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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

Between:

A FATHER

Applicant

-v-

A MOTHER

Respondent

IN THE MATTER OF PA (A MALE CHILD AGED 2½ YEARS)

Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant

-v-

A STEPFATHER

Respondent

-and-

Between

A STEPFATHER

Applicant

-v-

A HEALTH AND SOCIAL CARE TRUST

Respondent

-and-

A MOTHER

Respondent

IN THE MATTER OF GY (A FEMALE CHILD AGED 15 YEARS)

Ms M Smyth QC with Mr A Montgomery BL (instructed by Directorate for Legal Services) for the Trust
Mr G Duffy QC with Ms J McCaffrey BL (instructed by Gus Campbell solicitors) for the Father/Step-father
Ms S Simpson QC with Ms M Kelly BL (instructed by Gerard Maguire solicitors) for the Mother
Ms N McGreenera QC with Ms T Overing BL (instructed by Deirdre Lavery solicitors) for the guardian ad litem on behalf of GY
Ms L Murphy (instructed by the Official Solicitor) representing the interests of GY

McFARLAND J

Introduction

[1] There are three applications before the court. I have anonymised the names of the children by applying ciphers which are not their initials. Nothing can be published that can lead to the identification of either child. For convenience, throughout this judgment, I have made reference to “the father.” This man is the father of PA, the male child, but not of GY, the female child. He was a partner of the mother and therefore could be described as having fulfilled the role of step-father to GY.

[2] The father has applied for an Article 8 contact order with his son PA. PA had been the subject of a care order application which had resolved with the making of a residence order in favour of the mother and a supervision order in favour of the Trust. The supervision order has now expired and the Trust has no direct involvement in the matter. It is therefore a private family law matter between the parents.

[3] GY is the subject of a care order and is residing in Trust accommodation. The father is a former partner of the mother and would have resided in the same household fulfilling a step-father role for a period of approximately seven years. The Trust is seeking the leave of the court to obtain an injunction against the father to prevent the father from having any contact with GY. This is being sought under the inherent jurisdiction of the court and the Official Solicitor was appointed to represent the interests of GY.

[4] The father is also seeking the leave of the court under Article 53(3)(b) of the Children (NI) Order 1995 (“the Children Order”) to commence an application for contact with GY. The guardian ad litem was appointed to represent the interests of GY in the Children Order proceedings.

Background

[5] GY is now 15 years of age. She is the child of the mother and an unknown male. The father and the mother were in a relationship for a period of

approximately seven years. During this time three children, including PA, were born to the couple and all four children resided with the mother and the father.

[6] There were serious concerns relating to the upbringing of the children and the Trust was forced to intervene and remove them from the family home in May 2017. GY, and two half-siblings, were made the subject of care orders on 1 May 2019, with care plans of foster placements. GY has had to undergo a significant number of placements whilst in care and has since March 2022 been residing in a Trust residential unit. She is currently extremely dysregulated in her presentation with repeated instances of absconding, self-harm, probable drug-misuse and probable sexual exploitation.

[7] PA was also the subject of care order proceedings which were resolved with a residence order in the mother's favour. A supervision order was put in place and after its expiry after 12 months, the situation remains reasonably stable.

AP's contact with the father

[8] The issues in this this aspect of the case have been largely resolved. Prior to the Covid-19 pandemic the father had been seeing AP on a regular monthly basis. The relationship between the mother and the father was, and remains, strained with the father being convicted in March 2021 of harassing the mother. A restraining order protecting the mother is currently in place.

[9] The father's initial application sought unsupervised contact on a weekly basis, however he had limited his expectations by the time of the hearing on 15 June 2022 and there was broad agreement that he would seek, and the mother would grant, supervised contact on a monthly basis for two hours. There is one outstanding issue concerning location. The father lives in Fermanagh and the mother lives in Belfast. A contact centre in Belfast has been agreed as the preferred location and the only issue is what will be the actual location for the contact.

[10] It is the court's understanding that there are now only two contact centres in operation in the Belfast area, at Knock (in the east) and Cloona (in the west). The centre in central Belfast is not currently in operation. The central Belfast centre would be the ideal location for convenience to both mother and father. The father objects to Cloona for reasons he refers to as safety reasons but with no elaboration. The court does not know if this is a specific or generalised fear or the basis for such a fear.

[11] Cloona is the more convenient for the mother and child and the father's resistance to that venue is not supported by any evidence as to why he would be at risk, if at all, when attending this location. In the circumstances I direct that the contact shall take place at Cloona contact centre or at such other contact centre as can be agreed by the parents. Contact will take place on a monthly basis for a period of two hours, the first contact to take place within 28 days of this order.

GY's contact with the father

[12] The Trust seeks to invoke the inherent jurisdiction of the court. This jurisdiction is derived from the royal prerogative and involves the courts taking steps to put in place measures to protect vulnerable citizens who are unable to protect themselves. This concept of *parens patriae* (parent of one's country) recognised the role of the sovereign and, more recently, the sovereign's judges, to intervene in certain circumstances. Its earliest recorded judicial manifestation is believed to have been a decision of the Exchequer Chamber in *Calvin's Case* (1608) 77 ER 377 when the rights of a Scottish child's property in England were preserved by the court.

[13] The jurisdiction developed, primarily in wardship, with courts taking protective steps. These steps have involved proactive intervention. Lord Eldon LC in *Wellesley v Duke of Beaufort* (1827) 2 Russ 1 stated:

"It has always been the principle of this court, not to risk the incurring of damage to children which it can repair, but rather to prevent the damage being done."

[14] Waite LJ in *R v Central Television plc* [1994] Fam 192 at 207 said that:

"the prerogative jurisdiction has shown striking versatility throughout its long history in adapting its powers to the protective needs of children, encompassing all kinds of different situations"

[15] The wardship jurisdiction has been significantly curtailed by Article 173 of the Children Order, and is now exercised in very limited circumstances. In recent years the courts have considered the granting of injunctions of the type the Trust are seeking in this case. MacDonald J in *A City Council v LS* [2019] EWHC 1384 explained the extent and limitations of the jurisdiction at [35]-[37]:

"[35] ... The inherent jurisdiction with respect to children is exercised by reference to the child's best interests, which are the court's paramount concern. Whilst under its inherent jurisdiction, the court may make any order or determine any issue in respect of a child and whilst, therefore, the jurisdiction of the court under the inherent jurisdiction is theoretically unlimited, there are, in fact, far-reaching limitations on the exercise of the jurisdiction (see *Re X (A Minor) (Wardship: Restriction on Publication)* [1975] All ER 697 at 706G). The boundaries of the inherent jurisdiction, whilst malleable and moveable in response to changing societal values, are not unconstrained.

[36] Prior to the implementation of the Children Act 1989, the most frequent example of the exercise by the High Court of its inherent jurisdiction over children was in wardship. However, wardship is only one manifestation of the inherent jurisdiction with respect to children. Subject to the distinguishing characteristics of wardship being that custody of the child is vested in the court and that, although day to day control is vested in the individual or local authority, no important step can be taken in the child's life without the court's consent, the jurisdiction in wardship and the inherent jurisdiction of the High Court are the same (see *Re Z (a minor) (freedom of publication)* [1997] Fam 1). In the circumstances, the inherent jurisdiction in respect of children can be invoked without the use of wardship (see *Re W (A Minor) (Medical Treatment: Court's Jurisdiction)* [1993] Fam 64). This is sometimes known, for convenience, as the 'residual' inherent jurisdiction of the High Court.

[37] [Article 173 of the Children Order] imposes specific prohibitions on the use of the inherent jurisdiction where the applicant for relief under the inherent jurisdiction is a local authority."

In that case the 17 year old girl, who was demonstrably at grave risk of serious or even fatal harm, was not a looked after child (i.e. was not the subject of a care order or under an accommodation requirement under statutory provisions identical to the Children Order) and the local authority was seeking to make provision for a secure accommodation order. MacDonald J concluded that such a case did not fall within the inherent jurisdiction of the court.

[16] Of more particular relevance is the decision of Keehan J in *Birmingham City Council v Riaz* [2014] EWHC 4247 when injunctions were granted against named individuals to prevent contact between them and a 17 year old girl who was the subject of a care order and had been the victim of sexual exploitation. Keehan J was satisfied that the power to grant such an injunction was still retained as he explained at [46]:

"I am of the firm view that the use of the inherent jurisdiction to make injunctive orders to prevent [child sexual exploitation] strikes at the heart of the *parens patriae* jurisdiction of the High Court. I am satisfied that none of the statutory or the "self-imposed limits" on the exercise of the jurisdiction prevent the court from making the orders sought by the local authority in this case."

In *London Borough of Redbridge v SNA* [2015] EWHC 2140, Hayden J declined to

exercise the jurisdiction when he refused to grant an injunction against an adult male (SNA) which was seeking to protect unnamed children or children not the subject of proceedings who were potentially at risk from SNA, a suspected predator. His view was that the court should be extremely circumspect in exercising the jurisdiction. At [38] he indicated that

“ however creatively the jurisdiction may have been implemented it has always been deployed to protect or promote the best interests of an identified child or vulnerable adult.”

[17] With the Children Order effectively codifying the nature and extent of state intervention in the lives of children, the need for the inherent jurisdiction greatly diminished. Article 173 of the Children Order placed specific limitations on the inherent jurisdiction in respect of children at sub-article (1). Sub-article (2) requires a Trust to seek the leave of the court to issue any application, and sub-article (3) makes provision as to how a court should consider such applications:

“The court may only grant leave if it is satisfied that –

- (a) the result which the authority wishes to achieve could not be achieved through the making of any order of a kind to which paragraph (4) applies; and
- (b) there is reasonable cause to believe that if the court’s inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.”

[18] I am satisfied that the inherent jurisdiction is retained in these circumstances. The Trust exercises parental responsibility over GY. (The mother also continues to exercise that responsibility and she is fully supportive of the application.) In the circumstances it is entitled to take steps *in locus parentis* to protect a child in its care. This is not a case, such as in *London Borough of Redbridge* where there is no clearly identifiable child or an absence of evidence concerning that child’s exposure to harm.

[19] The consideration of leave will hinge on whether she will suffer significant harm if the inherent jurisdiction is not exercised. If leave is granted, a wider consideration of her welfare falls to be considered under Article 3(1) and (3) of the Children Order and the application of the ‘welfare test.’ The ‘welfare test’ not only includes the likelihood of harm but other and wider considerations:

- “(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."

[20] The father's application for leave is governed by Article 53(3)(b) of the Children Order. He does not fall into the category of applicant set out at Article 53(1) and leave is required. The test for leave is the same as the test for leave set out at Article 10(9) in respect of leave to issue an application for an Article 8 order (see *Re M* [1995] 2 FLR 86). Article 10(9) provides for the court having particular regard to the nature of the proposed application, the applicant's connection with the child, any risk that the proposed application disrupting the child's life, and (as the child is a looked after child) the Trust's plans for the child's future and the wishes and feelings of the mother. *Re M* stated that frivolous and vexatious applications should fail and that the court should only grant leave if there was a serious issue to try and that there was a good arguable case with an eventual real prospect of success. Again, the key consideration is GY's welfare with consideration of the 'welfare check-list' (see [19] above).

Consideration of contact with GY

[21] The Trust has presented to the court evidence of its concerns about the well-being of GY. Some of this evidence is supported by corroborative evidence such as copies of messages. Other evidence consists of reports of what GY had told social workers, and what others, such as teachers, foster carers and friends, have told social workers that GY had told them. The father disputes some of this evidence. By agreement, no fact finding hearing was convened.

[22] I do not propose to set out all of the reported incidents but consider it appropriate to make reference to some.

[23] To understand the background, when the mother and father separated in April 2019, the father began to harass the mother. In or about October 2020, he followed her after a contact session and sent threatening messages to her. He was convicted in March 2021 and a restraining order was imposed to protect the mother.

[24] Although the father states that he lives in Fermanagh, he appears to spend a lot of his time for no real reason in the area 60 miles from his home which is where GY has resided in Trust placements.

[25] In July 2021, GY's then placement broke down and the father collected her from that placement with the assistance of his mother.

[26] The father's wider family have also been involved in various interactions with GY, including two brothers, his father, his mother and his mother's partner. No evidence has been presented to the court to indicate that these interactions were in anyway positive. The father's father, his mother, his mother's partner and his brother were all served with Article 68 letters (see [30] below) during this period.

[27] On 31 July 2021 the father collected GY from her placement and she was later found in his mother's home.

[28] On 10 August 2021 GY absconded and when she returned she stated that she had been with the father's brother, and that her father had given her £50.

[29] On 29 August 2021 the father collected GY from the foster placement. It transpired that GY had been taken by the father to Newcastle. Various reports have emerged from GY about this event including GY being in the presence of a 'crowd' of men and having received cannabis from the father.

[30] On 9 September 2021 an 'Article 68' letter was served on the father. This refers to the provisions of Article 68 of the Children Order which sets out the offence of abducting a child in care, which incorporates removing a child, retaining a child, and inducing, assisting or inciting a child to abscond.

[31] At or about this time there had been numerous occasions when GY had disappeared from her placement to an unknown location for an unknown purpose.

[32] On 1 October 2021 a friend of GY told social workers that the father was in daily contact with GY, that the father had told GY that he would kill himself, that the father had told GY that she will come to live with him and that the father's mother contacts GY. The friend also told social workers that the father had sent a picture of the 'Article 68' letter to GY (see [30] above).

[33] On 6 October 2021, GY absconded from her placement, was picked up by the father, and taken to his father's home.

[34] A mother of a friend of GY contacted social workers to report that the father contacted GY on a persistent basis and on one occasion had told GY to leave school if teachers annoy her.

[35] In late October 2021 GY's foster carer saw GY with the father on a bus and

said that there had been a meeting between the two on another occasion. At or about this time GY had self-harmed in school.

[36] On 5 November 2021 it was reported that the father met GY after school. This engagement was recorded on video.

[37] The father sent a message to GY on 8 November 2021 encouraging her to leave the placement. This placement broke down on 11 November 2021.

[38] GY disclosed to her teacher on 12 November 2021 that the father was harassing her with text messages and telephone calls and that she was in fear of him.

[39] At this time GY was living with a friend's family after a placement breakdown and GY showed her carer messages from the father indicating that he had booked to take her to Newcastle that weekend. At this time GY was displaying distress and had to leave school early.

[40] On 23 November 2021 the police served a formal CAWN (child abduction warning notice) on the father although he refused to sign a receipt for the notice.

[41] GY on 1 December 2021 blocked the father from the snapchat messaging service. At Christmas 2021 the father contacted GY on numerous occasions by telephone and message.

[42] On 15 February 2022, GY's foster carer overheard a telephone conversation between GY and an unknown male (later described by GY as being 15 years of age). The content of the conversation appeared to relate to discussions about each other's sexual experience. GY told the male that she had "done it" 15 times. The male then asked her - "do you remember the first time I met you and you told me about your step-father, does that include the time with him?" to which GY replied - "no it doesn't include him, it was mostly with boyfriends." When a social worker spoke to GY about this conversation and the reference to the father, GY used a zip-like gesture across her lips and said she did not want to talk about it.

[43] The next day GY told a social worker that on 12 February 2022 she saw the father in a shopping centre and had to run and hide in the toilets to avoid contact with him.

[44] The court had convened a review of the applications on 7 March 2022. On 2 March 2022 the father sent a message to GY - "Court for contact with you and [PA] is next Monday the 7th March in [town]...its probably the only chance we will have to make social let us see each other...if that's what you want id like it if u came with me?" GY responded by saying "Why would I go to court for you??" to which the father sent three messages - "Just thought it would be good for you to speak for yourself there instead ov having people speak for you"; "You don't need to go with me you can go yourself" and "Oh and it was put back to next week ll check the letter an tell yea the date."

[45] On 5 April 2022 the staff at the residential unit observed GY and another resident on Facetime (a video platform) with the father and his brother.

[46] The court has been provided with screenshots of certain conversations between GY and the father by messaging. No actual date is available although they probably took place in the early months of 2022. I set out below certain extracts (which are quoted *verbatim*) from these screenshots:

“Father (F) Ur mum is where she wants to be [GY]. i never ruined her life she ruined mine ... how did I ruin ur life [GY] all I want is my family” ...

GY - You do realise I’m not you[r] family”

F - You are tho.”

GY - And don’t you ever say that MY mum ruined her life it was you that ruined it and yk what my mum is so much happier without you” ...

F - Tell me how I ruined ur mums life. Bet u cant

GY - 1. Don’t be a cheeky c*** 2. You hit us 3. You mentally and physically abused us. 4. You are longer part of my family

F - Fair enough if u don’t want me in ur life and u cant see that ur mum is the one who put u in care and not once have I seen her in court trying to get you out”

Later the father sent the following message - “Um sorry I let socials an ur mum put u in care im sorry I failed u”

[47] Because of the different nature of the two applications a guardian and the official solicitor have become involved in these proceedings to represent the interest of GY. The official solicitor has expressed the opinion that GY is “extremely vulnerable to emotional and physical harm and sexual exploitation.” The guardian in her report has stated that the contact between the father and GY from July 2021 has increased her vulnerability and placed her in emotional harm. She later stated the opinion that the father had demonstrated a blatant disregard for GY’s best interests. The guardian expressed the view that GY’s overarching need is to experience consistent and safe care within a placement which can provide her with

tailored therapeutic care and stability.

[48] Both the guardian and official solicitor report that GY expresses different wishes and feelings about contact with the father. This reflects what is being reported by the mother and by the social workers. On occasions GY has expressed a wish to see the father, on other occasions she has expressed a strong wish not to see him, and also on occasions she can display an air of indifference. Her view at the time of the hearing on 15 June 2022 would appear to be indifference.

[49] To put GY's difficulties into context and to take into account the role of the father in her upbringing, when the Trust were forced to intervene with the family in May 2017, the threshold criteria relating to GY and two of her half-siblings were agreed by the father and the mother. These included:

- a) There had been extensive social services involvement with the family dating back to 2010. All three children's names had been on the child protection register under the categories of potential emotional abuse and potential neglect of all three children, with the additional category of potential physical abuse in relation to one child as at 24 June 2016.
- b) The family home was observed on multiple occasions as unkempt and dog faeces was observed on a balcony outside the home.
- c) The children had been subject to neglect in relation to their basic care. GY had severe and recurrent head lice and had inadequate bedding.
- d) The father assaulted the mother following a verbal argument in June 2012.
- e) The parents failed to follow through with two referrals to Barnardo's family resource centre in 2016 due to issues being cited such as childcare.
- f) The parents failed to meaningfully engage with social services at date of intervention and on occasions, prevented access to the family home.
- g) The father has a difficult relationship with social work professionals and has on occasions presented as openly hostile.
- h) On 15 May 2015, the father admitted cultivating cannabis in the family home for his own personal use and received an adult caution from the police.

[50] The father's case is that he is only trying to support the best interests of GY. He states that he has not been contacting her, but that she has been contacting him and all he is doing is responding to her and providing assistance. When he has had to collect her he states that he has taken her to the residences of his mother and his father. He further states that the child has been induced to tell lies about him by the social workers and that all the dysregulation that is currently being displayed is as a result of the actions of the mother and the Trust when the child was in the care of the

Trust.

Discussion

[51] The starting point for consideration of this case is the threshold criteria found by the court at the time of the making of the care order. This was a far from an idyllic childhood for GY. She was brought up in what was clearly a chaotic household with very poor parenting skills being displayed by both the mother and the father. Neither co-operated to any extent with social workers.

[52] GY's memories of this upbringing are evidenced in some of the text messages sent by GY to the father (see [46] above).

[53] The topics of conversation in these, and other, messages are entirely inappropriate and have been commenced by the father. I have no reason to doubt that when the father is in direct communication either in person or by telephone or video calls there will have been similar conversations taking place.

[54] Despite the apparent offer of an apology within the messages by the father, his comments are typical of his general approach which is that everything is the fault of others – the Trust, the mother and GY and he has absolved himself and his wider family of any responsibility for the current situation.

[55] As indicated above, a significant amount of the hearsay, and double hearsay evidence is denied by the father, and without the court conducting a fact finding exercise after hearing from the various witnesses, I have proceeded on the basis of matters that are admitted by the father, that can be corroborated by other evidence or can be determined by strong inferences from proven facts. I consider that, on this basis, there is more than enough for the court to deal with this matter.

[56] These facts include:

- a) The father has been initiating direct contact with GY on occasions;
- b) When contact has been initiated by GY the father has responded;
- c) The father has been discussing entirely inappropriate topics with GY;
- d) The father has been knowingly giving false information to GY about his role as to how she came to be in care;
- e) By his conduct the father has sought to undermine GY's placements and her schooling;
- f) On occasions when he has had direct contact with GY, knowing that she had left her placement, he declined to return her to the placement, to the Trust or to the police;

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- g) On one occasion he took her to Newcastle;
- h) On two occasions he took her to residences where GY stayed overnight, when he knew that neither of the residences, or the people who live there, had been approved by the Trust;
- i) The father disclosed to GY that he had received an Article 68 letter. (Although this is hearsay evidence I have drawn the inference that the friend's reference to a picture of an Article 68 letter must infer that the friend has seen the letter which had been delivered to the father and was therefore in his control and custody);

[57] Although the father speaks of always having the best interests of GY, he has not produced any evidence in this affidavit or by other means of having done anything that would have promoted her welfare. Despite the clearest warnings from the Trust, who exercise parental responsibility, and by the police, he continues to contact GY and to respond to her when she contacts him. When he is able to provide transport for GY he has refused to return her to places of safety and has permitted her to be in the company of unapproved individuals without telling the Trust. He has failed to cooperate in any way with the Trust. This has extended to him refusing to acknowledge service of documents pertaining to the welfare of GY.

[58] GY has expressed differing views about the father from outright hostility to wishing to see him. Both the mother and the father refer to differing views expressed to them, which is perhaps understandable. GY's current approach as expressed to the guardian appears to be indifference. The court takes into account her wishes and feelings, but also takes into account how she currently presents and her current circumstances. It would also be correct to state that although GY is 15 years of age her own judgment concerning what is good for her and what is bad for her would appear to be limited. She has had a difficult upbringing and since moving into Trust care has had a very unstable existence. She is currently indulging in conduct that could be categorised as extreme risk-taking and is not displaying an appropriate level of decision-making even for a 15 year old.

[59] At present there are concerns about her physical, emotional and educational welfare. There is a significant concern about drug-taking and sexual exploitation. Her education is not consistent and is subject to disruption.

[60] Preventing the father from having contact with her is a change in her circumstances which could only have positive results. His current role is entirely negative. His role in GY's life to date has indicated that he is unable to display a capability of meeting her needs. He not only contributes to her instability and dysregulation but when she does seek him out he offers nothing that assists her. His approach appears to be focussed on his only needs and desires, whatever they may be, rather than her wellbeing.

Conclusion

[61] I am satisfied that leave should be granted to the Trust. Should the court not exercise its inherent jurisdiction then it is likely that GY will suffer significant harm through the future conduct of the father and his interaction with GY.

[62] Having granted leave, I am further satisfied, and for the same reasons, that the court should exercise its jurisdiction and grant the injunction sought by the Trust, the purpose of which is to prevent all contact between the father and GY.

[63] It therefore follows that the father's application for leave must fail as there is no real prospect of success. His application is therefore dismissed.

[64] There will be no order as to costs between parties, but there will be the usual taxation order for legally assisted parties.

[65] Finally, I discharge the guardian and the official solicitor from their roles in these matters.