Neutral Citation Number: [2016] EWCA Civ 1091

Case No: B4/2016/1053

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BIRMINGHAM CIVIL JUSTICE CENTRE
Her Honour Judge Evans Gordon
BM15CO0211

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/11/2016

Before :

LADY JUSTICE HALLETT
LORD JUSTICE ELIAS
and
LADY JUSTICE KING

- -

Between :

Y (Children)

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- -

Danish Ameen (instructed by **KHF Solicitors**) for the **Appellant**
Ruth Cabeza and **Anita Rao** (instructed by **Birmingham City Council**) for the **1st Respondent**
Catherine Preen (instructed by **Baches Solicitors)** for the **3rd and 4th Respondents**

Hearing date : 27 October 2016

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Judgment Approved

Lady Justice King:

1. This is an appeal from care and placement orders made on 18 February 2016 by Her Honour Judge Evans Gordon sitting at the Birmingham Civil Justice Centre in respect of two children, MAM born 10 April 2009 (7) and MMY born 26 March 2011 (4).

2. It is now accepted on behalf of the parents that a care order was inevitable and the focus of the appeal has therefore been as to whether the judge failed to give proper consideration to whether a placement order was in the best interests of the children. The ground of appeal in respect of which permission has been given is framed as follows:

> "The judge erred in failing to give:
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> (i) proper weight to all the factors relevant to the decision whether adoption was necessary in the interests of the children;
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> (ii) proper considerations to the alternatives to adoptions;
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> (iii) sufficient reasons as to why a permanent severance of the children's relationship with their family was in their best interests and necessary"

Background

3. The appellants: JY (the mother) and MY (the father) are both of South Indian origin although the mother also has a Singaporean identity card. The couple came to the United Kingdom in or around 2004. The mother entered the country legitimately but subsequently overstayed and there is no record at all of the father's entry into this country. Applications made by the parents for leave to remain were refused in December 2013. The parents and their two young children therefore lived under the radar of the authorities and, as a consequence of their illegal status, were not entitled to state benefits. It appears that the father had however been in work and the children did not come adversely to the attention of social services until after the father lost his job in 2013. Following his unemployment the family survived on a bank loan but, by April 2014, they were destitute.

4. The family were referred to the local authority by the Children's Society; by then MAM (a boy) was five and MMY (a girl) was three. The local authority carried out an initial assessment and the children were made the subject to a child in need plan and financial support was provided to the family. Almost immediately the parents were in conflict with the local authority, believing as they did, that it was the local authority's responsibility wholly to provide for the family. The father's extreme behaviour was exhibited as early as 14 May 2014 when he threatened to jump into the river off a bridge together with the children if a new house and financial assistance to the level he sought was not provided.

5. Between the referral in April 2014 and August 2015 the local authority attempted to work with the parents. As at this stage there were no concerns about the parents' general abilities to provide the children with good enough care and it was anticipated that a reasonable working relationship could be achieved. Not only did this not prove to be the case, but the parents used their children as a means to put pressure on the

local authority to give them more money with a wholly callous disregard for their emotional well-being.

6. The judge's judgment sets out the background and makes extensive findings of fact. The parent's strategies amongst other things included using the children directly to try to demand money as well as keeping them off school (and even hiding them in cupboards) in order to prevent social workers from seeing or talking to the children. The most serious matter occurred in 2015 when the parents coached MMY to make, what are now accepted to be wholly false allegations of physical and sexual abuse directed at the school and social workers. This inevitably resulted in a full investigation and the involvement of the police, including the arrangement of an intimate child protection medical for MMY, (although the parents in fact failed to take her to the appointment). The father maintained these very serious allegations at trial, although he now accepts the finding made by the judge that the allegations were wholly fabricated. Mr Ameen on behalf of the father in accepting this to be the case, says that the parents were motivated by a misguided notion that such allegations would help them to achieve their aim of somehow stopping the professionals at the children's school from asking about the welfare of the children.

7. By May 2015 there were, understandably, very serious concerns about the children. Not only were the social workers unable to see the children at home but MAM's attendance at school was falling away and his behaviour was deteriorating. MMY had been removed from nursery.

8. On 28 May 2015 the parents attempted to abscond to Glasgow although when social services in Glasgow made it clear that they would not be providing financial assistance, the family returned to Birmingham.

9. Care proceedings were finally issued on 12 August 2015, an interim care order made due to the risk of the family absconding, and on 18 August 2015 the children were removed from the parents' care.

10. The children were placed with a culturally appropriate foster carer with whom they have lived ever since and who has offered them a permanent home in the event that it is decided that the children's best interests lie in their remaining in a long-term foster placement.

11. The local authority's view was that the children had suffered significant emotional harm as a consequence of having been made the puppets of, in particular, the father in his war of attrition with the local authority. The local authority wished to facilitate regular contact but, as is often the case, asked the parents to sign a contact agreement whereby they would agree not to make inappropriate remarks about the professionals in front of the children, that they would not discuss the case with the children and would not speak to the children about returning home.

12. The parents refused then and have continued to refuse, to sign such an agreement. Their position has been that to sign it would be a breach of their human right to free speech or of freedom of expression. The trial judge was satisfied that not only had the father been given sensible and appropriate legal advice as to the importance of contact for the children by his own legal team, but also that His Honour Judge Plunkett, who case-managed the case throughout had "implored" the parents to sign the agreement

to enable contact to take place. The parents remained resolute and as a consequence, when the matter came on for trial in February 2016, these children, who had lived with their parents until the making of the interim care order, had had no contact, direct or indirect for six months. When the matter came before this court that period of time had extended to fourteen months.

13. In a statement dated 29 June 2015, the then lead social worker Mr Birkenhead, put as the 'first realistic option' for the future care of the children as being placement with the parents under a full care order, with the 'second realistic option' being long-term foster care. Within that statement he set out the advantages as he saw them to a long-term foster placement. He explained that efforts from the local authority would continue in seeking to engage the parents "in a more positive and meaningful manner" and, that "should that be achieved, then consideration could again be given to the possibility of the children returning to the care of their parents".

14. What is clear from all the evidence is that the local authority, for a significant period of time, had anticipated that the children would in due course be rehabilitated to their parents. To this end, they sought within the care proceedings various assessments, including a psychological assessment of the parents and a parenting assessment. Not only have the parents declined to engage in any of the proposed assessments, but they have not engaged in any meetings or exchanges with any of the professionals other than their own lawyers since the proceedings were launched, even to the extent of refusing to meet with the children's guardian.

15. During the course of the proceedings the mother became pregnant with her third child. A child protection planning meeting was held on 13 October 2015 when it was decided that care proceedings would be issued with a view to removing the newborn baby into foster care as soon as he or she was born. On 14 November 2015 the mother left the United Kingdom for Singapore where she has remained ever since. The local authority was not informed of her departure.

16. By the time of the issue resolution hearing listed on 1 February 2016, the father had dispensed with his legal team. The order made that day records that the court "strongly encouraged" the father to seek the advice of a solicitor and barrister, and said that he could "benefit from professional representation at the final hearing," the order also records the father "stating that he does not wish to employ the services of a lawyer as he does not trust them".

17. By the time the trial came on in February 2016, the father was representing himself and the mother was not present. At an early stage the judge refused the father's application to call the children as witnesses and permission to appeal that decision was refused.

Care Plans

18. It is the father's case on appeal that long term fostering was a realistic option requiring proper consideration by the judge. Having read the papers it seems to me that the view which has been expressed by the local authority from time to time in this regard is relevant to the question of whether long term fostering was ever a realistic option which should have been considered by the court. The court has had the opportunity of seeing a raft of case management orders made by the case management

judge, together with the evidence filed from time to time by social services. By way of example, an order of 9 October 2015 records :

> "Realistic possible options for placement of the children are:
>
> - return to parents
>
> - long-term foster care
>
> - adoption"

19. The position remained the same on 6 November 2015 at a time when it is recorded on the face of the order that the mother and father were refusing to sign the contact working agreement and that the parents had been given time to reflect upon that decision. On the same day, 6 November 2016, the judge timetabled the case and made conventional orders for the local authority to file their evidence by 7 December 2015; they failed to do so and sought an extension of time. Notwithstanding their failure to comply with the court's order, in the background social work decisions were being made as to the care plan which was to underpin the care order sought by the local authority.

20. On 19 November 2015 a "Child in Care Review" was convened by the local authority and, in consultation with the children's guardian, long-term fostering was ratified as the best option for these two children. The minutes of the review have been made available to the court. The identified evidence base was as follows:

> "The [social worker] shared that the local authority final care plan for MAM and MMY was a permanency through long-term fostering. This was based on consultation with the adoption team with regards to the children's chances of an adoptive placement being identified for both of them as a sibling group, were the plan to be one of adoption. The adoption would endeavour to look for positive placements if directed to do so, but in the light of MAM's age, the complexities and impact of events in the past months on him and the fact that this would be for a sibling group would be slim. After further consideration and discussion with the children's guardian the view was that it would be in the children's best long-term interests if a plan of long-term fostering was pursued."

21. The document then records the decision of the review as follows:

> "The local authority presented a single-track care plan of permanency through long-term fostering. The IRO [independent reviewing officer] is in agreement with this as the most appropriate for MAM and his sister. Both children have some way to go in terms of recovering from the experience of neglect and emotional instability. The question of separating the children is clearly not a way forward in this instance, as they share a strong bond. Also, due to MAM's age, a plan of

> adoption would most likely result in a longer period of waiting for an adoptive family to be identified for MAM.
>
> It was shared with the meeting by Jill that the children's guardian, RP, Richard Pashley, would more than likely not have supported a plan of adoption, and would have requested the LA to provide more evidence to support why this would be the right plan for the children."

22. The recommendation as of 23 November 2015 was therefore that the children should remain in long-term foster care with the foster carer with whom they have lived since their reception into care.

23. On 30 November 2015 the team manager returned from leave and expressed her opinion that, notwithstanding the age of MAM, adoption should be considered as it is said she understood that the family finding team in the fostering and adoption section felt there to be a trend whereby older sibling groups were now finding families.

24. On 1 December the team manager spoke to the independent reviewing officer, who agreed to reconsider her position. The guardian could not be reached for his comments on that occasion, but the following day, 2 December 2015, for the first time a plan for adoption was ratified.

25. The guardian, when faced with the *volte face*, reluctantly agreed to the amended care plan on condition that the children stayed together and the search for an adoptive placement was time-limited to twelve months. The fall-back position therefore was now to be for long-term fostering.

26. Meanwhile the local authority's compliance with the case management orders was in such a state of disarray that on 8 January 2016 HHJ Plunkett directed the attendance of Alistair Gibbons, the Executive Director for Children's Services, to attend before him.

27. The matter came before HHJ Plunkett on 12 January 2016 when, notwithstanding the change in care plan to adoption, once again the 'realistic possible options for placement' are listed in the order as 'return to parents, long-term foster care or adoption'. At that hearing the judge gave the parents one final opportunity to make any application they wished for an assessment of the family and circumstances of the family in Singapore. No such application was made.

28. Even though by 2 December 2015 the local authority had changed its care plan to one of adoption and the court had ordered them to file their final care plan and evidence by 7 December 2015, it was not until 21 January 2016 (6 weeks late) that a care plan was filed. Also on 21 January 2016 a statement was filed by Hina Patel, the adoption and fostering team manager. That statement, given the earlier pessimism expressed by the social workers at the child in care review meeting following consultation with the family finders, was surprisingly upbeat as to the prospects of finding adoptive parents for the children together. Counsel on behalf of the children's guardian referred to this document as being an example of statements filed in such cases by Birmingham City Council, which were, she said, well known to be extraordinarily

optimistic as to the prospects of finding an adoptive placement for any particular child.

29. The first time the trial judge had the case before her was at the issues resolution hearing held on 1 February 2016. On the order made at that hearing, now only a matter of days before the trial, the local authority's plan is recorded for the first time, as 'seeking a plan of permanency through adoption'.

The hearing

30. The father, as a consequence of his own obduracy, was unrepresented at the hearing. The mother was not only unrepresented but not present. As a consequence, as I understand it, the father focused only on what he regarded as the "lies and abuse" perpetrated by the social workers; his case was simply to demand the immediate return of his children with a view to relocating to Singapore to be reunited with his wife and new baby. Had the father been represented, (given what is accepted by Mr Ameen to have been the absolute inevitability of a care order having been made), there would undoubtedly have been a heavy focus on a care plan of long-term fostering as an alternative to adoption as a fall back position to the father's primary case.

31. Such a forensic investigation would doubtless have targeted a number of matters including:

    i) what must be regarded as the highly unsatisfactory change of care plan to one of adoption, not only as to the timing but as to the manner in which it was done.

    ii) the fact that the recommendation for long term fostering had been made in November notwithstanding the simply appalling behaviour of the father throughout the proceedings which reflected the fact that, so far as had been able to be ascertained, the children had received good enough care from their parents until they became financially destitute in 2014.

    iii) the plan for long-term fostering as approved in November, it would have been argued, not only reflected the challenges presented by placing a sibling group, including as it did a boy of MAM's age, but also allowed for the potential of, if not rehabilitation, certainly re-establishing contact in the event that the parents could be persuaded to adopt a more child-focused view and sign a contract agreement once the proceedings were concluded.

    iv) that the children, under a long-term fostering arrangement, could stay with the carer who had provided them with exemplary care and had given them much needed security whilst they had been living with her,

32. It goes without saying that there were and are also powerful arguments in support of adoption which needed to be weighed against the potential arguments in favour of long term fostering.

The judgment

33. The judge was in an unenviable position; the father was a litigant in person, who behaved badly and was extremely challenging throughout the hearing leading the judge to make this finding:-

> "[17] In my judgment the father lied to me throughout the hearing. He has no compunction in saying or doing anything that he feels will advance his causes of obtaining the return of his children and, at least historically, of obtaining leave to remain in the United Kingdom. Unless the other witnesses or documentary evidence supported what he said, I find that I could not accept anything he said. I recognise that there may have been some truth in some of what he said but his exaggeration and untruths meant that I could not tell what was true and what was not."

34. The judge was further handicapped by the fact that, late in the day, documents were being sent through from Singapore, which were supposed to support a case that the mother and father would be able financially to care for and support the children in Singapore and that they would have family support in the area. As if all this was not enough, the judge was further hampered by the deficiencies in the way in which the local authority had prepared the case for trial.

35. The judge therefore was left, amongst all the "noise", with the task of stripping down the evidence to reach findings upon which to base the threshold findings, as well as considering the welfare of these children in the unusual circumstances of the case.

36. Counsel on behalf of the local authority rightly reminded the court that this was an *ex tempore* judgment. She reminded the court of the very great pressure under which care judges operate and that, should care judges feel that their judgments are to be examined with a level of scrutiny which render it impossible for them to give *ex tempore* judgments, the family courts, already under intolerable pressure, would collapse under the strain.

37. I particularly have in mind that most recently in *Re F (Children)* [2016] EWCA Civ 546 The President, Sir James Munby, who is acutely conscious of the pressures on judges, made the following observations

> " "22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole, and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in *SP v EB and KP* [2014] EWHC 3964 (Fam), [2016] 1 FLR 228, para 29, there is no need for the judge to "incant mechanically" passages from the

> authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."'
>
> 23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in *Piglowska v Piglowski* [1999] 1 WLR 1360. I confine myself to one short passage (at 1372):
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> "The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case … These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."
>
> It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis".
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> 24. In the present case it is important also to bear in mind that the Deputy Judge was giving an ex tempore judgment at the end of a hearing which had occupied only one day, and in the presence of the parties who had been present throughout the hearing and who had heard both Mr Power's evidence and counsel's submissions – all of which must have been fresh in their minds as they listened to the judgment being delivered."

38. The judge's judgment sets out in detail her frustration at the behaviour of the father and, by implication, the mother. She dealt with the factual matrix making the serious findings of emotional abuse, which found the threshold criteria. Having made those findings the judge turned to a consideration of the welfare of the children. The judge properly reminded herself of the well-known words of Lady Hale in *Re: B* [2013] UKSC 33 and of Lord Justice Munby in *Re: B-S* [2013 EWCA Civ 1146 saying:

> "As the cases have made clear, care and placement orders are very draconian. I can only be satisfied that nothing else will do if all realistic options are weighed against one another in the balance and consideration is given to the pros and cons of each.

> In doing this it is essential the assessment or balancing exercise is based on evidence. Evidence much consider what support should be given to the parents and fill any gaps as set out as in *Re: B* and indeed *Re: B-S*."

39. The judge then properly reminded herself that she must also consider s.1 of the Children's Act 1989 and s.1 of the Adoption and Children Act 2002. She then applied the welfare check list in order to assist her with her evaluation. It is right to say that whilst the judge considered that the effect on the children of ceasing to be members of their original family, she did not make any reference to their baby full-sister, currently in Singapore with the mother. For my part, whilst this is an undoubtedly a significant omission, it would not on its own in my judgment lead to the appeal being allowed.

40. There are two references in the welfare section of the judgment to what the judge had directed herself to consider by way of 'all realistic options' for placement. At she said [para44]:

> "As I have said, I accept that the parents were able to meet the basic physical needs of the children but, in my judgment, they were not able to meet their emotional and development needs in the light of their conduct and treatment of the children over 2014/2015. I am going to made the order sought by the local authority because the mother and father have demonstrated that they will not or cannot prioritise their children over their own wishes, feelings and objectives."

41. The judge considered the parents' proposal that the children should forthwith be returned to the father with a view to relocating to Singapore. The judge set out why she (quite properly) rejected that proposal for rehabilitation saying:

> "[50] I agree with Mr Marimanzi and the guardian that this [rehabilitation] is simply not a realistic option on the evidence and is not, in any event, within the children's timeframes. There are simply no realistic options for these children other than care and placement and as there are no other options care and placement orders are proportionate in this case.
>
> [51] In saying this I accept that the parents love the children. The father's breakdown in closing to my mind was genuine. I think it was the first time he realised the magnitude of the situation. In the light of my decision I will dispense with the consent of the parents to the placement orders pursuant to the Adoption and Children Act 2002 as the children's welfare requires it."

This passage represents the totality of the judge's balancing exercise.

42. Stripped down to its essentials Mr Ameen's submission is that the judge's failure to mention, let alone consider, long-term fostering as an alternative to adoption is fatal and the matter should therefore be remitted for reconsideration of the welfare

considerations. He accepts, as he is bound to, that all the findings of fact made by the judge would, in those circumstances, remain untouched.

43. Ms Cabeza, whilst accepting that the judge did not specifically consider long-term fostering, submits that it can nevertheless be inferred, when the judgment is read as a whole. Indeed she says that the fact that the judge recorded that the local authority's contingency plan was for long-term fostering showed that long-term fostering was in the contemplation of the judge.

44. Ms Cabeza reminds the court of the observations made by Lord Justice MacFarlane in *Re: R (A Child) (Adoption: Judicial Approach)* 2015 1WLR 3273, in particular to the following passages:

> "[18] There is, to my mind, a danger in casting a single judgment, or indeed, the process of judicial analysis in any particular set of proceedings if spread over the course of more than one hearing, as "linear" simply because, as a matter of structure, the judge considers and then expresses a conclusion on a particular option for the child before moving on to consider a further option, for example placement for adoption. The concern which this court's judgment in *In Re: B-S* and the cases that preceded it, was focused on was the substance of the judicial analysis, rather than its structure or form.
>
> [20] . . . There was one issue in this case: should the child be returned to the mother or go forward for adoption. That is an adoption question to which the factors in the 2002 Act directly apply. In the circumstances it was necessary, and necessary only to analyse which outcome was to be chosen, by giving the child's welfare paramount consideration throughout her lifetime through the lens of the welfare checklist in the 2002 Act s.1(4). "

45. Finally Ms Cabeza draws the court's attention to:

> "[28] Further, contrary to the submissions made, I consider that the judge did indeed go on to make his own assessment of risk in the manner described by counsel, albeit not using her precise structure. Given his findings as to the deeply entrenched nature of the mother's choice of partners and the pattern of her alcohol abuse, the judge was entitled to conclude that the risk of harm to any child could only be neutralised by the introduction of a professional 24-hour carer, a proposition which is obviously unrealistic."

46. I would unhesitatingly, and with respect, endorse those observations. However in order to make good her submissions Ms Cabeza has to satisfy this court that the judge had in fact considered all realistic options for the placement of these children prior to concluding that the only option which would meet their welfare needs was the making of a placement order. Ms Cabeza submits that there were only two realistic options in this case, namely immediate rehabilitation (as sought by the father) or a placement

order as sought by the local authority. She submits that whilst a counsel of perfection may have seen a 'one-line reference' to long-term fostering in the judgment simply to exclude it, the reality, she says, is that this was an *ex tempore* judgment and long-term fostering was not a realistic option, it required therefore, at most, perfunctory consideration by the judge.

47. With respect to Ms Cabeza I do not agree. Tempting though it is, given the father's destructive behaviour over many months and the children's need for security and stability, to conclude that the father has brought an inevitable outcome on his own head, in my judgment long-term fostering was a realistic option. Had the judge analysed long term fostering as an option she may well have reached the same conclusion, namely that adoption is in the best interests of the children, however the fact remains that the social work professionals, together with the children's guardian, had concluded that long-term fostering was the order which was in the best interests of these two children as recently as November 2015 at a time when all involved were fully well-aware that the parents had not seen the children for many months.

48. It is submitted that the change in care plan was influenced in part by the fact that the children had become more settled and therefore the option of adoption became more realistic. I find it hard to see how progress between 15 November 2015 and 2 December 2015 can have been such as to have led to a fundamental change in the view such that adoption became a realistic and preferred option for the children. It is further said that it had become clear that the panel had been unduly pessimistic at the prospects of finding an adoptive placement and that the guardian's concerns had been met by making the search time-limited. That may be right but, in my judgment, consideration should nevertheless have been given to the possibilities of long-term fostering on the facts of this case.

49. Ms Cabeza further submits that as the parents did not put forward long-term fostering as an alternative to rehabilitation, the judge was properly left with only placement orders or rehabilitation to consider. Again, I disagree. The burden on care judges is a heavy one particularly where, as here, a parent, entitled to full legal aid, chooses to represent themselves. One of the most exhausting and demoralising aspects of such a situation is that the judge, in a jurisdiction where the best interests of the children are paramount, has no alternative but to be alive to issues and points which should and would have been put forward on behalf of the parents had they been legally represented. Local authorities, too, bear a heavy burden as their responsibility is to the child, the subject matter of the proceedings. The local authorities are under an absolute obligation to ensure that the court considers all matters relevant to the child's welfare, even when in doing so they might be seen to be undermining their forensic goal.

50. The appeal hearing focused on the judge's failure to consider alternatives to adoption and in my judgment, on that basis alone, the appeal must be allowed; it is not therefore necessary to consider the other two limbs of the ground of appeal.

51. The local authority submitted that, in the event that the appeal was allowed, this court could itself conduct the balancing exercise and conclude that, notwithstanding the failure of the judge to consider long-term fostering as a realistic option for the children, had she done so she would, nevertheless, made a placement order.

52. This court is not in a position to carry out such an exercise and unhappily the matter must be remitted for further consideration by a first instance judge. To this end the Family Division Liaison Judge for the Midlands, Mr Justice Keehan, has agreed to have an early directions hearing next week in order to minimise the delay in final decisions being made for these young children. Further, the court has, through his counsel, emphasised to the father that the outcome of today's hearing should not be regarded as any form of a victory on his part. Should his intransigent attitude continue, it may well be that any potential benefits to the children by way of long-term fostering in the form of an aspiration to re-establish contact, or even ultimately rehabilitation, is so unrealistic as to be ruled out.

Lord Justice Elias :

53. I agree.

Lady Justice Hallett :

54. I also agree.