

Neutral Citation Number: [2006] EWHC 3065 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

December 01 December 2006

Before :

THE HON. MR JUSTICE SUMNER

Between :

Birmingham City Council	<u>Applicant</u>
- and -	
S	<u>1st Respondent</u>
and	
R	<u>2nd Respondent</u>
and	
A	
(A child acting by her Guardian)	<u>3rd Respondent</u>

Mr Barda for the **Applicant**
Mr Weston for the **1st Respondent**
Mr Howell-Jones for the **2nd Respondent**
Miss Wills-Goldingham for the **3rd Respondent**

Hearing dates: 14 November 2006

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE SUMNER

This judgment is being handed down in private on 1 December 2006. It consists of 15 pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

The Hon. Mr Justice Sumner :

1. On 28 June 2006 Birmingham City Council, the local authority, issued care proceedings in relation to A who was born on 1 March 2006. The mother of A is S now 25 years of age. Her father is 20 year old R.
2. On 19 September 2006 the father issued an application in the following terms:
 - “i) I would ask that the court determine the issue as to whether A’s paternal grandparents should be informed of A’s birth.
 - ii) Whether my application for the issue of disclosure of this information should be transferred to the County Court.”
3. In due course the application was transferred to the High Court. It came before me on 14 November. On that occasion the father was represented by Mr Howell-Jones, the mother by Mr Weston, the local authority by Mr Barda, and the Guardian by Miss Wills-Goldingham.
4. The case is to be decided on 14 May when 5 days have been set aside. The case is in the High Court for a decision on the question of disclosure to the paternal grandparents. The 5 day hearing will be in the County Court.
5. During the course of the hearing I asked Mr Howell-Jones to put in writing the precise terms of the order that he was seeking. He did so and it is in the following form –
 - “The local authority, Guardian, and child’s mother be forbidden to disclose directly or indirectly to the paternal family any detail that the father is in fact the father of A.

Additionally, the child’s mother S is forbidden to disclose to any other person not associated with the proceedings, the detail that R is A’s father until further order.”

The application as now drafted is opposed by the local authority, the mother, and the Guardian.

The background

6. The mother, then Miss A, was married in 1997 to Mr M. The mother subsequently adopted the Muslim faith and changed her name.
7. There were 2 children of the marriage, B born on 6 April 1999, and C born on 2 January 2001. In July 2001 the parents separated. They were subsequently divorced.

At some stage the mother became involved in prostitution.

8. The local authority became involved with B and C in September 2002. There were concerns relating to the mother's parenting ability. In November 2002 the mother placed the children with their father stating that she could no longer cope. They came back to her in December 2002. In January 2003 B was returned to his father. C remained with her mother.
9. In March 2003 C was removed from the mother's care under a police protection order following the discovery of what were said to be non-accidental injuries to C. In June 2003 she was placed with her father and B where both children have remained.
10. The father and the mother met in 2004. A relationship developed and A was born in March 2006. The mother and father have not cohabited. They separated in September 2006 but remain friends.
11. Arrangements were made before A was born for the mother to move with her to a residential parenting assessment for a period of 12 weeks. The assessment came to an end on 14 May 2006. The mother was found sleeping with A in the same bed despite previous warnings.
12. The local authority then organised a mother and baby placement in Nottingham initially for 6 weeks. It was extended but terminated in August 2006. In brief, though the mother had parenting strengths, these were not shown on a consistent basis. A went into foster care. She has had regular contact with the mother and father.

This hearing

13. When the matter came before me on 14 November, all parties were agreed that there should be a further short residential assessment of the mother with A at Dudley Lodge. If this was successful it could lead on to a halfway house assessment. I approved that after reading a clear and insightful report from Miss King, an independent social worker, of 10 November 2006.
14. It will be apparent from the foregoing that there is no guarantee that the mother will be able to look after A. Her future is at this time delicately poised. That is of considerable importance to the application before me. Should the court decide that the mother is unable to look after A, there are no other members of the mother's family who have put themselves forward to look after her. In the absence of any member of the father's family seeking her care, the local authority would in those circumstances seek to place her for adoption.
15. The timetable is tight. If there are members of the father's family and in particular his parents who might wish to be assessed as long term carers for A, then with a hearing date in May 2007, there is a gap of a few weeks before that assessment should begin.

This is to ensure they can be completed before the next hearing. I turn to the parties' submissions before me.

The father's case

16. In his application of 19 September 2006 the father said in support of his application –

“I would ask that the court determine the issue as to whether I should disclose to my parents at this stage details of A's birth. The Guardian takes the view that I should tell my parents of A's birth. It is my view however that I should not tell them just yet as this will cause a number of difficulties within my family. It will also have implications for me and my family within the Muslim community.

I am willing to tell my parents however I do feel that the timing of this is crucial. I understand that the solicitors for the 1st Respondent mother S will be making an application for a further assessment. I would like to find out whether this assessment is going to be granted before I tell my parents as I would certainly want S to look after A on a long-term basis.”

17. In his statement of 27 October 2006, the father explained that though the relationship had come to an end, he and the mother both wished to continue to be friends. He would help out financially if she could look after A. He would like regular contact with her. He was not in a position to care for her if the mother could not do so.

18. He said -

“Unfortunately my family will not accept A. I fully understand that if there is no one else in the extended family to care for A she will have to be adopted. I would therefore agree to A being adopted.

It is my position that my parents should not be told about A. The reasons for this are that I am concerned that my parents will throw me out of their house, which would mean that I would have nowhere to live. My parents and other family members will not talk to me. There will be difficulties for my family and me within the Muslim community. Given S's background my parents would not want to be associated with A.

I have briefly discussed this matter with the children's Guardian. I did say to the Guardian that there could be a number of things that could happen if my parents found out about A's birth, not only that my mother may look after A. In hindsight perhaps I had not really thought about the issues that would arise at some length.”

19. On his behalf, Mr Howell-Jones accepted that both A and her father had a right to respect under Article 8 (1) for their private and family life. It was a question of balance.
20. If the mother's assessment is positive and the father supports her, no other extended family member would need to be considered. To inform his parents in those circumstances would be for little purpose. It would be a significant interference with the father's family life. If the mother's assessment is negative, then the father wishes A to be adopted. To tell his family at that stage would still amount to a significant interference.
21. Knowing his family he has a genuine belief that they would not wish to be associated with A. Accordingly even if his parents were told about A, the disclosure would be in vain. Further enquiries and disclosure to his parents would create not just substantial difficulties for him, but for the whole family in the wider community. He asks that his confidentiality be respected.
22. In any event it was too early for the question of whether his parents should be informed to be determined. His parents are devout Muslims. They attend the mosque every day. They are unaware of A's existence. If they discovered it, it would be a bombshell. Given the strict Muslim background, his 3 brothers and 3 sisters would also reject him as would his parents. He would have nowhere to go.
23. There would be a lot of embarrassment in the community and their standing in the community and the mosque would be affected. I asked if there was any particular Muslim dimension to the argument, rather than a devout religious background. I was told there was not.
24. It was the father's perception of his parents as people and their personalities seeing their son with a white mother and a former prostitute. It would be very surprising if their view was other than rejection of their son and A.
25. There was no absolute duty on the local authority or the Guardian. It was a balance between A's rights and those of the parents.
26. The father supports the mother if she was successful in looking after A. If she did succeed to have told his parents would have been in vain. Twin-tracking should be adopted.
27. Mr Howell-Jones submitted that the father was the best person to judge his parents' likely reaction. He said that one of the father's brothers had been imprisoned for 2 years for assault. It had had a big effect. It had compounded problems. He accepted that the father of the mother's 2 older children lived in almost the next door street to the father's parents and that the father knew him. The father did not wish to give evidence.

The mother's case

28. In her statement of 9 November 2006, the mother said that the challenging periods of assessment and the difficulties in their relationship led to their decision in September 2006 that they should separate as a couple. She held the father largely responsible for the periods of the assessments when she behaved and made decisions unwisely. She had become dependent on him. She thought he was providing support. Now they were no longer together she considered herself stronger and more independent.
29. She considered it regrettable that the father's family may ostracise him and ask him to leave the family home if they were to learn about A's birth. The father is adult and must ensure that A's best interests are a priority over others. She did not believe that A should be kept a secret.
30. She was proud and loved A who was entitled to know of her paternal family regardless of whether they wished to have any contact with her. She did not support his application to prevent disclosure to his family. She hoped that they would respond differently and that the father would be able to retain his family and contact with A.
31. Mr Weston submitted on her behalf that A was entitled to know her paternal family. She should have full knowledge of the family on both sides. Secrecy was to be avoided. It was not a sufficiently cogent reason to support the father's application.
32. The reasons put forward by the father were speculative. The mother had converted in 1997 and become a Muslim. There was no objective evidence that the parents would be rejecting of A. It was being put forward as a possible price that A would pay for any knowledge of the paternal family. The father's attitude is in contrast to the regular contact he has been having. It is accepted that it is going well.
33. The wording proposed on behalf of the mother for the purpose of any order made by the court is extremely wide. The mother would be prevented from telling the health visitor for instance who A's father was. It was a gross interference of her right to speak about the father of her child. It would not work in practice. It is also wholly disproportionate.
34. There was always the risk of the mother bumping into the father in the street with his family when she visited her children. They live some 10 minutes drive away. It is not realistic to try and impose such an order on the mother nor right.

The local authority's case

35. Mr Barda pointed out that most of the relevant case law concerned a natural father and whether he should be informed against the wishes of the mother that she had given birth to their child. In essence the court approves such a course only in appropriate circumstances and where the welfare of the child required it. It was an exceptional course.

36. He pointed to section 17 of the Children Act 1989 which placed the following obligation on a local authority –

“(1) It shall be the general duty of every local authority –

- a) to safeguard and promote the welfare of children within their area who are in need: and
- b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

By providing a range and level of services appropriate to those children’s needs.”

37. As A was being looked after by the local authority, there were further duties upon them. They are to ascertain the wishes and feelings of each of the parents so far as reasonably practical, and to give due consideration to them in making any decision about the child (Ss 22(4) and (5)). A local authority looking after a child had also to make arrangements for the child to enable him to live with a relative unless that would not be reasonably practical or consistent with his welfare (s.23(6)).
38. Within the relevant statutory provision there is finally, under s.1(4)(f) of the Adoption and Children Act 2002, a duty on the court or adoption agency to have regard to the relationship a child has with relatives, their ability to provide a secure environment for the child, and the relatives’ wishes and feelings. Mr Barda referred me to 2 cases, *Z County Council v R* (2001) 1 FLR 365 and *Re: H; Re: G (Adoption: Consultation of unmarried fathers)* (2001) 1 FLR 646. I refer to them later.
39. In this particular case he argued that the father had to disclose sufficiently compelling considerations. It was those which should be set against the responsibility of all concerned with long-term plans for A properly and fully to assess her extended family before she is placed outside of it and family links are severed.
40. Mr Barda accepted that the court did have the power to restrict the local authority and the Guardian from carrying out their statutory duty. He pointed out it had to be fact specific. Where Article 8 rights of the child and of a parent conflicted then in general those of the child should prevail.
41. Given the proximity in the present case of members of the family, it was likely that the paternal grandparents would discover the truth in any event. The facts were difficult to determine because the father had already gone back on what he said in his application. The sending to prison of another sibling had not resulted in him being rejected by the family. The religious element was not being relied upon. There was also the prospect that the father, having a good and developing relationship with his daughter, might wish to look after her himself.
42. In the longer term the only realistic course was that the parents should be informed. It was better that the father grappled with this sooner rather than later. It was an essential

part of the life story book for A.

43. On the balance it was right for a child to know that it was not possible to be kept within a family, rather than the family be kept in ignorance of a child's existence for whom they might wish to care. Even if they rejected her it was better that this should be done than avoided. The timetable required that a decision be made now. The local authority's applications would be going to Panel in January and evidence and assessments had to be completed by mid March. There was no window of opportunity other than now.

The Guardian's case

44. Miss Wills-Goldingham drew attention to the obligations on a Guardian in such a case to carry out such investigations as may be necessary for her to carry out her duty. This included contacting or seeking to interview such persons as might be thought appropriate or as the court directed.

45. She drew attention to the case of *Marckz v Belgium* 1979 2EHR at paragraph 45 where it was said –

“Family life within the meaning of Article 8 includes at least the ties between near relatives, for instance those between grandparents and grandchildren since such relatives may play a considerable part in family life.”

46. Earlier in the same judgment in considering the meaning of “respect” it was stated –

“This means, amongst other things, that when the State determines in its domestic legal system the regime applicable to certain family ties such as those between an unmarried mother and her child it must act in a manner calculated to allow those concerned to lead a normal family life. As envisaged by Article 8, respect for family life implies in particular, in the court's view, the existence of domestic law of legal safeguards to render possible, as from the moment of birth, the child's integration in its family.”

47. It was submitted that a child has the right to grow up within its family if that was possible. With 2 half-siblings living a few hundred yards away from the paternal grandparents, the prospect of some sort of meeting was quite likely. The mother has contact with those children. Furthermore the Guardian was saddened by the father's attitude as there had been very positive contact.

48. In all the circumstances it was right for the court to risk the reaction of the parents, if the father is to continue the role which he presently has. Finally the Guardian was concerned about the father's position. Formerly he had told her that if the mother knew about A she would wish to come forward. He was now saying the direct opposite. This

was explained on behalf of the father by saying that he had felt under some pressure then but he had now stood back and considered the matter.

The law

49. Much has been said in the course of argument about the rights of A, the father, the mother, and the grandparents under Article 8 of the European Convention of human rights, brought into English law by the Human Rights Act, 1998. It is in these terms –

“(1) Everyone has the right to respect for his private and family life, his home, and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Family life

50. I have first to determine whether there is family life, because otherwise there can be no rights arising under Article 8. As Dame Elizabeth Butler – Sloss pointed out in *Re H; Re G* at p.655 –

“Not every natural father has a right to respect for his family live. With regard to every child of whom he may be the father ... The application of Article 8(1) will depend upon the facts of each case.”

51. In *Keegan v Ireland* (1994) 18 EHRR 342, the European Court held –

“The Court recalls that the notion of the “family” in this provision is not confined solely to marriage-based relationships and may encompass other *de facto* “family” ties where the parties are living together outside the marriage [see, *inter alia*, the *Johnson and Others v Ireland* judgment of 18 December 1986]. A child born out of such a relationship is *ipso iure* part of that “family” unit from the moment of his birth and by the very fact of it. There thus exists between the child and his parents a bond amounting to family life even if at the time of his or her birth the parents are no longer cohabiting or if their relationship has then ended.

In the present case, the relationship between the applicant and the child’s mother lasted for two years during one of which they cohabited. Moreover, the conception of their child was the result

of a deliberate decision and they had also planned to get married. Their relationship at this time had thus the hallmark of family life for the purposes of Article 8. The fact that it subsequently broke down does not alter this conclusion any more than it would for a couple who were lawfully married and in a similar situation. It follows that from the moment of the child's birth there existed between the applicant and his daughter a bond amounting to family life.”

52. The following factors are relevant in this case. The relationship lasted for two years. Though they did not live together it was a close relationship. A was born after 18 months. The father and the mother continued their relationship for another 6 months and he saw A regularly. He wishes to help support A if she is rehabilitated to the mother. He has maintained contact with A which is good and developing. He is also on friendly terms with the mother though they are separated. I find that that amounts to family life within the meaning of Article 8. the contrary has not been argued.

Z County Council v R

53. In relation to the principles, which I should adopt in deciding this case, I have been referred to Z County Council. In that case, a mother approached a local authority in confidence about the expected birth of her child, whom she wished to have adopted. She refused to reveal the identity of the father. The guardian raised the question of whether she or the local authority as the adoption agency should contact the relatives and investigate whether any of them might wish to and be able to care out for her the child.
54. Holman J held –
- “There is, in my judgment, a strong social need, if it is lawful, to continue to enable some mothers, such as this mother, to make discreet, dignified and humane arrangements for the birth and subsequent adoption of their babies, without their families knowing anything about it, if the mother, for good reason, so wishes.”
55. He reviewed the statutory background. He held that none of the provisions imposed any absolute duty on either the local authority or the Guardian or the court itself to inform or consult members of the extended family. Furthermore, to inform the family was unlikely to confer any benefit on the child.
56. He assumed for the purpose of the hearing that there was family life. Not to inform the family was a grave breach of the child's rights to respect for her private life. But such interference was in accordance with the law, which permitted freeing and adoption orders. It was necessary and in proportion. He held it a grave interference with their right for a local authority to breach those rights by imparting information given to them in confidence to people from whom she wished right from the beginning to keep it

secret.

Re H: Re G

57. The President had to consider the position of two separate fathers. In each case the mother with whom they had had a relationship placed the baby with the local authority for the purpose of adoption. In the first case, the father and mother had been cohabiting for a period. They had an older child with whom the father had contact. In the second case, the mother and father had never cohabited and though they had been engaged, their relationship had completely dwindled, and they had lost touch.

58. She said, in relation to Z County Council, that Holman J had decided that there was no power to compel the mother to reveal the father's identity. She considered the Court of Appeal decision in the case of Re R (Adoption; Father's Adoption) (2001) 1 FLR 302 and concluded –

“The English courts, therefore, recognise that in an adoption application ... the position of the natural father, who does not have parental responsibility is, nonetheless, to be considered, and a decision has to be taken in each case whether to give him notice of the proceedings and whether to make him a respondent. The statutory framework to give him an opportunity to intervene in the proceedings is in place. The decision whether to give him that opportunity will have to be made in each case on its particular facts. As a matter of general practice, I would expect judges or district judges giving directions in adoption or freeing for adoption applications to inform natural fathers of the proceedings, unless for good reasons the court decides that it is not appropriate to do so. The desire of the mother for confidentiality may carry more weight in some cases than in others.”

59. Later she considered the rights of the father to a fair trial under Article 6. It provides –

“In the determination of his civil rights and obligations or of any criminal charges against him, everyone is entitled to a fair and public hearing with a reasonable time by an independent and impartial tribunal established by law.”

60. She went on at p.657 –

“If the father is a father who is found to have a family life with his child then one would expect Article 6 (1) prima facie to apply. This raises the difficult question of the impact of the rights of other parties under Article 8, and the welfare principles, on the right to a fair trial. There must, however, in principle, be some qualification of the right of a party to be heard in proceedings. This would be likely to arise under two separate

categories, namely, a policy decision of the court, in the exercise of its right to run its own proceedings within that the requirement that there should be a fair trial, and, secondly, the practicalities of service on a potential litigant or his attendance at the hearing. There will be cases where notice to a father would create a significant physical risk to the mother, to the children in the family, or to other people concerned in the case ... The importance attached by the mother to confidentiality, and her determination not to inform the father nor her own family of the birth of H, are relevant to considering whether the father should at this stage be given notice or made a respondent under rule 15(3). It does not, in my judgment, go to the first issue under the contention, namely, whether there is a family life which engages Article 8 (1). The much more difficult question is how to resolve the issues arising from the right of other parties, the mother, the child capital age and through her potentially the prospective adopters, under Article 8 (2).....”

61. In the result she did not consider it right to inform the second father where she held that “family life” had not been established. She did hold it necessary to do so in respect to the first father where family life had been established, even though the child concerned had been placed with prospective adopters.
62. Finally she considered the question of confidentiality and reached a conclusion somewhat different from Holman J. She pointed to the European Convention on the Protection of Human Rights and Fundamental Freedoms, 1950. It -

“underpins the evolving culture in our adoption legislation of greater involvement of natural families in post-adoption placements and knowledge of the natural father. It also underlines the existing English law on the right of all relevant parties to notice of litigation, including potential litigation, and the relevance of rule 15(3) to the natural father not married to the motherA considerable degree of confidentiality is clearly important, but it ought not, in the majority of cases, deprive the father of his right to be informed and consulted about his child.”

Conclusions

63. I am satisfied that the court has the jurisdiction both to grant and to refuse the application made by the father. It is not just dependent on whether he comes within the terms of Article 8. It is to be determined on the facts in each case. I have set out the considerations that arise under English domestic law. Before considering further the principles that arise here, I shall highlight the main points of the evidence.
64. The mother's seven-year-old son and five-year-old daughter live with their father in an adjoining street to the father's parents where he lives. The mother visits them. She lives about 10 minutes away.

65. The father has been involved with A and wishes to play a part in her life if she stays with her mother. This includes contact and paying maintenance.
66. Arguments for the father have been based on the prospect of his parent's rejection of both him and A. That was not however the basis of his application when it began only 2 months ago. He was then expressing a clear view that he would tell his parents about A but wished to see first how the mother's further assessment would go. That had changed by the time of his statement.
67. A month later he said "unfortunately, my family will not accept A." He was concerned that his parents would throw him out of their home and he would have nowhere to go. Also, with the mother's background, his parents would not wish to be associated with A. Finally, he acknowledged that there could be a number of things that might happen if his parents found out about A, including that his mother might look after her. He considered he had not really thought about the issues that would arise.
68. I am not satisfied that there is evidentially a sound basis to conclude that the father's parents or his family would reject A. I bear in mind that he told the Guardian first of all that, if his mother knew about A, she would wish to come forward. Whilst he may have changed his mind when he thought of the direct impact on himself and his family in the community, I consider it more likely that his first view of his mother's reaction is probably accurate. Thus, I conclude that if the situation were to arise where A might be placed for adoption, it is likely that within the father's family is a person who would wish to be considered as a potential carer.
69. A has the right to be brought up within her own family, unless there is good reason why this should not happen. This is under English common law, the Children Act, and under Article 8. Part of the father's rights under the same Article include the right for his family not to be informed about matters in his own life. This includes the information that he has fathered a child. However I have also to consider the rights of his parents and family members to put themselves forward as potential carers in order that A might remain within their family.
70. There are practical considerations as well. They include the serious risk, given the proximity of the families and the very close proximity of A's half-siblings and the mother's visits, that the father's parents will discover the truth. If they were to discover by accident that not only have they a grandchild, but one who has been placed for adoption, the news is likely to shock and upset them. If this were to happen, it would be a serious breach of their right to respect for their family life. They would have been denied the opportunity to bring up their own granddaughter, if they wished to do so, and were held able to fulfil that role.
71. I am in no doubt that the arguments put forward by the mother, the local authority, and the Guardian should prevail. Balancing the rights of A, the father and his parents, I find that the rights of A must prevail. I accept that the consequences for the father could be serious. He might lose his home. The family could be upset. A might be rejected both by his father and his family. I consider rejection less likely to happen. I consider it

more likely that his parents would wish to consider caring for A. I also bear in mind that the longer the father's contact with A continues and develops, the greater is the prospect that he might seek on his own or with family support to look after A. It would be a real loss if that came too late for A. It would be contrary to her rights to deprive her of that opportunity or the chance that the paternal family could look after her.

72. Furthermore, I have difficulty with the wording of the order that Mr Howell-Jones seeks to persuade me to make. The purpose is that the mother should be forbidden to disclose to any other person, not associated with the proceedings, the identity of A's father. Though I accept that she could be forbidden to contact the paternal family directly or indirectly, I am not satisfied that I either have the authority or that I should exercise it to try and prevent the mother talking about the father. Otherwise she could not discuss with family, friends or professionals the identity of her child's father.
73. Adoption is a last resort for any child. It is only be considered when neither of the parents nor the wider family and friends can reasonably be considered as potential carers for the child. To deprive a significant member of the wider family of the information that the child exists who might otherwise be adopted, is a fundamental step that can only be justified on cogent and compelling grounds. I find that there are no such compelling grounds here.
74. In part the father's concerns are that he has not done what his parents consider right. He has had a relationship and remains friendly with a mother, a former prostitute, and a person who might be regarded as not appropriate. I am not satisfied, however, that any reservations that they might have in relation to the mother would necessarily extend to their son's child.
75. I have borne in mind throughout that I am considering the position of grandparents not natural parents. My decision flows from applying the law to the particular facts of this case as I have found them to be. I have considered anxiously whether considerations applicable to natural parents, as in the judgments I have cited, are to be applied to grandparents. Would it be the same for siblings or more distant relatives? The answer lies in considering the alternatives for A.
76. What is at the heart of this case are the rights of 8 month old A who may be placed for adoption of her mother is held unable to care for her. They include her right to be brought up by her own family. The mother offers no alternative on her side who may be able to care for A if she cannot. The father seeks to avoid that question being asked of his family. His rights under Article 8 are therefore opposed to A's rights.
77. The father's reaction has shifted over time. Originally he thought his mother might be willing to care for A. Now he considers the family would reject him and A. I have not found his change of approach convincing – it is driven substantially by the upset he fears he will create rather than a genuine appraisal of whether his mother might wish to care for A.

78. The court would wish to preserve the father's position within his own family and to avoid upset to him and them if that is in A's best interests and her rights permit it. Here for reasons I have endeavoured to give I am satisfied it is not. If the mother is unable to care for A, the only prospect she may have to grow up within her own family, and retain links with both her father and mother, is if her father's family can care for her.
79. The importance of that for her has to be balanced against the breach of the father's rights to respect for his family life, and the risk of rejection for him and A by his family. That may be the result. I consider it less likely. Whilst the paternal grandmother may be willing to take on the care of A, I bear in mind that for a grandchild to be adopted outside of a strict Muslim family may be something they would not wish to contemplate. Other family members if not the grandmother may wish to put themselves forward.
80. The risk of rejection by the family is possible. But my assessment is that it is unlikely. If it happens then whilst it is damaging for A when she learns of it in the future, it is less damaging for her than losing the opportunity to remain in the care of her family.
81. I have also borne in mind in such a devout family that other relatives may put themselves forward. Furthermore the father, whose views have already changed, may find the choice of adoption too much when faced with that reality.
82. Accordingly, balancing the rights of the parties, I have come to the clear conclusion that I should refuse the father's application. I propose that he be given a limited opportunity to inform his parents of the position before the duty that lies upon the local authority and the Guardian is exercised and the paternal grandparents are informed of A's existence and her present circumstances. The father's application is therefore dismissed.