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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

13/123072

IN MATTER OF THE CHILDREN (NI) ORDER 1995

RE R, K and T - CHILDREN FROM EASTERN EUROPE

O'HARA J

All of the parties in this judgment have been anonymised so as to protect the identity 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 their adult relatives.

Introduction

[1] A Health and Social Care Trust (“the Trust”) originally sought care orders in respect of five children whose parents came here some years ago from Eastern Europe. Four of the children were born in the homeland of the parents while the fifth was born in Northern Ireland. Since the proceedings started two of the children have reached the age of 17. The result of that is that no public law orders can be made under the Children (NI) Order 1995. Of the youngest three R who is 15 lives with her parents while K who is 11 and T who is 6, both girls, live in foster care but separately from each other.

[2] Proceedings were issued in November 2013 by the Trust. At that point T was only a few months old. In her case the essence of the Trust application was that it was likely that she would suffer significant harm as a result of the continuation of the inadequate parenting given to her four older siblings.

[3] Notwithstanding the fact that because of their age care orders cannot be made in respect of the oldest two children, it is necessary to consider some of the issues which blighted their childhoods. What happened to them, and what is happening still, is part of what has driven the Trust to apply for care orders. Fifteen year old R

is at home with her parents. The Trust no longer seeks a care order for her because it contends that since she will stay with her parents (on the Trust plan) there is no need or justification for an order. Unusually the parents and the Guardian disagree with that proposition and support a care order being made.

[4] So far as K and T are concerned, they have been in foster care placements for approximately two years. The Trust proposal is that they should stay there. The parents do not seriously challenge the making of care orders but their challenge is to the care plan. What they seek is a finding that it is in the interests of these two youngest children that they should return from foster care to live with their parents and siblings, either in Northern Ireland or, preferably, by everybody returning to their homeland. The fall back option advanced on behalf of the parents is that they would separate with one of them taking three children and the other parent taking the other two.

[5] There is a repeatedly expressed desire on the part of the parents to return to their homeland. This possibility has been explored. In February 2017 detailed information was made available from that country which was entirely negative about the maternal grandmother and her family and what would be waiting for those who are currently in Northern Ireland if they returned. That information was not challenged. There is simply no coherent plan for a return to Eastern Europe - there is no identified place to live and no meaningful family support. That option, which had to be considered seriously once it was advanced, is simply not available in this case.

Threshold criteria

[6] Since the parents contend that there should be a care order for R and since they challenge the care plan for K and T but not the making of a care order they must accept as a matter of course that there should be a finding of threshold criteria within the meaning of Article 50 of the Children Order. In these circumstances it is not necessary to scrutinise the criteria to the degree that is required in some other cases. The Trust advanced a set of criteria when the case was in its early stages. The parents responded by conceding some but resisting others.

[7] I make the following findings in relation to threshold in respect of R, K and T. I am satisfied that it has been proved that these children had suffered and were likely to suffer significant physical and emotional harm attributable to the care they had received and were likely to continue to receive in the care of their parents as of November 2013:

- (i) The parents failed to ensure that the oldest four children attended school on a regular and consistent basis.
- (ii) The family home was cold due to a lack of heating and dirty on a regular basis and there was a lack of food in the home.

- (iii) The parents repeatedly failed to co-operate with Social Services in their efforts to assist the family.
- (iv) On 16 October 2012 the mother assaulted U, the second oldest child, a girl.
- (v) On 16 October 2012 when the four oldest children were examined by a forensic medical officer concerns were noted in relation to their poor hygiene and dirty underwear.
- (vi) The respondents failed to register the four oldest children with a dentist and they failed to attend all appointments with the GP.
- (vii) The parents left the four oldest children in the home unattended on 6 December 2012.
- (viii) The parents failed to make adequate preparations for the arrival of their youngest child, T, in July 2013.

So far as T is concerned, as appears above most of the threshold criteria did not relate specifically to her in light of her age but I am satisfied that had the Trust not intervened when it did she would have suffered the same likelihood of significant physical and emotional harm as her elder siblings.

[8] The fact that threshold criteria are satisfied is only the starting point in this and every case. It does not follow that care orders are made. The lives of those involved can improve (often with social work support) so that the need for a care order fades away. Other circumstances can change e.g. a relative can come forward to care for the children or help care for them. Alternatively there may be no improvement or there may actually be a deterioration which makes a care order a more likely outcome.

[9] In order to help understand this case it is necessary to refer to the 2017 psychological report of Dr J Dowd on the parents. His broad findings were as follows:

- (a) Both parents function within the borderline range of adult cognitive capacity.
- (b) Having moved to Northern Ireland with four children and then having a fifth child while here, their parenting responsibilities were likely to be more rigorous and complex with the children having to adapt to a new culture, language and expectations in terms of behaviour.

- (c) The parents had a basic understanding of the concerns of professionals, especially in terms of the father's aggression towards R (he was convicted of two separate assaults on her committed in 2014 and 2016).
- (d) The mother suggested that social services professionals "destroy children".
- (e) The father has strong personality traits which are borderline or avoidant in nature and which result in problematic behaviours within relationships. These traits are unlikely to alter.
- (f) The mother has primarily paranoid and avoidant personality traits which reflect the way in which she has been able to engage (or not) with professionals.
- (g) Caring for all five children simultaneously will inevitably pose these parents greater difficulties than other parents generally due to their potential cognitive deficits and especially as their children are more likely to experience greater challenges themselves adapting to the culture of Northern Ireland and that of their new peer groups.
- (h) The mother was assessed as offering a low to moderate risk of future acts of violence whereas the father was assessed as offering a moderate risk. Dr Dowd's opinion was that such moderate risk was most likely to emerge for both parents when they are experiencing fundamental life stresses. Given the significant parental stresses they will experience parenting all five children simultaneously, this may offer a somewhat pessimistic outlook.

[10] During their assessments by Dr Dowd both parents had the assistance of an interpreter. At no point did either of them speak in English despite having been in the United Kingdom for more than five years. The need for interpreters was also evident during the hearing of this case – it was a constant feature.

[11] Dr Dowd appended to his reports his notes from the interviews with each parent. The mother's interview was depressing in that she minimised failings on her part and that of the father. She also repeatedly asserted that U had been "destroyed" because she was put into a children's home when she was only 12 and, in that home, had been introduced to drugs, alcohol and sex. When Dr Dowd suggested that U's behavioural difficulties had started before she went into the home, the mother insisted that that was not correct.

[12] When it was suggested to the mother by Mr Dowd that since moving to the United Kingdom her children had experienced no stability in their caring environment, she accepted that but added "all of these problems were caused by the social worker". When he asked if she and the father had failed to understand the

children's developing needs because they were in a different country with a different culture and a different language, she said that was not the case. Instead she said that it was only since social workers had started interfering and had caused havoc in their family life.

[13] When speaking to Dr Dowd the father said that while he had done some things wrong, since the Trust had been involved in their lives they had ruined the family. He put the proportion of blame at being 50:50.

[14] He showed some greater insight when he accepted that his children should have gone to school sooner and that they had suffered because of poor social interactions. He also appeared to express real sorrow over his assaults on R, including the assault in September 2016 when in front of a social worker he had hit her on the face and spat in her face.

[15] The contents of Dr Dowd's report are obviously important but in this case there is added significance because of the timing of his interviews with them. During the course of these proceedings the father had appeared to show some prospect of being able to care for some or all of his children. There was always great pessimism about the mother's ability to make an equivalent contribution. The result of this was that the father was assessed with some positive results in Thorndale and was then allowed in or about 2014 to set up a home with the eldest child, a son D, and the two youngest children K and T. At this stage the two eldest girls U and R were in foster care or in children's homes. As time went on with very significant support organised and funded by the Trust some level of normality and routine was restored to the lives of the three children in the care of their father. However, in September 2016, after his second assault on R, the father was required to leave the family home. Between then and the end of the year the paternal grandmother stayed there looking after D, the oldest child, and sometimes U and R. After the September 2016 assault the two youngest children had been moved into foster care. One promising sign at the end of 2016 was that as a result of considerable efforts made by the Trust and others D was attending school almost 100% of the time and he was also at Sea Cadets.

[16] In December 2016 the paternal grandmother was struggling and the parents sought a ruling that they should be allowed back into the home. At this stage they were living in crisis accommodation at night and had no apparent prospect of finding somewhere with any degree of stability or security to live. The father also asserted that by that time he had learned from his mistakes and could prove himself better in the future. Against very strong Trust opposition I allowed the parents to return home. The detrimental impact of my decision was apparent all too soon. In January 2017 D's school attendance started to decline. By February 2017 he had completely stopped going to school and never returned. His parents contended that they repeatedly exhorted and encouraged him to attend class but even if that is true, which I doubt, they failed. Since their return home D's education has ended, he

spends most of his time in his room and he is socially isolated. He is doing nothing of value with his life.

[17] The education of the older two girls, U and R, had been problematic for some considerable time. Soon after the parents returned to the family home in December 2016, these two girls formally returned there also. This did not help advance their education. In the care of their parents their situation has gone from bad to worse. The parents could not or did not control them. U has had a baby and for long periods has run wild. There is a real concern that R is going down the same route. The parents both blame their placements in children's homes for this. Their case is that whatever the problems were before, their removal from the care of their parents made things much worse.

[18] I accept that the time these girls spent in the homes was not a success. There is reason to believe in the case of U that she may have been exposed to people, inside and/or outside the home, who took advantage of her vulnerability and introduced her to behaviours, some of which are criminal and all of which she was far too young for. It is however simplistic and wrong to think that failings on the part of social services are entirely to blame. For example she was smearing the walls of her bedroom before she was ever taken into care. No explanation for that troubled behaviour has ever emerged. In my view it was the behaviour of a girl who was being appallingly damaged in her home environment.

[19] What these children experienced when they were being raised by their parents, and then from about 2014 when they were being raised by their father, was entirely dysfunctional. Their parents came to Northern Ireland but did not learn English nor did they work. The conditions in which they raised their children were unacceptable. They could not interact with teachers or schools, nor could they get to know their children's new friends or their parents. In short, they were of little or no use to their children and they set no positive example to them.

[20] Worse than that there were things going on in the family home which have continually been denied or minimised by the parents. There has never been an explanation for items such as televisions or mobile phones appearing in the family home, sometimes to replace items broken in explosions of temper, which could not have been afforded by the parents who depended almost entirely on the Trust and public funds for their income. It is also clear that there have been confrontations in the home between the children, especially the two eldest girls, which the parents could not or would not control.

[21] The strong impression which I have formed from all of the evidence, written and oral, is that the father is volatile, regularly verbally aggressive and sometimes violent while the mother is generally passive and unable to protect, control or encourage her children. I do not believe that the social workers have ever been truly welcomed or accepted by the parents. They have certainly not received the co-operation which they deserved and their children needed.

[22] In relation to the children's homes, there are causes for concern. It is not widely appreciated that children cannot be locked in those homes, even at night. Social workers simply do not have the legal authority to take that action. The children who go there are typically those who are already most troubled and difficult to place with foster carers. In this case, for instance, a major problem with U was that she was not going to school. The Trust was unable to find a foster carer to take her in on that basis. It is quite apparent that her behaviour deteriorated in the care homes, probably under the influence of others, but that was despite the best efforts of the staff there and not due to failings on their part.

[23] In August 2017 the court received a report from Ms Cathy Donnelly, an experienced social worker and former Guardian ad Litem. She had been instructed on behalf of the parents to form an assessment, independent of the Trust's, on a range of issues. She advised that she did not consider that either parent had the capacity to resume the care of either of the youngest two children. Her view was that there were already too many uncertainties about the current situation for the three children who are with the parents. In her view there was potential for the family to experience even more stress if the two youngest children were returned to the family home which "remains fragile". Further it was the view of Ms Donnelly that the parents could not meet the competing needs of their children whether they parented together or apart.

[24] Ms Donnelly expressed concern about the eldest two girls making allegations to social workers and then retracting them. This suggested to her that there was something amiss in the family home but the girls would not disclose what that was. I share Ms Donnelly's view that if the children felt safe in the care of their parents this would not have been happening. In relation to the father Ms Donnelly considered that he had already been provided with a high level of support from the Trust yet the same problems continue to emerge. She thought that it would be in his interests to make alternative living arrangements. She hoped that this would allow him the opportunity to spend time away from the pressures of family life and reflect on the concerns of the Trust. She thought this might help to avoid a situation where problems escalated so that the two eldest girls had to be removed from the home again.

[25] I could continue to recite at greater length the overwhelming evidence in this case but I believe that it is unnecessary to do so. There is no interpretation or analysis of the case which suggests that the parents are managing to care adequately for their three eldest children. Nor should their two youngest children be returned to their care. For a multiplicity of reasons, some their fault and others perhaps not, that is just not possible. The only real question live in the case is what orders, if any, should be made in respect of the three youngest children. I will deal with them in turn.

R

[26] R is now 15½ years old. When she initially returned to live in the family home during 2016/17 there was some hope that she was not as troubled as her elder sister. In some respects her behaviour was less concerning. The position has changed. There is great concern about her current wellbeing. She lives with her parents but is still receiving no education and does not respond to whatever efforts they are making at parenting her. The Trust does not seek a care order for her but the parents do. The Trust suspect that the parents are motivated in part by the prospect that if a care order is made the Trust would become responsible for continuing to finance a home for the parents. The Guardian advanced the case for a care order for R because she thought “it might achieve something” but it was not clear to me exactly what it would achieve.

[27] I am despondent about R’s future but do not believe that a care order will achieve anything for her. There is no plan to remove her from the care of her parents because, in reality, there is nowhere she can be moved to. The Trust has not been able to achieve any on-going reductions of the risk to R despite having a series of interim care orders. The parents do not report what is going on and they do not co-operate. I cannot envisage what a care plan would look like in these circumstances or how it would be likely to be adhered to.

[28] In light of all of these factors I do not believe it to be in keeping with the principle of “no order” in the Children Order to make a care order in respect of R or even to make a supervision order. I cannot see what either order would achieve. Accordingly no order is made in respect of R.

K

[29] In a better world K and T would be placed together. That is what initially happened but it could not be sustained because their differing needs and demands required separate and individual care. K has been with the same foster carers since July 2017. It is the right place for her. In fact it is the only place for her.

[30] K wrote a letter to me to tell me that she wanted to go home, that she missed her family, that she did not want to stay in foster care until she was 18 and she also wanted her sister T to go home too. She told the Guardian much the same thing and also that if her parents moved back to their homeland she would want to go with them.

[31] I am not surprised that K has written this letter. It is entirely natural for her to want to live with her parents and siblings. But if she did so I fear that she will end up uneducated, isolated and at risk of severe harm. I regret going against her wishes and feelings but in all the circumstances the only possible order which can be made is a care order with a care plan that K remains in foster care, separate from T.

T

[32] T's time in foster care has not been as successful as K's. Her placement broke down in October 2018. The Trust has found another placement nearby for her. This is in its early stages and looks promising but inevitably the fact that she is in a new placement is a setback. The extent of that setback has been reduced by the fact that T has not had to change school so she has the continuity of her teacher and classmates which should help her.

[33] There is no alternative to long term foster care for T. What I said above at paragraph [31] about K applies also to T.

Contact

[34] For some considerable time the youngest children in foster care have had contact twice a week with their parents and those of their siblings who attend. The Trust proposal is that if care orders are made, and I have decided that they should be, contact should reduce to once per month. Its proposition is that such frequent contact as twice a week is simply far too much when long term foster care is the confirmed way forward. The Guardian ad Litem is sympathetic to that position to the extent that she supports a reduction in contact though her suggestion about frequency is a little different. She suggests that it should be once a fortnight at most. The parents resist any reduction in their contact. Apart from the fact that they want to have as much contact as possible they have expressed concerns about these young girls losing their Roma culture. They are already losing their ability to speak in their parents' tongue and there has been some criticism of the Trust's alleged failure to take steps to remedy that loss.

[35] Neither of these girls is going to be adopted. Unless their parents and elder siblings return to Eastern Europe they will continue to have contact with them and in that context it is relevant that the cultural heritage should be respected. That cultural connection will inevitably be reduced by the fact that the youngest child was born in Northern Ireland and the second youngest moved to Northern Ireland when she was very young indeed. Nevertheless it is the culture of their parents and should be built into their lives.

[36] So far as the frequency of contact is concerned I am satisfied that the Trust's approach is correct and that there should be a gradual reduction of the frequency of contact from its current level of twice per week to once per month. That reduction is in the children's best interests because it recognises the fact that their long term care will not be with their parents. It will instead be with foster carers who will carry the responsibility for protecting them, giving them physical and emotional security and stability and helping them to develop in the best way possible. That is most likely to be achieved by the route identified by the Trust.