Haringey London Borough Council v C, E and Another Intervening [2006] EWHC 1620 (Fam)

[2007] 1 FLR 1035

Family Division

Ryder J

19 July 2006

Care order — Freeing order — Adoption — 'Miracle baby' — Birth parents unknown — Whether religious belief a pre-eminent factor in welfare — Whether adoption has benefits not provided by residence or special guardianship

The child was brought to this country by a couple, Mr and Mrs E, who claimed he had been born to them as a 'miracle baby'. Their religious faith led them to believe that the conception and birth came about through the 'will of God', that placement of the child with others would not be permitted by God and that placement with themselves would be divinely ordained. However, the court held that they were not the child's parents and he was taken into care and placed with a foster carer in 2003: see *Haringey London Borough Council v C, E and Another Intervening* [2004] EWHC 2580 (Fam). The Kenyan genetic parents were unable to be located and Mr and Mrs E held to the view, despite the evidence and the court ruling, that they were the birth parents and not substitute carers, and wanted the child returned to them. The local authority plan, however, was for adoption (a West Indian couple, Mr and Mrs A, were approved as adoptive applicants in 2005) and the foster carer also wished to offer the child a permanent home, albeit she did not believe in adoption. The local authority sought a care order and a declaration freeing the child for adoption, Mrs E sought a residence order and the foster carer applied to be joined as a party to the proceedings and sought a residence order with a view to a special guardianship order in due course. Assessments of all three parties were undertaken.

Held – making a full care order and freeing the child for adoption –

(1) Despite the respect given to private and family life, to freedom of thought, conscience and religion and any individual belief system, the law did not give religious belief or birthright a pre-eminent place in the balance of factors that comprised welfare. If the views of Mr and Mrs E were to be sanctioned it would be virtually impossible for them to modify their position beyond their beliefs and the child would have to be encapsulated within that belief system and his future founded upon a lie. A placement with them would thus be contrary to the child's interests (see paras [36], [61]).

(2) Placing the child for adoption was the best way of securing the stability, security and identity that he most needed. Although placement with the prospective adopters was not perfectly matched because of their West Indian, rather than African, heritage there were many positive aspects to it and the child would have a visual identity with a family who had above average skills, determination and commitment (see para [72]).

(3) An application to be joined as a party for the purposes stated by the foster carer, Mrs F, was, having regard to the duration of her care of the child at the time of the application, governed by principles analogous to those set out in s 10(9) of the Children Act 1989. Applying those principles, the court found that adoption had demonstrable benefits that residence did not provide and that special guardianship would be much less likely to provide. Permitting Mrs F to take a full part in the process ensured that her rights under Arts 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 were protected (see paras [90], [93], [96]).

(4) On the basis of ss 10(5)(A) and 14(A)(5)(d) as inserted into the Children Act 1989 by the Adoption and Children Act 2002, Mrs F became eligible to apply for a residence or special guardianship order without the local authority's consent on the first anniversary of the child's placement with her. Given the court's conclusions on welfare and the child's need for a permanent family, it was wrong not to apply those same conclusions to what the position would have been if Mrs F had already applied for those orders. In the circumstances, applications for those orders would have been refused (see para [95]).

(5) Because the whereabouts of the child's birth parents were unknown, their consent was dispensed with on the ground that they could not be found. Section 18(3) and 18(6) of the Adoption Act 1976 were satisfied (see para [102]).

(6) The making of freeing orders was permitted under the pre-existing statutory code where, as here, the application was pending at the time the new code came into effect on 30 December 2005 and included the circumstance that the child had not yet been placed for adoption by an adoption agency (see para [104]).

Statutory provisions considered top

Adoption Act 1976, ss 6, 18

Children Act 1989, ss 1(3), 8, 9(3), 10(5)(A), (9), 14(A)(5)(d)

Adoption and Children Act 2002, s 113, Schs 3, 4

Adoption and Children Act 2002 (Commencement No 10 Transitional and Savings Provisions) Order 2005 (SI 2005/2897)

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Arts 8, 9

United Nations Convention on the Rights of the Child 1989, Arts 8, 35

Cases referred to in judgment top

A (Minors) (Residence Orders: Leave to Apply), Re [1992] Fam 182, [1992] 3 WLR 422, [1992] 2 FLR 154, [1992] 3 All ER 872, CA

G (Child Case: Parental Involvement), Re [1996] 1 FLR 857, CA

Gloucestershire County v P and Others [2000] Fam 1, [1999] 3 WLR 685, [1999] 2 FLR 61, CA

H (Minors) (Sexual Abuse: Standard of Proof), Re [1996] AC 563, sub nom *Re H and Others (Minors) (Sexual Abuse: Standard of Proof)* [1996] 2 WLR 8, sub nom *Re H and R (Child Sexual Abuse: Standard of Proof)* [1996] 1 FLR 80, HL

Haringey London Borough Council v C, E and Another Intervening [2004] EWHC 2580 (Fam), [2005] 2 FLR 47, FD

J and Another v C and Others [1970] AC 668, [1969] 2 WLR 540, [1969] 1 All ER 788, HL

J (Leave to Issue Application for Residence Order), Re [2002] EWCA Civ 1364, [2003] 1 FLR 114, CA

Jones v Great Western Railway Co (1930) 47 TLR 39, (1930) 144 LT 194, [1930] All ER Rep Ext 830, HL

Loveday v Renton [1990] 1 Med LR 117, CA

M (Care: Contact: Grandmother's Application for Leave), Re [1995] 2 FLR 86, CA

O and N, Re; Re B [2003] UKHL 18, [2003] 1 FLR 1169, [2003] 2 All ER 305, HL

P (A Minor) (Residence Order: Child's Welfare), Re [2000] Fam 15, [1999] 3 WLR 1164, sub nom *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573, [1999] 3 All ER 734, CA

U (Serious Injury: Standard of Proof), Re; Re B [2004] EWCA Civ 567, [2005] Fam 134, [2004] 3 WLR 753, [2004] 2 FLR 263, [2004] All ER (D) 197 (May), CA

W (A Child) (Care Proceedings: Leave to Issue Application), Re [2004] EWHC 3342 (Fam), [2005] 2 FLR 468, [2004] All ER (D) 197 (Nov), FD

W v Ealing London Borough Council [1993] 2 FLR 788, CA

[2007] 1 FLR 1037

James Presland for the applicant
Martha Cover for the first and second intervenors
Adrienne Barnett for the respondent child
Maggie Jones for the third intervenor
Michael Nicholls for the fourth intervenor
Julie Hine as advocate to the court

Cur adv vult

RYDER J:

Introduction

[1] C is a young boy who is believed to have been born in October 2003. If that is right he is just over 2½ years old. His birth parents are unknown because he is a victim of child trafficking, ie international child abduction for financial gain. He was brought to this country from the Republic of Kenya on 16 October 2003 by Mrs E, a woman who claimed to be his mother. Neither Mrs E nor her husband, Mr E, sought to conceal C's existence, quite the contrary, but there followed in consequence child protection inquiries that led to him being removed into the care of the applicant local authority, the London Borough of Haringey, on 14 November 2003.

[2] The background circumstances of this tragic case and the findings of this court on the facts in issue are set out in a judgment that was handed down in public on 12 November 2004 and which is now reported as *Haringey London Borough Council v C, E and Another Intervening* [2004] EWHC 2580 (Fam), [2005] 2 FLR 47. The proceedings were known colloquially as the 'miracle baby case'. C remains in the interim care of the local authority and is placed with a foster carer, Mrs F. C has had no contact with Mr or Mrs E since his removal into care.

[3] Mr and Mrs E remain firmly of the view that they are C's birth parents despite this court's judgment and they pursue their fervent wish that he should return to their care. Mrs F also wishes that C should continue to live with her. The local authority plan is and has always been that C should be adopted. There are approved adoptive applicants, Mr and Mrs A, who like Mr and Mrs E and Mrs F, are ready and willing to offer C a permanent home.

[4] The formal applications before the court are as follows:

(i) by the local authority for a care order and for a declaration freeing C for adoption;

(ii) by Mrs E for a residence order, permission having been given to make that application by Johnson J on 27 February 2004;

(iii) by Mrs F to be joined as a party to the proceedings with a view to asking the court to make a residence order and in due course a special guardianship order.

[5] Within the proceedings so far, Mr and Mrs E have asserted that although C does not have their DNA, he is their child by a conception and birth that were miracles that arose out of the power of prayer, ie the will of God. Mr E in particular objects to the scientific description that C is not their biological child and that they are not his birth parents. They say that faith provides the answer for that which medical science cannot or will not explain.

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For the reasons set out in this court's earlier judgment, I held that Mrs E had neither given birth to nor had been pregnant with C (or any other relevant child) and that she and Mr E had been cruelly deceived into thinking that C was their child and a miracle birth for the financial benefit of others.

[6] In order that this judgment may be understood it must be read alongside my first judgment. However, for clarity I shall repeat the summary of relevant findings that can be found at the conclusion of that first judgment:

> 'I have decided that fact not faith is the explanation for the birth of C. I have been greatly assisted by Dr O who was asked to consider whether in consequence C is likely to suffer significant harm. Dr O has described to the court the dangers inherent in C growing up with a false view that he is a miracle child with carers who are of the same view if that is not in fact the case.
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> All children should be able to understand where they come from and where in the context of life they belong. C cannot do that because he has no accepted identity with Mr and Mrs E. The claimed relationship with Mr and Mrs E would be founded on a lie which when discovered would likely lead to a profound disruption. If the basis of his existence is denied there will be adjustment problems, feelings of grief, loss and rejection. The risk is great. The lack of any family medical history may present C with additional difficulties as he grows older. I accept the evidence of Dr O …
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> Mrs E in one aspect of her evidence that does her no credit sought to deny Dr O's reported discussion with her to the effect that C would be a miracle child. At the very least she hopes he will have special powers and gifts, though she accepts that will be a matter for God alone. Dr O was clear that both Mr and Mrs E were of the opinion that as C grew up he would realise that he had a special purpose in life. Mrs E equally denies her discussions with the social worker that if C does not accept his birth, he would be left to his own fate. She now says that he would always be a part of her family.
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> Mrs E said that although she would support the return of C to his birth parents if I find that his birth is not a miracle, she would not believe any DNA test that matches C to any other adults as their child. Mr E agrees and says that he will work with professionals but points out that he cannot be expected to accept a lie (ie that C is not his child by miracle birth).
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> Although I have decided that C's birth as described was a falsehood not a miracle, Dr O urged upon me a professional consideration of Mr and Mrs E's response to that finding not least because they wish to pursue their application that C should return to live with them. In light of their evidence to me, that step (if accepted by Mr and Mrs E) must be taken in parallel with an urgent investigation into C's origins and must not delay his long term and hopefully permanent placement with a family.
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> C is entitled to know who his birth parents are and to have a relationship with them, if they can be found. It may be that even with the benefit of DNA testing C's origins will remain unknown. C may not be Kenyan though he is certainly African. The Director of Children's

> Services in the office of the Vice P of Kenya has offered to arrange care for C and that may also be a matter that should be investigated. C has no psychological roots other than with his day to day carers, but he has long term cultural and religious needs. If an alternative permanent placement has to be found he needs that as soon as possible, to be able to develop the security, stability and attachments of family life.
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> Having regard to the facts I have found I am satisfied that the threshold in section 31 of the [Children] Act [1989] is satisfied as follows—
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> (a) C is not the child of those adults who have claimed to be his parents;
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> (b) C is the natural child of unknown parents from whom he was by an unknown means removed;
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> (c) C's identity is at present unknown;

(d) If C's future care is founded upon a lie he will likely suffer profound harm;

(e) At the point that protective steps were taken C's care was based upon a fundamental lie.

I am not in a position to make a final decision about C's future although I have no doubt that the balance of the evidence as to the risk of harm is against Mr and Mrs E and strongly suggests that C's welfare demands that he remain in the protective care of the local authority for the time being.

The local authority wish to move to a permanent placement with a family in the United Kingdom but have very properly agreed to use their best endeavours to work with central Government and police agencies here and abroad to try and trace C's birth parents.'

[7] Mr and Mrs E cared for C for just over 6 weeks of his life. During that brief period their relationship with him and their practical and emotional care of him was excellent and has not been the subject of any criticism before this court. Since their first appearance before Johnson J this court has treated Mr and Mrs E as significant adults in C's life who enjoyed the existence of de facto family life before his removal into care.

[8] This was the backdrop against which the court and the local authority sought to plan for C's future. There were three parallel processes: (a) the investigation of whether C's genetic parents could be traced; (b) an assessment of Mr and Mrs E and their capability to provide for C having regard among other issues to their response to the court's judgment; and (c) the local authority's plan to place C for adoption. As will become clear, Mrs F's wishes and feelings and in particular her desire to look after C in the long term provided an additional dimension.

[9] The key issue is of course what is in C's best interests. The assessments and investigations that were undertaken have concluded that Mr and Mrs E should not be C's permanent carers. The local authority and the child's representatives likewise advise the court that Mrs F should not be C's permanent carer. Those conclusions were not accepted by the intervenors and accordingly there have been a series of hearings that have led to the handing down of this judgment today. I have heard and read extensive evidence from

Mr and Mrs E, Mrs F, the local authority social work and placement teams, the former children's guardian and the forensic experts appointed to undertake assessments and report to the court.

[10] In the course of hearing that evidence, I have concluded that the opinions of Mr and Mrs E that I came to in November 2004 remain correct. Despite this, I have not assumed that Mrs E's evidence is tainted by incredibility, quite the contrary, her evidence on each issue has been heard on its merits and I have striven to obtain from Mr E the faith based context for the assertions that he makes. Although I am pleased to record that he obtained legal aid to be represented for the final hearing, I have permitted him at every stage to submit his own documents and to ask his own supplementary questions, so that the context of his case should not be lost. In recording this, I do not want to detract from the advocacy of Ms Cover who on behalf of Mr and Mrs E has repeatedly demonstrated the very highest professional standards in the work she has undertaken.

[11] In the process of considering the assessment materials and opinion evidence put before me, I have had to make some additional findings of fact. As before, I have done so having regard to the well known principles regarding the burden and standard of proof described by Lord Nicholls of Birkenhead in *Re H (Minors) (Sexual Abuse*: *Standard of Proof)* [1996] AC 563, [1996] 1 FLR 80, at 585–591 and 90–101 respectively and *Re O and N*; *Re B* [2003] UKHL 18, [2003] 1 FLR 1169, at paras [16] and [17] and have kept in mind the wide context of social, emotional, ethical and moral factors that informs the fact finding process: see *Re H* above, at 591 and 101 respectively and *Re U (Serious Injury*: *Standard of Proof)*; *Re B* [2004] EWCA Civ 567, [2005] Fam 134, [2004] 2 FLR 263, at para [26].

[12] In addition to the findings that I made in November 2004 as to the likelihood of harm to C, which have not been undermined by any of the evidence I have subsequently heard, I have had to come to conclusions as to each of the factors that are described in s 1(3) of the Children Act 1989, ie the welfare checklist. The most relevant factors are the risk to C inherent in each of the options presented to the court, including the likely effect upon him of any change of circumstances and the capability of each of the applicants to meet C's needs in the context of those risks. In accepting expert forensic opinion evidence on these issues which is itself a process of deduction from fact or in making the court's own deductions and assessments, I have applied the test set out by Lord Nicholls of Birkenhead in *Re O and N*; *Re B* [2003] UKHL 18, [2003] 1 FLR 1169, at paras [23]–[41] and have been careful: (a) to distinguish inference (ie logical deduction from established facts) from conjecture or speculation: *Jones v Great Western Railway Co* (1930) 47 TLR 39; and (b) to test the soundness of an expert's opinion, no matter how eminent or uncontradicted, so as to determine the extent to which the opinion is supported by the evidence: *Loveday v Renton* [1990] 1 Med LR 117, at 125, per Stuart-Smith LJ.

[13] The experts who have greatly assisted the court in this and previous hearings are:

(i) Dr Adesida, a consultant child and adolescent psychiatrist who gave advice under the pseudonym Dr O that the court relied upon in November 2004 and who has continued to provide very

great assistance by his careful and cogent evidence which is informed by his appreciation of cultural, religious and racial perspectives;

(ii) Dr Cameron, a consultant child and adolescent psychiatrist;

(iii) Dr Cutting, a consultant adult psychiatrist;

(iv) Dr McDonald, a consultant psychiatrist in women's health and peri-natal psychiatry;

(v) Professor Fleming, a consultant haematologist;

(vi) Ms Pring, an independent social work consultant.

[14] After the final hearing and the subsequent applications to admit additional evidence, the court was told that the Children and Family Court Advisory and Support Service (CAFCASS) sought to have the appointment of the children's guardian terminated for reasons unconnected with this case. With the agreement of the parties, the guardian's appointment was discharged and a new guardian was appointed. The parties were able to agree that the court's consideration of the evidence in this case was not prejudiced by any advice proffered by the original guardian because the court had quite independently formed the view that it could not rely on unsupported assertions by the guardian in the circumstance that she had previously formed a view about Mr and Mrs E based at least in part upon her disapproval of their faith (see paras [27] and [31] of the judgment of 12 November 2004). I record the fact that despite this, C's legal team has provided very great assistance for which I am grateful.

The position in Kenya

[15] Having regard to the duties placed upon the state by Arts 8 and 35 of the United Nations Convention on the Rights of the Child 1989 this court specifically requested that steps be taken to see if C's birth parents could be traced. The local authority made strenuous efforts to identify C's birth parents with representatives of the competent authorities and Governments of the following states: Kenya, Ethiopia, Tanzania, Uganda, the Sudan and Somalia. In reality, having regard to C's age at the time of his removal, his most likely birthplace was Kenya and inquiries elsewhere were a safeguard to establish whether there were contemporaneous reports of child kidnapping.

In Kenya, inquiries were made through the State's welfare department and criminal investigation authorities and advertisements were placed in the National press.

[16] The court has been told that 52 potential claimants came forward to the Kenyan authorities as potential birth parents for C in response to the ongoing criminal investigations in that country and the advertisements placed there. Each of the claimants agreed to DNA testing. None of those who have come forward to say that they have lost a child has DNA that matches that of C and it is with the greatest of regret that the court has had to conclude, with the agreement of the parties, that having striven to find C's genetic parents, it can wait no longer to provide the stability and security that C deserves and requires.

[17] The Kenyan Government briefly intervened in these proceedings in response to the court's request made on 17 February 2005 that they should clarify their claim to the care of C and the arrangements that would be put in place to safeguard his welfare. As late as 9 June 2005 a Mr Hussein, the

Acting Director of Children's Services in the Office of the Vice President and Ministry of Home Affairs of Kenya confirmed in a letter to the British High Commission in Nairobi that if the court was satisfied that C was a Kenyan child then he should be brought back to Kenya for 'necessary alternative family care placement'. Further, on 15 June 2005 the Director of Criminal Investigation in the Office of the President of Kenya, Mr Kamau, said that at the close of their investigations they would request C's return 'because he will be useful in the trial of Mrs E' repeating the position set out by the same authority on 2 February 2005 that led this court to issue its request.

[18] Despite significant efforts made by the local authority solicitor and representatives of the British High Commission in Nairobi, the final position was not ascertained until 6 June 2005 when the High Commissioner of the Republic of Kenya appeared by counsel and confirmed that his Government did not seek C's return to Kenya and had no welfare proposals to put before the court relating to his welfare. Insofar as they had any view, it was that C should be adopted rather than placed with Mr and Mrs E.

[19] The court is grateful to CAFCASS Legal who briefly acted as advocate to the court in respect of this issue, the local authority solicitor, the Foreign and Commonwealth Office, the British High Commission in Nairobi, the Kenyan High Commission in London and the solicitors and counsel instructed by the High Commissioner of the Republic of Kenya for their assistance. Although these inquiries took a great deal of time to come to a conclusion, there were at the same time parallel inquiries, investigations and assessments in relation to the question of where and with whom C should be permanently placed.

The assessments of Mr and Mrs E

[20] Mr and Mrs E ask the court to make a residence order so that C shall live with them again. They love C and their commitment and devotion to him has not diminished with time. They would agree to initial supervision of their care by the local authority. They do not wish to adopt C as they regard him as their son and likewise, although they will accept supervision by the local authority, they do not seek to become approved foster carers.

[21] Mrs E was born on in September 1966 and is now 39. Mr E was born on in June 1957 and is now 49. They were married on 7 February 1998. Their marriage is a fundamental part of their faith and is for life. They have many friends and extended family both here and overseas and a close and supportive care network. They describe their life as being in the service of God. Mr E is in good health. Mrs E has in the past experienced sickle cell disease crises and complaints consistent with that diagnosis.

[22] Having regard to the advice of Dr Adesida, which was accepted by the court in November 2004, an important element of this hearing has been to assess whether Mr and Mrs E have changed

their views sufficiently to enable C to be protected from the risk of harm that the court accepted would arise if C's future life and placement were founded on a lie. Initial indications were not optimistic.

[23] Mrs E believes she is again pregnant and that she has been since before this court gave judgment on the facts in November 2004. There is no medical evidence to support the existence of the pregnancy which she describes as a spiritual pregnancy. She and Mr E say that this is not

uncommon in the Pentecostal Christian Ibo community of Nigeria where, they say, pregnancies of up to 3 years are experienced. So far as her illness is concerned she believes herself to be cured and Mr E says that his 'wife maybe had spirits that caused her ill health'.

[24] At the end of the hearing in November 2004 Mr and Mrs E were given permission to instruct a consultant adult psychiatrist to advise the court on their parenting abilities having regard, for example, to the issues that had been raised by Dr Adesida and the possibility that Mrs E was experiencing and had experienced one or more pseudocyeses.[1] On 23 December 2004 Mr and Mrs E notified the court that they no longer wished to proceed with a psychiatric assessment and after giving them time to consider their position, that permission was discharged on 17 February 2005. At the same time Mr and Mrs E were given permission to instruct Dr Cameron, a well-known consultant child and adolescent psychiatrist, to advise the court upon their capabilities as carers from the perspective of the child's future needs. They have also been assessed by an independent social work consultant, Ms Kathy Pring.

[25] Despite the initial and quite strong optimism expressed by Dr Cameron, neither he nor Ms Pring now support a placement of C with Mr and Mrs E. Likewise, Dr Adesida continues to advise the court against such a placement.

[26] On 9 January 2005, Mr and Mrs E signed a joint statement responding to the court's first judgment by declaring that it was unacceptable to them because the court did not accept their spiritual explanation for the birth of C to Mrs E. Mr E went further and, distinguishing his previous evidence to the court, maintained that although he accepted and still accepts that his DNA does not match that of his alleged children, including C, that does not mean they are not his biological children: to the contrary he firmly asserts that they are. There was nothing in that statement that demonstrated any acceptance of the court's findings or of the fact that C has two stories relating to his past: the secular or scientific and the religious. Not even lip service was paid to the court's judgment or the possibility of a secular explanation for C's birth.

[27] Among the matters that I have already found as a fact were the comments made to Dr Adesida by Mrs E that she hoped 'at least that C would have special powers and gifts' and the subsequent comment by Mr and Mrs E to Dr Adesida that C would realise as he grew up that he had 'a special purpose in life'. Alongside the rejection of the court's judgment as to the circumstances of C's birth and parentage that is contained in Mr and Mrs E's joint response there was a forceful rebuke from Mr E that he would not be intimidated to tell lies (about his beliefs) to get his child back.

[28] Subsequently, Mr and Mrs E sent a message and birthday card to C on his first birthday from themselves and the church community, the content of which has concerned all of the experts who advised the court on this aspect of the evidence. Mr E said: 'We want you to know that you are born to impact your generation, this is why the enemy is fighting …'. The members of the congregation expressed the following opinions 'you are a blessing to this

generation', 'may God add many more years for you to fulfil his purpose he ordained you to do', 'you are a sign to the world' 'our God given Baby [C] we are waiting to worship you'.

[29] In written and oral evidence to the court Mr and Mrs E sought to emphasise that all of their children are special and will impact their generation and that the miracle is C's birth not any special status or powers that he may thereafter have. They assert that they believe he will be a normal little boy. This evidence was consistent with one of the discussions Mr and Mrs E had with Dr Cameron when they first met and which swayed Dr Cameron to believe that they may have some insight into the court's concerns.

[30] Dr Cameron also believed that he had detected some change in their perceptions as to the court's findings. It is not in issue that they reject those findings both as they relate to the birth of C and the likelihood of harm. So far as they are concerned they state in terms that their position as respects C's birth will never change and that they do not accept that children come to harm either because of the circumstances of their miracle birth or when they are told of that birth. So what was it that Dr Cameron detected that caused him to hold the opinion that they should be considered as carers?

[31] There were two elements to their discussion with him. The first is the possibility that Mr and Mrs E would be able to give C both their own story (the spiritual story) alongside the scientific story and the second was that they said that if any person presented themselves with matching DNA they would have relinquished all claim to C despite their beliefs. The first I have had to assess in evidence and the second is a partial recognition that even the most devout members of their own community would have doubts as to the birth of C if DNA related adults came forward and whatever Mr and Mrs E and others in the Gilbert Deya Ministry might think of scientific evidence, it would be a grievous sin to keep someone else's child.

[32] Accepting as I do the elaborate and emotionally charged nature of charismatic language and the fact that the comments on the birthday card as opposed to Mr and Mrs E's message were those of others, I nevertheless do not accept Mr and Mrs E's rationalisation of the words used. Nor do I accept that it was reasonable to expect them to be communicated to C. I have come to the strong conclusion that they approved of them at the time and now and furthermore that they believe in them. Mrs E told me as much.

[33] Despite this, I accept that there was some change in their perceptions that was enough to justify Dr Cameron's opinion and the subsequent experts' discussions and propositions, although as I shall relate, I have concluded that the optimism expressed by Dr Cameron about Mr and Mrs E's ability to communicate the secular story to C was misplaced.

[34] Mr and Mrs E told Dr Cameron and Ms Pring, the independent social work assessor instructed on their behalf, that C is their birth child. To Ms Pring Mr E added that white people in Britain are putting pressure on Kenya to assist the local authority, that they are the victims of racial and religious persecution and that they will pray for any adoption of C to fail.

[35] It is important to understand Mr E and not to rush into judgment of him. He says that his family do not challenge the medical or scientific evidence because that is not the way to understand truth. Science cannot authenticate the truth of God's word. He and Mrs E have faith and their faith is anchored in the scriptures and is best summarised by these quotations from

the New Testament of the Bible: 'all things are possible to him who believes' (Mark Ch 9, v 23), and 'for with God nothing shall be impossible' (Luke Ch 1, v 37). He relies upon the scientific and medical impossibility of some of the truths described in scripture including miracle birth and says with conviction if those miracles were possible then it was and is the same God who can and does provide for them now. He points to the scriptural truth that recorded miracles did not cause psychological or emotional damage then because God is the author of peace not confusion, so why should they now?

[36] I set out his position in some detail lest it be thought that this court may have misunderstood or misconstrued this devout and peaceful man and the hurt that he undoubtedly feels, which is expressed in his more emotive allegations against those who he characterises as 'the enemies

of the church': the local authority and the former children's guardian, who 'are being used by Satan'. Religious, racial and cultural factors are integral elements of welfare and may on the facts of a particular case provide both the positive and negative factors and context by and within which decisions have to be made. However, whatever an individual belief system may provide for, and despite the respect that will be given to private and family life and the right to freedom of thought, conscience and religion and the freedom to manifest religion or belief in worship, teaching, practice and observance (by Arts 8 and 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention)) the law does not give any religious belief or birthright a pre-eminent place in the balance of factors that comprise welfare *ReP (AMinor) (Residence Order: Child's Welfare)* [2000] Fam 15, sub nom *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573, at 586E and 597B–599E, 30 and 41–43 respectively; and *J and Another v C and Others* [1970] AC 668, at 771–711. Furthermore, the safeguarding of the welfare of vulnerable children and adults ought not to be subordinated by the court to any particular religious belief.

[37] In analysing Mr and Mrs E's application to be C's permanent carers, it is important to remember the key issue that separates Mr and Mrs E from the local authority and the child's representatives. Although Mr and Mrs E would always regard a placement with them as the return of their son, C is not their genetic child, this would not be the placement of a child back with his birth family nor would it be the placement of a child in a new and approved adoptive or foster care family. Indeed, having regard to the very particular requirements for the assessment and approval of a child who has been removed from his country of origin, I accept that it is most unlikely that such approval, if sought, would be obtained. In any event, Mr and Mrs E do not want to be considered as adoptive applicants nor do they seek the return of C under the protection of a care order, ie they do not want to be approved foster carers. They want C to live with them under a residence order. If the court does not accede to their application, they do not want direct or indirect contact with C.

[38] At an experts' meeting prior to a hearing in May 2005 Dr Adesida and Dr Cameron were able to agree the following propositions:

(i) C should be in a permanent placement.

(ii) If Mr and Mrs E's views remain unchanged, namely that Mrs E

did give birth to C and was not a victim of a cruel deception involving an assault upon her, their care of C would be harmful, ie some acceptance of the terms of the judgment is needed.

(iii) A distinction is to be drawn between an 'ordinary special child' in an average family and a child brought up by parents who have a 'near delusional' belief in the child's sanctity.

(iv) The latter situation, a parent/child folie-a-deux, constrains the child's individuality and risks being emotionally abusive.

(v) C's welfare would be promoted by him being given a dual story because that is a record of what actually happened, ie a spiritual story and a secular story that are neither equal nor matching and that re-tell his history.

(vi) C should also be given the similar dual stories that relate to A (the child who died in Kenya from postbirth complications) and G (the child detained by the Kenyan authorities) neither of whom are related to C nor to Mr and Mrs E.

(vii) Mrs E would have to surmount two additional hurdles to be able to care for C:

(a) whether her sickle cell anaemia affects her ability to parent C;

(b) whether her pregnancy related mental health impairs her ability to parent C.

(viii) Mrs E does not accept the evidence that the court accepted about C's birth, ie she does not accept that she did not give birth to him but her belief which is essentially dictated by her religious faith need not undermine her parenting of C (provided there is acceptance of the judgment at least at the level of being able to tell C: (a) the religious belief (which is not a subjective truth) that spiritual intervention led C to being their child; and (b) the secular finding that he was born to some other parents and transferred to Mrs E covertly (which is not an objective truth).

(ix) There is evidence of a change of view which if it persists and is accepted by the court would permit Mr and Mrs E to bring up C as a normal boy rather than one who is special, ie the parents suggestion to Dr Cameron that 'though he is a miracle baby born as a result of spiritual intervention, they regard him, like other miracle babies as being an ordinary boy, and would bring him up as such' and they 'have no expectation of C growing up with some kind of extraordinary ability: that ended with his birth, he's now the same as any child'.

(x) Stranger adopters should take priority if well matched (ie culturally and racially) but if none are available Mr and Mrs E should be considered provided Mrs E's haematology and mental health circumstances do not significantly impair her parenting competence as should trans-racial adoptive and foster care placements.

(xi) If Mr and Mrs E refuse to be assessed they would be disqualified from further consideration.

[39] It can be seen that in their conversations with Dr Cameron there were some indications that Mr and Mrs E had become more pragmatic and accepting of the views of others including the court. It was in this context and the delay in finding any suitable adoptive carers that Drs Adesida and Cameron perhaps surprisingly agreed that Mr and Mrs E should be further considered by the court subject to evidence about their health.

[40] On 25 May 2005 and following the joint advice of Dr Adesida and Dr Cameron, evidence in relation to Mrs E's health was commissioned from Professor Fleming, a consultant haematologist and Dr Cutting, an adult psychiatrist. Subsequently and after it transpired that Dr Cutting wished to defer to an expert with specific expertise in women's and peri-natal psychiatry, the local authority applied for and successfully obtained permission to instruct Dr McDonald. In stating their opposition to the instruction of Dr McDonald, Mr E reiterated the couple's opinion that the case was entirely based upon belief, ie the power of God to do unusual miracles including pregnancy conceived through the power of prayer, and that unless Dr McDonald had experience of such miracles she would not be able to assist.

Haematology

[41] Professor Fleming is a haematologist with a considerable international experience. He confirmed that Mrs E does have moderately severe sickle cell disease. She had a significant history of crises and treatment in the decade from 1991 to 2001. She has severe liver disease as a complication of her sickle cell disease that has progressed (adversely) since December 2000. In addition, she has a mild aortic incompetence, retinopathy and asthma.

[42] Mrs E reports that she has been symptom free since 2002. Lest it be thought that she is not relating the truth of her present symptoms to the court it is important to record that Dr Norman Parker, Mrs E's new consultant haematologist and treating clinician, reports that Mrs E is not imagining that she is well, she is in fact well and that the improvement in her health could be consistent with the after effects of pregnancy.

[43] Professor Fleming advised that:

(i)

there is a probability, if not a certainty, of future acute sickle cell crises that will require hospitalisation;

(ii) if Mrs E seeks and complies with medical advice then the development of associated organ failure would not reduce her chances of caring for C during his childhood below 80%;

(iii) Mrs E's continued belief in her spiritual cure will undermine her capacity to parent.

[44] Dr Cameron had initially advised the court that C should not be placed with Mr and Mrs E if the medical advice was that Mrs E was more than likely to suffer from lifethreatening episodes, hospitalisations in the future and have impaired energy such that C would be condemned to a stressful upbringing. His final position on this aspect of Mrs E's capability to care is that Professor Fleming's evidence is not such that she would be prevented from being C's carer on this ground. Not everyone takes such an optimistic position, but the consensus of medical opinion is that Mrs E is not ruled out as a carer on this ground.

Mrs E's mental health

[45] Dr Cutting could not advise upon parenting skills or issues relating to mental health in child birth. However, he was able to confirm that Mrs E does not suffer and has not suffered from a formal psychiatric disorder. He says that Mrs E is not delusional because to be so she would have to hold a false belief that does not conform to her cultural and subcultural background. Her belief is in accordance with the beliefs of the discrete church and community in which she lives (and that from which she and her husband originate in Africa). She has the potential therefore to be an adequate parent in that she is no more likely than anyone else to develop a mental illness.

[46] Dr McDonald, in a very learned and erudite synopsis, reviewed the world literature and thinking on pseudocyesis. I accept that she was significantly hampered by the curtailment of her history taking from Mr and Mrs E but what she said about pseudocyesis is, I find, reliable and cogent. She analysed the vague and incomplete accounts of Mrs E's pregnancies, foetal movements and medical history and formed a clear opinion from which no professional dissented.

[47] Dr McDonald said that Mrs E's presentation is consistent with pseudocyesis and that it is likely she has experienced previous pseudocyeses. She is an emotionally vulnerable woman who has suffered significant trauma in relation to her infertility and sickle cell disease. Dr McDonald's opinion was that the influence of the Gilbert Deya Ministry in maintaining Mrs E's belief that she is pregnant is highly important. It is not likely she will be able to change because of the positive impact of her belief upon her. To challenge her beliefs while the proceedings are ongoing would be extremely difficult. On the one hand to have someone else's baby is profoundly morally unacceptable but to concede otherwise they (Mr and Mrs E) would face the loss of C and cultural acceptance. Even to confront the lack of a genetic relationship would place them in an extremely difficult position.

[48] Dr McDonald's opinion is that Mrs E's pseudocyesis appears to be a chronic or at least recurring condition with no evidence that it is likely to resolve in the near future. She is also of the opinion that Mrs E's pseudocyesis and her broader psychological functioning would potentially undermine her capacity to parent and address the needs of a developing child in a realistic fashion at least to this extent: that if Mrs E confronts her pseudocyesis she is likely to become severely depressed. The church has a placebo effect. Taking treatment could be regarded as an admission of lack of faith. Dr McDonald believes that it is virtually impossible in light of her psychological trauma that she could ever tell the secular version in a balanced way or work with others to obtain psychological or emotional help.

[49] I have had regard to the fact that in a number of countries around the world, including in Africa, inter-family or community informal placements or adoptions are more common, especially where that can provide the hope for a better life for the child and the solution to the childlessness of a particular relative which may in some cultures be regarded as shameful. Such a placement

would not be a pseuodcyesis and reference to pregnancy in that context may be colloquial and in accordance with the cultural norms in which it occurs. All of that may be relevant on the facts of an appropriate case, but C was not placed with Mrs E as an inter-family or community placement, that

has never been her case, nor would it explain the present spiritual pregnancy or the falsity of the documentation that was provided for C which Mrs E adamantly continues to deny.

Formulation

[50] On 7 November 2005 there was a further experts' meeting between Dr Adesida, Dr Cameron, Dr McDonald and Dr Cutting. They agreed that in their opinion Mr and Mrs E believe that the pregnancy and conception came about by divine intervention although Dr McDonald thought that she had detected some awareness in Mrs E that she did not deliver the baby and acknowledgement was given to both Mr and Mrs E for some insight, albeit that the central tenets of the court's judgment remained unacceptable to them. The experts agreed that Mr and Mrs E's beliefs would lead them into conflict with the needs of C, just as there is already conflict between the secular and the spiritual stories that cannot be resolved. The experts agreed that if C was swept into the belief that he was special and finds out how he really came to be with Mr and Mrs E it would lead to conflict that could be damaging and that the risk of emotional and developmental harm would be greater than in a conventional adoptive placement. The experts accepted that Mr and Mrs E would have difficulty in giving to C an account of his origins that at least gives the secular story equal status to the spiritual whereas adopters would be able to tell both stories and could be expected to be more detached in their account.

[51] They identified a checklist of factors:

(i) Positive:

- (a) they love him dearly;
- (b) he would fill a huge gap in their lives;
- (c) they are highly motivated;
- (d) there is an enduring nature to the emotional attachment Mr and Mrs E feel for C;
- (e) C would be attentively cared for
- (f) they have a real commitment to one another;
- (g) they have a network of family and friends.

(ii) Negative:

- (a) the belief system's account of where children come from;
- (b) their continuing belief concerning pseudocyesis;
- (c) Mrs E's vulnerability to breakdown;
- (d) their attitude towards professionals;
- (e) the concern over C's future medical care;
- (f) Mrs E's physical health impairment;
- (g) Mrs E's psychological functioning;
- (h) Mrs E's chronic anaemia as an impairment to functioning.

(iii) They advised the court that the negatives outweigh the positives.

[52] The experts' meeting agreed that attachment, good parenting and permanency of placement were now the most important factors for C. Drs Adesida and Cameron agreed that C is securely attached and has the

capacity to attach with others. They likewise agree that an African match would be better than an African Caribbean family but that the first consideration must be a permanent match and good parenting. C would not be likely to suffer significant harm in an adoptive family when his origins were explained to him but he would need to have the benefit of good life story work.

[53] In oral evidence Dr Cameron finally advised the court that if Mr and Mrs E believe that C is a special or miracle boy that would be an important risk as it would be delusional. Likewise the key risk issue arising out of the background history is the lack of acknowledgement by Mr and Mrs E that C has been removed from another parent, rather than their religious beliefs. Dr Adesida in conclusion advises that even if it is accepted they will tell both stories, they will not give the secular story emphasis as for them the stories are mutually exclusive. Mrs E said in evidence that she would tell him the truth: that he was born by prayer and could only tell him the secular story after she had told him the truth.

[54] Ms Pring, the independent social worker instructed by Mr and Mrs E, confirmed that in her opinion Mr and Mrs E do not believe in the secular story and that C would be told by Mr and Mrs E that he is their child, by conception and birth. In her opinion, any attempt by them to recite two stories could not be balanced. A placement with them would carry the permanent risk that the trust and transparency between carers, children and professionals that is part of the framework and success of permanent placements would be compromised. There are conflicting stories that would in their telling by Mr and Mrs E cloud the clarity of his life story so as to obscure rather than be transparent about the unknown aspects of his life ie the circumstances that led to the loss of his genetic parents. That conflict has to be resolved to this court's satisfaction if there are not to be serious consequences for C's well-being.

[55] In answer to the experts, Mr and Mrs E assert that they will tell C the truth which is that he is their child, that he was born through prayer but that his DNA does not match theirs and it is that which causes the authorities to be concerned. They also say that they would not allow him to be treated as a special child in the sense of having extra-ordinary powers or significance as that would be contrary to their faith. The miracle is in his birth not his life.

[56] The local authority continues to oppose the placement of C with Mr and Mrs E for the following reasons:

(i) it will be important in due course for C to resolve his issues of loss relating to his birth parents and he is not likely to be able to do that with Mr and Mrs E;

(ii) the placement may be seen by them and others including C in due course as a vindication of their beliefs as to C's birth and a legitimation of child trafficking;

(iii) C has no biological, physical or emotional attachments to Mr and Mrs E, as distinct from the emotional attachments Mr and Mrs E feel for C;

(iv) Mr and Mrs E are not related to C and do not intend to adopt him: they put themselves forward as birth carers not substitute

carers: they would not be approved by the local authority as foster carers and could not be approved as adopters for an overseas child;

(v) Mrs E continues to say that she is again pregnant despite negative pregnancy tests and does not accept that her previous and present pregnancies were pseudocyeses;

(vi) Mr and Mrs E have another alleged miracle baby G who was seized by the Kenyan authorities and who is not DNA related to them: there are no known plans for his care and the introduction of him into their family with C;

(vii) Mrs E may yet be extradited to Kenya to face criminal prosecution in that country.

[57] They place particular emphasis on the following:

(i) C should know the truth of his upbringing not just dual stories of doubtful comparative significance or importance;

(ii) to place C with Mr and Mrs E would compound his lack of identity and the lack of knowledge about his origins with layers of confusion caused by the spiritual account of his birth and Mr and Mrs E's emotional complicity in a story that would amount to being a cover up of his abduction from his natural parents (the profound lie referred to by Dr Adesida);

(iii) for the placement to work the story would have to be private ie kept out of the public domain, something initially supported by Dr Cameron, a story best kept private for C and his family: in the circumstance of Mr and Mrs E's strong adherence to their faith that is simply not possible;

(iv) Mr and Mrs E would continue to practise their faith with C and that involves the celebration of miracles including C's miracle birth;

(v) Mr and Mrs E have not demonstrated the capability to deal with the myriad questions raised by their guarded and limited acceptance of the judgment: questions that C is as likely to raise as anyone.

[58] Their appreciation of the risks that C faces if placed with Mr and Mrs E are as follows:

(i) C would be raised in the expectation that he would accept the spiritual story, ie he will be expected to believe in the same deception to which Mr and Mrs E fell victim which has nothing to do with the content or genuineness of their religious beliefs but the pernicious activities of those who have prayed on the beliefs of the genuinely devout;

(ii) in placing C with Mr and Mrs E in this circumstance, the court would be sanctioning a profound lie;

(iii) C needs to know that Mr ands Mrs E and others believe that his birth was a divine intervention but that his genetic parents remain unknown: his history is a balance between two stories;

(iv) Mr and Mrs E would have to be trusted to care for C on their own, if the court places C with them they will have neither need for nor any wish to co-operate with other agencies;

(v) Mr and Mrs E are to all intents and purposes strangers to C.

[59] I find myself in agreement with the local authority position, informed as it is by the careful advice of Dr Adesida, Ms Pring, Dr Cutting and Dr McDonald, save that I would prefer to characterise the key issue as the lack of acknowledgement that C was removed from his parents rather than 'truth' which is a concept that in the context of this case has very different constructions. Although Dr Cameron now agrees with the conclusions of his colleagues, he has been much more optimistic than each of them about Mr and Mrs E's capabilities. I find that his initial impressions of their degree of acceptance of any secular explanation and their capability to provide for C a balanced account of his origins were too optimistic.

[60] Having regard to the expert evidence and the evidence of Mr and Mrs E, I make the following findings:

(i) Mr and Mrs E's practical care of, enduring attachment to and unconditional love for C are not in doubt;

(ii) Mr and Mrs E's motivation to care for C throughout his childhood is genuine;

(iii) Mr and Mrs E's support network of friends and family is good;

(iv) of the potential carers presently identified, Mr and Mrs E are the nearest match to C's heritage;

(v) Mr and Mrs E reject the findings of the court and continue to regard C as their son;

(vi) Mr and Mrs E demonstrate some occasional glimpses of insight into the circumstances of his birth but these are not sustained and in particular neither is able to acknowledge that C was removed from his real parents;

(vii) Mrs E is again experiencing a spiritual pregnancy;

(viii) Mrs E does not have and has not had a mental illness;

(ix) Mrs E has experienced and continues to experience pseudocyeses and this is a chronic or recurring problem;

(x) Mrs E's pseudocyesis and broader psychological functioning will undermine her capability to care for a child: she is emotionally vulnerable;

(xi) Mrs E's physical health is not a sufficient impairment for her to be unable to care for C during his childhood, most particularly in the circumstance where that care would be shared with Mr E;

(xii) there is a possibility that Mr and Mrs E might allow their beliefs to get in the way of C's healthcare but no more than that. It is more likely that Mr and Mrs E's beliefs will get in the way of Mrs E's healthcare which may have a consequentially adverse effect upon C's care but there is no sufficiently cogent evidence to conclude that that risk is a real possibility, ie she has demonstrated that she can use medical interventions to good effect when she chooses to do so;

(xiii) Mr and Mrs E may be able to tell C what the court has said but

they will assert the truth of their belief in the spiritual version and be unable to give credibility and status to the secular story because they believe that story to be a lie;

(xiv) Mr and Mrs E do harbour a hope that C will be a special or miracle child in life, just as they assert he was by birth.

[61] Not only do I share the experts' doubts that Mr and Mrs E could view C as an ordinary child but I have come to the very firm view, as Ms Pring said, that he would have to be encapsulated in a bubble of Mr and Mrs E's belief system in order that the risk of emotional harm to him could be minimised. If I sanction their views it would make it virtually impossible for them to modify their positions beyond their beliefs. Mr and Mrs E think of themselves as C's birth parents and not substitute carers. They cannot think of themselves as adopting or caring for a stranger's baby. As they believe that placement with others will not be permitted by God, they will equally regard placement with themselves as divinely ordained.

[62] Having regard to the threshold findings I made in November 2004 as to the likelihood of harm that exists and the additional findings and assessments set out above, I hold that a placement with Mr and Mrs E would be contrary to C's best interests and I decline to accede to their application.

Chimerism

[63] A separate issue arose in March 2006 as a consequence of Mrs E receiving advice from her new consultant haematologist, Dr Norman Parker. Aside from his opinion that the improvement in Mrs E's sickle cell condition was consistent with the physiological changes that accompany pregnancy (which I note is not the same as saying Mrs E had been pregnant or that the changes were the consequence), Dr Parker asked the court (on behalf of Mr and Mrs E) to consider whether C might have chimerism or mozaicism.

[64] In essence, chimerism is an occurrence that has been demonstrated in some animals where two cell lines merge in the womb and one part of the body is derived from one set of chromosomes with its own particular DNA pattern and another part of the body has a separate set of chromosomes with a different DNA pattern. It has now been demonstrated in very rare cases in humans. So far as Mr and Mrs E's case is concerned, if it were relevant, it might provide a scientific explanation for why a child's DNA might not match that of his parents. This possibility was first raised by Mr E in his final submissions in November 2004, he having become aware of scientific reports of children who did not share their parents' DNA.

[65] The hypothesis was considered by Dr Timothy Clayton who is a senior forensic scientist and a PhD in molecular genetics. Dr Clayton is familiar with the scientific literature on the subject and explained how a chimera can develop in extremely rare but isolated, documented cases. Not a single example of this condition has been revealed in the tens of thousands of DNA tests that are performed each year upon different samples from the same person by the forensic science service, including familial tests on a trio of allegedly related persons (characteristically mother, child and putative father). He points out that for this to be relevant, it would have to have occurred twice so as to exclude both Mrs E and Mr E as parents.

[66] Mozaicism is a clearly distinct concept in that unlike chimerism the genetically distinct populations of cells arise from one zygote, not two. A person with a genetic mosaic has cells in his body with a different genetic makeup, such as an extra 47 chromosome in some but not all cells.

[67] Dr Clayton has analysed such samples as are available from both Mr and Mrs E and concludes that there is no scientific evidence to indicate that either of them is chimeric. As I understand it, on the basis that neither Mr nor Mrs E rely upon a scientific explanation for the birth of C, this issue has not been pursued any further and is one that on the evidence the court can now safely exclude. Professor Fleming adds that C does not have an inherited condition that can be traced back to Mrs E's sickle cell anaemia.

The local authority's plan

[68] When the case was heard in November 2004 the local authority had available to them a culturally appropriate adoptive placement for C. Unfortunately and unbeknown to the court, those applicants did not feel able to wait to see if C's birth parents were among those who had come forward in Kenya and they immediately withdrew. By 1 March 2005 the local authority had located another appropriate placement but that was unexpectedly withdrawn when the applicant was relocated in his employment to the USA. There then followed a prolonged period of searching as the local authority tried to find what is a rare resource, a family of African heritage who were willing and able to adopt or care for C on a permanent basis. It was in this context that Mr and Mrs E were able to repeatedly point to the lack of any settled feasible plan for C while at the same time pursuing their own application.

[69] It should not be thought that the local authority were in any sense dilatory or unaware of the urgent need to permanently place C. Far from it. The local authority have a marked success in the placement of young boys of African and African Caribbean heritage and if they could not find a suitable family with all its special experience and contacts, I hazard a guess that no one else would. In any event, no other adoption agency or consortium was able to assist them despite repeated approaches.

[70] It was not until 1 June 2005 that the local authority identified a family of African Caribbean heritage, Mr and Mrs A, who wished to put themselves forward for assessment and approval. They are a West Indian couple with significant childcare experience. Mr A is in his early 50s and Mrs A is not yet 40. Mr A has three adult children from a previous relationship and the present family unit comprises two children from Mrs A's former relationship and a child of their own. Their strong family desire to adopt arises out of their knowledge of the circumstances of abandoned, orphaned and vulnerable children. Their marriage is assessed as being very stable, loving and committed. They are in very good health and practice Roman Catholicism with a healthy respect for other religions and cultures including the right of their own children to make life decisions for themselves. They equally have an interest in and respect for African culture and food. They have a mutually supportive network of family and friends.

[71] It is in the nature of trans-racial placement proposals that questions are raised about the suitability of the adoptive applicants for a particular child. This is heightened in relation to C because of his own lack of identity and

background history. With this specific need in mind, Mr and Mrs A were recommended for approval by the local authority's adoption panel as adopters on the 25 October 2005. They were approved as adoptive applicants for C on 15 November 2005.

[72] The local authority relied upon the very cogent and carefully considered evidence of an experienced senior team manager in their adoption service. She agreed with Dr Adesida who said that having observed C with Mrs F there was nothing in his behaviour or responses to his foster carer that would make him think that it would be difficult for C to form attachments with future carers. She made it clear that C would not be difficult to place with Mr and Mrs A, that he would have the ability to reattach and that the placement identified is very good. In particular although it is not a placement that is perfectly matched by reason of the A's West Indian rather than African heritage, there are many positives about it, including the fact that C will have a visual identity with his family.

[73] Having regard to C's most particular needs and Mr E's profound objections to this placement (based upon the A's cultural background and previous marriages) I have scrutinised the placement and matching assessments of the local authority with great care. I have come to a firm view that Mr and Mrs A and their family have above average skills, determination and commitment and that the assessment materials accurately recommend them as a very good placement for C. I accept the local authority's evidence and have come to the clear conclusion that their plan for C is feasible and in his best interests. C should be placed for adoption which is the best way of securing for him the stability, security and identity he most needs.

[74] Were it not for the application of Mrs F that would be the inevitable decision of the court. It has, however, been necessary to consider Mrs F's application with some care, supported as she is by Dr Cameron.

Mrs F

[75] C has been in his existing placement with Mrs F since 4 April 2005. Mrs F is a devout, Muslim, multi-national mother who lives on her own with C. Her adult son is living in this country. She announced an intention to care for C on 26 October 2005 and also explained that she was unable to adopt C because of the tenets of her faith. She is described as very well bonded with C who is developing well and thriving in her care.

[76] Mrs F is in her early 50s. She was born in North Africa and has triple nationality. She is in good health. She describes herself as a devout Muslim, as are all of her family. She has a large extended family spread across the Western and Eastern world. She lived in England as a young woman and returned to live here in 1995. She has been married twice and has an adult child who

has lived in England since 2000. That child lives independently but is in regular and close contact with Mrs F. She has been in several employments before she became a shortterm foster carer.

[77] In order to assess the viability and merits of her proposed application, the court permitted her to file written evidence, give oral evidence and be crossexamined by counsel without restriction. Further, Mrs F was able to rely on the fact that she has been successfully assessed as a shortterm foster carer and also upon Dr Cameron's opinions of her and her capability to meet C's needs. Her application was opposed by all except Dr Cameron. With the

agreement of all parties, I heard the evidence relating to Mrs F de bene esse, ie on the merits and without prejudice to the legal principles that have to be applied (which in any event were the subject of statutory amendment after the hearing of evidence and before judgment was handed down). Echoing the sentiment expressed by Ward LJ in *Re G (Child Case: Parental Involvement)* [1996] 1 FLR 857, at 866, that process allowed Mrs F to present her case without doing injustice to any other party, including C, and was a broad rather than a restrictive or formulaic approach to the exercise of discretion in keeping with previous dicta of the court (see *W v Ealing London Borough Council* [1993] 2 FLR 788, at 794H and *Re M (Care: Contact: Grandmother's Application for Leave)* [1995] 2 FLR 86, at 98).

[78] Mrs F described her care of C and the initial problems she had when he was placed with her. She described the success she had in managing his feeding and skin care and I accept her evidence. I have no doubt that C is a confident, well cared for boy.

[79] Mrs F does not have a good relationship with social workers and I am satisfied that this is because Mrs F is a mature, independent and private woman who finds the inquiries of social workers superficial and their job an intrusion which she would prefer to do without. Mrs F is wrong in her impressions of them and the tasks they have to perform and that is an issue of considerable concern to the court. That led to a particularly sad miscommunication when Mrs F wanted to go to North Africa to see her dying father. She did not do so because no arrangements were made for C so that she could travel on her own. On the one hand her devotion to C was demonstrable, on the other her inability to resolve such an important issue for her with a social worker and/or with anyone in her network of family or friends is clear.

[80] Mrs F says she will move from her present onebedroom flat to a larger property and on her evidence I believe her. That she has not done so already no doubt reflects the uncertainty of her position. She accepts that having regard to C's age if he were going to stay with her they would certainly need a larger property in the near future.

[81] Mr E reminds the court that if he and Mrs E are to be criticised for unrealistic perceptions of C, that is a criticism that can be and has been levelled at Mrs F. It is certainly possible that Mrs F has an exaggerated view of C's potential abilities, whether as a footballer or as a musician or otherwise, but the criticism made of her by social workers is within the bracket identified by the experts as that of a carer who believes that C is 'an ordinary special child' rather than anything more significant.

[82] I do not think that these and the other more practical issues that have been raised as concerns relating to her care are of any critical significance save that they demonstrate that she finds it difficult to seek out and act upon social care advice and in my view will continue to do so. That is coincident with the local authority view: albeit that they do say that had Mr and Mrs A not been available to them, they would have tried to work with Mrs F to secure a 'second best' placement for C.

[83] Mrs F is supported by Dr Cameron. He says:

(i) she is an inspirational carer;

(ii) her relationship with C is special;

(iii) C has not just thrived, he has positively flourished;

(iv) his attachment has a fine quality to it;

(v) there is a trusting reciprocal relationship;

(vi) there would be a separation reaction if C were to be moved;

(vii) there has to be a compelling gain from a further move.

[84] Dr Cameron came to these conclusions without the benefit of discussing them with his colleagues at the last experts' meeting and without the benefit of knowledge of all of the local authority's files. That came about because he pursued his inquiries as to the suitability of Mrs F as a carer for C of his own volition and without instruction by the parties or the permission of the court. In consequence, his opinions could not be tested by interdisciplinary discussion and peer review until the evidence was heard in court. I regret to have to say that I have come to the conclusion that Dr Cameron's opinions about Mrs F were lacking in the sophistication that that discussion could have provided and were over enthusiastic in their optimism.

[85] To the extent that he describes the relationship and attachments between C and Mrs F as being special, ie in some way unique, with the implication that there cannot or should not be a change of carer, I have come to the conclusion that his opinion has erred into speculation and away from logical deduction and analysis. No-one else describes the relationship in these terms. Illogically, Dr Cameron accepts the evidence of each of the other relevant professionals who say that a separation reaction would be mitigated by the high quality attentive parenting which the local authority have assessed Mr and Mrs A as being able to provide. Likewise, Dr Cameron accepts that C is securely attached and has the capacity to attach to others. The local authority evidence in particular is of a little boy who is doing well but who is in a similar position to others who have to move on from shortterm foster care placements. Dr Cameron's assessment is based on his own personal observation of the quality of Mrs F's attachment with C. Having regard to the experience that Dr Cameron brings to bear in children cases I have not lightly disagreed and have only done so after a careful consideration of all of the evidence.

[86] Even if Dr Cameron's test for a move can be reconciled with the law ie his proposition that there must be a compelling gain, the answer to his hypothesis is that Mrs F is unlikely to be able to provide for C's longterm need for an identity without assistance and, according to the evidence he accepted, adoption will provide: (a) carers who can give a balanced account of the dual stories of his origin; (b) less risk of emotional and developmental harm; (c) good parenting and the security of permanency; and (d) an essential personal and family identity. On any basis these factors describe a compelling gain.

[87] Special guardianship is expected to provide an additional legal security of permanence by comparison with a residence order and the benefit that parental responsibility is shared with birth parents rather than a local authority. A special guardian would have daytoday responsibility for the upbringing of a child and the ability to override the parental responsibility of a birth parent (save in some important but limited respects), while retaining the child's basic parental link. Even if Mrs F could resolve her difficulties

with professionals, as a legal arrangement for C whose needs are so clear, not least because he has no known birth parents, it would be a poor second choice.

[88] I have come to the following conclusions on the facts having heard the extensive oral evidence of the social workers, Mrs F and the experts, including Dr Cameron:

(i) Mrs F will need financial support and social work advice from the local authority who would have to remain directly involved in C's upbringing throughout his childhood even if a special guardianship order were made, whereas C will not be subject to the regular

scrutiny and review of the local authority once an adoption order is made, nor will he need to be;

(ii) Mrs F's family network is not significant in this country: her adult child is very supportive but is a young single student living in London. It is suggested that she/he would be the fall back carer for C were anything to happen to Mrs F unless that were to be permanent in which case Mrs F's sisterinlaw in Sweden would help;

(iii) Mrs F has a male friend who is not her partner and as such the court knows little about him: he is not identified by Mrs F as being of significance as a male role model for C or as a carer in C's life;

(iv) Mrs F is of an age where C would be growing up in his teenage years with a parental figure whose age profile resembles that of a grandparent not a parent;

(v) very good though Mrs F's present care might be, I have formed the very clear impression on the evidence I have heard from Mrs F that she has no concept of how important identity will be to C in the future: she thrives in the relative anonymity of international existence whereas what C will need is anything but anonymity;

(vi) C will need to have his identity explained and Mrs F accepts that she will need continuing assistance to deal with the question of C's origins

(vii) C will need to resolve the loss of his birth parents and will need to be given the dual stories about his history: in my judgment, Mrs F will need considerable help with these tasks;

(viii) Mrs F will find it difficult to maintain a working relationship with the social care advisers she will need and for very different reasons than those that are applicable to Mr and Mrs E, the trust that will be necessary between carer, child and professionals will be compromised, indeed to an extent it already is;

(ix) Mr and Mrs A are able to provide a better cultural match than Mrs F including, importantly, in respect of C's visual identity;

(x) C may suffer a separation reaction upon removal from Mrs F but that will be mitigated by the high quality attentive parenting which the local authority have assessed Mr and Mrs A as being able to provide;

(xi) C is securely attached and has the capacity to attach to others;

(xii) there would be a compelling gain in C moving from Mrs F's

care to an adoptive placement in that adoption will provide: (a) carers who will be able to give a balanced account of the dual stories of his origin; (b) less risk of emotional and developmental harm; (c) good parenting and the security of permanency; and (d) an essential personal and family identity;

(xiii) there are very real benefits to C from the stability, security, identity and nationality that adoption will confer as opposed to residence, foster care or special guardianship;

(xiv) in Mr and Mrs A there is a significant likelihood that C will benefit from an extended and loving close family, siblings and male and female role models that cannot be provided by Mrs F in a daytoday environment;

(xv) the benefits of adoption as against the possibility of special guardianship in the future are well made out.

[89] On the facts of this case Mrs F has family life with C within the meaning of Art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

The local authority doubted that the relationship between an employed foster carer and a child in her care could, without more, amount to family life, ie that there would need to be something qualitatively more than the simple relationship of child and carer to establish the same. I have not heard any significant argument on this issue but I did come to the conclusion that Mrs F had surmounted that hurdle.

[90] Mrs F's application to be joined as a party was made at a time when as a matter of law (by s 9(3) of the Children Act 1989 as it then was) she was disqualified from making an application for a residence order without the consent of the local authority which was not forthcoming. At that time she was constrained to ask the court to exercise its jurisdiction to make a residence order in her favour of its own motion. Such an order would have been exceptional and would have required cogent grounds firmly based on the child's clear needs. Such an application, not supported by the local authority has to be scrutinised by the court with great care: *Gloucestershire County v P and Others* [2000] Fam 1, [1999] 2 FLR 61, at 13–14 and 72–73 respectively, per ButlerSloss LJ.

[91] Although the court can and should have regard to the merits of a proposed application and all the circumstances of the case, an application to be a party for the purpose stated by Mrs F was, having regard to the duration of Mrs F's care of C at the time of her application, governed not by the welfare principle but by principles analogous to those set out in s 10(9) of the Children Act 1989. Those principles are: (a) the nature of the proposed application for a s 8 order; (b) the applicant's connection with the child; (c) any risk there might be of that proposed application disrupting the child's life to such an extent he would be harmed by it; and (d) where the child is being looked after by a local authority – (i) the authority's plans for the child's future, and (ii) the wishes and feelings of the child's parents: *Re M (Care: Contact: Grandmother's Application for Leave)* [1995] 2 FLR 86, at 95, per Ward LJ as considered by Thorpe LJ in *Re J (Leave to Issue Application for Residence Order)* [2002] EWCA Civ 1364, [2003] 1 FLR 114, at para [15] (see also *Re W (a Child) (Care Proceedings: Leave Issue Application)* [2004] EWHC 3342 (Fam), [2005] 2 FLR 468, per Sumner J).

[92] Furthermore, the court should approach the application on the basis that the local authority's plans for C's future are designed to safeguard and promote his welfare and that any departure from those plans might well disrupt the child's life to such an extent that he would be harmed by it: *Re A (Minors) (Residence Orders: Leave to Apply)* [1992] Fam 182, [1992] 2 FLR 154, per Balcombe LJ, at 192–193 and 161G respectively.

[93] Looking then to those principles:

(i) the nature of the proposed application: Mrs F wishes to continue to be C's carer without the benefits of adoption to which she is opposed for religious reasons but with the protection of a residence order and ultimately a special guardianship order; however, for C, adoption has demonstrable benefits that residence does not provide and that special guardianship with Mrs F will be much less likely to provide;

(ii) the applicant's connection with the child: Mrs F is a shortterm foster carer to whom C is well attached in a loving care environment;

(iii) any risk that there might be of the proposed application disrupting the child's life to the extent that he would be harmed by it:

  (a) a further assessment of Mrs F and her family would cause more delay with no likely additional factual or opinion evidence being provided in addition to that already available; further delay would risk losing Mr and Mrs A;

  (b) a key risk of harm in respect of Mrs F mirrors that which was relevant to Mr and Mrs E, ie providing an identity for C. Mrs F will need help to meet C's need to know of his origins and of the two stories, secular and

spiritual; in my judgment her difficult working relationship with social care professionals will militate against that process;

(c) C needs a name that is his forever and the nearest equivalent that can be provided to a birth family with maternal and paternal figures and role models: on the evidence a placement with Mrs F would be 'second best' and would risk harm to C that could be minimised by an adoptive placement with Mr and Mrs A;

(d) a placement with Mrs F would be a poorer cultural match for C who has needs as a black African child that include his visual identity, which are less likely to be met in a placement with Mrs F;

(e) if Mrs F's application is allowed to proceed and is unsuccessful and the local authority lose Mr and Mrs A, they could not provide a contingency plan with family carers; none are available and the likely delay in finding and approving another suitable family would be unconscionable.

(iv) The authority's plans for the child's future: the plan is carefully assessed, clear and in the court's judgment is in C's best

interests. The local authority have submitted their plans to the most careful scrutiny including by the court and Mrs F's lawyers and they have not been found wanting.

[94] For the reasons set out above Mrs F's application is refused. However arguable Mrs F's case might have been in theory (ie on paper and before the evidence was tested) it became unsustainable in fact by reason of the court's findings on the evidence.

[95] With effect from 30 December 2005 and by reason of s 113 of and para 56 of Sch 3 to the Adoption and Children Act 2002, s 9(3)(c) of the Children Act 1989 was amended and new ss 10(5)(A) and 14(A)(5)(d) were inserted into the 1989 Act which entitle a foster carer to apply for a residence order or a special guardianship order in respect of a child who has lived with her for at least one year immediately preceding the application. Accordingly, Mrs F became eligible to make an application for a residence order or a special guardianship order without the local authority's consent upon the first anniversary of C's placement with her in April 2006. She has not made any application, although the court has been told that she has made an application for public funding in order to make an application for a special guardianship order.

[96] The court has heard and read extensive evidence that more than satisfies the inquiries that the court has to make to determine the question of welfare and the factors provided for in the welfare checklist in s 1(3) of the Children Act 1989. Mrs F had the benefit and support of a nationally recognised expert whose materials the court chose to admit despite the manner in which they had been collated so that all other professionals could be cross-examined upon them as if that assessment had been permitted by the court. There has been a comprehensive hearing within which the merits have been hotly debated. By permitting Mrs F to take a full part in the process the court has ensured that Mrs F's Art 6 and 8 rights under the European Convention were protected without there being a disproportionate interference with the child's rights.

[97] The court has come to its conclusions on the basis of evidence supported by a body of experienced professionals. Having regard to the imperative that is C's need for a permanent family, it would be wrong not to apply those conclusions to the circumstances that exist, ie in fairness to C and to Mrs F to consider what the position would have been had Mrs F applied for a residence or special guardianship order. Having regard to the findings I have made and for the reasons I have given, I would have refused an application by Mrs F for a residence order or a special guardianship order. There must be an end to litigation for C, who must be placed as soon as possible.

[98] In written submissions to this court on 6 July 2006 Mrs F indicated that C's circumstances had changed since December 2005. I put her on notice that the court needed to know the nature and extent of the changes relied upon, so that it could decide whether there is anything sufficient to reopen the court's inquiry. Mrs F was given time to set out her case. She says through counsel that she would have wished her circumstances to be reconsidered by a consultant child and adolescent psychiatrist but acknowledges that time is against her and that as a minimum she wants the court to consider the following:

(i) a letter from Dr Cameron as to the likely effect of the passage of time upon C's attachment to her;

(ii) a report on C's speech and language and the progress achieved with C's eating behaviour;

(iii) a statement from Mrs F as to the quality of her care and relationship with C;

(iv) statements from Mrs F's extended family members including a sister who intends to permanently remove to England later this year with her children.

[99] Mrs F has not been able to present any of these materials to the court. I am told and am happy to accept that the speech and language report exists and describes Mrs F's positive care and the good progress C is making. I accept that Dr Cameron will say what he said in oral evidence which is that now C has reached the age of 2, delay is not as important as it would have been at an earlier stage in his life and development. With respect to Dr Cameron, any reconsideration he might give to attachment and the consequences of separation cannot be put in any higher or more favourable way than he did on Mrs F's behalf in December 2005.

[100] The factual position that Mrs F wishes to adduce is that which the court expected: she remains a good if not a very good shortterm foster carer and C's attachment to her will be secure and will not have lessened with the passage of time. Her support network may well improve. The proposed evidence is not of any different quality from that which the court heard in December 2005.

[101] Mrs F's position has the effect of asking for an adjournment for the new evidence to be adduced. Were I to entertain that course I would have to hear additional evidence from the new children's guardian, Dr Adesida and the social workers, all of whom would be expected to continue to disagree with Dr Cameron and oppose a placement of C with Mrs F. The guardian and social work teams who have remained involved say so in terms. The guardian advises the court that the material that Mrs F seeks to adduce is not sufficient to cause her to believe that the court could come to any different conclusion and she, along with the local authority, oppose the application. With respect, I agree. The material would not alter the facts I have found nor the reasons I have given.

Freeing for adoption

[102] Having come to the conclusion that I approve of the local authority's care plan for the adoption of C by Mr and Mrs A and his placement with them on a permanent basis, it follows in circumstances where the whereabouts of his birth parents are unknown that the requirements of ss 6 and 18 of the Adoption Act 1976 are satisfied.

[103] I have had regard to s 6 of the Adoption Act 1976, first consideration being given to the need to safeguard and promote the welfare of C throughout his childhood and have taken note of the fact that C's wishes and feelings are inchoate by reason of his age and understanding. The objection of Mr and Mrs E cannot be sustained having regard to my conclusions on the merits. Likewise the objection of Mrs F whose evidence has been considered in coming to the conclusions that I have. There are no birth parents to consent or

object and by reason of that fact I dispense with their consent on the ground that they cannot be found pursuant to s 18(1)(b) of the 1976 Act. Having regard to the local authority's plan, I declare that C is likely to be placed for adoption and accordingly s 18(3) and 18(6) of the 1976 Act are satisfied.

[104] The local authority's application for a declaration to free C for adoption is governed by the Adoption Act 1976 in the circumstances described in Sch 4 to the Adoption and Children Act 2002, at paras 6 and 7 and the Adoption and Children Act 2002 (Commencement No 10 Transitional and Savings Provisions) Order 2005, at paras 10 and 4. These provisions permit the making of freeing orders under the pre-existing statutory code where applications are pending at the time the new statutory code came in to effect on 30 December 2005, including in the circumstance that the child is not yet placed for adoption by the adoption agency.

[105] There is no need on the basis of the information considered by the court in the confidential Form F for the placement to be visited or further assessed by the guardian prior to any freeing order being made and the court accordingly has in its possession all the information it needs to consider this application.

[106] For the reasons set out above I make a full care order in respect of C and I declare him to be free for adoption. The local authority may now place him with Mr and Mrs A once the time for permission to appeal my orders has passed.

Order accordingly.

Solicitors:*Legal Department of the London Borough of Haringey* for the applicant

Goodman Ray for the first and second intervenors

JD Spicer & Co for the respondent child

Bindmans for the third intervenor

Cobbetts for the fourth intervenor

CAFCASS Legal as advocate to the court

CAROLINE BRIDGE

1 Editor's note: Pseudocyesis, also known as false pregnancy, can cause many of the signs and symptoms associated with pregnancy and can resemble the condition in every way except for the presence of a foetus.