The unredacted version of this Judgment was delivered in private, but the Judge hereby gives leave for this redacted version of the Judgment to be published.
The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO.: FAM 2022-0350

IN THE MATTER OF THE ADOPTION ACT (2021 REVISION)

BETWEEN:	**ZM & JM**	**Applicants**
AND:	**N**	**1st Respondent**
AND:	**BL**	**2nd Respondent**

Appearances: **Ms. Rosie Whittaker-Myles for the Applicants**
Ms. Martha Rankine for the 1st Respondent
2nd Respondent did not attend

Before:	**Hon. Mr. Justice Richard Williams**
Heard:	**6-8 August 2024**
Written submissions Applicant:	**28 August 2024**
Written Submissions Respondent:	**30 August 2024**
Criminal record sheet Respondent:	**13 September 2024**
Draft circulated:	**16 October 2024**
Judgment delivered:	**21 October 2024**

Adoption application - Unreasonable withholding of consent by father and mother

REDACTED JUDGMENT

Introduction

1. This is an application by a child's ("R") married foster parents ZM (male) and JM (female) ("the Applicants") to adopt him. ZM is aged 47 and JM is aged 43. Although the Applicants have every intention to voluntarily facilitate contact between R and interested family members, they do not agree to a formal contact order being made in the adoption proceedings.[1] The application is not now consented to by R's biological parents. An adoption order is recommended by the Department of Children and Family Services ("DCFS") who have carried out assessments and filed reports for the Adoption Board ("the Board") and for the Court.

2. The father ("N") states that, although he is currently incarcerated, he does not wish to give up his parental rights for R and he does not agree that adoption would be in R's best interests. He stresses that R is his first child and his parents' first grandchild and that he and his parents do not believe in giving up "*our children"* for adoption. N's position is that it is in R's best interests and well-being to "*allow him to grow up in the care of his biological family, who are able and willing to provide him with the love, care, and family unit he needs."* He stated at paragraph 23 in his affidavit sworn on 9 April 2024:

> *"...., whilst I may have fallen short at times in demonstrating "the dedication, interest and consistency of a committed parent" to (R) due to my legal woes, notwithstanding my past failures, I am dedicated to redeeming myself to be the best I can be for (R). I am committed to rehabilitating myself whilst I am incarcerated and I have taken steps to achieve this goal. To this end, I have enrolled in English and Maths classes and Anger Management and Drug Counselling at the prison. Regarding the Applicants' suitability, I understand that in light of my current predicament, they may be seen as the "better bet" for (R). However, this is not enough for the Court to intervene in my family life simply because the Applicants are more suitable parents for (R) at this time."*

3. Although N is currently serving a custodial sentence that expires in 2033, he states that he should be paroled in late 2028 or 2029. He stated that his plan is to live and work in the Cayman Islands upon his release because he remains married to a Caymanian national. In his oral evidence, he said

[1] See Paragraph 35 in Affidavit sworn by the Applicants on 14 November 2025. Also, in cross-examination, ZM said that if an adoption order is made the Applicants would make sure that the father could contact both of them on Messenger or by telephone. ZM said that he could also take the initiative and call the father at the prison and if the father can receive such calls during the week that option could be explored.

that he would then apply for a residence order for R and that he believes that N at either age 8/9 or 14 would understand why he was being moved from the Applicants and it would not be hard for him or detrimental to him. This is important because this is not a case in which a biological parent is saying that there is no need for an adoption order solely because a child can live with carers under a residence order until he is aged 16. It is a case in which the objection to an adoption order is because a parent seeks to change the status quo in 4/5 to 9 years' time and take on the care of a then 9/10-14 year old child whom he has never cared for and who has lived with his present carers from shortly after his birth. There is no evidence from N or his wife before the Court to lead one to conclude that it remains a viable marriage. In fact, the evidence says otherwise. When considering the strength of his marriage, what is clear is that after only being in the Cayman Islands for a brief period N married his wife and shortly thereafter commenced an intimate relationship with R's mother ("BL"). When cross-examined, he said: *"... marriage last until 2019, at time I had relationship with child's mother."* I also note that in his oral evidence, when speaking about the time he was in a relationship with BL, N said: *"I was married at the time still, but my wife and I were not together, you know."* He also stated in cross-examination: *"I seek to try to get me and my wife together to get RERC[2]. I try reconcile with wife after (R) born, it never really work out like that as she knew about baby and all those things. It make situation worse between me and her."* He also said in his oral evidence that he cannot now locate his wife *"to sign divorce papers"* which he says he needs to do to enable him to get a work permit. Therefore, his above comment that his plan is to live and work in the Cayman Islands upon his release as he remains married to a Caymanian national seems one without merit and unrealistic. N says that if, he is deported/unable to remain in the Cayman Islands, he intends to return to Jamaica and to take R to live with him in the family home.

Background- Relationship of N and BL to filing of application for a care order on 16 October 2019

4. R was born on 17 August 2019. He is now 5 years old. R's birth was not registered and initially there was no birth certificate recording the father's name. BL was forty years old when R was born. R was BL's fifth child, and she had failed to consistently raise any of R's siblings or provide for their basic needs.[3]

[2] Residence and Employments Rights Certificate.
[3] At the time of R's birth there was one other minor sibling and three adult siblings. DCFS had concerns about R and the other minor sibling who was almost 10 years old at the time.

5. At the time of R's conception N was married to a Caymanian.[4] He had formed an intimate relationship with BL shortly after the marriage. BL told the social worker, Ms. Genevieve Tomlinson, that, when she was pregnant, she did not want the child and that it was a mistake resulting from a 'one night stand.' When Ms. Tomlinson first met N, she said he was *"passionate*" and that he said that he and BL had lived together. N said that, due to issues within his marriage, his RERC was never obtained and he said that the process around making such an application prevented him obtaining a work permit. In cross-examination, N said that the application had not been submitted due to a *"misunderstanding"* between him and his wife. N also contends that it was his later custodial sentence that prevented the application processing.[5] N states that his immigration issues have stopped him finding legal employment since the marriage and that is why he has not made any financial contributions to assist the Applicants with the care of R. However, it appears that pursuant to s.38(7) Immigration Transition Act (2022 Revision) N may have been able to make an application for a work permit and possibly have one granted in his pre-incarceration circumstances.

6. During and after her pregnancy BL was leading a chaotic lifestyle characterised by drug abuse and housing issues. In July 2019, BL tested positive for marijuana and cocaine use while pregnant with R. When BL was pregnant with R, DCFS had received referrals from the Health Service Authority and members of the public regarding BL's substance abuse and about her being homeless. DCFS were informed that BL was not receiving pre-natal care, did not have health insurance and did not have access to food or sufficient nutrients while she was pregnant. In or around May 2019, BL told DCFS that she was not bonding with her unborn child and that she had decided that she did not want to keep the baby when born, nor did she want to be forced to keep the child. BL reached out to Ms. Tomlinson, seeking help to provide a home for her unborn baby. In July 2019, DCFS provided CINICO coverage for BL to enable her to have access to maternal care for the unborn child. DCFS provided BL with rental assistance in August 2019 because she was unemployed and living out of her car at the time. Later, on 8 August 2019, BL advised DCFS that she was not certain whether she was going to put up R for adoption, adding that she would consider doing that if she found a family who could give the child a better life. On 16 August 2019, a day before R's birth,

[4] N was married on 9 May 2018, only eight months after his September 2017 arrival in the Cayman Islands. He informed the Court during cross-examination that he met his wife after he arrived in the Cayman Islands. He is a Jamaican national.
[5] Paragraph 12 N's Closing Written Submissions.

BL again said that she was not sure what she wanted to happen to R, and the social worker reiterated that it was her decision about adoption and that she should not feel pressured when deciding.

7. On 6 September 2019, R and his minor sibling were left in the care of a family friend ("BR"). BL had reached out to BR and told her that she did not want to keep R and said that she was thinking about giving him to BR's daughter. BL failed to return to collect R (and his sibling) and BR was unable to communicate with or locate her. BL failed to reach out to DCFS regarding the care of R or his sibling. DCFS received reports that BL was seen walking in public on 15 September 2019 possibly under the influence of drugs.

8. In September 2019, BL failed to cooperate with DCFS who had been making attempts to meet with her. BR told the social worker that she suspected that BL would not attend at the DCFS office because BL knew that DCFS would no longer make rental contributions to her because the children were not in her care and due to the reports of drug use. At that time DCFS did not know the name of the father, as BL had failed to provide them with that information.

9. By 16 October 2019, DCFS formed the view that BL had abandoned R. DCFS determined that BL had not made the effort to change her unhealthy lifestyle choices in order to provide a safe and stable environment for R or R's next sibling and that she was not making an effort to provide for their basic needs. DCFS decided that it should apply for a care order, with the care plan being to place R in foster care while prospective adoption candidates went through the adoption process. DCFS submitted that R would thrive in a long term placement rather than under the unacceptable care provided by BL where he was *"exposed to suffering harm of insufficient nutrients, insufficient stability and lack of a safe nurturing environment that fosters healthy development and growth."*[6] In the Social Work Evidence Template prepared by social worker Candace Hylton, she wrote concerning adoption: *"... The department has a list of potential families that have shown an interest in adopting (R) and all potential parents need to be explored to ensure that (R) is placed with a family/parent that can provide for his every need. However, this process will take some time and delay permanent placement which will result in (R) bonding with foster parents only to potentially be disrupted in place with a new adoptive parent. The impact of the constant instability of a*

[6] Paragraph (c) page 12 of the Social Work Evidence Template dated filed on 16 October 2019.

permanent home could cause long-term attachment and trust issues.[7] *However, this possibility is not considered to outweigh the known instability that living with mother will cause for (R).”* The Form C2 Care application was filed on 16 October 2019. The contact plan under an interim care order was for there to be one hour bi-weekly supervised contact with BL and the maternal grandmother. There were no recommendations made in relation to N because at that time his identity was still unknown.

Background- Interim Care Order made in Summary Court 25 October 2019

10. Initially BR had expressed an interest in adopting R, but on 21 October she indicated to DCFS that she was not sure whether she wanted to do that. On 25 October 2019, Chief Magistrate Hall made an interim care order, expiring on 20 December 2019, with a review hearing fixed for 11 December 2019. The Magistrate’s note recorded in the Court file stated that BL did not attend that hearing as she had not been served. The Magistrate’s note does not indicate that N was in attendance, If N was not, that may be because he was not notified of that hearing as DCFS did not know the father’s identity at the time.

Background- Period between first Summary Court hearing 25 October 2019 and the second Summary Court hearing on 11 December 2019

11. DCFS records show that, on 12 November 2019, N contacted DCFS. This is consistent with N not attending the first Court hearing. N told them that he was R’s father and that he had been involved in R’s life. N told DCFS that he was unsure why BL had denied his involvement. N told DCFS that his and BL’s relationship had ended by the time that R was born because it had been a tumultuous one due to BL’s drug use[8] and due to the fact that N was still married to another woman. In his affidavits, N does not mention that he was charged for the offence of common assault against BL and that is why the relationship ended and why, due to bail conditions, he was unable to return to live in BL’s home. It appears that the assault charge was dismissed by the Summary Court on 15 May 2020 when BL failed to attend Court.[9]

[7] My emphasis by underlining.
[8] Paragraph 3 N’s Affidavit sworn on 12 December 2022
[9] N said during cross-examination: *“After four months when she call police, she tell police about scrape/scratch foot. When (it) come court she not come to court and court throw out.”*

12. N told the Court that, following his separation from BL, he lost communication with her and only found out about the birth through BL's cousin in North Side. He said that although he was *"unprepared to be a father"* he was *"happy and excited at the birth of my first child and look forward to spending time with my new-born son"*. N said that when he heard the news, he went to see the child at BL's home two days after the birth. In his oral evidence, he said that it was on his second visit to see her that he took along baby supplies, which he termed in oral evidence as being *"a couple of things"*. In his affidavit[10] evidence he gave the impression that it was on the first visit that he brought *"milk, pampers and clothing"*. Apart from his assertions, there is no other evidence to verify that he contributed any supplies for the child at any time. In his oral evidence, N said that he tried to see BL a few times at the residence where BL was living, until he realised that she was not residing there anymore. He said that, after BL left the property where he had visited her and R, he did not know where they went to.

13. Importantly, in his oral evidence in chief, N said that he knew, at the time, that BL had a drug problem and that contributed to the relationship ending.[11] During cross-examination, N said that they lived together during four months of the pregnancy and that for the last five months of her pregnancy she would come to see him if she wanted anything. However, I note that N said during cross-examination that he was not aware that BL was repeatedly using drugs when she was pregnant. His evidence is not consistent. From his own evidence, he must have known, as did a number of other persons who reported her usage, that BL was using drugs when she was pregnant. Despite knowing that, he did not make the expected level of effort to locate BL and R before DCFS got involved and/or to report any concerns to DCFS or any relevant health agency about the possible risk to his unborn child post separation.

14. In his affidavit evidence[12], N said the next thing he knew was when DCFS reached out to him and informed him that R was living with the Applicants as foster carers. However, in his oral evidence, he said that before he had spoken to a social worker, and about a week after the birth, he had been called by a lady who told him that she was caring for R due to BL's issues. He said that he made it known to her that he *"need the child to come by me"* and was told by the lady that could not happen

[10] Paragraph 4 N's Affidavit sworn on 12 December 2022.
[11] In his evidence in chief, N said: *"2nd time I visit I bring supplies - I bring a couple of things - at time she had a drug problem…"*
[12] Paragraph 5 N's Affidavit sworn on 12 December 2022.

as *"child protective services"* were involved. He said that he visited the child in the care of that lady three times. N said that when DCFS contacted him they informed him that he had not been contacted before the foster placement was made because BL had not acknowledged him as the father and had not provided them with his details. In his oral evidence, N said that he tried to tell DCFS that he needed R to stay with him, but was told he would have to *"go through Court"*. DCFS records state that N did not put himself forward to be R's carer but told DCFS that he wanted his father to take on that role. In his evidence in chief, N conceded that he told DCFS that his father would be R's carer initially because he was unable to straighten out his own immigration status and had no stable address, which he said the Magistrate had required him to do and to have. I note that later, in February 2021, when the social worker spoke to N to identify a family member with whom R could reside, N said that he did not want R around his father as he was worried about ill-treatment, and that he did not get along with his stepmother. The paternal grandfather and his partner were interviewed by DCFS, but they then failed to follow up with DCFS. At the time, DCFS recorded that: (i) N was unemployed;[13] (ii) N was on a suspended custodial sentence;[14] (iii) N had another pending matter before the Court; and (iv) N's immigration status was uncertain.

15. On 28 November 2019, following discussions between BL and BR, JM and ZM took on the full-time care of R. It was on a rather informal basis, as they did not have anything in writing from R's biological parents authorising the arrangement. It is common ground that R has remained under their high standard of care since then. JM told the Court that they did not intend to adopt R when they received the message asking them to care for him, but they were *"moved to provide the support when the message came in"* as JM *"did not see anyone else help"*. Having considered, in particular ZM's evidence, I accept that was the Applicants' position and motivation when they agreed to care for R.

[13] N states that he is a skilled tradesman who can work anywhere in the construction industry.

[redacted]

16. ZM would frequently encourage N *"to get things in order to be able to take (R) and care for him since adoption was not our original intentional focus"*. ZM even reiterated to the paternal grandfather on occasions, one example being just before R was to start at preschool, the importance of N *"getting himself together"* in order for him to take over the care of R. ZM also told the paternal grandfather that if N failed to do that, an adoption order would be applied for and he replied that he had tried to talk to N but he did not seem to be taking it seriously. ZM's advice was proffered to no avail over too many years in this young child's life. ZM is so fair minded that, at the end of his evidence in chief, he told the Court that even now: *"If (N) tomorrow morning was in a position to give (R) stability and security and (R) did not need to wait, I would be broken, but I would say here take your son, as I want him to have his son. I don't think that (R) would ask for this."* ZM said that despite him then going on to say: *"I consider (R) to be my son. I would lay down my life so he could live not even think about it."* The Applicants are right in saying that, for the foreseeable future, and arguably even for the rest of R's minority, N will continue to fail to put himself in a position to enable him to offer the stability and security required for a change of the status quo in the childcare arrangements.

17. Trying to make him feel more involved, the Applicants say that they encouraged N to contribute to R's care. They informed him about items needed such as clothing, formula and diapers. Despite them doing that, the Applicants say that R did not contribute financially to the child's care and that his only expenditure was for two birthday presents he purchased for R. N says that he did not financially contribute as he was unemployed.[15] I note that it was the Applicants who took the initiative and reached out to N for him to have contact on R's first birthday, but when N attended he did not have a present to give to R and he only went to get one, a small brown toy car, after JM suggested to him that he should go and come back with one for this landmark occasion.

18. On 4 December 2019, JM informed DCFS that she and ZM were interested in fostering R. JM disclosed that they had been assisting BR, who was their church sister, with the care of R. They first met R when BR asked them to babysit him on a couple of occasions in October 2019. BR had placed a notice on her church blog asking for someone to undertake the care of R. DCFS established that BR had challenges continuing to provide care and that JM and ZM were assisting financially

[15] See paragraph 5 above.

and initially having R stay with them on weekends. The Applicants said that they were made aware at the time by BR that N was involved with R and that questions about his paternity had been raised.

19. The Applicants sensibly contacted DCFS for guidance. They acted upon the advice received, which was to apply for a residence order. The Applicants state that it was at this juncture that DCFS contacted both N and BL. The Applicants were told by DCFS that the parents agreed that R should reside with them until the parents were settled sufficiently to provide R with the required stability. The Applicants said that N was told that they intended their care of R to be a temporary arrangement, bridging the time until either parent could take on R's care. I accept that ZM has on a number of occasions spoken to R about him *"stepping up to the plate"* and *"positioning himself to take care"* of R[16] as they just wanted what is best for R. However, despite ZM's sage advice, the Applicants rightly feel that N has throughout failed to regularise his position, stabilize his lifestyle and make the right life choices. Therefore, N has not shown that he is capable of raising R to date and for the foreseeable future.

Background - Second Summary Court hearing, 11 December 2019 – interim supervision and residence order

20. The care proceedings came before Magistrate Donalds on 11 December 2019. The Magistrate's note on the Court file records that N had not been served and makes it appear that he did not attend the hearing. The note says that the parties are required to appear at the next review hearing, but if they fail to do so, the interim orders may be made final in their absence. If the note is correct, it is not clear why N was not served as it appears that he had made himself known to DCFS almost a full month earlier. DCFS informed the Magistrate that their efforts to engage with N and his family to ascertain their readiness for the child had *"proved futile"*. N in his oral evidence says that he was at the December 2019 hearing. The Applicants, who attended the December 2019 hearing, said that the first time that they met N was at the February 2020 hearing. The Learned Magistrate made an interim supervision order for 8 weeks and an interim residence order in favour of JM and ZM. The Court directed that there would be a review hearing on 6 February 2020. As neither N or BL are Caymanians, R's immigration status was resolved by the Applicants adding him as a dependent on their Government work contracts. ZM has recently been granted Caymanian status, entitling JM to apply for the same as a spouse. If R was adopted, he would also be able to acquire that status,

[16] See paragraph 16 above.

something he would not be able to do if he remains under the Applicants care only pursuant to a residence order.

Background- The third Summary Court hearing, 6 February 2020 – Supervision and residence order

21. On 6 February 2020, Chief Magistrate Hall made a one-year supervision order to DCFS and a final residence order in relation to R to JM and ZM. N attended that hearing, BL did not. In the written submissions, Counsel for N correctly states that N agreed that R should live with the Applicants, but only until *"he was settled and could take responsibility for the child"*. In the recently filed closing written submissions prepared on behalf of N, his Counsel wrote that: *"The father first met the Applicants during the Court proceedings, initially for an interim care order and thereafter for a residence order. Both father and mother attended Court and gave their consent to grant the Applicants a residence order."* Although the granting of a final residence order was not opposed at the February 2020 hearing, the above assertion made in the closing submissions may not be fully accurate, as the Court file does not record N as being present for either of the two earlier hearings at which interim orders were made and BL was not present at the hearing at which the interim care order was made.[17] Although there may have been communications between them, on the Applicants' evidence, the first time that N met them was at Court at the February 2020 hearing. The diverging views about attendance is confusing, but they do not affect the determination of the matter before me. What is agreed is that the day of the hearing was the first time that N had seen R since he had been in the Applicant's care. That happened because the Applicants initiated N's contact with R on that day by inviting N to meet R when R was sitting in a car parked close to the Courthouse.

Background – DCFS Written case plan, February 2020

22. DCFS produced a written case plan ("the Plan") dated 14 February 2020 to guide the parties and set out the expectations for all relevant parties whilst the supervision order was in place. It forms an important part of my deliberations in this case. In the Plan, consideration was given to the circumstances of R's biological family. The Plan contained the objectives and goals set for BL, N, ZM and JM. The Plan was signed by: (i) the DCFS social worker[18] and her supervisor; (ii) N; and (iii) ZM and JM. The Learned Magistrate had explained to N at the February 2020 hearing that he

[17] See paragraphs 10 and 20 above.
[18] Ms. Candace Hylton.

had a year to put himself in a position to take on the care of R. Significantly, the Magistrate added that, if N failed to do that, the Applicants could then apply for an adoption order. I am satisfied that the signatories would have been aware of and understood the content, including what goals and objectives they were expected to achieve by the February 2021 target date and that adoption would be a real possibility if they were not met.

23. The content of the Plan showed that DCFS were clear that BL could not care for R as she: (i) was still using cocaine and was refusing to check into rehab; (ii) still appeared to be homeless; (iii) was unemployed; and (iv) had little to no interest in spending time with R. BL failed to meet any of the objectives or goals set out in the Plan by the target date and this remains the state of affairs to date.

24. DCFS acknowledged in the Plan that N had *"shown an interest in getting to know his child and has expressed wanting to raise him"*. DCFS also expressed its view in relation to N that: (i) since N had become involved he had not made an offer to DCFS to financially support R; (ii) N was unemployed; (iii) N had made contact arrangements with which he did not follow through; (iv) N was more interested in handing R over to the paternal grandfather as opposed to raising R himself; (v) N had not shown the maturity of a father and he did not appear to grasp what raising and providing for a child entails; (vi) N did not have a *"steady address"* as he sometimes slept at his girlfriend's home and sometimes on his father's couch; and (vii) N had failed to inform DCFS about his accommodation plans and that no steps had been taken towards finding accommodation which would be large enough to also house R. On the evidence before me concerning the circumstances that prevailed at that time, the observations made by DCFS about N at that time were justified.

25. In the Plan, DCFS set out a number of *"goals"* for N, and these included: (i) N obtaining gainful employment; (ii) N attending parenting classes; (iii) N desisting from using illicit drugs; (iv) N desisting from engaging in criminal activities; (v) N demonstrating that he has accommodation that is conducive for R to live in; and (vi) N demonstrating that he can provide for R's basic needs, safe home, food, loving environment, health insurance and child care when he is at work. DCFS set out the objectives to be that: (i) N to become a responsible parent that can provide and care for R; (ii) N to sort out his immigration status; (iii) N to improve his parenting skills; and (iv) to unite R with

N. N failed to meet all those objectives or almost all the goals by the target date[19]. Ms. Tomlinson, when examined by N's Counsel, said that the long-term plan was to enable N to get custody, but the expectation was for N *"to say that he had put things in place regarding goals set out in the plan"*. She concluded that: *"He never fulfilled any part of the plan, I am not saying that he did not try… It is fair to call him an unfit parent."* It is fair to say that any assigned social worker failed to offer N any assistance with setting up parenting classes with the Family Resource Centre ("the Centre"). On the other hand, it is also clear that N failed to be proactive in any way concerning seeking that parenting education assistance from DCFS or directly from the Centre.

26. The Plan also included goals for JM and ZM. The goals included: (i) obtaining R's Caymanian residency with the assistance of the DCFS; (ii) continuing to provide a loving, safe environment for R; and (iii) facilitating contact with the biological parents with the assistance of an assigned social worker. The objectives in relation to JM and ZM included: (i) ensuring R is living a good quality life with access to all his basic needs; and (ii) facilitating and assisting with the bond between the biological parents and R. With the assistance of N, the Applicants were able to secure a passport for R and they paid for a new birth certificate for R accurately recording N as being his father. N was informed by the social worker that he was required to attend at the Registrar of Births for the registration to take place and, although he attended for the registration day, he failed to bring the appropriate funds and that is why the Applicants had to pay. JM and ZM have commendably met all the expressed childcare goals and objectives, and I will elaborate further below herein concerning the facilitation of contact goal.[20]

27. The expectation set out in the Plan, if the objectives and goals were met, was for R to *"continue to flourish in a loving environment and bond with biological parents"*. The *"Permanency Goal"* expressed in the Plan was *"for the child to be united with biological parents. <u>However, if parents do not follow through with the above stated goals, for the care giver to seek adoption of the child by hiring an attorney"</u>*.[21] The note concluded with the following comment: *"(JM and ZM) have*

[19] N may have met his illicit drug intake goal, as he points out that, since his [redacted]conviction for consumption of ganja, he has never taken any drugs although he did say in his oral evidence: *"At the moment I never plan to be smoking, some reason I get caught up and use marijuana – they make cakes."* The only conviction recorded on N's Criminal Records Office - [redacted]

[20] See paragraph 29 below.

[21] My emphasis by underlining.

been involved with the child since birth and the child has bonded with them. They have financially supported the child and provided more than adequate care. It is obvious that they love the child and hopes (sic.) to adopt him, however, fully understands (sic.) that adoption may not be possible and still want to care for the child until/if/when parents have demonstrated that they are capable."[22] JM stated in her evidence in chief about the February 2020 hearing: *"The Magistrate said after the hearing before we left chambers, Magistrate spoke to (N) ask him if he understood the proceedings and why final order made. He respond in positive saying he understood. Magistrate instruct that (the Applicants) had right to apply for adoption after a year if he did not comply with the care plan goals."*[23]

28. It was evident that JM and ZM were able to provide the immediate care for R that was required and that they were willing to also provide long-term care. It was also evident that the door was not being closed to R living in the future with N, but for that to happen N had objectives and goals to meet within a reasonable time frame. N failed to do that.[24]

Background – Contact between N and R

29. N said that the expectations about ongoing contact which he had held after being told by the social worker that R had been placed with the Applicants as foster parents were *"sadly mistaken"*. N said that his attempts to have contact with R had been *"blocked or derailed"* by JM and ZM. N said that when he asked for contact, he was told that his request was *"inconvenient"*, or that other plans were already in place or that R was sick. In his oral evidence N said that the Applicants told him that they could not give him the level of contact that he sought, including overnight contact, because they were responsible for what happened to R due to the Residence Order being in place. He added that after being incarcerated, after a time, he was not able to get through to the Applicants when he tried to contact them[25] and the last time he had contact was on R's birthday in August 2023. N said this was *"frustrating"* for him, as he felt that he had *"established a bond"* with R who he says was always *"excited and happy to spend time"* with him.

[22] My emphasis by underlining.
[23] See paragraph 22 above.
[24] See paragraph 25 above.
[25] In his oral evidence he said this included trying via Facebook or WhatsApp.

30. The Applicants paint a different picture about their interaction with N and his contact with R. Their position is that they have always allowed R to have contact with his family and that they have been the ones striving to meet the Plan's goal to facilitate contact with the biological parents and their families. They say that they have always believed that it is in R's best interests for him to know his family and have a relationship with those family members who are interested in having such a relationship. They have facilitated contact with the maternal grandmother, the paternal grandfather, and two of R's siblings, as well as the paternal uncle and aunt. When he was living in Grand Cayman, the Applicants used to take R to see his paternal grandfather at his shop. When the paternal grandfather returned to live in Jamaica in 2022, the Applicants facilitated telephone contact for him with R at least once per month and they still provide him with photographs and videos of R. When R was eighteen months old, with the consent of BL and N, the Applicants arranged a religious ceremony for R to be blessed. They invited N, BL, the paternal grandfather and N's sister to the ceremony. The latter two attended the ceremony. N did not attend due to him being remanded in custody at the time. I am satisfied that the Applicants have shown that they recognise the benefits derived from R knowing his biological background and identity and that they are willing to facilitate reasonable levels of indirect contact for those wider family members who properly seek it.

31. Prior to N's incarceration they facilitated contact requested by him at Camana Bay, Airport Park and Seven Mile Beach. Those visits would last for about an hour because N would indicate that he needed to leave. Up to R's second birthday this occurred about twice a month. After that, N requested more frequent contact which the Applicants say was facilitated. On several occasions they messaged N to inform him of and to invite him to attend upcoming medical appointments for R. The Applicants say that he has never attended any appointments, nor has he given them an explanation as to why he was unable to attend them. Since his incarceration, N is allowed by the prison to have video contact with R only on Saturdays and the Applicants have said, and I find, that they have tried to arrange as many calls as possible and that they will continue to do so.

32. The Applicants indicated that at the beginning they had a *"casual and cordial"* relationship with N. ZM in his oral evidence said that in the beginning: *"I told (N) this is your child and I hope you not think I want to take the child. I said I want you to put yourself together and he said he would work on that. We become friends, honestly… I call him a friend, I guess that just my personality…*

I tell him he need to start bonding with the child- tell him man to man."[26] The Applicants said that N would call them to schedule a time that was convenient to N to see R. Initially N telephoned them, but as time progressed, he started using WhatsApp messages at least once a week. The Applicants were happy to tell N how R was doing, and they would send him photographs and videos. They said that, after the February 2020 contact near the Courthouse, there was no physical contact between N and R until R's first birthday on 17 August 2020. JM reminded the Court that between February/March 2020 and August 2020 there were Covid-19 lockdown regulations in place. The Applicants said they would invite N to join them at church and at doctor's appointments. JM said that he would give N ample notice of medical appointments, two to three days in advance, but he would not attend although he said that he would. All the above is accepted by N, save that he says he was not invited to attend doctor's appointments. I prefer the Applicant's evidence to that given by N concerning these appointments. JM said that they paid for all of R's education and that N at no time offered suggestions or any type of assistance relating to R's education.

33. JM said that between August 2020 and June 2021 there was contact at least once or twice per month and they would also reply to N's texts in which he was asking how R was doing. JM said that N did not say that he was uncomfortable with the level of contact at that time.

34. On 24 October 2020, N sent a voice message to the Applicants telling them that he wanted them to drop R off at a location to be decided at noon that day with a bottle and a change of clothing. It appears that his intention was to take R to a birthday party. The Applicants told N that they would not accede to his demand as they were uncomfortable with it and because they were of the belief that any contact was to be supervised.[27] N was upset and told them that he was not in agreement with any supervision requirements. JM then reminded him that the social worker had been trying to reach him and that he could speak to her if he felt that the contact arrangements should be changed.

35. On 4 November 2020, the paternal grandfather was again contacted by DCFS, and he reaffirmed that he was not able to provide care for R. He told the social worker that he had separated from his

[26] See paragraph 16 above.
[27] During her evidence in chief JM said: *"I thought the supervision order meant that the contact also had to be supervised."*

wife and that he was trying to find somewhere for him and N to live. He added that he hoped that N would find employment to enable N to then be in a position to gain custody of R.

36. On 17 December 2020, the Applicants messaged N saying that they had not heard from him for a few days and wanted to give him the opportunity to speak with R. N failed to reply until 5:30 PM on Christmas Day when he sent a message simply stating: *"Hey."* The Applicants responded and sent him photographs of R opening his presents, to which N replied: *"Kiss the baby and tell him Merry Christmas."* N added that he was planning to send a message to make some arrangements to see R, but he was tired.

37. There had been a positive contact on Sunday 13 June 2021 which JM organised after N had messaged her on 9 June 2021. That was at the beach, and it included N, his father and his brother. However, the Applicants indicated that the nature of their relationship with N changed thereafter when N became *"hostile in his discourse"* when requesting to see R. The Applicant's say that late at night, on 16 June 2021, N's father passed on a message to JM that N wanted to see R on Sunday 21 June 2021, which was Father's Day. JM replied to N saying that she had received the message from N's father and that contact could not happen on that day as she was working and ZM was in quarantine. Quite reasonably in the circumstances, JM offered contact on the Saturday as an alternative. JM is a social worker and ZM is a paramedic, so they both have demanding jobs with resulting obligations to the community that they serve which they are obligated to meet. Over the next three days, N sent several rude threatening messages, in particular one at 11:53 AM on 20 June 2021, as he felt that his request should have been accommodated. He wrongly accused the Applicants of lying and of being motivated to try to keep R away from him. N said that R was always happy and excited to see him and that he felt that the Applicants' actions were *"obstructive"* and were *"prejudicial"* to him and R. He said that this is why he was *"very vocal about (his) displeasure"* on that occasion. However, this does not justify his unattractive actions and if he were more level-headed he should have appreciated the nature and importance of the work commitments that the Applicants had and that they simply could not rearrange those to accommodate contact at times when it suited N to have it on fairly short notice. When one considers the substantial evidence relating to the Applicants' approach to contact, it cannot be said to be obstructive; in fact, the impression gained is that they have been patient and very accommodating. If N had real grievances about the contact regime, he could have applied for a contact order, something that he has never

done. The Applicants were concerned by the nature of the messages and made a report to the police which included playing the messages to them. The Applicants told N that the communication line between JM and N should cease and that, moving forward, any communication should only be between N and ZM.

38. N did not see R on his second birthday in August 2021 as ZM was working. ZM had told N on 12 August 2021 that, due to his work commitments, he would not be able to facilitate a contact visit on that day and he suggested the 19 August 2021. Unfortunately, N again responded with several aggressive messages and accused the Applicants of lying, adding that arrangements should be made without hesitation for him to see R whenever he requested that to happen. Of course, that is an unreasonable expectation for N to have held not just because of the Applicants' commitments but also because of R's routines. N told ZM that he should take time off from his paramedic work responsibilities to facilitate contact on demand. ZM informed him that, if he did not find the present arrangement to be satisfactory, then he should make an application relating to contact to the Court. Arrangements were commendably made for contact to take place on 19 August 2021.

39. The Applicants had family members visiting them from overseas during the Christmas period in 2021 which meant that JM and R had to remain in Covid quarantine with them, whilst ZM stayed out of the home as he had to work. N contacted ZM on 23 December 2021 requesting to see R on Christmas Day and he sought details about R's clothes and shoe sizes. ZM informed him that, due to the family being in quarantine that Christmas Day, contact could not take place and he let him know that he himself had to move out of the home due to work.

Background – R's special needs

40. JM specialises in behavioural health in her employment with DCFS and this makes her well suited to assist R with his special needs outlined below. Ms. Tomlinson remarked in her oral evidence: *"I see that (R) can be a handful. I observe (the Applicants) had a way to calm him."* JM and ZM saw signs of R having heightened sensitivity to some things. JM noted that after a year at his preschool. The preschool also made similar observations. R's then school asked the Applicants to obtain an assessment because they were starting to have challenges with supporting him and wanted advice as to how they could offer any required support. Unfortunately, that assessment took two years, even after much prompting. The consequence of the findings made in the various reports

resulted in R being unable to obtain a placement in a private primary school, as the approached schools kept indicating that they did not have the necessary skills amongst their staff to meet his needs. Fortunately, as already commented on herein, very late in the day, a placement in the Government's school system was made available to R for the start of the present school year.[28]

41. On 1 December 2022, a psychologist, Yanique Matthews, agreed with a previous recommendation that R would benefit from a Developmental Assessment and from ABA Intervention services. The psychologist said that R needed targeted support to promote his development and increase success in a classroom setting. The psychologist highlighted issues with R's speech and communication skills.

42. Emily Runnoe at the Health Service Authority conducted a Speech-Language Evaluation. She then reported in an email on 22 December 2022 that R was a *"gestalt language processor, as he produces frequent echolalia and is merely producing self – generated language"*. She added that R *"exhibited a Mixed Receptive – Expressive Language Impairment characterized by difficulties following age appropriate direction; understanding/asking/answering simple WH-questions; understanding/producing age–appropriate concepts; understanding/labelling object function… he exhibited an open–mouth depressed-lingual oral resting posture coupled with audible breathing"*. Having regard to her findings, Ms. Runnoe felt that R would benefit from twelve-sixteen sessions of Speech-Language Therapy *"to improve his receptive, expressive, and social – pragmatic language skills and to help empower caregiver(s) with language facilitation strategies to utilise in the home"*. Ms. Runnoe also recommended that R should participate in: (i) an Occupational Therapy Evaluation; (ii) an Audiologic Evaluation; and (iii) a Psychological Evaluation, as well as to continue monitoring whether there was a need for a Feeding Evaluation.

43. A Psycho-Educational Assessment Report was provided in February 2024. The report produced by the educational psychologist, Renece Bazil, had been requested because R struggled with behaviour regulation and had displayed some aggressive behaviours towards his peers. The author mentioned in the report that, when R was aged three, he had a Multidisciplinary Evaluation Team Report in 2023 which indicated that he had mild developmental delay in the areas of adaptive functioning and personal social, as well as a significant delay in cognitive ability with motor skills being below

[28] See paragraph 69 below.

average. The report also noted that, as R had moderately low average auditory and expressive language skills which demonstrated a mixed receptive-expressive language impairment, he had been receiving speech and language support from a speech therapist every week at school since November 2023. Ms. Bazil found that R's full-scale IQ fell well within the low extreme which suggested that his cognitive abilities were less than developed for his age. R also had significant hyperactivity which means that he would have difficulty with control of attention and/or behaviour and could have poor concentration or be easily distracted. She noted that R *"is exhibiting many of the associated features characteristic of Autism Spectrum Disorder"* and added that his *"severe behavioural dysregulation is likely impacting the development of his social skills, and his ability to appropriately engage with peers and adults"*. She stated that he met the *"criteria as a special education needs student… under the category of need: Social/Emotional/Mental Health Difficulties"*. Ms. Bazil went on to elaborate about the category stating that it was *"characterised by severe difficulties in managing emotions and/or behaviour that adversely impacts the student's functioning within the educational setting. Social, emotional and mental health difficulties may manifest themselves in many ways. These may include becoming withdrawn or isolated, as well as displaying challenging, destructive or disturbing behaviour. These behaviours may reflect underlying mental health difficulties including but not limited to anxiety or depression, self – harming, substance misuse, physical symptoms that are medically unexplained, attention deficit hyperactivity disorder, attachment disorder etc"*. She then went on to make a number of valuable recommendations for educational establishments to take into account, including R being placed in smaller classes.

44. It is evident that R is a special needs child who requires support, along with security and certainty, in both his home and school life. R also has wider medical challenges, including having his adenoids removed, having tubes put into his ears due to illnesses/ear infections. He also has severe allergy issues for which he receives medication. N, who says that he opposes adoption because he seeks to have R placed into his care for the first time in R's life at some period between 2028 and 2034 depending on when he is released from prison, comments in his evidence that he would do his best to address the issues that have been highlighted by the experts. However, it is clear from the substance of what N said in his evidence, that he does not have a true or realistic grasp of R's needs and what the effect would be of removing R with the difficulties outlined from the only carers

he has known and who he refers to as *"Mum and Dad"*[29] at that later stage in his childhood. JM said in her oral evidence that R can be aggressive at times but added: *"We know how to deal with these behaviours. He has a temper, he is an amazing child."* ZM said: *"I am already his parent from three weeks old so needs to be permanency for a child like (R)- permanency, stability, security and opportunity."* It is likely that the fundamental change in the care regime that N says he will be seeking in the future would also likely require R to leave the jurisdiction to Jamaica and to a different school system. N has not been able to show a sufficient understanding or even acknowledgement of the consequences of that seismic change to the status quo to R's life when seeking to oppose an adoption order on the basis that R should be uprooted and live with him at some stage in the future.

45. Ms. Tomlinson in her oral evidence reaffirmed the view expressed in her November 2022 Report: (i) that an adoption order would provide R with the stability which BL or N are not able to provide; and (ii) that R had *"already been integrated in the immediate and extended family system as well as in the wider community and he is loved and care for."* Importantly she added that there *"would be a level of trauma if (R) is shifted around"* and that R had *"bonded and settled in stable family life, careful why disrupt that and for why?*" She went on to reiterate: *"If (R was) moved, could be traumatised, if moved likely to cause harm to the child."*

Background – Adoption discussions between the Applicants and the parents

46. On 19 October 2020, N was invited to join the Applicants to spend time with R at Camana Bay. The Applicants say that this was the first occasion when they mentioned the possibility of them adopting R and that they raised it in circumstances where N had told them that BL was still using drugs and that he was unemployed, had financial issues and had no place for R to live with him. N does not seem to recall this first discussion about adoption. The prevailing circumstances included the Applicants' concern about the criminal law issues which N was facing and which N was unwilling to provide them with details about. N had been charged with [redacted] in 2020 [redacted] N said in cross-examination: *"I did not tell (the Applicants) about the [redacted] charge as I not see it as relevant."* The Applicants told N that if they were allowed to adopt R, they would maintain R's relationship with both of his parents and wider family members.

[29] Evidence in chief of JM.

The Applicants said that, at that stage, N initially agreed to them proceeding with the adoption application and informed them that he would sign any required documents. N denies ever indicating that he would agree to an adoption taking place or that he would sign any adoption papers. He said in his oral evidence that: *"From the get go, I always told them I not give my signature as I not want that for the child."* Although he accepts that the Applicants have been *"exemplary"* foster parents to R, he says that he is *"an individual driven by a profound belief in the transformative power of love and the significance of family"*[30] and opposes adoption as he feels his ties with the child would be severed if such an order were made. N says that he has always made it clear to the Applicants that he could not agree with an adoption.

47. Believing that they had received N's blessing, the Applicants started the adoption application in or around January 2021. However, on 3 March 2021, N and his partner contacted DCFS and requested *"custody"* of R. DCFS advised N that he needed to make an application to the Court. N, possibly due to the criminal offence issues leading to his current period of incarceration[31], has never filed an application for a residence order to be made to him. In his oral evidence N said that, at the March 2021 meeting held with DCFS, he told them that he knew that an application to Court would not work out as the Magistrate had previously asked him about having a stable job and a stable address, which he still did not have. He gave the same reasons for not applying, when asked if he had applied for defined contact, including overnight contact. Shortly thereafter, on 22 June 2021, as the supervision order had expired in February 2021, DCFS closed the case in relation to R.

48. When the Applicants spoke to N in May 2021 at church, he told them that he was not sure whether he wanted any adoption proceedings to progress. N says that he told the Applicants that he did *"not have the heart"* to have his son adopted. N has since also said to the Applicants that he objects to the adoption because R is *"his only seed"*, but he would be willing for them to be his Godparents and for R to continue living with them. The Applicants say N told them at the church that his mother did not want her only grandson to be adopted. The Applicants informed the Court that they have not met and that, before and since she called ZM at work on 9 November 2023, they have not

[30] Paragraph 8 of N's Affidavit sworn on 9 April 2024

[31] [redacted].

spoken with or received any communications from the paternal grandmother. They therefore question how it is that she has been able to influence N's decision about adoption.

49. At the May 2021 church meeting, ZM told N that he needed to get his life in order as they were not willing to raise R long-term if N later decided that he was going to come and take the child away. ZM reiterated that the Applicants intended to provide a permanent home for the child if N failed to take the required steps, which had been outlined in the Plan, to put him in a position to provide the appropriate level of care for R. Communications between them became more sporadic, reducing from biweekly to once a month. The Applicants became aware that N had been incarcerated at the prison at least twice before he was sentenced for his latest offence without him telling them. N did not comment on the prison point, but told the Court that he did his best to arrange contact but it was difficult at times due to R's schedule.

Background - The adoption application and proceedings

50. On 17 June 2021, JM and ZM wrote to the Board setting out the reasons why they wished to adopt R. BL gave her written consent to the adoption by signing the Form D on 31 July 2021. BL had already told JM on 12 June 2021, when JM asked her if she had considered the possibility of the Applicants adopting R, that she wanted what was best for R and that she knew that neither she nor N were in a position to care for him. At the hearing, N imputed that the Applicants had tried to buy BL's consent. I see no merit in that contention, and I find that the purchasing of telephone credit for BL on two occasions was simply done as BL requested it to enable BL to speak to them or N. On 3 August 2021, JM and ZM made a Form A application to the Board to Adopt R. On 21 September 2021, the Board reviewed the application and deferred the application to enable it to interview N. The Board conducted that interview on 6 October 2021 and thereafter, on 26 October 2021, it decided to *"read the legal implication in the absence of Form D"*.[32] On 7 December 2021, the Board "*agreed to ascertain N's criminal charges"*. On 11 January 2022, the Board approved the production of a Home Study Report. On 21 April 2022, the Home Study Report was completed. On 24 May 2022, the Home Study Report was submitted to the Board. On 24 May 2022, the Board approved the production of a Supervision Court Report ("SCR").

[32] A Form D consent form from the father.

51. By the time the SCR was submitted N had been incarcerated on 17 August 2022. Despite that happening, ZM sent him a message to see whether N would be able to have a video chat with R on his third birthday. Thereafter the arrangements were made, and that indirect birthday contact took place.

52. Ms. Tomlinson filed the SCR dated 12 September 2022. Ms. Tomlinson confirmed that BL had given her consent to the adoption and that N was not consenting. Ms. Tomlinson stated that N was in prison and that he was unwilling to answer any of her assessment questions as he was not in favour of adoption. The SCR contained details about ZM and JM's backgrounds and it exhibited all the required documentation, for example concerning health, police and employment status. Ms. Tomlinson recorded that JM had told her about two occasions when ZM approached N to inquire about his preparation to have R *"returned"* to N's care.[33] JM told her that N always expressed to him that he was putting things in place to enable N to have R, but she and ZM had observed that there was no evidence of N making the preparations to take R. ZM said that he and his wife had *"reminded"* N that they loved R and that they intended to adopt him if N *"failed to honour his commitment"*. Ms. Tomlinson reported that JM and ZM told her that: *"They were surprised when (N) recanted as he was initially supportive of the adoption. They recalled that he visited their church with a few of his family members and observed the Adoptee. On seeing the child, it seems that he then changed his mind and indicated that he would prefer for them to be godparents instead of proceeding with adoption."*

53. Ms. Tomlinson, when referring to R's household, stated that R had *"already been integrated in the immediate and extended family system as well as the wider community and he is loved and cared for"*. She noted that ZM and JM had *"the ability, willingness and commitment to bring up the adoptee to achieve his full potential"* and added that they are *"more than capable and have already demonstrated their interest to fulfill their obligation as parent"*. She reported that R was *"settled and thriving well"* adding that he *"has been residing with the applicants since he was eight weeks old and has known them as his parents"* and that ZM and JM had *"provided a safe, nurturing and caring environment for the adoptee"*. Ms. Tomlinson concluded that: *"The adoptee stands to gain in the long term from (JM and ZM's) ongoing care and love"* and that JM and ZM had: *"invested in the adoptee overall development from the inception although there was no plan for adoption."*

[33] See paragraph 16 above.

She further concluded that the making of an adoption order would provide R with *"stability which neither parent is able to offer"* and that she *"would not hesitate to recommend (JM and ZM) as prospective adoptive parents"*. These insightful observations made by Ms. Tomlinson are all borne out by the evidence.

54. Following the submission of the SCR on 3 November 2022, JM and ZM filed the Form A Application for an Adoption Order dated 3 November 2022. The Application came on before the Grand Court on 16 November 2022. The Court noted that N, who was represented by his current attorney, did not consent to the adoption. The Court directed that N file an affidavit setting out why his consent should not be dispensed with and what child arrangements he believed should be made in relation to R[34]. N mentioned that his brother and sister-in-law ("paternal uncle and paternal aunt") were interested in seeking Section 10 orders in their favour relating to the child. I note that the Applicants state that the first and last time that they heard from the uncle was when he telephoned them after N had been sent to prison around June 2022 to inform them that N 'had left him in charge.' The Applicants presumed that the uncle was talking about looking after R while N was in prison and, at the time, they were surprised by that as this first contact made by him was almost three years after R was born and N had never suggested such a childcare arrangement to them. This 'appointment' by N of these relatives, who were in reality strangers to R, is an example of N and his family members' actions being driven by their view that their biological family ties to R are paramount, without thought being given to the welfare of R in the circumstances of the case. In light of N's indication about his brother, the Court directed that if any other party sought to be joined to the proceedings because they wanted to make s.10 applications in relation to R, then they must file and serve their applications with supporting affidavit evidence by or on 9 December 2022. The matter was adjourned to return to Court on 16 December 2022.

55. On 13 December 2022, Ms. Tomlinson filed a brief report concerning the paternal uncle and aunt. The paternal aunt informed the social worker that her husband was in prison for a traffic offence and that he was due to be released by 30 December 2022 or early release on 9 December 2022. Interestingly, Ms. Tomlinson formed the view that, when she first spoke to the paternal aunt on 22 November 2022 on the phone, the aunt was unaware of N's request for them to have R in their care.

[34] N filed that affidavit on 15 December 2022, although the Court Order had required it to be filed by or on 9 December 2022.

Ms. Tomlinson reported that at a meeting on 24 November 2022, the paternal aunt stated that they would consider helping N to keep R *"as he is family"*. She reported that unsuccessful efforts were made to contact the paternal aunt on 5 and 6 December 2022 on the phone and by email on 1 December 2022. On 12 December 2022, the paternal aunt told Ms. Tomlinson that she had the flu and would not be available for an interview that week.

56. At the hearing on 16 December 2022, it was evident that no applications had been filed by the paternal uncle and aunt. In N's Affidavit sworn on 12 December 2022, he said that because he was incarcerated, he would not be able to provide R with a home until he was released and that he had decided that his brother and his wife should apply for a residence order and raise R until he was released. In his Affidavit N reiterated his request that the paternal uncle and aunt be granted *"custody"* of R for two years *"by way of a probationary period"*. Despite: (i) the non-compliance with the Court's previous direction, (ii) the failure to reply to Ms. Tomlinson's attempts to contact them in December 2022; and (iii) their non-attendance at the hearing, N said at the hearing that the paternal uncle and aunt still wished to make that application. The Court, reluctantly due to the further delay due to non-compliance with earlier directions, extended the time for the uncle and his wife to file their application by or on 20 January 2023 and adjourned the matter to 2 February 2023. At the hearing, BL indicated that she was withdrawing her consent to the adoption order and that she agreed that the paternal uncle should care for R. Ms. Tomlinson indicated in her oral evidence that BL told her that she *"did not want to get to court or get involves"*. She added: *"(BL was) nervous of N. That is the impression I got. Fearful of the outcome of her supporting the adoption. She fears his reaction if she supports it. She prefers not to be involved."*[35] In this context, I remind myself that the relationship between N and BL came to an end after BL reported N to the police for assaulting her. It is evident that N can be a violent man, as evidenced by his present incarceration resulting from a serious [redacted] conviction.

57. On 18 January 2023, the paternal uncle and aunt wrongly filed an Application for Leave to Apply for a Residence Order in the Summary Court (SCL2023-0004) rather than in the Grand Court. It was a defective application because, although the narrative part in the form stated that they wanted R to live with both of them, it failed to name the aunt as an applicant or be signed by her. On 30 January 2023, Magistrate Gunn rightly transferred the application to the Grand Court to be matched

[35] See also BL's comments made to social worker Ms. Commoy Watkins-Powell set out at paragraph 78 below.

up with the ongoing adoption proceeding. On 30 January 2023, the paternal uncle and aunt filed an Application for Leave to Apply for a Residence Order in the Grand Court. Again, it was a defective application form, as it again failed to include the aunt as a named applicant, the aunt did not sign the form, and it did not name JM or ZM as Respondents.

58. The parties and the paternal uncle attended the hearing on 2 February 2023. The paternal aunt did not attend, the reason given to the Court for her non-attendance was that she was at work. This is not a welcome approach to the litigation by her and was a further indication to me, when coupled with their approach thereto, that the application was a rather half-hearted one. BL and N were produced from their respective prisons. The Summary Court file (SCL2023-0004) was not placed before the Judge at that hearing. Although they had failed to properly comply with the directions given on two previous occasions relating to the filing of an application in proper form, a further opportunity was again reluctantly given to the paternal uncle and aunt to file a properly completed application with supporting affidavit by or on 1 March 2023. The Court directed that the leave application hearing was to be fixed for the first open date after 22 March 2023.

59. On 15 March 2023, Ms. Commoy Watkins-Powell filed a social worker report for the Court after she assessed the proposals being made in relation to N's brother and his wife. She concluded that the paternal uncle and aunt's application was motivated by a belief that it was in R's best interests to remove him from the family which had cared for him from the age of just under three months and to place him in their household, with the only consideration being because the uncle was R's blood relative. They had never been able to have a child of their own, and they told the social worker that parenting R would fulfill their lifelong dream of becoming parents. Their plan was to eventually adopt R and raise him until N was released from prison. When N's incarceration came to an end, they would decide what the arrangements should be for R, depending on their assessment of N's ability to care for R. Ms. Commoy Watkins-Powell reported that the paternal uncle and aunt had been unable to coordinate and commit to block out time to complete the report and therefore she was concerned about whether they would be able to coordinate their time to ensure that R attended the appointments he needed to attend and thus not meet his needs. The paternal uncle and aunt had had very limited contact with R, which could have been as little as two visits. I share Ms. Commoy Watkins-Powell's view that, although the paternal uncle was making the application to promote R growing up within his biological family, that in itself was not sufficient justification to

uproot R from his stable long-term primary carers and from the only home he had ever known, to make a residence order to live with persons who were, in reality, strangers to him and who had limited childcare experience. Their application illustrated a lack of child-centric insight by the paternal uncle and aunt, as well as by N (who was the one who initially suggested the arrangement and strongly supported it) as to what would be in R's best interests.

60. On 31 March 2023, FrancisGrey Attorneys came on the record for the paternal uncle and aunt. On 27 May 2023, KSG attorneys came on the record for JM and ZM. Unfortunately, the paternal uncle and aunt again failed to file a proper amended application, and this caused yet further regrettable delay, as the directions in place had related to their leave application which the Court had told them to file by or on 16 February 2023.

61. During the course of the proceedings, when N contacted ZM on R's fourth birthday in August 2023 he was told to call JM as ZM was at work. N did that and he asked to speak with R. JM directed the video call to R who was playing and moving around at the time.

62. The matter came on for case management on 13 October 2023 at the request of N's attorney. BL failed to attend the hearing. Counsel for the paternal uncle and aunt indicated that the Amended C1 Application and the Application for Leave to Apply for a Residence Order would be filed and served by or on 3 November 2023. The Court extended the time for those filings, made wider directions about filings and directed that the leave application be heard on the first open date after 20 January 2024.

63. An Application for Contact and an Application for Leave to make that application with supporting affidavits were filed on 3 November 2023 by the paternal uncle and aunt. In their supporting affidavit they stated that they would not now be applying for a residence order, but only for a contact order. The leave application was fixed for 6 March 2024.

64. In his affidavit sworn on 16 November 2024, the father accepted, after his brother and sister-in-law had withdrawn their residence application, that it was not in R's best interests to be separated from the Applicants who, at that time, were best placed to care for him under a residence order. N added that an adoption order was not necessary to safeguard R's welfare, opining that such an order should

only be one of last resort where there was no other alternative and that a residence order was a proper alternative. In his Affidavit, N accepted that he was unable to offer any options for R but said that, upon his release, *"I plan to change my life and circumstances so that I may be in a position to care for (R) as a parent should and have him live with me permanently."*

65. On 4 March 2024, the Court approved an order submitted by the paternal uncle and aunt for permission to withdraw their applications. Unfortunately, N's insistence on involving the paternal uncle and aunt to these proceedings and the dilatory manner in which they litigated has caused considerable delay to the primary adoption proceedings, which has clearly not been in the best interests of R. It seemed to the Court that the uncle and aunt, although likely well-meaning, were reluctantly persuaded to be brought into these proceedings by N, and they had given little thought to the welfare of R or the reality of the position, but instead prioritised N's wishes.

66. The 6 March 2024 hearing proceeded as a case management hearing. BL again failed to attend the hearing. The Court informed the parties who attended that the remaining issues for determination were whether the Court should dispense with the required consent of the parents and, if the Court did dispense with the need for that consent, whether it should go on and make an adoption order in favour of JM and ZM. At that hearing, the Court reviewed the Leave for Contact Report filed by Ms. Commoy Watkins-Powell on 29 February 2024. The Court gave directions about the filing of further evidence, including a social worker report on the issue of dispensing with consent[36]. The matter was listed for a mention hearing on 3 May 2024 and leave was given to the parties to list the consent hearing on the first open date after 18 May 2024.

67. On 3 May 2024, directions were given to the consent/adoption hearing listed for 6 and 7 August 2024. On 2 August 2024, N's attorney was asked to obtain and provide the Court with a copy of her client's Criminal Antecedents Schedule/Record. Unfortunately, this was not provided to the Court until 13 September 2024, a month after the close of the hearing.

[36] That report was prepared by Ms. Tomlinson, and it was filed on 24 April 2024 with a further supervision report on 29 April 2024.

68. At the consent hearing held in August 2024, I considered all the material in the submitted bundles. Oral evidence was given by the Applicants, N, Ms. Watkins-Powell and Ms. Rose-Bailey[37]. The parties were directed to file their written closing submissions by 28 August 2024. I had re-arranged my Court diary to allocate judgment writing time to enable me to try to complete the judgment before my departure from the jurisdiction on 4 September 2024. Unfortunately, N's submissions were not filed until 30 August 2024 and the judgment writing days were lost. Regrettably this, coupled with the abovementioned delay providing the criminal antecedents schedule, has also inevitably delayed the Court's writing this Judgment.

69. A concern was forcefully expressed at the hearing that any delay in providing the judgment would result in R failing to be enrolled in a Government school before the start of the new academic year under the present Residence Order. The Court was told that a school place could only be secured for R (he not being Caymanian) if an adoption order was in place. As it became evident that a judgment could not possibly be handed down sufficiently in advance of the start of the new school year, on 8 August 2024, I wrote a letter to the Director of the Department of Education Services in which I highlighted R's predicament. Thankfully, on 9 August 2024, the Director informed the Applicants that a place was secured for R to commence at a Government school for the start of the Fall term. If an adoption were made, as ZM has Caymanian status and JM's entitlement to apply as ZM's spouse, N would have no issues with school places (especially a placement that meets his present educational needs), he would be able to apply for educational scholarships. He would be able to acquire Cayman status which would mean that he could live and work in the Cayman Islands onward into adulthood.

The Law - The applicable statute

70. The case falls to be decided having regard to the provisions of the Adoption of Children Act (2021 Revision) ("the Act").

71. Section 9 of the Act sets out the powers to make adoption orders. Pursuant to s.9 the Court may exercise that power if it determines that it should because JM and ZM: (i) are domiciled in the Cayman Islands; (ii) have filed the application in the prescribed manner; and (iii) are spouses who have been married for at least three years. As the Applicants are over twenty-five and under sixty-

[37] A reporting social worker.

five years old and as R was born in the Cayman Islands the prohibition to making an adoption order under s.10 of the Act does not apply. The forms and information required about JM and ZM which are required pursuant to the Adoption of Children Rules (2021 Revision) ("the Rules") and Adoption of Children Regulations (2021 Revision) ("the Regulations") have been filed.

72. Section 10(4)(a) of the Act provides the following in relation to the requirement for the consent to be given by the parents:

"Subject to section 11, an adoption order shall not be made —

(a) in any case, except with the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child; …."

The Adoption Act 1976 in England and Wales provisions, in the absence of a parental responsibility agreement with the mother or Court order, meant that a father who was not married to the mother of the child at the time of the child's birth (or who did not subsequently marry the mother) was not to be treated as being a parent for the purposes of the Act. This was because under that English and Welsh Act he was treated as being a 'relative' as defined in s.72(1) of that Act. The Cayman Act does not include an unmarried father in the definition of a relative found at s.2. Also, N now has parental responsibility as his name has been added to R's birth certificate. I am, therefore, satisfied that he is to be regarded as being a parent under the Act.

73. N has throughout the proceedings withheld his consent to the adoption and, at paragraph 3 in the closing written submissions, it is stated that he *"vehemently opposes the adoption"*. It is submitted that N's opposition is *"not just emotional but also has strong legal justifications"*. BL initially gave her written consent to the adoption but later, as she is able to do, withdrew that consent. It is important to note that the written consent, which is usually given at an early stage in the adoption process, is provisional and must still be operative at the moment when the adoption application is heard, unless the Court exercises its powers of dispensation. Therefore, in the present matter, the required parental consent is not presently given by either parent and an adoption order can now only be made if the Court dispenses with that requirement. The Court must first determine whether it should exercise its discretion to dispense with the consent of N and BL before it is able to hear the application for adoption.

74. Section 11 of the Act is the section dealing with the Court's power and the grounds to dispense with the parents' agreement for adoption on one or more specified grounds. The relevant part of s.11 of the Act for this application is s.11(1) of the Act, and that subsection provides:

> *"(1) The Court may dispense with any consent required by paragraph (a) of section 10(4) if it is satisfied -*
>
> *(a) in the case of a parent or guardian of the child, that that parent or guardian has abandoned, neglected or persistently ill-treated the child or has persistently failed without reasonable cause to -*
>
> *(i) discharge the obligations of a parent or guardian of the child; or*
>
> *(ii) demonstrate interest in the child;*
>
> *(b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that that person has persistently neglected or refused so to contribute; or*
>
> *(c) in any case, that the person whose consent is required cannot be found or is incapable of giving their consent or that their consent is unreasonably withheld or for any other reason such consent should be dispensed with."*

75. For completeness's sake, s.14 of the Act sets out the functions of the Court and the relevant part of the section provides:

> *"(1) The Court, before making an adoption order, shall be satisfied -*
>
> *(a).....;*
>
> *(b) that the order if made will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child, having regard to its age and understanding; and*
>
> *(c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction.*
>
> *(2) The Court, in an adoption order, may impose such terms and conditions as the Court may think fit, and in particular may require the adopter by bond or otherwise to make for the child such provision, if any, as in the opinion of the Court is just and expedient."*

Application to dispense with consent of BL

76. JM and ZM, relying upon s.11(1)(a) and s.11(1)(c) ask the Court to dispense with BL's consent. It is submitted that aside from the initial few weeks after R's birth, he has not been in BL's care and thereafter she has had very limited contact with him and no involvement in his upbringing. The Applicants state that R has only seen BL approximately five times whilst in their care and that is when JM took R to see his maternal grandmother. It is rightly contended that BL has failed to

discharge any obligation of a parent to R. There is evidence that she has had an ongoing drug abuse and homelessness issue, and she has failed to engage in these proceedings. Exhaustive attempts have been made to serve the summons for this hearing on her, but she cannot be located. I am satisfied that the Court should continue in her absence.

77. On the evidence before me I find that BL abandoned R when she handed him over to BR for her to care for him when he was just under one month old. She thereafter showed no interest in R or desire to have him back in her care. She has almost entirely throughout his life, failed to discharge the obligations of a parent. There is no indication that she will ever be in position to address her longstanding illicit drug addiction which for years has prevented her being in a position to care for R, or any child.

78. It was clear that BL has shown no interest in engaging in the proceedings since the February 2023 hearing. Interestingly, at paragraph 3 in the closing written submissions filed on behalf of N, it seems that he had formed the view that BL was consenting to the adoption. Ms. Commoy Watkins-Powell indicated in her 29 February 2024 Report that she had tried to visit BL at her apartment on 19 February 2024. However, BL was not there, and she was found asleep and unclothed in a nearby derelict vehicle. When BL was told that the visit was about R, the reporter said that BL appeared distressed and said: *"You all need to give the man (N) his child and (she) has nothing to say to (reporter) about this as (she) don't want anyone to kill (her)."* The reporter asked her if she had been threatened and BL replied that: *"She was done talking to the worker as she don't want to say certain things for it to be recorded into this report."* The reporter said that BL promised to visit her in her office, but she did not turn up, and in fact has failed to communicate with the social worker or to engage in the adoption process at all since February 2023.

79. In addition, the fact that BL in the past formally agreed to adoption is itself relevant to deciding whether her subsequent withholding of agreement is unreasonable (***Re P (Adoption: Parental Agreement)*** [1985] 2 FLR 635***; Re R (A Minor) (Adoption) (No.2)*** [1987] FCR 113). Lord Reid said in ***O'Connor v A and B*** [197] 2 All ER 1230 at 1232 *"and the adopting family cannot be ignored either. If it was the mother's action that brought them in, in the first place, they ought not to be displaced without good reasons".* The time began to run against BL from the time that she

gave her formal written consent on 31 July 2021[38], and the passage of time makes it more difficult for her to show that the later withdrawal of consent at the hearing on 16 December 2022[39] is reasonable. Her vacillation and failure to engage in the proceedings is a factor to be taken into account, as it illustrates a lack of insight to enable her to make the judgment required of a reasonable parent. In addition to her abandonment of R and failure to discharge her responsibilities to R as a parent, I am satisfied that BL's withholding of consent is unreasonable. I have no doubt that I should dispense with her consent in this case. She is not in a position to offer R security and stability. I accept that this is a clear interference with BL's rights as a mother under Article 9 of the Cayman Islands Bill of Rights ("the BOR") but that is necessary in the interests of R. Accordingly, I dispense with the requirement for BL's consent for the adoption.

Application to dispense with consent of N

80. At paragraph 32 in the closing written submissions it was clarified that JM and ZM are relying upon s.11(1)(c) in the Act when seeking that the Court dispense with N's consent. It is submitted that N is unreasonably withholding his consent to an adoption order. It also appears, when looking at paragraph 27 of their closing written submissions, that the Applicants are relying upon s.11(1)(a)(i), contending that N has persistently failed without reasonable cause to discharge the obligations of the parent.

81. It is important to make clear that the Court must consider N separately from BL. Unlike BL, albeit that R was in her care for a matter of weeks at the outset of his 5 year-old life, N has never lived with R. This is not a case of a person refusing consent with the view that there be a return of a child to a parent who has cared for that child. It is a case involving a withholding consent with a belief and on the basis that a five year-old child should wait for between a further 4-9 years to be placed with a parent who has never cared for that child. Unlike BL, N, to his credit, has shown an interest in the child and genuinely wishes to play a part in the child's life.

82. In relation to the failure to discharge parental obligations ground, N's current custodial sentence is the reason that has failed to do that since his incarceration. It is, of course, his fault that he is incarcerated and the damage that has caused him to be able to play a meaningful role in his child's

[38] See paragraph 50 above.
[39] See paragraph 56 above.

life. He is responsible for that predicament. Prior to his incarceration, one could not portray him as being a hands-on father, but I would not go so far as to conclude that he has consistently failed to discharge any obligations of a parent. Although the frequency of his contact requests is not as high as he suggests it to be, I am satisfied that, financial contributions aside, N has made some, albeit fairly limited, efforts to discharge his obligations. He has attended at Court whenever he has had notice of hearing in proceedings before and after the current adoption proceedings. I accept that at times he may have felt unable to discharge certain obligations because R was not permitted to live with him due to court orders and due to the fact that any contact was informally supervised by the Applicants.

83. Before I turn to the issue of unreasonableness of withholding consent to adoption. I note that the Applicants submit that s.10(3) the Children Act (2012 Revision) ("the Act") brings adoption proceedings within "family proceedings" covered by the Act and therefore, pursuant to s.3 of that Act, R's welfare is the "Court's paramount consideration". Section 10(3) of the Act is a provision which allows the Court to consider the possibility of making s.10 child arrangements orders in 'any family proceedings' including adoption proceedings under the Act. This offers the prospect of a court in one set of proceedings having to consider: (i) the question of whether or not to make a s.10 order by reference to the requirements of s.3(1) of the Act (the child's welfare being paramount); (ii) the question whether or not an adoption order should be made by reference to the provision of s.14(b) of the Act (requiring the Court to be satisfied that an adoption order would be for the best interests of the child); and (iii) the question of whether or not to dispense with the agreement of the parent or guardian by reference to the test of reasonableness. Therefore, the approach should be for the Court to decide what arrangements would best serve R's welfare; if adoption, with or without contact, is the course which is best for R, the Court must then consider whether the parent is being unreasonable in withholding agreement in the context of those arrangements. Prior to the hearing I notified the parties that they should be in the position to address such an approach at the hearing.

Application to dispense with consent of N - The applicable case law

84. Prior to the hearing, I provided details of a number of cases to the parties which I felt might be referred to at the hearing. The parties have also kindly provided me with a number of case

authorities which they have mentioned in the written submission. I have considered those authorities.

85. The leading authorities on the test the Court should apply when considering dispensation of consent are **Re W (An Infant)** [1971] 2 AER 49, **Re C (a minor) (Adoption: Parental Agreement, Contact)** [1993] 2 FLR 260 and **Down and Lisburn Trust v H and R** [2006] UKHL 36 which expressly approved the following test proposed by Lords Steyn and Hoffmann in **re C:**

> *"...making the freeing order, the judge had to decide that the mother was 'withholding her agreement unreasonably'. This question had to be answered according to an objective standard. In other words, it required the judge to assume that the mother was not, as she in fact was, a person of limited intelligence and inadequate grasp of the emotional and other needs of a lively little girl of 4. Instead she had to be assumed to be a woman with a full perception of her own deficiencies and an ability to evaluate dispassionately the evidence and opinions of the experts. She was also to be endowed with the intelligence and altruism needed to appreciate, if such were the case, that her child's welfare would be so much better served by adoption that her own maternal feelings should take second place.*
>
> *Such a paragon does not of course exist: she shares with the 'reasonable man' the quality of being, as Lord Radcliffe once said, an 'anthropomorphic conception of justice'. The law conjures the imaginary parent into existence to give expression to what it considers that justice requires as between the welfare of the child as perceived by the judge on the one hand and the legitimate views and interests of the natural parents on the other. The characteristics of the notional reasonable parent have been expounded on many occasions: see for example Lord Wilberforce in In re D (Adoption: Parent's Consent) [1977] AC 602, 625 ('endowed with a mind and temperament capable of 5 making reasonable decisions'). The views of such a parent will not necessarily coincide with the judge's views as to what the child's welfare requires. As Lord Hailsham of St Marylebone LC said in In re W (An Infant) [1971] AC 682, 700:*
>
> > *'Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.'*
>
> *Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some embarrassment at having to consult the views of so improbable a legal fiction, we venture*

to observe that precisely the same question may be raised in a demythologised form by the judge asking himself whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invented to provide the answer to this question."

86. As mentioned above, the Court must consider R's welfare. R's welfare alone is not enough to justify an adoption order being made against the wishes of a parent. As Lord Carswell put it in ***Down Lisburn Health and Social Services Trust v. H*** at paragraph 69:

"The mere fact that the proposed adoption would conduce to the welfare of the child is not of itself sufficient to establish unreasonableness on the part of the parent."

However, Lord Carswell helpfully went on to add:

"Nevertheless, as Lord Denning MR said in In re L (An Infant) (1962) 106 SJ 611:

> *"A reasonable mother surely gives great weight to what is better for the child. Her anguish of mind is quite understandable; but still it may be unreasonable for her to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable woman in her place would do in all the circumstances of the case."*

There may be an amalgam of factors, possibly conflicting, which will vary from case to case and cannot profitably be placed in prescribed categories. In In re D (An Infant) (Adoption: Parent's Consent) [1977] AC 602, 625 Lord Wilberforce said, in the context of a father's withholding agreement to his child's adoption by the mother and stepfather:

> *"What, in my understanding, is required is for the court to ask whether the decision, actually made by the father in his individual circumstances, is, by an objective standard, reasonable or unreasonable. This involves considering how a father in the circumstances of the actual father, but (hypothetically) endowed with a mind and temperament capable of making reasonable decisions, would approach a complex question involving a judgment as to the present and as to the future and the probable impact of these upon a child."*

Therefore, the weight to be given to the child's welfare will vary according to circumstances. The ultimate decision must be a balanced decision, although taking into account that a reasonable parent would be expected to attach weight to what is better for their child. It should not be reached by

considering only whether life with the proposed adopters would be a 'better bet' for the child than life with his own parent.

87. In ***Re C (A Minor) (Adoption: Parental Agreement: Contact)*** [1993] 2 FLR 260 the Court suggested that the test may be approached by the judge asking himself whether, having regard to the evidence in applying the current values of our society, the advantages of adoption for the welfare of the child appears sufficiently strong to justify overriding the views and interests of the objecting parent.

88. Lord Hailsham stated in ***Re W*** *that:*

> *"…. Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. The question in any given case is whether a parental veto comes within the band of possible reasonable decisions and not whether it is right or mistaken. Not every reasonable judgment is right, and not every mistaken exercise of judgment is unreasonable. There is a band of decisions within which no court should seek to replace the individual's judgment with its own."*

I agree that the Court must not substitute its own view for that of the parent. It is possible that a court could reach its own view that it would be better that the adoption should proceed, but nonetheless arrive at the view that a reasonable parent was perfectly entitled to withhold his or her consent to the making of such an order. It must be proved that the withholding of consent is unreasonable; it is not enough to prove that a reasonable parent would consent.

89. Lord Hailsham made it clear that unreasonableness is not restricted to blameworthy conduct, and he gave some examples as follows:

> *"…besides culpability unreasonableness can include anything which can objectively be adjudged to be unreasonable. It is not confined to culpability or callous indifference. It can include, where carried to excess, sentimentality, romanticism, bigotry, wild prejudice, caprice, fatuousness, or excessive lack of common sense."*

There may be other examples such as a blameless parent who has been the victim of unfortunate circumstances or illness rendering him unable to previously care for the child or sometimes a parent who sadly is simply inadequate and unable to cope with childcare. The Court may consider the

parent's attitude as a relevant factor when assessing the attitude of the hypothetical reasonable parent. The chances of a successful reintroduction to, or continuance of contact with, the parent is an important factor in assessing the position being taken by the hypothetical, reasonable parent. This is a factor in this case, as N primarily objects to adoption as he will be seeking a residence order upon his future release from prison.

90. I accept that N has an honest desire to remain a parent of R, albeit possibly delegating some of those responsibilities to his mother in Jamaica if he has to leave the Cayman Islands after his release from prison. However, N cannot be said to have worked properly and satisfactorily so that he has money which can contribute to R's upkeep, nor has he been able to sort out his own affairs to enable him to care for the child. If he had done all of those things, which he has failed to do in the 5 years of the child's life, one might argue that he was not being unreasonable if he said: *"Good as it might be for my child to be adopted and looked after by somebody else, I am not prepared my child should be removed entirely out of my life and no longer be a member of my family that I should be as if I had never had the child at all."*[40] However, the Court would expect the opposing parent to provide concrete details of his proposals, not just wishes, for the future care of the child if the Court were not to make an adoption order and these proposals may also be a factor when considering unreasonableness. Although ***Hitchcock*** is a case which was decided back in 1952, after which notions of how children are dealt with have changed, I note Lord MacDermott's referral **In Re W (an Infant)** at page 65 paragraph b-d of the following excerpt from a page124 in Hilbery and Devlin JJ's judgment in ***Hitchcock:***

> *"If they*[41] *can bring evidence before the court which shows that his prospects of providing a home are quite illusory and that there is no real chance of it, that would be a matter to be taken into consideration. Again the test is the same: a father might say, "I want my child and I think that I can find a home for it", but if an answer, a satisfactory answer to the minds of the justices is, "You want your child but, having regard to the difficulties with which you are faced and having regard your own past record and your own situation you will never be able to provide a home for him or bring about as you ought and, you should*

[40] See Lord Goddard CJ in **Hitchcock v WB** [1952] ALL ER at 122, 123.
[41] In the matter before me this would be the Applicants, who have the burden of showing that N is being unreasonable.

realize, as a reasonable man, that it is in his best interests that you should part with him altogether," then the presumption of reasonableness is displaced."

91. The above considerations should mean that a satisfactory, capable and reasonable parent is able to prevent their child being adopted against their wishes, even in circumstances in which the child's welfare may be improved by being adopted. This is consistent with the right to family life. The European Court of Human Rights accepts that *"consideration of what is in the best interests of the child is always of crucial importance"* (**Scott v. United Kingdom 2000** Fam. L.R. 102 at paragraphs 18-94)[42]. However, Article 9 of the Cayman Islands Constitution Order 2009, Bill of Rights ("the BOR"), which is similar to Article 8 of the European Convention Human Rights, also requires that state intervention in family life, which could include adoption of children against parental wishes, be justified by more than a mere identification of which of various options would be the "better bet" for the child. In **YC v. United Kingdom** (2012) 55 E.H.R.R. 33 at paragraph 134 the Court said:

"The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the 'necessity' for such an interference with the parents' right under Article 8 to enjoy a family life with their child."

As stated in **Johansen v. Norway** (1996) 23 E.H.R.R. 33 at paragraph 78 measures that totally deprive a birth parent of his or her family life with the child and are inconsistent with the aim of reuniting the family:

"should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests."

92. In the ***Down and Lisburn Trust case*** which went from the House of Lords to the Strasbourg Court where it is reported as ***R and H v United Kingdom*** [2012] 54 EHRR 2, a number of important statements were made by the European Court in the course of its decision. At paragraph 81 it was stated that:

[42] In that case there was no indication that an alcoholic mother would ever escape from her addictions and where the European Court held (at para. 18-101) that the domestic authorities could not be criticised for concluding that adoption was "the only option" for the child.

"Measures which deprive biological parents of their parental responsibilities and authorise adoption should only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the child's best interests."

That case involved a proposed freeing order of a child for adoption not by relatives but by non-kinship (or stranger) adopters. Of course, in the matter before me, the Applicants are not relatives, but they have been caring for R for almost all of his five years.

93. The Supreme Court in England and Wales considered the requirements of the ECHR in the case of a 'stranger adoption' in ***Re B (A Child)*** [2003] UKSC 33. The Court commented upon when such an adoption would be proportionate for the purpose of justifying interference with the Article 8 rights. The Court noted that, to satisfy Article 8, such interference by making an adoption order had to be necessary or that a *"high degree of justification"* was required. Lady Hale's view[43], like that of Lord Neuberger, was that an adoption order should only be made where nothing else will do. Therefore, although there is a wider discretion in the Grand Court than in England and Wales due to the "for any other reason" provision at s.11(1)(c) in the Act, I accept when I review the evidence and consider the non-European case law that it is still a high threshold that needs to be met when considering the dispensing of parental consent and making an adoption order.

Conclusions

94. Although recognising the right to family life with biological parents, it is important to note that the present case, although one that involved an interim care order and then supervision order (which has long expired) is not one where there was an intention that the child should be promptly adopted. It is not a case where there was a removal of a child from parents with adoption proceedings starting shortly thereafter. In fact, the clear intention, which was reemphasised to N on a number of occasions, was that the supervision and residence order would be a holding care arrangement, with the expressed hope that the parents would rearrange their lives in such a way to enable them to take on the care of their very young child. In the present matter, R from shortly after his birth was placed, with the agreement of the parents with JM and ZM. He has since been cared for only by the Applicants for the five years of his life and R regards them as being his mother and father. During those five years neither parent has put themselves in a position whereby they could care for him.

[43] Paragraph 198 in the Ruling.

The father as a consequence of his criminal conduct suggests that the earliest he could care for N would be when R reaches the age of 9 when he potentially could be released from prison in 4 to 5 years' time. However, there is a possibility that any release from prison would not be before late 2033 when N would be 14 or 15 and almost aged out of childhood (s.10 Children Act orders can only be made until a child reaches 16, unless there are exceptional circumstances). There is of course uncertainty, especially when one considers what has happened over the five years since R's birth, about how long it would take for N, or whether N would ever, be able to arrange his lifestyle and choices to put him a position to be able to care for R, let alone a child with R's needs. The present circumstances are different to those considered in the Article 8 cases mentioned by me and those highlighted in the submissions made by Counsel for N. That said, even having regard to what appears to be a unique wider discretion being given to the Grand Court by the use of the *"for any other reason such consent should be dispensed with"*, I fully accept that the making of an adoption order which would result in removing the natural parents parental responsibility is a very serious interference by the state in family relationships which the Court should not lightly authorise.

95. Although R's welfare is not to be elevated to be the sole consideration, it is an important factor when considering objectively all the circumstances of the case when determining whether the refusal to give consent is unreasonable. For the reasons that I set out below I do find that the proposed adoption would be in the best interests of R.

96. R is fully bonded with the Applicants. In R's mind ZM and JM are his parents, and they are the adults who have well cared for his emotional and physical needs from shortly after his birth to date. If there were an adoption order, that would give R the security of knowing that the Applicants would have permanent parental responsibility to care for him and give him the security and certainty that he requires whilst facing the challenges of life, including his reported specific educational/medical challenges, as he progresses through childhood. I accept what Ms. Watkins-Powell stated in her report that it is reasonable to assume that R *"would want to be in an environment that is safe, healthy and where his needs are considered and provided for"*. The fact that he has matured since the date of the reference in her report, increases and does not diminish the value given to her view. That is not to say that R might wish to lose his connection with N. If an adoption order were made, that will not happen as I am satisfied that the Applicants will retain some connection with the biological father via contact even in the absence of an order. If an

adoption order is made, I would not see the need for an accompanying contact order. The feasibility and nature of any contact would of course depend on how N conducts himself. When looking at the reasonableness of N's withholding of consent, the Court can have regard to the fact that he should be aware that, if he conducts himself appropriately, he would retain a connection with R even if an adoption order were made.

97. I have already commented herein in some detail on R's educational needs when referring to the expert input that the Applicants have obtained for R.[44] The Applicants clearly possess the insight and skills to ensure that they are being met. I do not hold the same view in relation to N or BL. R's emotional needs will be best met by him now knowing that he is to remain living throughout his childhood in a secure and loving family with whom he can identify and with whom he is firmly bonded. It is abundantly clear that the Applicants offer that and they are the only ones who can do that, especially when one compares that with the great uncertainty that would arise from N's long-term vague proposals for R's upbringing and BL's abandonment of R. R's physical needs are the same as for any male child of his age and again those have always been met to a high standard by the Applicants. BL clearly cannot meet R's needs. Obviously, N would never be able to meet R's physical needs until after his uncertain release date from prison, which could be at any time between later 2028 and 2033. It is questionable, having regard to his inability to put himself in a position to do that since R's birth, whether he would be able to do that after his release from prison. I make these observations about BL and N, whilst at the same time recognising that the test of reasonableness is not a test of culpability or of callous or self-indulgent indulgent indifference or a failure of parental duty. The observations are made as they form a part of all the circumstances, the totality of which the Court may take into account when determining the reasonableness, this is especially so when I note the *"any other reason"* provision under s.11(1)(c) in the Act.

98. As previously highlighted, N's intention is that he will apply for a residence order for R upon his release from prison. Although N has stated in his evidence that he had no cause for concern in respect of the parenting that the Applicants were providing, he is challenging the long -term future role of the Applicants as the principal carers of R. Importantly, this is not a case in which N opposes adoption solely on biological parent/loss of parental responsibility grounds. N has a clearly repeatedly stated the objective to later remove R from the care of the Applicants, although it is clear

[44] See paragraphs 40-44 above.

from his evidence that the practicalities and the effect on R of such a course are not well thought out by him. His wish to have R reside with him is not driven by an argument that he would be able to offer a standard of care to the level than the one that R is currently benefiting from, but primarily for genetic/biological family reasons. N's evidence shows a real lack of insight into what the detrimental and destabilising effect of the uncertainty that would be caused in the interim in a situation where the children proceedings remained open, with the Applicants and R always having on their mind that a residence application is intended to be made possibly between 2029 and 2034, by which time R would have spent between 9-14 years in the excellent care of the Applicants. R is aged 5 and it cannot be in his interest for his family life and security of home to be held in limbo for a number of years covering a large part of his remaining childhood to have to wait and see just in case N, upon release from prison, can for the first time in this child's life put himself in a position to argue that he is a capable parent. N's evidence also shows a lack of insight as to his own limited parenting capabilities and also as to what the impact would be on R, caused by uprooting R at some unspecified date from his to date almost lifelong stable family setting, from the only home that R knows. It is evident that N has not considered any of this or is unable to recognise any or this, and that his refusal to consent is emotionally driven by his personal emotional interests being elevated over and above the welfare of R. A reasonable parent, when considering whether to give or refuse to give his consent, would be expected to have considered all the above. N has not.

99. This is a situation where a five year-old child has been settled for almost the entirety of his life with foster carers (who for over half of his life have had a residence order in their favour), where there is a clear risk that if the adoption order were not made in favour of the foster carers the birth father would introduce disruption and uncertainty into R's life by seeking to him placed into his care at some uncertain date when the child is between the age of 9-15, even though his chances of success would arguably be nugatory. That risk of disruption and continued uncertainty is genuine and substantial and is not speculative or fanciful. When looked at objectively, at the time of the hearing, the above are factors that show the unreasonableness of the withholding of consent when looked at in the context of the totality of the circumstances.

100. Thankfully minimal or negligible harm has been caused to R resulting from his parents' actions or inaction to date. This is due to the high standard of care and emotional support that he has received from the Applicants throughout his life to date. If they had not been around to offer him support

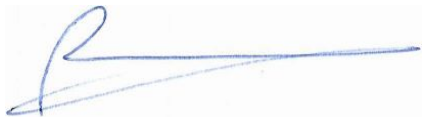
when he was a baby and thereafter over the past five years, the situation may have been a very different one, one much to R's detriment. To remove him from his current home at this juncture or in particular in 4 to 8 years' time would inevitably be highly traumatic and likely very damaging for the child. Likewise, the uncertainty that would result from the knowledge that there is a high likelihood that N would be applying for a residence order in 4 to 8 years' time if no adoption order is made would be similarly destabilising and potential traumatic for R as he grows older and his needs change and it would put great emotional stresses on his carers, the Applicants, and could undermine the existing secure and safe family unit. A reasonable parent, when considering withholding his consent, would hopefully be expected to take that into account and hopefully acknowledge it.

101. Having considered the evidence adduced in these proceedings, together with the submissions for the respective parties and the applicable law, I am not satisfied that BL or N are currently able, and will highly likely in the long-term, be unable to adequately be a parent to or provide for the physical, emotional and financial needs of R. I am satisfied also that it is in the best interests of this child that he remain in the care and control of the Applicants. Adoption would imbue ZM and JM with the full parenting responsibilities for R. This includes being the ones solely responsible for the daily care and financial responsibilities for R, long-term educational planning, and health care decisions. The Applicants' childcare plans would not be governed, restricted or influences by the spectre of future legal challenges to the care arrangement being made at some later date by N, but concentrated and focused on what is in R's short and long term development and interests. They would be the ones solely responsible for the emotional and psychological development of R, ensuring that he continues to grow in the loving and stable environment they have hitherto provided to him. An adoption would mean that the Applicants would be fully integrated into the child's life and rights, including inheritance rights and other legal familial benefits.

102. Although it is clear that the father understandably has very strong feelings for R, when I consider all the circumstances in this case, I have no doubt that I should dispense with his consent. The Applicants have established that N is unreasonably withholding his consent. I do that not because of my finding that adoption would be in the best interests of N, although that is a consideration I must take into account. I am of the view that, when looked at objectively, in all the circumstances of this case, a reasonable father would recognise that R's welfare would be much better served by

adoption and a permanent and secure placement with the Applicants, even if that meant putting N's own paternal feelings into second place.

103. If these proceedings had come before me when the one-year supervision order was still in force or shortly thereafter and if there was evidence at that time that either of the parents had reached their goals and objectives set out in the Plan (or could show that they had striven to do so), it may have been difficult for the Applicants to prove that a refusal of consent was an unreasonable one, even if it could be shown that either parent had not provided the same or a higher level of care than had been provided by the Applicants. However, R's situation is very different now: his ever-developing needs are changing and he is securely attached to the Applicants. The security that adoption would give to R living for the remainder of his childhood with the Applicants without the threat of that being challenged at a later date will better provide him with the opportunity to reach his full potential, despite his difficult start to life. Five years is a significant period of time in a child's life, arguably even more so if they are the first five. BL has failed on all accounts as a parent and has shown lamentably no interest in R. The position now has moved on from the stage when the supervision order expired. R has been cared for and lived with the Applicants since shortly after his birth, and in his mind, they are his parents. It is unreasonable for N to expect R to wait for another four to nine years, all the while having uncertainty about what may then happen. In all the circumstances of this case, certainty, stability, security and permanence are, without a doubt, what is required to enable him to have a rewarding and safe childhood. This will only be achieved with any certainty in his current family unit and that must not be destabilised by the likelihood of further children proceedings being brought in four to nine years' time if no adoption order is made.



The Hon. Justice Richard Williams
Judge of the Grand Court

Footnote: This version of the Judgment has been redacted to remove details that may lead to the child being identified. This version has been redacted as the Judge has given leave for the Judgment to be published. The unredacted version of this Judgment has been provided to the parties and a sealed copy will remain on the Court file.