



SUPREME COURT OF NORWAY

On 11 September, the Supreme Court gave judgment in

HR-2018-1720-A (case no. 2018/77), civil case, appeal against judgment,

A (Counsel Camilla Hagen)

B (Counsel Christian Gustavsen)

v.

The municipality of X (Counsel Mette Yvonne Larsen)

V O T I N G :

- (1) Justice **Kallerud**: The case concerns deprivation of parental responsibility and consent to adoption under section 4-20 of the Child Welfare Act. The question is whether adoption is in the best interests of the child.
- (2) C was born on 00.00.2013. Shortly after his birth, he was taken into emergency care. Barely one year old, he was moved to the foster home where he now lives. He thus recently turned five and has been living with his foster parents for almost four years. The foster parents wish to adopt him. I will revert to the circumstances relating to the care order.
- (3) C has developmental disabilities. He has characteristic features and psychosocial difficulties. He has been examined for chromosome disorders, but none has been detected. In many areas, he is far behind children of his own age.
- (4) C's biological parents are A and B. They were separated in October 2013 – one to two months after C was born – and divorced in the autumn of 2014. Currently, there is no contact between the biological parents.
- (5) C's mother has remarried and now lives in Z with her new husband. They had a son in March 2015, who is in the care of the local child welfare service. Inntrøndelag District Court's judgment of 8 January 2016 gives a thorough account of A's ability to care for this

son. As the court concluded that it would be "seriously detrimental" to the care of the child if he were to be returned to his parents, the order of the child welfare service was upheld. The court also agreed with the child welfare service's decision to keep the foster parents' address secret to the biological parents. The parents have contact visits with their son four times a year. Since the summer of 2016, contact visits have been carried out without the supervision of the child welfare service.

- (6) After the split-up, C's father moved back to his parents. He later established a new relationship, which has now ended.
- (7) When C was born, the parents lived in X. On 20 August 2013 – four days after C's birth – the local child welfare service issued an emergency care order under section 4-6 of the Child Welfare Act. The order sets out that the child welfare service had received a note of concern from A's general practitioner during the pregnancy. The note reported a number of alarming circumstances concerning A and serious problems in the relationship between her and B. Three days after the birth, the child welfare service received another note of concern. The child welfare service initiated inquiries, but had the impression that the parents tried to avoid contact. It was agreed that the parents would come to the child health clinic the next day, where they would also meet the child welfare service. Despite this, the parents took the newborn child in their car and informed the child welfare service that they had gone to Western Norway.
- (8) The child welfare service concluded – against the background I have briefly presented – that it would be of great harm to the child if he were to remain in his parents' care. An order was issued for the boy to be taken into emergency care at a secret address, but that he was to have contact visits with his parents for a maximum of two hours per week under supervision. The County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*) approved the order on 22 August 2013.
- (9) With the help of the police, the child was found on 20 August 2013 and placed in the emergency home.
- (10) After the first care order had been issued, information emerged that increased the child welfare service's concern. On 30 August 2013, the child welfare service issued new temporary orders deciding among other things that, due to the recent events, there should be no contact visits. The orders gave a thorough presentation of the factual circumstances as well as detailed arguments. For instance, it was held that such visits entailed a risk of attempted abduction to which the child should not be subjected, as any success in running away with him would entail danger to his life and health. The County Social Welfare Board approved the new orders on 2 September 2013.
- (11) On 29 November 2013, the County Social Welfare Board in Y ordered that the boy be taken into care and, like the child welfare service, that he be placed at a secret address with no access to the parents.
- (12) The County Social Welfare Board's care order was brought before the district court, which upheld it. The case was appealed to the court of appeal, but was not admitted. The further appeal to the Supreme Court was dismissed on 27 March 2015.
- (13) On 28 December 2015, the municipality of X brought before the County Social Welfare Board a request for deprivation of parental responsibility and consent to adoption.

- (14) On 17 February 2016, the County Social Welfare Board in Y concluded as follows:
- "1. **A and B are deprived of parental responsibility of C, born 00.00.2013, see section 4-20 subsection 1 of the Child Welfare Act.**
 2. **The County Social Welfare Board consents to C's foster parents adopting him, see 4-20 subsections 2 and 3 of the Child Welfare Act.**
 3. **The County Social Welfare Board will not decide whether there should be contact between C and his biological parents after the adoption, see section 4-20 of the Child Welfare Act."**
- (15) A filed a petition for review to Inntrøndelag District Court, while B asserted third party rights. On 1 December 2016, Inntrøndelag District Court concluded as follows:
- "1. **Items 1 and 2 of the County Social Welfare Board's order 17 February 2016 in cases 15/311 and case 15/351 are upheld.**
 2. **A and B are not to have access to C."**
- (16) Item 1 of the conclusion implied that the district court denied the request for deprivation of parental responsibility and consent to adoption.
- (17) The judgment was given with dissenting opinions. The majority – the professional judge and the lay judge from the general lay judges committee – found that it was premature to conclude that the advantages of adoption would make up for the disadvantages of losing contact with the biological parents. The minority – the expert lay judge – found that the conditions for adoption were met. The minority found that there were weighty reasons for adoption, stressing that the boy was particularly vulnerable and that adoption would ensure stability and safety for him and for his foster parents.
- (18) The municipality of X appealed to Frostating Court of Appeal, which on 16 October 2017 concluded as follows:
- "1. **A and B are to be deprived of parental responsibility for C, born 00.00.2013, see section 4-20 subsections 1 and 2 of the Child Welfare Act.**
 2. **Consent is given for C's adoption, see section 4-20 subsection 3 of the Child Welfare Act."**
- (19) This judgment too was given with dissenting opinions. The majority – including the expert lay judge, emphasised the boy's need for peace and stability and that one could not rule out that applications for access would be filed in the following years. The minority – one of the professional judges – found that the evidence presented did not suggest that the mother or the father would cause any problems with regard to the placement, and that it was premature to conclude in the adoption issue.
- (20) A has appealed to the Supreme Court against the findings of fact and the application of the law. B, having third party rights in the case, filed a response in support of the appellant as well as a derivative appeal. On 12 February 2018, the Supreme Court's Appeal Selection Committee decided to allow A's appeal, whereas B's derivative appeal was not admitted. B has stated in writing before the Supreme Court that he opposes adoption and given grounds for his view. He has also expressed that legal representation for him in the Supreme Court is not necessary.

- (21) Psychologist Jon Ståle Gjesdal Henriksen has been appointed as an expert by the Supreme Court in accordance with section 25-2 of the Dispute Act, and he has given a written statement. The Commission on Child Welfare Experts has not had any remarks to the statement. Gjesdal Henriksen also gave an oral statement to the Supreme Court in accordance with section 30-11 subsection 1 of the Dispute Act. Some written testimonies have also been given.
- (22) The appellant – A – contends:
- (23) Forced adoption can only be justified by particularly weighty reasons. Such reasons are not currently present. The majority of the district court and the minority of the court of appeal have made a correct assessment.
- (24) The parents accept that it is best for C to live in a foster home. But it would be premature to take the irrevocable step of consenting to adoption. Although C is a vulnerable child, there is no reason for assuming that adoption will make his situation safer or better than if he stays in foster care. The child's needs and possibilities of development have not been studied and elucidated. This may have an impact on the adoption issue.
- (25) The child welfare service has made no real attempts to establish contact between C and his parents after his birth, which is worthy of criticism. There is no basis for assuming that the child will suffer negative consequences of careful contact with his mother under due supervision and guidance, and in cooperation with the foster parents. On the contrary, reports show that C does not react negatively to contact with strangers.
- (26) A has no objections to the foster parents. She accepts that C is to grow up in their home. But they should not be allowed to adopt the boy, as adoption will in practice exclude all contact with his biological parents and his half-brother in the foreseeable future. He will thus be completely cut off from his roots.
- (27) A has developed substantially during the years after giving birth to C. Although her child born in 2015 is also in foster care, the circumstances are completely different from those concerning C. She cooperates well with the child welfare service in Z where she now lives. She sees the child without supervision, and she has a good relationship with the foster parents. This demonstrates that the child welfare service in X and the foster parents apply incorrect information regarding A. The good relationship with the child welfare service in Z and with the foster parents of C's half-brother indicate that consenting to adoption without further inquiries and attempts to establish contact with his mother and half-brother would be wrong.
- (28) There is no risk that the parents will create any disturbance to C or the foster parents. The child welfare service has given the foster parents information regarding A and her family that stems from the period immediately after the childbirth in 2013. Based on this information, it is understandable that the foster parents are sceptical to having contact with her. Although the foster parents have now read the expert's report to the Supreme Court, the information they have received regarding C's mother is inadequate. This represents an ongoing procedural error by the child welfare service.
- (29) A has submitted this prayer for relief:

"1. Item 1 of the judgment of Inntrøndelag District Court of 1 December 2016 in case 16-045465 is to be upheld."

- (30) The respondent – *the municipality of X represented by the child welfare service* – contends:
- (31) The court of appeal's judgment is correct. The conditions for adoption are met, and compelling reasons suggest that consent to adoption should be given. C is a child with major developmental challenges. He is in special need of safety, sense of belonging and follow-up.
- (32) All experts who have been involved in the case agree that adoption is in the child's best interests and have given solid arguments in support of their position. Adoption would be a continuing benefit to C.
- (33) The municipality of X represented by the child welfare service has submitted this prayer for relief:

"The appeal is to be dismissed."

- (34) *I have concluded* that the appeal must be dismissed.
- (35) The case concerns adoption against the will of the parents. The question is whether the boy – who is now five years old – is to remain in foster care in the home where he has lived the last four years, or whether the foster parents may adopt him.
- (36) Under section 36-5 subsection 3 of the Dispute Act, the court is to review all aspects of the case, and the review must be based on the situation at the time of the judgment.
- (37) The right to forced adoption is regulated by *section 4-20 of the Child Welfare Act*. The provision's subsections 1 to 3 read:

"If the county social welfare board has made a care order for a child, the county social welfare board may also decide that the parents shall be deprived of all parental responsibility. If, as a result of the parents being deprived of parental responsibility, the child is left without a guardian, the county social welfare board shall as soon as possible take steps to have a new guardian appointed for the child.

When an order has been made depriving the parents of parental responsibility, the county social welfare board may give its consent for a child to be adopted by persons other than the parents.

Consent may be given if

- a) **it must be regarded as probable that the parents will be permanently unable to provide the child with proper care or the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her and**
 - b) **adoption would be in the child's best interests and**
 - c) **the adoption applicants have been the child's foster parents and have shown themselves fit to bring up the child as their own and**
 - d) **the conditions for granting an adoption under the Adoption Act are satisfied."**
- (38) The parties have stated that the deprivation of parental responsibility under the provision's subsection 1 is only relevant in the event of an adoption order. I will therefore

immediately turn to the adoption issue.

- (39) The parties agree that the conditions in subsection 3 (a), (c) and (d) are met. I share that view. I must assume that the parents are permanently incapable of providing C with proper care. Furthermore, I stress that C has developed a close attachment to the foster home. Psychologist Gjesdal Henriksen has stated that C is "extremely emotionally attached to his foster parents" and that the foster parents, from his perspective, are irreplaceable. There is no doubt that C is extraordinarily dependent on this foster parents, and the expert describes that he is not attached to other persons who may replace or compensate the daily care he receives from his foster parents. The expert also stresses that the foster parents are particularly suited to care for him. It has also been established that the foster parents have proven extremely fit to raise the child as their own. This is also accepted by the parents.
- (40) The crucial point is thus whether "adoption would be in the child's best interests", see section 4-20 subsection 3 (b).
- (41) In 2015, the Supreme Court heard two cases regarding forced adoption. The *legal principles* were dealt with there.
- (42) The following is set out in Rt-2015-110 paragraph 46:
- "A forced adoption has a strong impact on the biological parents. The emotional pain of your child being adopted is usually profound. The family ties severed by forced adoption are protected under ECHR Article 8 and Article 102 of the Norwegian Constitution. Adoption is also a radical measure for children, which under the UN Convention on the Rights of the Child Article 21 may only be decided if this is in the best interests of the child. The interests of the parents take second place where crucial factors indicate adoption of the child, see Article 104 (2) of the Norwegian Constitution and the UN Convention on the Rights of the Child Article 3 no. 1. I refer here to ECtHR's judgment in the case Aune v. Norway of 28 October 2010, paragraph 66, which states, in connection with the proportionality assessment under ECHR, Article 8 no. 2, that the adoption must be based on "an overriding requirement pertaining to the child's best interests". This case is the same case that was settled by the Supreme Court in Rt. 2007, page 561. I therefore find that the mode of expression in paragraph 51 of this Supreme Court judgment - that there must be "particularly weighty reasons for adoption" – suggests the use of the same norm.**
- (43) In Rt-2015-1107 paragraph 44, this is summarised by the requirement of "the child's best interests" being supplemented by a requirement of "particularly weighty reasons". It then reads:
- "The concerns for the child that suggest adoption must be so strong that the concern for maintaining the biological ties between the child and its parents must give way."**
- (44) Some *case law from the European Court of Human Rights* has emerged since the Supreme Court's judgments in 2015. I mention in particular judgment 30 November 2017 *Strand Lobben v. Norway* and judgment 26 April 2018 *Mohamed Hasan v. Norway*. The first judgment was given with a 4 – 3 vote, and was, on 9 April 2018, referred to hearing in the Grand Chamber. On 6 September 2018, the European Court of Human Rights (ECtHR) concluded in *Jansen v. Norway* that Article 8 had been violated in a child welfare case. However, that case contained issues that differed from those in our case. The judgment is not final and enforceable.

- (45) The ECtHR judgment of April this year in *Mohamed Hasan v. Norway* is unanimous and enforceable. The case concerned deprivation of parental responsibility and consent to the foster parents adopting the appellant's two children. As in the case at hand, the appellant did not request that the care for the children – with whom she had not had contact for a long time – be returned to her. The Court also took the grounds for deprivation of care into account in its assessment of the adoption issue, see paragraph 153. In its judgment, the Court presented the general principles on which it bases its judgments on deprivation of care and adoption where violation of Article 8 of the European Convention on Human Rights (ECHR) is asserted. As far as I can see, the newly given judgment contains legal principles that are well established in ECtHR case law. I will therefore rely on this judgment to a great extent in my deliberation.
- (46) In paragraph 142, it is established that the reasons given for the measure must be "relevant and sufficient". It also says:
- "Moreover, it must be borne in mind that the decisions taken by the courts in the field of child welfare are often irreversible, particularly in a case such as the present one where an adoption has been authorised. This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interferences ..."**
- (47) This corresponds well with what I have quoted from the Supreme Court judgments from 2015, where the irreversibility of adoption is emphasised.
- (48) In paragraph 144, the Court mentions that it, when deciding whether Article 8 has been violated, will consider the fact that the threshold for intervention varies from one Contracting State to another:
- "The Court has held in many cases, such as *K. and T. v. Finland* ... that in determining whether the reasons for the impugned measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of the Convention, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area."**
- (49) But, the Court adds: "... consideration of what is in the best interests of the child is in every case of crucial importance".
- (50) This corresponds well with the provision in Article 21 of the Convention on the Rights of the Child stating that in connection with adoption "the best interests of the child shall be the paramount consideration". The expression "paramount" is used in paragraph 149 in *Mohamed Hasan v. Norway* and in several other judgments, see for instance the Grand Chamber judgment 6 July 2010 *Neulinger and Shuruk v. Switzerland* paragraph 135.
- (51) The expression in Article 21 of the Convention on the Rights of the Child - "the paramount consideration" – is thus even stronger than that of the general provision in Article 3 (1) stating that the best interests of the child are "the primary consideration". I refer to Supreme Court judgment Rt-2009-1261 paragraph 29 et seq. (*Ashok*) where Article 3 is dealt with in more detail. In paragraphs 31 and 32, it is held that proposals were made during the drafting of the Convention to use "paramount" also in Article 3, but that this was too far-reaching. Similar objections are however not made in adoption cases where the child's best interests are crucial.

- (52) Finally in paragraph 149 in *Mohamad Hasan v. Norway*, the following general remark is given on cases involving the care of children:

"Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interest must come before all other considerations ...".

- (53) The emphasis placed by the Court on the child's best interests corresponds well with Norwegian law. I confine myself to referring to Article 104 paragraph 2 of the Norwegian Constitution stating that for decisions that affect children "the best interests of the child shall be a fundamental consideration", and to the Norwegian case law to which I have already referred.

- (54) Here, I also mention that the Norwegian legislature wants to increase the use of adoption as a child welfare measure, see Proposition No. 69 (2008-2009) to the Odelsting, page 27 et seq. It was deemed "essential for a child that it may grow up under conditions that involve a minimum of insecurity with respect to the future" and that research shows that adoption may give a "safer and more predictable upbringing than long-term foster home placements", see in particular page 33 of the Proposition. A reference may also be made to Norwegian Official Report 2009: 21 Adoption – for the sake of the child, Norwegian Official Report 2012: 5 Better protection of children's development and Norwegian Official Report 2014: 9 New adoption legislation.

- (55) In *Mohamed Hasan v. Norway* paragraph 161, the Court refers to previous case law – among others *Aune v. Norway*, see Supreme Court judgment Rt-2007-561– when it comes to cases where the contact between the child and the parents has been limited:

"The Court has previously held that where social ties between a parent and his or her children have been very limited, [t]his must have implications for the degree of protection that ought to be afforded to [the parent's] right to respect for family life under paragraph 1 of Article 8 when assessing the necessity of the interference under paragraph 2' ...".

- (56) The concern for the parents is thus, naturally, less prominent in cases where the social ties between the parents and the child are weak.

- (57) The Court emphasises that when it comes to measures that may sever the contact between the parents and the child completely, a stricter scrutiny is called for, see for instance the final part of paragraph 145 in *Mohamed Hasan v. Norway*:

"However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, ... Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed."

- (58) When it concerns a situation like the one at hand – replacement of a foster care arrangement with adoption – the following is stated in paragraph 147:

"In cases where the authorities have decided to replace a foster home arrangement with a more far-reaching measure, such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicants' legal ties with the child have been broken, the Court will apply its case-law according to which 'such measures 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' ...".

- (59) Hence, a consent to adoption against the will of the parents can only be justified under

"exceptional circumstances", and the decision must be motivated by "an overriding requirement pertaining to the child's best interests". As I have already quoted from paragraph 46 in Supreme Court judgment Rt-2015-110, the requirement of "particularly weighty reasons" must be interpreted likewise.

- (60) In paragraph 148 of *Mohamed Hasan v. Norway*, the ECtHR stresses the strict procedural requirements that must be met by the domestic decision-making authorities.
- (61) Against this background, I will summarise the *subject of review* of relevance in the case at hand:
- (62) The best interests of the child are the most important and weighty concern when deciding the adoption issue. Because adoption is such a radical and irreversible measure, it can only be justified – on the child's hand – by particularly weighty reasons. These grounds must be balanced against the consequences of adoption for the child's contact with its biological parents in the individual case. Where there has been little or no contact between the parents and the child, the concern for protection of their family life will be given less weight than in cases where a more normal family life has existed.
- (63) *Status of knowledge and research* on adopted children have been studied by the expert and presented in an appendix to the statement. He believes that the summary in Supreme Court judgment Rt-2007-561 is still accurate. The following is set out in paragraph 50:
- "In our case, the expert has presented as a general knowledge that foster care is not ideal when it involves long-term placement of children that came to the foster home before any connection had been established to any biological parent. In these cases, adoption is the best solution for the child's development."**
- (64) Based on an updated study of relevant research and – not least – professional experience as a psychologist, the expert states the following in the case at hand:
- "Children in long-term foster care that are adopted, undergo better psychosocial development than children in a similar situation who are not adopted. It is the durability of the child's sense of belonging that seems to be essential."**
- (65) The expert specified in his statement before the Supreme Court that this is a difficult area of research, one of the reasons being that few forced adoptions are carried out annually in Norway. And, as emphasised in Supreme Court judgment Rt-2007-561 paragraph 50, a specific, individual assessment must be made in each case. But, as emphasised in the same paragraph, such a research- and experienced-based perception of what is generally best for the child, must be given particular weight. Also, Proposition No. 69 (2008–2009) to the Odelsting, page 6, stresses that research shows that "... for some children, adoption may give a safer and more predictable upbringing than long-term foster care".
- (66) I now turn to the *individual assessment* of whether adoption in our case is in the boy's best interests.
- (67) First, I stress that our case does not concern a possible return of C to one or both of the parents. It was clear already when he was a newborn that neither of them should have parental responsibility, which they have accepted. Before the Supreme Court, A expressed the following to the expert:

"I have accepted that I will never have the chance to bring him home, that he stays where he

is, but without being adopted. After all, he has been there since he was one. But I think he should know his biological origin."

- (68) I also emphasise that the basis for the assessment is that C has never lived with his biological parents and that he has not had any contact with them since the days following his birth. In the case at hand, there has not been and, regardless of outcome, nor will there be any form of ordinary family life for the child with his biological parents. Finally, I mention the basic and indisputable fact that C, regardless of whether consent is given to adoption, will continue to live with his foster parents.
- (69) The case has been thoroughly examined. All relevant factors have been assessed, and the biological parents have been heard and given the chance to have the orders issued reviewed by the courts. The expert appointed by the Supreme Court has carried out comprehensive and thorough work, also including a review of previous reports. The expert's conclusions are well founded, and I have no basis for questioning his professional opinions. In the following, I will largely refer to his findings.
- (70) *C is a highly vulnerable child in special need of protection.* This has been stressed by all experts involved in various stages, and it was relied on by both the majority and the minority of the court of appeal. This has also been accepted by A.
- (71) The expert before the Supreme Court held that C suffers from "major developmental disorders", and that "C is a child with clearly deviating development in several areas and on many development areas, he does not function according to his age". The expert has emphasised that his language skills are probably "closer to those of a two-year-old than a three-year-old". Furthermore, he has a delayed perception of numbers, amounts and time, and difficulties regulating his emotions. He has sleep disturbances and does not function according to his age when he plays. He does not eat independently and still needs a diaper overnight. He has low tolerance for interacting with strangers.
- (72) The expert summarises as follows:
- "It is the expert's opinion that C, today, must be regarded as a child that is seriously delayed linguistically, socially and cognitively. It is not to be doubted that C is a child that needs care beyond what is normally required. His development status indicates that C is vulnerable to abrupt changes, new situations for which he is not well prepared and to non-routine absence from his foster parents."**
- (73) According to the expert, there may be many reasons for C's late development and psychosocial disorders and this should be studied further. However, the expert deems it more likely that his difficulties are partially inherited. But the separation he experienced when he was moved from the emergency home to the foster home at the age of one may also have had an impact.
- (74) In the expert's opinion, C has a "special need of protection". He emphasises that all forms of "insecurity and disturbance may have a negative impact on his general sense of safety".
- (75) My perception is that C's particular vulnerability and special need of protection have been adequately clarified. The need for further examinations is mostly based on a wish – as far as possible – to find the reasons for C's problems. The expert has mentioned that no chromosome disorders have been detected despite several tests. He has also mentioned that both C and his half-brother as newborns showed "... bodily unrest, shivering and regulation difficulties that may occur after [the mother's] consumption of certain

substances or drugs during the pregnancy". However, he reports that A has expressed that she only took prescribed medicine during the pregnancy.

- (76) *The boy's mother* – who is the parent most actively opposing adoption – was also placed in a foster home as a child. She has cognitive functioning disorders and may diagnostically be characterised as intellectually disabled. She has no education beyond primary school, she has never had any ordinary work and, according to her own statement, she is waiting to receive disability insurance. Since A is not requesting the care of C, I will not elaborate further on her personal situation. I mention all the same that her situation seems to have improved from the time of C's birth, although the son she had with her new husband in March 2015 was also taken into emergency care at a secret address, and later placed in a foster home. She seems nevertheless to be cooperative towards both the child welfare service in Z and the foster parents of the son born in 2015.
- (77) *The boy's father* is, according to information gathered by the expert, diagnosed with light intellectual disability. Nor he has any education beyond primary school, and he has never had any ordinary work over time. He has received disability insurance since 2009-2010, and he has told the expert that he does not know why. As with A, I do not find it necessary to elaborate on B's personal situation at this point.
- (78) *The foster parents* receive only praise. They are particularly suited to meet the special needs of the child. The expert has emphasised that C has a full and exclusive sense of belonging to the foster home. I assume that all arrangements are made for C to have the best possible development in the foster home.
- (79) Against this background, I now turn to the *advantages and disadvantages for C if he is adopted* compared to the situation if he continues to be a foster child indefinitely.
- (80) According to the expert, adoption will entail a number of advantages for C. More specifically, he has emphasised the following:

"All children living in a foster home, whether short-term or long-term, may feel like being in a state of emergency. Adoption will contribute to normalising the child's family situation. ... It is the expert's professional assessment that C, due to his history and his psychosocial functioning, requires more stability and protection from change and insecurity in his life than other children do. By consenting to the foster parents adopting C, society may provide him with this protection through the Supreme Court's judgment.

If the Supreme Court does not consent to adoption, the biological parents will at the same time be given a right to readdress the issue of access within a short period of time. In future proceedings dealing with access rights, C will be heard by the County Social Welfare Board or by the courts. The expert is deeply concerned that his present feeling of safety in life and of belonging in the foster home will be replaced by a detrimental confusion as to where he belongs and who his care persons are. To bring C's own voice into this, he frequently asks for his foster parents' affirmative response to '....take care of me?'...

For some children who grow up in a foster home, follow-up from the child welfare service may be a resource. It is, however, the expert's opinion that C's foster parents having the full and legal responsibility for him will be a source of stability and predictability. A legal connection between C and the foster parents will be of great intrinsic value to him – not only until he becomes of age – but also as a young adult. If adoption is carried out now, it will be at a profitable time for C since he will soon be ready for school.

... Adoption may make life simpler for C."

- (81) I support the expert's individual assessment.
- (82) The possible *disadvantage* of adoption has to do with C's biological ties to his family. As I have mentioned in my presentation of Norwegian and ECtHR case law, consideration should be made to avoid that biological ties are severed. However, there are several reasons why this aspect must be given limited weight in the case at hand.
- (83) Firstly, it is not a question of severing any established social ties between the child and his biological family. Such ties have never been established – the biological parents have not had contact with the child during the five years that have passed since his birth. I refer to what I have quoted from ECtHR case law on the assessment in cases where the social ties between the child and the parents are weak. Here, they are non-existent. As in *Mohamed Hasan v. Norway*, replacing legal ties to the biological parents by legal ties to the foster parents will thus serve to consolidate their *de facto* family ties, see paragraph 161 of the judgment.
- (84) The appellant has criticised the child welfare service for having done too little to establish contact between C and his biological mother. The child welfare service has admitted this to some extent. But the subject of review is the order of deprivation of parental responsibility and adoption. In my view, any previous neglect by administrative bodies cannot dictate whether or not adoption is in the child's best interests. If errors have been committed previously, this cannot be of detriment to C in the decision that is now to be taken.
- (85) It is a fact that C in his entire life has been without any form of contact with his biological parents. This must be taken into account in the assessment of what is best for him now, regardless of whether the child welfare service is to blame for not having done more to establish contact. I add that even if it had been possible to establish an appropriate form of contact between the biological parents and C, such contact would, considering C's special needs, only have been limited. I have problems seeing how this could have changed anything in the adoption issue that is now to be settled.
- (86) Next, I emphasise that C's developmental disorders make one doubt whether he will ever reach such a level as to perceive what "biological family" means. The expert holds that it is uncertain whether he will ever understand the difference between biological parents, foster parents and adoptive parents. Today, C is in any case not able to see that he has other parents than his foster parents. Due to his particular vulnerability and need of safety, it would, in the expert's opinion, be detrimental to him if the biological parents were to introduce themselves as "mother" and "father", and a trial arrangement with contact visits "would be like experimenting with the boy's mental health".
- (87) Thirdly, I emphasise that in this case, an appropriate contact in the foreseeable future between the child and his biological parents will at any rate depend on the foster parents. The expert does not exclude the possibility that C would benefit from having contact with his parents, so he has more grown-ups who give him care and attention on birthdays etc. But for this particularly vulnerable child, the foster parents must, in the expert's opinion, be the ones to regulate this. The expert states:

"C will for a long period ahead adjust and experience the world through the feeling of safety the foster parents provides him. If the foster parents or adoptive parents are positive to contact with the biological parents, this will probably be the most important single factor determining how contact visits are experienced by C.

It is undoubtedly the foster parents who in the end will be best suited to assess what C is capable of understanding of his own history and whether contact with the biological parents may be relevant. The foster parents maintain that they do not exclude that some form of contact may be established with the biological parents, if it is in the best interests of C. The expert trusts that the foster parents will, possibly under qualified supervision, establish contact with the biological parents under the conditions already mentioned."

- (88) I have noted that the foster parents are positive to establishing contact with C's biological family, provided it is in his best interests. It is therefore possible that C – when he is ready for it – in a safe manner may have contact with his biological mother and even with his father and half-brother. Although the foster parents' positive attitude does not entail any legal rights, neither for C nor for his biological parents, it is a factor that should be given weight in the assessment of what is best for the child.
- (89) As the matter stands, I must assume that it is clearly in C's best interests that the foster parents regulate if, when and, if relevant, how contact should be established with his biological parents and half-brother. Through adoption, this decision is also formally theirs to make, with the stability and security this provides.
- (90) A has contended that it is too early to implement the irreversible measure of adoption. In this regard, she has pointed at the requirement for further examination of C, and that this may have an impact on the adoption issue. It may well be true that further examination and mapping of C's condition are required; this is set out in both the expert's statement from which I have already quoted and in the foster parents' written statement to the Supreme Court. But I have problems seeing how this is relevant to the adoption issue. C's fundamental features, his particular vulnerability and need of protection will not change by an examination of the reasons for his difficulties. Nor are there any unclarified issues relating to the biological parents or the foster parents. The case at hand is thus different from that in Rt-2015-1107 where the Supreme Court, in its individual assessment, concluded that the child did not have much to lose from waiting until her relationship with her biological father had been further clarified, see paragraph 56.
- (91) Against this background, I find that there are compelling reasons for arguing that adoption is clearly better for C than continuing in foster care. I also find it clear that there are "exceptional circumstances" justifying adoption and that the County Social Welfare Board's consent thereto is "motivated by an overriding requirement pertaining to the child's best interests".
- (92) The appeal must therefore be dismissed.
- (93) I vote for this

J U D G M E N T :

The appeal is dismissed.

- (94) **Justice Normann:** I agree with the justice delivering the leading opinion in all material respects and with his conclusion.

- (95) Justice **Bull:** Likewise.
- (96) Justice **Høgetveit Berg:** Likewise.
- (97) Justice **Webster:** Likewise.
- (98) Following the voting, the Supreme Court gave this

J U D G M E N T :

The appeal is dismissed.