

JERSEY / JUDGMENT

In the matter of Darcey (freeing for adoption) [2019] JRC 119 (27 June 2019)

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judgment

the bailiff: 1. The child was born in 2018. She is the First Respondent Mother's fifth child and the first child of the Second Respondent Father. On 31 st May, 2019, we made a final care order in respect of the child, approved the care plan and freed the child for adoption, reserving our reasons. This judgment contains those reasons. Threshold 2. All of the Mother's other children have been the subject of a residence order or care orders as the case may be. The youngest of the other half siblings was made the subject of a care order and freed for adoption on 18th May 2015. 3. As was noted in respect of that youngest half sibling:- "The mother is a long-term heroin user whose drug use continued through her pregnancy with [Child 1], who was born [in] 2014, drug dependent and suffering from respiratory difficulties and withdrawal symptoms." 4. As Dr Englebrecht noted in her report in 2014, the Mother: "has a long history of Heroin and Benzodiazepine addiction, for which she has received a full range of treatment interventions, including detoxification, admission to hospital and rehabilitation services to different opiate detoxification, admission to hospital and rehabilitation services to different opiate replacement treatment programmes (Methadone and Buprenorphine)." 5. As Dr Englebrecht also said:- "In the past, [the mother's] efforts to address her drug problem in the community were often superficial and short lived during a crisis situation. Her commitment and motivation quickly receded when the crisis was over" 6. The child was also born drug-dependent and had to have treatment in the Special Care Baby Unit. She was released from hospital on 17 th October, 2018, and has been in placement with foster carers ever since, initially with the consent of the Mother and thereafter under an interim care order granted by this Court on 6 th November, 2018. 7. As was said in the interim care order judgment of this Court, there was alleged against the parents a chaotic relationship and the fact that they both have extensive criminal convictions, including convictions for violence. The Mother continued to use illicit drugs during her pregnancy and the Minister contended that the child was at risk of significant harm because of the Mother's mental health problems, irritability and propensity to act aggressively. Reference was made to a report of a psychologist, again in 2014. As the Mother has not agreed to have any therapeutic treatment from the Adult Mental Health Team since then, it is asserted by the Minister that things will not have changed as the Mother considers there is nothing wrong with her. 8. That is very much the position which this Court is now faced with as well. The Minister has put together a threshold

document which, although not accepted in full by the parents, has nonetheless resulted in threshold itself being conceded. The Court is satisfied that the terms of Article 24(2) of the Law are met. We are satisfied that the child has suffered and is likely to suffer significant harm and that the harm and the likelihood of that harm are attributable to the care likely to be given to the child if the order were not made, that care falling short of it would be reasonable to expect a parent to give the child. 9. Indeed the parties here do not resist the Minister's submission that threshold has passed. 10. The Court heard evidence from Tia Sibanda, the social worker who has been involved with the Mother and this case since February 2018, from Jane Pinder, an independent social worker appointed to make a report to the Court, from Dr Melanie Gill, a psychologist who has made reports on both the Mother and the Father; from the Father, the Mother, and the guardian. Although much of the Minister's evidence was directed at the right course of action for the future, that inevitably involved consideration of what had happened in the past and was therefore relevant to the question of threshold. The evidence from the Mother and the Father, particularly the former, was directed to keeping the child with the Mother, and inevitably therefore we have looked back onto threshold conduct as well as forward to the future. Our conclusions from all of this evidence were as follows. 11. First of all, we are in no doubt that the child has suffered significant harm in utero as a result of the Mother's drug dependency. That caused the child to be born drug dependent, suffering physical withdrawal symptoms as a result. She had to be cared for in the Special Care Baby Unit, requiring Oramorph to help with withdrawal. She was on this medication for a number of weeks to assist her in managing the withdrawal symptoms. The toxicology report of 24 th September, 2018, set out findings in relation to hair and blood samples taken on 14 th September. The samples were divided into two 3cm segments, such that each centimetre of cut hair represented the exposition of the Mother's drug use over one month. The toxicology findings were that it was likely that the Mother had been a repeated low user of Valium (diazepam) an iolytic drug during the six month period before sampling. There was a negative drug testing for cannabinoids, cocaine, methamphetamines, opiates and amphetamines. The findings were therefore more likely than not to indicate that those drugs had not been actively consumed by the Mother over the six month period before the hair sample collection. Furthermore the hair and blood test findings in relation to alcohol suggested that alcohol had not been consumed excessively over the six month period. 12. Notwithstanding the toxicology test, we note that the Mother admitted to taking cocaine in about April 2018 and indeed Dr Englebrecht told us that on the Mother's return to Jersey on 11 th April that year, she tested positive for cocaine, unprescribed opiates, benzodiazepines and methadone. 13. There was a further toxicology report on the Mother dated 28 th March, 2019, in respect of hair and blood samples taken on 13 th March, 2019. In summary the results of that test showed that the Mother had taken benzodiazepines and sedatives, cocaine, methamphetamines (ecstasy) and opiates during the relevant six month period. Diazepam (Valium) had been consumed repeatedly at medium levels over the entire period. Ecstasy had been consumed repeatedly at medium levels over the six month period. It was more likely than not that cocaine had been consumed occasionally at low levels over the first three month period before the hair sample collection but there was not enough evidence found to suggest the regular and active use of cocaine in the fourth, fifth and sixth month period before sampling (July/August/September

2018). The toxicologist found that it was more likely than not that the Mother had consumed morphine at low levels infrequently over the first three month period before the collection (none in the earlier three month period) and more likely than not that codeine had been consumed at low levels infrequently over the six month period. There was no evidence that heroin, amphetamines or cannabinoids had been consumed during that period. 14. As regards alcohol, the findings were inconclusive. One test suggested that there had been no chronic or excessive alcohol abuse during the three to four weeks before sampling. Another test suggested that it was more likely than not that alcohol had been consumed excessively over the six month period before the hair sample collection. 15. Dr Englebrecht considered that the Mother was physically dependent on opioids and had difficulty in controlling their use coupled with a strong desire to use them. She thought that the Mother was not engaging in chronic alcohol consumption. 16. We were satisfied that the Mother has a continuing drug addiction problem. Whether this is attributable to the child being removed from her care or not, it is telling that following the birth of the child, the Mother's use of drugs seems to have increased. She gave us a number of explanations for that - she had an operation for a femoral hernia in February 2019 and was prescribed a Diazepam based drug. Opiates were given to her by the hospital and sedatives likewise, and she was in a lot of pain throughout that procedure. Her doctor has prescribed her various sedatives and, as he is highly professional, he would not prescribe it for fun. As to the ecstasy mentioned in the toxicology report, she did not remember taking it. She suffers from anxiety and she said she did not like party drugs. Nonetheless, it has to be said that the ecstasy report was there. 17. She told us in evidence that in April this year she took cocaine. 18. It was also very noticeable that during Advocate Tremoceiro's summing up of the position on behalf of the child, when he was making the submission that the Mother was physically dependent on opiates, and resorted to drug taking to cope with her childhood difficulties, the Mother could not help but interrupt and say "I take drugs because I like them". 19. It may be the case that some parents are able to cope and provide good enough parenting to their child or children notwithstanding their drug misuse or methadone prescriptions. If drugs were the Mother's only problem, that would be an issue we have to consider. However it is clear that it is not. The psychological and psychiatric evidence is that she has a dissocial personality disorder, coupled with narcissistic traits. Dr Englebrecht told us that patients with a dual diagnosis (or co-morbidity) - a coexisting mental health problem and a drug misuse problem - have a poorer prognosis. Co-morbidity is associated with negative and often complex factors including higher rates of relapse, increased hospitalisation, higher rates of completed suicide, housing instability, poorer levels of social functioning (poverty, violence, criminality and marginalisation), less compliance with treatment and greater service utilisation. 20. There is no doubt also that the Mother has some issues in her personal life which from a psychological perspective need attention. The Mother does not really accept this. She told us that in her view everyone has a borderline personality disorder because we are not the same. She generally did not accept Dr Gill's conclusions which she said had been reached in an hour on the strength of one interview. "I accept I have issues, but maybe not at this gravity." 21. Some of the expert evidence was to the effect that the Mother considered that every problem was caused by somebody else and not by her. It was the world which was out of step with her, and not vice versa. Some insight into the

Mother's issues in this respect can be seen in the evidence surrounding an exchange of views she had with a family support worker at a time of contact. The child had a particularly full nappy, and after that had been changed, the family support worker said words to the effect of "Now we know what the problem is". In her evidence in chief, the Mother said that she thought that the authorities were going to "dob me in it" and she went on to say that she was pleased she had stopped breastfeeding so that no allegations could be made against her for that. She was asked more questions about this later in her evidence. When asked what the problem was in connection with the nappy comment from the family support worker, the Mother said that it had been implied that she was a paedophile. 22. We do not think that most people would have construed the support worker's comments in that way. The fact that the Mother has done so illustrates that, at least in respect of that exchange, the problem lay with her and not with anyone else. This piece of evidence illustrates that not only does the Mother have issues which need attention but also that she does not understand that; and it is well known that if psychological issues of this kind are to receive the attention they need, it is essential that the person concerned accepts the need for treatment. In her evidence to us, Dr Gill said that in her view it would be necessary to deal with both the psychological issues and the drug dependency, but probably the latter would need to be dealt with first. We do earnestly hope that the Mother comes to accept that these twin problems need to be addressed. We cannot imagine how distressing it must be for the Mother to see each of her children being taken away from her. On each occasion, she is put through a semi-public misery when the issues she has and the conduct in which she engages is paraded before a court; and she is asked questions which suggest her credibility is being doubted. Inevitable as it is, because the focus in court proceedings is on the interests of the child, this must be not only distressing but psychologically damaging for her. We earnestly hope she will accept the need for treatment. 23. The consequence of these various difficulties

- drug habit coupled with dissocial personality disorder - is that there is a serious risk of the child not being properly cared for. In particular, there is a serious risk of violence and indeed the Mother admitted to us some violence on her part, even though she thought that it was not her fault. Where a young child is exposed to any form of domestic violence or abuse of that kind, it is again well known that the psychological world of that child implodes. The security which the child needs to have as she grows up will be missing, and the world will become a challenging and hostile environment where there is an ever present risk of danger and damage. No child can fulfil her potential in those circumstances. There was doubt on the evidence as to whose fault it might have been as between the Father and the Mother that arguments took place. We do not think it matters very much whose fault it was. The reality is that the fact that the police were called several times in the closing three months of last year shows that it is more likely than not that the child would be exposed to violence in her immediate world if left in the care of the Mother. 24. We also accepted that the Mother had made suicide threats. We accept that whether or not these threats were carried out, there would be a risk of the child suffering significant harm if she was living with her mother at that time. 25. The evidence of alcohol abuse is, as we have indicated, inconsistent but there is no doubt that on some occasions there appears to have been abuse of alcohol which, in

conjunction with drug taking, has led to unreliable conduct which might result in the child suffering significant harm if in the care of the Mother. 26. Although threshold was agreed, we think it is appropriate that we set out why we ourselves are satisfied about threshold because our findings of fact in this respect do have a material impact on the application of the welfare test. The welfare test 27. That being so, we are faced with the orders which potentially could be made in this case. The Court has been provided with a very helpful analysis from the guardian, who agrees with the Minister's recommendations as to the ultimate disposal of this case. (i) The first option would be the return of the child to the care of her parents with no order being made. Neither parent has addressed the childhood traumas which they have suffered and which continue to impact negatively upon them. If they were to address them, the timescales for doing so fall outside the child's timescales. As a result, the child would be placed at risk, and all the assessments available have indicated that neither parent is appropriately and consistently able to meet the child's needs. (ii) The second option would be a return to the joint care of the parents under the auspices of a supervision order. Although we used the expression "joint care" we note that the Father is currently in HM Prison La Moye on remand for trial in the Royal Court on an indictment containing a number of charges. If this option were to be followed, there are the same risks or concerns which are noted above. It is not deemed by either the guardian, the social worker or the independent social worker to be an appropriate order to make, and we share that view. (iii) The third option would be a return to the care of one of the parents under the auspices of a supervision order. The same objections apply and it is not thought to be appropriate to make such an order. In any event, although the Father is currently on remand at HM Prison, it is suggested by the Mother that their intentions are to remain together. In that event, the concerns which arise from the volatility of the parents' relationship would not be abated and this would be another reason why this particular option would not be appropriate. (iv) The fourth option would be for the child to be placed in the care of extended family members under a residence order. No family members have as yet been identified as suitable. The Father has suggested to us that we should make enquiries as to whether his family in Country C might have someone suitable to care for the child. We were told by the social worker that enquiries were made of the brothers but after careful thought each of them had concluded that he was not able to care for the child. Any further enquiry now we think this would also be outside the child's timetables. We do not think this is an appropriate order. (v) The fifth option would be for the child to be placed in long-term foster care under the auspices of a care order. This has a number of drawbacks. (a) First, it would not offer the child a permanent placement, and indeed with the risk of placement breakdown, there might be a number of moves for her. (b) Secondly, long-term foster placement does not provide any level of permanence that a child needs. She would be a looked after child which would involve having continuous social worker and other agency involvement, which might impact on her sense of identity and stability. (c) Thirdly, there would always be the risk that her parents might undermine the placement by making applications to the Court to discharge the care order - and worst of all perhaps, (d) fourthly the people caring for the child would not have parental responsibility for her and decisions

about her care would need to be made by the Minister. The Court is in no doubt that this is not an appropriate order to make for this child, especially given her age, as it would not offer her stability and security in her placement. 28. That being so, the Minister's care plan, which is supported by the guardian, suggests that the final option is the only realistic one for the Court, namely that the child be legally separated from her birth family. It would involve thus an order freeing her for adoption. In fact her half-sibling who was the subject of an order for this Court in 2015 has been adopted and it does seem that it would be extremely desirable if that could turn out to be an appropriate adoptive placement for the child as well, as she would have a better understanding of her personal identity. 29. This application has been vigorously resisted by both the Mother and the Father. We had no doubt that the last option was the correct one to accept and we now set out our reasoning in more detail. 30. It was suggested to us by Advocate Godden that it would be appropriate to adjourn the present proceedings and that such an adjournment would operate in the best interests of the child. This was so, he contended, because it was in the child's interests that she should be brought up with her natural mother if that should be possible, and it was clear that the Mother needed time to address the issues which she faced. Such an adjournment would in those circumstances be planned and purposeful, and not an adjournment which would cause a delay operating against the best interests of the child. 31. We were not persuaded by that submission. The independent social worker, Ms Pinder, told us that in her view the Mother would need 12 to 18 months drug free lifestyle before there could be any confidence that drugs were a thing of her past. In her experience the length of time during which a person addicted to drugs was able to be abstinent was critical to assess the success of their change of heart. From her experience she was able to say that while the Mother could no doubt benefit from some training, the greater needs were abstinence followed by psychological help on the substantial

issues.

In her opinion, the Mother would not be able to make changes in any foreseeable period because she did not accept that any changes were needed. 32. It is right to note that the Mother's criticism of the independent social worker's evidence was largely focussed on the Mother's belief that she was not truly independent. From the Mother's perspective

- indeed as she said in her evidence - the Children's Service are spiteful. The traumas in her life had been caused by the children being removed, and their removal was at the instance of the Children's Service and not anybody else. She considered that she had been prejudged because of previous proceedings and it was for this reason that she had asked for an independent social worker's report. One can only imagine, then, her dismay when she attended for her interview with Ms Pinder to find that the social worker Tia Sibanda was with Ms Pinder in the same room when the Mother arrived. This evidence came out late in the hearing and was not put to earlier witnesses but it does give us the opportunity to say this. (i) First of all, we do not accept that Ms Pinder's evidence was compromised in any way. We formed our own assessment of her during the course of her evidence, and we are

satisfied that she was a truthful, reliable and above all else independent witness. We were able to form our own views as she gave evidence, and we have no doubt that if she had not been satisfied with the work of the social worker, or if she had disagreed with the opinions expressed by the social worker, she would have told us. (ii) Secondly, one of the purposes of having an independent social worker is that they should be independent. It is absolutely critical that everyone understands that an independent social worker is going to read all the reports and have all the same information as the social worker employed by the Minister will have. Indeed there is no other way one could expect a balanced and sensible report from the independent social worker. Nonetheless, the independent social worker is appointed in order to assuage the concerns of parents in circumstances such as those facing the Mother. That means it is important that the Minister takes every step to avoid the possibility of a conclusion being drawn by a parent that the independent social worker is not in fact independent. That means that, if possible, the interview between the independent social worker and the parent should not take place in the Children's Service premises. It means that when they do take place, the Minister's social worker is not present. It means too, of course, that the independent social worker must take every step to ensure that his or her independence is not only obvious but is perceived to be obvious. 33. This will have been difficult in the circumstances of this case, not least because the Mother did not fully engage with the assessment anyway. When Ms Pinder prepared her first parenting assessment, she noted that the Mother had not participated in assessment sessions and that details of her childhood history were unknown to Ms Pinder. She also noted that she had not had the opportunity to discuss alcohol or substance misuse. Generally, "the engagement of [the Mother] was insufficient for the parent assessment to be completed." 34. On the second occasion, there was a greater degree of participation from the Mother, and Ms Pinder noted this in her report. Nonetheless, two out of the four planned sessions with the Mother were missed. 35. Dr Gill told us that the combination of the entrenched personality problems and traits combined to show a constant level of trauma and lack of attachment figures in the Mother's personality. This led her to have emotional and behavioural instability. She is not able to regulate her own emotions, which is why she uses drugs to help her do so. She generally turns away from trust or reliance in other people. Dr Gill told us in cross examination from Advocate Godden that although the Mother did not complete all the questionnaires which she requested, and although the interview lasted only one hour, she was satisfied that she had enough to form a reliable view. She thought the Mother was an extremely vulnerable woman, and indeed, looking at the historic records, no one could expect to come through undamaged the various traumas which the Mother had suffered. 36. From the evidence which we have heard, some of which is highlighted in this judgment, we are not satisfied that the Mother has the will at present to tackle the difficulties which she has. If she did have the will to do so, it would almost certainly not be a task which would be completed within the timescales for this child. The Court is satisfied that the child is likely to suffer further significant harm if left with the Mother as a result of the Mother's lack of care for her. One does not take a child from his or her birth parent unless that threshold is passed and the Mother herself accepts that it is passed in this case. That being so, we cannot

assume that in two to three years' time, if there has been an adjournment, all will be well and if for any reason it turned out not to be well, then the child would then be aged between 2½ and 4, and the opportunities for a successful long-term placement at that age with new adoptive parents would be more limited and hold less realistic prospects for success. For these reasons, we did not think that it would be in the interests of the child for us to adjourn the present proceedings. 37. Given that we do not think either the Mother or the Father can possibly have care of this child; and that there is no family member or connected person who would be able to take the child into their care (and we were satisfied from the social worker that she had done everything reasonable to investigate this possibility); and given that long-term fostering is not in the best interests of the child, that did in effect leave us with no other option but to approve the care plan which involves freeing the child for adoption. In the context of that care plan however, we noted that the Minister was willing to agree the guardian's recommendation for an amendment of the care plan in so far as contact is concerned pending a suitable matching with prospective adoptive parents. The guardian suggested two weekly contact with the Father and, separately, two weekly contact with the Mother until matching took place and the Minister has agreed that proposal. We noted that Dr Gill was of the view that increased contact could do no harm to the Father, and that as far as the contact with the Mother was concerned, it would be as well to reduce or cease that contact altogether as soon as possible. 38. Advocate Davies suggested for the Father that he had been let down by the Minister who had not facilitated contact for some of the period he had been in prison. The Father was desperate to have as much contact as he possible could, and there would be no harm in it. 39. The guardian and the Minister took the view that contact on a two weekly basis until matching would be appropriate for the child. As with other issues concerning the child, contact had to be for her benefit and in the Minister's submission, and indeed the guardian's submission, the parental contact on a two weekly basis until matching would cause stability. 40. We agreed with that assessment, and have approved the care plan on that basis. We comment below in more detail as regards the requested freeing order. 41. That left two matters outstanding. The first was the Father's application for parental responsibility, and the second was the question of a freeing order for adoption. 42. We take first the application for parental responsibility. In one sense, this was an unnecessary application. As Advocate Davies put it to us, the Father was resigned to the inevitability of a conclusion in this case, but he does not currently have parental responsibility although he is unquestionably the de facto father, and his name is not on the child's birth certificate. However, he has shown a commitment to his daughter and Advocate Davies submitted it would be appropriate to respect that by granting him parental responsibility even if that responsibility was only for a short period of time. He had engaged in all the assessments that were necessary in these proceedings and he had taken part in them. Rightly or wrongly, the Father feels that the Minister has taken steps which have prevented him from supporting the child. He considers that the Minister in effect sent him back to Country D in respect of a breach of the probation order that had been imposed on him there and as a consequence, he was not in the Island and available to the child after her birth. Advocate Davies submitted that it was important to him that when the child grew up,

she had the opportunity to find out if she chose to do so that her father had loved her and that she was important to him too. 43. Although the freeing of a child for adoption carries with it the loss of what parental responsibility there is, we consider that it is right to grant the Father parental responsibility in this case. We accept that he loves the child. Indeed we think that perhaps the arrival of this child in the world has been - certainly could be - an epiphany for him, resulting in his tackling the various issues which he too has to face and which were identified at length in the psychological evidence before us. We hope that he is prepared to address those issues and that the authorities may find some way of supporting his efforts in that respect both while he is in custody and thereafter. 44. We were impressed with the way in which the Father has engaged with the proceedings and with the experts. Indeed, although his criminal history might suggest otherwise, he has engaged constructively with the Court during this hearing. We do not accept that the Minister had anything to do with his return to Country D for breach of the probation order, but again this is one of those areas where we can understand his perception that it might be so even though we are confident it was not. The Father told us that the child has in his view enjoyed their contact sessions together. He wants to have memories of their contact sessions and indeed he wants the child to have deep down some memory of him which both can keep for the rest of their respective lives and will be noted in the child's life history documentation. The Father feels he is making a contribution to his child now, even if the milestones are very little. From all the evidence we have heard and read in the contact logs, we think that is probably fair comment. In those circumstances, we considered that it was right that the Father should be recognised as having parental responsibility because we have treated him in that way in the course of these proceedings and because he has acted as if he should have such responsibility. 45. We now turn in more detail to the question of adoption. 46. In so far as material Article 12 of the Adoption (Jersey) Law 1961 ("the Adoption Law") provides as follows: "Freeing child for adoption (1) Where, on an application by the Minister, the Court is satisfied in the case of each parent or guardian of the child that - (a) the person freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order; or (b) the person's agreement to the making of an adoption order should be dispensed with on a ground specified in Article 13(2), the Court shall make an order declaring the child free for adoption. (2) No application shall be made under paragraph (1) unless - (a) it is made with the consent of a parent or guardian of a child; or (b) the Minister is applying for dispensation under paragraph (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the Minister. (3) No agreement required under paragraph (1)(a) shall be dispensed with under paragraph (1)(b) unless the child is already placed for adoption or the Court is satisfied that it is likely that the child will be placed for adoption." 47. In the context of Article 12 (3), the Court is satisfied that it is likely that the child will be placed for adoption. 48. In so far as material Article 13 of the Adoption Law provides as follows:- "Parental agreement (1) An adoption order shall not be made unless - (a) the child is free for adoption by virtue of an order made under Article 12 or by order of a court of competent jurisdiction in any other part of the British Islands; or (b) in the case of each parent or guardian of the child the Court is satisfied that - (i) the parent or

guardian freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order, whether or not he or she knows the identity of the applicants, or (ii) the parent or guardian's 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 - (a) cannot be found or is incapable of giving agreement; (b) is withholding his or her agreement unreasonably; (c) has persistently failed without reasonable cause to exercise his or her rights, duties, obligations and liabilities as a parent or guardian in respect of the child; (d) has abandoned or neglected the child; (e) subject to paragraph (4) has persistently ill-treated the child; (f) as seriously ill-treated the child; (g) is incapable of caring for the child or is of such habits or mode of life as to be unfit to have the care of the child." 49. In this case neither of the parents (the Father now having parental responsibility) have consented to the making of the adoption order. In those circumstances, the Minister contends that both of them are withholding agreement unreasonably for the purposes of Article 13(2)(b). 50. Article 16(1) provides as follows:- "Functions of Court as to adoption orders (1) The Court before making an adoption order shall be satisfied - (a) that every person whose consent is necessary under this Law, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to extinguish his or her parental responsibility for the child; (b) that the order if made will be for the welfare of the child; and (c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction. (2) In determining whether an adoption order if made will be for the welfare of the child, the Court shall have regard (among other things) to the health of the applicant, as evidenced, in such cases as may be prescribed, by the certificate of a registered medical practitioner, and shall give due consideration to the wishes of the child, having regard to the child's age and understanding. (3) The Court in an adoption order may impose such terms and conditions as the Court may think fit, and in particular may require the adopter by bond or otherwise to make for the child such provision (if any) as in the opinion of the Court is just and expedient." 51. Article 16, including in particular Article 16(1)(b) refers to the functions of the Court in relation to the actual adoption order itself and does not apply strictly to the application for a freeing order. However, Article 2 of the Children Law requires that when the Court determines any question with respect to the upbringing of a child, the child's welfare shall be the Court's paramount consideration. Furthermore, Article 2(2) requires the Court, in any proceedings in which any question with respect to the upbringing of a child arises, to have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child. 52. In our judgment, these provisions apply to orders freeing a child for adoption. The freeing order has the effect of removing parental responsibility from the parents because under Article 12(5) of the Adoption Law, it is then conferred upon the Minister as if the order were an adoption order and the Minister was the adopter - see this expressly provided also at Article 20(2) of the Adoption Law. The

issue of parental responsibility clearly raises questions with respect to the upbringing of the child. 53. It is right to remind ourselves that the statutory regime in England and Wales is not the same as the statutory regime in Jersey in so far as concerns adoption. That does mean that one must be extremely careful in looking at rules which apply in England and Wales in connection with adoptions. Nonetheless it is also right that we remind ourselves of the fundamental principles of adoption, especially in the non-consensual cases. These principles were very fully considered in *Re B-S (Children)*

- [2013] EWCA Civ 1146 in a judgment of a strong Court of Appeal, in this case delivered by Sir James Munby, President of the Family Division. At paragraphs 17 to 46, Munby P set out a number of considerations, including Human Rights considerations to which the Court is required to have regard when considering questions of non-consensual adoption. 54. We have in mind the dicta of the Strasbourg Court in *YC v United Kingdom*
- [2012] 55 EHRR 967, paragraph 134, where it was said:- "Family ties may only be severed in very exceptional circumstances and ... everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing." 55. Munby P referred to the decision of the Supreme Court in *Re B (a Child) (Care Proceedings: Threshold Criteria)*
- [2013] UKSC 33 and at paragraph 22 he said this:- "The language used in *Re B* is striking. Different words and phrases are used, but the message is clear. Orders contemplating non-consensual adoption - care orders with a plan for adoption, placement orders and adoption orders - are 'a very extreme thing, a last resort', only to be made where 'nothing else will do', where 'no other course [is] possible in [the child's] interests', they are 'the most extreme option', a 'last resort - when all else fails', to be made 'only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short where nothing else will do ...' 56. All this is of course entirely consistent with the statute which drives the Court to consider when applying the welfare test a less interventionist rather than more interventionist approach. 57. The route by which the Supreme Court reached the conclusion it did in *Re B* is not a route, in terms of statutory provision, which would apply in Jersey, but it nonetheless seems to us that, taking a step back, the fundamental principles will not be very different. For the state to interfere in the family life of its citizens by removing a child from the natural parents is indeed an extreme thing to do. The Court will set its face against social engineering which might result in children being taken from their parents on some intellectual or academic basis so as to provide them with a theoretically more advantageous upbringing. Wherever possible, the Court should be looking to ensure that children can be brought up in their birth families, and if that should be impossible, then with connected people. 58. The Adoption Law requires that before making a freeing order in the absence of parental consent, the Court must be satisfied that that consent has been unreasonably withheld. There have been cases in this jurisdiction in which the Court has held that, having reached a conclusion as to what is in the best interests of the child, it follows that it would be

unreasonable for any parent not to want those best interests to be secured. Neither in the present case nor on the previous occasions has there been much considered argument in that respect; and while we can see the force of the point, it also seems to us to be relevant to note that the extra dimension in adoption cases is usually the removal of any right to contact between the birth parents and the child in question and furthermore the adoption, if effected, removes from the child his birth name and his blood links to his birth family. What is in his or her best interests may go to physical or mental well-being, but it may not go to that sense of identity which every person needs to have. It seems to us that the judgment in *Re B-S* is helpful because it emphasises the importance of the decision which the Courts are asked so frequently to take. There always needs to be very anxious scrutiny of what has happened in the child's life so far and what the realistic potential is for the future, when a freeing order is contemplated. 59. In this case, we have in part addressed these matters by reference to the options put before us by the guardian. In addition, the Minister can rely not only upon the advice of the social worker employed in the Children's Service who has worked with this family for 15 months or so, but also on that of an independent social worker who was instructed to act for the very reason that the Mother's lack of trust in the Children's Service could itself have been a consequence of what has happened in the past and therefore an issue for consideration. In addition, the Minister is able to rely on the report of Dr Gill and on the evidence of Dr Englebrecht. 60. In circumstances where every professional is in effect saying the same thing to the Court as to the likelihood of any change on the part of the parents during the child's timescale, it would be a brave Court that would take a contrary view. We are satisfied that proper efforts have been made to identify all the difficulties which need to be addressed if any other course is to have any realistic chance of success and we are satisfied that having regard to all these features the parents are withholding consent unreasonably for the purposes of Article 13 of the Adoption Law. 61. For these reasons we have approved the care plan and have made a freeing order. 62. There is one last thing we wish to add. It is not clear at present where the relationship between the Father and the Mother might go in the future. It is not impossible that at some future date, they may decide to have another child, or, even if their relationship does not go forward the Mother might decide to have another child with a different father. We do think it is essential that the Mother accepts the need for treatment as it appears the Father has accepted his need for treatment - and we hope that resources will be found to make that treatment possible. If the Mother addresses the issues which she has, proceedings of the present kind may be avoided in the future; but if she does not, it seems to us to be entirely likely that there will be a similar application by the Minister when the next child is born and there is at least a very real risk of the same outcome. *Authorities Children (Jersey) Law 2002 Adoption (Jersey) Law 1961. Re B-S (Children), Re*

[2013] EWCA Civ 1146 (17 September 2013) (Children)

[2013] EWCA Civ 1146 YC v United Kingdom [2012] 55 EHRR Re B (a Child) (Care Proceedings: Threshold Criteria)

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