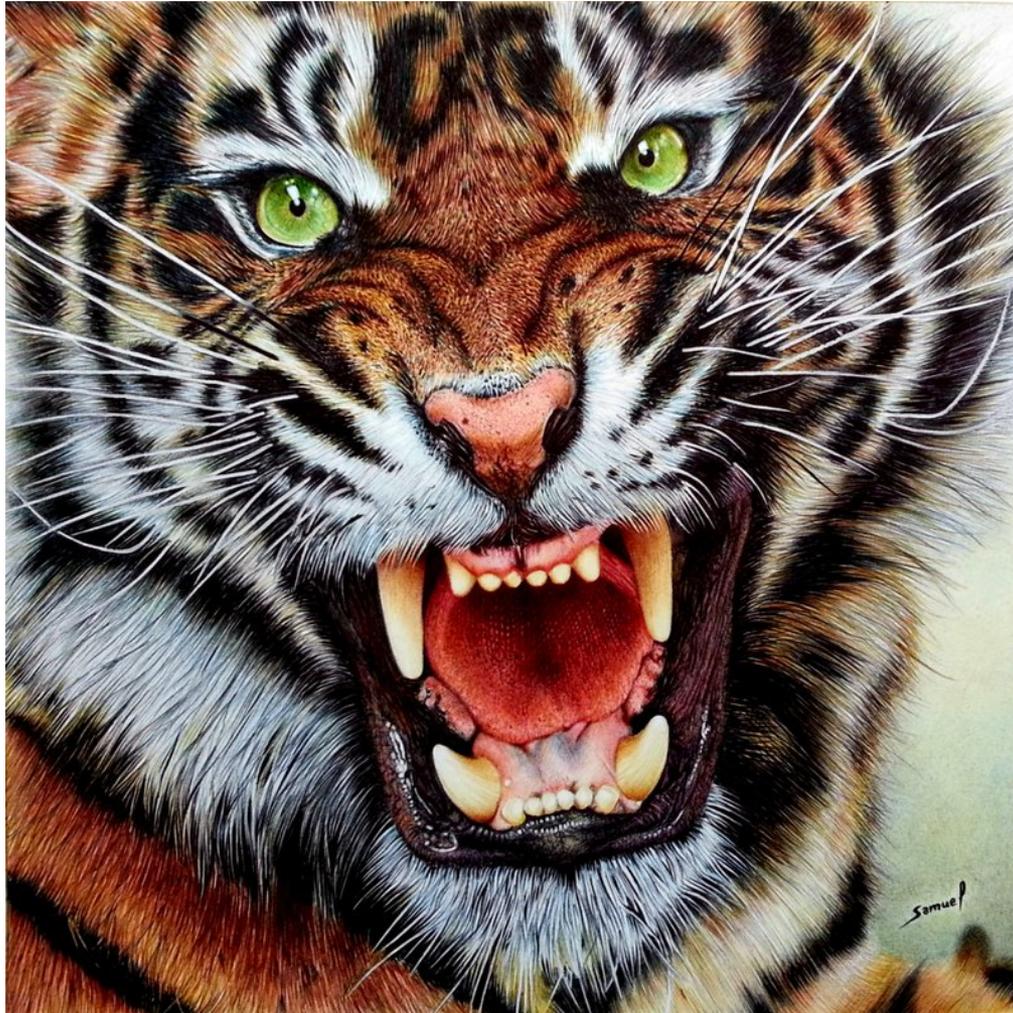


**CUTTING THROUGH ALL THE
NOISE, WHICH FACTORS CARRY
WEIGHT WHEN THE COURT
UNDERTAKES A HOLISTIC
ANALYSIS OF PLACEMENT
OPTIONS, E.G. KINSHIP CARE**

Ruth Henke QC

THE COURT MAKES THE ULTIMATE WELFARE EVALUATION



USEFUL CASE LAW :

- RE T (A CHILD) (CARE PROCEEDINGS: COURT'S FUNCTION) [2018] EWCA Civ 650
- RE W (A CHILD) CARE PROCEEDINGS: COURT'S FUNCTION)[2014] 1 WLR 1611



THE JUDICIAL ARMOURY INCLUDES :

- Making an interim care order a final care order and refusing the placement application.
- Directing the attendance of the local authority's agency decision maker to ensure the court's conclusion had been properly understood and to explore the possibility of the fostering panel reaching a different conclusion
- Considering the use of wardship
- Directing the local authority to produce a statement setting out how it could provide the necessary support and vigilance under wardship
- Directing an up-to-date analysis by the Guardian
- Transferring the case to the High Court so the local authority's decision making process could be challenged within the proceedings on public law grounds.



RE B-S (CHILDREN)(ADOPTION: LEAVE TO OPPOSE) [2014] 1 WLR 563 PARA 18

"The overarching principle remains as explained by Hale LJ, as she then was, in *Re C and B* [2001] 1 FLR 611, para 34:

'Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child.'

To this we need only add what the Strasbourg court said in *YC v United Kingdom* (2012) 55 EHRR 967, para 134:

'family ties may only be severed in very exceptional circumstances and ... everything must be done to preserve personal relations and, where appropriate, to "rebuild" the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing'."



THREE IMPORTANT CASES

- *In re B (A Child) (Care Proceedings: Threshold Criteria) [2013] 1 WLR 1911*
- *In re B-S (Children) (Adoption Order: Leave to Oppose) [2014] 1 WLR 563*
- *In re R (A Child) (Adoption: Judicial Approach) [2015] 1 W.L.R. 3273*



FOUR PRINCIPLES:

- that the fundamental principle continued to be that, where there was opposition, the making of a care order with a plan for adoption, or of a placement order, was permissible only where, in the context of the child's welfare, nothing else would do;
- that the court's paramount consideration continued to be the child's welfare throughout his or her life; that the statutory requirements of section 1 of the Children Act 1989 and section 1 of the Children and Adoption Act 2002 have not been eroded or glossed by decisions of the Court of Appeal;
- that, where on an application for a care order the plan was for adoption, the court has to have regard not merely to the welfare checklist in section 1(3) of the 1989 Act but also, and even if there was no application for a placement order, to the welfare checklist in section 1(4) of the 2002 Act;
- and that, while the law required the court to give full consideration to those options which were realistically possible, it did not require the forensic pursuit of options which, having been properly evaluated, could legitimately be discarded as not being realistic



THE BALANCE

Adoption

+

-

Long
Term Care

+

-

Kinship

+

-



THREE PARTICULARLY WEIGHTY FACTORS

- The right to a family life
- The need to afford paramount consideration to the child's welfare throughout his/her life – S1 ACA 2002.
- The need to ensure the child is safe.



IN REAL TERMS

Adoption

Kinship

Security & Safety

∨

Loss of Family

Family

∨

Risk of Harm

Family

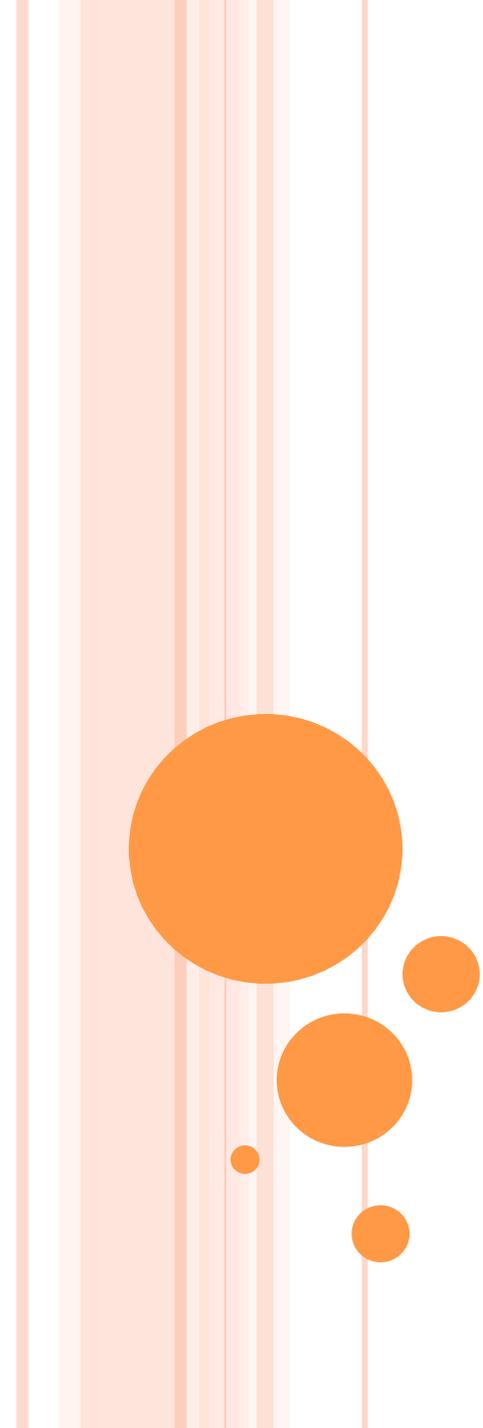
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Managed Risk

=

Kinship Care





THANK YOU

rmh@30parkplace.co.uk