ENGLAND AND WALES / JUDGMENT

X, Re

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Neutral citation: [2025] EWFC 396 (B CASE NO. BS26/2025 IN THE FAMILY COURT AT BRISTOL IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002 AND IN THE MATTER OF X

Approved Judgment

Judge's name: Her Honour Judge Cope This judgment was given in private. The judge gives permission for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Introduction

1. I am concerned with an issue relating to an adoption order made on 30 July 2025 by His Honour Judge Davis, which has yet to be sealed. 2. Ms T represents the local authority. She has attended with the social worker and the team manager.

Background

3. By way of background, there were previous care proceedings for X. X was made subject to an interim care order on 19 July 2023 by the Family Court at Bristol due to concerns around the mother's mental health; lack of engagement with health professionals; the parents' ability to prioritise X over their relationship; the domestic abuse within their relationship; their extensive criminal histories and their inability to acknowledge the concerns. 4. X's mother is Ms A and his father is Mr B. Mr B does not have parental responsibility for X as he was not named on X's birth certificate and he and Ms A were not married. Mr B did participate in the care proceedings and was made a party. 5. The local authority's final care plan, was for X to be placed for adoption and therefore it sought care and placement orders. Ms A did not oppose the making of the care and placement orders whereas Mr B did. After a final contested hearing, care and placement orders were granted on 12 July 2024. The adoption application 6. The application before me relates to an adoption application in respect of X by his prospective adopters who he has lived with since early 2025. An adoption

application was submitted on 17 April 2025. The Annex A was submitted on 12 June 2025 together with an address form confirming the birth parents' current addresses. Importantly, this confirmed Mr B's address at an approved premises in Town Y having been released from prison in April 2025. This was confirmed by his probation officer on 11 June 2025. It is the local authority's understanding that this address was also confirmed by the Department of Work and Pensions and the court then sent a letter to Mr B on 17 July 2025 notifying him of the application and asking him to contact the court should he wish to be made a party to the proceedings. 7. The court held a hearing on 30 July 2025 before His Honour Judge Davis, having not received a response from the father and having received an indication from the mother that she did not oppose the making of the adoption order. The court determined on 30 July 2025 that the adoption order was made and invited the adopters to give an indication if they would wish to hold a celebratory hearing, which was confirmed on 1 August 2025. 8. On 5 August 2025, the court made contact with the social worker asking if she had had any contact with the father ahead of the hearing as it had come to its attention the letter sent to the father had been returned by Royal Mail as he was no longer resident at the address given and this was returned to the court on 31 July 2025. 9. His Honour Judge Davis asked the court office to hold onto the order until it had the heard from the social worker as to whether she had been in contact with the father before the hearing. The social worker subsequently confirmed that she had not. However, His Honour Judge Davis was absent by the time of the response and the matter was referred to me. I had no knowledge of the file and felt it appropriate to list a short hearing which I did on 26 August 2025. 10. The hearing on 26 August 2025 was adjourned to allow the local authority's legal department to take instructions, as the social worker was not present, and to allow time to consider the appropriate way for this matter to be dealt with. 11. Of significance, the adopters did not know about the events following from 30 July until 28 August 2025. The adoption social worker's team manager advised them of the difficulties on 28 August 2025. They have not taken legal advice at this time and say they will wait to hear the outcome of today's hearing. 12. In preparation for the hearing on 29 August 2025, the social worker has contacted Mr B's probation officer and been able to secure his current address. The issues and the law 13. A summary of the law is set out by Ms T which I accept as being accurate.

14. While service has been at Mr B's last known address, it seems that he had moved by the time the court contacted him giving him notice of the application. The local authority says Mr B was deprived of his right to apply to become a party to these proceedings and if appropriate, to seek permission to oppose the application. Therefore, there has been a procedural irregularity in the making of the adoption order.

15. Ms T also refers to several cases: a) In Re B (Adoption: Jurisdiction to set aside) [1995] 2 FLR 11995 it was confirmed that adoption orders are not 'immune from challenge'. They can be appealed against in the same way that other orders can be appealed against and can be appealed against where there has been a 'breach of natural justice'. Examples of this are where a party who has a right to be heard has not been notified of the hearing, or where a party has for some other reason not been heard. In these circumstances the court 'has the

jurisdiction to set aside the order and so make good the failure of natural justice'. b) In Re K (adoption & Wardship) [1997] 2 FLR 221 the Court of Appeal indicated that where an adoption procedure had been fatally flawed, an application to revoke should be made to the High Court. Here there was a complete absence of due process and a wholesale abandonment of correct procedure and guidance. That is a clear basis upon which to consider whether the order should be revoked. c) In Re J (A minor) (Revocation of adoption order) [2017] EWHC 2704 the court emphasised the importance of due process, including the filing of evidence, disclosure, and proper hearings with representation, none of which occurred. The adoption order was described as a 'complete aberration' made without sufficient material and due process, rendering it manifestly flawed. Regarding the revocation, the court explained that revoking an adoption order is an exceptional remedy requiring the High Court's inherent jurisdiction, which was beyond the powers of the original judge. The court acknowledged the distress caused to all parties but underscored the paramount importance of fairness and integrity in the process permanently affecting the child's legal status. Ultimately, the court concluded that the flawed adoption order should be revoked and that the matter should be relisted for proper consideration before the Designated Family Judge, following established procedures to ensure fairness and compliance with legal standards. d) Re X And Y (Children: Adoption Order: Setting Aside) [2025] EWCA Civ 2 the Court of Appeal stated: (paragraph 64): 'There may also be cases, where the failure to serve a party has been so quickly identified that the court, whether the High Court or the Family Court, can correct the position by using its powers under the Family Procedure Rules 2010, FPR 27.5.' (paragraph 65): 'The use of this statutory power does not amount to the exercise of an originating inherent jurisdiction ... A recent unreported case provides a good example of its use in this context. A circuit judge made an adoption order in the absence of the birth mother, who had attended every hearing so far. She contacted the court the next day, saying that she had wanted to attend the hearing but had not had notice. The judge made a further order that day, giving the mother the chance to apply to set aside the order within seven days. She did so, and he relisted the matter a week later. After hearing submissions and some evidence, he accepted that the mother had not had notice. He set aside the adoption order and made a new adoption order. That was an appropriate exercise of that court's powers and the mother's application for permission to appeal from the adoption order on other grounds was refused by this court.' (paragraph 66): 'The court (High Court or Family Court) may also be able to employ FPR 2010 29.16, known as the slip rule. It is most often used to correct minor blemishes or omissions in orders. However, it can be deployed wherever there has genuinely been an accidental error or omission, but not as a way for the court to have second or additional thoughts.' (paragraph 70): 'The conclusion that we have reached on consideration of the previously decided cases, which holds firmly that there is no jurisdiction at first instance to set aside a validly made adoption order...' (Finally, at paragraph 74): '... Rather than holding, as all parties submitted was the case, that Lieven J's interpretation of the extent of any inherent jurisdiction to revoke an adoption order was too narrow, we have concluded that the reality is that no such jurisdiction exists.' The options open to the court 16. Today, it seems to me that first, part

27.5 Family Procedure Rules could be used, which would require Mr B to make an application. Secondly, part 29.16 Family Procedure Rules allows the correction of errors in judgments and orders by the court. The accidental error here would be that the court in all good consciousness thought Mr B had been served and that due process had been followed. Thirdly, the court could use its powers under section 31F(6) Matrimonial and Family Proceedings Act 1984. The court could find that the making of the adoption order was invalid as notice had not been effected on the father and as such can rescind the order and re-list the application on notice to the father. Fourthly, the Barrell jurisdiction established that judges have a limited ability to reconsider their own orders before they are 'perfected' (formally sealed and completed) if there is good reason to do so. Finally, the use of the inherent jurisdiction to set aside the adoption order as the adoption order was not validly made as the procedure in the making of the order was flawed as notice had not been given to one birth parent.

Conclusion

17. I have given careful consideration to the matter. It seems to me that His Honour Judge Davis thought that Mr B had been served at the time of the hearing. However, the local authority is understandably concerned about the delay from when his address was confirmed by his probation officer (12 June 2025) to the time when the court contacted him about the application (17 July 2025). By 17 July 2025 he had moved. 18. Taking all matters into account I am satisfied that the most appropriate way forward is for the order of His Honour Judge Davis to be sent out immediately. 19. I will make an order today setting out Mr B's right to apply to set the adoption order aside (under part 27.5 Family Procedure Rules). Whilst there has been a delay in sealing the order, the information came to the court the day after the hearing on 30 July 2025, (so 31 July 2025). The order has not been sent out. This seems to me to be analogous to the situation set out in paragraph 65 of Re X And Y (Children: Adoption Order: Setting Aside) in terms of when the information was received by the court. I am satisfied this is an appropriate use of the rules.

20. My order will need to have a recital setting out what Mr B would need to address (which will include the need to show a reasonable prospect of successfully showing that he should be given permission to oppose the adoption order). He will have 14 days to make an application. My order will also allow Mr B 21 days to appeal today's order should he be of the view that this is not the right way forward. In the absence of any action on his part the adoption order will stand. Her Honour Judge Cope 29 August 2025 7

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Prepared on 23 October 2026 · Esheria