy the threshold test; serious detriment is required. The application of the threshold test was considered in *West Lothian Council* v *B*. Decisions as to a future likelihood of harm cannot be based merely on allegations or suspicions. Further, the role of the court at first instance is to set out the factual position and the sheriff had regard to that. Put shortly, there was insufficient evidence to conclude that there would be serious detriment to the children if

they were to be returned to either of the respondents. There was insufficient evidence as to the nature of the detriment that would be likely if the children were to reside with the respondent. The respondent went on to expand by reference to the facts as found by the sheriff.

Decision

[20] In our opinion, the law on this matter is now settled. The relevant statutory provisions are as follows:

> **"80 Permanence orders**
> (1) The appropriate court may, on the application of a local authority, make a permanence order in respect of a child.
> (2) A permanence order is an order consisting of—
> (a) the mandatory provision,
> (b) such of the ancillary provisions as the court thinks fit, and
> (c) if the conditions in section 83 are met, provision granting authority for the child to be adopted.
> (3) In making a permanence order in respect of a child, the appropriate court must secure that each parental responsibility and parental right in respect of the child vests in a person.
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> **81 Permanence orders: mandatory provision**
> (1) The mandatory provision is provision vesting in the local authority for the appropriate period—
> (a) the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act (provision of guidance appropriate to child's stage of development) in relation to the child, and
> (b) the right mentioned in section 2(1)(a) of that Act (regulation of child's residence) in relation to the child.
> (2) In subsection (1) *"the appropriate period"* means—
> (a) in the case of the responsibility referred to in subsection (1)(a), the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 18,
> (b) in the case of the right referred to in subsection (1)(b), the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 16….
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> **84 Conditions and considerations applicable to making of order**
> (1) Except where subsection (2) applies, a permanence order may not be made in respect of a child who is aged 12 or over unless the child consents.

(2) This subsection applies where the court is satisfied that the child is incapable of consenting to the order.
(3) The court may not make a permanence order in respect of a child unless it considers that it would be better for the child that the order be made than that it should not be made.
(4) In considering whether to make a permanence order and, if so, what provision the order should make, the court is to regard the need to safeguard and promote the welfare of the child throughout childhood as the paramount consideration.
(5) Before making a permanence order, the court must—
(a) after taking account of the child's age and maturity, so far as is reasonably practicable—
(i) give the child the opportunity to indicate whether the child wishes to express any views, and
(ii) if the child does so wish, give the child the opportunity to express them,
(b) have regard to—
(i) any such views the child may express,
(ii) the child's religious persuasion, racial origin and cultural and linguistic background, and
(iii) the likely effect on the child of the making of the order, and
(c) be satisfied that—
(i) there is no person who has the right mentioned in subsection (1)(a) of section 2 of the 1995 Act to have the child living with the person or otherwise to regulate the child's residence, or
(ii) where there is such a person, the child's residence with the person is, or is likely to be, seriously detrimental to the welfare of the child.
(6) A child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of subsection (5)(a).

87 Effect of order on existing parental right
The making of a permanence order extinguishes the parental right mentioned in subsection (1)(a) of section 2 of the 1995 Act of—
(a) a parent of the child in respect of whom the order is made,
(b) a guardian of such a child,
which, immediately before the making of the order, vested in the parent or, as the case may be, guardian."

[21] Section 84(5)(c)(ii) has been identified as the threshold test. Its terms must be satisfied before consideration can be given to the other statutory provisions. It has been comprehensively analysed by Lord Reed in the case of *West Lothian Council* v *B* at paragraphs [18]-[29]. The requirement that the court must be satisfied and the provision that the matter of which the court must be satisfied is a likelihood: a likelihood of serious detriment to the child's welfare (paragraph [19]). The future likelihood of R must be based

upon findings in fact and those findings must be established on the balance of probabilities (paragraphs [22] to [25]). The burden of proof rests on the parties seeking the order (paragraph [26]). Detriment must be serious: it is not a case of a child benefitting by being brought up elsewhere (paragraph [27]). Finally, if the court finds that the threshold test is satisfied it should be clear: (1) what is the nature of the detriment which the court is satisfied is likely if the child resides with the parent; (2) why the court is satisfied that it is likely; and (3) why the court is satisfied that it is serious (paragraph [29]). Thus mere detriment to a child is insufficient to satisfy the seriously detrimental test. As is made clear by Lord Reed in the West Lothian case paragraph [27] under reference to the decision of Lord Templeman in *In re KD a Minor (Ward: Termination of Access)* [1988] AC 806 and in *In re L(Care: Threshold Criteria)* [2007] 1 FLR 2050 interference with family life by the removal of a child from its natural family can only be undertaken by the state when strict criteria are satisfied. In so emphasising the threshold test it may be said that Lord Reed was only restating the statutory position. At paragraph [247], referring to the judgment of Lord Reed, the sheriff explains the threshold test presents a "very high bar" for the petitioner to attain. Such a formulation does not appear in the judgment of Lord Reed and we see no warrant to qualify the statutory conditions in that way. However the sheriff appears to have viewed the decision of the Supreme Court as imposing a higher bar and raised his expectation of the evidence which the respondents should have provided to the court. In our opinion, in doing so the sheriff fell into error.

[22] There is no issue taken as to the fact finding exercise undertaken by the sheriff; his findings in fact are unchallenged by either side. The issue in this case is the conclusion the sheriff reached on those facts as to the satisfaction of the threshold test. The conclusion is not a discretionary one; it is a judgement.

[23] The pertinent facts are to be found in findings in fact 11, 18, 21, 23, 46, 47, 51, 61 and 71 and paragraphs 15, 23, 28-32, 34, 35, 84, 107 and 114 of the sheriff's note. We have summarised the principal findings above. On any view of that evidence there were significant issues as to the care of children for whom the respondent had some involvement or responsibility. That some of these findings did not relate to children who are the subject of this application is not material. The younger boy has never been in the care of the respondent. The respondent's care of other children is a very relevant factor.

[24] Nevertheless the sheriff was concerned that since 2015 the appellant had had no contact with the respondent. Even the curator had had limited contact with the respondent. Furthermore, the appellant did not lead expert evidence on the impact on the children of their being returned to either parent and had no up to date assessment of the mother.

[25] We have reached the conclusion that the sheriff was wrong in concluding that the threshold test of serious detriment was not met in the instant case. We consider the sheriff fell into error in his determination that the decision to close the case of the children on 7 November 2014 is an evidential barrier for the respondent, which resulted in his taking no account of the pre-November 2014 facts in reaching his decision. The evidence prior to January 2015 was more than ample material to reach the conclusion that it would be not just detrimental but seriously detrimental to the welfare of the children for them to be returned to reside with the parents or either of them. The respondent disengaged from the care process and went to England to begin a new life. In essence he relies upon his absence and lack of engagement as a basis to defeat the application. Given these facts, if the respondent wanted to establish that his conduct was no longer of the nature it had been it was incumbent upon him to provide material which would enable the sheriff so to conclude. The appellants led such evidence as they had as to his circumstances and none of it much

assisted his cause. There was no requirement for the appellants to lead expert evidence as to what impact there might be if either child was returned to its parents. The decision was one for the court. In *Fife Council* v *M* (at paragraph [54]) it was held that removal from a positive environment was a factor the sheriff was entitled to take into account when assessing serious detriment to a child. In the case of WAM, he has never lived with either parent. On the facts of this case it is entirely appropriate to conclude that removal to the respondent would be seriously detrimental to his welfare. In the course of his judgment the sheriff made clear his firm conclusion that the children cannot live with either parent. In our opinion the impediments the sheriff identified to his conclusion as to the threshold test are not well founded. Having made this error in law it is open for this court to reconsider the sheriff's decision on the question of serious detriment. We consider that had he given proper weight to the findings which he made, he should have reached the conclusion that there was a real possibility of serious detriment to ALM and WAM if they were allowed to reside with their father.

[26] On the proven facts summarised above there is more than sufficient material to establish that it would be seriously detrimental to the welfare of the children to return to reside with the parents. The parents have shown themselves incapable of carrying out their responsibility to safeguard and promote the health, development and welfare of their child. The failings are not marginal but are substantive and persuasive.

[27] The sheriff also fell into error by failing to answer the welfare question. The sheriff ought to have made findings in fact and law in relation to the questions as posed by sub-sections 84(3) and 83(1)(d) and answered the welfare question. Given his omission so to do we follow the approach which the Inner House approved in *City of Edinburgh Council* v *GD*

[2018] CSIH 52, that this court may, if satisfied, make such findings in fact and law as are required.

[28] In addition the sheriff has not made findings in relation to the various options for the care of ALM and WAM and the respective merits and demerits thereof. We observe that the position here is similar to that as noted by the Extra Division in *TW* v Aberdeenshire Council at paragraph [26]:

> "The sheriff was unable to make any finding as to when, if ever, they might be able to undertake the care of C… A vague hope of the possibility of maintaining some unspecified kind of relationship between a child and her natural parents from whom she has had to be taken into care shortly after birth is not an appropriate basis on which to disrupt the emotionally stable conditions in which a child is and has been residing with foster parents with a view to adoption. "

We have considered whether the information available is sufficient for this court to make findings on these matters. There is ample material to allow us to make findings on these matters (a course of action encouraged by the Inner House in *City of Edinburgh Council* v GD and *North Lanarkshire Council* v *KR* [2018] CSIH 59).

[29] Like the Inner House in the *North Lanarkshire Council* case this court has the benefit of recent reports by the curator *ad litem* which provides up-to-date information regarding the present arrangements for ALM and WAM. The reports make an assessment of the benefits and detriments of the various options for the care and welfare of ALM and WAM in the future. The curator identifies two options, the first being that they remain in long term foster care subject either to a child support order or a permanence order without authority to adopt; the second being that a permanence order is made with authority to adopt.

[30] In respect of long term foster care the curator expresses the opinion that remaining subject to a child support order or a permanence order has the advantage that the children would retain their current identity. She recognises that they have not seen either of their

parents for some time and call their current carers "mum" and "dad." Taking account of the fact that the current carers wish to adopt the children and can provide them with a stable family environment for the rest of their lives she reaches the view that the benefit of retaining current identity is fairly minor.

[31] The curator also identifies that if a permanence order with authority to adopt is granted the negative of loss of identity is mitigated as the children would become part of a different family, but this is a family of which they already appear to consider themselves to be a part. It also offers security and stability in an environment in which the children appear happy and secure. Thus the curator concludes that in her opinion the children's welfare would be best safeguarded and promoted by their being adopted by their present carers who are committed to the lifelong relationship of adoption. In short that they offer a home offering love nurture and respect which would safeguard and promote the welfare of the children throughout their lives. We are satisfied on the basis of the material available to us and to avoid further protracted delay were the matter to be remitted back to the sheriff that this court can make the necessary findings.

[32] On the basis of the sheriff's findings and note we find that the basis for the petition has been established. That finding also accords with the report from the curator *ad litem* who supports the making of the order. Section 84(3) and (4) provide that the court may not make a permanence order unless it considers that it would be better for the child that the order be made than it should not be made and that in considering whether to make such an order the court is to regard the need to safeguard and promote the welfare of the child throughout childhood as the paramount consideration. The making of a permanence order satisfies both subsections. In relation to section 84(5)(b) the children are too young to have a view. There are no particular religious, racial, cultural and linguistic issues.

[33] So far as adoption is concerned the petitioners rely upon sections 83(2)(c) and (3). Section 83(3)(b) allows the court to make an adoption order if in the opinion of the court the parents are unable to satisfactorily discharge their parental responsibilities and rights and are likely to continue to be unable to do so (section 83(2)(d) is not relied upon). Section 14(2), (3) and (4) also fall to be applied. The provisions of article 8 of the European Convention and Human Rights are also satisfied in that there is a requirement that the adoption proceed for the sake of the child's welfare.

[34] If the children cannot be rehabilitated to either parent the only options are long term accommodation or adoption. In the report produced for this court the curator recommended that if the court found that the threshold test had been satisfied that the child's welfare throughout his childhood would best be safeguarded and promoted by the grant of a POA.

[35] The appellants seek an order for no contact. There has been no contact for a number of years. Indirect contact can be left to the petitioners and prospective adopters to consider.

[36] Accordingly we shall therefore make the following findings in fact and law:

Recalls the second finding in fact and in law.

Inserts the following findings in fact and in law

1. That the child's residence with the respondent is likely to be seriously detrimental to his welfare.
2. That the granting of a permanence order will safeguard and promote the welfare of the child throughout his childhood.
3. That it is better for the child that a permanence order should be made than that it should not be made.

4. That the respondent has parental rights and responsibilities in relation to the child and is unable satisfactorily to discharge those responsibilities and exercise those rights and is likely to continue to be unable to do so and consequently that his consent to the granting of the order should be dispensed with.
5. That having regard to the need to safeguard and protect and promote the welfare of the child throughout his childhood and there being no practical alternative, that it would better for him that authority to adopt be granted than that no order is made.