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IN THE FAMILY COURT
(Sitting at Newcastle)

No. NE127/19

The Law Courts
The Quayside
Newcastle-upon-Tyne
NE1 3LA

Tuesday, 18 June 2019

Before:

RECORDER HENLEY

(In Private)

B E T W E E N :

LA

Applicant

- and -

(1) M

(2) F

Respondents

ANONYMISATION APPLIES

MS S. UPTON appeared on behalf of the Applicant.

THE FIRST RESPONDENT appeared in person.

THE SECOND RESPONDENT did not appear and was not represented.

J U D G M E N T

RECORDER HENLEY:

- 1 On 2nd April 2019 a prospective adopter made an application to adopt R, a girl born on [a date in] 2015, who is now four years old. She is the child of M, the Mother, and F, the Father, who share parental responsibility for her.
- 2 On 23rd July 2018 I granted a care order and a placement order in respect of R. The care proceedings in respect of R and her siblings were allocated to me and I heard both a lengthy fact-finding hearing and a contested final welfare hearing in respect of those children. It is pursuant to the placement order that I made that on 5th November 2018 R was placed with her prospective adopter.
- 3 On the application being made by the prospective adopter, notice was given of the application in accordance with the rules of the Court to both parents and they each in their separate ways indicated their intention to seek the permission of the Court to oppose the making of an adoption order. HHJ Hudson gave directions on 23rd May 2019 for evidence to be filed by each of the birth parents and by the local authority by way of response. The matter comes before me today for determination of whether I should grant permission to oppose the making of an adoption order.
- 4 It is important at the outset to set out the legal framework within which this application falls to be considered. Section 47 of the Adoption and Children Act 2002 governs this application and, as I have indicated to the Mother at the outset of this hearing, the Court cannot give leave to oppose the making of an order unless it is satisfied that there has been a change of circumstances since the placement order was made. In that regard I must consider the findings that I made against the parents, both at the fact-finding stage and at the final hearing.
- 5 The change of circumstances relied on in support of the application must be relevant or material to the question of whether leave should be granted and must be of the nature and degree sufficient to open reconsideration of the issue that was determined, namely that there be planned adoption for R.
- 6 As the Court of Appeal stressed in the leading case of *Re B-S (Children)* [2013] EWCA Civ 1146, orders contemplated in respect of adoption are very extreme and a last resort only to be made when nothing else will do and where no other course is possible in the interests of a child. There are well established principles in both the Children Act 1989 and the Adoption and Children Act 2002 that the Court must adopt the least interventionist approach and the question at the end of the day is whether or not what is required is adoption.
- 7 In *Re B (Children)* [2008] UKHL 35, a Supreme Court case which preceded *Re B-S*, Neuberger L emphasised first of all that although a child's interests are paramount, the Court must never lose sight of the fact that those interests include being brought up by their natural family, ideally by their natural parents or at least one of them unless overriding requirements of the children's welfare would make that not possible. Secondly, the Court must consider all the options before coming to a decision and thirdly, the Court's

assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities must offer.

- 8 Before approving the making of a placement order the Court had to be satisfied that there was proper evidence from the local authority and guardian addressing all other realistic options. The Court was obliged to provide an adequately reasoned judgment, evaluating all the options in a global, holistic manner, taking into account the burden of each.
- 9 With that in mind, the proper approach to the application to the Court today under s.47(5) is a two-stage process. First, has there been a change of circumstances, and secondly, if so, should leave to oppose be given?
- 10 In answering the second question, the Court needs to consider all the circumstances and, in particular, these inter-related questions. First of all, the parents' ultimate prospect of success if given leave to oppose, secondly the impact on the child if the parent is or is not given leave to oppose, remembering that at this stage the child's welfare is paramount, this exercise having been described as one of judicial evaluation rather than mere discretion.
- 11 In *Re B-S* the Court of Appeal outlined the procedure for determining these applications, which has been the procedure adopted today. The then President Munby, P did go on to say that as a general proposition, the greater the positive change in circumstances and the more solid the parents' grounds for seeking leave to oppose, the more cogent and compelling the arguments based on a child's welfare must be if leave to oppose is to be refused. The mere fact that a child has been placed with prospective adopters cannot be determinative, nor can the mere passage of time. The older the child and the longer the child has been placed, the greater the adverse impacts of disturbing the arrangements are likely to be. The Court is not to attach undue weight to short-term consequences for a child if leave to oppose is given. Given the nature of the issues and the gravity for the parents and the child as well as the evaluative nature of the judicial task, there is no doubt that where the question whether leave should be given the approach in *Re B* must apply.
- 12 In *Re B*, the then President gave further guidance in relation to the approach of the second stage under consideration when he said this:

“In addressing the second question, the Court must first consider and evaluate the parent's ultimate prospect of success if given leave to oppose. The key issue here is whether the parent's prospects of success are more than just fanciful but whether they have solidity. If the answer to the question is no, that will be the end of the matter. In evaluating the parent's ultimate prospects of success if given to leave to oppose, the judge has to remember that the child's welfare is paramount and must consider the child's welfare throughout his life. In evaluating what the child's welfare demands, the judge will bear in mind what has happened in the past, the current state of affairs and what will or may happen in the future. There will be many cases where despite the change in circumstances, the demands of the child's welfare are such to lead a judge to the conclusion that the parent's prospect of success lack solidity.”
- 13 That therefore is the legal framework and as I indicated at the outset and as highlighted by reference to the authorities, the key date for considering when one needs to look at the change relates to the findings that the Court made on 23rd July 2018. As I have indicated I had conduct of the care proceedings and heard evidence from the Mother during the course of those proceedings at three separate hearings – firstly during the fact-finding hearing in February 2018, then during a contested interim care order application in April 2018 and

then again at final hearing in July 2018. I made findings of dishonesty against the Mother at each hearing. I have reminded myself of the judgments that I gave.

- 14 In my judgment following the fact finding hearing I made this general observation about the Mother:

“I am however satisfied that what she felt able to disclose in evidence; in terms of the way that the children were treated in the household, the extent and severity of the domestic abuse present in her relationship with [F] and the abuse that she experienced in the care of her parents, [MGPS], represents only part of what she knows and that she is still not being fully open and honest with the Court about all she has witnessed and experienced. I am also satisfied that she was not telling the truth about the full extent of the way that she has mistreated [A].”

- 15 In the same judgment I said this about the Father:

“I found [F] to be an inherently unreliable witness. His evidence was often deliberately unhelpful. He would, at times, give a range of contradictory answers to questions, for example ‘it could have been me, it could have been her, it could have been both of us’; he often prayed in aid of ‘memory problems’ which I am satisfied was a convenient way of him avoiding having to answer questions and of having to think too deeply about his actions and the impact that they have had upon the Mother and the children. His evidence was motivated by self-interest and was laced with self-pity. He often blamed others during his evidence – for example he said that [A] was making things up, that the Mother was lying, that his lack of contact with the children was the local authority’s fault and that he had been the victim of domestic violence in both his significant relationships. He demonstrated very little insight into or acceptance of his own wrong doings, even in respect of the assault he perpetrated against the Mother on 19th June 2017. Whilst accepting that he was responsible for that incident on the basis that he ‘hit a woman’, when being taken through the detail of the Mother’s account of that night he ‘failed to remember’ much of what he had done.”

- 16 Within that judgment I found that the parents’ relationship featured significant domestic abuse and violence and that the Mother had minimised and continued to minimise the full extent of that abuse. I found that the Father had physically abused R’s older sister A and had maltreated her causing her emotional harm. I found that the Mother was aware of this and failed to protect her, prioritising her relationship with the Father above the safety of the children. I found that the Mother threatened violence against A and that she behaved in an emotionally and physically abusive way towards her. I found that all of the children suffered significant emotional harm and that both parents were responsible for that. I made significant and serious findings of historical sexual abuse against the Mother’s Father, MGF, and found that all four children were exposed to a risk of sexual abuse from him. I found that the Mother had manipulated the social worker and had pressurised A into lying to professionals about the abuse that she was suffering at home.

- 17 I made findings against the Mother during that judgment on the basis that she had deceived the local authority in respect of what was happening in the family home and the relationship she had with F. She managed to conceal domestic violence and persuade professionals that the disclosures that A was making during the time she lived at home were untrue. I was satisfied, notwithstanding the series of concessions and admissions that she made since that time, that even during the fact finding hearing she continued to minimise the full extent of the domestic violence that took place between herself and F, the full extent of F’s alcohol

use and all she knew about the abuse that took place during her own childhood at the hands of MGF as a consequence of the loyalty she continued to feel towards each of them.

- 18 Following the fact-finding hearing, the youngest three children, including R, remained in the care of the Mother. The Mother maintained that she was not in a relationship with the Father and that she was having no contact with her parents. I granted interim care orders in April 2018 sanctioning the removal of R and her two siblings from the care of the Mother on the basis that I was satisfied that the Mother was still not being open and honest with the Court and was unable to protect the children from the risks posed to them by the Father and by her own Father, MGF. The Mother was clearly struggling to accept the findings that I had made against MGF at that stage.
- 19 By the time I made final care and placement orders in respect of R on 23rd July 2018, disclosure of the Mother's telephone records had been received. Those telephone records revealed that the Mother had lied to professionals and the Court about her separation from the Father and her lack of contact with her own parents. On the first morning of the final hearing, and as a consequence of that evidence, the Mother significantly changed her position and accepted that she could no longer advance a case to care for the children. She did contest the care planning for them and on that basis I heard evidence from her again.
- 20 In my judgment dated 23rd July 2018 I said this:

“Sadly the Mother simply cannot be trusted in respect of the contact that she has with [the Father] or with her parents, and having given her repeated opportunities during these lengthy proceedings to truly separate from [F] and to extricate herself from having contact with him, she has failed to do so. She has also lied and been complicit in lies to conceal the contact that they have with each other and the contact that she continued to have with her parents. I consider it highly likely that she remains in contact with all three adults and that she knows their whereabouts. I also consider it highly likely that she would permit all three of them to have contact with the children should they be returned to her care. The Mother has demonstrated time and again that she is an accomplished liar, that she is capable of manipulating and deceiving professionals, that she is vulnerable and demonstrates misplaced loyalty towards both [MGF] and [F] notwithstanding the findings that the Court has made. None of the extensive work that the Mother has completed during these proceedings to enhance and increase her understanding of the risks posed to the children from [F], from her relationship with [F] and from [MGF] has had the desired effect and I am satisfied that the provision of any further work to the Mother in that regard would, at least at this point in time, be futile. There is no reasonable prospect of the Mother making the necessary changes to be able to protect the children or keep them safe within the timescales that these children require. The risks to each of these children if placed with the Mother are so high, so serious and so profound that I am satisfied that none of them can safely return to her care. The Mother has, as recently as the first day of this final hearing acknowledged this, but only in response to overwhelming evidence filed against her.”

- 21 The Father failed to attend the final hearing and in my judgment of 23rd July 2018 I said this:

“I am satisfied that sadly, each Father's failure to attend this hearing is an indicator of their lack of prioritisation of their children... In [F]'s case I am satisfied that his decision not to attend this hearing was prompted by the telephone records and his lies about the contact he was having with the Mother being discovered. It is indicative of

his cowardice that he has absented himself from the case this week rather than attended to accept responsibility for his actions and participate in assisting me to make decisions about the future care and welfare of his children. I agree with [MT] that his commitment and input during these proceedings has been shamefully inadequate.”

- 22 It is against this background that I must consider the changes that each parent has made.
- 23 I found there to be significant risks of physical, sexual and emotional harm to the children in this case should they be placed with the Mother and so the most important issue when I consider change in this particular case is whether the Mother is now any further forward in accepting my findings and whether she has undertaken work to assist her to process the risks that exist within the family, to enable her to protect R from them.
- 24 In accordance with the order that the Court made, I am indebted to the Mother first of all for the witness statement that she provided setting out her position in respect of this application. I note that the Father has failed to file a statement or to engage in these proceedings. He was reminded last week by the social worker for a second time that this hearing was listed today and yet he has not attended Court today, nor provided any reason for his failure to attend. He also failed to attend Court at the last hearing. This is, I am satisfied, consistent with his behaviour during the earlier set of care proceedings that I heard. I am satisfied that the Father has been given notice of the hearing and the need for him to file a statement. I am satisfied that it is appropriate to proceed to make decisions today in his absence and in the absence of written evidence from him. I am satisfied he has failed to engage and that it is not in the welfare interests of R to adjourn this hearing when there can be no guarantee that by doing so the Father’s cooperation would be secured.
- 25 In the Mother’s case she seeks a return of R to her care. She maintains that she is no longer in a relationship with the Father and asserts that they separated in August of last year. She maintains that she is seeking divorce. She also asserts that she has no ongoing relationship or contact with her parents, MGPS. She relies on the fact that she has done a number of courses and has separately sought counselling for depression and medication for that depression from her general practitioner. She continues to be supported by Tyneside Women’s Health and is now supported by the Pause programme.
- 26 As far as the Father is concerned, notwithstanding that he indicated his opposition to the making of an adoption order, it is unclear today on what basis he would assert that he has changed, if at all, and whether he would seek to advance himself to care for R. This is because he has failed to engage in these proceedings and failed to file any evidence in support of his case.
- 27 On behalf of the local authority the key social worker, SW, has prepared a detailed statement, for which I am very grateful. SW was the allocated social worker for R throughout the care proceedings and prior to them being issued and therefore has had lengthy involvement with this family. She sets out within her statement that the Father failed to attend a hearing on 23rd May this year in connection with this application, failed to file any evidence in these proceedings and she reminds me that on 23rd May 2019 HHJ Hudson directed that today’s hearing could proceed in his absence and in the absence of written evidence from him. She highlights that the parents repeatedly lied about their relationship during the care proceedings and that only disclosure of their telephone records revealed the truth. She makes the point the Mother said she was seeking a divorce during the care proceedings and yet was in fact in daily telephone contact with the Father at the time, as was revealed by disclosure of her telephone records.

- 28 SW sets out within her statement the difficulties which still plague her ability to make contact with the Father, which echoes her previous experience of him and she reminds me that his attendance at contact and at court hearings during the care proceedings was inconsistent and sporadic. She is unaware of any work done by the Father to address the findings that I have made against him, either to reduce the risk of domestic abuse that he poses and therefore the risk of physical and emotional harm that he poses to children or to address his problematic alcohol consumption.
- 29 In so far as the Mother's case is concerned, while she gives credit to the Mother for admitting that she has had some limited contact with her parents earlier this year as a consequence of a family bereavement, she stresses that these disclosures have only come after the Mother was aware that this information has already been revealed to the local authority during the course of a recent child protection enquiry into the Mother's sister's children. She highlights that the Mother remains a significant support for the Mother's sister, who is open in her stance that she does not accept the findings that I made against their Father.
- 30 In so far as the Mother's practical arrangements are concerned, the Mother is living with CM who has had her own children permanently removed from her care. I should add that I have also dealt with the care proceedings relating to CM's children and so I have a detailed understanding of the issues surrounding CM and the risks that she poses to children. The local authority advised the Mother not to permit CM contact with the children during the care proceedings and the Mother signed a written agreement that she would not do so.
- 31 She states that the Mother's work with Pause is not complete. 18 months' worth of work is required. SW states that the Mother continues to place almost all responsibility for the current state of affairs at the door of the Father and does not accept the role that she played. In answer to the Mother's contention that a return to her care would allow R to have contact with her sibling A, who is placed in foster care pursuant to a care order that I granted, she highlighted that A supports R being adopted and would have significant anxiety about R's safety if I was to return her to the care of their Mother.
- 32 In contrast, SW confirms that the prospective adopters for G and L and R have all exchanged contact details with each other with a view to continuing to promote inter-sibling contact and therefore, if adopted, these are lifelong relationships that R would be able to enjoy. She stresses how happy and settled R is in her placement and the disruption that she would experience if she were to be returned to the care of her Mother.
- 33 In terms of the procedure followed, the local authority, at the Mother's request, has gone first in making submissions to me during the course of this application today. The local authority did so by commenting on the evidence to which I have already alluded.
- 34 I should stress that there is no doubt at all that this is a Mother who is deeply committed to R and that she loves R dearly. However, the real anxiety that the local authority advances and which it says amounts to no change of circumstance, is the lack of shift in the Mother's thinking, the lack of shift in her understanding of risk posed to R and the lack of understanding of the part she had to play in the abuse which the children suffered and the risk of abuse that they were exposed to.
- 35 These are always extremely difficult cases to decide. The Court has very much to keep in mind the ruling that the Court of Appeal gave, that the bar must not be set too high in these applications. In considering whether there has been a change of circumstance in making the placement order, I must remind myself that that change does not have to be significant.

What it has to be, however, is relevant or material to the issue that the Court has to consider.

- 36 As far as the Father is concerned, due to his lack of engagement, I have no evidence to base a conclusion that he has changed. On the contrary, the evidence presented to me by the local authority and by the Father's lack of commitment to attending court hearings and his failure to file any evidence to support the contention that he has changed indicates to me that he has not changed. I am satisfied that this is a case where there has been no change on his part and so his application fails at the first stage.
- 37 The findings that the Court made in the course of the care proceedings, which I have summarised already during the course of this judgment, were very serious indeed. One of the real difficulties faced by the Mother today in the Court's judgment is that she admits that she is still struggling to accept the findings that I made against her Father, MGF. She accepts that she needs further work in that regard and she accepts that she is yet to be referred to the Mosaic Project, which is part of Barnados. That work was highlighted as necessary by R's guardian during the course of the care proceedings. When I asked the Mother today why she was yet to be referred for that work, she told me that she "had not had time".
- 38 The Mother's ability to accept the Court's findings is absolutely crucial, in my view, to her ability to protect R from the very significant risks that I found to exist in this case. The Mother accepts that her parents and F continue to know where she lives and that although she is working towards moving house to an unknown address, she has not done so to date and she accepts today that the timescale for any move is essentially open-ended.
- 39 The Mother accepts that she maintains her friendship with CM and within her statement she concedes that she "still has a distance to travel". I found her answers to me in the courtroom particularly illuminating. When I explored these issues with her, she accepted that the timescale for her to undertake further work and to move house is open-ended and without any limit of time.
- 40 In terms of the future protection, as far as R is concerned, absent a shift in acceptance of what the Court found following the February fact-finding hearing last year, it is very difficult to see what could be put in place to safeguard R going forward should she be returned to the Mother's care.
- 41 In terms of the change that the Mother asserts, on close analysis much of it does not really constitute change from what I have heard before. The Mother's position in many respects is the same as it was at the time of the final hearing last July. She was at that stage asserting that she was divorcing the Father and that she had no contact with her parents. It was only the disclosure of her telephone records that reveal the truth. The Mother's inability to accept and implement the advice of the local authority remains evident today and that is evidenced by her continuing friendship with CM and, most tellingly, by the fact that she continues to allow CM to live at her home, something that she failed to mention in her written evidence but conceded when I pressed her about it during the course of this hearing. She told me that she could not see the relevance of this. The risks posed by CM were made plain to her during the course of the care proceedings and she signed a written agreement regarding this. It is therefore significant that she invites the Court to accept that she has changed when she is no further forward in being able to accept advice and/ or the views of professionals with regards to the risks posed by such an adult.
- 42 The work which the Mother herself has done which, of course, is credit-worthy does not appear to have brought about any significant shift in view and the Mother concedes that

further work is required with regards to her understanding and acceptance of the sexual risk posed by her Father. This work is yet to commence. The only new work that has specifically been put before the Court relates to the counselling which the Mother has had for depression and the medication which her doctor prescribed her in respect of that. It is to the Mother's credit that she has sought out such help and has accepted it.

43 I make clear that in considering the Mother's case I have taken it at its highest. Whilst noting all of the positives, placed against the background to which I have alluded and the significant areas where there has been no change, the Court is not persuaded that the fact that the work that she has done would amount to a change of the nature and degree sufficient to warrant reopening the question. The Mother does not accept the risk that she poses to R in light of the findings that I made against her. She has done no work to address that risk. The Mother seeks to blame F for the removal of the children and the orders made in the care proceedings. The Mother has still been unable or unwilling to accept the Court's findings and against that background has been unable to demonstrate change. Her ability to protect R from the profoundly serious risks that her Father poses to them is significantly compromised by her inability to accept the findings that I have made against him. Her evidence in connection with this application is brief and makes no further admissions or concessions to reveal the full extent of her knowledge of the abuse that took place during her childhood and then later within the family home provided to R. Full acceptance and acknowledgment of the abuse suffered within these family relationships would be the starting point required before the Court could have any confidence of change. Sadly, the Mother remains a very long way from where she needs to be.

44 There having been no relevant or material change, it follows that the application fails at that first stage because, absent change, the Court cannot go on to consider the second question. However, in the event that another court goes on to consider this again and finds that my decision in that regard is wrong, then I will nevertheless go on to consider the question of the solidity of the Mother's prospects and I incorporate within that consideration for R's welfare. R is, as is rightly expected, settled and doing extremely well in her placement, where she has been since November of last year.

45 Exploring the issue of solidity of the Mother's prospects with the Mother directly was particularly illuminating today. She appeared to me to have very little concept of the need that would exist for R to be not only removed from her prospective adopter, but to be placed in local authority foster care for further assessment to take place and for her further work to take place. In my exchanges with her it seemed very clear to me that she had not really anticipated the need for further assessment work and her first response indicated to me that she simply thought this would be a case of R being moved from a prospective adopter back to her. Of course, that could not be the case and it appeared to me that she lacked any real understanding of the process that would lie ahead. She did concede to me that overall on her case R would have to wait for an unlimited period of time for her to make changes before she could be returned home to her care and that she would have to therefore remain waiting in limbo in a short term foster care placement with ongoing contact. What she argued to me was that it would be better for R to be in foster care with contact with her and with A than being placed where she is. That to me really betrayed a complete lack of understanding of the impact that all of this would have on R, because overall, looking at R's timescales, I am persuaded that the Mother really does have limited prospects of success. R does not have an open ended and unlimited period of time to wait in local authority foster care. It cannot be in her best interests to have to wait in limbo for an indefinite period of time whilst her Mother makes further changes and accesses further work.

46 In answer to my questions about this issue, the Mother underlined to me very clearly the

lack of solidity in her prospects and it would be very difficult in these circumstances for me to reach the conclusion that her prospects were sufficiently good to put R's plan in reverse, when that would come with really awful consequences for R were the Mother not to be successful in due course. For those reasons, as I say, on consideration of the second question, this application fails at that stage as well.

- 47 I entirely endorse and acknowledge the position of a natural parent who wishes to have a child returned to their care and whilst I appreciate that and I give credit to the Mother for all of the work that she has done, for her commitment to her daughter and for her undoubted and unquestionable love for R, very sadly she has failed to satisfy me that the test is made out in this application and on that basis I am afraid the application must stand dismissed.
- 48 As I indicated at the outset, I will direct a transcript of this judgment. I will do so at public expense. I will direct that the transcript be sent to the Mother and to the Father and to the local authority. I propose to list this case at least 28 days from now and that gives an opportunity to the Mother, or indeed the Father if they wish to do so, to seek permission to appeal to the Court of Appeal in London. The timescale for that is within the next 21 days from today's date.
- 49 The parents will each be given notice of the next hearing date, but I make clear that unless and until my decision in respect of this application is successfully appealed, that application will proceed, an adoption order will be made and the parents will not be given further opportunity to contest it at that stage.

CERTIFICATE

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**** This transcript has been approved by the Judge ****