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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

16/037908, 16/037908/05 and 15/073330/AO1

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

IN THE MATTER OF THE ADOPTION (NI) ORDER 1987

IN THE MATTER OF LAURA A CHILD

O'HARA J

Introduction

[1] This case involves an application by a Health and Social Care Trust for a care order and freeing order for a six year old girl who will be called Laura. The miserable background which led to Laura being taken into care will be apparent from the detailed statement of threshold criteria set out below. As will appear from those criteria there are three adults primarily involved in the case. The first is the mother who was only 15 when she became pregnant. The second is the father though he and the mother separated just months after Laura's birth. The third is P, the mother's partner at the time when Laura suffered injuries in 2015 and 2016.

[2] The mother's case is that Laura can and should be returned to her care, even if not immediately. Accordingly she opposes the making of a care order which is based on a care plan for adoption. It follows that she opposes the application for a freeing order. The father agrees to both a care order and a freeing order but would like more contact than the Trust is suggesting. So far as P is concerned his role in the case was only that of an intervener. He is no longer in a relationship with the mother but was allowed to intervene so as to defend himself against the allegation that he caused serious physical harm to Laura twice.

Threshold criteria

[3] The threshold criteria which were proposed by the Trust and signed by both the mother and father (but not by P) are as follows:

- (1) On 30 July 2015 Laura was presented to a hospital with the following injuries:
 - (a) Four bruises to her right buttock.
 - (b) A larger bruise adjacent to these at the junction between the buttock and lateral thigh.
 - (c) Four bruises to her left buttock.
 - (d) A bruise on the mons pubis in the midline.
- (2) The likeliest mechanism of injury is fingertip gripping with the type and location of injuries being associated with sexual abuse.
- (3) (Deleted by agreement).
- (4) On 26 April 2016 Laura was admitted to hospital with genital bleeding. She was examined under local anaesthetic by Dr Alison Livingstone and Dr Choo. The outcome of the forensic medical examination was as follows:

Laura presented with acute onset of genital bleeding associated with significant genital injuries including a laceration through the posterior fourchette, fossa novicularis and extending into a complete hymenal disruption. There were also signs consistent with fresh bruising around the posterior fourchette and two linear lacerations at either side of the labia minora/clitoris. Laura also had a cluster of four bruises on her outer thigh.
- (5) The most likely mechanism of injury was an acute penetrative sexual assault by a firm object.
- (6) Upon the basis of the medical evidence all of the injuries noted above are non-accidental injuries.
- (7) P perpetrated these two sets of injuries in a deliberate manner. P sexually assaulted Laura on more than one occasion.
- (8) On each occasion Laura was in the primary care of her mother. She displayed a gross failure to protect Laura from harm. She was grossly negligent in her parenting.
- (9) The mother was unable to give any appropriate explanation as to how the child sustained the injuries despite being her primary carer.
- (10) The mother routinely and illicitly breached the safe care plan in relation to Laura by permitting P to have unsupervised contact with

Laura. The mother allowed P to reside in her home with Laura notwithstanding the terms of the safe care plan.

- (11) The mother was dishonest with professionals about the circumstances of P's contact with Laura. She repeatedly lied to the Trust and to professionals about his contact. Further she lied to the police regarding the fact that P had had unsupervised contact with Laura prior to her admission to hospital. Further the maternal family also lied to the Trust about these breaches of the safe care plan.
- (12) The mother failed to provide a safe home environment for Laura and permitted Laura to come to significant harm and sustain serious penetrative sexual injuries while in her care. She failed to report the first set of injuries.
- (13) The mother prioritised her wish to be in a relationship with P over the needs of Laura. She did so notwithstanding subsequent revelations made by her of aggression in the relationship towards her from P. In so doing she failed to protect Laura. Her dependence upon him is evidenced from the fact that she wished him to remain at the hospital with her in April 2016 despite Laura having sustained serious sexual injuries.
- (14) The father was not having contact with Laura at the date of Trust intervention. He was not available to care for Laura at the date of her removal from the care of the mother.
- (15) The father has had an inconsistent role in Laura's life. He was not proactive in seeking contact with Laura following her return to the care of the mother in October 2015.

Further background

[4] The Trust had been involved in Laura's life because of concerns about her from 2014. However, it was not until July/August 2015 that issues escalated, with the discovery of the bruises described at paragraph 1 of the threshold criteria. That led the Trust to issue proceedings the Family Care Centre. Those proceedings were dismissed in October 2015 with a finding that the bruising was not sufficient to establish a case of significant harm within the meaning of Article 50 of the Children Order.

[5] The Trust appealed against that decision in November 2015. While the appeal was pending Laura returned to her mother's care on the basis of a well-defined care plan. That plan included the following critical obligations:

- P was not to be in the mother's home while Laura was there.

- Laura's family would visit her daily to confirm that Laura was well and that there were no concerns which needed to be relayed to the Trust.

Laura's family appeared at the time to be people who could be trusted and relied upon. Sadly this turned out not to be the case.

[6] Initially things seemed to go quite well. The mother started a safe parenting assessment and was praised in January 2016 for adhering to the safe care plan. In March 2016 the view of the Family Centre which was working with the mother was that it still needed to do some more work with her before the assessment concluded.

[7] This promising progress came to a crashing halt in April 2016. The mother and P took Laura to the maternal great grandmother's home because Laura had the appalling injuries described at paragraph 4 of the threshold criteria. What happened next, in effect, was that the great grandmother made them take Laura to the hospital where the extent and nature of the assault on Laura was revealed. Even at that point, and for months afterwards, the mother lied to doctors, social workers and then the PSNI about what had happened, about her relationship with P and about her multiple breaches of the safe care plan.

[8] It is important to record the fact that the father is not believed to have caused any injury to Laura. By July 2015 he and the mother had long separated. To his credit he alerted professionals to the bruising which he saw on Laura at a contact in July 2015. He is however a person of no real significance or meaning to Laura which is why he consents to the application that she be freed for adoption.

[9] While P had the status of intervener in this case he played no part, either by giving evidence or through his counsel asking questions. This was despite the fact that in paragraph 7 of the threshold criteria he is blamed for causing Laura's injuries. No case was advanced that it was not or might not have been him. I made it clear to him that he was entitled to participate, that he was entitled to give evidence and that if he did not do so I might accept the allegations against him set out in the threshold criteria, strengthened by adverse inferences being drawn by reason of his failure to give evidence. Notwithstanding that warning he chose not to engage in the case. In the circumstances I chose not to compel him to do so.

[10] The mother gave evidence, seeking to persuade me that there is still some chance of her caring again for Laura. She described how much she had learned and matured since 2015/16 and that she would not make the same mistakes again. Unfortunately for her, her evidence only increased my concerns about what had happened to Laura and her role in it. She had to concede in cross-examination by Ms Simpson QC for the Trust that she lied to just about everybody who was trying to help her and Laura in 2015/16, putting her relationship with P ahead of Laura's interests. In relation to the 2015 bruising her evidence actually made me consider

whether the threshold criteria needed to be amended to add her as a possible perpetrator rather than lay all the blame on P as paragraph 7 does. The Trust submitted that I should do so.

[11] Dr Ben Grey, a psychologist with a specialism in risk, parenting and attachment, gave evidence. He had co-written a report with Juliette Kesteven, a qualified social worker who specialises in these same areas and is a co-director with Dr Grey of the Cambridge Centre for Attachment. This evidence is significant because the Trust proposal is that if Laura is freed for adoption her parents should only have indirect contact with her once a year. That is an unusual application - most plans for adoption which come before courts in Northern Ireland envisage some level of direct post-adoption contact.

[12] The report and oral evidence advanced the “no contact” recommendation on the assumption that Laura would stay with and be adopted by her current long term foster carers. In their home she has progressed beyond all expectations. The Guardian ad Litem described the change in Laura as “incredible”. Her tantrums, nightmares and bad behaviour have faded away. She is a much happier and more secure child, doing well in school.

[13] Dr Grey strongly endorsed adoption as the only way forward for Laura. He accepted that some work could helpfully be done with the mother by way of psychotherapy. However that work would inevitably have to be long term and would extend far beyond any timescale which would permit consideration of Laura being returned to her care in the foreseeable future. So far as contact is concerned he gave three reasons for it being inappropriate:

- (i) There is evidence that Laura is being “re-traumatised” through contact. The relationship between mother and Laura is such that Laura is reminded at each session of her mother’s inability to protect her and this in itself elicits failings associated with the trauma she has experienced.
- (ii) The emotional impact of Laura’s history and injuries on new adoptive parents needs to be considered. It will affect their ability to support Laura in having continued contact with her mother. Insofar as continued contact is frightening for the adoptive parents it would also be frightening for Laura and she will be unable to feel safe with it.
- (iii) There remains a significant risk that the mother may develop risky and dangerous relationships in the future and that as Laura grows older and more curious about her mother’s life this could have an undermining effect on Laura’s security and also on her adopters.

Conclusion

[14] This case started in the High Court by way of an appeal from the October 2015 decision in the Family Care Centre to dismiss the application for a care order. There was then a further application following the injuries discovered in April 2016 after which the freeing application issued in April 2017.

[15] In light of the events of April 2016 it is no longer necessary for me to decide whether the judge in the Care Centre was right to dismiss the original case. It is fair to note however that what happened in 2016 necessarily makes everyone think again about the 2015 incident and injuries and whether they were more significant and sinister than the judge considered at the time. I have had the significant advantage in this court of hearing directly from Dr Alison Livingstone, a paediatrician whose speciality is in assessing children suspected of having been abused. Her evidence was that the 2015 injury was caused by significant force and was inevitably very painful and upsetting for Laura. In the absence of any explanation from the mother or P, the nature and location of the bruising led Dr Livingstone to suspect strongly that not only was the injury non-accidental but that it may have been inflicted in the context of a sexual assault. These concerns were increased by the events of April 2016 where the injuries were greater and the suspicion of sexual assault markedly higher.

[16] Taking all of these matters into account I accept and approve the threshold criteria detailed above which include the 2015 as well as the 2016 injuries. As already indicated, in light of the mother's evidence I was invited by the Trust to consider whether the mother should be added to the pool of possible perpetrators of the July 2015 injury. As matters stand P is the only person blamed for inflicting those injuries. The mother certainly had the opportunity to injure her daughter in July 2015 and her evidence was deeply unimpressive. On balance however I think that the far greater likelihood is that P injured Laura in 2015 as he certainly did in 2016. Accordingly, I do not amend the threshold criteria.

[17] It does not inevitably follow that a care order is made once threshold criteria are established. It is still open to the court to make no order at all or to make an order short of a care order. In this case however it is clear that nothing else is possible. The mother's desire for rehabilitation to her of Laura is understandable but hopelessly unrealistic and unachievable within any conceivable timescale. That is the only conclusion I can draw from the evidence of Dr Grey and Ms McGinnis, the social worker who gave evidence for the Trust. Accordingly I make a care order for Laura on the basis of the care plan for adoption.

[18] So far as the freeing order is concerned, I recognise the rights of the parents to family life, where possible, and the extent to which the making of a freeing order (or a care order for that matter) represents an interference with family rights which has to be justified. The depressing circumstances of this case however are entirely clear. What Laura needs is the protection, support, stability and love which she is enjoying

with her long term foster carers. She is still very young and has now been with them for some years. It is overwhelmingly in Laura's best interests that that relationship should be formalised by way of an adoption order rather than her remain in long term foster care. I find that the mother is unreasonably withholding her consent to Laura being adopted. Every parent in her position would know that only by being adopted can Laura recover from the trauma inflicted on her by P, trauma which the mother allowed to happen.

[19] The father has not formally given his consent to adoption even though he does not oppose the freeing application. That being so I find that he too, although in a different way, is unreasonably withholding his consent to adoption.

[20] So far as contact is concerned I endorse the plan that contact should only be indirect for each parent, once per annum. I was particularly struck by the first of the three reasons advanced by Dr Grey for there being no direct contact. There was clear evidence that Laura was distressed coming up to and after contact. This proved the concept of re-traumatisation which Dr Grey spoke about and which also featured in the evidence of Ms McGinnis and the Guardian, Ms McDonnell. While judges in this jurisdiction try to facilitate some level of on-going contact, even after adoption, in appropriate cases this is clearly not such a case. There is no good reason why a young girl who has been assaulted, abused and neglected while in the care of her mother should continue to see her as she grows older. If that changes in later life, so be it. The issue can then be reconsidered. But at this stage of Laura's development not only is direct contact not in her interests but it is contrary to her interests.

[21] I wish to add one final word about the mother. She was barely more than a child herself when she became pregnant and then made the multiple mistakes which led to her relationship with P, to P assaulting Laura and to Laura being taken out of her care. All of this will undoubtedly scar her but she is young enough to rebuild her life, with the support of her family, and prove that she can do better in future.