

Neutral Citation Number: [2024] EWFC 373

Case No: **ZC119/23**
ZC120/23
ZC121/23

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2024

Before:

MRS JUSTICE THEIS DBE

Between:

A

Applicant

- and -

(1) Adopt London North
(2) B (3) C (4) D, by their Children's Guardian

Respondents

Tom Wilson (instructed by **Goodman Ray**) for the **Applicant**
Eléonore Berthelsen for the **1st Respondent**

Lina Khanom (instructed by **CAFCASS Legal**) for the **Children's Guardian for the 2nd, 3rd
and 4th Respondents**

Hearing date: 9th December 2024
Judgment date: 20th December 2024

Approved Judgment
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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Theis DBE:

Introduction

1. The court is concerned with adoption applications made in February 2023 by the maternal aunt, A, of three children, B 16 years, C 16 years and D 14 years. Their birth mother, E, died in a car accident in 2012. Their birth father, F, has had no involvement in their lives and I determined at an earlier hearing should not be served with notice of these proceedings.
2. These applications have taken over 18 months to conclude as a result of the local authority's failure to understand its statutory obligations in respect of adoption support and to properly assess the family for that support. The delay caused by this misunderstanding has been detrimental to the children's welfare as it has prevented final decisions being made for orders which there is no dispute their lifelong welfare needs require.
3. The matter was listed for a final hearing on 9 December 2024 when the court was able to make the adoption orders. The reasons for those orders being made are set out below.
4. I have dealt with these proceedings since the start. It is hoped this judgment will prevent other prospective adopters having to endure such prolonged uncertainty by delays in adoption support assessments being undertaken that accord with the statutory obligations of the local authority. A has had the benefit of a legal team who are recognised experts in this area of the law, but even with the level of expertise it has still taken over twelve months for an adoption support plan to be presented that complies with the legal obligations of the local authority. The court is extremely grateful to Mr Wilson and Ms Dally who acted pro bono in relation to advising A about related judicial review proceedings and the drafting of two pre-action protocol letters about the local authority adoption support decisions.

Relevant background

5. The children were born in Country X, and lived with their mother until her death in a car accident in 2012. Their father, F, has played no role in the children's lives and was abusive to the mother.
6. Following the mother's death the children, then aged 4 and 2 years, went to stay with their maternal aunt, A, and their maternal grandmother, G.
7. In 2017 A was compelled to leave Country X due to persecution as a result of her political activities. A had been captured, detained and tortured for about a year before being released and fleeing the country. A moved to the United Kingdom as a political refugee in 2018 and was granted asylum here.
8. During A's imprisonment the children were forced to flee their home with their grandmother and were homeless.
9. A enlisted the assistance of the Red Cross and in 2019 was able to locate the children and G living on the road by a Church. Following formal applications made by A the Home Office granted the children permission to enter the United Kingdom in early 2021 and they were placed in A's care, where they have remained. Soon after they were placed with A the Red Cross described the children's relationship with A as follows: *'As a result, [A] stepped into the shoes of a parents and de facto adopted the children until she was forced to leave [Country X]...The children have been deeply missing [A], whom they call 'mum'. They were raised by [A] since they were very young and she has always been their primary carer, even from the UK.'*
10. Following their arrival in the United Kingdom the children were placed with A in a one bedroom apartment. A described in her statement the children's presentation on their arrival as being in a bad physical and mental state, as they had each experienced profound trauma, instability and distress in their early lives.
11. They were assessed by the local authority's Early Help team who noted the *'ease and comfortable dynamic in the family'* and the *'warmth and care between all members of the family'*. No concerns were raised about A's care of the children, although the assessment records concern about overcrowding and A's lack of parental responsibility

regarding the children. The local authority funded an appointment for A with a solicitor but refused to fund the costs of any court application.

12. B has significant health needs and has been diagnosed with Kernicterus, a neurogenetic or neurometabolic disorder which is caused by a rare complication of jaundice causing brain damage. He has four limb motor disorder with oral and peripheral limb involuntary movements and associated difficulties with eye opening and being able to look upwards. Due to the stigma attached to disability in Country X, B had not attended school.
13. B's twin sister, C, was subjected to sexual abuse in Country X and although she attended school she has struggled with panic attacks, suicidal ideation and unexplained seizures. She is currently being supported in her school, and through CAMHS.
14. D attended school in Country X but has permanent scarring on her body as a result of third-degree burns caused by her birth father when he threw hot oil at her mother. This has had both physical and psychological consequences for D.
15. These proceedings arose out of a separate application by a Hospital Trust to undertake diagnostic tests and offer treatment in relation to B. Even though there was no dispute between A and the Hospital, the Hospital felt compelled to seek the court's permission, due to the lack of anyone in the United Kingdom who had parental responsibility for B.
16. That application came before me on 9 August 2022, B was made a party to the proceedings and on 12 August 2022 I made an order that B lives with A, which meant she had parental responsibility for him. By that stage A had the benefit of specialist legal advice.
17. A subsequently applied for a child arrangements order for all the children and sought leave to apply for an adoption order, as the children had not been living with her for three years as required by the Adoption and Children Act 2002 (ACA 2002).
18. On 14 October 2022 I made orders that gave A leave to apply for an adoption order, dispensed with the need to serve or give notice to the birth father and made child

arrangements orders in respect of all the children in favour of A so she had parental responsibility for all the children.

19. On 14 February 2023 A applied to adopt the children.
20. The Local Authority prepared an Annex A report in August 2023 which supported adoption orders being made. In relation to adoption support the report failed to include any assessment of the family's need for adoption support services and contained the legally incorrect assertion that '*the placement is not eligible for adoption support*' as it was a '*non-agency adoption*'.
21. The Children's Guardian report, dated 8 September 2023, supported the making of an adoption order.
22. When the matter returned to court on 6 October 2023 it had been hoped that would be the final hearing. Due to the failure of the local authority to undertake an assessment of the family's adoption support needs the matter could not be concluded then. I made directions for the local authority to file the adoption support assessments, as required under the relevant legal framework.
23. The adoption support assessments dated 23 November 2023 proposed a modest one-off payment to cover the costs of the relevant applications to secure the immigration status of the children, and no ongoing adoption support allowance.
24. At the hearing on 8 December 2023 I directed disclosure of the decision making records from the local authority and a statement from the Agency Decision Maker in relation to the decision not to provide such support. The material that was provided pursuant to this direction demonstrated that if A had applied for a special guardianship order she would be entitled to ongoing financial support equating to £676.20 per week. The local authority had determined to provide no ongoing financial support to A and did so on the erroneous basis that A would not be entitled to any financial support under a special guardianship order.

25. The next hearing on 1 February 2024 was adjourned as A's legal team informed the court that A was going to commence judicial review proceedings against the local authority. The matter was listed for review on 30 July 2024.
26. On 26 March 2024 A served a pre-action protocol letter on the local authority.
27. On 28 March 2024 the local authority agreed to re-assess the family's needs for adoption support, including ongoing financial support.
28. On 4 July 2024, following repeated chasing by A's solicitors, the local authority stated the assessment would be completed by 25 July 2024 and A would be informed of the outcome before the next hearing on 30 July 2024.
29. No assessment was available before 30 July 2024 which meant that hearing had to be adjourned to 16 August 2024.
30. On 5 August 2024 the local authority confirmed in writing the proposal that A would receive the one off payment related to the immigration application to secure the children's status here and £9,226 to support A with the medical bills relating to C's medical treatment here. The assessment did not include any ongoing adoption support allowance. This was said to be based on the Child and Family Assessment undertaken by the local authority and to '*meet the financial needs of the family*'. The assessment contained no explanation to underpin this conclusions, no evidence of any means test having been undertaken and no evidence of any consideration having been given to A's outgoings. It also did not explain why the local authority continued to propose that A would be worse off than if she had applied for a special guardianship order.
31. As a result of this the hearing on 16 August 2024 was adjourned to 10 October 2024.
32. A's solicitors served a second pre-action protocol letter on 2 September 2024.
33. As there was no assessment completed by 10 October 2024 there was a further adjournment to 9 December 2024.

34. The local authority responded to this with a further decision on 14 November 2024 which included an ongoing allowance for each child totalling £766.50 per week, but it had reneged on its previous agreement to meet C's medical treatment costs, which were over £10,000.
35. Following further discussions at court on 9 December 2024 the parties were able to agree that the weekly payments would be backdated to 5 August 2024 and, in addition, the sum to secure the applications necessary for the children's immigration status would be paid.
36. That position having been confirmed in the court order with a fixed date for when such payments would be made enabled the court, finally, to be in a position to make the adoption orders.

Legal Framework

37. The preliminaries to adoption and the procedural requirements have all been satisfied. They can be summarised as follows:
- (1) Sections 47 (8)-(9) and 49(4) ACA 2002 – all three children are under the age of 18 years and are not married.
 - (2) Sections 49(3) and 51(1) ACA 2002 – A is eligible to apply to adopt the children by virtue of her habitual residence in England and Wales, her age being over 21 years and her status as a single person.
 - (3) Sections 42(5) and (6) ACA 2002 – by virtue of the order dated 14 October 2022 A has the court's leave to make the adoption application notwithstanding that the children have been living with her for less than three years when the application was made.
 - (4) Sections 44(1) – (3) ACA 2002 – A gave notice to the local authority of her intention to adopt the children on 26 October 2022 and these applications were made on 14 February 2023, more than three months but less than two years later.
38. Pursuant to section 47(2) ACA 2002 the court may not make an adoption order unless it is satisfied that the children's parents, here their birth father's, consent or their consent should be dispensed with. Section 51(1) ACA 2002 provides that such consent cannot

be dispensed with unless the parents cannot be found or the welfare of the child requires it to be dispensed with. In this case it is submitted that the court having determined that the birth father should not be served or given notice of these proceedings the children's welfare require his consent to be dispensed with.

39. Turning to the question of adoption support services section 3 (1)-(2) ACA 2002 require the local authority to maintain adoption support services designed to meet the needs, in relation to adoption, of children who may be adopted and persons wishing to adopt a child. Such services are specifically designed to assist adoptive families. The Statutory Guidance of Adoption published in July 2013 makes clear at paragraph 9.1: *'The provision of a range of adoption support services is a crucial element of the statutory framework introduced by the Act. This is based on the recognition that adoptive children and their families are likely to have a range of additional needs.'*
40. Section 3(3) ACA 2002 requires that such support services must extend to those persons prescribed by regulations and may extend to other persons.
41. Section 4 ACA 2002 provides that *'a local authority must at the request of ... (a) any of the persons mentioned in paragraphs (a) to (c) of section 3(1) ... carry out an assessment of that person's needs for adoption support services'*. Those listed in section 3(1)(a) ACA 2002 include children who may be adopted and persons wishing to adopt. The local authority is obliged to undertake an assessment of need for adoption support services, if requested to do so by A.
42. The Adoption Support Services Regulations 2005 ('ASSR 2005') prescribe the services which must be available, those individuals to whom adoption support services must be provided, and the nature of any assessment of need for adoption support services. The combined effect of s3(3) ACA 2002 and Regulations 3 and 4 ASSR 2005 is that:
 - (1) The only support service which must be offered to A, subject to an assessment of need, is counselling, advice and information.
 - (2) The local authority is not obliged to offer other prescribed support services, such as financial support, therapeutic support, or services to prevent disruption, to A. This is because the imperative to provide such services is limited to an *'agency adoptive*

child’ or the adoptive parent of such a child. The local authority may, however, offer such services and has a discretion to do so.

43. This is confirmed at paragraph 9.7 of the Statutory Guidance which provides:

‘Under section 3(3)(b) of the Act, local authorities have discretion to extend services to persons other than those to whom services must be extended. This means that, for example, services to prevent disruption could be provided to a non-agency adoptive child, and financial support could be provided if the local authority considered this appropriate.’

44. Regulations 13 to 18 ASSR 2005 govern the manner in which an adoption assessment must be carried out. Pursuant to Regulation 13(3) ASSR 2005, the local authority is not required to assess the person’s need for a service if he is not within the description of persons to whom such a service must be provided. However, it has a discretion to do so. This is confirmed at paragraph 9.43 of the Statutory Guidance:

‘The people who are entitled on request to an assessment of their need for adoption support services are set out in section 4(1) of the Act and ASR 13. As explained in paragraph 6, ASR 4 limits the local authority’s duty in this respect to an assessment of need for support services of the kind to which each category of person is entitled. Local authorities have discretion under section 4(2) of the Act to undertake an assessment for other persons or in other circumstances if they think it appropriate.’

45. Section 4(5) ACA 2002 requires the local authority, if it is to offer adoption support, to prepare an adoption support plan and keep the plan under review.

46. As Mr Wilson submitted at an earlier hearing when the local authority had failed to carry out an assessment:

- (1) The local authority is in breach of its statutory duty to undertake an assessment of A’s need for adoption services.
- (2) A is not ineligible for adoption support. She is eligible for the full range of adoption support services if the local authority chose to assess her for them. Insofar as the local authority does not assess her for financial or therapeutic support, this is a decision on its part not to exercise its discretion to do so.

(3) Such a decision is amenable to challenge on the usual public law grounds.

As a result of this analysis Mr Wilson submitted that the local authority's contention that A is not eligible for such support services and that the support available to her through Early Help is higher than that under Adoption Support is both *'legally misconceived and factually incorrect'* as it *'misunderstands the local authority's discretion to assess her for support services and ignores the benefit to the family of having any support offered to it enshrined within a formal, statutory document in the guise of an adoption support plan'*.

47. In determining whether the court should make an adoption order the court can only make such an order if it meets the lifelong welfare needs of the child in accordance with section 1 ACA 2002. The child's welfare is the court's paramount consideration in reaching any decision, having had regard to the welfare checklist under s1(4) ACA 2002.

Submissions

48. In his excellent written and oral submissions Mr Wilson on behalf of A submitted that with the support plans dated 25 November 2024, updated with the additional agreements reached between the parties at this hearing, the court can now make an adoption order in favour of A in relation to each child. He submits the welfare evidence has been clear since the assessments undertaken by the local authority and the Children's Guardian in 2023. The twelve month delay had been caused by the failure of the local authority to properly understand its legal obligations to provide an adoption support assessment and plan. That is now in place.

49. On behalf of the Adopt London North, the regional adoption agency, Ms Berthelsen acknowledges the delays in her position statement but supports an adoption order being made at the hearing. She obtained instructions to agree the start date of the adoption support allowance and the timeframe for payment of the sums to support the immigration applications, as outlined in the agreed order, and supported the adoption orders being made.

50. Once the additional matters regarding the financial support had been agreed at court, the Children's Guardian fully supported the adoption orders being made.

Discussion and decision

51. The welfare evidence has been clear and overwhelming since 2023. Both the Annex A report and the Children's Guardian's report made strong recommendations for adoption orders to be made.

52. The evidence makes clear A is able to meet each of the children's welfare needs to a high standard despite the enormously difficult circumstances.

53. In the assessment undertaken by the local authority Early Help team they summarise the position as follows:

'Through assessment and observation and discussion, Early help and other professionals have been able to identify that [A] is very able in meeting all the needs of all the children. [A] has listened and acted on advice and support given by agencies, leaving her now able to navigate services that can help the family. From day one all the children have called [A] Mum, they like to help her, write her cards and buy her gifts to show how much they love her. The children all treat each other with love and respect, having normal ups and downs as all siblings have.'

54. The position is summarised by the following extracts from the Children's Guardian's report:

'Following the death of the children's mother [A] and her grandmother cared for them. [A] states that [C] was subject to sexual assault in [Country X] which has impacted on her emotional and psychological state, and she requires therapeutic support. [B] has received an assessment for his health and developmental issues and is attending a special school. [D] bears the scars from the burns, her right ear is partly missing, and she has mid to low hearing loss, some of her hair is also missing. There is scarring on her right arm which has caused her movement difficulties as the skin can tear. She is awaiting plastic surgery and I understand was also subject to an attempted sexual assault in [Country X].'

'[A] has been steadfast in her desire to care for her nieces and nephew, despite all the trauma and challenges she has experienced in her own life. She is an impressive young woman who has provided a high standard of care for the children in difficult circumstances. She has been proactive in obtaining support and implementing the advice given. She clearly loves the children and is assiduous in ensuring that they attend all their appointments and received the support they require.'

The Guardian continues:

'The trauma they have experienced is well documented and [A] has been admirable in the manner in which she has prioritised the children's needs. They are now in a home where they are well loved and with a care giver who is providing attuned parenting. Adoption by [A] affords the children the opportunity to have a nurturing, reparative base, therefore, the risk of them suffering further harm is greatly reduced.'

55. I am satisfied that each child's welfare requires the consent of their birth father to be dispensed with. He has had no active involvement with the children throughout their lives and any involvement that he has had has caused them significant physical and emotional harm.
56. Although the issues regarding an Adoption Support Plan have finally been resolved it is of very great concern that it has taken twelve months, and that part of that delay was caused by a fundamental misunderstanding by the local authority of the relevant legal framework that governed the assessments for such support. It was only through the tenacity and expertise of A's legal team and two letters before action that the situation now has been reached where agreement was possible. That additional significant delay and lack of certainty has been contrary to the welfare needs of these three vulnerable children.
57. Having considered the evidence in this case and the updated adoption support plans, with the additions made at this hearing, I am satisfied that the lifelong welfare needs of each of these children can only be met by the court making the adoption orders.