

Neutral Citation No: [2021] NIFam 29	Ref: OHA11579
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	ICOS No: 15/104855
	Delivered: 29/07/2021

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

Between:

A HEALTH AND SOCIAL CARE TRUST

Appellant

and

MOTHER GH and FATHER IJ

Respondents

O'HARA J

All of the parties in this judgment have been anonymised so as protect the identities of the children to whom the proceedings relate. Nothing must be disclosed or published without the permission of the court which might lead to their identification or the identification of any adult relatives.

Introduction

[1] This case centres around the care planning for three children - a boy AB who is 15, another boy CD who is 13 and a girl EF who is 9. I gave a judgment in July 2019 after a protracted fact finding hearing in which I detailed the violent and destructive relationship between their parents which had blighted the lives of the children. It has continued to do so. The father appealed against my judgment to the Court of Appeal and that appeal was dismissed. At paragraph 35 of its judgment, [2020] NICA 3, the Court of Appeal said:

“This is a horrific case and the awfulness of the harm caused to all three children is readily apparent to this Court even though it is one step removed from the consideration of the primary evidence in this case. The degree of inhumanity displayed by IJ in relation to GH is

beyond comprehension. The Court considers that this appeal has served to give rise to further harm being inflicted upon the three children, one of whom is suffering from a serious illness.”

[2] The current position with the children should be explained at the start:

- As before EF still lives with her mother. She has not seen her father since March 2018.
- AB now also lives with his mother and has done so since February 2021. He had lived with his father (and CD) until January 2019. At that point he went into foster care. He had mixed experiences there until he went to his mother in February 2021. AB has not seen his father since 4 October 2019. The last straw for him was that on that date he had a hospital appointment about treatment for cancer. His father attended but instead of focusing on and supporting his son he focused on his opposition to the Trust and then left abruptly. AB was very distressed and mystified, asking why his father would do that. This led him to reappraise his life, to distance himself from his father and to rebuild a relationship with his mother and sister with whom he wants to remain.
- CD has been continuously in foster care since August 2019. Until late June 2021, after a variety of placements, he had been in a residential home with a few other children. CD refuses to see his mother or either of his siblings. He sees his father and asserts that he wants to return to live with him. As the hearing before me started on 17 June 2021 he had moved to a foster care placement. That change led me to decide to hear all relevant evidence about AB and EF on 17 and 18 June 2021 but to adjourn CD’s part of the case until late July in order to see if the foster placement was working or starting to work.

[3] This judgment is about what orders, if any, should be made under the Children (NI) Order 1995 on foot of the fact finding hearing, in light of my judgment and the Court of Appeal judgment and what has happened in the last two years in respect of each child. The Trust, the mother and both Guardians ad Litem support the making of care orders in respect of all three children. The father submits that no care orders are required, that all three children should be returned to him and that this should be done as soon as possible. He contends that the care plans are inadequate in a variety of ways. As an alternative submission he suggests that in CD’s case I should make a supervision order but on the basis that CD lives with him.

The Father’s Case

[4] For the care planning hearing, the father submitted a 70 paragraph statement with more than 200 pages of exhibits, mainly photographs of what he depicts as a

happy family destroyed by false allegations by his wife and flawed findings by me based on unreliable, inaccurate and inconsistent social work reports and experts' opinions. He rejects all of my findings against him, reasserts his good character and denies any wrongdoing. He contends that he has been open and honest, respectful and grateful when appropriate. In addition, he complains bitterly about what he regards as harsh treatment of him while the mother, who he regards as deeply flawed, dishonest and sick, gets away with everything.

[5] The father was not called to give evidence during either part of the care planning hearing, the first part about AB and EF, the second part about CD. There was short and limited questioning by his counsel of the few witnesses who were called on the basis that the father's statement was to be taken as read as were all statements, Trust reports, Guardian reports and experts' reports. In addition, at the conclusion of the hearings, I received written submissions on behalf of the Trust and the father.

Threshold Criteria

[6] In order for me even to consider whether I should make a care order or supervision order I have to be satisfied that threshold criteria have been established within the meaning of Article 50 of the 1995 Order. Using the statutory language, that means that I have to be satisfied that each child is suffering or is likely to suffer significant harm and that such harm, or likelihood of harm, is attributable to the care given or likely to be given to that child if no order was made, not being care which it would be reasonable to expect a parent to give. That harm can be physical or emotional and the word "significant", according to Article 50(3), means compared to the health or development of a similar child.

[7] In CD's case, though not in AB or EF's cases, the submission for the father has challenged the existence of threshold criteria. That challenge has been made, at paragraphs 5-8, by way of a misleadingly limited reference to paragraph 59 of my judgment of July 2019. It is simply not possible to read that judgment properly without realising how the threshold criteria are clearly satisfied in respect of each child. To take just one example paragraph 59 continues by referring to the mother being brutalised by the father in the family home "in the presence of the boys." That part of the paragraph is omitted from the written submission for the father as are many other relevant findings.

[8] It was also submitted that "there is no evidence to support a finding that the care provided by the father will give rise to continuing harm to CD." That is simply wrong, hopelessly wrong. The evidence given by Ms S Leitch, social worker, is that CD uses his father's language when rejecting efforts by social workers and others to engage with him or to get him to talk to them. He does not use the normal language or vocabulary of a boy of 13. Rather when he attacks his mother and AB and the social workers he uses the language and vocabulary of his father, illustrating how much his world view is dictated and distorted by his father.

[9] The father's alternative or fall-back submission at paragraph 9 that I should make a supervision order, not a care order, is itself an acceptance that the test for threshold criteria is satisfied since a supervision order can only be made if they are.

CD's Competence

[10] AB is an intelligent 15 year old boy who has had representation by his own Guardian ad Litem for some time. On behalf of the father the issue of separate representation for CD was raised a number of times during the last 12 months or so of the case. The father's contention was that CD's voice was not being heard, that the Guardian was not representing his views and that CD was entitled to his own representation because he is competent.

[11] CD is a very intelligent boy. In many, if not most, cases such a boy of his age would be competent to instruct his own representatives. I was not however persuaded of that in CD's case. On this issue I had the advantage of a report from Ms C Fitzpatrick who is a solicitor with considerable experience in children's cases. The issue is not how clever CD is, which is not in doubt. Rather the issue is that he is controlled and dictated to by his father and has been for years, even in the time after he was removed from his father's care. This is illustrated by much more than the language that he uses. It is evident in his absolute refusal to see his mother, his sister or even AB.

[12] I am satisfied, unhappily so, that CD has no independent thinking when it comes to considering information he receives and forming an opinion. It is not that his opinion is one which others may disagree with. It is that his opinion is effectively predetermined by his father. His father has direct access to him, to influence and manipulate him, through a mobile phone which he gave CD. At last week's hearing it was represented that the father has blocked CD's number to prevent CD contacting him. Even if that is so, which I don't necessarily trust the father about, it is an access the father is in charge of and which he uses as he wishes, not responsibly.

[13] It is also necessary to make the point that the Guardian, who also represents EF, has consistently represented CD's views about wanting to return to his father and rejecting all contact with the rest of his family.

[14] Finally on this issue it was emphasised to me on a number of occasions, especially in June and July 2021, that CD was very anxious to meet me to tell me directly what his wishes and feelings are. I agreed to meet him and offered the dates of either 22 or 23 July 2021. When that was relayed to CD, he announced that he no longer wanted to meet me, that the decision was already made. I understand that to mean that in his eyes I had already made my decision. That may possibly be CD's independent view but I believe it is far more likely that this was his father's view and that that is the real reason why CD did not meet me.

The Mother's Position

[15] The mother supports the Trust's application for care orders. The care plans envisage AB and EF staying with her while CD stays in foster care, not returning to his father. The fact that AB is now with her, and that EF has stayed with her, represents something of a turn around and triumph for her. At earlier stages in this case she found herself in a very difficult position – emerging from an abusive and violent relationship and not necessarily responding well at different points to Trust intervention and support. As recently as December 2020 Dr Denise McCartan, clinical psychologist, had what she described as two “very disappointing sessions” with the mother. She effectively discontinued her work with her on that basis.

[16] Inevitably, this was seized on by the father to support his long running contention that the mother has a personality disorder and cannot be trusted to care for AB or EF. Dr McCartan acknowledged at paragraph 2.1 of her report that sometimes there is a problem with the “fit” between client and therapist. For that reason but also because of concerns I had about aspects of Dr McCartan's report I allowed the engagement of Dr Brian McCrum who reported in May 2021 after 7 sessions with her.

[17] Dr McCrum's report and oral evidence was much more positive about the mother and about her engagement, her response to him, her progress to date and the likelihood of further progress. Under cross-examination by counsel for the father he was clear that he would not have done a number of things which Dr McCartan did with the mother, that he took a different route. It was put to him that the mother had fooled him. He acknowledged that possibility but doubted it. I do not believe he was fooled by the mother. Before he met her he had read Dr McCartan's report so he knew what one professional thought of her already. He must inevitably have reached a contrary view cautiously, given his admitted respect for Dr McCartan. And while any of us might be fooled or deceived over one or two sessions, it is much harder for an expert to be fooled over 7 sessions.

The Father's Personality

[18] In the second part of the hearing Professor Daniel Wilcox, consultant clinical psychologist, gave evidence about his assessment of the father based on a series of interviews between 2016 and 2020. His conclusion, rejected by the father, was that the father has a personality disorder marked by narcissism, self-importance, grandiose ideas about himself and an absence of empathy for others. The Professor believed that any child raised by the father would be emotionally harmed by a disorder of this level and would be left unable to make key decisions for himself. Any child in his care would have to be totally compliant and so would be vulnerable and insecure.

[19] In relation to the father's capacity to change, the Professor believed that due to the father's age and the degree to which his thinking is fixed as well as his total refusal to accept help, there is little or no prospect of change

[20] The Professor testified that he could have formed this view on the basis only of his first meeting with the father but thought it unwise to do so because of the variables which come with just one meeting. He was entirely confident however on the basis of a series of meetings that his initial impressions were correct and the diagnosis of a personality disorder could be made.

Care Orders?

[21] The fact that threshold criteria are proved does not lead inevitably to care orders being made. If it is in the children's best interests, I should either make no order or the least interventionist order possible.

[22] In these three cases however it is quite impossible to make any lesser orders than care orders. These children have all been significantly damaged by witnessing and suffering from the conduct of their parents, especially their father. None of the children can possibly live with him without suffering even more damage. AB and EF are with their mother but she is still recovering from the abuse which she suffered and has to work her way through her own problems as she simultaneously cares for them. While they are better off staying with her than going anywhere else, they will need Trust support and access to counselling for some years to come.

[23] While CD refused to meet me, I met AB after the evidence had concluded. A note of that meeting was shared with the parties and now forms part of the papers in this case. I was taken aback about how impressive a teenager AB is. Despite everything he has been through over so many years he is funny, engaging and obviously clever. Significant credit for AB's presentation must go to the Trust and to Mr Robin Jordan, chartered psychologist, for the work which has been and continues to be done with AB. Mr Jordan's report, written in or about December 2020, describes the problems which AB has endured, illustrating yet again the damage he suffered (especially at pages 8-9) as well as the progress he has made.

[24] AB's major concern when I met him was how much he wanted to see CD. The fact that CD will not meet AB is a source of great sorrow to AB. AB has no desire however to see his father, now or in the foreseeable future.

[25] I can only make care orders if I am satisfied with the care plans. The father's objection to the care plan for AB and EF is the absence of any provision for contact with him. In AB's case that is entirely the father's fault - he himself has caused the estrangement from AB. In EF's case the mother did obstruct contact, as my 2019 judgment relates, but contact is not now in EF's best interests. For so long as the father maintains his fixed narcissistic views, contact for AB and EF with him would cause far more tension and unhappiness than it would bring anything positive.

[26] In CD's case the father's attack on the care plan was different. Since mid-June CD has been in a foster placement. He absconded twice in the first week or so but since then has shown some signs of beginning to adapt to this new home. On any view however it is early days. Given that he is 13 with a very troubled past and an obstructive and hostile father alternative foster placements may not be easily found for CD. It is to the Trust's credit that it found this one.

[27] CD's care plan states the following under the heading "Contingency Plan if the placement breaks down":

"If the placement broke down an alternative foster placement would be sought."

[28] Counsel for the father challenged this, contending that it was simply too vague and did not reflect the reality that a long-term foster placement might not be achievable. In that event, the question asked was whether the plan should indicate that CD would return to his father.

[29] This question was debated with the witnesses and with the court. Ms S Leitch, social worker, and Ms C Owens, Guardian ad Litem, were firmly of the same view, that the one place CD cannot live is with his father. That would aggravate and perpetuate the damage already caused to him. I did not hear from the father on this or any issue because he chose not to give evidence. I am satisfied that had he done so he would have repeated the same lies and false denials that run throughout his statement in the same way that they ran through his evidence during the fact finding hearing. The father has no positive or collaborative role or plan for anyone - he wants control, unquestioned control and all on his own terms.

[30] In light of the exchanges in court the Trust modified its contingency plan on 22 July. The important part now reads:

1. In the first instance seek an alternative long-term foster placement for CD.
2. If a long-term placement was not achieved a short-term placement would be sought.
3. If a short-term placement was not achieved the Trust would place CD in residential care. During this time an assessment would be undertaken to see if a more appropriate specialist setting is required if his needs cannot be met within a Trust facility."

This is still somewhat vague but only because alternatives to foster care are so limited. We have very few options within Northern Ireland for damaged teenagers for whom a foster placement is not possible. I do not criticise the Trust for the limitations of this amended plan, a plan which I approve. What is critical to it is that excluded from the contingency plan is consideration of a return of CD to his father. That will not happen. It is so contrary to CD's interest that it cannot be allowed.

Conclusion

[31] Over too many years a succession of social workers, guardians and other experts have spent huge amounts of time working out how to protect and care for these three children. Some degree of success has been achieved in that AB and EF are happy with their mother with a real prospect of their lives continuing to improve as hers does too. The great sadness is that CD has not or has not **yet** broken free from his father's malign influence and refuses for now to see his siblings or his mother. I am satisfied that the current placement in foster care offers a real opportunity to him. It is bound to face difficulties but there is simply no better way forward for any of the children than the one which is set out in the care plans.

[32] In the circumstances I approve the care plans and I make care orders in respect of all three children. I discharge the Guardians with my thanks and I order legal aid taxation for the assisted parties.