

## PUBLIC LAW CHILDREN

September 2024

**Successful appeal by the Local Authority against the refusal of an application for a placement order.**

**In the matter of M (A CHILD) [2024] EWCA Civ 1000**

**Lord Justice Macur**

**Handed down – 29 August 2024**

*Full judgment can be found [here](#)*

### Overview:

The Local Authority ('LA') successfully appealed the Judge's refusal for a placement order in respect of a 4-year-old female child, 'M'. The Court of Appeal re-emphasised the need for judges to provide a full and comprehensive welfare analysis and cautioned against over-reliance on the phrase "nothing else will do" in cases concerning adoption.

### Background:

On 14 August 2020, the Local Authority ('LA') issued public law proceedings, one day after M's birth, due to concerns regarding serious incidents of domestic abuse perpetrated against the mother by the father, alongside his drug misuse and refusal to engage. These proceedings concluded on 20 October 2021 with a 12-month supervision order. A renewed application for a care order was made on 12 July 2022 after concerns that the mother had resumed contact with the father.

The final hearing was listed for 13 November 2023, but this was delayed as the Agency Decision Maker ('ADM') was unable to decide upon a recommendation of adoption. Following an updating parenting assessment of the mother, the final hearing was re-listed for 13 May 2024. The LA put forward a care plan for a care order and placement order, the mother opposed this. During the proceedings, M and the mother were together in a mother and child foster placement.

Following an ex-tempore judgment given on 15 May 2024, the Judge concluded that he would not make an order for adoption and invited the LA to produce a new care plan with a transition for M to move into long-term foster care. He relied heavily on the evidence of V, the 'excellent foster carer', and the assertion that she would look after M long-term, which was, in fact, not the case.

The Judge expressed concern that although the ADM, social worker and Children's Guardian supported the plan for adoption, it would be difficult to place M locally and therefore the placement may not allow for sufficient contact with the mother.

## The Appeal

The LA appealed the judgment on the following grounds:

- (1) The Judge erred in peremptorily dismissing adoption as a realistic option for M, a 4-year-old child.
- (2) The Judge failed to sufficiently evaluate the realistic options.
- (3) The Judge's reasons contained within his judgment were inadequate, see in *Re B (A Child) (Adequacy of Reasons)* [\[2022\] EWCA Civ 407](#). The Judge adopted a linear approach in evaluating the available options for the child's future care, contrary to the guidance of Sir Andrew McFarlane P as reiterated in *Re B (A Child) (Adequacy of Reasons)* [\[2022\] EWCA Civ 407](#) at [43]

After the hearing, the LA clarified the position of V, who was clear that the maximum amount of time they would keep M was five years. This information was given to the Judge on 9 July 2024, who e-mailed the LA solicitor on 10 July 2024 and requested that the following observation be drawn to the attention of the Court of Appeal:

*"I would want the C of A to know – following yesterday's hearing when I heard for the first time (as did the Guardian) – that the foster carer has decided that she can in fact only care for the child for a maximum of 5 years, that my decision might have been different in this "extremely finely balanced" case (as described by the Guardian). In my judgment it is important for the C of A to know of this most recent development."*

When discussing the judgment the Court of Appeal found at [30] – [39]:

- The Judge based his decision primarily on the “erroneous belief” that V would provide long-term foster care for M. However, as disclosed in an email to the Court by the Judge before the appeal, this was not the case.
- The Judge’s communication to the Court prior to the commencement of the appeal was “puzzling”. His judgment was contrary to his assertion that he thought this was an "extremely finely balanced case".
- The Judge did not adequately articulate his reasons for disregarding the opinion evidence of all the professional witnesses.



- The Judge did not provide a balanced, holistic evaluation of all actual evidence in the case. He placed an overreliance on the phrase “nothing else will do” despite the caution provided in *Re W (A child) (Adoption: Grandparents' Competing Claim)* [\[2017\] 1 WLR 889](#) at [68] and [69].
- There was not sufficient analysis of the welfare factors.

Accordingly, the case was remitted for a rehearing before a different judge.

Prepared by:

**Eleanor Hull**

[eleanor.hull@stmarysfamily.co.uk](mailto:eleanor.hull@stmarysfamily.co.uk)