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Case No: CA-2026-002574

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT BRIGHTON
HHJ Levey
SD20/26

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 November 2026

Before:

LORD JUSTICE PETER JACKSON
LORD JUSTICE NEWEY
and
LADY JUSTICE MAY

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G (A Child: Leave to Oppose Adoption)

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Thomas Rowland (instructed by **GT Stewart Solicitors**) for the **Appellant Mother**
Natasha Isaac (instructed by **Brighton & Hove City Council**) for the **Respondent Local Authority**

Hearing date: 3 November 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 11 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Peter Jackson:

Introduction

1. This is an appeal by the mother of D (4) from the refusal of her application for leave to oppose the making of an adoption order.

2. In April 2024, when D was around 21 months old, care proceedings began and she was placed in foster care. The reasons were summarised by the Children's Guardian in her final analysis in those proceedings (all quotes anonymised):

> "D has been known to two local authorities since before birth and the Mother has generally engaged well with social worker interventions. On the whole the basic care of D has been good as is the quality of contact she has with her Mother. It is the problematic use of illicit drugs and excessive use of alcohol which impacts significantly on the Mother's ability to prioritise D. In addition to this the Mother has a troubling mental health history involving depression, anxiety and PTSD as a result of her childhood and younger life trauma and sexual assault. Her engagement with violent and abusive partners has also harmed her and D."

3. A final hearing of the local authority's application took place before HHJ Levey over three days in March 2025. The mother was represented and gave evidence. D's father played no active part. Agreed threshold findings documented the mother's drinking and drug use and referred to a series of assaults of one kind or another on her by three partners (one being D's father) in the previous two years. There had also been a serious incident in September 2023, which led to the mother being convicted of assaulting an emergency worker in D's presence.

4. In a careful reserved judgment handed down on 13 March 2025, the Judge described the mother as a vulnerable young woman, who had had a terrible childhood involving serious sexual abuse together with physical and emotional abuse at the hands of others. He observed that it was not surprising that she had encountered difficulties with her mental health in adulthood and had resorted to the use of drugs and alcohol. He described her as being dignified and disarmingly candid in her evidence. She did not challenge the assessments made of her, but sought a residential assessment at a named unit. The Judge had no doubt of her commitment to the rehabilitation process for D's sake as well as for her own. He accepted that there was a clear, strong bond between D and her mother, with contact being good. However, he concluded that the concerns underpinning threshold had not been sufficiently addressed and could not be resolved within D's timescales. He therefore refused the mother's application for a residential assessment and, being satisfied that adoption was the only realistic option capable of meeting D's long-term welfare needs, he made a care order and a placement order.

5. Contact last took place in September 2025. D was placed with a prospective adopter in October 2025, and in January 2026, an adoption application was issued.

6. The mother herself is now aged 24. She has a new partner and in May 2026 their son R was born. He is the subject of a Child Protection Plan, but no proceedings have been taken in respect of him.

The mother's application

7. The mother sought permission to oppose the making of an adoption order, supported by an initial statement. On 18 June 2026, the Judge made a directions order by consent. The mother was directed to file a further statement with supporting exhibits, addressing the following issues in particular: the nature and degree of any change in her circumstances since the making of the placement order; any work she had undertaken; her involvement with the local authority in respect of R; her proposals in relation to whether the court should decline to make an adoption order and instead make some lesser order; if she was seeking the return of D to her care, what practical arrangements she proposed; the reasons why she considered the granting of permission to oppose the adoption order was in D's best interests throughout her life. The local authority was directed to file a reply covering a number of specified matters, and requiring a welfare checklist analysis and "a detailed discussion and analysis of the considerations referred to in the judgment of Munby P in *Re B-S (Children)* [2013] EWCA Civ 1146 paragraphs [72]-[74]." These directions led to the court having the benefit of statements of unusually high quality for an application of this kind.

8. In the mother's statement of 24 July 2026, she offered these matters as evidence of a change of circumstances since March 2025:

    - Abstinence from drugs and alcohol since August 2025, supported by regular testing and engagement with rehabilitation and recovery services
    - Remaining abstinent despite the death of both of her parents in January 2026
    - Completion of psychotherapy
    - Obtaining stable accommodation
    - Ending her abusive relationship and obtaining a restraining order against her former partner, who was serving a prison sentence for assaulting her
    - Entering a new relationship in August 2025, which she described as stable and supportive, with backing from R's father's family
    - Living with her new partner since March 2026

- Caring for R without the need for proceedings

The mother exhibited a number of documents in which professionals corroborated her account.

9. In her original statement, the mother said this:

> "I feel that D should be given the chance to live with her birth family and to have a relationship with her brother. I have thought a lot about how this may cause some disruption to D, given how she may have settled into the prospective adopter's care, but I feel that it would cause her less harm to have this disruption of a return to my care than to face a life of questioning why she was adopted."

10. In a statement of 8 August 2026 by D's social worker, the local authority accepted that there had been a change in the mother's circumstances, describing her abstinence as a significant achievement and a substantial change, given the previous concerns. It also accepted that her current relationship was stable, and of a very different character to previous relationships. However, there remained uncertainty about the long-term stability of those changes and it was the local authority's view that they were not of a degree sufficient to re-open consideration of the issue of D's adoption. D had not been in her mother's care for over two years and had not seen her for almost a year. She was now thriving in the care of her prospective adopter and her wider family, and there was a commitment to post-adoption contact. D had had a high level of change and disruption. She needed the certainty and stability of an adoption order. Granting the mother leave to oppose would lead to ongoing uncertainty, which would be detrimental to her emotional well-being. The prospective adopter had, understandably, found the uncertainty arising from the mother's application unsettling and worrying, but she has remained impressively focused on D's needs.

11. A statement was filed by the prospective adopter, expressing her commitment to D and giving a rich portrait of her present life.

The Judge's decision

12. Having received written and oral submissions from counsel on 14 August 2026, the Judge reserved his decision. On 28 August 2026, he handed down a 19-page judgment.

13. At the outset, the Judge expressed the issue in this way:

> "1. The issue for the court is whether the statutory gateway of a change in circumstances is established and, if so, whether, having regard to D's lifelong welfare as the paramount consideration, leave to oppose the adoption order should be granted."

At a later stage of his careful legal self-direction, he wrote:

> "15. In undertaking the second-stage evaluation, I have had regard to the matters identified in Re B-S (Children) (Adoption Order: Leave to Oppose) [2013] EWCA Civ 1146 at [74], including the mother's prospects of successfully opposing the adoption application, the nature and extent of the changes relied upon, the child's current circumstances, the consequences of granting or refusing leave, the position of the prospective adopter and the potential impact upon the child of further contested proceedings."

14. The Judge found that the first stage of the statutory test was satisfied. The mother's sustained abstinence, engagement with services, therapeutic work, new relationship, stable accommodation and care of R amounted to a relevant change in circumstances that was sufficient to warrant a second-stage evaluation.

15. That question was, the Judge said, more difficult. Should the court, taking account of all the circumstances and giving paramount consideration to D's lifelong welfare, revisit the plan for adoption that was approved when the placement order was made? He considered this thoroughly at paragraphs [59-75], reaching these conclusions:

- The mother's progress was genuine, substantial and deserving of recognition. [60]
- However, her abstinence and recovery remained relatively recent and had not been tested over time, particularly against the additional demands of caring for D. [61]
- The mother's new relationship was relatively recent and untested. There was limited evidence about the partner, his understanding of D's needs, or his role in future care arrangements. [62]
- The mother's domestic abuse work was incomplete. [63]
- Although the mother's care of R was an important and positive factor, D would have her own needs, and there was little evidence as to how a transition would be achieved or how the competing demands upon the household would be managed. [64]
- The difficulty for the mother was not that there had been no change, but that the changes remained relatively recent and incompletely tested. [65]
- "I have considered the likely effect on D throughout her life of both options before the court. I accept the importance of her relationship with her birth family and sibling. I bear in mind her age, her background and the characteristics relevant to her welfare. I consider that a likely effect of reopening the adoption plan at this stage would be to introduce uncertainty into a placement in which she is settled and secure. I attach

significant weight to the permanence, continuity of care and security presently available to her." [66]

- "In weighing D's welfare interests, I take account of the benefits that would arise if the mother's application were granted. D would retain the possibility of being brought up within her birth family and of developing her relationship with her sibling through shared family life. I recognise that these are important factors and that they carry weight in the lifelong welfare evaluation. However, I must also consider D's current living circumstances. She is settled in the care of the prospective adopter, has formed secure attachments within that family and now enjoys the stability and permanence that were absent during the earlier part of her life. In my judgment, the potential benefits identified by the mother are presently outweighed by the risks and uncertainty associated with revisiting the adoption plan. D's welfare requires the court to place significant weight upon the continuity, security and permanence that her current placement provides." [68]

- "Standing back and considering all the circumstances, I am not persuaded that the mother's prospects of successfully resisting the adoption application are sufficiently strong to justify the grant of leave. The changes that have occurred are positive, but they remain relatively recent and insufficiently tested. There remains uncertainty as to whether those changes have become embedded and whether they would endure if the demands of caring for D were added to the household. The risk of destabilisation is one which cannot properly be ignored." [70]

- "The mother's achievements are real and significant. However, measured against the circumstances that led to the placement order, they remain at a relatively early stage. The court cannot yet know whether abstinence, recovery and the stability of the current relationship have become embedded. Nor can the court know how those arrangements would withstand the additional demands of caring for D, a child with identified needs arising from her earlier experiences. That uncertainty weighs heavily in the welfare balance." [71]

- "Even if the mother's progress continues, further time would be required before the court could safely conclude that abstinence, recovery and relationship stability had become embedded. D cannot wait for that assessment to be carried out. Her welfare requires decisions to be taken by reference to her timescale, not that of the adults." [72]

- "Having considered all the circumstances of the case, and giving paramount consideration to D's lifelong welfare, I conclude that this is not a case in which leave to oppose the making of the adoption order should be granted. The mother's application is therefore refused." [75]

16. The adoption hearing was listed for 25 September 2026.

The appeal

17. On 18 September 2026, the mother sought permission to appeal on the following grounds:

1. The Judge was wrong to determine that the Mother's prospects of opposing an adoption order were not 'sufficiently strong' by failing to properly weigh the Mother's changed circumstances.

2. The Judge placed improper weight on gaps in the evidence to determine the merits of the Mother's application at a permission stage.

3. The Judge was wrong to say that it was not in D's welfare interest to grant the Mother permission to oppose the adoption order.

18. On 14 October 2026, I granted permission to appeal.

The legal framework

19. Section 47(5) of the Adoption and Children Act 2002 provides that where a child has been placed with prospective adopters under a placement order a parent or guardian may not oppose the making of an adoption order without the court's leave. Section 47(7) states that the court cannot give leave unless it is satisfied that there has been a change in circumstances since the placement order was made.

20. The leading authority on the application of the section is *Re B-S (Children)* [2013] EWCA Civ 1146, [2014] 1 WLR 563. It broadly endorsed previous decisions of this court in *Re P (Adoption: Leave Provisions)* [2007] EWCA Civ 616, [2007] 1 WLR 2556, [2007] 2 FLR 1069 and *M v Warwickshire County Council* [2007] EWCA Civ 1084, [2008] 1 WLR 991, [2008] 1 FLR 1093, and it has been followed in a number of later decisions, most recently in *R (A Child: Leave to Oppose Adoption)* [2026] EWCA Civ 673, [2026] WLR(D) 320, [2026] 2 FLR 557.

21. The following statements of principle in *Re B-S* are relevant to the present appeal:

- At §59, that a parent must show solid prospects of success in opposing adoption:

> "There is a two stage process. In deciding how discretion is to be exercised at the second stage the court must have regard to the parent's ultimate prospects of success if leave to oppose is given. In deciding how discretion is to be exercised the child's welfare is paramount; that being so one can well see why the parent's prospects must be more than just fanciful and must be solid – for how otherwise can it be consistent with the child's welfare to allow matters to be reopened?"

- At §70, that the section is intended to be a meaningful remedy in an appropriate case, and is not to be described as 'stringent':

> "Section 47(5) is intended to afford a parent in an appropriate case a meaningful remedy – and a remedy, we stress, that may enure for the benefit not merely of the parent but also of the child… Stringent, as we have said, is a word that appropriately describes the test that has to be surmounted before a non-consensual adoption can be sanctioned. It is not a word that comfortably describes the test that a parent has to meet in seeking to resist such an adoption."

- At §74(iii), that where there is change and a solid case the court should be slow to refuse leave:

> "Once he or she has got to the point of concluding that there has been a change of circumstances and that the parent has solid grounds for seeking leave, the judge must consider very carefully indeed whether the child's welfare really does necessitate the refusal of leave. The judge must keep at the forefront of his mind the teaching of *Re B*, in particular that adoption is the "last resort" and only permissible if "nothing else will do" and that, as Lord Neuberger emphasised, the child's interests include being brought up by the parents or wider family unless the overriding requirements of the child's welfare make that not possible. That said, the child's welfare is paramount."

- At §74(vi), that the greater the change, the likelier it is that leave will be granted:

> "As a general proposition, the greater the change in circumstances (assuming, of course, that the change is positive) and the more solid the parent's grounds for seeking leave to oppose, the more cogent and compelling the arguments based on the child's welfare must be if leave to oppose is to be refused."

- At §74(viii), that the court should take a long view:

> "The judge must always bear in mind that what is paramount in every adoption case is the welfare of the child "throughout his life". Given modern expectation of life, this means that, with a young child, one is looking far ahead into a very distant future – upwards of eighty or even ninety years. Against this perspective, judges must be careful not to attach undue weight to the short term consequences for the child if leave to oppose is given…"

- At §74(ix), that undue weight should not be given to the impact of granting leave on prospective adopters:

> "Almost invariably the judge will be pressed with the argument that leave to oppose should be refused, amongst other reasons, because of the adverse impact on the prospective adopters, and thus on the child, of their having to pursue a contested adoption application. We do not seek to trivialise an argument which may in some cases have considerable force, particularly perhaps in a case where the child is old enough to have some awareness of what is going on. But judges must be careful not to attach undue weight to the argument. After all, what from the perspective of the proposed adopters was the smoothness of the process which they no doubt anticipated when issuing their application with the assurance of a placement order, will already have been disturbed by the unwelcome making of the application for leave to oppose..."

- At §74(x), that the test should not be set so high as to be unachievable:

> "We urge judges always to bear in mind the wise and humane words of Wall LJ in *Re P*, para 32. We have already quoted them but they bear repetition: "the test should not be set too high, because … parents … should not be discouraged either from bettering themselves or from seeking to prevent the adoption of their child by the imposition of a test which is unachievable.""

22. In *Re M (A Child: Leave to Oppose Adoption)* [2023] EWCA Civ 404, [2023] 4 WLR 36, [2023] 2 FLR 840, I cited these and other passages from *Re B-S* and added:

> "21. From this, it can be seen that the prospect of success in opposing adoption if leave is granted is an important element to which the court must have regard, but it is not a test in itself, still less an exclusive one. It is helpful as a reminder that the question to be answered is whether or not there should be an opposed adoption hearing. However, the expressions 'more than just fanciful' and 'solid' are not true opposites, in that something that is not fanciful may fall short of being solid. This may lead to the court being pressed with

> different formulations and can cause inconsistency if the court treats prospects of success as the only benchmark.
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> …
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> 23. Drawing matters together, I suggest that the essential question for the court at the second stage is this: Taking account of all the circumstances and giving paramount consideration to this child's lifelong welfare, should the court revisit the plan for adoption that it approved when making the placement order? By asking this question, the court ensures that it focuses firmly on the individual child's welfare in the short, medium and long term with reference to every relevant factor, including the nature and degree of the change that it has found, the parent's prospects of success, and the impact on the child of contested proceedings."

23. Finally, in the earlier decision of *Re W (A Child: Leave to Oppose Adoption)* [2020] EWCA Civ 16, [2020] 1 FLR 1125, I said this at §42:

> "It is well-established that where substantial change has taken place, the likelihood of the parents being able to show a solid case for opposing adoption will be the greater. To be solid the case must have substance: see *Re B-S* at [57-59]. It must be a case that needs to be fully considered before a decision can be taken about adoption. This calls for a broad and practical balancing up of the welfare advantages and disadvantages of granting leave. I would not expect expert evidence or oral evidence to feature: indeed, if the court is seriously thinking that either might be necessary, it may be an indication that leave should be granted. At all events, the decision on the grant of leave under s. 47(5) should not be allowed to develop into a trial of the adoption application on incomplete evidence."

Submissions

24. For the mother, Mr Rowland submitted that the evidence provided by the mother gave her prospects of successfully opposing the adoption order that were more than fanciful. The court was required to re-examine the necessity of adoption at the final hearing and there was now evidence that adoption was not the only available option. The mother should therefore have been given permission to defend the making of an adoption order.

25. He further submitted that, having identified gaps in the evidence concerning her future care of D, her care of two children, and the role of her partner, the court should have granted the mother's application and made appropriate directions to enable those matters to be addressed through further evidence. By treating the lack of evidence as a reason to refuse permission, the Judge doomed the mother's application at the permission stage.

26. For the local authority, Ms Isaac supported the Judge's decision for the reasons he gave. He had long experience of the case and was best placed to make the required assessment. The evidential gaps he identified were themselves relevant factors in the determination of prospects of success and welfare. Even if those gaps were addressed, there would still be insufficient evidence to establish a real prospect of successfully resisting the adoption order.

27. Alternatively, if the court concludes that the Judge erred by effectively determining the adoption application on incomplete evidence, Ms Isaac invites us to provide guidance on how first instance judges should assess the second limb of the test where a parent has demonstrated substantial change in circumstances. In such cases, it is suggested that a more detailed analysis of real prospects of success and welfare may be required.

Analysis

28. With respect to the last submission, I consider that there is ample guidance on this statutory provision, and that it can be applied equally to stronger applications and to weaker ones.

29. In my view, this was a clear case for the grant of leave to oppose the making of an adoption order. If leave is not to be granted to this parent, it is difficult to see how s.47(5) offers the meaningful remedy that Parliament intended.

30. At the first stage, the changes in the mother's circumstances were assessed by the Judge to be genuine and substantial, and he rightly carried them forward into the welfare assessment.

31. At the welfare stage, some distinctions should be observed.

32. First, as a general point, s.47(5) requires a broad and practical balancing exercise, as befits a threshold provision. An overly-detailed assessment risks drawing the court into a trial of the adoption application on incomplete evidence, something deprecated in *Re W* at §42.

33. Second, it is important to remember that the question to be answered is whether or not it is in the child's interests for there to be an opposed adoption hearing (*Re M* at §21). It is not whether it is in the child's interests to be adopted. Put another way, the decision is not a decision about adoption but a decision about the management of an adoption application.

34. Third, as part of the welfare evaluation, the court looks to see whether the parent has a solid case, a substantial case that deserves consideration. They do not have to show that they are more likely than not to succeed. To borrow from a different context (*Re H (A Child)* [2015] EWCA Civ 1284, [2016] 2 F.L.R. 1173, at §70), the court is asking whether a case is a 'runner', not whether it is a 'winner'.

35. In this case, the Judge acknowledged that the decision was one of some difficulty and he paid deep attention to it, including by reserving judgment and giving extensive reasons. Indeed, the very degree of care that he took gives

some indication that the mother had put forward a solid case for the court's consideration. As it was, his conclusion at [70] amounted to a judgement that her case would not succeed, when the question at that stage of the analysis was different and less demanding. This inadvertently set a test that was stringent and close to being unachievable: *Re B-S* at §§70 and 74(x).

36. Had the Judge acknowledged the solidity of the mother's case, he would next have asked himself why she should be refused leave: *Re B-S* at §74(iii). That would have led him to consider the narrower question of the short-term impact of a contested hearing alongside other welfare considerations.

37. As to that, at [66] the Judge placed considerable weight on "the likely effect of reopening the adoption plan" on D's present care and security. I regret that D's prospective adopter will feel delay and uncertainty that she herself has done nothing to bring about, but there was no reason to believe that D herself would be affected or that the placement would be at risk. Adoption is a momentous decision and there was no evidence to justify the weight that the Judge gave to this short-term factor: see *Re B-S* at §74(ix).

38. In contrast, another welfare factor, pointing towards the grant of leave, was missing from the inquiry. In *Re B-S* at §70, it is stressed that the power to grant leave in an appropriate case may enure for the benefit not merely of the parent but also of the child. Here, there was clear reason to believe that the grant of leave to the mother would be of benefit to D in the long term. A decision taken when she is just 4 years old will determine the course of her life. Whatever happens, she will grow up with knowledge of her mother and R, and face-to-face contact is said to be a possibility. If she is adopted, it will be important to her to know, as an older child and as an adult, that that was still necessary. If she should not be adopted, refusal of leave prevents the court from saying so.

39. Another aspect of the appeal concerns the Judge's appreciation that the evidence was incomplete. There are clearly some questions that only time can answer. Others may be answered or clarified by the filing of further evidence, including professional or even expert evidence. In this case, the Judge rightly identified gaps in relation to the partner and about the form of any rehabilitation plan. Those were matters that could only be clarified by professional assessment and input. The mother had already produced a significant amount of evidence and it is difficult to see why those particular gaps counted against her application.

40. For these reasons, I would allow the appeal, grant the mother leave to oppose the making of an adoption order, and remit the proceedings for an early case management hearing before a judge nominated by the Family Presiding Judge. In doing so, I express no view whatever about the outcome of the adoption application, which will now be determined by the Family Court on the basis of all the evidence.

Lord Justice Newey:

41. I agree.

Lady Justice May:

42. I also agree.
