Case No: B4/2018/2939

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM WEST LONDON FAMILY COURT
HH JUDGE ROWE QC
ZW17C00477

Neutral citation: [2019] EWCA Civ 525

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 January 2019

Before :

LADY JUSTICE KING
LORD JUSTICE BAKER
and
MR JUSTICE MOOR

- -

IN THE MATTER OF THE CHILDREN ACT
AND IN THE MATTER OF RP (A CHILD) (FOSTER CARER'S APPEAL)

Between :

LR	**Appellant**
- and -	
A LOCAL AUTHORITY (1)	**Respondent**
A MOTHER (2)	
A FATHER (3)	
RP (by her children's guardian) (4)	

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- -

Deirdre Fottrell QC and Tom Wilson (instructed by **Goodman Ray**) for the **Appellant**
David Fowler (instructed by **Local Authority Legal Services**) for the **First Respondent**
The Second Respondent appeared in person
Sam King QC and Oliver Jones (instructed by **Freeman Solicitors**) for the **Third Respondents**
Sandra Fisher (instructed by **Beu Solicitors**) for the **Fourth Respondent**

Hearing date: 30 January 2019

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Approved Judgment

LORD JUSTICE BAKER :

1. This is an application by a foster carer, hereafter referred to as "LR", for permission to appeal out of time against a care order made on 18 October 2018 by HHJ Rowe QC in the West London Family Court in respect of a little girl, R, who has been in her care for the past 14 months. The order, which was made at the end of proceedings involving R and her three older siblings to which LR had not been a party, was on the basis of the local authority's final care plan under which R is to be placed with foster carers in Poland.

2. The application for permission to appeal was considered on paper on 21 December 2018 by Moylan LJ who directed that "the applications by LR to be made a party for the purposes of the proposed appeal, for permission to appeal and the substantive appeal (if the former applications are granted) are all to be listed for hearing together". He further ordered that the judge's order be stayed pending determination of the applications. The hearing took place before this court yesterday, after which we reserved judgment until today.

3. The principal issue arising on the appeal is whether the judge had regard to all of the relevant matters in reaching her decision about R's future. In reaching that decision, she was obliged to have regard to the relevant matters in the welfare checklist in s.1(3) of the Children Act 1989, including the likely effect on R of any change of circumstances. In addition, as the applications before her included an application for a placement order in respect of R under s.21 of the Adoption and Children Act 2002, she was obliged to have regard to the relevant matters in the welfare checklist in s.1(4) of that Act, including:

> "(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."

The principal ground of appeal advanced on behalf of LR is that the judge failed to identify her relationship with R as relevant to her decision or to take into account the value to R of that relationship continuing.

Background

4. The full background is set out in Judge Rowe's first judgment, dated 2 August 2018. For the purposes of this judgment, the important features are as follows.

5. R was born in March 2017 and is therefore now aged 22 months. Her mother comes from Poland and her father from Romania. Her mother has three older children, all by different Polish fathers – a girl, W, aged 15, a boy, K, aged 13, and another girl, O, aged rising nine.

6. The mother gave birth to her first three children when living in Poland. At some date thereafter, she moved to England to work. Initially, her children stayed in Poland but at a later date they moved to live with her here.

7. The family came to the attention of social services in the local authority in West London at the end of 2016. The mother was then pregnant with R and living with the father of the child she was carrying. The initial report to the local authority included allegations of domestic abuse. In March 2017, there was a report of a violent incident between the mother and W. In June 2017, the mother alleged to the police that R's father had been watching child pornography and that W had told her that he had given her a massage and had masturbated in front of her. The police also told the local authority that the mother was vacillating about the allegations and not fully cooperating with their investigation. Further referrals were made to social services by the local hospital and school raising concerns that W, then aged 13, was sexually active and that the mother was failing to protect her. On 11 July 2017, W was taken into police protection after reporting that she had been assaulted by the mother. The mother signed a written agreement under s.20 of the Children Act consenting for W to be accommodated by the local authority and a further agreement not to allow R's father into the house while assessments were carried out. Subsequently, W absconded from foster care and returned to her mother.

8. A s.47 assessment of the family concluded that the children were at risk of harm and, following a case conference on 31 July 2017, W and R were made subject to child protection plans and K and O subject to child in need plans. In the following weeks, W absconded on several further occasions and on 18 September moved to a therapeutic residential home. In conversation with social workers, she stated that she had had sex with between 30 and 40 men. Meanwhile, further reports were received that R's father had continued to visit the family home.

9. On 27 September 2017, the local authority started proceedings under Part IV of the Children Act and obtained an interim care order in respect of W and interim supervision orders in respect of the three younger children. In early October, W absconded again from her residential home, and on 11 October was placed under a secure accommodation order.

10. In late October, the mother removed K and O from school and concerns grew about their whereabouts. On 9 November 2017, the local authority granted interim care orders in respect of the three younger children. At the hearing, the parents refused to disclose the children's whereabouts, and applications were therefore made to the Family Division of the High Court for tipstaff orders to locate the children. Despite these efforts, on 30 November, the maternal grandmother removed K and O to Poland. R, however, was safely recovered from an address in West London and shortly afterwards placed with LR with whom she has lived ever since. The local authority started proceedings in

Poland under the Hague Child Abduction Convention and eventually through that process the children were returned to this jurisdiction in June 2018.

11. Meanwhile, a number of assessments had been carried out, including a psychiatric assessment of W and parenting assessments of the mother and R's father. The local authority also considered other options for long-term placement of the children. These included placing the children in Poland with family members or in foster care. The local authority also considered long-term placement options for the children in this country.

12. On 9 April 2018, the local authority filed its final care plans for the children. For the three older children, the local authority proposed that they be placed under a full care order, with W remaining in her residential placement and K and O being placed in long term foster care. For R, the plan was that she should be placed for adoption, and the local authority filed an application for a placement order under s.21 of the 2002 Act. Section 4 of the plan stated *into alia*:

> "4.2 The local authority proposes that R should remain in the care of her current foster carer until prospective adopters have been selected.
>
> 4.3 The local authority currently has approximately 16 adopters who have successfully been assessed to adopt a child of R's age. Those successful prospective adopters will be subject to a selection process, followed by presentation for matching at the local authority's adoption and permanency panel. It is therefore anticipated that R will be placed with her adoptive parents within three months of the making of the final orders.
>
> 4.4 …. [R] will remain placed with her current foster care until such time as she is placed for adoption."

The final statement filed on 22 April 2018 by the local authority social worker assigned to the family confirmed that the local authority's plan was for R to remain in her current foster placement whilst efforts were made to find an adoptive family. On 15 May 2018, R's case was allocated to a member of the local authority's family finding team, ZC. It seems clear that, at that stage, the local authority was not contemplating the possibility of R remaining in her current placement.

13. On 11 June, the children's guardian filed her report for the final hearing. She recommended that W should remain in her residential unit, that K and O be placed in long-term foster care, and that R be placed for adoption, with no ongoing direct contact with her half-siblings. No consideration was given in her report to the possibility of any of the children being placed in Poland.

14. The proceedings were listed for a 7-day final hearing starting on 18 June 2018 for the court to determine whether the threshold criteria under s.31 were satisfied and, if so, what orders should be made for their future welfare. On 27 June, the penultimate day of the hearing, the local authority filed a statement from the family finder, ZC, about the steps the authority was taking to identify an adoptive placement for R. ZC recorded that R had settled well in her

placement, had a strong bond with her foster carer, and was "a content little girl". She reported that LR had formally expressed an interest to adopt R. ZC observed that,

> "although not a cultural match (the carer is White British), the foster carer has the means to support R's birth identity within her support network of friends and family. As the foster carer has looked after R for eight months, and is very committed to R, the [local authority] is currently completing an adoption assessment on the current foster carer. This will be fast tracked and the aim is to complete this by September 2018."

ZC added that, in parallel, the family finding team would be seeking to identify other prospective adopters on the national database.

15. At the conclusion of the hearing on 28 June, the judge adjourned the hearing and directed the local authority to compile and submit questions to the Polish Central Authority. She further directed that closing submissions be given in writing, and listed the matter for judgment on 2 August. Thereafter, some information was obtained from Poland and written submissions duly filed.

16. On 2 August, the judge delivered a judgment in which she made findings on the allegations relied on by the local authority and found that the threshold criteria under s.31 of the Children Act were satisfied. It is unnecessary for the purposes of this appeal to consider her findings in respect of the threshold criteria in any detail. Suffice it to say that she made the following findings:

    (1) that R's father had accessed pornography websites showing pictures of teenage girls;

    (2) that in 2016, when sharing a bed with the mother and W, R's father had touched W's private parts;

    (3) that the boundaries within the household were wholly inappropriate and that, as a result, W was exposed to a sexualised regime of care which caused or contributed to her vulnerability to child sexual exploitation;

    (4) that without significant insight and change, the mother would be unable to protect her children from such exposure in future;

    (5) that the mother had consistently failed to cooperate with the local authority and deliberately tried to subvert the relationship between W and the staff at her residential home;

    (6) that the children had been exposed to domestic abuse between the mother and R's father, and that there had been a toxic relationship between the adults about which they had sought to minimise the evidence;

    (7) that in October 2017, the mother had removed K and O from the school roll for two weeks, saying she did not want them talking at school about what was going on at home;

(8) that over a period from June 2017 to January 2018, W had been beyond parental control;

(9) that W's emotional neglect had caused her to harm herself by cutting on a number of occasions;

(10) that in November 2017, the mother, R's father and the maternal grandmother had colluded to hide the three children from professionals and to arrange the abduction of K and O to Poland.

17. Having made those findings, the judge turned to consider what orders should be made for the children's future welfare. She was, of course, considering the future of all four children, with differing needs and circumstances. This appeal only concerns R and it is only necessary to refer to matters concerning the other children insofar as they impinge on the decision about her.

18. The judge began the second part of her judgment on 2 August 2018 by analysing the relevant matters in the welfare checklist in s.1(3) of the Children Act. In R's case, in respect of whom the local authority was at that stage also seeking a placement order, the judge also considered the relevant factors in the welfare checklist in s.1(4) of the 2002 Act. In carrying out this exercise, it is clear that the judge was, to some extent, hampered by the fact that K and O had only recently been returned from Poland and that the information about them was, in some respects, incomplete. In particular, there was a shortage of evidence about how K's special needs would be met under the various options for his future care.

19. So far as the children's wishes were concerned, the judge noted W's strong wish to return to Poland, and that R was too young to express a view. So far as K and O were concerned, there had been insufficient time for professionals to assess their wishes and feelings following their return from Poland.

20. So far as the children's needs were concerned, the judge observed that they needed stable, secure, settled, child-focused parenting where ideally they could be with each other or, alternatively, where they could have contact with each other. The judge then considered the likely effect of a change in the children's circumstances. At paragraph 122 of her judgment, she said:

> "Looking at the impact of change, that is closely related in this case to issues of harm and to the options available for the children. Change is possible for all and likely if not inevitable for three of the four children in the near future. It is not my understanding from any evidence that K, O or R can stay in their current placements."

I interject that it is a central plank of the argument advanced by Ms Deirdre Fottrell QC on behalf of LR on this appeal that this passage contained a significant error by the judge, because by that stage it was known that LR had applied to the local authority to be considered as a potential adopter for R. It is plain to me that the judge did not realise this, because at paragraph 126 she stated:

> "R must move. And wherever she goes, she needs a carer able to support and provide her with the long-term home she needs. So she will have to cope with the change, and the impact of that change will flow directly from the quality of the new environment to which she moves and the extent to which it meets her needs."

21. The judge then considered the impact of a move to Poland, noting that for any of the children it would involve a significant change. She observed that it would be a positive change for W, given her expressed wishes, and a less significant change for K and O who had recently spent time in Poland, albeit with family members rather than in foster care as the local authority now proposed. So far as R was concerned, the judge said (at paragraph 127):

> "If R moves to live in Poland then, albeit at a young age, she will be exposed really for the first time to the full raft of life in Poland, of the language in Poland, which will be a big change for her since she has since November of last year been living in an English foster home with English spoken around her."

The judge concluded her analysis of the impact of change on the children with these words:

> "So really there is much change in the offing for these children, and there is a great deal of care needed when implementing the regimes to which the different children move."

To my mind, this comment confirms that the judge was plainly unaware of the fact that LR was putting herself forward as R's adopter.

22. Turning to the children's background and characteristics, the judge noted:

> "They are Polish children, obviously in R's case a Polish Romanian child, with – especially in relation to the older three children – a strong sibling sense of identity."

The judge proceeded to consider the risk of harm to the children, by reference to her earlier findings, and the capacity of the mother and maternal grandmother to meet their needs. The judge concluded that neither had that capacity. R's father was not by this stage putting himself forward as a carer for his daughter.

23. The judge then considered the factors in the checklist in s.1(4) of the 2002 Act in respect of R. At paragraph 139, referring to the factors in s.1(4)(c) (the likely effect on the child throughout her life of having ceased to be a member of the original family and become an adopted person), she said:

> "If she is adopted in this country, she would be placed with adopters committed to becoming her parents throughout her life and to enhancing the cultural needs which she has. She would lose not only membership of her birth family, the opportunity to grow either with her parents or any of her siblings, but she would also lose the chance to grow in the country of her mother, maternal family and siblings' origin, and to experience through

> some contact with her father – if safe – the culture of her paternal side. So her losses will be significant. So too would be her loss of the opportunity to develop relationships with her siblings that will be losses throughout her life."

When dealing with s.1(4)(f), the judge stated (at paragraph 140) that this was

> "linked to a significant degree with the observations I have already made in relation to s.1(4)(c) because the parents and her siblings are able and willing to have a relationship with her, though I have already made findings about the capacity of her parents to provide her with a secure environment. Her close family members are all deeply opposed to adoption and strongly in favour of a plan that allows R to go to live in Poland."

24. Ms Fottrell points out again that there is nothing in this part of the judgment to suggest that the judge had in mind the option of R remaining with LR or being adopted by her.

25. The judge then carried out what she described as "a holistic evaluation of the various options before the court in this complicated case". She looked in turn at the advantages and disadvantages of placement of the children with their mother, placement with the maternal grandmother, placement of K and O in long-term foster care in England, and placement of some or all of the children in Poland. The only specific reference to R in her analysis of these four options is found in paragraph 153 of the judgment:

> "A disadvantage of a move to Poland is the change it would involve for R, and she would not have in a foster home in Poland the ultimate degree of permanence that research and experience indicates coming from adoption."

The judge then considered the option of adoption for R:

> "154. The option of adoption for R next. In favour, it has that element of permanence not available in the other legal framework. It has a commitment from carers who are looking to a lifetime commitment, rather than simply providing a home for a child to the age of 18. It would have the advantage of assessed and dedicated carers committed to meeting R's needs throughout her life.
>
> 155. The disadvantage: as already described, it may not be possible to achieve a culturally appropriate placement, though it might; and the losses would be of the opportunity to grow with any of her siblings, or to have contact with her mother, possibly her father, in a home intended to be in a country – namely Poland – that seeks to claim her."

The judge then considered the option of long-term foster placement in Poland and compared the advantages and disadvantages of adoption in this country. She noted the local authority's concern about the limited nature of information from Poland about the options for R in that country. She also referred to the recognised differences between long term fostering and adoption generally. She

recorded that the local authority had described it as "unthinkable" that a child of R's age would not be adopted if she could not be placed in her family. The judge noted, however, the different attitudes to non-consensual adoption in other jurisdictions. Once again, as Ms Fottrell points out, there is no reference in the analysis of these options to the advantage that adoption by LR would allow R to remain in her current placement where she is settled and thriving.

26. At paragraphs 159 - 160, the judge summarised her thinking as follows:

> "159. This is a very difficult case, I find, it is difficult because of the very different ages of the children. It is difficult because of the very different experiences of the children, and because of the differences in the needs of the children. It is a very difficult case because of geography, and it is also difficult because in relation to the consideration I give to the placement of some of the children at least – if not all of the children – in Poland to the difficulty in achieving the sort of detailed information about placement that is usually available in this country from local authorities in this country.
>
> 160. This is a finely balanced case in some ways, given the competing options for the children, particularly if – in an ultimate holistic evaluation – they cannot return to the mother's care. It is particularly finely balanced for R …."

27. At this point, however, the judge indicated that she would not make a final decision until further information had been obtained from Poland, in particular about how K's identified special needs would be evaluated and met and the therapeutic options for W. She therefore adjourned the application for that information to be obtained.

28. The hearing resumed on 20 September 2018. Further written evidence from Poland had been obtained which indicated that foster placements were available for the children in Poland, in the area where their extended family live, although, because of her young age, R would be placed separately from her older half siblings. In addition, the local authority filed a further statement from the team manager, dated 19 September. For reasons which are not entirely clear to me, this important document was not included in the appeal bundle and was only handed to us at the start of the hearing yesterday. In the statement, the team manager identified five "realistic options" for the children as a group. Under the first, reiterating the local authority's proposal at the hearing in June, all four children would remain in the UK, W, K and O in their current placements and R being placed for adoption. Under the second, K and O would be placed in foster care in Poland, and W and R would remain in this country, with W in her current placement and R placed for adoption. Under the third, all four children would be placed in foster care in Poland. Under the fourth, W would remain in her current placement and the three younger children placed in Poland. Under the fifth, R would be placed for adoption here and the three older children placed in Poland. Under each option, the analysis included a short "balance sheet". The analysis identified the advantage of adoption for R in these terms:

> "R would achieve permanency through adoption and would have a family life outside of the care system. R's current foster carer has put herself forward to be considered as an adopter for R so there is a possibility that she would not have to move again. R has developed a significant bond with her current foster carer and she would find separation difficult."

At the end of the statement, the team manager reported that the first option was the local authority's preferred outcome. She explained the reason for recommending adoption for R as follows:

> "R's current carer would like to be considered as a prospective adopter for R, and this will be considered alongside other potential matches should the court grant a placement order. The possibility of an adoptive placement with her current carer has the significant strength that R would not experience any further moves and would remain with the person she currently looks to as her parental figure. R has a strong bond with her current foster carer and any move at this point would have to be carefully managed. If the move was to Poland, it is likely that R would have considerable difficulty settling. R is very young, she has never been to Poland and her first language is English. To be surrounded by a different language, culture and setting all of [a] sudden would be extremely confusing for R, and not in her best interests.
>
> The local authority recognises that R's Polish and Romanian heritage is significant, as is her ongoing relationship with her siblings; however we consider that her need for permanency and the opportunity for permanency through adoption outweighs this.
>
> R's siblings are considerably older that her and she has lived apart from them for almost one year. R had no contact with K and O between November 2017 and June 2018, so whilst she has become familiar with them the strength of the sibling bond is reduced."

29. No oral evidence was given at the hearing on 20 September. The judge was provided with some written and oral submissions. I note that some of the parties were represented by different counsel from those who had appeared during the hearing in June. The parents strongly supported the placement of all four children in Poland. The guardian, who had not provided a supplemental report nor carried out further inquiries of her own, supported W remaining in her current placement for the time being but, with regard to the three younger children, including R, she changed her position and recommended that they be placed in Poland.

30. At the conclusion of the hearing, the judge indicated that she would adopt the fourth option identified in the social worker's updated analysis under which W would remain in England under a care order so that she could complete her therapy and the three younger children, including R, would be placed in foster care in Poland. The judge directed the local authority to file amended care plans and a skeleton argument setting out the legal framework for the children's move. She reserved judgment until 18 October. By that date, however, the plans for W had changed because she had been so distressed about the prospect of the

three younger children moving to Poland while she stayed here. The judge therefore adjourned her decision in respect of W again. In respect of the other three children, however, she made care orders as previously indicated and set out further reasons in a supplementary judgment.

31. At the start of the second judgment, delivered on 18 October, the judge recorded the parties' respective positions, starting with the local authority in this way (at paragraph 6):

> "The local authority maintained its position as at the final hearing and as set out in my judgment of 2 August. Essentially they submit it is possible for R to remain in her current foster placement thereby avoiding the disruption. Only adoption could offer a child of R's age the stability that she needs throughout her life and the local authority emphasised observations in the case law about the comparatively precarious nature of long-term foster care when set against the advantages and stability of adoption."

This is the first reference in either judgment to the possibility that R might remain in her current placement. The judge then summarised the position of the other parties as summarised above.

32. The judge then set out her final analysis. With regard to R, this consisted of a lengthy passage which I shall recite in full:

> "10. I turn to deal with the analysis in respect of R and of course in her case I have to do so by reference to the checklist under s.1(4) of the 2002 Act, and I must think about R's welfare throughout her life. R urgently needs stability in a home that is as permanent as possible where her day-to-day needs are met, where her cultural needs are met, where she can grow with a knowledge of her birth family. If she ceases to be a member of her birth family then she loses forever the opportunity to grow with the knowledge, save in a life story, of her family. She loses forever the opportunity to grow within her own culture. She will learn that her siblings all returned to Poland where they are together and that only she was excluded from that process. If she is adopted then she would of course have carers dedicated to her, matched and tasked with meeting her needs throughout her life and with helping her to understand and come to terms with her life story. She is a very young Polish/Romanian girl, currently in an English-speaking placement where it is proposed by the local authority that she will remain.
>
> 11. I refer to the threshold criteria to identify the risk of harm and the harm in this case. R's relationship with her siblings is of lifelong value to her and it will, if she too returns to Poland, continue at a high, frequent, formal and informal level. If she remains in the UK and is adopted those relationships will be lost. Her relationship with her mother is of value and can continue if R is in Poland so long as the mother makes herself available.
>
> 12. I am not entirely clear about the plan for father. However, the Polish authorities will, I am satisfied, be well able to assess the value and

> appropriateness of contact between him and R if she is in Poland and if he seeks it. R's family strongly support placement in Poland.
>
> 13. I acknowledge that, all else being equal, it is unusual to choose long-term foster care over adoption for a child as young as R. The advantages of adoption are clear and statistically the prospects of a successful placement of a child of R's age for adoption are good. I said in August and I repeat that this is a difficult and finely balanced case, especially for R ….
>
> 14. My decision is to refuse the application for a placement order and to approve the arrangements for all three … younger children, to be placed in Poland. To the extent that my reasons are not already clear I repeat those in summary as follows. Firstly, this is overwhelmingly a Polish family. The children came here at different times but the placement here has never worked, none of the children have settled here and their only real family life so far is in Poland. Secondly, R's position is of course different because she was born here but neither of her parents are English and her cultural ties lie wholly elsewhere. Her maternal and paternal families are elsewhere. That is not important to her now at her age but will grow year-on-year increasingly in importance and in significance to her. How could she bridge the gap in future if she wanted to if her cultural experience and identity are limited to the long distance and if she cannot even speak the same language as members of her family? The Polish authorities are dedicated to this family. I am satisfied that they will ensure the children grow with possibly even daily but on any view frequent, regular, informal contact that will cement the sibling group that has been so fractured by the different experiences.
>
> 15. This gives R the best most balanced opportunity to grow in a home that will meet her needs in the long-term but as a full part of her birth family in a country of her cultural heritage with contact to her siblings and, if she will comply with the requirements of her, the mother.
>
> 16. I acknowledge the impact of this change in the short term on R but consider it is worth that short-term upheaval for the benefits that the move will bring to her throughout her life by taking the Polish option in her case."

33. The judge invited counsel to identify any relevant matters she had omitted from this judgment. After hearing further submissions, she added a supplemental passage to her judgment citing three further matters which had been identified. Of these, only the third is relevant to this appeal. The judge dealt with it in this way:

> "I acknowledge that I was in error in saying that R would necessarily lose contact with her natural family if she is adopted because the prospective adopter is open to the possibility of post-adoption contact and in particular for W for the time being. I acknowledge that is a factor and I should have and do take it into account and that does make a marginal difference to the factors and balance of factors. W has of course been very clear of the importance of her relationship with R. Ultimately, it is a marginal difference because W sees herself, and has always seen herself, clearly when she saw me, saw herself, and for the future sees herself, as a Polish

> child who will return to live her future life in Poland. In those circumstances, even if there were a possibility with conditions of some limited contact by R to one or other of her siblings, the geography would make it unlikely that would endure. In relation to K and O, the language barrier would probably be insuperable in any event, so that the difference in her relationship with her family, if adopted, and if she goes to Poland, remains profound."

34. On 5 November 2018, LR's solicitors invited the local authority to ask the court for permission to disclose the judgements to their client so she could obtain legal advice. When the local authority refused, LR applied to the judge. At a further hearing on 21 November 2018, the judge ordered the disclosure of relevant information. On 4 December, she refused an application on behalf of LR for permission to appeal, but granted a stay of her order for seven days to allow the appellant to make an application to this court. On 6 December, an appeal notice was filed, five weeks after the expiry of the 21-day appeal period. As set out above, Moylan LJ listed the matter for hearing today and extended the stay of the judge's order.

35. Meanwhile, W, K and O have all moved to Poland and are placed together in a foster home. R remains living with LR. The mother has also gone back to Poland, although she has returned for the purpose of contact with R and for the hearing of the appeal

Preliminary issues

36. Before turning to the grounds of appeal, I deal with two preliminary points: (1) whether LR should be given permission to bring this application as a non-party to the care proceedings, and (2) whether to extend the time for filing of the appeal notice.

37. No party has cited a case to us in which a foster carer has sought to appeal an order in care proceedings to which he or she was not a party. In the event, none of the respondents to this appeal contends that LR does not have a sufficient interest to apply for permission to appeal. In those circumstances, although detailed submissions were set out in the skeleton argument filed by Ms Fottrell and Mr Wilson on behalf of R, we have not heard argument on the first issue.

38. In *George Wimpey UK Ltd v Tewkesbury Borough Council* [2008] EWCA Civ 12 [2008] 1 WLR 1649, this court concluded that a person can be an "appellant" within the meaning of CPR r.52.1(3)(d) notwithstanding that he was not a party to the proceedings in the lower court. The policy underpinning this interpretation was explained by Dyson LJ (as he then was) at paragraph 9 of his judgment:

> "It would be surprising if the effect of the CPR were that a person affected by a decision could not in any circumstances seek permission to appeal unless he were a party to the proceedings below. Such a rule could work a real injustice, particularly in a case where a person who was not a party to the proceedings at first instance, but who has a real interest in their

> outcome, wishes to appeal, the losing party does not wish to appeal and an appeal would have real prospects of success."

39. The principle in the ***George Wimpey*** case was applied on an appeal from an order in care proceedings in ***Re W (A Child)(Care Proceedings: Non-Party Appeal)*** [2016] EWCA Civ 1140 [2017] 1 WLR 2415. In that case, the judge at first instance made findings that a social worker and a police officer had lied to the court about their investigation and had subjected the child to a high level of emotional abuse over a sustained period as a result of their professional interaction with her. The social worker and police officer, neither of whom had been a formal party to the proceedings, applied successfully for permission to appeal against the judge's adverse findings on the basis that they had been given no opportunity to know of or meet the criticism during the trial.

40. How should the court approach an application by a foster carer for permission to appeal when she is not a party to the proceedings? Every foster carer has an interest in the child they are looking after, but not every one will be able to demonstrate a real interest in the outcome of an appeal in proceedings concerning the child. Without hearing full argument, I would prefer not to make any observations about where the line should be drawn or the criteria to be considered when considering such an application. In the present case, LR manifestly has a real interest in the proposed appeal, and in addition her position on the substantive issues is unsupported by any of the other parties. For reasons that will become clear later, I conclude that the proposed appeal does have a real prospect of success. In those circumstances, I would grant her permission to appeal.

41. The second preliminary question is whether to extend time for appealing. The notice of appeal was filed five weeks after the expiry of the 21-day period in r.52.12. All of the respondents opposed the application for an extension of time in their skeleton arguments filed for this court. On behalf of the local authority it was submitted that, when the judgment was delivered on 18 October 2018, the outcome would not have come as a surprise to LR because she had been told of the judge's decision after the hearing on 20 September. She did not, however, instruct solicitors until 5 November. It is submitted that this delay is significant in the context of the statutory requirement for every public law child case to be disposed of within 26 weeks and the impact of any delay in the implementation of a care plan on a child of this age.

42. I accept that any delay in launching an appeal in this type of case is likely to be prejudicial to the child's welfare. On the other hand, I do not think that LR can be criticised for taking no action before the delivery of the judgment on 18 October and to my mind the subsequent delay of eighteen days in instructing solicitors is not so serious as to preclude an extension of time for filing a notice. It is clear from the chronology set out above that thereafter LR and her legal representatives acted promptly in seeking to obtain information relating to the proceedings and, having obtained the information, filed the appeal notice expeditiously. Furthermore, as all the respondents accept, in considering an extension of time the court is to have regard to the underlying merits of the appeal. As will become apparent, I consider that this appeal has considerable merit. In those circumstances, I would propose extending time.

43. In the event, when the court indicated its preliminary view that time should be extended, none of the respondents to the appeal sought to persist with their objections.

The substantive issues

44. The grounds of appeal, as defined by Ms Fottrell and Mr Wilson in their clear and comprehensive skeleton argument, are as follows.

    (1) Having ruled out the parents and maternal grandmother, the learned judge wrongly treated the balancing exercise as one between stranger adoption in this country and placement in Poland. She ignored the fact that an identified adoptive placement was available which would enable R to stay with LR, her primary carer and secure attachment figure. As a result of this error, she failed to recognise, analyse or place weight upon (a) R's attachment to LR; (b) LR's willingness to care for R, or (c) the impact on R of the loss of a primary attachment relationship.

    (2) As a result, the judge placed disproportionate weight on R's cultural background.

    (3) The judge further placed disproportionate weight on the preservation of the sibling relationship.

    (4) The judge failed to consider alternative frameworks for a placement with LR, such as a special guardianship order.

45. It will immediately be apparent that the second and third grounds are essentially challenges to the weight which the judge attached to specific factors in carrying out her analysis. The first and fourth grounds, however, are of a different character because they each consist of an assertion that the judge failed to take into account material matters relevant to her decision. I propose, therefore, to deal with these two grounds first.

46. In support of the first ground of appeal, Ms Fottrell and Mr Wilson submit that the judge's failure to have regard to the fact that an identified adoptive placement was available which would enable R to stay with her primary carer and secure attachment figure was contrary to the series of decisions of this court which have stressed the importance of undertaking a rigorous analysis of all realistic options for a child. They cite in particular the decisions in *Re B-S (Children) (Adoption: Leave to Oppose)* [2013] EWCA Civ 1146 [2014] 1 FLR 1035, *Re G (Care Proceedings: Welfare Evaluation)* [2014] EWCA Civ 965 [2014] 1 FLR 670 and *Re M'P-P (Children) (Adoption: Status Quo)* [2015] EWCA Civ 584. The last-named case concerned an appeal by a foster carer against a judge's decision to revoke the care and placement orders with respect to the child. In allowing the appeal, this court concluded that the judge's analysis had been fundamentally flawed in that he failed to give any regard to the effect on the children of removing them from the care of their primary attachment figure, when it was common ground that this was a strong and entirely positive relationship, and had further failed to attribute any value to the

continuation of that relationship. Ms Fottrell and Mr Wilson rely in particular on paragraphs 48 to 51 in the judgment of McFarlane LJ (as he then was). In paragraph 48, he cited an observation of Ormrod LJ in *D v M (Minor: Custody Appeal)* [1982] 1 All ER 897 that

> "it is generally accepted by those who are professionally concerned with children that, particularly in the early years, continuity of care is a most important part of a child's sense of security and that disruption of established bonds is to be avoided whenever it is possible to do so."

McFarlane LJ continued:

> "49. In more recent times the prescient observations of Ormrod LJ, which were made at a time when the early work of John Bowlby and others on 'Attachment Theory' was available, have been borne out by the enhanced understanding of the neurological development of a young child's brain that has become available, particularly, during the past decade. As a result, the importance of a child's attachment to his or her primary care giver is now underpinned by knowledge of the underlying neurobiological processes at work in the developing brain of a baby or toddler.
>
> 50. In the context of 'attachment theory', the wording of ACA 2002 S.1(4)(f), which places emphasis upon the 'value' of a 'relationship' that the child may have with the relevant person, is particularly important. The circumstances that may contribute to what amounts to a child's 'status quo' can include a whole range of factors, many of which will be practically based, but within that range the significance for the child of any particular relationship is likely to be a highly salient factor. The focus within CA 1989, s.1(3)(c) is upon the 'likely effect on' the child of any change. The focus in ACA 2002, s.1(4)(f)(i) is upon 'the value to the child' of any particular relationship continuing.
>
> 51. It is not my purpose in this judgment to express a view upon the relative importance of attachment/status quo arguments as against those relating to a placement in the family. Each case must necessarily turn on its own facts and the weight to be attached to any factor in any case will inevitably be determined by the underlying evidence. In any event, for reasons to which I have already referred, it is not necessary to do so in this case as, unfortunately, the judge does not appear to have engaged in any real way with the effect on the children of moving them from the care of their primary, and only, attachment figure or with the value to them of maintaining that relationship."

47. Ms Fottrell and Mr Wilson submit that that Judge Rowe committed the same error as the judge at first instance in *Re M'P-P*. There was evidence that R had settled well in her placement with LR, with whom she had a strong bond. Accordingly, they submit that the effect on the child of moving from the care of her primary, and only, attachment figure and the value to her of maintaining that relationship were plainly factors to be taken into account in assessing the realistic options for her future. There is, however, no reference to this important relationship, or the impact of its loss, in either judgment. In her first judgment,

Judge Rowe made a material error of fact in stating that "R must move". By the time of her second judgment, the judge recognised that it was the local authority's case that it was possible for R to remain in her current foster placement. Ms Fottrell and Mr Wilson submit, however, that, despite recognising this fact, the judge did not engage with it as a factor to be weighed in the balance. Instead, she treated the balancing exercise as a straight choice between stranger adoption and placement in foster care in Poland.

48. Ms Fottrell and Mr Wilson submit that the judge repeatedly treated the children as a sibling group when in fact their interests were materially different. R is a very young child, much younger than her half siblings, with very different needs and circumstances. Unlike them, she was born in England and, with a Romanian father, has a somewhat different cultural background. At the time of the judge's decision, she had been separated from them for ten months with relatively little contact, in particular with K and O in the period when they were in Poland following their abduction by the grandmother. None of these points featured in either judgment.

49. In support of the fourth ground of appeal, it is submitted that a further deficit arising from the judge's error was a failure to consider alternative frameworks for a placement with LR, including possible private law orders such as a special guardianship order. Ms Fottrell and Mr Wilson submit that this failure improperly compelled the judge to the stark choice she wrongly identified. Consideration of private law orders as an alternative to adoption would have revealed options to mitigate the losses identified by the judge. For example, they would have enabled R to remain settled with her primary carer in a secure placement, avoiding the significant disruption of a move to Poland, but at the same time avoiding the severance of legal ties between R and her family, and contact with her siblings.

50. The appeal is opposed by the local authority, the parents and the guardian. On behalf of the local authority, Mr David Fowler submits in respect of the first ground that the judge precisely identified the realistic options for R, including adoption. He disputes the assertion made on behalf of the appellant that the judge treated the balancing exercise as a choice between stranger adoption and placement in Poland. In his written submission to this court, he conceded that, in her first judgment, the judge was under a misapprehension that, if R were adopted, she would need to move from her foster placement, but he argued that, by the time of her second judgment, she was clearly aware that, subject to being approved and matched, the local authority's plan was for adoption by her existing carer. He submitted that it is clear that, after ruling out family placements, the options were continued placement with LR with a view to adoption versus foster placement in Poland. There was no obligation on the judge to consider any private law option such as special guardianship. There are no significant advantages of such an order in this case, and the suggestion relied on in the fourth ground of appeal that private law orders should have been considered is fanciful.

51. On behalf of the father, Ms Sam King QC and Mr Oliver Jones assert that the first ground of appeal is advanced on the basis that it was a *fait accompli* that the foster carer would be positively assessed for adoption and matched with R.

In fact, neither of those assumptions should be taken for granted because the adoption assessment had not been completed at the time of the hearing on 20 September and thereafter was abandoned following the judge's indication of her decision. Ms King and Mr Jones concede that the fact that LR was an approved foster carer was obviously a positive indicator for the purposes of the adoption assessment, but there is no indication of what might have been the eventual outcome of that assessment. Although the evidence of ZC was that the local authority was fast-tracking the assessment of LR, it was not the local authority's case that she was necessarily their primary choice for an adoptive placement. It is submitted that there is a significant cultural mismatch between the foster carer and R as well as other potential disadvantages, for example that she is a single carer. Ms King and Mr Jones submit that the judge was being presented with an aspiration by the foster carer and that this was no more than a contingent option as opposed to a realised proposition. Even if the assessment had reached a positive conclusion, it would still have been necessary for LR to go through the matching process. In those circumstances, they submit that it would have been impossible for the judge to undertake a proper balancing of the advantages and disadvantages of a potential adoption by LR. As Ms King made clear in oral submissions, it is therefore not accepted on behalf of the father that the relationship between R and LR was a relevant relationship within the meaning of s.1(4)(f) of the 2002 Act.

52. Ms King and Mr Jones submit that there are important distinctions between the facts in ***Re M'P-P***, and those of the present case. ***Re M'P-P*** involved a foster carer/prospective adopter who, unlike LR, had been successfully assessed. They cite the observation of Sir James Munby P in ***Re T (A Child) (Early Permanence Placement)*** [2015] EWCA Civ 983 at paragraph 50 that

> "the care judge is concerned at most with consideration of adoption in principle, not with evaluating the merits of particular proposed adopters."

53. In their written submissions, Ms King and Mr Jones argued that, in the present case, the option of placing R with LR for adoption was barely put before the court. Apart from the reference cited above from the statement of the family finder ZC, there was no mention of the option in the local authority care plan or any of its evidence. Furthermore, it did not feature in any written submissions put before the judge. In fairness to Ms King, I should stress that this submission was drafted before she saw the team manager's statement of 19 September which contained a detailed analysis of the possibility of R being adopted by LR and the advantages of that option.

54. In brief oral submissions to the court, the mother appearing in person opposed the appeal and urged the court to allow R to move to Poland. The mother has herself recently moved back to Poland where the older three children are also now living in foster care and, in the mother's words, "are waiting for their sister". The mother helpfully confirmed information previously provided by the Polish authorities that, if R moves to Poland, she will be placed in a foster placement by herself where she can stay until she is 18. It was the mother's case that the judge reached the right decision in the child's best interests and in doing so took LR's position into account. The court is very grateful to the mother for coming to court and making her submissions.

55. On behalf of the children's guardian, Ms Sandra Fisher drew attention to the guardian's change of position during the proceedings. In response to the first ground of appeal, she submitted that any good attachment to LR "lends itself to a successful move to a Polish foster carer"; that the decision in *Re M'P-P* was distinguishable on its facts; that an endorsement by the judge of a plan for adoption for R would not guarantee that LR would be approved or matched as the prospective adopter.

56. When listing the hearing, Moylan LJ gave permission to the Polish Embassy to file written submissions and attend the hearing. The Embassy duly sent a letter to the court and arranged for a member of staff to attend the hearing. We are very grateful to the Embassy for its contribution to the hearing. In its letter, the Embassy confirmed that a placement had been identified for R in Poland which was both culturally appropriate and located close to her half-siblings and extended family. The placement will be supervised by the Polish local authority and court. The Embassy staff are ready to assist in the implementation of the order. The letter reminds us that Article 8 paragraph 1 of the UN Convention of the Rights of the Child requires protection of children's rights to preserve their identity, including their nationality, name and family relations without unlawful interference. The Embassy stresses that this requirement is irrespective of the fact that the biological parents are unable to care for the children. It is argued that in R's case preserving her cultural identity would have long term benefits outweighing those linked to permanence in her current placement. For those reasons, the Embassy invited the court not to permit LR to appeal against Judge Rowe's order. The Embassy added, however, that any final decision would be respected by the Polish authorities.

Conclusions

57. I am entirely persuaded by Ms Fottrell's arguments in support of the first ground of appeal. At no point in either judgment did the judge consider the value to R of remaining in LR's care. I reject Ms King's submission that the relationship between R and her foster carer was not relevant within the meaning of s.1(4)(f) of the 2002 Act. Given the evidence as to the strength and significance of that relationship, it is incontrovertible that their relationship was relevant. As a result, as McFarlane LJ emphasised in *Re M'P-P*, the judge was obliged under s.1(4)(f)(i) of the 2002 Act to consider the likelihood of it continuing and the value to the child of it doing so. The judge did refer to s.1(4)(f) in her first judgment but only identified R's relationships within her birth family as relevant to her decision.

58. By the time of the resumed hearing on 20 September, the judge had clear evidence that R had a strong and significant bond with LR with whom she had lived for ten months from the age of nine months, that the possibility of placement with LR had a significant strength that R would not experience any further moves and would remain with the person she looked to as a parent figure, and that R would find separating from LR difficult. None of these important considerations is mentioned in the second judgment. Although the judge said that she acknowledged the impact of the change in the short term on R, she did not expressly address the evidence of the team manager that it is likely that she would have considerable difficulty settling in Poland, which she

had never visited before, and that to be suddenly surrounded by a different language, culture and setting would be extremely confusing to her and not in her best interests.

59. The respondents all seek to distinguish *Re M-P-P* from this case on the grounds that the facts were significantly different. That is true, but the importance of the citation is not the factual matrix of the case but McFarlane LJ's exposition of legal principle. In *Re M'P-P*, McFarlane LJ was underlining the statutory obligation on courts to identify relevant relationships and consider the value to a child of those relationships continuing. In many cases, the relationship arising for consideration will be with the birth family. But there is no reason why this requirement should not extend to other relationships identified by the court as relevant, including a relationship with a foster carer. For the reasons identified by McFarlane LJ, where, as here, a child, particularly a child of this age, has formed a strong bond with a foster carer, it is manifestly in the child's interest for the court to consider the likelihood and value of that relationship continuing. I am quite sure that Sir James Munby P was not intending to suggest otherwise in the passage in his judgment from *Re T* cited by Ms King. As Sir James himself acknowledged subsequently in *Re B (A Child) (Sibling Relationship: Placement for Adoption)* [2018] EWCA Civ 20, [2018] 2 FLR 1 at paragraph 25 of his judgment,

> "there is nothing in *Re T* to say that the court can ignore a crucial factor which is necessarily concomitant with a particular placement".

For my part, the court's statutory obligation when considering an application for a placement order is to identify any relevant relationship and consider the likelihood of that relationship continuing and the value to the child of its doing so may extend to a relationship between a child and foster carers who have put themselves forward as prospective adopters.

60. I do not accept that the appeal is based on the assertion that it was a *fait accompli* that the foster carer would be positively assessed for adoption and matched with R. There was certainly no guarantee that LR would be approved as an adopter. It was, however, the local authority's case before the judge that adoption by LR was their preferred and proposed option. There was, therefore, plainly a likelihood that the relationship would continue and it was therefore important for the court to take that factor into account.

61. I have considerable sympathy with the judge. Given the care she evidently devoted to this difficult case, and the thorough way in which she crafted her judgment dated 2 August, it is obvious from her assertion that "R must move" that she was unaware of the fact that that the local authority was contemplating that the child would remain with LR. Although there was evidence about this in ZC's statement, it clearly did not feature prominently in the local authority's presentation at the hearing in July. There is no reference to it in the social worker's statement or the care plan, nor is it mentioned in the guardian's analysis. The closing submissions filed by the local authority deal predominantly with the issues of threshold. The relatively brief submissions concerning welfare options do not allude to the possibility of R remaining in her current placement. It is to my mind surprising that counsel for the local

authority did not apparently correct the judge's error at the conclusion of her judgment.

62. By the adjourned hearing on 20 September, however, the judge did have a clear and detailed analysis from the team manager which included an assessment of the possibility of LR adopting R and the advantages of that option. Although the second judgment of 18 October referred to the fact that the local authority plan was for R to be adopted by her current carer, it did not take into account the specific circumstances of her current placement, the strengths of that placement, the fact that R would avoid any move at all if she remained where she currently is, and the security of that placement.

63. How did it come about that this senior judge with her great experience of cases of this type omitted this important information? We were not supplied with much information about the hearing on 20 September. None of the advocates who appeared on that occasion were before us on this appeal. It may be that the lack of continuity of counsel was a contributing factor. I also note the judge listed the case at 10am at Barnet, whereas the earlier hearing had taken place at West London. I have the impression that this was a relatively short hearing held before her day's list.

64. I am for my part concerned that the guardian did not file a supplemental analysis, given the fundamental change in her position between the start of the hearing in June and the adjourned hearing in September. In her report dated 11 June, she had recommended that R be adopted in this country with no contact with her half-siblings and family members. Her report included an assessment of the factors in the welfare checklist and an "early permanence analysis" in which she considered the advantages and disadvantages of the various options for the children. Under the heading "adoption", she wrote: "Placement for adoption would sever the tie between R and her birth family. It could provide a stable family life throughout the remaining of her minority and beyond." At that stage, the guardian was unaware that LR had put herself forward as a prospective adopter. So far as the other children were concerned, the recommendation in the guardian's written analysis was that all three should be placed under full care orders, with W remaining in the residential unit and K and O placed in long-term foster care. At no point in her report did the guardian address the possibility of placement in Poland for any of the children.

65. By the time of the adjourned hearing in September, however, the guardian's position had changed. She was now recommending that the three younger children should be placed in foster care in Poland. Despite these important developments, she did not prepare an addendum analysis of the advantages and disadvantages of the options for the children, which were completely different from those identified in her report. This morning, we received a copy of written submissions made by counsel on behalf of the guardian dated 18 September which informed the court that the guardian had changed her mind and was now supporting placement of the three younger children in Poland, with W to move there once her therapeutic work was completed. In the document, counsel sets out the advantages for R perceived by the guardian in the proposed move to Poland. He did not, however, address any disadvantages. The document added that the guardian had not seen the amended care plans and reserved the right to

amend her recommendations once they had been received. It is plain, therefore, that this document was filed before the guardian had read the team manager's statement dated the following day. I am concerned that the guardian reached a definitive recommendation before she had seen the local authority evidence. I am also concerned that nowhere in this position statement, nor in any other document filed on behalf of the guardian, was there any reference to the possibility of R being adopted by LR. Indeed, the document, in summarising the judgment of 2 August, repeated without comment the error that "R must move".

66. I am, of course, well aware of the great pressures on all professionals working in this field. I am sure this very experienced guardian, like all of her colleagues, has a heavy case load. But I regret to say that there was a failure to comply with the guidance given by this Court on many occasions, most prominently in ***Re B-S*** but also on many other occasions. Specifically, in ***Plymouth CC v G (Children)*** [2010] EWCA Civ 1271, Black LJ, as she then was, (in a passage cited and approved in ***Re B-S***) stressed that

> "the court requires not only a list of the factors that are relevant to the central decision but also a narrative account of how they fit together, including an analysis of the pros and cons of the various orders that might realistically be under consideration given the circumstances of the children, and a fully reasoned recommendation."

With respect, I consider it was incumbent on the guardian in this case to provide the judge with an analysis of the value to R of remaining in LR's care and of the advantages and disadvantages of the proposals that R be adopted by LR and the proposal that she be placed in foster care in Poland. I can find no evidence that any such analysis was provided.

67. Given all these difficulties, it is perhaps unsurprising that the judge went astray. For whatever reason, I am satisfied that the she did not identify or address this important part of the evidence when she made her decision at the end of the hearing on 20 September and later when she came to draft her second judgment. This was, as the judge acknowledged, a finely-balanced decision, and the important matter overlooked by the judge could well have tipped the balance.

68. I have therefore regrettably concluded that permission to appeal must be granted, the appeal allowed on the first ground, and the application for a care order and placement order in respect of R remitted for rehearing. In those circumstances, I do not consider it necessary or appropriate to reach a decision on the other grounds of appeal.

69. If my Lady and My Lord agree with my assessment of the merits of this appeal, although I have every confidence that Judge Rowe would carry out a rehearing fairly, I would propose that the case be remitted in the first instance to the Family Division Liaison Judge for London, Theis J, to determine future allocation of the proceedings. Consideration will also have to be given as to whether, and if so how, LR is to participate in the rehearing. At the rehearing, the judge will have to carry out a fresh analysis of the options for R's future care. In doing so, he or she will of course take into account all the arguments advanced by the parties, and also the points made by the Polish Embassy. For

my part I would not wish to be thought to be giving any indication of what the outcome of that rehearing should be. I have, however, reached a clear view that the appeal should be allowed for the reasons set out above.

MOOR J

70. I agree

KING LJ

71. I also agree.

72. This is a case which highlights the importance of all relevant information being before a judge who has the responsibility of making critical welfare decisions in relation to children and of the responsibility of each of the parties to play their part in ensuring this to be the case.

73. This matter started life as a so-called "rolled up" hearing where a judge first determines the threshold criteria and, thereafter, providing the threshold criteria is satisfied, moves onto make the appropriate welfare decisions in respect of the children concerned.

74. Whilst not desirable, it is not uncommon for a judge to find him or herself in a position where, as here, he or she is lacking certain essential information necessary in order properly to consider the Local Authority care plan at the conclusion of the threshold stage.

75. In the present case, on 27 June 2018, the day before the conclusion of the substantive trial, the Family Finder report, to which Baker LJ has referred, was filed. That report made it clear that the Local Authority were contemplating the possibility of the adoption of R by his current foster carer, LR. The following day, the judge adjourned the matter in order for enquiries to be made in Poland in relation to all the children.

76. It was not until 2nd August that judgment was given. As already recorded, that judgment was given by the judge in the erroneous belief that R would inevitably have to move from the care of LR and, it follows, as Baker LJ noted, that the judge was unaware that LR was putting herself forward as an adopter. At the conclusion of that hearing, the judge said that he regarded the future placement of R as a particularly finally balanced decision and she once again adjourned the matter for more information to be obtained from Poland.

77. On 19th September, the team manager filed a further statement. It was clear from the content of the statement that, by now, adoption by LR was becoming the strong preference of the Local Authority, and the Local Authority's case was that adoption was in the best interests of R.

78. The court was told, during the course of this appeal hearing, that by the time the welfare hearing took place the next day, on 20 September, the adoption assessment of LR was all but concluded; only one "wrap-up final meeting" was outstanding. It was common ground before us that the assessment of LR as an adopter for R was "highly likely" to be positive.

79. No explanation has been offered as to why, when the matter had been adjourned in August, the Local Authority did not then ensure that that assessment, so nearly concluded, was finished and submitted to the judge so that she had all the relevant information which, in the event, was just out of her grasp but was critically important to her consideration of all realistic options for this little girl.

80. The judge was left on 20 September without a completed assessment and therefore a positive case being put on behalf of the Local Authority that, not only could R remain with LR, but that the Local Authority would be seeking a placement order on that basis. In the event, at the conclusion of the hearing on 20 September, the judge indicated that R was to move to Poland and live in long-term foster care. The matter was however adjourned again without judgment having been given, with a direction that the Local Authority prepare an appropriate care plan. The judge's expressed preferred outcome was contrary to the Local Authority's case and contrary, as they believed, to the best interests of R, but, far from the Local Authority completing the assessment they abandoned it. The assessment was never completed and was therefore, unavailable to the judge even on 18 October when she gave her final judgment and when, for the first time, she referred to the possibility of R being able to remain with LR but without the benefit, or the certainty, of a positive assessment in support of the Local Authority case and to balance against the alternative of the removal of R from her primary care to a long-term foster placement in another country.

81. Even at that late stage had the judge had the completed assessment she would have had an opportunity to compare two crystallised plans rather than one perfected plan for relocation to Poland as against one, speculative, unassessed possibility that R could be adopted by LR.

Order : appeal allowed