

Neutral Citation No: [2021] NIFam 55

Ref: FOW11654

ICOS No: 19/69630
19/69630/01
16/69630/02
19/004157
19/094565

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

Delivered: 19/10/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

BETWEEN:

A HEALTH AND SOCIAL CARE TRUST

Applicant

-and-

A MOTHER

and

A FATHER

Respondents

IN THE MATTER OF TWO CHILDREN
AZ AGED 3 AND XY AGED 2 YEARS

Mr Toner QC with Ms McCluskey BL (instructed by DLS) for the Trust
Ms Connolly QC with Mr McGuiggan BL (instructed by Myler McGuiggan, Solicitors)
for the Mother

Mr O'Brien BL (instructed by John McCaffrey & Co, Solicitors) for the Father
Ms Simpson QC with Mr Girvan BL (instructed by Fox Law Limited, Solicitors) for the
Maternal Aunt

Ms Mackin BL (instructed by Ferris & Co, Solicitors) for the paternal Grandparents
Ms Mullally BL (instructed by PJ Flanagan Solicitors) for the maternal Grandparents
Ms Smyth QC with Ms Austin BL (instructed by Fisher & Fisher, Solicitors) for the
Guardian ad Litem on behalf of the children

HHJ FOWLER QC

(sitting as Deputy High Court Judge)

[1] The names of the parties in this case have been anonymised in order to protect the interests of the children to whom the case relates. Nothing must be

published or reported which directly or indirectly leads to the identity of the children being revealed.

[2] The proceeding before the court at present are:

- Applications for care orders in respect of AZ and XY

[3] It is necessary at the outset to address the question of threshold criteria in respect of both children. To this end the court has to decide whether the requirements of Article 50(2) of the Children (Northern Ireland) Order 1995 (the 1995 Order) have been satisfied. The court must determine whether at the time of intervention by the Trust, AZ and XY were suffering or likely to suffer significant harm attributable to the care given to them, or likely to be given to them, not being what it would be reasonable to expect a parent to give.

[4] In considering this issue the court keeps in mind that “harm” is defined in the legislation to mean “ill-treatment or the impairment of health and development.” In turn, “health” is defined as “physical or mental health” and “development” is defined as “physical, intellectual, emotional, social or behavioural development” (Article 2 of the 1995 Order).

[5] The question of whether harm was or is significant is to be determined in accordance with Article 50(3) of the 1995 Order. This states that:

“... where the question of whether harm suffered by a child is significant turns on the child’s health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.”

[6] It was agreed between the parties that the case would proceed by way of submissions and the court agreed to this approach.

[7] The background to this case is that the parents of AZ a girl and XY a boy had been following a lifestyle characterised by a chaotic, unsettled and often violent existence. AZ was born in 2018 and lived with her parents for the first six months of her life. Social Services were involved in an effort to help the parents care for AZ but neither parent was responsive to the help offered at that time. Despite best efforts by the Trust AZ was placed on the Child Protection Register within two months of her birth and within weeks removed from her parents care on a voluntary basis. By seven months of age AZ was moved to her current kinship carer DE on 26 September 2018. By late 2018 the mother was expecting another baby and XY was born in 2019. The family circumstances had not changed and three days after his birth XY was placed with his current kinship carer.

[8] In the present case the court is satisfied AZ and XY at the time of intervention by the Trust were likely to suffer significant harm attributable to the care likely to be

given to them. The following facts have been established in the agreed threshold criteria. The mother has agreed AZ lacked a secure settled home. Budgeting and money management was an issue with her being reliant at times on family and social services to purchase essentials. There was no baby formula available on 18 May 2018 for AZ and the Trust social worker had to purchase it.

[9] It is agreed that the father engaged in risk taking and impulsive behaviours with the mother prioritising her relationship with the father over her own and AZ's safety. The father was a negative influence and offered her little by way of support or assistance in caring for AZ. There was domestic violence in the relationship. The father demonstrated non-compliance with social services and professionals. He failed to engage with mental health and community addictions. He had extremely limited insight into the concerns of the Trust. The mother failed to adhere to the Trust safe care plan of 10 August 2018 when she stayed overnight with the father contrary to a condition that she was to stay with AZ.

[10] The mother has agreed that while she was pro-active and receptive to social services and other external support (Women's Aid, Mental Health and antenatal care) during her pregnancy with XY unfortunately she was unable to demonstrate consistent stability away from the influence of the father.

[11] The mother has agreed threshold and consents to a care order being made. She is in agreement with the Trusts proposal of long term kinship care with the current carers but cannot agree the Trust's care plan due to her opposition to the proposals for reduced contact with both AZ and XY. The father does not dispute threshold and neither consents or objects to a care order.

[12] Given the cumulative effect of the above agreed threshold criteria the court is satisfied that at the time of intervention by the Trust both AZ and XY would have been likely to suffer significant harm unless the Trust intervened as it did. It is clear that the standard of care which AZ received and XY would have been likely to receive from either parent was well below the standard a reasonable parent or parents would provide for their child.

[13] Despite loving their children, sadly, neither the mother nor father were or are able to meet the needs of their children. They are unable to provide a safe and satisfactory standard of care. The mother continues to live a dysfunctional and chaotic lifestyle. Her mental health is poor and she has engaged in self harm. The father is presently in custody and has a record for domestic violence. They both lack the skills and basic capacity to provide and care for their children. They put their own need over those of the children. As a result both children would be at risk of neglect and potential physical and/or emotional harm.

[14] Accordingly, based on the evidence within the papers and the agreed threshold criteria repeated above, the court considers that the threshold criteria set in Article 50(2) of the 1995 Order has without doubt been met in respect of both AZ and XY.

[15] The court having concluded that the threshold criteria have been met in respect of both children it considers that a care order in respect of each child is necessary for the Trust to progress the children's identified care plan. Accordingly, the court must consider and determine (a) what care plan serves the best interests of each child and (b) the appropriate levels of contact to be put in place. In considering these issues I take into account the Article 3 welfare check list. Both parents object to the proposed care plans in respect of the children on the basis of their opposition to contact proposals. The central consideration for the court are the care orders and whether or not the final proposed care plans proportionally promotes and protects the safety and welfare of the children within the proposed long-term kinship care arrangements.

[16] In relation to care planning and contact I have heard submissions on behalf of the Trust, Guardian ad Litem, mother, father, long term foster carers and both paternal and maternal grandparents.

Trust

[17] The Trust carried out two Together or Apart Assessments in respect of the children's individual placements. A further Attachment/Developmental Assessment was also recently carried out by Professor Iwaniec and set out in her report dated 16 April 2021. It was and still remains the mother and father's view that both children should be placed together. Indeed, it was initially the Guardian ad Litem's view that the children should be placed together. However, given the length of time the children have been placed with their carers, AZ since she was seven months old and XY since he was three day old, it is only natural that they have formed strong attachments to their kinship carers. It is agreed by all parties that the quality of care given to the children by both sets of carers is of very high quality and they have actively committed to and promoted a positive and highly beneficial level of contact between AZ and XY. To such a level that Professor Iwaniec suggests that the level of attachment to their primary care givers is such that if they were removed from them it would 'lead to emotional trauma and acute distress' and would be 'seriously disturbing.' It is agreed by both the Trust and Guardian that it is in the children's best interests and for their psychological security that they remain in their respective placements. At present none of the parties want the placements to change.

[18] However, the Trust recognises there have been difficulties in relation to contact in respect of both the mother and grandparents. It is reported that both children do not appear comfortable in their mother's company, maintain a distance from their mother and seek out their carers for comfort and reassurance. The mother becomes easily distracted on her phone leaving the carers to entertain the children.

[19] There were difficulties in relation to the paternal grandparents contact on 1 July 2021 when unfortunately both the grandparents and the carers experienced communication and hostility issues with each other. This resulted in a strained

atmosphere in the presence of the children not conducive to the children's social and emotional well-being. Mediation was offered to the parties but regrettably the paternal grandmother did not attend.

[20] Unfortunately, there was also an issue with the maternal grandmother at both children's christening. There was a verbal altercation initiated by the maternal grandmother both during and after the christening service. This caused both children upset with XY particularly experiencing significant sleep regression and being unsettled at bedtime.

[21] Both sets of carers reported that the reintroduction of face to face contact after easing of lockdown resulted in regression in the children's presentation and behaviour. AZ was restless and slept poorly. XY experienced sleep regression, waking at night, difficult to settle and crying.

[22] Given this backdrop, it is in terms of contact where the parties differ significantly. The Trust after the most recent LAC review propose that the mother's contact be reduced to once per month for one hour fully supervised. That the paternal and maternal grandparents contact be at a level of once every four weeks for 1½ hours facilitated by carers.

Guardian

[23] The Guardian ad Litem agreed that the care given by both sets of kinship carers was excellent and placement apart in the present circumstances is in the children's best interests. It was suggested that best contingency planning would be that if either placement broke down the other sibling placement would be the first option considered and failing that further consideration within the wider kinship grouping.

[24] In terms of contact the Guardian was of the view that adult contact with the children must be purposeful and rewarding. To date there has been concerns that it has not been. Lack of engagement and inconsistency by the mother in her interactions with the children and hostility between the grandparents and carers were not in the best interests of the children. It was submitted these incidents impacted on the children and by extension the carers with the potential to undermine the stability of the placement. The fact the grandparents had issued residence applications caused emotions to run high and the heat has not gone out of the situation yet. The Guardian contended these adult issues significantly impact upon the children adversely. The proposed levels of contact did little for the benefit or welfare of the children.

[25] The number of persons at contact was also cited as an issue where two children, four carers and two grandparents being present at contact could be exhausting for the children. The cumulative effect of the high level of contact was also an area of contention for the Guardian with concerns of it simply being too demanding for both children and carers and risks the stability of the placements.

[26] The Guardian asked the court to focus on the best interests of the children rather than the adults. That contact was a balancing exercise requiring built in flexibility. The Guardian proposed that the mother's contact be separated out from the grandparents with the mother's contact once per six weeks and the grandparents four per year direct and two per year indirect.

Mother

[27] Ms Connolly QC on behalf of the mother submitted that a significant level of contact was necessary for the mother to allow for a bond to grow between her and the children. However, it was clear that the mother recognised that her role was secondary to the care givers and she was respectful to them. Nevertheless, it was unwarranted and disproportionate for the grandparents to circumvent the mother as a central figure in the children's lives and to be afforded mediation, assessments and greater contact than the mother. It was submitted that there was nothing to justify reducing contact effectively from once every fortnight to either once every four weeks or once every six weeks – levels arguably lower even than a fostering situation rather than kinship. It was submitted once per fortnight struck the correct balance moving forward.

Father

[28] Mr McBride BL on behalf of the father was supportive of paternal grandparent contact at once per month. In terms of contact the father was realistic and recognised that being in custody with a release date in March 2022 was such that he was unable to engage with the Trust in a meaningful way at present. He asked for consideration to be given to indirect contact prior to his release.

DE Kinship Carer

[29] Ms Simpson QC on behalf of DE the kinship carer for AZ was in agreement that a care order be granted and asked that DE's application for a residence order be dismissed. It was confirmed that DE was fully committed to AZ. She was of the view that contact was excessive and that AZ was disrupted and unsettled after contact. It was agreed that after the initial incidents over the summer with the grandparents things had settled down and the grandparents were more respectful of contact and placement arrangements. DE was in agreement with the Guardian's proposals for reduced contact.

Maternal Grandparent

[30] The maternal grandmother accepted the incident at the christening and apologised. She indicated that she is willing to work with the Trust and is not seeking an order in respect of contact. Contact has progressed well since the summer and she is respectful and accepts the Trust proposals for contact.

Paternal Grandparents

[31] The paternal grandparents agree with the current Trust care plan of one contact per month unsupervised. They agree with the Trust that the LAC reviews can deal with any issues arising in a flexible way.

Consideration

[32] Ultimately, the issue is whether the welfare and well-being of the children is promoted, secured and improved by contact with their mother, father and grandparents and at what level is that best achieved. I agree with the Guardian to the extent that I find contact between the mother and both of her children is fraught with difficulties. She fails to engage with the children or be attentive to their needs. She is easily distracted and lacks the tools to effectively communicate with them or promote any attachments. That after contact the children are on occasions unsettled and their sleep disturbed. That the mother's mental health is such that she had engaged in self harm and this is of concern as to how her mental ill health may impact on contact and ultimately the welfare of the children. However, she does not attempt to undermine the position of the carers or the stability of the placement and there is the potential for an appropriate attachment to develop within a kinship setting where she may begin to have a role in the children's lives. Much will depend on her. It is impossible to predict how she will engage moving forward and that is why the Trust have adopted a care plan with inbuilt flexibility and indeed there is a LAC review due in January 2022 where the issue of contact can be kept under close review. The Trust have therefore adopted a plan which will involve a purposeful review. The proposed contact, as identified by both the Trust and Guardian, requires to be reduced given the unsettling impact on the children and the mother's lack of engagement. I take on board the Trust's rationale that at this point in time contact should be reduced from what is effectively once per fortnight to once per month supervised with the potential for a further reduction in January 2022 depending on circumstances. This allows for the contact arrangements to be balanced and flexible and reactive to the children's needs and best interest.

[33] In terms of the father he is still in custody and no doubt if he wishes can begin to engage with the parenting courses in custody and with the Trust. While there are no plans or recommendations as yet for contact the Trust have indicated they will give consideration as to the appropriateness of contact. Much will depend on his ability to maintain a stable lifestyle, keep out of prison and engage in a meaningful way with the Trust. It is too early at this stage to begin indirect contact.

[34] As far as the grandparents are concerned they have an important part to play in the children's lives in terms of support for the placements and in terms of being part of contingency planning. In this regard contact is beneficial to the children and of purpose. This is provided their actions and behaviours do not adversely impact the children or imperil the placements. Their input should be focused on the welfare of the children and on making the contact as enjoyable and purposeful as possible for them, building an appropriate grandparent relationship with the children in the

context of what are high quality placements. Contact is not about them or what they get from it. Contact is about what enhancements, benefits and supports they bring to the children's lives. At present I agree with the Trust that contact should be once per month unsupervised. However, I imagine were there to be any further hostility or unpleasantness at contact or other family gatherings with the children present this will have an impact and be considered at any future LAC reviews.

[35] In future LAC reviews not only will the mother and grandparents have a voice, the foster carers and social workers will also have much to report and contribute. It is imperative that contact proceeds with the children's best interests to the fore. I would hope the very special contact between the siblings initiated and facilitated by the kinship carers will continue and be encouraged and supported by the Trust. It is a testament to the kinship carers that the one thing all parties can agree on in this case is the high quality care provided to these two children. Accordingly, I consider the Trust care plan is therefore entirely appropriate taking into account the full circumstances of the case. I am satisfied that the Trust's plans for contact with each of the children is satisfactory and will operate in the best interests of each child. It also takes into account the respective family lives of the mother, father and grandparents.

[36] In conclusion, I grant the care orders as being necessary and proportionate. I approve the care plans as put forward by the Trust and the flexibility of the proposed contact arrangements.

[37] I discharge the Guardian ad Litem. There will be no order as to costs between the parties, but the costs of the legally assisted parties shall be subject to the usual taxation orders.