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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF ORLA AND MARTIN (No: 3)

The Applicant Father appeared as a Litigant in Person
The Respondent Mother appeared as a Litigant in Person
Ms Smyth QC with Ms O'Flaherty represented the children instructed by Official Solicitor

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KEEGAN J

The names of the parties in this case have been anonymised in order to protect the interests of the children to whom the case relates. Nothing must be published or reported which directly or indirectly leads to the identity of the children or their families being revealed. The names I have given the children are not their real names.

Introduction

[1] This case comes before me following two judgments of O'Hara J ("the judge") dated 31 July 2018 reported at [2018] NIFam 13 and dated 10 January 2020 reported at [2020]NI Fam 8. The children in the case are now 17 years of age and 14 years of age. The eldest child is a girl who will turn 18 next May, the youngest child is a boy who will turn 15 next April. I will not recite the background in any detail as this is contained in the comprehensive judgments of O'Hara J. Suffice to say that this has been a protracted case which has involved litigation for the last 9 years. The parents separated in 2010 and subsequently divorced. O'Hara J has commented in his first judgment that:

> "It would be a gross under-statement to say that the separation and divorce were acrimonious. These two adults truly despise each other. Neither of them has shielded the children from their mutual animosity or

> even tried to do so. Inevitably, that has caused damage to the children."

[2] In terms of child arrangements, the position after the separation evolved into a form of shared parenting so that by October 2014 the children were to have alternative weeks with the parents. This was formalised into a joint residence order on 16 January 2015. Fairly quickly this agreement unravelled particularly in relation to the older girl, who only availed of the shared care arrangement until May 2015 when she refused to stay with her father. In the first judgment the judge records that since then she has seen her father on a few occasions but in recent times she has refused to see him at all. So for the last 5 years Orla has not seen her father. The younger child sustained a longer period of staying in contact with his father every fortnight until February 2016. After that time he also stopped going for contact. It appears that he, like his sister, has only seen his father a few times since then and now refuses to see his father. So, Martin has not seen his father for the last 5 years.

The judgments of O'Hara J

[3] The first judgment O'Hara J details the nature of proceedings before him. They involved the hearing of evidence including that from Dr Berelowitz, a Child and Adolescent Psychiatrist, Ms Helena Stewart, a Psychotherapist, Ms Miller the Senior Social Worker, and Ms Gillen, the previous social worker. The parents also gave evidence as did the Guardian ad Litem, who at that time was Ms Forster. In the July 2018 judgment the judge concluded as follows:

> "[48] This is a truly miserable case. Both parents attribute blame widely and have attacked a range of people including each other, social workers, experts and me for the state of affairs which has left the children damaged. I believe that the children are unhappy and know that they have been denied a better life by the actions of both of their parents but they have had to choose one over the other and have opted for their mother.
>
> [49] The view of every expert witness is that both parents have contributed significantly to the state of affairs. I agree entirely with that."

[4] At paragraph 50 the judge makes some particular findings as follows:

> "(i) There is no evidence whatever that the father is a paedophile.
>
> (ii) There is no evidence whatever that he ever had indecent images on his computer.

(iii) The father can't or won't stop himself from openly denigrating the mother with terms like "witch" and "fat ugly bitch."

(iv) The children knew from both parents, but especially from the mother, details about their financial disputes.

(v) Martin was not encouraged to continue to stay with his father after Orla stopped staying with him.

(vi) Despite this Martin soldiered on for a further nine months or so.

(vii) Martin wants a continuing good relationship with his father as illustrated by his happy and positive reaction when he saw him in his new school comparatively recently. In all probability Orla wants a continuing good relationship with her father."

[5] In the 2018 judgment the judge also said that "it is never too late to a build a relationship between a parent and a child but it can be exceptionally difficult to do so in very bad cases such as this." He found that both children had suffered and were likely to suffer significant emotional harm as a direct consequence of the ongoing hostility and acrimony between the parents which affected, in a terrible way, the care which the parents have given them. He therefore found that the threshold criteria were met. He also decided that the shared residence order was of no meaning and so it was revoked with immediate effect. In his judgment the judge said that he wanted the children to be informed in age appropriate terms of his judgment including the reasons for his decision which he had reached and the views of the experts. He said he hoped that if the children are reassured they will not be removed from their mother's home, they will be free to reconsider the possibility of re-establishing contact with their father. At this stage the judge did not give the Trust leave to withdraw its application for a care order as that was still on the agenda. However, he asked for some time to be taken to try and build up contact between the children and their father who he thought should remain with the mother and that was how the first judgment ended.

[6] In the second judgment in 2020 the judge records that the efforts to re-establish contact were not fruitful and there had been no contact whatsoever. On 19 December 2019 the judge therefore granted the Trust leave to withdraw from the case and he discharged the Guardian ad Litem. The judge records that the father accepted this as the only realistic way forward. The judge also states that with the

agreement of the parents he made a specific issue order and in the light of the exceptional circumstances of the case he made that until each child was 18. In relation to Martin the judge pointed out that his education was extremely problematic at the date of judgment in that he was absent from school more than half of the time. The judge agreed with the father in relation to this issue that Martin's situation was as he described it 'desperate.' The judge also said that he was not convinced on the medical evidence before him that Martin suffered from any condition which justified his absences from school. The ultimate conclusion of the judge was that in all of the circumstances a public law order was not required or further intervention. Accordingly, the only order made in relation to each of these children was a specific issue order. The terms of that order are as follows:

> "The court directs that:
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> (i) Under Article 9(6) a specific issue order is made in relation to the children until they reach the age of 18 years in the following terms:
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> (a) The applicant shall notify the respondent via email without detail of any significant injury, trauma, illness or inpatient hospitalisation.
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> (b) The respondent or his next of kin shall notify the applicant of any significant injury, trauma, illness or inpatient hospitalisation of the respondent and the applicant shall inform the children of this.
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> (ii) Leave is granted for the court judgments in this case to be released to a variety of persons including the schools, the General Practitioner, any consultant involved with the children and the Educational Welfare Service if they become involved with Martin regarding his school absences.
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> (iii) Given the concerns in relation to Martin's poor school attendance the school shall consider a referral to the Education Welfare Service to investigate this. The parties shall inform the school of this direction.
>
> (iv) The Educational Welfare Service are invited to investigate the case and to take all necessary steps to address same. The parties shall inform the Educational Welfare Service of this direction.
>
> (v) The Educational Welfare Service are invited to expedite Martin's case as quickly as possible given the pressing

urgency of same and the length of time that there has been poor school attendance. The parties shall inform the Educational Welfare Service of this direction.

(vi) The schools and the Educational Welfare Service are invited to update the father on all matters relevant to the children. The parties shall inform the schools and the Educational Welfare Service of this direction."

Current Proceedings

[7] The matter returned to the Family Division by way of a Covid-19 form issued by the father on 19 April 2020. In that the father urged the court to hear this case again as part of the court's remit to hear urgent matters and he sought contact. I issued a case management direction order of 27 April 2020 which read as follows:

> "Having considered the application issued under Covid-19 Guidance, the court is not persuaded that this is an urgent matter as final orders appear to have been made on 10 January 2020; the court made a specific issue order (ICOS No: 11/103100/05) and in addition dismiss the related public and private law applications (lodged under ICOS Nos: 15/95107 and 11/103100/04 respectively) following two judgments from the Honourable Mr Justice O'Hara delivered on 31 July 2018 and 10 January 2020. The court does not understand that there is any appeal from these orders. The final orders do not provide for contact and so it is not appropriate to convene an urgent hearing pursuant to the Covid-19 Guidance. Should the applicant wish to bring a fresh application to the High Court he can do so by C1 setting out the grounds for another application and the respondent may then reply and the court will consider that in due course and issue directions."

[8] Ultimately, the applicant father did issue a C1 of 11 May 2020 in which he sought relief under the Children (Northern Ireland) Order 1995 ("the Children Order"). The respondent mother has also now issued an application to the court effectively seeking a no contact order by application dated 8 July 2020. I have convened various case management hearings as a result of which I required the parties to lodge any evidence that they wanted to in the hearing of this matter. I then listed a hearing before the court. The applicant father applied to appear in person and that was agreed to, the mother appeared by Sightlink.

[9] I should also say that upon obtaining carriage of this case I decided that the children would be best served if they had some representation and so on 8 June

2020, by agreement of the parties, I invited the Official Solicitor to represent the subject children in these proceedings. The Official Solicitor accepted the invitation and has represented the interests of the children. Both the applicant and the respondent have appeared as litigants in person. The applicant father has previously appeared as a litigant in person. The respondent mother indicated that she had now had a substantial legal bill of £150,000 due to the number of previous court hearings and so she could no longer afford to have legal representation. Ms Smyth QC along with Ms O'Flaherty BL represented the Official Solicitor.

The issues in the case

[10] During various case management hearings I made both parties aware that I would not be minded to reopen matters that had already been litigated upon unless there was some good reason, and that I wanted to concentrate on current circumstances and issues that had arisen since the orders made by Judge O'Hara. Having had this discussion with the parties it appeared that a number of matters emerged for the adjudication of the court as follows:

(i) Whether or not the children had properly been informed of the contents of the judgment, in particular the finding of the judge that the father was not a paedophile.

(ii) Whether or not the specific issue order in terms of educational provision and health provision sharing was working.

(iii) Whether or not there should be a prohibition on any contact between the father and children.

(iv) Whether or not there should be a development of indirect contact.

[11] In dealing with this case as part of my case management powers I invited each party to file written submissions which they have done and which I have considered. The Official Solicitor has also filed position papers. I also invited both parties to make submissions to the court. Given the issue about the information sharing with the children I invited the previous Guardian ad Litem to file a report and I also required her to give evidence to the court which she did. At the request of the parties I obtained the transcript of the hearing on 10 January 2020 when the judge gave a ruling in relation to what was to happen about information sharing.

The Hearing

[12] I will start with the evidence of the Guardian ad Litem ("the Guardian") Ms Forster. She gave evidence that following the judgment of 31 July 2018 she explained the judgment to the children. She said that she liaised with the children's legal team and agreed that she would deliver the judgment with the children's solicitor. She said there were some difficult issues raised about both parents in the

judgment and so she decided that it would be both painful and unnecessary to mention certain points for example paragraph 50(iii) which states that the father will not stop himself from openly denigrating the mother. During her evidence the Guardian confirmed that she delivered the judgment in detail and summarised the positions of the parties involved. She told the children that both parents had made allegations about the other parent but did not go into details about these or their arguments with each other. She says the children commented at various points and asked questions and the meeting took approximately 1½ hours. The Guardian pointed out that the father subsequently raised his concern in court that she had not specifically told the children that he is not a paedophile in accordance with the finding AT paragraph 51 of the judgment. In respect of this the Guardian told me that the judge directed that the Guardian ad Litem should produce information to the court regarding the explanation of the judgment and the judge thereafter had no further queries and never raised the matter again. The Guardian notes that the father continued to raise this matter at court on a number of occasions and remained aggrieved that the Guardian did not dissuade the children from the belief that their father is a paedophile. In her report and in her evidence the Guardian said that she had spoken to the children on 31 occasions over the course of court proceedings and they have never once mentioned this view of their father, similarly discussions with the Senior Social Worker, Ms Tracey Gillen, confirmed that the children never expressed this belief.

[13] In relation to the 10 January 2020 judgment the Guardian again had to explain to the children what was happening. As is apparent from the transcript on 10 January 2020 the father raised an objection to the Guardian advising the children of the judgment. Senior Counsel, Mr McGuigan QC, acted for the Guardian at that time and pointed out that it is normal practice for the Guardian to deliver the judgment to the children as per the Children Order Advisory Committee Best Practice Guide. The Guardian confirmed that the father had complained that she did not previously tell the children that he is not a paedophile. She said that he was reminded by Mr McGuigan that this was never specifically directed by the court and that this view has never been expressed by the children. After further discussion the judge's view was that the Guardian should work with Ms Anne Miller, Principal Practitioner, on how to move forward. The Guardian gave evidence that after court she, together with the children's legal team, discussed the matter with Ms Miller and it was agreed that she would meet with the children accompanied by Ms Hasson, Solicitor, and consult with Ms Miller prior to doing so. She said that she consulted with the solicitor on 20 January 2020 when they discussed how to deliver the judgment and it was agreed that she should talk through each paragraph in age appropriate language. The Guardian gave evidence that she spoke to Ms Miller on 21 January 2020 and explained how she intended to deliver the judgment. She explained that she would not address the paedophile issue and Ms Miller, she says, was content with her proposed actions. The Guardian and her solicitor met with the children on 21 January 2020 and discussed in detail what they intended to say and she said that upon speaking to them the children had no questions on the matter.

[14] By agreement, the applicant father put before the court some correspondence from Ms Miller in relation to this issue. In her letters Ms Miller states that at the court on 10 January 2020 Mr Justice O'Hara alluded to a joint visit to Orla and Martin taking place to include the Guardian and the social worker. She said she discussed this with Ms Forster and her legal team after the court and they were clearly of the opinion that her presence was not required and that Ms Forster and the solicitor would be visiting. A follow-up telephone contact took place with Ms Forster and during which Ms Miller says that she "asked her to reinforce the areas of discussion, particularly the comments and the false allegation of the father being a paedophile." That is where this matter was left.

[15] In addition to this issue the father has raised some problems in relation to the children's schooling and also the health of Martin. He raises his great concerns about Martin's non-school attendance in the past and his health issues which have led to specialist intervention for bowel problems. He also raises some issues about Orla's involvement with school which has not been that positive. These matters are dealt with in the written submission and there are a number of aspects to them.

[16] I do have a concern that these issues were raised just over 3 months from the judgement of O'Hara J however to satisfy myself I asked the Official Solicitor to undertake some enquiries. I asked the Official Solicitor to assist and make contact with the schools and the Education Authority and to comment upon the welfare of both children. I should say that the Official Solicitor considered that interviewing of the children was not appropriate at this stage given the extent of litigation in the past and the indicators in the judgment particularly *viz a viz* Martin that he just "wanted to be alone." In her position paper the Official Solicitor expands on this as follows:

> "I am very mindful of the fact that Martin's health and school attendance having recently greatly improved which may well be a reflection of his being in a better place emotionally and psychologically. Martin is clearly fragile and has been through a lot. The ongoing court proceedings lasting almost a decade and most of his childhood and the acrimony between his parents has cost him dearly. In addition, Martin has lost the relationship with his father for a considerable part of his childhood. I am acutely aware that any re-engagement on the part of professionals with the children for the purposes of court proceedings would put the children at risk of further emotional harm and distress and might well undo the considerable positive progress which appears to have been made certainly in terms of Martin's emotional wellbeing at an important stage and time of his life, particularly in relation to his education."

[17] The Official Solicitor also took the trouble to speak to the school Vice Principal in relation to Martin and she made contact with the Education Authority. The Official Solicitor reports that the school Vice Principal was keen to point out that Martin had been at school prior to Covid and was doing well, she said that his school attendance improvement was important. She pointed out some issues about eating but generally it was a positive report. The most recent update received via the Official Solicitor is that Martin has also made some progress in relation to school meals.

[18] The reports obtained regarding Orla's education are not so positive as concerns had been raised by the teachers in relation to Orla's lack of engagement and attainment. In her reports the Official Solicitor concludes that there was good information sharing by both schools and the Education Authority with the father and I am content in relation to that. Clearly there are concerns about Orla's lack of engagement at school but as the Official Solicitor rightly points out but she is now a girl who is over 17. In relation to Martin's health issues it is clear that this is again a concern but the father has been kept informed of this by speaking to the consultant.

[19] During the course of his submissions the father also made the case that he has been trying to send indirect contact and this has been not reciprocated. Some points have also been made about the content of the indirect contact and the extent of it. That is why the mother requests no contact whatsoever. In his application the father is asking for an extension of contact and also suggests that he should for instance be able to buy flying lessons for Martin, a car and driving lessons for Orla and generally have greater input into their lives. In her application the mother states that the father's contact with her amounts to harassment and that the children do not want contact and should not be subjected to having continued contact of the nature provided by the father.

Consideration

[20] The first point to make in this case is that the litigation has now been over 9 years which is a long period. As I previously said it is not the purpose of this court to deal with ongoing complaints and parental hostility. That, in essence, deflects from the court's real purpose which is to consider the welfare of the children. Certain findings have already been made in this case and there is absolutely no reason put before me which would make me think that I have to look at those again. Both parents have continued to make allegations against the other in their written submissions. However, I am not conducting a fact finding in relation to historical matters given the fact that this case was decided by Judge O'Hara and because such an approach would be contrary to the imperative to deal with children's cases in a timely way and would be totally disproportionate to the issues at play. I am guided by the Children Order and the principles in that in relation to a case of this nature are clear. Under Article 3 of the Order:

"3.—(1) Where a court determines any question with respect to—

(a) the upbringing of a child; or

(b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

Article 3(3) states that:

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;

(g) the range of powers available to the court under this Order in the proceedings in question.

Article 3(5) also states:

> (5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all."

[21] I have considered the above in reaching my decision. The father has also presented a range of decisions to the court from various family law courts. Of course each case is fact specific but suffice to say I am familiar with the cases that he raises, in particular the cases about parental alienation. The father also raises the European Convention on Human Rights and he is correct to do so because the Convention is engaged particularly Article 8 which relates to rights to private and family life. Those rights are enjoyed by the father in relation to his children but they are also enjoyed by the children.

[22] A striking characteristic of this case is that the children are now 17½ and 14½. In children law terms it is rare to have jurisdiction at all for a child aged 17½. The only reason why this case remains before the court is that the specific issue order was made until age 18 in the exceptional circumstances. The father rightly observes that this is an important factor and in all the circumstances of the case it seems to me that there is very little by way of intervention that could possibly occur in the case of Orla given her age and circumstances. I say this notwithstanding the fact that she is clearly not attaining at school but she is a girl who will fairly soon turn 18 and become an adult and she can in blunt terms make up her own mind about what relationship she has with her father in the future.

[23] I have some concerns about Martin's presentation however I am reassured by the enquiries the Official Solicitor has made in relation to that. It appears that the school issue is not as bleak as it first appeared. If progress continues hopefully the Education Authority will not need to intervene. I am also satisfied that the school are actively looking at the issue of school meals and Martin's diet.

[24] The judge did not make an order for contact. I am now being asked to make a no contact order in relation to the children. That is a draconian order and it is not one that I think is merited in this case. I should say I have looked at the indirect contact that the father has sent and I consider that it is appropriate save it should not include any references to parental disputes; sadly that has to be spelt out. In terms of frequency the contact should be along the lines suggested by the Guardian in that the father may send an indirect contact by way of card and/or modest gift at each child's birthday and Christmas. The children are not obliged to return the indirect contact but they should be encouraged to do so if they so wish. It is unrealistic of the father to think that I can provide for anything else. This is clearly not a case where he can achieve residence. It is clearly not a case on the basis of the wishes and feelings of the children where he can obtain direct contact. The indirect contact is

essentially to allow him to keep up a link but frankly it may be that that is not going to be reciprocated in the near future. It is also unrealistic of the father to think that he can involve himself further by buying the flying lessons or the car/driving lessons. That is simply not going to work in this case for the reasons given by O'Hara J. Accordingly, I dismiss the mother's application as I have decided not to change the current framework for indirect contact which is operating under the no order principle.

[25] In relation to the previous judgments, I am not going to engage in a pointless dispute about the actions of Ms Forster and Ms Miller. However, I am slightly concerned that the children may have been left with an inappropriate impression about their father either directly or indirectly. I know what the Guardian's intentions were in terms of not discussing the paedophile allegation. I understand that raising the issue at all may backfire on the father. However, this issue hangs in the air and the father wants it addressed. Martin was present when the house was raided by the police and so he must have some awareness. I therefore tend to think that the children should be told that the judge determined that their father was not a paedophile and that there was no evidence of such material on his computer. I do this accepting that the mother's submission before me was that she has never said that he is a paedophile but the mother did repeat that the computer expert told her that it was paedophilic material. So, on balance I think that this needs to be properly addressed otherwise it will fester and cause problems and it is going to have to be addressed at some stage in the future. I am going to ask the Official Solicitor to deal with this issue in a further visit to the children, the terms and timing of which the Official Solicitor should decide. The Official Solicitor can also deal with the issue of indirect contact as the children should be told that they are only going to receive something at Christmas and on each of their birthdays and they have a choice whether to respond or not and that is all the court is ordering.

[26] In relation to information sharing, as I have said, the schools have acted entirely appropriately and I am very grateful to the Official Solicitor for confirming with me that there is absolutely no problem with information sharing to the father directly by the schools. The specific issue order also requires information sharing about health with the father and it appears that he has had an involvement with Martin's consultant. I will therefore dismiss the father's application on the basis that the current specific orders remain in place and that indirect contact remains open.

[27] Other than that there is not much more that this court can do save to stress that it would be a further tragedy for this family if the Education Authority had to bring proceedings. It would be a further tragedy if Martin continues to have problematic health. This case is crying out for the children to be allowed to have a breathing space and a normal childhood. I am not sure that both parents are able to see that because they are consumed with their own dispute with the other. However, they should realise that these matters will ultimately resurface when these children become adults. If the children are not well adjusted now they have little hope of being well adjusted in their own relationships in the future. That is quite a

burden for any parent to bear but it is something that I think will probably arise in this case if the parents cannot see past their own interests.

[28] Finally, as I have raised the Article 179(14) provisions I invite each party within one week to file any written submissions that they want to make about whether or not I should impose an order which would require either party to have the leave of the court before any further application would be determined. There are some cases on this which the parents might want to look at such as *Re P (Section 91(14) Guidelines: Residence and Religious Heritage)* [1999] 2 FLR 573 and *KT v ST* [2017] NI Fam 7.

Conclusion

[29] The specific issue orders will remain in place. There will be no further order. I have given directions to the Official Solicitor in relation to speaking to the children. I direct written submissions on the 179(14) point within one week after which I will issue a decision in relation to that.