[2024] IEHC 227

Record No. H.M. 2024. 13

THE HIGH COURT

FAMILY LAW

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 54 OF THE ADOPTION ACT 2010 (AS AMENDED) AND IN THE MATTER OF 'M', A MINOR, BORN ON THE [REDACTED DATE]

CHILD AND FAMILY AGENCY

AND

A.C. AND B.C.

Applicants

AND

THE ADOPTION AUTHORITY OF IRELAND

First Named Respondent

AND

W.X.

Second Named Respondent

AND

Y.Z.

Third Named Respondent

Record No. H.M. 2024. 13

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FAMILY LAW

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 54 OF THE ADOPTION ACT 2010 (AS AMENDED) AND IN THE MATTER OF 'N', A MINOR, BORN ON THE [REDACTED DATE]

CHILD AND FAMILY AGENCY

AND

A.C. AND B.C.

Applicants

AND

THE ADOPTION AUTHORITY OF IRELAND

First Named Respondent

AND

W.X.

Second Named Respondent

AND

U.V.

Third Named Respondent

JUDGMENT of Ms. Justice Nuala Jackson delivered on the 10th April 2024.

INTRODUCTION

1. W.X. is the birth mother of M and N, the children with whom these proceedings are concerned. Y.Z. is the birth father of M and U.V. is the birth father of N. During the course of the hearing herein, I met with M and N. They are both most impressive young people, N. on the cusp of adulthood and M. in the midst of adolescence. They have faced challenges in their young lives but, fortunately, it was clear that they both now have achieved a clear sense of stability and they are focussed on their day to day lives, school and extra-curricular activities as is normal, appropriate and desirable for young people of their ages. W.X. has also faced very considerable challenges in her life and it is to her very considerable credit that she has now addressed these and, to a very considerable extent, overcome them. Her achievement in this regard is to be complimented. It is, however, a fact of life that time passes on and new norms become established over the passage of time and dialling back the clock is sometimes not possible. This is not to in any way diminish the achievement of overcoming challenge. In addition, it must also always be remembered that time takes on a particular significance in the context of childhood where periods of time, considered short in later life, can represent a significant portion of a child's life. In the context of the struggles faced by the family of W.X., M and N were fostered by A.C and B.C., a fostering arrangement which has been very successful as far as M and N are concerned and which has been in place for a very considerable number of years. A.C. and B.C. now wish to adopt them and M and N wish to be adopted in order that their membership of their *de facto* family of long standing may be legally recognised. This application is supported by and has been advanced by the Child and Family Agency as First Named Applicant ("the CFA") together with A.C. and B.C..

2. I must determine whether these adoptions should proceed having regard to the requisite statutory proofs set down in section 54 of the Adoption Act, 2010 as amended ("the 2010 Act as amended"). The making of section 54 order is opposed by W.X. Y.Z. is not opposing the application and has signed the requisite consent documents. Y.Z., in a position which was entirely understandable, indicated at the commencement of the hearing herein that he was opposing the application in respect of his child, M.. Subsequent to my having spoken with M. (and a note of our conversation having been

provided to W.X. and Y.Z.), Y.Z. indicated that his position had altered and that he was consenting to the section 54 order and that he would sign all necessary forms to enable M.'s adoption to proceed. However, he did so in circumstances in which he remained of the view that the statutory proofs would not be met herein but he did not wish to obstruct the making of an adoption order, having regard to M's wishes. This position will be considered further below.

EVIDENCE

3. The following evidence was before me at the hearing herein and was considered by me:
   A. Affidavit of Hazel Mullen, social worker, CFA familiar with case files of the children over many years and currently the allocated social worker for both. No Notices to Cross-examine had been served but I indicated that I would permit cross-examination if sought given the late engagement of W.X. and Y.Z. in the proceedings. Ms. Mullen was cross-examined on her Affidavit by Counsel on behalf the Second and Third Named Respondents.
   B. Affidavit of Ellen Grant, social worker, AAI who was involved to contact and engage with the birth parents of the children. No significant issues arose in relation to her Affidavits. Cross-examination was not sought.
   C. Affidavit of Mark Kirwan, the Manager of the Domestic Adoption Unit of the AAI. This Affidavit exhibited the necessary statutory proofs so far as the AAI is concerned and also the Adoption Assessment Report prepared by Helen Culhane, social worker with the CFA. Cross-examination was not sought.
   D. Replying Affidavit of W.X.. I afforded an opportunity to W.X. to supplement this Affidavit with oral evidence if she so desired. It was indicated that she did not wish to do so and, in particular, did not wish to be cross-examined. The Applicants indicated that they did not wish to cross-examine W.X. on her Affidavit.
   E. Replying Affidavit of Y.Z.. I afforded an opportunity to Y.Z. to supplement this Affidavit with oral evidence if he so desired. It was indicated that he did not wish to do so. The Applicants indicated that they did not wish to cross-examine Y.Z. on his Affidavit.

F. Ms. Mullen prepared affidavits in reply to the Affidavits referenced at 4 and 5 above.

4. In addition, I spoke with the children having agreed the terms upon which this should be done prior to so doing. In this regard, there was full discussion of the issues addressed in the judgment of Collins J. in ***DK v. PIK*** [2021] IECA 54 and my conversations with the children took place with full cognisance and recognition by all concerned of the legally hybrid nature of the information derived from such conversations.

FACTS NOT IN DISPUTE

- W.X. is originally from a third country but has lived in Ireland for many years. She is the mother of three children, the younger two of whom are the subjects of these proceedings. The oldest child is a half-sibling of M and N.
- W.X. has averred that the circumstances of the children coming into care are not disputed by her, that she was at the time *"dependent upon alcohol"* and she *"was unable to care for the children on the occasions set out in the Grounding Affidavits"*.
- The first involvement of the CFA with the family was in or about 2006 (pre-dating M's birth). At that time, there were concerns raised about alcohol addiction and mental health issues. The boys were cared for by third parties under private arrangements during this time. Assessment found no evidence of alcohol addiction or mental health issues. Following network checks, the file in respect of the family was closed.
- A further referral was received in or about 2008 (again, pre-dating M's birth). This referral seems to have been triggered by a contact made by the oldest half-sibling and allegations made by her concerning the care of that child and N by W.X.. Concerns were expressed by An Garda Siochana in relation to W.X.'s excessive consumption of alcohol and the impact of this on her behaviours and her care abilities in relation to her children. Section 12 of the Child Care Act, 1991 powers were invoked by An Garda Siochana in respect of N (his sister being cared for by her birth father).

- A subsequent application for an interim care order was not successful and N and his sister returned to the care of W.X.. At approximately the same time, a supervision order pursuant to section 19 of the Child Care Act, 1991 was made.
- In or about February 2009 (prior to the birth of M.), approximately six months after the previous childcare applications, a further application for an interim care order was made by the First Named Applicant (the CFA). This related to concerns relating to supervision of the children and alcohol abuse. The CFA asserts that W.X. was "incoherent, evasive and untruthful". There were also concerns regarding threats of self-harm. N was placed with emergency foster carers for three months.
- In or about 2012, some three and a half years later, An Garda Siochana again invoked its powers under section 12 of the 1991 Act. M was an infant at this time. The concerns expressed were, yet again, lack of supervision, leaving the children unattended and alcohol abuse. Qualitative care deficits were also reported. Emergency foster placements were made in respect of M and N.
- An emergency care order was sought but refused in circumstances in which W.X. gave an undertaking to the District Court to refrain from alcohol consumption. The children returned to her care.
- Further concerns were raised (this time by the school of the older children) approximately 10 months later. The issues were, yet again, intoxication and leaving the children unattended. An Garda Siochana again invoked its powers under section 12 of the Child Care Act, 1991 and an application for an interim care order was made by the CFA and such order was granted. M and N were placed with the Second and Third Applicants at this time and have resided and been cared for by them ever since.
- A full care order was made in or about November 2015.
- W.X.'s involvement with M and N since:
  (i) She refused to attend child in care reviews as the foster carers were present. She did input into care planning outside of the context of such care reviews.
  (ii) She attended for access with the children on a relatively consistent basis although the access was altered (frequency was reduced) and its conditions revised (supervision) based upon professional assessment of the children and their best interests. Assessment favoured the children remaining in care.
  (iii) Access deteriorated after 2015 in circumstances in which W.X. faced accommodation challenges and was charged and subsequently convicted of a

serious crime. This resulted in her incarceration. There was some dispute as to the cause of the breakdown of access at this time and this will be further considered below.

(iv) It would appear that visits were planned during the period of incarceration and thereafter but it is common case that only one access visit has occurred since 2015. This occurred some two and half years ago. No such visits occurred during the period of incarceration.

(v) Christmas gift exchange has occurred. Letter contact has not occurred.

- M and N have been in the care of the Second and Third Named Applicants since mid-2013, at which stage M was not yet three years and N was a young boy.
- The First Named Respondent has made a declaration pursuant to section 53 of the 2010 Act.
- I believe that it is accepted by both W.X. and the CFA that the boys are (a) oppositional to contact with their mother and (b) expressing the wish to be adopted by the Second and Third Named Applicants. However, there is divergence between them as to the reasons for this, the support, encouragement and planning which the CFA has put into maintenance of contact (and in relation to the preparation of life story work generally with the children) and the independence of the views which the children express (particularly so in relation to M).
- W.X. did not inform Y.Z. that he was M's father at the time of his birth and he would appear not to have been so aware until after M went into care. He would appear to have had some level of contact with M and N prior to this time but in the capacity of a friend of their mother only.
- Upon discovering his paternity of M, brought proceedings before the District Court under the Guardianship of Infants Act, 1964 (as amended) and Orders were made in respect of access and Y.Z. was appointed a guardian of M.
- Y.Z. acknowledges difficulties with alcohol in the past. It is common case that he too has experienced considerable challenges and trauma in his life including addiction, homelessness, and bereavement. He embraced a relationship with M upon paternity being established and subsequent to life story work and preparation being undertaken. Y.Z. and M have established a relationship and they have regular access together. There would appear to have been some issues in relation to access but these appeared to result from misunderstandings and misconceptions rather than due to any fault on the part of

anyone involved. M expressed confidence that this contact would continue and be supported by the First and Second Named Applicants in the event that he is adopted and he indicated that he would wish it to continue.

- No applications for any increased parental role in the lives of the children have been made since the date of the full care orders in 2015.
- It is acknowledged and accepted that Y.Z. and W.X. have both made huge efforts to address their life challenges and have had considerable success in this regard.

FACTS IN DISPUTE

- W.X. acknowledged previous challenges in her life and these as relate to alcohol abuse and threats of self-harm were also indicated in the Affidavit filed by Y.Z.. Y.Z. did, however, depose that W.X. had told him that she never left her children unsupervised. He deposes that W.X. appropriately addressed the clothing needs of the children and any deficit in accommodation (which he accepts did arise) was not due to any fault on the part of W.X.. He denies that M was underweight but acknowledges some behaviours indicative of emotional distress namely that M would rock back and forth, as a way of self-soothing. M has during his time in the care of the Cs received counselling in respect of these behaviours.
- Professional assessment found that W.X. had a lack of understanding of the impact of her behaviour(s) on M and N. Attachment deficits were identified and the professional assessment found an undue care reliance upon the eldest sibling. The antiquity of such assessment has been referenced by W.X..
- W.X. asserts that the CFA did not support access from 2015 onwards and that it did not do sufficient support work with the children to facilitate access while W.X. was incarcerated. The CFA disputes this and states that the difficulties were due to the emotional toll which their mother's conduct placed upon the children and that access did not occur based upon the distress of the children and the wishes of the children i.e., they did not wish to attend for access while W.X. was incarcerated. The CFA says that the children found it very difficult to re-engage with access subsequent to the release of their mother. On balance, I believe having considered the totality of the evidence that the CFA undertook considerable work in this regard, sensitive to the particular circumstances and needs of the children.

- W.X. and Y.Z. express concern that insufficient work has been done with the children in relation to their life stories and their families of origin and they have expressed concern that this will be to the detriment of the children in the future. There is no doubt that a knowledge and understanding of background is an essential and acknowledged part of individual identity and personal development. Again, on balance, I have formed the view having considered the totality of the evidence that the CFA undertook considerable work in this regard, sensitive to the particular circumstances and needs of the children.
- The CFA indicates that the Second and Third Applicants are aware of the importance of origins and identities for M and N and that they are supportive of encouraging such awareness. The CFA and the Second and Third Applicants assert that they will continue to encourage contact and will facilitate such contact in accordance with the wishes of the children post-adoption. All involved realise that this would take place on a voluntary basis and cannot be the subject of legal obligation or order. Y.Z. has little confidence that encouragement would be given or that access would occur. In this regard, it must be stated that when I spoke with M, he was very clear that he could see his birth parents if he wished to do so, that he had discussed this with his current care givers and they had assured him that they would support such contact if he wished it. It is obviously impossible to predict the future but I can find that M was clear in his understanding that the Second and Third Named Applicants would support contact if he wished it. At the present time, he appeared to wish such contact with his birth father but not with his birth mother.
- The birth parents expressed concerns that the wishes being expressed by the children had been the result of undue influence by others. I have considered this in greater detail hereinafter but I did form the view that the children's express views were authentic and independent, expressed in a manner reflective of and consistent with their respective ages.

THE WISHES OF THE CHILDREN

5. Article 42A of Bunreacht na hÉireann and section 54(3)(b) of the 2010 Act, as amended, mandate that:

"…, so far as is practicable, in a case where the child concerned is capable of forming his or her own views, give due weight to the views of that child, having regard to the age and maturity of the child, …"

6. In the present case, I have
   (i) Received a letter/mind map document written by each of the children in their own hand;
   (ii) I have received written and oral evidence from social workers who have engaged directly with the children over a very considerable period of time reflecting the children's views as expressed to them;
   (iii) I was privileged to meet with both of the children with individual engagements with each of them.

7. There is an age disparity between the two children of four years and it is therefore to be expected that there would be a maturity differential between them and there was. However, I formed the clear view that the children were amply capable of forming their own views at a level appropriate to their ages. The long letter from N clearly stated a wish to be adopted and proceeded to set out the reasons for this. He wishes to be *"officially"* part of the unit which has been his *de facto* family since 2013; the support and commitment which he has received from the prospective adopters; the positivity which he feels and has felt within this unit and his wish to *"feel comfortable"* within this family unit. I was particularly influenced by his comment – *"Back to the question on why I want to be adopted well in the family I feel like a normal kid. I get to experience life the way every child should. In this family, I feel safe, loved, thought of, cared, wanted, protected."* The hand-written mind map by M speaks of feeling safe within his current care unit and never wanting to leave. His communication is clear that he wishes his role within this unit to be solidified. The conversations which the children had with me accorded with these written correspondences. M made it clear to me that he wished to be adopted and I believe that he had a full understanding of "adoption" albeit in a manner consistent with early adolescence. He believed it would bring him into his current care unit "fully", giving his current caregivers "more control". He confirmed that he was supported by the prospective adopters and that he considers them his parents. I was particularly impressed by the confident way in which M informed me that he wished to continue to have contact with his birth father, that he

had discussed this with the prospective adopters and they have confirmed that they would support this. My conversation with N indicated a clear wish to be adopted and a very clear understanding of what this involved, as would be expected from a young man on the cusp of adulthood. He indicated that he already was and felt part of his current family unit but he needed adoption *"to make it more official"*. He referenced the stability which he believed would come from being adopted. Perhaps understandably for a young person who has been in the State care system for in excess of 10 years, he said that he wanted to be *"normal"*.

8. In the course of submissions and in written testimony before me, it was suggested by the birth parents that they feared a lack of independence in the views expressed by the children and, particularly so as regards M. They expressed the fear that the influence of others had played a part in the views being expressed. For this reason, I expressly interviewed the children separately and M (in respect of whom these views were more robustly made by his birth parents) visited me first in time. There was some understandable nervousness but both were open and forthcoming once comfortable in their surroundings. I did not find any evidence of influence. Their perspectives on life appeared to me to be entirely consistent with their lived experiences.

THE LAW

9. Section 54 of the Act of 2010, as amended, provides, *inter alia*:

"(1) Where applicants, in whose favour the Authority has made a declaration under section 53(1), request the Child and Family Agency to apply to the High Court for an order under this section—

> *(a) if the Child and Family Agency considers it proper to do so and an application in accordance with paragraph (b) has not been made by the applicants, the Child and Family Agency may apply to the High Court for the order, and*
>
> *(a) if the Child and Family Agency is satisfied that every reasonable effort has been made to support the parents of the child to whom the declaration under section 53(1) relates,*

(b) if, within the period of 3 months from the day on which the request was given, the Child and Family Agency either—

(i) by notice in writing given to the applicants, declines to accede to the request, or

(ii) does not give the applicants a notice under subparagraph (i) of this paragraph in relation to the request but does not make an application under paragraph (a) for the order,

the applicants may apply to the High Court for the order.

(2) On an application being made under paragraph (a) or (b) of subsection (1), the High Court by order may authorise the Authority to make an adoption order in relation to the child in favour of the applicants and to dispense with the consent of any person whose consent is necessary to the making of the adoption order.]

(2A) Before making an order under subsection (2), the High Court shall be satisfied that—

(a) for a continuous period of not less than 36 months immediately preceding the time of the making of the application, the parents of the child to whom the declaration under section 53(1) relates, have failed in their duty towards the child to such extent that the safety or welfare of the child is likely to be prejudicially affected,

(b) there is no reasonable prospect that the parents will be able to care for the child in a manner that will not prejudicially affect his or her safety or welfare,

(c) the failure constitutes an abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise, with respect to the child,

(d) by reason of the failure, the State, as guardian of the common good, should supply the place of the parents,

(e) the child—

(i) at the time of the making of the application, is in the custody of and has a home with the applicants, and

(ii) for a continuous period of not less than 18 months immediately preceding that time, has been in the custody of and has had a home with the applicants,

and

(f) that the adoption of the child by the applicants is a proportionate means by which to supply the place of the parents.

(3) In considering an application for an order under subsection (2), the High Court shall—

(a) have regard to the following:

(i) the rights, whether under the Constitution or otherwise, of the persons concerned (including the natural and imprescriptible rights of the child);

(ii) any other matter which the High Court considers relevant to the application,

and

(b) in so far as is practicable, in a case where the child concerned is capable of forming his or her own views, give due weight to the views of that child, having regard to the age and maturity of the child,

and, in the resolution of any such application, the best interests of the child shall be the paramount consideration.

(4) The High Court, of its own motion or on application to it in that behalf, may make orders—

(a) adding other persons as parties to proceedings under this section, and

(b) for the payment—

(i) of any costs, in relation to the proceedings, that are incurred by the person and are not paid by another party, if legal aid for the proceedings

under any scheme operated by or on behalf of the State for the provision of legal aid has been refused, or

(ii) by the person of any costs in relation to the proceedings that are incurred by any other party.

(5) The Child and Family Agency shall be joined as a party to proceedings under subsection (1)(b).

(6) Proceedings under this section shall be heard in private.

(7) A request to the Child and Family Agency under subsection (1)—

(a) may be given by handing it, or by sending it by prepaid post, to an employee of the Child and Family Agency at its premises, and

(b) for the purposes of subsection (1)(b), is given to the Child and Family Agency on the day on which it is handed or posted to it"

10. The history and provisions of section 54 (2A) of the 2010 Act (as amended) have been considered in some detail in the judgment of Hogan J. in the recent Supreme Court case of **Child and Family Agency and B v. The Adoption Authority of Ireland and C and Z** [2023] IESC 12 ('the B case'). Hogan J. states (paragraph 37):

"*In essence, the question arising in these proceedings has largely reduced itself to the issue of whether the proposed adoption would satisfy these various statutory pre-conditions."*

11. The Supreme Court then proceeded to consider each of the statutory conditions arising. I have set out the relevant dicta at some length due to the similarities between that case and the present:

"Section 54(2A)(a): whether parents failed in their duty

58. This sub-section provides that the High Court must satisfied that for a "continuous period of not less than 36 months" immediately preceding the date of the making of the application the parents had failed in their duty

towards the child "to such an extent that the safety or welfare of the child is likely to be prejudicially affected."

59. ... The concept of failure of parental duty has, as I noted at outset of this judgment, been a central feature of this aspect of our adoption law since 1988. In Adoption (No.2) Bill Finlay C.J. observed ([1988] IR 656, at 664) that the concept of failure must be construed as "total in character". He continued:

> *"No mere inadequacy of standard in the discharge of parental duty would…suffice to establish this proof…This does not mean that the failure must necessarily in every case be blameworthy, but it does mean that a failure due to externally originating circumstances such as poverty would not constitute a failure within the meaning of the sub-clause."*

60. This passage was subsequently applied by this Court in Northern Area Health Board v. An Bord Uchtála [2002] 4 IR 252, a case arising under the 1988 Act. Here a child had been in foster care for some years. Although her father had not been involved in her care, her mother opposed the adoption application. She, however, suffered from severe mental health issues and the High Court found that she was too ill to look after the child. In this McGuinness J. held ([2002] 4 IR 252, at 272) that there was

> *"ample evidence to establish that on account of her disability [the mother] had been unable to fulfil her parental role, not alone for the required twelve-month period but for the entire of [the child's] life."*

She also added ([2002] 4 IR 252, at 272) that this finding was not offset by the level of access to the child on the part of the mother, agreeing with Herbert J.'s description of her that she was "more of a visitor than a parent" to the child.

61. A similar view was taken by MacGrath J. in HR and FR. In this case the natural parents had six children, one of whom died in infancy in circumstances that were never fully explained to the satisfaction of the authorities. The mother was pregnant with CW at the time of the death and, following his birth, he was taken into care. Because of the parents' concerns regarding the question of whether other children would be taken into care, they appear to

have left the State to live variously in either the United Kingdom or Nigeria (from whence they had originally come).

62. It is unnecessary to detail the complex facts of what subsequently happened. It is sufficient to say that CW lived all his life with loving foster parents and both he and they sought an adoption order shortly before he attained his majority. While MacGrath J. described the application as "highly unusual and difficult", he nonetheless held that the statutory proofs for the purposes of s. 54(2A) had been satisfied and he made the order sought."

Section 54(2A)(b): whether natural parents unable to care for the child to the extent that her safety or welfare would be prejudicially affected

12. Examining this requirement, Hogan J. addressed the circumstance of improvement which had occurred in the life conditions of the birth parents as is the position in the present case.

"65. That, however, is not the relevant statutory test. It is not a question of parental capacity simpliciter because the sub-section goes on instead to stipulate that this parental care must be exercisable in a manner "that will not prejudicially affect…her safety or welfare." All the evidence is that Ms. B.'s welfare would be best served by leaving her to reside in the only house which she has known as her family home. This is where her centre of interests lies, and she has come to love and value the rural life and landscape which her foster home offers. She should not be uprooted from that home environment, not least given the nature of her disability and personal disadvantage.

66. Section 54(2)(b) is accordingly not concerned with parental capacity in the abstract. This statutory test is rather concerned with the concrete welfare and interests of the particular child in question. Given the circumstances of Ms. B.'s life to date, any arrangements in her living environment would cause a very significant rupture in her life and would be fraught with risk.

67. I appreciate, of course, that it is no part of Ms. C.'s case that in the event that this appeal were to succeed that Ms. B. would then come to live with her. The point, however, is that Ms. C.'s own subjective intentions in this regard are

not directly relevant to the application of this specific statutory test. Rather the High Court is required to ask itself whether the natural parents would be in a position to care for the child in a manner which would not prejudicially affect her safety or welfare. Here I agree with the comments of Whelan J. in the Court of Appeal to the effect that any conclusion to the contrary simply overlooks what she described as "the lived reality" of Ms. B. To that extent, therefore, I consider that this test is also satisfied in that there is no reasonable prospect that Ms. B's mother would be able to care for her in a way which would not prejudicially affect her welfare."

Section 54(2A)(c): abandonment of parental rights

"68. ... As Denham J. (in Southern Health Board) and McGuinness J. (in Northern Area Health Board) both respectively observed in the context of the similarly worded 1988 Act, this term must be accorded a meaning according to its statutory context and is has - as both of these judges in their respective judgments stressed - a "special legal meaning". While the word "abandon" has gloomy overtones reminiscent of the novels of Hugo and Dickens, and it is, moreover, a word which, as Denham J. said in Southern Health Board, is one which "in its ordinary meaning would distress parents" ([2000] 1 IR 165 at 177), it does not necessarily mean or imply abandonment in the sense of the physical abandonment of a child (although, of course, it could do so). The sub-section is rather directed at the question of the abandonment of parental rights vis-a vis the child.

69. In Northern Area Health Board, McGuinness J. said ([2002] 4 IR 252, at 276): "Here P.O'D has agreed to the continuing care of J. by Mr and Mrs H. over virtually J's entire life to date. She is, in addition, happy that this situation should continue. She has allowed and willingly continues to allow J. to become in a practical sense a member of the H. family. She has, in my view, abandoned the custody and care of her daughter to Mr and Mrs H. She has left and will continue to leave to them the crucial decisions regarding J's health and education and the carrying into effect of those decisions, together with the by no means insubstantial financial costs that arise from them. In my

view this situation amounts in a real and objective sense to abandonment of her rights as a parent. As Walsh J. pointed out in the passage quoted above [from G. v. An Bord Úchtala [1980] IR 32 at 67-68] a parent may be deemed to have abandoned his position as a parent. In my view the infrequent visits by P. to her daughter, largely initiated by others, are not inconsistent with the reality of her abandonment of her position as a parent. It is true that P. has consistently expressed her opposition to adoption. I would, however, agree that such opposition in itself does not contradict the fact of abandonment. The test of abandonment must be an objective one."

Section 54(2A)(d): whether necessary for the State to have intervened

"71. There can really be little argument regarding compliance with sub-section (d). This requires the High Court to be satisfied that it was necessary that the State, as guardian of the common good, should supply the place of the parents. The unfortunate reality in the present case was that Ms. C.'s marriage and, consequently, her ability to care for her children, was overwhelmed by a series of crushing vicissitudes. She herself was unable to cope and this is why Ms. B. was first admitted into care and then fostered. This is a clear case of where the State had to supply the place of the parents."

Section 54(2A)(e): whether the child is in the custody of the foster parents

"72. Here again there can be little argument regarding compliance with this specific statutory condition. This sub-section provides that the High Court must be satisfied that the child in question is in the custody of Ms A and that she has a home with her for at least an 18-month period. It is not disputed but that Ms. B has been living with Ms. A and in her custody for virtually the entirety of her life or, indeed, that Ms. A has provided a loving and caring home for her."

Section 54(2A)(f): proportionality of the proposed adoption order

13. In the **B Case**., Hogan J. comprehensively addressed the issue of what is to be considered proportionate in the context of applications such as the present. He stated:

> *"75. .... Adoption is an institution which is designed to meet the deep-seated human needs for family stability, security and the ties and love of a family in circumstances where – for whatever reason – the natural parents have been unable to provide such an environment for the child. Adoption is accordingly rather more than simply the question of a name or a right to inherit or even the entitlement to look to others for guidance and direction in the making of important life decisions such as might in the past have been provided by wardship or now (since 26 April 2023) by assisted decision-making. Adoption is rather a question of status which has lifetime consequences going well beyond the issue of care during the minority of the child. The making of an adoption order reflects the fact that a new family relationship has been created and this is one which is underpinned and supported by the State and its legal system. This point is underscored by the fact that this very institution is provided for and acknowledged by two separate constitutional provisions, namely, Article 37.2 and Article 42A.*
>
> *76. It is also worth observing that the ties created by an adoption do not cease when the adopted child attains his or her majority. This has been the position since the Adoption Act 1952. It reflects a clear and consistent view on the part of the Oireachtas that there is a lifelong value to the relationship created by adoption."*

Section 54(2A)(3): the constitutional rights of the parents and the child

> *"82. Section 54(2A)(3)(as amended by the 2017 Act) supplements all of this by requiring the High Court to have regard to the constitutional and other rights of all persons concerned (including the child) and to any other matter which the Court considers "relevant to the application." In the Court of Appeal Power J. dissented [at 87] on precisely this issue because she was not convinced – just as Barrett J. had not been in the High Court – that "having regard to the enduring and positive nature of the relationship that has prevailed between them, a relationship that time and attention can strengthen,*

that it would truly be in this child's best interests to sever the constitutional link that currently exists and to change her legal identity."

14. It was argued on behalf of the Second Named Respondent that there had been a failure to comply with section 54(1) of the 2010 Act in this case. This subsection deals with the entitlement to apply for an order pursuant to section 54(2) to this Court. The subsection provides that such application may be brought by the CFA in certain circumstances and by the prospective adopters in other circumstances. A prerequisite to such application was inserted by the 2017 Act namely that the CFA must be satisfied that every reasonable effort has been made to support the parents of the child to whom the declaration under section 53(1) relates. This provision is not a proof to be substantively addressed by me. It requires that the CFA must be so satisfied. The Affidavit of Helen Mullen on behalf of the CFA in support of this application, considered in its entirety, indicates that the CFA is so satisfied. Therefore, I have evidence before me which indicates compliance with section 54(1)(a) of the 2010 Act as amended, namely that the CFA is so satisfied. The subsection under consideration does not provide that this Court must be so satisfied. The Second and Third Named Respondents undoubtedly disagree with the CFA in this regard but there has been no formal legal challenge to the decision of the CFA. The legislative provision has been complied with.

15. The fulfilment of the requirements of subsection (1)(a) as amended by the 2017 Act have been considered previously be this Court and by the Court of Appeal. In **CFA & Ors v The Adoption Authority of Ireland & Ors** [2018] IEHC 515, McGrath J. noted that the CFA must satisfy itself that every reasonable effort has been made to support the parents of the child, before making the application under Section 53(1) of the 2010 Act, as amended. In considering Section 54(1)(a), McGrath J states:

'*Section 54(1)(a) therefore appears to stipulate that this is a matter within the competency of the Agency. It is not specified in section 54(2) that this Court must also satisfy itself that the Child and Family Agency has complied with the provisions of section 54(1) before it may consider the making of an authorisation order or an order dispensing with the consent of a person whose consent is required, or that the application under section 54(2) should act as an appeal from a decision, declaration or determination of the Child and Family Agency in that regard. On the face of it,*

therefore, it seems to me that any remedy or challenge to compliance with the provisions of s. 54(1)(a) may lie in a different forum.'

16. The above was confirmed in **CFA & Ors v The Adoption Authority of Ireland & Ors** [2022] IECA 196.

17. The application of Section 54(1)(a) was further considered by Jordan J. in **CFA & Ors v AAI [2021] IEHC 677**, with it being noted that it does not matter whether the court agrees with the conclusion reached by the CFA. This case relates to a child who at the time of the making of the Section 54 was on the cusp of majority.

18. In so deciding, however, I am mindful of the obligations arising pursuant to Article 8 of the European Convention on Human Rights and the ECtHR jurisprudence in this regard. It is clear that section 54(1)(a) of the 2010 Act as amended is reflective of State obligations in relation to family unification/reunification. These obligations are addressed by Hogan J. in the **B Case** aforementioned at Paragraphs 86 – 94. I agree fully with the *dicta* therein which equally apply in the present case.

SUBMISSIONS OF THE PARTIES

19. The First Named Applicant submitted that the legislative requirements as set out in section 54(2A) of the 2010 Act as amended had been fully complied with, addressing each provision of the subsection in turn. Precedent authorities, especially the **B Case**, were opened to me and the similarities between the present case and the **B Case** were addressed. In the context of fears expressed by the birth mother that the children might be financially or socially disadvantaged by an adoption order being made, assurances were provided in this regard by the CFA.

20. Counsel for the First Named Respondent addressed the necessary proofs in terms of the eligibility and suitability of the prospective adopters and the declaration of the Adoption Authority of Ireland pursuant to section 53 of the 2010 Act as amended that, subject to this application, it would be appropriate to make adoption orders in respect of both children.

21. The Second Named Respondent argued that there had been a failure on the part of the CFA to adequately support the maintenance of a relationship between the children and their parents and, in particular, access between the children and their birth mother. Shortcomings in relation to preparing the children for visits with her during her period of incarceration and also in relation to the preparation of life story work were asserted. It was argued that the children were provided with an inadequate narrative in relation to these events and they had not been adequately supported and facilitated to understand, appreciate and take on board the very real improvements which had taken place in W.X.'s life since that time. A default in attaining the standards required by section 54(1)(a) were argued. It was further asserted that the exhibits in the Affidavits filed (and in particular the Affidavit of Ms. Mullen) were not in the direct knowledge of the deponent. The Second Named Respondent accepted that the Affidavit showed that the exhibited reports existed but argued that these reports were of antiquity. The access reports were accepted and the position of the CFA that the social workers sought to promote access but that the children chose not to attend access was not disputed, rather the contention was that this position might have been altered with appropriate supports and if proper narratives had been engaged. It was further disputed that there had been "abandonment" of the children but it was accepted that the authorities support a very special and particular definition of this term in the context of section 54(2A) which definition did not accord with the normally understood meaning of this word in common parlance. It was further argued by W.X. that adoption was not a proportionate response in the present case especially in relation to N. who was so close to attaining his majority. In relation to the views of the children, fears of influence by third parties were asserted. The Second Named Respondent expressed her love for and pride in the children such that she could not bring herself to consent to the relief being sought. Y.Z. likewise disputed abandonment and failure of duty and asserted an insufficiency of support for the children in respect of maintaining a link and encouraging an understanding and appreciation of their life story, background and extended family. However, Y.Z. was clear that he wished to make these objections from a purely narrative point of view in circumstances in which he did not wish to oppose the granting of the reliefs being sought herein and further indicated his preparedness to sign all necessary documentation to consent to the adoption of M.

APPLICATION OF THE LAW

22. Useful guidance is provided by MacGrath J. in **Child and Family Agency v. Adoption Authority of Ireland (HR and FR)** [2018] IEHC 515 at paragraph 101 as to the general approach to be taken in applications such as the present:

> *"I am satisfied, nevertheless, that in the Court's approach to the determination of an application under s. 54(2) the legislative amendments as constitutionally mandated now place at the heart of the resolution of the application, the best interests of the child as being the paramount consideration. Paramount, in this regard, means the overriding and not the sole consideration. This does not mean, however, that there is any easing in the requirements for satisfactory proof of each and all of the matters set out in s. 54(2). Rather in approaching the consideration of the application under subsection 2, and in the assessment of whether the criteria have been fulfilled, there is an obligation on the court to place at centre stage the best interests of the child, not as an additional matter of proof but as an overriding or overarching requirement. In this regard, Ms. Phelan B.L. on behalf of the Child and Family Agency lays particular emphasis on the wording of Article 42A and suggests that the starting point for the consideration of the Court should be the best interests of the child. Whether it should be considered the starting point or not, it is clearly of central significance and is constitutionally and statutorily the paramount consideration in the resolution of these proceedings.*

23. There are very many factual similarities between the **B Case** and that presently under consideration.

    (i) The children have been in State care for a very considerable period of time.

    (ii) There is a strong bond of care between the children and their foster carers and the latter have hugely supported the children's development and addressed their particular needs in a very beneficial manner.

    (iii) The nature and extent of any relationship with their birth parents has been far from what would be involved in day-to-day parenting.

    (iv) Assertions of breach of duty on the part of the CFA have been advanced by the birth parents in both cases. I have considered this aspect in some detail and I am of the view that the nature and extent of failure being advanced in the instant

case is far removed from that which was advanced in the **B Case**. The failures expressed and found in the B Case were qualitative and quantitative in nature such that in that case there had been a failure to facilitate access over a considerable period. This is not the position here. The birth parents assert qualitative failings in terms of support and identity work carried out with the children while acknowledging that the resistance to access came from the children. They assert that, with proper and adequate support and identity work, the children would not have been so resistant. I regret that I cannot so find having considered the nature and extent of work carried out with the children over the course of their time in care. Additionally, whatever the level of work done with the children, there has been no suggestion that W.X. would have been in a position to resume care. I do not believe that Y.Z. was in such a position either. No such application was brought by either of them throughout the considerable period that M and N have lived in the C household. In this regard, I am of the view that the *dictum* of Hogan J. at paragraph 10 informs:

> *"It is, I think, unnecessary for me to express any concluded view on this issue because even if one accepts that the CFA failed adequately to support Ms. C in the manner required by statute and by the 1995 Regulations, all this would have meant is that there would have been greater contact at key times between Ms. B and Ms. C. While this would certainly have been to the good, it really would not have changed the essential fact that Ms. B resided with Ms. A for all her life."*

24. There are also certain differences. I wish to highlight these differences with a view to determining whether they are such as necessitate a difference of result.
    (a) the child in the B Case was voluntarily placed in care by her mother whereas the care orders in respect of M and N were contested by W.X.. I do not believe that this can materially distinguish this case from the **B Case** and, arguably, to the extent that it does so, it supports an order being made herein. As is clear from the judgement of Hogan J., in the B Case, the birth mother's consent was on the basis that, in the context of her then challenges, she voluntarily agreed to her child being placed in State care *"in the knowledge that this was likely to be in the best interests of her daughter"* which it undoubtedly was. In the present case, W.X. opposed the care

applications and I have no doubt that she did so in circumstances in which she likewise believed that she was acting in the best interests of her children. However, based upon the determination of the District Court, clearly this subjective belief was not objectively justified. It must also be noted that there have been no applications since 2015 when the full care order was made to alter the care arrangements for the children.

(b) The child in the **B Case** the duration of care was virtually the totality of the child's life and the child had never been in the day-to-day care of her birth mother. In the present case, this is not the position. N was substantially in the care of his mother (with some periods in State care or in the care of third parties) from the time of his birth (2006) until 2013. M was substantially in the care of his mother from the time of his birth (2010) until 2013. While the absence of any period of day-to-day care is most relevant in applications such as the present, I am of the view that this is not a distinguishable factor in this case as the time for which the children have been absent the day-to-day care of their mother has been very significant and particularly so having regard to the life experiences of the children. For both children, the majority of their childhood has been in the care of the prospective adopters without day-to-day care input from their birth parents.

(c) The child in the **B Case** had an ongoing relationship with her birth mother which cannot be stated in the present case, M and N having had contact with W.X. only once since 2015.

THE POSITION OF Y.Z.

25. Y.Z. was not aware of his paternity of M for a number of years after his birth. M was in care by the time he became so aware. Upon becoming aware of his paternity of M, he took prompt steps to make application to the District Court and he was appointed a guardian of M. He has engaged in access with M throughout. There have been some ups and downs in this access but these are not considered to be of any major significance in the context of the present application. He has not enjoyed a day-to-day parenting role in relation to M and he very honestly admits that he has had considerable life challenges which would have precluded this. He deposed that he would have consented to the adoption and he would not have opposed the application before me had he been

informed by M himself that he wished the adoption to proceed. It is likely expecting a lot from M, given his life experience, that he would be able to embrace such a conversation. M has a relationship with Y.Z. and wishes this to continue in the form of access. Y.Z.'s desire for assurances from M directly are understandable in the context of his view that he may have been influenced in his views. Although understandable, Y.Z.'s wishes in this regard may be, indeed have been, unachievable and I believe this to be understandable in the context of M life experiences. Y.Z., during the hearing herein, indicated that he would be guided in his approach to the proceedings by my conversations with M and, following the tenor of such conversation being relayed to him, I was informed that he was not opposing the application and would sign all necessary documentation for the adoption. His Counsel informed me that he wished to make a submission by way of narrative but that he was agreeable to the order being made as sought by the applicants. I accept this position. However, it is important that there would be no lack of clarity herein and making the order sought is dependent upon statutory proofs being satisfied. I confirm that, absent his position of agreement and withdrawal of opposition, I am satisfied that the statutory proofs required by section 54(2A) are fulfilled as regards Y.Z. also.

CONCLUSION AND DETERMINATION

26. Failure of duty

a. For a variety of reasons, the birth parents in the present case have been unable to discharge parental rights for virtually a very significant portion of M and N's lives. While not in any sense ascribing personal blame to either of them for this state of affairs, the plain fact of the matter is that all decisions regarding the education, welfare, up-bringing and day-today care of M and N have been taken by their foster parents. While, again, to their credits the birth parents have sought to maintain contact and sought to visit the children, something which has occurred in respect of the Y.Z. but not so far as W.X. is concerned, they are at most as relatives rather than parents to the children and have not exercised any decision-making role regarding the education and welfare of the children. This has been the position for well in excess of the statutorily prescribed 36 month period.

b. The lived reality of both children is such that I have determined that the birth parents are unable to care for the child to the extent that their safety or welfare would be prejudicially affected.

c. The use of the term "abandonment" by the legislation is unfortunate and can be distressing in this context but the authorities are clear that there is a particular legislative meaning which applies focus on the abandonment of parental role rather than abandonment of the child and that the test is objective in nature. In the circumstances of this case, I conclude that the legislative test has been satisfied.

d. In the circumstances of this case and arising from the conclusions which I have reached in respect of, in particular, (a) and (c) above, I find that this is a case in which the State, as guardian of the common good, should supply the place of the parents.

e. There can be no doubt that the children in this matter have been in the custody of and have had a home with the Cs for a continuous period of not less than 18 months immediately preceding the date of the making of the application herein.

f. The birth mother argued that making the order sought would not be proportionate. In this regard, she referred to the other legal remedies available which would address the needs of the children which were least definitive than their being adopted. Her arguments in this regard were made in relation to both children but were particularly addressing what benefit could be derived from adoption for N, given that he is on the cusp of adulthood. This is a situation similar to that arising in the B Case and I believe that the dicta of Hogan J. are apposite in this instance as they were in that case:

> *"79. In these circumstances Ms. B is entitled to enjoy the emotional and legal security of family membership which adoption entails. Any other conclusion would, on the facts of this case, be inconsistent with the obligation imposed upon this Court by Article 42A.4. As O'Donnell J. observed in Re JB and KB (minors) [2018] IESC 30, [2019] 1 IR 270, the application of Article 42A requires it to be performed in a manner which is child-centred in which the paramount consideration*

is, in fact, the child's best interests. Posed in this manner this question really answers itself.

80. While Ms. B is on the cusp of adulthood, her condition and arrested mental development means that many of the delights of young adulthood – travel, adventure, romance, further education and employment – are likely to be denied to her. Her future is regrettably an uncertain one. If ever there was a young adult who needed the stability and security offered by a family environment, it is in fact Ms. B. It is only through adoption that these ties of emotional stability and family support can be given a full legal reality."

In these circumstances, I find the making of the order sought to be proportionate.

Views of the Children.

27. I have recited the evidence and information available to me in relation to the views of the children (which was considerable) at paragraphs 3-8 and following above. I do not believe that the views as expressed were inappropriately influenced by any party and I found the expression of these views to be consistent with the chronological ages of the children. The views of the children appear to be unequivocal in their wish to be adopted and their reasons for expressing these views seem to be grounded upon a desire for stability and to have their *de facto* family life and lived experience formalised and legally recognised.

Best interests of the children

28. Having regard to the totality of the evidence before me and, in particular, the Affidavits of the social workers herein, I find that the granting of the order sought accords with the best interests of the children.

Constitutional rights of the children and the birth parents

29. I have the Constitutional rights of the birth parents and of the children. I believe that it is strongly in M and N's interests that they should enjoy the emotional security and supports which they clearly receive from the C family and of which they are very cognisant. I have formed the view that these undoubted interests should be dominant in this instance. I am, however, aware of the ongoing contact between M and his birth father and his expressed wish (supported by the Cs) that this would continue. I am mindful that the position in relation to contact with their birth mother is, at the present time, more complex. However, I am conscious that, even absent contact, the boys' birth mother has (as has Y.Z.) beneficial input to make in relation to background, origins and life stories. There is no doubt that many of the factual matters which contribute to the statutory proofs herein being satisfied derive from circumstances of tragedy and challenge in the lives of the birth parents. There is also no doubt that both W.X. and Y.Z. have made admirable and considerable strides in re-establishing their lives and rescuing themselves from their previous adverse circumstances. It is, regrettably, the factual reality, however, that M and N's lives have moved on and have progressed over the time which has elapsed such that the statutory proofs must be viewed as satisfied, the wishes of the children favour the completion of their integration into what has now been their family unit for many years and I have formed the view, on the evidence before me, that to do so also accords with their best interests. I am mindful, however, that identity, background, and origins are most important and willingness to provide support and information in this regard was proffered by both W.X. and Y.Z. in the event that the adoptions proceeded. These are responsible, welcome, and admirable offers of support. I further must acknowledge the fear expressed by W.X. and Y.Z. that, in the absence of legal provision for open adoption in Ireland, post-adoption engagement with their origins on the part of the children might not be supported and facilitated by the prospective adopters even if sought by the children. In this regard, I note that in the **B Case**, an undertaking was sought from the Court of Appeal that contact would be facilitated after the making of the adoption order which undertaking was also positively addressed by the Supreme Court (Paragraph 85). Having spoken with both children and, in particular, from my conversation with M, I do not believe that the concerns of the birth parents in this regard are well founded and I form this view from the confidence expressed to me by M that his wish to continue to see his birth father would be supported by the prospective adopters, this having been discussed by him with them. However, having regard to the important information and input which the birth parents

may have in the future in the children's lives, I am going to seek from the Second and Third Applicants an undertaking that they will support the wishes of the children in relation to contact with and information concerning their families of origin in such manner as accords with the children's best interests.

30. I therefore find that the statutory conditions set out in section 54(2A) of the 2010 Act as amended have been satisfied and, in consequence, I will make an order pursuant to section 54(2) in respect of both children.

31. In the context of the proximity of the attainment of his majority by N, I will abridge the time for service of any Notice of Appeal herein to a period of 14 days from today's date.