SUPREME COURT OF NORWAY

JUDGMENT AND ORDER

given on 30 November 2022 by a division of the Supreme Court composed of

Justice Hilde Indreberg
Justice Ragnhild Noer
Justice Knut H. Kallerud
Justice Arne Ringnes
Justice Borgar Høgetveit Berg

HR-2022-2292-A, (case no. 22-079459SIV-HRET) and (case no. 22-083884SIV-HRET)
Appeal against Borgarting Court of Appeal's judgment 1 April 2022

A (Counsel Preben Justin Askø)

v.

X municipality (Counsel Ida Kristine Berg-Johnsen)

(1) Justice **Kallerud:**

Issues and background

(2) The case concerns a request for increased contact rights with a daughter placed in the care of the child welfare services. It is also a question of whether an interim measure may be sought in a case like this.

(3) The child in question is 12-year-old B. Her parents are A and C. B's mother has sole parental responsibility and is requesting more frequent contact with her daughter. B's father is not a party to the case.

(4) The child welfare services have been in contact with the family since 2000 and took over the care of B's two older sisters in 2007. The care of B was transferred to the child welfare services in 2013. She was three years old at the time, and has since been living with the same foster parents. I will return to the basis for the care order and the mother's previous legal actions related to the care order and contact rights.

(5) On 23 March 2019, the mother requested revocation of the care order. Alternatively, she requested more frequent contact than the two hours four times a year previously set by the courts. She also requested that the restriction on B's address be lifted and that the contact sessions no longer be supervised. The municipality found that the contact should be reduced. On 10 September 2019, the County Board rejected the mother's request for revocation of the care order, see section 4-21 subsection 1 second sentence, see section 7-13, of the Child Welfare Act. Particular emphasis was placed on B's attachment to the foster home and her wish to live there. Following a dialogue process, the decision to restrict the address was set aside.

(6) The County Board continued to consider the extent of contact. Psychologist specialist Ingrid Sønstebø was appointed as an expert. On 8 July 2020, the County Board concluded that it was necessary, for a certain period, to reduce the contact to once a year, but extended the duration to three hours. B had suffered severe and long-lasting reactions after previous contact sessions. The County Board emphasised that the contact regime had proven to be harmful to B, both mentally and physically. It was also noted that "challenging the girl's boundaries may eventually result in her opposing contact, making it impossible to execute." The County Board further decided that the child welfare services should be allowed to supervise during the contact sessions and that the foster mother should be allowed to attend. Finally, the County Board decided that the mother should not be allowed to contact B by phone or through social media. The decision was implemented immediately, so since mid-2020, there has been one regular contact session a year.

(7) The mother brought the County Board's decision before Drammen District Court. The District Court was composed of a professional judge, a psychologist specialist and an ordinary lay judge. Sønstebø was appointed as an expert also in the District Court and gave testimony. The judges agreed that it was "obvious that the current contact regime is harmful to B and that she is subjected to undue hardship by having to endure four contact sessions a year, and that four annual contact sessions are not in B's best interest." Similar to the County Board, the professional judge and the ordinary lay judge found that contact, for a period, should be

limited to one contact session a year. The expert lay judge found that B could handle two contact sessions a year. On 9 November 2020, the District Court ruled as follows:

> "1. A is granted contact rights with B, born 00.00.2010, up to three hours once a year.
>
> 2. The child welfare services are to determine the time and place for the contact session and are entitled to supervise.
>
> 3. The foster mother may attend the contact sessions together with B.
>
> 4. A may not contact B by telephone or through social media."

(8) The mother appealed to Borgarting Court of Appeal, which agreed to hear the appeal. In assessing this, the Court of Appeal noted that when contact is as restricted as in this case, it strongly interferes with the right to family life, and the reasoning is subject to strict requirements. It was unclear to the Court how vulnerable the child was and how severe her reactions were after contact. The same applied to whether the child's reactions might be subdued by improved preparations, by the execution of the contact sessions and by support measures.

(9) During the case preparation, the parties agreed to suspend the case for six months. The purpose was to obtain information on status for the planned annual contact session in July 2021 and any additional contact sessions if deemed to be in the child's best interest. Psychologist specialist Sønstebø was once more appointed as an expert and observed the contact session in July 2021. Based on her advice, no further contact sessions were held in the autumn of 2021. The case was then resumed. On 3 February 2022, the mother sought an interim measure, requesting contact with B once a month, alternatively contact as determined by the Court.

(10) The Court of Appeal was composed of three professional judges. In addition, the Court sat with an ordinary lay judge and a psychologist specialist. In the judgment, it is stated that the expert's testimony had given the Court "an understanding of the underlying physiological and psychological mechanisms causing B's acting out after contact and how seriously it could affect her emotional and intellectual development – and potentially her physical and mental health – if these reactions are not taken seriously". In the Court's view, even a limited increase in the contact would clearly subject B to undue hardship. The Court found, with hesitation, that the contact sessions should still be supervised. The mother should be allowed to call B beforehand. The request for an interim measure was denied, without further discussion. On 1 April 2022, the Court of Appeal ruled as follows:

> "1. The following changes are made to the conclusion of the District Court's judgment:
>
> - in point 1: the duration of annual contact sessions is set at four hours,
> - in point 4: A may contact B once a year by telephone. The telephone contact is to take place shortly before the annual contact session.
>
> Otherwise, the appeal is dismissed.
>
> 2. The request for an interim measure is denied."

(11) The mother has appealed to the Supreme Court, invoking an error of fact and an error of law. The order to deny the request for an interim measure has also been appealed against.

(12) The Supreme Court's Appeals Selection Committee granted leave to appeal on 17 June 2022. The appeal concerning the refusal to issue an interim measure was referred to a division hearing in the Supreme Court. Psychologist specialists Ingrid Sønstebø and Eva Steinbakk were appointed as experts. They have worked independently of each other and have each prepared an extensive statement. The Expert Commission on Children has had no remarks to the statements. Also, some new reports and statements have been presented to the Supreme Court.

The parties' contentions

(13) The appellant – *A* – contends:

(14) The goal of reuniting the mother and B has not been abandoned. It follows from the case law of the European Court of Human Rights (ECtHR) that in such cases, minimum contact rights must be established to facilitate reunification. This is not achieved by one or two contact sessions a year. Such restricted contact will only be accepted by the ECtHR if the objective of reunification has been explicitly abandoned and a satisfactory reasoning has been given.

(15) The mother believes there should be at least eight to twelve annual contact sessions, and that this will not cause undue hardship for B. Psychologist specialist Steinbakk's statement indicates that the child welfare services have been wrong about the reason for B's reactions. The consequence of this misperception is that reducing the number of contact sessions has been considered the only effective measure. It is now clear that there are other ways to alleviate the burdens for B after contact, as the mother has repeatedly suggested. The two most recent contact sessions have been executed in a different manner, and B has not had any significant reactions. It is entirely safe, and necessary for reunification purposes, to attempt a significantly higher contact frequency. B's wishes for having contact have varied, and she lacks sufficient insight into and understanding of the matter. The fact that she now seems to want two contact sessions a year cannot be decisive, as she at times has wanted more.

(16) The rules on interim measures are also applicable in child welfare cases. There may be a need, as in the case at hand, to try out more frequent contact than what the child welfare services and the courts have decided before a final ruling is made. The rules in chapter 36 of the Dispute Act cannot be applied to this end. The conditions for an interim measure are met.

(17) A asks the Supreme Court to rule as follows:

> "In the main case:
> A is to have contact rights with B as stipulated at the Court's discretion.
>
> In the interim measure case:
> A is to have contact rights with B as stipulated at the Court's discretion until a final judgment has been handed down."

(18) The respondent – *X municipality* – contends:

(19) The goal of reunification of the mother and daughter has not been abandoned, but it lies ahead in time. Restricted contact now does not prevent reunification later. There are strong and special reasons for practicing restricted contact. More than one contact session a year is currently too burdensome for the child. Forcing more contact upon her now will not facilitate reunification; on the contrary, it will likely harm the relationship between the mother and daughter. It is also important to respect B's own opinion – she is clearly stating that two annual contact sessions is all she can handle. There is no longer a need for supervision during the sessions. There is also no longer a need to limit the mother's possibility to contact her daughter by phone or through social media.

(20) The rules in chapter 36 of the Dispute Act are exhaustive and take, as special rules, precedence over the provisions on interim measures. The need for temporary decisions is covered in the Child Welfare Act and the special procedural rules in chapter 36. In any case, the conditions for an interim measure are not met.

(21) The municipality asks the Supreme Court to rule as follows:

> "In the main case:
> 1. Contact between A, born 00.00.2010 and the mother, B, is stipulated to one contact session a year.
>
> 2. The foster mother may be present during the contact sessions.
>
> In the order:
> Principally:
> The Court of Appeal's order is set aside and the request is dismissed from the courts.
>
> In the alternative:
> The appeal is dismissed."

My opinion

The Supreme Court's jurisdiction

(22) The Supreme Court may review all aspects of the case, see section 36-5 subsection 3 of the Dispute Act. The assessment must be based on the circumstances at the time of the judgment, as outlined in HR-2020-662-S paragraph 42.

The law

(23) In March 2021, the Supreme Court decided three cases on contact rights with children in the child welfare services' care. In the first judgment – HR-2021-474-A – the legal principles are outlined with references to case law from the ECtHR and the Supreme Court grand chamber rulings HR-2020-661-S, HR-2020-662-S, and HR-2020-663-S. The two other judgments regarding contact rights given on the same day – HR-2021-475-A and HR-2021-476-A – on this point largely rely on and refer to the first judgment.

(24) The Supreme Court's first judgment on contact rights from March 2021 – HR-2021-474-A – discusses a formulation on the extent of contact used by the ECtHR in several judgments. The following is set out in paragraph 40:

> "In a new judgment from the ECtHR handed down on 22 December 2020, *M.L. v. Norway*, it is stated in paragraph 79 that "[f]amily reunification cannot normally be expected to be sufficiently supported if there are intervals of weeks, or even months, between each contact session …". The statement is included under "General principles" in the judgment and refers to a previous judgment from the ECtHR, given on 19 November 2019, *K.O. and V.M. v. Norway*. As I see it, here, the ECtHR highlights the general starting point that continuing and frequent contact is crucial to ensure reunification. At the same time, the ECtHR maintains that the best interests of the child "must come before all other considerations", see paragraph 78 in *M.L. v. Norway*. In any case, the contact regime must not expose the child to undue hardship, see HR-2020-662-S paragraph 129."

(25) The ECtHR has handed down some new judgments since the Supreme Court heard the three cases on contact rights in March 2021, notably *A.L and Others v. Norway* and *E.M. and Others v. Norway*. Both were handed down on 20 January 2022. In the *A.L.* judgment, the same wording regarding the frequency of contact is repeated in paragraph 48. I interpret the ECtHR's statement in the same way as Justice Noer in my quote above.

(26) Neither the *A.L.* judgment nor the other recent rulings from the ECtHR suggest a change in Norwegian case law. As far as I can see, it involves the application of already established principles to specific circumstances. I also note that in the new judgments, the ECtHR does not comment on the Supreme Court's understanding of the ECtHR's case law.

(27) In other words, the sources of law have not changed since the Supreme Court's 2021 rulings, and I will base my assessments on the legal principles outlined therein.

(28) HR-2021-475-A paragraphs 37–38 generally discusses the *right to contact* and the overreaching goal of *reunification of children and parents and what is best for the child*.

> "According to section 4-19 subsection 1 of the Child Welfare Act, children and their parents "are entitled to contact rights with each other" unless otherwise provided. The right of contact (contact) also follows from Article 102 of the Constitution, Article 8 of the European Convention on Human Rights (ECHR) and Article 9 (3) of the UN Convention on the Rights of the Child. To reach the aim of family reunification after a care order, contact between the child and its parents is crucial. Contact must be facilitated with a view to maintaining, strengthening and developing the bonds between the child and its biological parents, in consideration of the child's best interests and the aim of family reunification.
>
> The extent of contact must be determined on an individual basis, with emphasis on finding measures that are in the child's best interests, see section 4-1 of the Child Welfare Act. If the interests of the child collide with those of the parents, a fair balance must be struck. Although working towards family reunification through frequent contact is important, the measures must not subject the child to undue hardship, either in the short or the long run. Nor should the contact be of such an extent that it may harm the child's health or development. After an assessment and balancing of the various factors, the arrangement must ultimately be in the child's best interests."

(29) In HR-2021-474-A paragraphs 43–45, Justice Noer gives further *guidance for the balancing of interests*:

> "As long as the aim of family reunification has not been abandoned, contact rights must be granted to the extent possible without compromising the best interests of the child. Although an absolute minimum cannot be applied, see HR-2020-662-S paragraph 134, as little as three to six contact sessions a year is at the outset not suitable to strengthen and develop the bonds between the parents and the child. Such limited contact *must be necessary* based on consideration of the best interests of the child.
>
> At the same time, contact must not be facilitated that exposes the child to *undue hardship*, see HR-2020-662-S paragraph 129:
>
> > 'The domestic authorities cannot facilitate contact exposing the child to undue hardship, see K.O. and V.M. paragraph 69. Both the child's need of stability and continuity in the care situation and the parent's lack of caring skills may, after an individual assessment, suggest that the access be limited. However – irrespective of the assumed length of the foster care – the authorities must regularly check whether the circumstances have changed and assess the importance thereof for the extent of access.'
>
> In two subsequent judgments from the Supreme Court, it is emphasised that the expression "undue hardship" does not mean that the extent of contact should be close to this limit, see HR-2020-1967-A paragraph 61 and HR-2020-2081-A paragraph 74. This is because measures must not be taken that would harm the child's health and development, see Strand Lobben paragraph 207. I stress that there is no necessary contrast between limited contact for a certain period and family reunification, when the latter is not realistic in the short term. The contact may be increased when deemed proper out of consideration for the child."

(30) In prolongation of the precision that there is *no necessary contrast between limited contact for a certain period and family reunification,* Justice Noer stresses in paragraph 48 that there is no sharp line between cases where the goal of reunification is firm and where reunification is no longer considered realistic. She states:

> "Although such a distinction is necessary, there is no sharp line. There will be a sliding transition between cases where it is clear that the children should be returned to their biological parents within a short period of time, and cases where such a return is unrealistic in the short term. Whether one finds oneself in one or the other situation, will depend on how the circumstances develop. The extent of contact can thus not be determined solely based on the likelihood of family reunification, see HR-2020-661-S paragraph 145. Where the consideration for the child clearly suggests limited contact with the parents, this cannot be overturned by a superior and general aim of family reunification.
>
> Secondly, there may be a difference between what is in the best interests of the child *in* the short term and what is best in the long term. This consideration may imply that contact should be limited in the light of the current situation, even if the long-term goal is family reunification."

(31) In other words, there is no basis for the appellant's contention that, where the goal of reunification has not been abandoned, minimum contact must be established. As it appears from the quote, the assessment is more nuanced and complex.

(32) I add that the new Child Welfare Act, Act of 18 June 2021 no. 97 – which enters into force on 1 January 2023, provides the following in section 7-2 subsection 3:

> "Only when strong and special reasons so warrant can the Tribunal decide that access visits must be severely restricted or disallowed altogether."

(33) According to the preparatory works, the rule is included based on case law from the ECtHR and the Supreme Court, see Proposition 133 L (2020–2021) page 270.

(34) In paragraphs 52–56 of HR-2021-474-A, Justice Noer gives a further account of some aspects of the individual assessment. Here, I will highlight in particular:

> *"The child's vulnerability* and reactions to contact with its parents are crucial in determining the proper extent of contact. Each child must be assessed separately, and one must bear in mind that regular contact sessions also may be profitable for the interaction between children and their parents. The *child's needs* on a more general level and how he or she copes after the care order are significant. The same is the strength of the child's *bonds* with its biological parents. Depending on maturity and age, *the child's own opinion* carries great weight – to which I will return.

(35) Guided by these legal starting points, I will now consider what would be the appropriate extent of contact between B and her mother.

The individual stipulation of contact

The background to the care order and previous legal examinations

(36) B's parents became a couple in their early teens. The father had a difficult upbringing and started substance abuse early on. The couple had a daughter in 1992 when the mother was 22 years old. In 1995, they moved in together and had another daughter in 1996. It is reported that the father abused substances during their relationship and had received several psychiatric diagnoses before B was born. He himself has reportedly revealed that he committed extensive and severe violence against the mother, and it is assumed that he has committed aggravated violence against her and, to some extent, against B's older sisters. As for the mother, there is no information about substance abuse or violence.

(37) As mentioned, the family first came into contact with the child welfare services in 2000. In 2007, the child welfare services removed the two eldest daughters with the consent of the parents. The County Board found no doubt that the conditions for a care order were met. The parents were unable to see or prioritise the children's needs, and they had not been able to provide them with sufficient practical and psychological care for a long time. The County Board emphasised the father's exercise of psychological, physical, and latent violence, from which neither of the parents had managed to shield the children.

(38) The mother and father married in 2009, and B was born in August the following year. The parents consented to the child welfare services' follow up of the family while the mother was pregnant. After B was born, the father underwent treatment for his substance abuse.

(39) After the father had struggled to stay awake during a contact session with one of the older daughters and tested positive for several narcotic substances, the child welfare services made

an emergency care order in the summer of 2011. B was placed in emergency foster care. The decision was appealed against. The County Board upheld the appeal, and B returned home after having stayed in emergency foster care for a little over a month. Supervision was implemented at home, and the municipality later made a new request for a care order. The background included an expert report on the home situation and new reports of the father's substance abuse.

(40) The municipality's request for a care order was turned down by the County Board in the summer of 2013. Despite grounds for concern, the County Board believed that the child welfare services had not substantiated the risk of B being seriously harmed due to her mother's inability to provide her with sufficient care.

(41) The municipality brought the case to the District Court in August 2013. The Court appointed an expert and conducted a main hearing over three days in November 2013. The District Court's judgment from December 2013 gives a comprehensive account of the conditions in the home, "the mother's emotional and psychological care for B", the child's development, and the mother's relationship with the father. Although the mother has many good qualities, the Court found that she lacked "a fundamental understanding of B's need for security, and a significant lack of insight into why and when B needs protection". In to the Court's view, the mother fails in these central caregiving tasks, and the situation "appears untenable, with a high likelihood of skewed development in B". The District Court decided on a care order, placement in foster care, and supervised contact with the mother four times a year for up to two hours each time.

(42) The mother appealed against the District Court's judgment to the Court of Appeal, which, in January 2014, refused leave to appeal. The Supreme Court's Appeals Selection Committee dismissed her appeal in February of the same year.

(43) The mother applied for revocation of the care order in July 2015. The County Board decided in October 2015 to uphold the care order and continue the contact regime of two hours four times a year.

(44) The mother brought the case before the District Court, which upheld the care order. The municipality wished to reduce the contact to twice a year, while the mother wanted to maintain the current regime of four times a year. In a judgment handed down in August 2016, the Court emphasised that despite the contact sessions generally proceeding smoothly, B's subsequent reactions lasted two to four weeks each time. However, like the County Board, the Court concluded that there were no sufficiently strong or special reasons to reduce the contact. The court noted that reactions in connection with visitation "to some extent must be expected".

(45) The mother appealed against the District Court's judgment to the Court of Appeal, this time joined by the father. During the preparation of the case, two expert psychologists were appointed. In a judgment handed down in March 2017, the Court of Appeal reached the same conclusion as the District Court – the care order was upheld. The contact regime was not a subject of discussion in the Court of Appeal, and there was no reason to make changes to it. Thus, the arrangement of two-hour visits four times a year would remain in place. The mother appealed against the Court of Appeal's judgment to the Supreme Court, which, in May 2017, refused leave to appeal.

(46) In 2019, the mother applied once again for revocation of the care order. She also requested expanded contact rights. I have already gone through the procedural history of this case in my presentation of the case background.

(47) I will now turn to the issue of contact rights based on the current situation.

The goal of reunification still stands

(48) The judgments of both the District Court and the Court of Appeal affirm that the goal of reuniting the mother and child has not been abandoned. Also before the Supreme Court, the municipality has stated that reunification remains the overreaching goal. However, it is also clear that the reunification of the mother and child, if it occurs, lies ahead in time.

The child's current situation – particularly on the reactions after contact

(49) B, now twelve years old, has been in the same foster home since she was three. The foster home functions very well. During the nine years she has lived there, she has been included in the family as if she were the foster parents' own child. She refers to the foster parents as "mom" and "dad". Since 2019, the foster mother has been fully dedicated to take care of B. At school, she has a full-time assistant. This has been necessary to help B, especially during the periods following contact sessions where she tends to fall behind academically and struggle socially.

(50) Since the care order in 2013, B has been described as a vulnerable child who suffered significant stress during her first three years of life. From early on, she witnessed her father's substance abuse, outbursts of anger, and her mother's fear without receiving sufficient psychological support and protection. The two relational disruptions B experienced – the emergency placement in 2011 and the transfer to foster care in 2013, which involved a lot of turmoil during the transition – have also affected her.

(51) The experts highlight that children have a particular risk of skewed development before the age of three. This is due, among other things, to the fact that the brain undergoes rapid development during this period, and children establish attachments to adults while not yet having a language that can help them understand their surroundings. Recent neuropsychological research shows how the brain is particularly susceptible to certain types of stimulation during the first years of life, which affects how one copes with challenges later in life. Expert Sønstebø puts it as follows:

> "... in small children who experience frightening events from caregivers without protection and sufficient help for comfort and soothing, the brain's alarm system may become overdeveloped and hypersensitive – while the regulation system becomes underdeveloped and weak."
>
> ...
>
> "The worst situation a young child may experience is being subjected to repeated frightening behaviour from its mother or father – who are supposed to be the safest in the world – without receiving any comfort or help to regulate the fear that these incidents evoke."

(52) Sønstebø emphasises that B's functioning and symptomatology are consistent with what is often observed in children with such experiences. She perceives B as being "affected by a dysregulated stress system as a result of experiences in the biological home during her first years of life". In Sønstebø's assessment, B's clear reactions after contact sessions indicate that "her core problem is her history and relationship with her mother". She views B's functional decline after contact sessions as a consequence of this, as the contact with her mother triggers strong reactions that take a long time to subdue.

(53) Expert Steinbakk emphasises that B's significant hardship during her early years may have made her more vulnerable. However, she finds that "the repeated legal proceedings ... are the factor that most severely affects B's functioning" today. The crucial point, as I understand the expert, is that the legal processes, including repeated talks with experts and other professionals, become a constant reminder of the child's background and situation. One of the effects of this is the fear of being removed from the foster home and from "mom" and "dad".

(54) The contact sessions with the mother have been good – at least in recent years. B enjoys being with her mother, who is competent in contact situations, accepts guidance and collaborates well with the foster mother. The problem is B's reactions after the contact sessions.

(55) The rulings from the County Boards and the courts describe B's sometimes extensive, serious, and long-term reactions after the contact sessions. There are also multiple reports from individuals associated with the child welfare services and statements from the school and the foster mother with similar descriptions.

(56) The expert Sønstebø, who has assessed B repeatedly, describes the reactions as follows:

> "After contact sessions, she struggles and experiences a decline in functioning. B has shown prolonged, serious reactions after contact with her mother during the nine years she has lived in foster care. She becomes stressed, highly activated, dysregulated, irritable, tired, weary, sensitive, experiences weak concentration and memory, struggles socially, loses appetite, and becomes visibly insecure."

(57) The Court of Appeal states the following with regard to B's reactions:

> "Although she receives regulation assistance from her surroundings, it takes as much as four to eight weeks after a contact session before the stress reactions disappear. This means that while B was still having contact with her mother four times a year, until the summer of 2020, between four and eight months of the school year could be spent in a state where her academic development halted and regressed. The same applied to her social functioning. In the Court of Appeal's view, this is very serious considering her social development, self-esteem and educational opportunities. The gravity of the situation is not diminished by the fact that B is entering adolescence, which is normally challenging even for children without particular vulnerabilities."

(58) Although the experts in the Supreme Court have slightly differing views on the most likely cause of the serious reactions after contact, they agree that more than a very few annual contact sessions would not be advisable.

(59) It is undisputed that B's functioning has improved since the extent of contact was reduced from four times to once a year. Her school assistant has stated to the expert Sønstebø that "B has made significant progress both socially, emotionally and academically after the reduction in the contact.

(60) Since the Court of Appeal's judgment, one regular contact session and one observation session were carried out with the presence of the new expert in the Supreme Court. These sessions also went well. The experts have given slightly different descriptions of B's reactions afterwards. However, the overall impression is that B has had significantly fewer setbacks after the recent contact sessions. Although this is very positive, it does not provide sufficient basis for any considerable expansion of the contact regime for the time being. The risk that B may suffer serious harm from frequent contact remains too great.

The child's opinion on the frequency of contact sessions

(61) Over time, B has given various answers to how often she wants to see her mother. However, she made it clear to the experts who spoke with her before the Supreme Court proceedings, that twice a year is sufficient and that the contact sessions should be shorter than they currently are.

(62) When asked by one the experts, she strongly opposes as many as twelve contact sessions a year:

> "No, please don't decide that I have to meet her so often. It's way, way too much. I get so exhausted afterwards."

(63) When the expert asks: "How about six?", she replies:

> "Every second month? If the judge decides that, I won't come. I'll glue myself to the sofa. We can meet twice year and maybe she could come and watch our theatre plays, that's the maximum of what I can take."

The experts' recommendations

(64) As mentioned, the experts agree that frequent contact sessions will be too much of a burden for B.

(65) The expert Sønstebø states that it is "difficult to say exactly ... when the contact sessions constitute undue hardship and become detrimental to B's health and development". She considers it "risky" to arrange more than one annual contact session and recommends one session a year with a duration of four hours. The session should be scheduled during the summer holiday to avoid missing school. If the Court decides on more than one annual contact session, she recommends that they last for one and a half to two hours to prevent the contact from becoming too intense. She gives guidelines on how to execute the contact sessions in B's best interests.

(66) The expert Steinbakk recommends two contact sessions a year, each lasting around one and a half hours. As I will return to, she emphasises B's opinion with regard to the number of contact sessions. She, also, gives recommendations on how the sessions should be executed. The experts largely agree on this matter.

Overall assessment

(67) In other words, the contact sessions with the mother have, at least until recently, been a great burden for B due to her subsequent reactions. Although there have been fewer problems after the latest contact sessions, there is still a genuine and imminent risk that more than one or two contact sessions a year will subject her to undue hardship. There are strong and special reasons for establishing very restricted contact.

(68) Contact beyond this would clearly not be in B's best interests given the current situation. In my view, forcing her to undergo more contact sessions would easily conflict with Article 104 subsection 2 of the Constitution, which states that for actions and decisions that affect children, the best interests of the child shall be a fundamental consideration, see also Article 3 (1) of the Convention on the Rights of the Child and section 4-1 of the Child Welfare Act.

(69) I also emphasise B's own perception of the issue. According to Article 104 subsection 2 second sentence of the Constitution, she is not only entitled to be heard, but due weight must be attached to her views in accordance with her age and development. She is 12 years old, and according to section 31 of the Children Act, "the child's opinion shall carry significant weight", including in matters concerning contact, see also section 1-6 of the Child Welfare Act.

(70) The expert Steinbakk states the following regarding the importance of respecting B's wish:

> "B is 12 years old and clearly expresses how often and in what manner she wishes to meet with her mother. The undersigned finds that it is important to listen to B's wishes and thus provide her with a sense of control in her own life. This will be important both for her own development and for her relationship with her mother.
>
> In general, it will be unproductive to enforce visitations with adolescents against their expressed wishes. Forced contact may harm the relationship and work against its purpose. This is particularly true here where B has a specific rationale for her wish, which is also linked to past negative experiences (fundamental vulnerability, the effects of the numerous legal proceedings). A contact frequency beyond her wish may also create anxiety in B about potential reunification that she does not want or feel ready for. ... Considering B's age, such restricted contact will not prevent reunification if the Court decides it would be in B's best interests."

(71) The expert Sønstebø, too, recommends avoiding "forced meetings" as a tool to improve the contact between B and her biological family. She states:

> "Forced contact rarely leads to improved relationships. It is more natural to distance oneself from someone who is forced upon you against your will. We become more secure and inclined to spend time with those who respect our boundaries and consider our needs. In this way, restricted contact over a period may facilitate reunification to a greater extent than extensive contact, and provide better opportunities for contact in a lifelong perspective."

(72) I believe it is now appropriate to establish a contact regime in line with, and explicitly rooted in, B's wishes.

(73) In this case, highly restricted contact in the near future does not prevent reunification if the conditions are conducive to it. However, frequent contact sessions could easily make reunification more challenging.

(74) Against this background, I have concluded that two contact sessions a year between the mother and B would be appropriate. In line with B's wishes and the experts' recommendations, the contact sessions should be brief. I find that the duration of each session should be two hours.

(75) I emphasise that the contact regime established is a minimum. The number of contact sessions, the length of the sessions and their format must be evaluated continuously. The good collaboration between the mother and the foster mother is promising in this regard. This is vital to find a contact regime that is beneficial for both B and her biological family, and to facilitate flexible arrangements based on B's capacity, as the foster mother has pointed out.

The request for an interim measure

(76) During the case preparation for the Court of Appeal, the mother requested an interim measure granting her contact rights of once per month, alternatively as determined at the Court's discretion. The Court of Appeal turned down the request. The Court thus examined the request on its merits. The order has been appealed to the Supreme Court, and the claim is currently that the mother and child should have contact as determined "at the court's discretion until a final judgment is handed down."

(77) The Supreme Court's judgment will soon become final, which means that the request is no longer pertinent. However, the Supreme Court is to clarify whether an interim measure can be granted in a child welfare case that is being heard under the special rules in Chapter 36 of the Dispute Act. I will not consider whether it is permissible to grant an interim measure in cases pending before the County Board – and which are therefore not processed under Chapter 36.

(78) The Dispute Act contains special rules in chapter 36 for actions concerning "administrative decisions on coercive measures against individuals", see section 36-1. Cases concerning care orders and contact rights under the Child Welfare Act are to be handled according to these rules. Unless otherwise specified in the special rules of chapter 36, the general provisions of the Dispute Act apply, see Norwegian Official Report 2001: 32 A page 522:

> "The relationship between the special rules for cases involving coercive measures and general statutory law intended to remain as it is today: Unless expressly stated or implied by the special rules, the procedure relies on the general provisions. In cases of doubt, decisive weight must be placed on whether the relevant procedural rules are consistent with the purpose of the special rules, which is to ensure a proper, swift, genuine, and sufficiently thorough examination. For this reason, the rules on simplified judgment proceedings in section 9-8 will for example not be applicable to cases involving coercive measures."

(79) Thus, the rules in chapter 36 are designed to "meet the need for particularly swift processing and ruling, and to fulfil the particularly strong requirements of legal protection that apply in cases involving the use of administrative coercion and deprivation of liberty", see Tore Schei

and others in the commentary on chapter 36 of the Dispute Act, updated as of 1 September 2022.

(80) As I understand these general principles, this means that the rules on interim measures cannot be applied alongside the special procedural rules in chapter 36. I will limit myself to a brief discussion:

(81) Because the cases have such substantial implications – in cases under the Child Welfare Act, both for the child and for the biological parents – a sound decision-making basis is vital. The rules in chapter 36 ensure this better than the rules on interim measures. For example, the court shall review "all aspects of the case", see section 36-5 subsection 3, and the District Court shall sit with three judges, one of whom is an expert, see section 36-4 subsection 1. The importance of this is well illustrated by the case at hand: The contact regime for which the mother requests an interim measure has been deemed by both the District Court and the Court of Appeal – after thorough consideration – to be untenable for the child.

(82) Several provisions in chapter 36 aim to expedite the proceedings, see section 36-2 subsection 1 second sentence, and section 36-5 subsections 1 and 2, stating that the date of the main hearing shall be fixed "immediately" and the case shall be given priority and "shall be heard as swiftly as regard for the proper conduct of the case permits". It is difficult to see any need for a temporary arrangement established in a different procedural form. I also refer to the rule in section 36-2 subsection 3, stating that an action shall not prevent the implementation or maintenance of the decision unless the court decides otherwise".

(83) There are also other provisions in chapter 36 that argue against parallel use of an interim measure. I mention section 36-10 subsection 3, stating that an appeal against the judgment of the District Court requires the leave of the Court of Appeal in a child welfare case. Such a limitation does not apply to appeals against orders regarding interim measures. See also section 36-1 subsection 1 second sentence, stating that "other claims" cannot be included in the action. I also note that the child's right to be heard also applies in a case concerning an interim measure. This would often be difficult to implement properly as part of a process based on rules on interim measures. In any case, a child whose opinion is to be heard also in an interim measure case is likely to suffer an additional burden. Finally, I note that the rules on costs are different, see section 36-8, stipulating that all expenses relating to the case shall be borne by the State in cases under chapter 36.

(84) As I have now demonstrated, a form of dual-track procedural system would be unfortunate for many reasons and undermine the significance of the special procedural rules in chapter 36.

(85) It follows from section 34-1 subsection 1 that the aim of the rules on interim measures is to secure the claim, see (a), and to establish a temporary arrangement in a disputed legal issue, in order, among other things, to "avert considerable loss or inconvenience", see (b). These assessment criteria are poorly suited for a child welfare case. Also, the rule in section 32-7 subsection 2, stating that an order for provisional security can be made without an oral hearing, is not suitable when a child welfare case has already been brought to court.

(86) There is some relevant case law. The Supreme Court rulings Rt-1991-833, HR-1992-43-K, Rt-1993-1586, Rt-1995-1076, Rt-1997-1152, Rt-1989-1134, Rt-1998-2036, HR-1999-247-K, Rt-2003-422, and HR-2017-2153-U address issues related to temporary decisions in child welfare cases. The rulings are somewhat divergent, and the overarching question raised in the

present case is barely addressed. In my opinion, the rulings provide limited guidance, and I will not delve into them. The case law of the Court of Appeal also appears unclear. However, I note that Borgarting Court of Appeal, in an order of 31 October 2022 – LB-2022-102686 – discusses the question more generally and concludes that the rules on interim measures "do not allow for regulating the contact... prior to the hearing of the main case in the Court of Appeal".

(87) Finally, I mention that legal literature provides no support for seeking an interim measure in a child welfare case pending in the courts, see Hans Flock, *Midlertidig sikring* [provisional security], 2011, page 58, and Frode Innjord, *Saksbehandlingen ved domstolene* [the procedure in the courts] in Steinar Tjomsland, *Barnevern og omsorgsovertakelse* [Child welfare and care orders], 2003, page 169.

(88) Against this background, my conclusion is that the rules on interim measures cannot be applied to ongoing child welfare under the special rules in chapter 36 of the Dispute Act.

Conclusion

(89) Contact between the child and her biological mother is set at two hours twice a year.

(90) In line with the municipality's claim, the foster mother is entitled to be present during the contact sessions. The mother has not opposed this.

(91) The request for an interim measure should not have been examined on its merits by the Court of Appeal. The order must be set aside and the case ruled inadmissible in court.

(92) In accordance with B's wish, expert Sønstebø is to notify her of the Supreme Court's judgment.

(93) I vote for this

J U D G M E N T A N D O R D E R :

1. Contact between A and B is stipulated at two hours twice a year.

2. The foster mother may be present during the contact sessions.

3. The Court of Appeal's order is set aside and the request for interim measure is inadmissible in court.

(94) Justice **Høgetveit Berg:** I agree with Justice Kallerud in all material respects and with his conclusion.

(95) Justice **Ringnes:** Likewise.

(96) Justice **Noer:** Likewise.

(97) Justice **Indreberg:** Likewise.

(98) Following the voting, the Supreme Court gave this

J U D G M E N T A N D O R D E R :

1. Contact between A and B is stipulated at two hours twice a year.

2. The foster mother may be present during the contact sessions.

3. The Court of Appeal's order is set aside and the request for interim measure is inadmissible in court.