

Neutral Citation No: [2024] NIFam 3

Ref: McF12509

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

ICOS: 15/106137/12

Delivered: 29/04/2024

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 NI (A MALE CHILD AGED 12 YEARS) (No 3)

The Father appeared as a litigant in person
Ms S Simpson KC and Ms M Mullan BL (instructed by John J McNally & Co solicitors)
for the Mother

McFARLAND J

Introduction

[1] The father has made an application for leave under Article 179(14) of the Children (NI) Order 1995 to bring an application for a residence order and to “re-evaluate handover arrangements” (a reference to the current terms of the contact order in favour of the father). Although the application is dated 8 December 2023 it was not until 8 March 2024 that it was in a position to be accepted by the court office. The requirement for leave arises from a previous order of this court of 9 March 2022 that no applications in respect of the child could be made by the father before March 2025 unless he had the leave of the court.

[2] This is a long-running case which has been before the courts in both England and Northern Ireland for a significant period, the first set of proceedings having been issued in England in December 2012. The residence order in favour of the mother was made in England in September 2013 and since then there has been ongoing litigation

relating to the child. The courts have attempted to filter applications by imposing Article 179(14) orders in June 2016 (for three years), December 2019 (for three years) and then again in March 2022. By the 9 March 2022 order (see *Re NI* [2022] NIFam 10) this court made a contact order allowing the father significant periods of contact with his son.

[3] The Annex to that judgment sets out the terms of the contact –

“[2] The Father will have contact with NI as follows –

(a) Christmas & New Year

Contact should alternate annually so the child is with one parent over Christmas and the other over New Year. The contact with the Father should be for up to one week in England. The parents should agree the arrangement for 2022 no later than 1 September 2022, and in the absence of agreement contact with the Father this year will be over the New Year, then over Christmas in 2023 and so on.

(b) Easter Contact

The child is to spend half of the school holiday (one week) with the Father in England (from 2023 onwards).

(c) Summer Contact

The child is to spend two periods in England with the Father, each period lasting up to two weeks.

(d) Halloween

The child will spend half the Halloween break in England.

(e) Child’s birthday

The nearest weekend to the birthday is to be spent with the Father either in Northern Ireland or England as per the Father’s wishes.

(f) Additional contact

- (i) The Father is at liberty to come to Northern Ireland for weekend contact sometime between Christmas and Easter (from 2023 onwards), Easter and the summer (from 2023 onwards)

and between Halloween and Christmas (from 2022 onwards). Contact is from 6pm on Friday until 6pm on Sunday. These times can be subject to reasonable adjustment to take account of the Father's travel arrangements.

- (ii) Such additional or alternative direct contact as can be arranged and agreed between the parents from time to time taking account special events

(g) Step-mother and half-sibling contact

At any time when NI is having contact with the Father he can have contact with his step-mother and his half-siblings.

(h) Indirect contact

Except on the days when the father is having direct contact, the Father shall initiate a Skype, Facetime or similar live video contact with the child each Friday at 6 p.m. and the Mother shall ensure that the child is available for this contact and that her live video platform is working. If the child is with the Father in England on a Friday, then the Mother shall initiate, and the Father shall facilitate, a similar contact between the Mother and the child.

[3] The following conditions shall apply to the contact arrangements set out in [2] above.

- (a) The Father must designate the dates that he wishes to have contact with the child in England and Northern Ireland. The designation must be published to the Mother no later than 84 days (12 weeks) before the first date of the designated period of contact (e.g. for the summer contact the first date is 1 July and therefore the Father must designate the two periods over July and August by 8 April);
- (b) If the Father has not so designated the dates of the proposed contact, contact shall not take place for that period, unless the Mother, at her discretion, agrees to the contact, such contact to take place in accordance with conditions that she, again at her discretion, shall apply;
- (c) If the child is to travel to and from England

accompanied, then the Mother and the Father, or their suitable nominee who is known to the child, must travel with him. The name of any nominee is to be provided to the other parent at the same time as the confirmation of the travel arrangements (see (f) below);

- (d) If the child has reached a suitable age, he may travel to and from England unaccompanied using an approved airline chaperone service, but he may only do so by express written agreement of both parents;
- (e) The Mother shall be responsible for the cost of travel for the child and any accompanying adult or chaperone service from Belfast International Airport to Stansted Airport. The Father shall be responsible for the return costs from Stansted Airport to Belfast International Airport. Other airports may be used by way of prior written agreement;
- (f) The Mother and the Father must provide to the other documentary evidence no later than 42 days (6 weeks) before the first date of travel that they have booked and paid for the flights by forwarding a copy of the booking confirmation. Once booked, the booking cannot be cancelled or amended without the written permission of the other parent. If the Father has failed to provide such evidence, contact shall not take place for that period, unless the Mother, at her discretion, agrees to the contact, such contact to take place in accordance with conditions that she, again at her discretion, shall apply;
- (g) If either parent has expended funds on the booking of flights and the contact does not occur through any default of the other parent in compliance of the terms of this order, the other parent shall reimburse the cost expended within 7 days of demand;
- (h) Hand-over of the child shall take place within the terminal buildings of the airports. The Mother is responsible for the bringing of the child to Stansted Airport (or other English airport) for the outward journey and the father is responsible for bringing the child to Belfast International Airport (or other Northern Irish airport) for the return journey;

- (i) When contact is taking place in Northern Ireland, the father shall be responsible for his travel costs to and from Northern Ireland and the hand-overs shall take place in the terminal buildings of a ferry or airport as the Father shall designate, such designation to be given in writing at least 7 days before his arrival;
- (j) Except with the express written permission of the Mother, the Father is not permitted to remove the child from Northern Ireland when he is exercising contact in Northern Ireland and from England when he is exercising contact in England;
- (k) Prior to the commencement of contact it shall be the responsibility of both parents to ensure that the child has sufficient travel or identity documents, if any, to enable the child to board the aeroplane for both flights, in accordance with the published policy of the carrier;
- (l) During contact the Father shall not weigh, or shall not cause any other person to weigh, the child and he shall not discuss, or permit any other person to discuss, the issue of weight with the child;
- (m) The parents shall set up a Whatsapp or other suitable restricted members' group for the transmission of messages. The membership of the group shall be both parents and one other adult nominated by each parent. The child shall not be a member. The purpose of the group is to facilitate the sharing of information concerning the child generally (e.g. matters relating to the parents exercising of parental responsibility) and contact, and in particular the compliance with the conditions of this order. Transmission and receipt of a message and the attachment of a document shall be sufficient evidence of compliance of a term of this order;
- (n) The parents, by written agreement, can amend any of the terms of this order."

[4] In June 2022 the father sought leave to bring an application in similar terms to the current application. On 2 August 2022, this court convened an *ex parte* hearing to deal with the father's application, and by order of 12 August 2022 it dismissed the

application (see *Re NI (No 2)* [2022] NIFam 28). The father appealed that order, and his appeal was dismissed by the Court of Appeal on 10 May 2023 with the father ordered to pay one half of the mother's legal costs (see *F v M* [2023] NICA 27). On 13 November 2023 the Supreme Court refused permission to appeal (see *F v M* (UKSC 2023/0106)) ordering the father to pay the mother's legal costs. The application currently before the court was dated within a month of the Supreme Court's decision.

The application

[5] By his application the father refers to the fact that there has been no physical contact between the father and the child since Christmas 2020. The application, and the supporting documents, refer to many historic aspects of the case. The only reference to any development since August 2022 (the date of the previous order) is that the child has now attained the age of 12 years, and the father, by reference to a UK Government website, asserts that children aged 12 years and over can travel unaccompanied on UK domestic flights. No other evidence concerning a change of circumstances has been presented.

[6] I convened an *inter-parties* hearing on 23 April 2024, the father supplemented his written application with an oral submission. Much of this oral submission repeated the content of the written application. The father remains concerned and exercised by the decision-making carried out by the English courts back in the early phases of the litigation in 2013 and 2014, and thereafter by the Northern Irish courts. He repeated concerns about what he described as the proven lies of the mother when giving evidence at that time. He also referred to what he described as misconduct on the part of counsel for the mother. He was pressed to provide evidence of any material change of circumstances since the order in August 2022, but was unable to do so, save for the fact that the child has now turned 12 years old.

[7] The mother opposes the application relying on the basic fact that nothing has changed since the last set of proceedings, and further, that the father has done nothing to promote his contact with the child, both direct and indirect.

Consideration

[8] Apart from the passage of time, there has been no change of circumstances since the father made his previous application, which in turn had been rejected as there had been no change in circumstances since his previous application. The appeal against the previous order had been dismissed by the Court of Appeal as being "utterly devoid of merit."

[9] The child is now older. The father has raised the possibility of unaccompanied travel by aircraft. Provision for this had already been factored into the existing contact arrangements (see para [3] above and reference to para [3](d) of the Annex to the 9 March 2022 judgment).

[10] This has no impact on whether there should be a residence order in his favour. There is no evidence that the child's welfare would be promoted in any way by living with the father. The child has not had direct contact with his father since Christmas 2020 (when it was necessary for the court to intervene to force the father to return the child to the mother). The father does not wish to avail of the contact arrangements put in place by this court. These include six and a half weeks a year in England and three weekends in Northern Ireland.

[11] Although reference has been made to a Government web page stating that 12 year olds can travel unaccompanied, this is, of course, subject to the actual terms and conditions of the carriers. The only carriers flying between London Stansted airport and Northern Ireland are easyJet and Ryanair, both of which have a stated policy (as set out on their respective webpages) of permitting unaccompanied minors when they are 16 years and over. In the case of easyJet:

“Unaccompanied children aged 15 and under are not permitted to travel alone and will not be permitted to board the plane as easyJet does not provide an escort service or special requirements for unaccompanied children”

and in the case of Ryanair:

“We do not carry unaccompanied children under 16. We cannot provide an escort or special facilities.”

The child achieving the age of 12 years is therefore not a material change of circumstances.

[12] The test for leave is well established. The court considers the history of the case, the risk of potential harm (by the making of the application) to the child and whether there has been a material change of circumstances since the last time the case was before the court that would warrant the making of the order sought. Taking these factors into account, the court must then consider whether the father has an arguable case that would have a real prospect of success. There is no requirement that success should be probable, or more likely than not, but there must be a realistic, as opposed to fanciful, prospect of success (see *Re R (A Child)* [2019] EWCA Civ 895 at [31]).

[13] The sad reality of this case is that the father is not prepared to make any adjustment to his very entrenched views in this matter. As a result, although the court has endeavoured to promote and facilitate contact between the father and the child, this has not progressed because the father is only prepared to have contact with his son on his terms.

[14] By his application the father is seeking to re-open litigation which has long since been dealt with. It will serve no purpose. The father has not put forward any

evidence that would suggest that changing the child's residence or the current contact arrangements would in any way promote the child's welfare.

[15] The father's last attempt to re-litigate long determined matters in 2022 and 2023 has been refused by this court, by the Court of Appeal and by the Supreme Court. The father, through his written application and by his oral submissions is, again, reverting back many years and attempting to get a revision with the re-opening of various long-standing court orders.

[16] Taking the history of the case into account and noting that there has been no material change in circumstances, the court is driven to the only available conclusion that this application for a residence order and contact order has no realistic prospect of success. Leave to bring such an application is therefore refused.

[17] Although in civil litigation it is normal for costs to follow the event, in the family cases when dealing with the welfare of a child, the court will be slow to make any costs order. However, there are exceptions. Examples would be when the application, or the conduct of a party, go way beyond the usual sort of attitude which a reasonable concerned parent shows in relation to the future of their child, or if a parent has presented a case totally lacking in merit. This is such a case, and I will order the father to pay the mother's legal costs, to be taxed in default of agreement.