Neutral Citation No: [2020] NIFam 30	*Ref:*	KEE11198
	ICOS No:	19/65184
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	09/10/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF AN APPLICATION UNDER THE CHILDREN (NORTHERN IRELAND) ORDER 1995

AND IN THE MATTER OF AN APPEAL PURSUANT TO THE FAMILY HOMES AND DOMESTIC VIOLENCE (NORTHERN IRELAND) ORDER 1998

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Between:

HM

Appellant;

and

VM

Respondent.

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HM (the Appellant) appeared as a Personal Litigant
Ms Simpson QC with Ms Vance BL (instructed by Keenans Solicitors) for the Respondent
Ms Murphy BL (instructed by Ms Coll on behalf of the Official Solicitor to represent the interests of the children)

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KEEGAN J

Nothing must be published which would identify the children or their family. The names I have given to the children are not their real names.

Introduction

[1] This case was referred to me by the Court of Appeal for a rehearing of issues relating to contact between the father and his children. This follows proceedings before the Family Care Centre which led to orders being made by Her Honour Judge Loughran which were then appealed by both parents to the Court of Appeal. HM is

the father of two children whom I will call Mary and Jack. Mary was born in 2013 and so she is now 7 years of age. Jack was born in 2015 and so he is now 5 years of age.

[2] I first reviewed the case on 29 July 2019 when the matter was allocated to me. I then heard the case substantially over three days in August 2019 and again in February 2020. I was about to give judgement when Covid-19 intervened but thereafter I have regularly reviewed the case and issued various interim orders, the last being after my administrative review of the case on 22 September 2020.

[3] When I first took carriage of the case, the father was not availing of any contact with his children at all and I was obviously extremely concerned. As will be apparent from this judgment, matters did move on in that some direct contact was established. However, as of September 2020 further issues have arisen which mean that I cannot finalise this case. This is therefore an interim ruling so far as contact is concerned.

[4] I have sufficient information and evidence to allow me to determine other matters which may assist going forward and that is why I have compiled this written judgment at this stage. In doing so I have considered all of the written submissions I have received over the last 18 months. I have adopted the helpful suggestion of HM contained in paragraph 5 of HM's submissions of 15 September 2020 that an inquisitorial approach is required to bring this case to a final conclusion. I will therefore set out what matters need further exploration and which matters are closed.

Background

[5] The two parents in this case met whilst engaged in projects abroad. They married on 17 March 2012. The father is from Scotland and he is a qualified post-primary teacher. His father lives in Scotland and HM has some caring responsibilities in relation to him. Having read the testimonials provided by HM it is clear that he has the benefit of a body of friends in Scotland. The mother is originally from Northern Ireland and is a qualified special needs teacher. She lives here and has maternal extended family around her. The two parents separated in a manner which has not been conducive to a resolution between them. I will come back to the consequences of this in due course.

[6] There was a brief separation of the parties in October 2014. The more fundamental separation was in December 2014 when at the end of a family holiday to see her parents the mother informed the father that she was not returning to the family home in Scotland. At this stage the mother was two months pregnant with the youngest child. As has been apparent in the numerous court proceedings that have taken place there is a dispute between the parties as to why exactly the relationship broke down. However, both parents have rightly acknowledged that allegations about each other are not core to these proceedings which should be

dealing directly with the welfare of the children. Notwithstanding the great hurt that the parties feel, particularly HM, I was impressed when he said that he required the judgment to deal with certain issues but that he did not want it to look at adverse findings against either him or his wife. The sadness of this case is that, like other families, a relationship has broken down and now arrangements for the children require to be settled.

[7] The added complication in this case is that the parties live in two different places which are separated by a sea. This creates practical and logistical difficulties in relation to HM maintaining his relationship with the two children. In addition, it is quite clear that after VM left Scotland to come to Northern Ireland, HM has not been able to sustain employment. After this move HM applied to join the PSNI in Northern Ireland and he came to live here for a time. He was successful in that application and began some pre-service training at Garnerville. However, that was then suspended. HM has an extant judicial review application in relation to that. HM is now unemployed and has limited financial resources. VM, whilst employed, is of limited financial means.

Previous court proceedings

[8] The Children Order proceedings in Northern Ireland begin on 23 October 2015 when VM issued a C1 application to the Family Proceedings Court seeking a residence order. It is clear from the papers that I have reviewed that this was lodged on 26 October 2015. On 16 November 2015 a C4 acknowledgment of service was received by the father dated 6 November 2015. At this stage the father was legally represented. It is recorded in that C4 acknowledgement of service that the father did not challenge jurisdiction but sought contact arrangements to be put in place. It also appears that HM did not dispute residence to the mother.

[9] On 2 December 2015 there was a directions hearing at Newtownards Family Proceedings Court where both parties were legally represented. It appears at that stage that the father was directed to file a report on his mental health by 18 January 2016 something which he did given that a report was obtained from Dr Loughrey. On 21 January 2016 there was a review at Newtownards Family Proceedings Court. Again, both parties were legally represented and statements of evidence were filed and the case was listed for hearing on the residence and contact issue on 17 February 2016.

[10] On that date it appears the case was adjourned for a court children's officer referral and an interim contact order was granted by consent and the case was adjourned to the 16 March 2016 for hearing. I should say at this stage that having read the statements it is clear that from the separation which occurred after December 2014 there was contact for the father in Northern Ireland and whilst there were some difficulties in that being maintained it was both supervised and unsupervised.

[11] By 16 March 2016 it looks like HM dispensed with his legal representatives and thereafter he appeared as a litigant in person. On 16 March 2016 the matter was listed for review at Newtownards Family Proceedings Court. It is clear (and I have previously outlined in my judgment of 10 February 2017) that at this stage HM advised the court that he did not wish to pursue the jurisdiction issue. The case was adjourned as the court children's welfare officer report was not available. Fairly shortly thereafter on 18 March 2016 HM corresponded with the court office requesting a hearing on jurisdiction. The case then appears to have been transferred to the Family Care Centre on the basis of an appeal. I still cannot work out the exact terms of this appeal but the matter was clearly remitted to the Family Proceedings Court.

[12] I pause to observe that by this stage it was quite clear that the father was disputing the jurisdiction in this case and from the correspondence I have read in his files he was clearly asking the court to adjudicate upon it. On 19 May 2016 the case was listed before Newtownards Family Proceedings Court for determination on the jurisdiction issue. It could not be heard on that date and it was adjourned a number of times to fix a date but the hearing ultimately occurred on 21 July 2016. A decision was reached by District Judge King that the Family Proceedings Court did have jurisdiction to hear the case. I note that HM was unhappy with the decision and so he appealed and he also made complaint against the District Judge who heard it.

[13] On 22 July 2016 a Notice of Appeal was lodged and that was heard by the Family Care Centre over three days on 12 and 13 October 2016 and 1 November 2016. On 6 December 2016 the court determined that Northern Ireland had jurisdiction for the purposes of the Children Order proceedings. The court noted that the matter should return to the Family Proceedings Court to deal with the substantive case. This matter was heard by His Honour Judge Sherrard. On 6 December 2016 a Notice of Appeal to the High Court was lodged by HM from this decision on jurisdiction.

[14] The matter came to me and I heard the case on 16 January 2017. On this first appearance I raised an issue that the matter was not properly before me as it should have been a case stated. I therefore dismissed the appeal on a jurisdictional basis and that decision is comprised in my judgment *HM v VM* [2017] NIFam 2. When I dealt with this case I received a number of documents from HM and I tried to assist in him terms of moving his case forward. Firstly, I had received an opinion from Janice M Scott QC of 10 July 2016 dealing with the issue of jurisdiction in Scotland. Secondly, HM provided a proposal to the court to deal with all matters in terms of his children which would also necessitate him agreeing to accept the jurisdiction of the court. In dismissing the case that I had before me due to lack of jurisdiction I said that:

> "I do hope that this case can now be dealt with promptly and that the focus will be upon settling contact arrangements for the children."

[15] This sentiment chimes with that expressed by other judges who have dealt with this case. Also, in an effort to assist HM, I indicated that if matters were returned to the Family Proceedings Court he could apply to transfer the case to a higher court. Ultimately that did not occur and further proceedings have now been before the courts on the following basis.

[16] Proceedings were heard in the Family Proceedings Court following my ruling and they resulted in an order of the District Judge of 8 March 2017. By virtue of that order a residence order was made in favour of VM until each child attains the age of 16 years and a contact order was made for HM to have such contact with the said children as follows:

"Such contact as can be agreed between the parties."

[17] This matter was then appealed and the case was heard by the Family Care Centre before His Honour Judge Kinney who was successful in arranging for contact to take place, not without hitches, but on a relatively consistent basis. The actual orders from Judge Kinney are not in the trial bundles. In any event the Family Care Centre proceedings culminated in a hearing before Her Honour Judge Loughran sitting as a Deputy County Court Judge. Her Honour Judge Loughran made an order of 31 January 2019 which provided for direct and indirect contact for HM on an alternate basis between Northern Ireland and Scotland. Her Honour Judge Loughran provided a comprehensive written judgment setting out her reasoning. This judgment and order did not satisfy either party and both HM and VM brought applications to state a case to the Court of Appeal. Thereafter, the matter was considered by the Court of Appeal and that is why the matter was remitted to me for a rehearing.

[18] In addition to the Children Order proceedings there are non-molestation order proceedings which are before the court. At the outset I did not wish to cloud the Children Order proceedings with a contested hearing on this issue however it became necessary to bring these proceedings into focus in my court so that I could get a full picture of the case. It appears from trial bundle 8 which has now been filed that an application was made by VM for a non-molestation order. The format of this is rather hard to decipher and it is an undated application although the index states it is an F1 of 10 August 2018. There is a statement of VM attached. That statement refers to an allegation of domestic violence during the marriage and alleged behaviour by HM at Belfast Family Care Centre which led to the application. It appears that an order was made on foot of this application *ex parte* on 10 August 2018 by District Judge Rea. This was then renewed on 5 September 2018 by District Judge McKibbin and there was a further order that the proceedings be transferred to the Family Care Centre by way of an order of 5 September 2018.

[19] Judge Loughran in the course of her hearing also heard the non-molestation proceedings and by separate judgment she made an order on 10 April 2019 for 18

months which stated that the respondent (HM) is forbidden from communicating either directly or indirectly with the applicant (VM) unless such communication is in respect of either or both of their children. The respondent is forbidden from including any communication, either direct or indirect, in respect of either or both of the said children regarding any of the following:

> "Any reference to the history of the relationship with the applicant and the respondent, any reference to the history of contact between the children and the respondent, any reference to the history of contact between the children and the respondent, any reference to the behaviour of the applicant as a parent, any reference to the personal qualities of the applicant."

The respondent (HM) was also forbidden from threatening violence against the applicant and from intimidating, harassing or pestering the applicant.

In trial bundle 8 part of the judgment of Judge Loughran is provided.

[20] I have considered all of the other material by way of email history and text message history between the parties. This seems to be the sequence of previous court proceedings.

The progress of court proceedings before me

[21] As I have previously said this case came to me in July 2019. I was aware that the father was extremely distressed about the lack of contact with his children to the point where he said that he was going to engage in a hunger strike. That is why I heard the case immediately and out of the court term in August 2019. I also noted on the file correspondence from a Mr Forsythe who had written to the court on behalf of the appellant from an organisation called Families Need Fathers. I was happy to allow Mr Forsythe to act for HM as a McKenzie friend and attend court but unfortunately that did not come to pass and HM so acted as a litigant in person before me at the hearing which began in August 2019. This hearing was not without its difficulties as HM was often agitated and unable to control his emotions. To assist him I allowed him to present evidence from his own treating psychiatrist in Scotland, Dr Sheard and I heard some evidence from this doctor which was helpful.

[22] After the hearing on 30 August 2019 I decided to appoint the Official Solicitor to represent the interests of the children and assist with interim contact whilst the case was part heard. Ms Coll was appointed and from the word go she has been of enormous assistance along with her counsel Ms Murphy BL in arranging contact. HM has also rightly acknowledged the benefit the Official Solicitor had brought to this case. Notwithstanding ups and downs the court has managed to keep direct contact going. This has required enormous time and effort from all, in particular the Official Solicitor who has assisted with each and every arrangement. I pause to

observe that problems have arisen on both sides as even the simplest arrangements could not be agreed.

[23] HM decided to disengage around November 2019 when I was reviewing the case. In particular he absented himself during two Sightlink reviews on 18 and 20 November 2019. I proceeded to make interim contact arrangements nonetheless in the hope that HM would engage. HM did engage and direct contact eventually took place in December 2019 with the help of the Official Solicitor and it went well. At this stage there were clear green shoots which was very pleasing to this court after such a gap in contact.

[24] The matter came back to me for hearing on 10 February 2020. That was after an unfortunate period during which the court had to mediate between the parties in relation to the court papers. I must observe that when the case was listed in November 2019 the papers were in disarray and that caused delay and endless court time until the situation was corrected. I am sympathetic to HM's frustrations during that period. However, once the papers had all been put before the court in proper order the matter was ready to proceed in February 2020. A joint consultation had taken place the week before facilitated by Ms Murphy BL, counsel for the Official Solicitor. I am very grateful to her because following this meeting she circulated a draft Order which comprised the recommendations of the Official Solicitor for contact going forward. This provided for substantial contact for HM in Northern Ireland and Scotland on an incremental basis.

[25] On the first day of the hearing in February 2020 HM appeared in person and was in very good form. He told me that the joint consultation had gone really well, he was in agreement with that moving forward but with a few tweaks he thought the Order could be agreed and he thought that even though he would like further contact he would be pragmatic and he was agreeable to the Official Solicitor's suggestion in broad terms. In fact in relation to one part of the order he agreed a compromise. Ms Simpson QC was also positive and indicated that her client wanted to move on, that she was prepared not to rely on Dr McCartan's assessment and not proceed with the non-molestation proceedings. Ms Simpson said that she simply required some further time on behalf of VM because she took some issue with the pace of contact and she raised one point which was the location of contact at Easter.

[26] The full day was given over to very productive discussions. During the day I reviewed the case on a number of occasions and I heard from both parties that there was a broad understanding that there should be a moving forward on this framework. I should say that the Official Solicitor also presented an agreed expectations document which deals with issues of parental responsibility and the sharing of information with both VM and HM as parents of the children. This was again very useful. As the day progressed it became clear that the parties would need some time to read the various different documents and in particular HM raised some issues about some of the documents so I allowed the case to adjourn overnight.

[27] Unfortunately, when I came back the next day HM was no longer in agreement and he appeared in a state of high anxiety. This meant that there were difficulties in proceeding further. Therefore, I decided that I would conclude the case by receiving written submissions on the issues. I received substantial submissions from each party having allowed HM additional time.

[28] I was about to give judgment in March 2020 when Covid intervened and so I had to postpone. However, to the credit of both parents they worked well during Covid restrictions as some arrangements were made for contact and whilst there was disruption to direct contact, it was reinstated when restrictions were relaxed. I also adjudicated on some sticking points such as the cost associated with HM travelling for contact which I decided should be borne in part by the residential parent VM.

[29] I regularly reviewed the case in an effort to move on with contact including contact in Scotland which I ordered to occur in September 2020. There were hiccups some of which were of particular moment as follows: HM complained about his indirect contact and I thought that he had a point about the fact that the children were out of the house when he was calling. I was very disappointed that the contact I ordered in Scotland did not happen. I do not think that VM really assisted in facilitating this and I am particularly concerned that she booked a trip to the north coast and did not provide details of that. VM also complained about ongoing hostility from HM in messages to her.

[30] All of these issues could be worked out. However, a major issue arose in September 2020 as a result of which both the mother and the Official Solicitor brought C2 applications to the court. I will not recite the full details here but suffice to say that the events raised serious concerns in relation to that HM's stability. I know that HM apologised and said he did not mean what he said and that he had drunk a bottle of wine when he had sent the emails. By this stage I was told that HM had also discovered that VM may have a new partner. This led me to list an urgent review on 10 September 2020 as HM was due to have contact that weekend. HM presented in a very agitated state at this Sight link review and ultimately he removed himself from the link. I completed the review and had the transcript sent to HM in which I said I could not allow contact to go ahead given his presentation. I also suggested that he should get some help from Dr Sheard or someone else. Subsequent to this review HM emailed the court as he usually does to ask why I suspended contact. I am worried that HM did not understand the fact that contact could not take place whilst he was in such a state. Even though supervised contact was suggested I have to decide cases on the basis of the best interests of the children and that is why I took the view that I did. HM needs to realise that his actions have consequences. On 22 September 2020 I made an administrative order reinstating indirect contact once a week and stating that direct contact could resume if HM provided evidence of his own stability. That is where the case stands at present.

The way forward

[31] It is within my discretion how to manage the case going forward. This issue of case management is raised in a number of established family cases. It was explained by Lord Justice Gillen in the case of *Fergus and Marcail* [2017] NICA 71. In *Re B (A Minor) (Contact)* [1995] 2 FLR 1 the English Court of Appeal referred to a spectrum of procedure for family cases. This has been explained in a variety of subsequent decisions which are set out. In particular, in *Re C (Contact): Conduct of Hearings* [2006] 2 FLR 289 at paragraphs 30-33 Wilson LJ, as he was, cited with approval the *dicta* of Butler-Sloss LJ in *Re B* as follows:

> "In my view a judge in family cases has a much broader discretion to conduct the case as is most appropriate for the issues involved and the evidence available. There is a spectrum of procedure for family cases from the ex parte application on minimal evidence to the full and detailed investigations on oral evidence which may be prolonged. Where on that spectrum a judge decides a particular application should be placed is a matter for his discretion. Applications for residence orders or for committal to the care of a local authority or revocation of a care order are likely to be decided on full evidence, but not invariably."

As Gillen LJ said at paragraph 32:

> "In short these are not ordinary civil proceedings. Family proceedings present a situation where it is fundamental that judges have an inquisitorial role, their duty being to further the welfare of the child which, by statute, is paramount. Hence judges exercising the family jurisdiction have a much broader discretion than they would have in the civil jurisdiction to determine the way in which an application is being pursued."

[32] These sentiments chime with those of the former President of the Family Division of the High Court in England & Wales, Lord Justice Munby in the case of *Re C (Children)* [2012] EWCA Civ 1489. I am, of course, cognisant of Article 6 of the European Convention on Human Rights and Fundamental Freedoms which is the right to a fair trial. HM has consistently mentioned this obligation to me and I am acutely aware of it. That is why I have decided not to finalise the case at this time. I will, as HM suggests, indicate what else I need to hear about and when and what I can decide at this stage. I do all of this, having taken into account the rights of both parents and the children in this case.

[33] HM is a personal litigant and I have been particularly understanding of that by affording him considerable time and latitude to make his case and by adapting to his fluctuating presentation as best I can. HM has ably presented his case in writing and during oral submission when he has been calm. However, on occasions he has

not been able to regulate his emotions. I have made allowances for this given the diagnosis of Dr Loughrey of a chronic adjustment disorder. However, I have to proceed with the case bearing in mind that the paramount consideration is the welfare of the children. In our courts there is also an overriding objective to deal with cases in an effective manner which saves time and costs. This theme is reflected in Article 3(2) of the Children (Northern Ireland) Order 1995 which requires the court to avoid unnecessary delay.

Determination of the Issues

[34] I will deal with jurisdiction which continues to be raised. There are potentially three aspects to this. Firstly, whether the courts in Northern Ireland should have assumed jurisdiction in this case; second, whether I have jurisdiction to make an Article 8 order; and third, whether the background facts have a bearing on this case. I will deal with each of these strands in turn. As to the first point, HM maintains that the courts in Northern Ireland should not have assumed jurisdiction due to an unlawful removal. As such he has argued that the Scottish courts should have jurisdiction pursuant to the Family Law Act 1986. This legislation deals with conflicts between jurisdictions within the United Kingdom on the basis that only one court should have jurisdiction. Such disputes are not without their complexity and clearly should be decided by the higher courts. This part of the case has been finalised by the Court of Appeal in Northern Ireland. The adjudication was contained in a judgment given by Gillen LJ on 10 February 2017 sitting with Stephens LJ and Weir LJ and it is binding upon me. I appreciate that HM does not agree with this judgment but there is nothing I can do about that.

[35] Since that ruling the courts in Northern Ireland have dealt with this case and various orders have been made. We are now far away from the dispute between whether the Northern Ireland or Scottish courts should hear the case. Clearly a court needed to hear this case and that has been in Northern Ireland. I must satisfy myself that I have jurisdiction to make an Article 8 order. There can be no question that I do given the fact that the children clearly have their habitual residence here. This means that I have jurisdiction by virtue of the Brussels II Regulation which governs jurisdiction to make Part 1 Orders under the Children (Northern Ireland) Order 1995.

[36] However, I am entitled to consider the background circumstances in making any order. I note the comments of Lord Justice Stephens made in the Court of Appeal and I agree that the way the mother left Scotland was extremely problematic. Understandably, this has led to a palpable lack of trust on HM's part and that is relevant in constructing contact arrangements going forward.

[37] Secondly, I think it is important that I deal with the non-molestation order appeal. I have actively encouraged the parties to try to resolve this in an effort to move on with contact. In her final submissions VM has effectively conceded this appeal and as such it seems appropriate that these proceedings should come to an

end. They are separate proceedings under the relevant legislation. If an appeal is allowed the order is discharged from its making. In these circumstances it would be wholly disproportionate to prolong a case which has no purpose and which has been conceded to HM's advantage. I will therefore allow the appeal and discharge the non-molestation order.

[38] The final substantive point that HM has raised in his papers and before me on a number of occasions is his complaint about the courts in Northern Ireland. I note that he has complained against very many judicial office holders and professionals in the course of these proceedings. That is his right. However, he goes further and argues breaches of his human rights and he seeks damages against the Northern Ireland Court Service. It would be entirely inappropriate of me to make any adjudication on this without the relevant parties being represented in proceedings and so I do not do so. HM may bring separate proceedings if he so wishes in the civil courts.

[39] HM refers to other proceedings he has for judicial review which he can apply to have heard. HM also raises the divorce proceedings which I do not have before me but it may be that both parties should think about dealing with those proceedings in an effort to finalise this case.

Conclusion

[40] Hopefully, the above determinations will clear the air and assist with bringing finality to some issues. The remaining issue is contact between HM and his two children. In looking at this issue I must apply the principles within the Children Order, in particular Article 3 of the Children Order which enjoins me to look at the welfare of the children as the paramount consideration. I must also look at the welfare checklist and apply the principles in Article 3 including the no delay principle enshrined in Article 3(2). The draft order and agreed expectations is an excellently drafted document prepared by Ms Murphy on behalf of the children whom the Official Solicitor supported. The mother also supported this plan with some reservation about practicalities and the pace of change. The order was very much in favour of HM. Recent events demonstrate that to get back to that position or something like it some further time is required. I do not think that the scaffolding can be removed in this case as yet otherwise arrangements will not work. So, whilst I am sympathetic to VM's case that there should be no further delay, I consider that some further time is purposeful in order to achieve a more stable outcome.

[41] Upon Dr Sheard and/or another suitably qualified person assisting me as to HM's stability I see no reason why supervised contact cannot begin again in Northern Ireland and then in Scotland. I will have to see how that goes before consideration is given to any extended and unsupervised contact. In the meantime, the order for indirect contact will continue. I think that HM needs some breathing space but hopefully not too long and so I will provisionally list the case for final hearing on the next available date in February 2021, the said date to be

communicated to the parties forthwith. In my view that should afford enough time for the remaining issue of contact to be determined as I do not think that this case should go on much longer.

[42] As I have said, I hope that interim contact will progress in the meantime but there is liberty to apply in relation to that and any other matter. The Official Solicitor will remain in the case and I would be grateful if she could assist with interim arrangements and a timetable for the final hearing.