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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

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Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant

v

A MOTHER

Respondent

and

A FATHER

Respondent

IN THE MATTER OF THREE CHILDREN C4, C5 AND C6

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Ms T Overing (instructed by the Directorate of Legal Services) for the Health and Social Care Trust
Ms M Connolly KC with Ms M Rodgers (instructed by GRB Solicitors) for the Mother
Mr A Magee KC with Ms N Rountree (instructed by McConnell & Fyffe Solicitors) for the Father
Ms M Smyth KC with Ms L Casey (instructed by John McCaffrey & Co Solicitors) for the children by their Court Children's Guardian

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McFARLAND J

Introduction

[1] The Trust has applied for care orders in respect of three children and freeing orders in relation to the two younger children. I have anonymised the judgment to prevent any of the children and members of the wider family from being identified.

[2] There are seven children of the family, and all have been removed from the

care of the parents. The father is a member of the Irish Travelling community. The parents are unmarried but share the same surname. The father is named in each of the children's birth certificates, so he shares parental responsibility for each child. I will use the ciphers C1–C7 when referring to the children. C1 (10 years) and C2 (9 years) live together in a foster placement in the Republic of Ireland. C3 (8 years) lives in a separate foster placement in the Republic of Ireland as does C7 (2 months). C4 (5 years) is a male child and lives in a foster placement in Northern Ireland and C5 (4 years) and C6 (15 months) are both female and live together in a dual approved placement in Northern Ireland. This judgment relates to C4, C5 and C6.

[3] The parents have maintained a transient lifestyle with periods spent in England, Scotland, Northern Ireland and the Republic of Ireland. It is apparent that one of the purposes of this lifestyle was to prevent engagement with social services in the various jurisdictions in which they resided. C4 was born in the London area, C5 was born in south-eastern England, and C6 was born in Northern Ireland. The parents currently reside in the Republic of Ireland although their actual address is not known. The Child and Family Agency ("TUSLA" using the acronym of the Gaelic words for that agency) have an active role in respect of the lives of C1, C2, C3 and C7, with C7 only recently being removed from the parents' care at birth. The involvement of social services on both sides of the border with the family has been based around ongoing concerns about chronic neglect and serious safeguarding risks.

The proceedings

[4] On 22 May 2022 a police protection order was authorised in respect of C4 and C5 and they were both removed from their parents' care. An emergency protection order was then granted by the family proceedings court on 24 May 2022. An interim care order followed in respect of both children on 7 June 2022.

[5] At this stage the mother was seven months pregnant with C6. After C6's birth an interim care order was granted permitting removal of the child on her discharge from hospital.

[6] The Trust issued freeing proceedings in respect of C5 and C6 on 3 October 2023.

The mother's application under the Child Protection Hague Convention 1996

[7] As a preliminary issue I dealt with an application dated 24 October 2023 to exercise the court's jurisdiction under Article 8 of the Convention in respect of C4, C5 and C6 and to 'transfer' decision making in relation to their best interests to the Republic of Ireland.

[8] There is no issue that each of the children were habitually resident in Northern Ireland at the time when the Trust issued proceedings (May 2022 in respect of C4 and C5 and August 2022 in respect of C6) and have remained habitually

resident in this jurisdiction since then. By virtue of Article 5 of the Convention, this country is properly seised of the jurisdiction in respect of each child.

[9] Article 8 of the Convention is stated as being "by way of exception" and is therefore a derogation. C4, C5 and C6 are citizens of the Republic of Ireland and under Article 8, if this court considers that the Republic of Ireland "would be better placed … to assess the best interests of the child" it can either request that the Republic of Ireland assume jurisdiction to take measures of protection or suspend consideration of the cases or invite the parties to introduce such a request before the authority in the Republic of Ireland.

[10] Article 9 of the Convention provides for the authority in the Republic of Ireland if it considers that it is better placed to assess the best interests of any of the children to request this court to authorise it exercising jurisdiction or it can invite the parties to apply to this court with such a request. The mother's application is a free-standing application and has not been made at the invitation of a court in the Republic of Ireland.

[11] Although the mother's application has been loosely referred to as an application to transfer jurisdiction, the Convention does not mention transfer, but rather refers to an invitation being made to another contracting state (in this case the Republic of Ireland) to assume jurisdiction.

[12] The change of jurisdiction is therefore only by way of exception, and it must, ultimately, have the support of the other contracting state given the positive steps that must be taken by that state either at the invitation of this court under Article 8 or on its own motion under Article 9. The issue only relates to the jurisdiction better placed to make the assessment of the best interests of the child. It is not necessarily the same as where the children will live and with whom.

[13] I gave brief oral reasons when I dismissed this application at the hearing, and it is not necessary to expand upon those reasons to any great extent. Black LJ in *Re N* [2015] EWCA Civ 1112 at [159] described the process as follows:

> "What is transferred is, putting it bluntly, the problem, for which the other jurisdiction will, if the transfer is made, take responsibility."

[14] There is no evidence before the court that would suggest that the authorities in the Republic of Ireland would be better placed to assess the best interests of any of the children. All the relevant assessments have already taken place and the final decisions are pending. Although both parents have recently moved to live in the Republic of Ireland, all three children continue to live in Northern Ireland. TUSLA will have a body of information about the parents and the siblings in its care, but any relevant information has been shared with the Trust. There is no exceptionality in this case and this court can deal with the outstanding issues. The application was therefore refused.

Threshold

[15] Threshold has been agreed between all the parties and a document has been signed by both parents. The date of intervention for C4 and C5 was 22 May 2022, the date of the police protection order and for C6 it was 2 August 2022 the date of the interim care order.

[16] The agreed statement makes reference to the parents themselves being known to TUSLA during their own childhoods. The three older children C1, C2 and C3, had been removed by the courts in the Republic of Ireland from the parents' care on a permanent basis. The underlying difficulties arose from a lack of provision of basic care, poor supervision, a dirty and dangerous home environment, and severe neglect. There were issues concerning drug misuse and criminality with an inability of either parent to take advice.

[17] During the period between 2018 and 2022, the parents maintained a transient lifestyle throughout the British Isles and at times moves were undertaken to avoid social services involvement. Following a missing persons alert from Manchester social services, the family were located in Northern Ireland in May 2022. A community paediatrician highlighted significant dental decay with C5 requiring extraction of 20 teeth.

[18] The mother did not always engage fully with the ante-natal care for C6.

[19] I am satisfied that the agreed threshold document reflects the evidence contained in the various reports and statements. I am satisfied that the Trust has proved that C4 and C5 were both suffering significant harm whilst in the care of their parents and the harm was attributable to the care being given to them. I am also satisfied that C6 was likely to suffer from significant harm from the care that was likely to have been given to her by her parents if she had remained in their care.

The applications for care and freeing orders

[20] The Trust is seeking care orders for each child. The proposed care plans for C5 and C6 are adoption, and there are associated applications for freeing orders for each child. The proposed care plan for C4 is long-term fostering.

[21] The focus of the hearing, at which no oral evidence was presented with each party relying on oral submissions, was on the care plans and in particular the care plans for C5 and C6. There was no real objection concerning the need for the Trust to exercise parental responsibility for each child or that all three children need to be placed in long-term placements outside the family. Both parents submitted that their aspiration was that all seven children would be rehabilitated into their care, but there was a recognition that rehabilitation was not a realistic prospect in the foreseeable future.

[22] The care-plan for C4 is long-term fostering and is therefore not controversial. I therefore intend to focus my consideration of the evidence and the submissions on the issue of the adoption care plans for C5 and C6. This consideration will also take into account the first limb, or welfare, test of the freeing application.

[23] The law is very well established in relation to care plans of adoption. The court must be satisfied that the plan is a last resort and whenever there is no other realistic option for the child - in the words of Lady Hale in *Re B* [2013] UKSC 33 "when nothing else will do." This approach accords with the application of Article 8 of the ECHR (the right to respect for private and family life). Recently in *Strand Lobben -v- Norway* [2020] 1 FLR 297 at [207] the ECtHR stated:

> "Family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate to "rebuild" the family."

[24] There is strong and compelling evidence that neither parent, or both when working as a couple, would be capable of caring for any or all of the children. I have approached this case by looking at the parents individually and as a couple.

[25] Both parents were assessed in March 2023 by Dr Pollock, forensic clinical psychologist. The mother was assessed as having an emotionally immature personality with limited capacity for self-regulation. She also has a mild learning disability. Dr Pollock's opinion was that she did not have the capacity or motivation to achieve the positive changes that are necessary in this case. The father has long-standing and persistent addiction issues. He is within the extremely low learning disability range. The father's capacity to achieve a positive change within the children's time-scales would be very limited.

[26] These assessments must be viewed taking into account the experiences of, and the harm suffered by, the older children (C1 – C5) whilst in the care of the parents. Subsequent to Dr Pollock's reports, Dr Sweeney, another consultant clinical psychologist, reported on the three children in June 2023. All three children presented with insecure attachment relationships with their parents, and in particular C4 had a highly insecure ambivalent attachment style. Dr Sweeney was of the opinion that both parents would struggle to make the positive changes necessary in this case. She was also of the view that neither had the capacity to engage with and to receive support from professionals.

[27] This bleak picture in 2023 continued to develop with the parents attending only one of the nine pre-planned birth risk assessment sessions relating to C7 with the Trust staff. This reflected either a total rejection of, or indifference to, the genuine concerns emerging about the risk of harm to the child which was expected to be born in September 2023. The mother, with the acquiescence of the father, then removed herself from Northern Ireland. C7 was born in the Republic of Ireland and TUSLA considered it necessary to bring emergency proceedings before the court in

the Republic of Ireland, which sanctioned the removal of C7 from the care of the parents. The parents have not resumed any caring responsibilities for C7.

[28] The parents present as an unmarried couple, and it is their intention to maintain that relationship. I have therefore approached this issue on that basis, but should those circumstances alter in the future it is necessary to give some thought to the possibility concerning the ability of either parent to care for any or all of the children, either on their own or potentially with another partner.

[29] Dr Galbraith, another consultant clinical psychologist reported in January 2023 on both parents. It was noted that when assessed separately the mother was more positive and co-operative, but that the father was un-cooperative. That is my assessment of the general approach of the parents. The father is the main driver for the lack of cooperation which sometimes manifests itself in confrontation with Trust staff. The mother can be rigid and inflexible in her own approach, but less than the father. This may be partly due to the pressure exerted by the father upon the mother within the relationship coupled with the mother's clear desire for the relationship to continue. What is clear is that the father would not have the ability or skills to parent any of his children on his own.

[30] The mother has displayed a more positive engagement both with the various assessments and, at a modest level, with the Trust. She appears more committed to the children, although this must be seen in relative terms when compared with the father. She does have longstanding and deep-seated issues arising from significant adverse childhood experiences. These have endured into her adulthood. On her own I consider that she would struggle with all aspects of parenting. She would require support from a network around her which would have to be augmented by professional support. There is little evidence of any adequate family or friendship network. There is also little evidence that she would avail of any professional support that would be available to her. In the circumstances I consider that she too would not have the ability or skills to parent any of the children on her own. She clings to an aspiration that somehow, she will be able to care for all seven of her children in the future but beyond her stated aspiration she has done nothing to achieve any level of parenting ability.

[31] I have therefore concluded that neither parent, on their own or as a couple, would be in a position to safely parent any of the children and that rehabilitation of any child into their care could not be achieved in the short- to mid-term. I have come to that conclusion based upon the needs of each child, the likely adverse effect on each child of removing them from their current placements and placing them with the parents, and the lack of any capability of either parent of meeting the needs of the children.

[32] I have briefly referred to the lack of any family or friendship network to support the mother. The father does have a family network of sorts, but no-one has been identified within that network as being capable of providing care for any of the children. They are largely based in the Republic of Ireland. None of the four

children in that jurisdiction have been placed with a paternal family member. Two paternal family members were identified by the parents as potential carers but the assessments of both in late 2022 were not completed largely because neither relative engaged properly with the Trust.

[33] In the absence of any realistic family placement, either back with the parents or within a kinship setting, there is no alternative open in this case except consideration of what is sometimes called a 'stranger' placement. As rehabilitation to the parents is not feasible in the short- to mid-term, then this has to be viewed as a permanent placement.

[34] A 'together and apart' assessment was carried out in January 2023, and it came to the conclusion that placing the three children together, even if that could be achieved, would not be in any of the children's interests. It particularly focussed on C4's very complex needs given his presentation. It was considered that it was in his interests and in the interests of both C5 and C6 that he should be placed separately.

[35] Based on this advice the care plans have emerged that there should be two placements, one for C4 and one for C5 and C6 together. C4 is currently placed with his intended long-term foster-carers. They are experienced foster carers and are equipped to deal with the complex problems presented with the care of C4. C4 appears to be reasonably well settled within the placement.

[36] One issue raised by what are two different care plans is – why should C4's care plan not be adoption in a separate placement? The answer is that it is a less-interventionist care plan and as such complies with the well-established approach of always seeking out the plan with the least intervention in the family life of the child and the parents. In addition, it is reasonably clear that C4's care will present challenges for any carer (parent, foster-carer or adoptive parent) and placement options may be extremely limited within the adoption sphere. I do not believe that any emotional impact on C4 of a perception by him of being treated differently to his sisters C5 and C6 should they be adopted, is likely to manifest itself to a significant degree.

[37] The Trust's care plan of long-term fostering for C4 is based on very solid evidence from various reports and assessments and has the support of C4's guardian. There is no real opposition from the parents. Both recognise that rehabilitation of C4 to their care is impossible at this stage. They have an aspiration of rehabilitation but recognise that a care plan of foster-care at this stage is appropriate.

[38] There are issues with regard to contact which I will deal with later. I therefore approve the care plan and will make a care order in respect of C4.

[39] The issue with regard to C5 and C6 is different as the care plan is one of adoption. The consideration of this care plan and the welfare limb of the Adoption Order test requires more analysis, and in particular the elimination of all other

realistic options. I have already dealt with the options of rehabilitation and kinship care. Neither are realistic for either C5 or C6. The only real discussion revolves around long-term fostering or adoption.

[40] The 'together and apart' assessment earlier this year considered that C5 and C6 should be kept together in one placement and in furtherance of that recommendation the girls are now in a dual-approved placement. Both girls are very well settled in that placement which is the intended adoptive placement should the court make the necessary orders.

[41] The difference between fostering and adoption, and in particular how it impacts on a child, is well established. Lady Black in *Re V* [2013] EWCA Civ 913, an appeal heard in the immediate aftermath of the Supreme Court judgment in *Re B* (above) at [95], said that "I do not think that fostering and adoption can, in fact, be equated in terms of what they offer by way of security." She then went further in [96] to highlight some of the material differences.

> "(i) Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to "feel" different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement.
>
> (ii) Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time.
>
> (iii) Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a local authority, the starting point is that the authority is obliged to allow the child reasonable contact with his parents ([Article 53(1) Children (NI) Order 1995]). The contact position can, of course, be regulated by alternative orders under [Article 53] but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement. Once the adoption order has been made, the natural

parents normally need leave before they can apply for contact.

iv) Routine life is different for the adopted child in that once he or she is adopted, the local authority have no further role in his or her life (no local authority medicals, no local authority reviews, no need to consult the social worker over school trips abroad, for example)."

[42] Earlier I referred to Article 8 ECHR. Given the severe impact of adoption on family ties, the Trust must show that it is both necessary and proportionate. To this end, the Trust have presented an options analysis in respect of C5 and C6 which weighs up the proportionality of the proposed interference with family life.

[43] The analysis for each child is set out in the respective Statement of Facts lodged with each application to free the child (C5's at para 53 (ii) and (iii) pages 70 - 73 and C6's at para 54 (ii) and (iii) pages 72 – 75). I do not propose to set out in full the positives and negatives in the proportionality exercises conducted in the preparation of the Statements of Facts. The exercises expand on the factors set out by Black LJ in *Re V*.

[44] One of the negative factors is the potential that either or both parents would seek to undermine the placement should it not have the permanence of adoption. This is a particularly relevant factor now in the context of contact arrangements. I will deal with this in more detail, but in summary the conduct of the parents has the potential to undermine the placements. Whether that is deliberate on their part or just an outworking of their poor parenting skills is a matter for debate.

[45] The guardian has also carried out her own analysis (paras 16.21–16.63 pages 42–47 of her report). At 16:56 she states that C5's and C6's outstanding need for security and stability needs to be addressed and permanency care planning work should proceed as an urgent priority and without delay and at 16:59 concludes that their needs would be best met with the legal security only adoption can bring.

[46] The approach of both the Trust and the guardian cannot be validly criticised and I share the views expressed in the various reports. Adoption is in the best interests of both children. It is a plan of permanence that significantly impacts on the existing family ties, but taking everything into consideration I believe it is both necessary and proportionate.

Are the parents withholding their consent unreasonably?

[47] The legislation does require the court to consider a second limb to the test and relates to the parents' lack of consent. Both oppose adoption and neither consent. That is a perfectly understandable emotional reaction. The court can dispense with their consent should it consider that it is being withheld unreasonably.

[48] It is an objective test and requires the court to consider the circumstances of each of the parents in this case but to endow each with a mind and temperament capable of making reasonable decisions (see *Re: D* [1977] AC 602 at 625). It is important to acknowledge that a reasonable parent could legitimately still reject adoption even if adoption was in the best interests of that child. However, Lord Denning MR in *Re L (an infant)* (1961) 106 SJ 611 observed that:

> "I must say that in considering whether [the parent] is reasonable or unreasonable we must take into account the welfare of the child. A reasonable [parent] surely gives great weight to what is better for the child. [The parent's] anguish of mind is quite understandable; but still it may be unreasonable for [the parent] to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable [parent] in [the parent's] place would do in all the circumstances of the case."

[49] In this case the welfare of C5 and C6 would weigh heavily in the consideration of a reasonable parent. The reasonable parent would also acknowledge their own inadequacies, their lack of capacity or willingness to change, and their inability to take on board professional advice concerning basic parenting. A reasonable parent would take into account the disengagement between the parents and their older children C1, C2 and C3. I can see no real factors that a reasonable parent would weigh in the balance against adoption such as a grievance as to way they have been treated. The parents have mentioned from time to time complaints about how they have been treated by social services, but any fair analysis of the interaction between social services and the parents would recognise that the complaints of the parents lack substance and that any significant issues relate more to the conduct of the parents.

[50] I have looked at each parent individually and I consider that the Trust has shown that a parent endowed with a mind and temperament capable of making reasonable decisions would consent to the adoption of both C5 and C6 and therefore dispense with each of the parent's consent.

Contact

[51] I have previously referred to issues with regard to contact and this impacts on decision making relating to the contact plan for each child both pre-care order and post-care order, including post-freeing in relation to C5 and C6.

[52] The current contact arrangements are once per fortnight. Previously it had been once a week for C4 and C5, and three days a week for C6. This was reduced, ultimately by agreement although a court hearing on the issue had been listed.

[53] The conduct of the parents during contact, which remained fully supervised, raised concerning issues. Neither parent was capable of appreciating the harm caused to the children and neither adjusted their conduct despite advice and warnings. The parents have declined to sign a contract drafted to manage their conduct. The attendance at contact by the father has been erratic.

[54] By way of example the contact session on 5 October 2023 was noteworthy. This was one day before the court had listed the hearing to consider the proposed reduction in contact. The parents presented C5 with a Paw Patrol tracksuit, a Barbie dinner set and a selection box. C4 was provided with a Manchester United football kit and told it cost £140. He also received a car set and a selection box. Later C4 asked his father to bring him a Paw Patrol tower which the father agreed to do advising that it would cost £80. At the end of the contact, C4 was handed £45 in cash by his parents.

[55] All the children are reacting in a negative fashion, with the carers reporting emotional upset before and after contact. As previously stated, it is unclear if the conduct of the parents is designed deliberately to undermine the placements or is based on a very low base of parenting skill coupled with an inability or unwillingness to take on board the most basic of advice with regard to very straightforward issues. The extravagance of these gifts, the bias in favour of the male child, the monetising of the gifts, the promises of further largesse, and the presentation of £45 of cash to a five year child display significant parenting deficits but also indicate that the regularity of contact cannot continue at its current level.

[56] The evidence suggests that the children are suffering harm as a result of their parents' conduct during contact.

[57] The establishment of care plans of permanence, particularly adoption for C5 and C6 require a reduction in the regularity of contact. If the parents cannot control their conduct, the Trust will have to consider imposing the strictest of conditions on future conduct by the parents.

[58] The proposal is that C5 and C6 will have contact with C4 once a month. Contact with the other siblings in the Republic of Ireland has not commenced and will be kept under review.

[59] C4 is scheduled to have contact once a month with his parents for one hour. This will not include C5 and C6 so at least any issue concerning favouritism will not have a direct impact, but it may manifest itself whenever the children have contact with each other and it will operate to destabilise C4's placement with his foster-carers. The Trust must take steps to stop presents being provided, except on obvious days such as birthdays and Christmas. They must also take steps to end the handing over of extravagant presents and cash. All presents must be modest in nature and age appropriate.

[60] The plan is for contact between the parents and C5 and C6 should reduce

gradually to every two months, and then remain at that level until any adoption order. Thereafter, the proposal would be twice a year but that will be subject to review.

[61] These contact arrangements have the support of the guardian. The only concern of the court is that given the experience of the parents' relationships with their older children there may be a high probability that either or both parents will become disinterested and then just drop out of the lives of each child.

Conclusion

[62] For the reasons set out above, I will make care orders in respect of all three children approving the respective care plans for each child. I will free C5 and C6 for adoption dispensing with the consent of each parent. The guardian is discharged in respect of each child and there will be the usual taxation order in respect of legally assisted parties.