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(subject to editorial corrections)**

ICOS No:

Delivered: 10/04/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

A HEALTH AND SOCIAL CARE TRUST

v

PA

and

RM

IN THE MATTER OF CD (CARE ORDER AND FREEING ORDER)

Ms Claire MacKenzie (instructed by Business Services Organisation (DLS)) for the
Applicant Trust

Ms Suzanne Simpson KC with Ms Niamh Devlin (instructed by McCrudden & Trainor
Solicitors) for the Respondent

KINNEY J

Introduction

[1] The identities of the parties to these proceedings have been anonymised in order to protect the interests of the child to whom the proceedings relate. Nothing may be publicised or disclosed which reveals the identity of the child, directly or indirectly.

[2] CD is almost five years old. He was born to PA who is CD's birth mother. CD's biological father has never been involved in these proceedings. PA is transgender and recognises himself as a man. RM is PA's partner. The applicant Health and Social Care Trust (the Trust) seeks a care order in relation to CD and an order freeing CD for adoption. PA's case is that CD can and should be returned to his care, even if not immediately. He opposes the making of a care order which is

based on a care plan of adoption. He opposes the application for a freeing order. The Trust pursues its application for a freeing order on the basis that PA is unreasonably withholding consent to the adoption and his consent should be dispensed with. The Guardian supports the Trust case.

[3] There is a very substantial historical background to these proceedings. PA was on the child protection register as a child. He had a difficult childhood with a history of drug abuse, mental health issues, anxiety, ADHD and gender dysphoria. His first child, GK, was also the subject of public law proceedings. There were various assessments carried out at that time including a placement in Thorndale in 2016. PA recognised and accepted the issues that he faced in his life at that time and agreed not only that GK be taken into care but also agreed that GK should be freed for adoption. The freeing order was made in March 2018. CD was born in April 2019. GK was subsequently adopted but sadly suffered the loss of his adoptive mother which is something that has impacted on PA.

[4] Threshold criteria in relation to the care proceedings were agreed by the parties.

[5] CD was the subject of an interim care order made four days after he was born. He was removed into care and then placed with his current carers (and now prospective adoptive carers) some two weeks later.

[6] Although there had been extensive assessments of PA in relation to GK, the Trust took the view that PA should have a fresh start and made a referral to the Simpson family centre, which is run independently by Barnardos. The assessment was to consider PA's capacity to change along with a motivational assessment to be then followed by a parenting assessment. That work started in June 2019, and it continued until March 2020. There were over 50 sessions held with PA and a number of reports produced. The initial capacity to change aspect of the assessment was extended but then did move forward to educative work and then ultimately to monitored contact. There was recognition during this process that PA's engagement was good, and progress was being made. However, there were still serious concerns, particularly around basic parenting skills and PA's ability to meet CD's emotional needs. By February 2020 there were particular concerns about issues that had arisen since contact had moved to PA's home. Some of these issues related to the stress that PA felt around the assessment process. A final report was produced on 10 April 2020. Again, whilst recognising the progress that PA has made, the report concluded:

“Whilst there are certainly some aspects of the parenting role that PA is able to undertake and do this well at times, I do not feel we have seen enough of this consistently in this review. I would not have the confidence to say that CD would be safe in PA's full-time care at this stage and therefore query how we can move on with the

assessment. In order to progress PA would require a round-the-clock supportive environment to see how he is able to manage CD on a longer term basis including overnights and this is not something which the family centre can provide. It is therefore my recommendation that the work with Simpson family centre come to an end."

[7] Over the following 12 months PA undertook privately funded CBT work and attended 23 sessions with the counsellor.

[8] PA had been assessed by a consultant psychologist, Dr McCrum, in 2018 in relation to the proceedings concerning GK. At that time Dr McCrum questioned whether PA could successfully address outstanding concerns about his capacity to parent adequately. He said:

"There still appear to be outstanding concerns about his lack of coping strategies, emotional regulation, ability to use feedback constructively and show the flexibility needed to parent GK. I've outlined previously some areas in which I think he is moving forward but I am not sure these have created a context that would ensure the success of additional work."

[9] Dr McCrum considered the potential for further sessions using motivational interviewing techniques but was uncertain whether any further work would result in good enough parenting of GK within an acceptable timeframe. PA sought a further report from Dr McCrum in 2020 and an update report was filed in February 2021. Dr McCrum said it was,

"A matter of record that practical parenting of both GK and CD has evoked anxiety, and this emotional response appears to have inhibited him carrying out a variety of care tasks safely and consistently. Again, material from Simpson report suggested he was unable to tune into CD's needs routinely and lacked the flexibility to shift behaviour according to his son's changing dispositions."

[10] Dr McCrum acknowledged the CBT work that was being carried out and pointed out that there was no opportunity to assess whether improvements in presentation would allow for good enough parenting. Although Dr McCrum had seen developments in PA's life, he was unable to say if those had translated into parenting gains. He suggested a further assessment involving close observation of PA whilst caring for CD. There was then a further referral to Simpson Family Resource Centre to specifically consider whether had been any change as a result of the CBT intervention.

[11] PA sought a Thorndale assessment at this time, but the court refused that application on the basis that the Simpson Family Centre was better placed to carry out the assessment, were already familiar with PA, had a baseline to work from and there was no evidence of any bias. This work commenced around May 2021.

[12] A further report from Simpson was provided in August 2021. This concluded that there were still substantial issues regarding PA and the need for significant professional support. The concerns included PA's understanding of safety for CD, his rigidity in engagement and difficulty in sustaining CD's interest. The report commented:

"This piece of work sadly reflects the outcomes of the work previously completed by SFRC and whilst there is no doubt about PA's eagerness to care for CD there are still concerns about how he could do this on a 24-hour/7 day a week basis without an ongoing intensive level of support."

[13] Around this time PA entered into a romantic relationship with RM. At a subsequent LAC review in October 2021 the care plan was reaffirmed as one of adoption, but in light of the new relationship the Trust met with RM, and it determined that it would proceed with a further assessment. PA had previously expressed concerns and a lack of confidence in the assessment process and in particular that carried out by Simpson Family Resource Centre. PA had previously sought to instruct an independent social worker, Ms Armstrong, to undertake an assessment. Ms Armstrong was subsequently instructed as a joint instruction between the Trust, PA and the Guardian.

[14] Ms Armstrong's report was provided in June 2022. She recorded PA's anxiety about the assessment process. She met with RM and observed contact including contact which also involved RM's young daughter. Ms Armstrong met with the Trust and also with PA's advocate and the psychiatrist treating him in the Gender Identity Service. Ms Armstrong's conclusions were stark. Whilst PA had achieved a degree of emotional stability and a more balanced presentation, Ms Armstrong observed that this did not equate with the acquisition of parenting capacity. She said:

"I am of the professional opinion that PA continues to be driven more by his belief in his capacity from his own perspective, and his determination to do what he considers necessary comes from his perspective on the issues and needs of the child as he considers and wants them to be, rather than any meaningful and inherent capacity to acknowledge his deficits and accept responsibility for them or to consider with any depth of insight the needs of the child from the child's perspective

and the impact his deficits have had and continue to have on his parenting capacity.”

[15] Ms Armstrong concluded that there was a lack of realism and of meaningful insight without which fundamental change was unlikely to be achieved. PA’s insight was limited as he was unable to accept any assessment of his deficits.

[16] Ms Armstrong recognised that RM had a role to play but it appeared that her primary priority was to support PA in the role that he wished her to, rather than what may be required. Ms Armstrong commented:

“While RM in general terms has sufficient parenting capacity to parent her child, her capacity to meaningfully compensate for PA’s deficits is immediately compromised by the fact that she is influenced by his views on the situation, and she is not able to acknowledge the concerns of professionals sufficiently and objectively because of her desire/need to be supportive and protective of him. This is not to say that she would permit any child to be placed at direct risk of harm but her lack of proper understanding and/or acceptance of professional concerns about PA’s deficits would potentially compromise her reactions and responses in any situation.”

Ms Armstrong in concluded:

“There has been a comprehensive range of assessments, services and supports made available including the independent efforts PA made in accessing CBT. Despite the work already undertaken it has not enhanced his capacity to acquire meaningful insight and capacity to understand and meet the child’s needs from the perspective of the child. It is therefore difficult to identify any additional work which could be undertaken. Any consideration of further work in the absence of a degree of confidence that it could be successful must be balanced against the developmental timeframe and needs of a young child.”

[17] On receipt of this report, the Trust asked for further clarification on whether or not there was capacity to improve both PA and RM’s insight. Ms Armstrong filed an addendum report in July 2022. In relation to this question concerning PA, Ms Armstrong said:

“Despite the extensive work already undertaken by PA including CBT, this has not enhanced his capacity to understand and consistently and safely meet the needs and changing needs of the child from the child’s perspective. While the CBT appears to have to some degree enhanced his personal functioning, it has not enhanced his insight into the issues of concern as they relate to the limitations of his parenting capacity. It is therefore unlikely that further CBT or other psychological based therapy could bring about the changes necessary within the developmental timeframe of the child who is now almost 3½ years and who has been in foster care since birth.”

In relation to RM, Ms Armstrong commented:

“I acknowledged RM possesses the capacity to understand and meet the developing needs of her own child and one would therefore assume she could do so in respect of another child. However, I also noted that RM’s insight is compromised by her acceptance of PAs narrative and therefore she does not objectively consider his deficits and limitations and the concerns of professionals. A tailored and time-limited piece of work aimed at determining her capacity to independently acknowledge his limitations and deficits could perhaps be undertaken by an experienced family centre social worker who also understands psychotherapy. However, given RM’s current presentation it is difficult to have confidence that this could be achieved in a short period of time and as above must also be balanced against the developmental timeframe of a young child of almost 3½ years of age who has been in foster care since birth.”

[18] A further LAC review in September 2022 determined that the care plan should continue as permanence by adoption. The matter was listed for hearing in court in December 2022. PA sought a further assessment in Thorndale and the hearing was adjourned to allow the Trust to consider whether there should be any further assessments offered to PA. On 14 December 2022 a professional meeting was held, and it was agreed that further assessments would be provided. Then on 21 December 2022 police contacted the Trust regarding a 999 call made by RM in relation to PA.

[19] The senior social worker carried out a home visit the following day. In her record of the meeting the senior social worker recorded what she was told by RM. There had been an argument between PA and RM about PA’s dog and RM asked PA

to leave. PA told RM that she would have to get the police to get him to leave. RM tapped 999 into her phone to show him she was serious. She made the call but did so by accident. RM said that the couple had been stressed about the adjournment of the final hearing.

[20] In his evidence PA said that there was an argument about the dog which “got a wee bit out of hand.” He said tensions were high and he was frustrated with everything that was going on. He said it was a heated discussion and there were raised voices. He confirmed that RM asked him to leave. He was asked if he said that he would not leave unless the police were called. PA said that he may have said that impulsively just to give him time. He understood how this would worry social workers. He also said that a hormone imbalance at the time was a factor in the incident.

[21] RM in her evidence said that she had hit her face before the incident because she tripped over the dog and that was the cause of the argument. She said that she did not type in 999. She went to phone her friend but hit the lock button too many times. The police called back and then called to the house, but PA had already left. The situation resolved in a matter of hours. In cross-examination RM denied that she had lost her temper and said there was no shouting. She maintained that she did not deliberately make a call to the police or even type in the number 999. RM was referred to her earlier account in which she said she had tapped the number in but did not intend to call it. She said that was not an accurate statement. RM was then referred to a statement that she had made earlier in proceedings. In the statement she had said that she raised her voice and was shouting. In evidence she accepted that she had raised her voice but denied shouting. In the statement she had also said that she had told PA she would phone the police to ensure he left and had her phone with the 999 number on the screen. RM said in evidence that she felt that this was not worded correctly.

[22] I note that the social workers version as recorded in her minute is consistent with RM’s own statement of evidence and with the evidence of PA. It is inconsistent with the evidence given during the court proceedings by RM and I am satisfied that the evidence provided during the hearing is incorrect and was an attempt by RM to minimise the damaging events of December 2022.

[23] The Trust continued with its plans for a further assessment of PA and RM. Joanne Griffiths is a social worker who holds the position of court liaison officer. She was not part of the team who had been dealing with this case and was in that sense independent. The Trust intended that she would carry out a capacity to protect assessment with RM. Ms Fulton was to carry out an assessment of CD’s contact. PA however maintained his position that he wished to have a Thorndale assessment. That application was considered by the court and the judgement was given on 13 February 23.

[24] In that decision McFarland J considered the history of the case. He noted that assessments and reassessments had been undertaken. There were over 50 sessions carried out by Simpson Family Resource Centre with further assessment by Dr McCrum and Ms Armstrong. The judge noted there was broad agreement between the parties that a further and final parenting assessment should be undertaken. He also noted that PA lacked confidence in the assessment by Joanne Griffith. The judge in his decision said he had no doubt as to the professionalism of Ms Griffiths and noted that she had no previous involvement with the family. He pointed out that there were a range of concerns about a possible assessment in Thorndale including delays, waiting lists and funding. Whilst PA had his perception for the need for independence, that had been provided already by Simpson, Dr McCrum and Ms Armstrong. McFarland J expressed his confidence in Ms Griffiths' professionalism and independence of thinking and refused PA's application for a Thorndale assessment.

[25] The contact assessment by Ms Fulton was carried out at the same time as the capacity to protect assessment by Ms Griffiths.

Ms Fulton's assessment

[26] The assessment started on 21 January 2023 and the first feedback session was offered the following day. There was disagreement between PA and Ms Fulton regarding the appropriateness of some of the actions during the contact. Ms Fulton observed eight contacts, some at a Trust facility but also at W5, Pickie Park and Little Wing restaurant. The assessment completed on 6 May 2023 after some 19 hours of assessment. A report was provided. CD was described as a bright and bubbly child, curious and asking numerous questions whilst on placement. Ms Fulton noticed that he was more reticent during contact and described him as placid and compliant during contact. Ms Fulton noted that there was a lovely relationship between PA and RM's young daughter. Both PA and RM were invested in the children and very much wanted to be a family unit. Ms Fulton said that during the eight weeks of the assessment there was minimal evidence of co-parenting or prior communication and planning. The setting of boundaries and consequences was a significant theme in the assessment. Ms Fulton said that CD did not view either PA or RM as parental authority figures continuously during the contact sessions and he would often disregard what they were saying to him. Regular feedback was provided. Ms Fulton said that PA and RM struggled to reflect from CD's perspective. Both of the adults placed responsibility in the Trust, CD's carers and CD's illness during the assessment but did not see themselves as being a factor in how CD was internalising the contact. Ms Fulton noted her concern that CD behaved very differently in his environment with his carers than he did during contact, even though contact was a regular occurrence in this life and RM had been involved for some 18 months.

[27] Ms Fulton concluded that it was not in CD's best interests for PA to have unsupervised contact. Reasons included PA's inability to take on board and sustain feedback, PA's inability to implement boundaries and consequences, to give

direction and to follow through instructions to CD and PA's lack of insight into why CD may become dysregulated.

[28] Ms Fulton also considered that unsupervised contact for PA and RM together was not in CD's best interests. The reasons relating to PA factored into this decision but also that PA was unable to take RM's lead as a primary caregiver, that RM was not able to display that she could challenge PA on aspects of parenting she may disagree with, that the couple could not demonstrate co-parenting, and CD often appear to be prioritised over RM's younger daughter.

[29] Ms Fulton also concluded that an increase in contact or change in its venue was not in CD's best interest. Ms Fulton noted that CD became very unsettled when contact was increased during the assessment. After each extended contact CD was dysregulated and when returned to his carers he had unsettled nights, he wasn't eating and he needed to know where his carers were at all times. CD was not able to articulate his wishes and feelings despite several attempts by Ms Fulton to engage with him. Ms Fulton noted that when PA was mentioned, CD either changed the conversation or declined to speak. Ms Fulton observed that children thrive from routine, boundaries and consequences and PA and RM were not able to implement these. Ultimately, Ms Fulton expressed her concern that as CD had not coped with increased contact time to a three hour period, consideration would have to be given how his presentation would manifest if in the full-time care of PA and RM.

Ms Griffiths' assessment

[30] Ms Griffiths commenced her CASP-R assessment on 1 February 2023 with a contact observation between PA, RM and CD. The report and assessment centred on an assessment of RM's capacity to supervise and protect CD from risk. As part of this assessment Ms Griffiths also assessed the relationship dynamics between PA and RM and including both CD and RM's daughter during contact. The report set out RM's family background as provided by her to Ms Griffiths.

[31] After the contact observation on 1 February 2023 Ms Griffiths interviewed RM on 2 February, observed a further contact on 3 February and interviewed RM again on 17 February. Each of these sessions lasted approximately one and a half hours.

[32] Then on 23 February 2023 Ms Griffiths received a telephone call from PA to advise her that his relationship with RM was over. Ms Griffiths made a home visit to the couple that day following the telephone call. In the initial phone call PA told Ms Griffiths that he was going to get his own place and that he needed to be somewhere on his own. PA said there may be a relationship in the future but for now the stresses of social services involvement in assessments was too much. They were taking a break. He said that the couple would still be there for each other, that he would still be RM's daughter's father and RM would still be CD's mother. PA said that they had come to this decision in the last few days and still wanted to complete the assessment, but they just would not be together.

[33] At the home visit PA was clear in saying the couple were breaking up. Ms Griffiths spoke to RM alone and RM told Ms Griffiths that she didn't really know what was happening. PA had just told her that he needed a break. Ms Griffiths said that RM presented as sad and said she didn't want to get upset again about it. She also referenced PA's hormone injections and said that when he was due an injection, he became frustrated, and everything became a fight. Ms Griffiths noted PA's impulsivity in the decision to break up. It was made without involvement with RM. However, RM accepted what was described during that conversation by PA as him ending the relationship for both, remaining involved with each other's children and him remaining in her home whilst having his own space to get away when he needed. Ms Griffiths was further concerned that neither PA nor RM showed insight or understanding of the impact of PA's decision-making on the assessment process. In her evidence to the court she described the couple as totally unrealistic in taking a position that they would not be in a relationship but would continue to be assessed and to continue to care for each other's children with PA having his own space. Ms Griffiths felt this showed little insight into CD's needs. His needs were greater because of his background circumstances, and he would require a secure environment with therapeutic parenting. PA and RM could not provide that for him.

[34] On 26 February 2023 the couple advised Ms Fulton who was conducting the contact assessment that they remained in a relationship. If they were to separate, they would continue cohabiting. PA confirmed that he had talked about moving out, but RM denied PA had said this.

[35] On 1 March 2023 Ms Griffiths met PA. He described feelings of worthlessness around his family situation and said he had been stupid to phone Ms Griffiths before he and RM had spoken. PA stated his actions were impulsive and that this was not how RM planned her life and it was not fair on her. At a further meeting between Ms Griffiths and RM, RM advised that PA had been stressed due to social services involvement and the assessment generally. She also told Ms Griffiths that PA had referred to egg harvesting. PA wanted RM to carry a baby with his eggs and donor sperm, but RM wanted to have her own baby. They had agreed to discuss this matter further in the future.

[36] As part of her assessment Ms Griffiths considered RM's parenting capacity. She observed that RM does not like confrontation with or denying her daughter something she wants. RM presented as a warm and tactile parent and her daughter received a lot of love and physical warmth from her mother. During contact this was observed with CD as well. Ms Griffiths was concerned that RM underestimated the difficulties that CD would face during any transition in care. CD has a significant attachment to his current carers and sees them as primary carers. Any transition would require a great deal of support, attention, routines and boundaries to help him navigate the change. Ms Griffiths also noted that CD had already displayed some dysregulated behaviours within placement and contact

arrangements had changed. Ms Griffiths commented that RM had an idealistic view of how manageable this transition would be and how CD would settle.

[37] Ms Griffiths commented on the support network for RM. She was supported by her mother and one friend in particular in caring for her daughter. Ms Griffiths noted that in earlier situations RM did not seek support from her network until they became worried about her.

[38] Ms Griffiths considered the potential impact on CD. She had observed CD in his placement and contrasted his settled and calm behaviour in placement and his ability to articulate what he wanted to do with his behaviour at contact where his behaviour was described as compliant. Ms Griffiths also noted other factors that could impact on behaviour including his attendance at nursery.

[39] Ms Griffiths noted RM's history of abusive relationships. Ms Griffiths commented that she believed that RM needed PA for her own sense of self and self-esteem and appeared reliant on him within the relationship thereby making herself vulnerable once again. By way of example Ms Griffiths noted that when PA decided to end the relationship, RM was willing to allow PA to make decisions about the relationship, living arrangements and future assessment based on his wishes and needs. She was not happy with what PA was suggesting but was willing to go along with it. Ms Griffiths also commented on the vulnerability of the relationship and the ease with which PA was ending the relationship, not just early in the assessment but also during the assessment at all. PA's ongoing transition process and the difficulty of a change for CD in his care will need a high level of parenting. Integrating CD to the family would have an impact on RM's daughter. Although RM accepted the Trust concerns, she continued to hold the view that PA could look after CD on a continuous basis and did not believe there was anything negative about his parenting. Ms Griffiths noted that RM took on PA's narrative for situations. RM found it difficult to see any perspective other than his. In short RM did not consider that there are current concerns. Ms Griffiths concluded in her report:

"10.9. Following an intensive period of assessment and observations of approximately over 43 hours I am of the view that this is all too much for RM to be able to balance and achieve:

- Parenting two children with competing needs, one of whom will require parenting beyond that normally required to help him adjust, transition, settle and attach. She has not given me confidence in this area.
- Supporting PA emotionally through his transition process and the significant impact of that on their relationship and family.
- RM's own lack of confidence and self-esteem.

- RM has been observed to be the one who puts the work and effort into sustaining even a short contact, this is not sustainable in the long-term in my view.
- A lack of routines and boundaries and appropriately managing behaviour.
- RM does not take on board the Trust's concerns in relation to PA and therefore is not considered a protective adult.
- A bottom line is, as reported above, that I do not have confidence in the stability and long gravity of relationship between PA and RM.

10.10. I would have significant concerns regarding the stability of RM's and PA's relationship and strength to withstand transitioning a young four year old child who could be experiencing a level of anxiety, separation and loss from his primary carers. It is more than likely CD could regress developmentally, behaviourally and emotionally and will require an enhanced level of support, time and attention from the couple compared to other children of a similar age, alongside adjusting to parenting two children who have not resided together. This coupled with the potential physical and emotionally challenging major surgery for PA and the level of practical and emotional support he will require from RM during this period would place the couple and their relationship under an excessive level of pressure."

[40] A further LAC review was held to consider the outcome of the assessments and the care plan was reaffirmed. The current carers were presented to the Trust adoption panel which recommended they should be approved as adoptive parents for CD.

The Law

[41] The Trust seeks a care order under Article 50 of the Children (Northern Ireland) Order 1995 (the 1995 Order). Before making a care order the threshold for such an order must be considered. The court must be satisfied under Article 50(2) of the 1995 Order that the child has suffered or is likely to suffer significant harm attributable to the care given to him, or likely to be given to him if an order were not made, not being what it would be reasonable to expect a parent to give to him. I have considered the evidence in this case and the agreed threshold statement of facts provided by the parties. I am satisfied that the statutory test on threshold has been met and the facts contained in the statement of threshold facts are made out on the evidence.

[42] This finding is merely the first step in considering the application for a care order. In determining the need for a care order the court must take into account the care plan which is proposed. In this case it is a care plan of permanency by way of adoption. The court must bear in mind Article 3(5) of the 1995 Order which provides that the court shall not make an order unless it considers that doing so would be better for the child than making no order at all. The court must also take into account the welfare checklist factors contained in Article 3(3) of the 1995 Order. The Trust also seek a freeing order under the Adoption (Northern Ireland) Order 1987 (the 1987 Order).

[43] Article 9 of the Adoption (Northern Ireland) Order 1987 states:

“9. In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall –

- (a) Have regard to all the circumstances, full consideration being given to –
 - (i) the need to be satisfied that adoption, or adoption by a particular person or persons, will be in the best interests of the child; and
 - (ii) the need to safeguard and promote the welfare of the child throughout his childhood; and
 - (iii) the importance of providing the child with a stable and harmonious home; and
- (b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”

Article 16 of the same Order deals with the issue of parental consent. It provides:

- “ 16. (1) An adoption order shall not be made unless ...
- (b) in the case of each parent or guardian of the child the court is satisfied that –
 - (i) he freely, and with full understanding of what is involved, agrees –

- (aa) either generally in respect of the adoption of the child or only in respect of the adoption of the child by a specified person, and
- (ab) either unconditionally or subject only to a condition with respect to the religious persuasion in which the child is to be brought up,

to the making of an adoption order; or

- (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in paragraph (2).

(2) The grounds mentioned in paragraph (1)(b)(ii) are that the parent or guardian – ...

- (b) is withholding his agreement unreasonably.”

[44] The Trust asks me to find that the parents are unreasonably withholding their consent.

[45] In *Re C (a Minor) (Adoption: parental agreement, contact)* [1993] 2 FLR 260, Lords Steyn and Hoffman set out the test which was subsequently endorsed by Lord Chief Justice Morgan in this jurisdiction in *Re A* [2011] NIFam 19:

“(c) ... making the freeing order, the judge had to decide that the mother was ‘withholding her agreement unreasonably.’ This question had to be answered according to an objective standard. In other words, it required the judge to assume that the mother was not, as she in fact was, a person of limited intelligence and inadequate grasp of the emotional and other needs of a lively little girl of 4. Instead she had to be assumed to be a woman with a full perception of her own deficiencies and an ability to evaluate dispassionately the evidence and opinions of the experts. She was also to be endowed with the intelligence and altruism needed to appreciate, if such were the case, that her child's welfare would be so much better served by adoption than her own maternal feelings should take second place.

- (d) Such a paragon does not of course exist: she shares with the ‘reasonable man’ the quality of being, as

Lord Radcliffe once said, an ‘anthropomorphic conception of justice.’ The law conjures the imaginary parent into existence to give expression to what it considers that justice requires as between the welfare of the child as perceived by the judge on the one hand and the legitimate views and interests of the natural parents on the other. The characteristics of the notional reasonable parent have been expounded on many occasions: see for example Lord Wilberforce in *Re D (Adoption: Parent's Consent)* [1977] AC 602, 625 (‘endowed with a mind and temperament capable of making reasonable decisions’). The views of such a parent will not necessarily coincide with the judge’s views as to what the child’s welfare requires. As Lord Hailsham of St Marylebone LC said in *In re W (An Infant)* [1971] AC 682, 700:

‘(i) Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.’

(e) Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some embarrassment at having to consult the views of so improbable a legal fiction, we venture to observe that precisely the same question may be raised in a demythologised form by the judge asking himself whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invented to provide the answer to this question.”

[46] The test for making a freeing order without the consent of a parent is, of necessity, a demanding one. This is well recognised in the authorities such as *Re B (A Child)* [2013] 2 FLR 1075. In that case the Supreme Court re-emphasised the need for proportionality in considering adoption orders. The court must look at the advantages and disadvantages of the proposed order and decide whether adoption is necessary in the particular circumstances of that case.

Contact

[47] The issue of contact was a focus of criticism by PA and RM during the course of the hearing. The court was invited to consider extensive contact records. This was done primarily to discredit the criticisms made of PA during contact and which were evidenced by the Trust both in their own reports and through observations of other professionals during various assessments. The central criticism is that the Trust and other professionals were “nitpicking” in their approach and were holding PA to a higher standard than that required of an average parent. What followed at hearing was itself a nitpicking approach to examining individual contact records. This misplaced focus did not consider the central question of PA’s ability to parent CD on a full-time basis. Whilst the general pattern of contact was largely positive, changes to structure were challenging for both CD and PA. PA, in particular, struggled to take on board feedback provided to him after contact and neither PA nor RM accepted the constructive criticisms made during contact and during assessment.

[48] All of this is in a context where PA continues to assert his desire for a Thorndale assessment. That request was thoroughly examined by the court and was rejected. The Guardian in her evidence confirmed that Thorndale could not offer PA the level of assessment required. She had chaired a meeting to look at what was possible. Thorndale at the time had advised that it was inappropriate to offer a residential assessment and they were unable to supervise contact within CD’s locality.

Consideration

[49] During the hearing the parties sought to focus on the most recent reports of Ms Griffiths and Ms Fulton. However, those reports do not sit in isolation, and they build on a considerable body of work that has been carried out in relation to PA over a very lengthy time period. The assessments have latterly included RM, but it is impossible not to take into account the significant resonances between the reports carried out in relation to the proceedings involving GK and the ongoing reports over the last four and a half years relating to CD.

[50] At times PA has sought to draw the comparison in how CD and RM’s daughter are dealt with by professionals and in particular highlighted the caregiving provided to the daughter. This is a completely false comparison. They are very different children with very different experiences. I have no confidence that CD could deal with the challenges he would face if rehabilitated and sadly no confidence in the stability of the relationship.

[51] PA complains that the potential for family support networks was not fully explored. However, those networks would not make any difference to the assessments made of PA and RM and, as aptly put by Ms Armstrong in her report, are simply scaffolding which would be placed around a structure with no

foundations. Ms Griffiths acknowledged that RM had an open door to her family and easy relationships with them but she did not see any evidence of the use of a support network and it made no difference to the outcome of her assessment.

[52] Ms Griffiths' report identifies the deficits presented by both PA and RM. PA criticised the independence of Ms Griffiths' report. Ms Griffiths confirmed that she was not part of the social work team dealing with this family. In fact her role is as a court liaison officer and is not part of any of the child or family teams. She did of course have a line manager with whom she liaised and to whom she reported. Ms Griffiths was not party to any discussions about how she was to be involved in conducting an assessment. Ultimately, her determination and conclusions were based on over 40 hours of assessment and observation that she undertook.

[53] Ms Griffiths was challenged about a meeting which was carried out in April 2023, but which was not initially disclosed by the Trust and also on the content of several emails in which there was some conversation about the case. Ms Griffiths was not aware that the existence of the meeting had only recently been disclosed to the parties. She said the meeting was about assessments generally and to see what progress had been made. The meeting was not about the details of her report. Ms Griffiths said she was already writing up a report, but it had not yet been shared and the meeting did not influence her report in any way. She was simply feeding back what stage she was at. She acknowledged that she could see how this may have been received by PA. Ms Griffiths commented that it was always known she was an employee of the Trust, and that the assessment was provided by her as a person who was new to the case. She reaffirmed that the meetings had no bearing on her assessment, or her report and she confirmed that her assessment was her own analysis.

[54] The Guardian observed in her evidence that conversations between professionals is not uncommon and indeed should be encouraged in appropriate circumstances. There were two assessments running at the same time assessing different aspects of relationships but overlapping. Some of the conversations clearly relate to obtaining required background information and also to provide direction on timing and an opportunity for Ms Griffiths to feedback the progress that she was making. Ms Griffiths was clear in her understanding of her independence of the social work team. Nevertheless there needed to be information sharing and gathering to allow her to do her assessment. This did not affect her independence. Ms Griffiths acknowledged that she asked Ms Forrest, her line manager, to proof read her report for typographical errors and formatting.

[55] Ms Griffiths was questioned in some detail over this aspect of her assessment process and her ultimate report. I am satisfied that she has properly fulfilled her role. Much is made of her apparent lack of independence, and this is contrasted by PA with the independence that may have been provided by Thorndale. However, the request for a Thorndale assessment and further psychological assessment were fully and carefully considered by the court and PA's application in this regard was

dismissed. It is bordering on disingenuous to ignore the fact that all parties were aware that Ms Griffiths was a Trust employee and her independence rested on the fact that she was not involved in this case or as part of any family team within the Trust. Ms Griffiths acknowledged that PA may have a different perception of her independence. That sadly however is a common theme over the years where PA has criticised and challenged practically all of those professionals who have been involved in assessments but have not provided conclusions with which he can agree. I do not share those concerns and I am satisfied that Ms Griffiths' report is a comprehensive analysis and assessment based on extensive observations and meetings that she had undertaken.

Narrative

[56] No specific narrative work has been carried out with CD. This issue has been raised by the Guardian throughout proceedings. PA has argued that the lack of narrative has had an impact on CD's understanding of the situation and will have impacted his behaviour at contact. There is no doubt that CD's world is a particularly complex one. He started school in September 2023 and has had to cope with changes in his contact regime as a result of the various assessments being carried out on PA and RM. He is not helped when different adults in his life tell him different things or simply omit to address confusing issues. One example is a consistent and appropriate use of labels or titles for the various adults in his life. There was no consistency in how the carers, PA and RM referred to themselves as part of CD's life and clear confusion for CD as he changes his language at different times.

[57] I am satisfied that the lack of narrative is a significant failing for CD. An appropriate and ongoing narrative will help him make sense of his world. He has been involved in many of the assessments and his contact arrangements have been disrupted in an effort to give PA a better opportunity to demonstrate his parenting skills. New professionals who are conducting these assessments have been introduced to his world with little explanation or context. There is no good reason offered during the course of this matter for this failure. It would appear that too much emphasis was placed on trying to assist PA by recurring assessments and less consideration about the impact on CD. The warning signals for this approach, whilst perhaps laudable in one respect in giving a parent every opportunity to demonstrate their ability, were given by various professionals including Dr McCrum and Ms Armstrong when they questioned the timescales for continuing assessments in the life of this young child.

[58] The Guardian raised the issue of the narrative of the Trust on a continuous basis. PA also repeatedly asked for movement on narrative work. However, the lack of narrative is not the basis for CD's presentation and does not obviate the parenting deficits of PA.

Conclusion

[59] It is clear in this case that nothing short of a care order is required for CD. PA's desire for rehabilitation of CD to his care is understandable but is also sadly unrealistic and unachievable within any timescale which aligns with CD's best interests. It has not been straightforward to determine CD's ascertainable wishes and feelings, not least because of his age and the particular context of his life. The Guardian in her final report noted that CD preferred to compartmentalise the two parts of his family life and did not engage readily when asked about PA. He rarely referred to PA during his home life. The Guardian reflected this observation was also the experience of other professionals who had worked with CD. CD presents in a more reserved and less independent way than he would in his home placement. At times he is reluctant to engage. It is, however, clear that he is very well settled and feels secure in his current placement. His physical, emotional and educational needs are being appropriately met. I am satisfied that a change of his circumstances now would have a detrimental impact on him.

[60] There has been an analysis of different options for a care plan by both the Trust and the Guardian. I am satisfied, having considered all of the evidence available to me, that the care plan in this case is an appropriate care plan. I am satisfied that CD's welfare requires that a care order be made. I am satisfied that such an order is both necessary and proportionate. I therefore approve the care plan and I make a care order in relation to CD.

[61] The Trust makes a further application for a freeing order for CD. This application is supported by the Guardian. PA objects to the making of such an order advocating instead for rehabilitation of CD to his care or, if that is not possible, for long-term fostering to meet CD's future care needs.

[62] In considering an application for a freeing order the court must consider and promote the welfare of the child throughout his childhood and have regard to the importance of providing the child with a stable and harmonious home. The making of a freeing order must be proportionate and in pursuance of the legitimate aim of securing the best interests of the child throughout his childhood. The court should first determine whether or not a freeing order is an appropriate order, necessary to safeguard and promote the welfare of the child.

[63] CD is clearly well settled and very comfortable with his current carer's. He is thriving in their care. He needs to be protected from emotional instability. At his young age, CD has no real understanding of his complex family circumstances.

[64] I am satisfied that rehabilitation of CD to PA's care is not a viable option. Notwithstanding the pessimistic outcome of the various reports and assessments, further assessments were commissioned in 2023 into both PA and RM. The outcome of these assessments also painted a bleak picture. The only available options are either long-term fostering or adoption. Both of these have been considered in detail

by the Guardian and the Trust. I will briefly summarise the advantages and disadvantages of each type of order in this case, but I have taken into account all of the matters identified in the various reports.

[65] Long-term fostering provides CD with:

- protection from the risks he would be exposed to if in the care of PA and RM;
- continuing Trust involvement in monitoring and supporting his placement. That involvement would continue in most cases until the age of 18 years; and
- PA would not lose parental responsibility, CD's name would remain unchanged, and he would have a continued legal connection with PA.

Disadvantages include:

- the lack of legal security in the carers' relationship with CD and the possibility of further applications in relation to placement;
- the potential legal limitations in the role of the foster carer and the possibility of further placement moves;
- a lack of security about placement;
- the invasive nature of the ongoing involvement by social services; and
- the cessation of placement by the age of 18.

The advantages of adoption include:

- legal certainty and security with an established place within a forever family;
- greater potential for commitment from the adoptive parents;
- the lack of statutory involvement and intervention;
- the avoidance of any sense of stigma or intrusion into family life; and
- research findings show that generally speaking, for a young child like CD, there are better opportunities and outcomes in permanent placement. I remind myself that while helpful in a generic sense, each case is very fact specific and any reference to research is just one factor to be weighed in the balance.

Disadvantages of adoption are:

- that it is an order which severs all legal ties between the children and their birth family;
- that there remains the risk of a placement breakdown;
- children may face challenges in understanding why they were not raised within their birth family, leading to a sense of loss, unresolved guilt or identity confusion. This disadvantage would also apply to some extent to the long-term fostering solution.

[66] I am satisfied the return to PA's care would be likely to have only a negative impact on CD. I accept the wealth of expert evidence in this case supporting the conclusion that PA is unable to provide good enough parenting even with the support of RM. There is not any available therapeutic or other intervention which will be likely to enable PA to carry out adequate parenting within a reasonable time. All of the experts were agreed that PA cannot look after CD to the requisite standard.

[67] CD would have a very long time in foster care ahead of him. Adoption would allow him to fully integrate with his new family, improve and develop a sense of belonging and be invested with a real security and certainty. I am satisfied that adoption is likely to be much more stable for him and much easier for him to accommodate. The benefits of adoption are more obvious for a child of CD's age as are the potential disadvantages of spending almost the entirety of his childhood in foster care. I am satisfied that what CD requires is the protection, support, stability and love which he is currently enjoying. He needs a sense of belonging. I am satisfied that it is overwhelmingly in CD's best interests that his care should be by way of an adoption order rather than remain in long-term foster care. I have taken into account the article 8 rights of both CD and PA. Whilst acknowledging the importance of the bond between a child and his parent, I am satisfied that this is a case where freeing for adoption is both a necessary and a proportionate order.

[68] I must now consider whether or not PA is withholding his consent unreasonably. This question must be considered according to an objective standard. The test is one of reasonableness, it is not a test of the love that a parent has for their child. The test is most straightforwardly formulated by asking – are the advantages of adoption for the welfare of the child sufficiently strong to justify overriding the views and interests of an objecting parent.

[69] I am satisfied that a reasonable parent, taking all factors into account, and in particular the welfare of CD, would recognise the overwhelming benefits of adoption to him and would recognise the unreasonableness of refusing consent. I am satisfied that this is a case where the advantages of adoption for the welfare of CD are sufficiently strong to justify overriding the views and interests of PA. I am

satisfied that long-term fostering is not an appropriate order to make in respect of CD and will not meet his best interests. I am satisfied that a freeing order is in the best interests of CD and is both proportionate and necessary. I therefore dispense with the need for PA's consent, and I make the freeing order in respect of CD.

[70] I am satisfied that the Trust proposals for contact are appropriate and meet CD's needs.

[71] I wish to acknowledge the engagement of PA at all times during these proceedings. He has been polite and respectful. His vulnerabilities have been clearly demonstrated in these proceedings and I am sure that those have been very difficult for him to hear. I also understand the impact that the unfortunate and sad circumstances of GK's adoptive family have caused. However, that is not a valid reason to deny CD what he requires. What is clear is that PA has striven to do his best for CD. He has shown his great depth of love for CD, and I can understand that he wishes to make it clear that he has fought for CD and has demonstrably not walked away from him. I have no doubt that PA also wants what is best for CD and I hope that he can come to understand in time that the orders I have made today are ultimately in CD's best interests.

[72] I approve the contact arrangements proposed by the Trust.

[73] I discharge the Guardian.