

Neutral Citation No: [2024] NIFam 19

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

ICOS No:

Delivered: 13/06/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

A HEALTH AND SOCIAL CARE TRUST

v

AB and CD

**Mr Magee KC with Ms Paula McKernan (instructed by Directorate of Legal Services) for
the Applicant**

**Ms Ramsey KC with Ms Clarke (instructed by James Ballentine & Son Solicitors) for the
Respondent Mother**

**Ms Simpson KC with Ms MacAllister (instructed by McAtamney Solicitors) for the
Respondent Father**

**Ms Smith KC with Mr Gervin (instructed by Sara Edge Solicitor) for the Children's Court
Guardian**

KINNEY J

Introduction

[1] The Trust have initiated care proceedings in relation to E who is two years old. Both of his parents are Romanian nationals. He was born on 25 May 2022 in Antrim and has lived in Northern Ireland for all of his life. He was placed in the care of the Trust in July 2023 and has resided with his present foster carers since August 2023.

[2] An incident occurred between the mother and the father in December 2023 which resulted in the father being charged with a range of criminal offences including assault occasioning actual bodily harm. At this time, it was confirmed that the mother was pregnant with a due date of April 2024. The mother refused to share any details regarding the pregnancy and said it was her intention to return to Romania to give birth and then return to Northern Ireland to take E back to Romania with her. The

mother subsequently left for Romania. She gave birth in March 2024 but sadly the young baby passed away. She has remained in Romania since then.

[3] The father pleaded guilty to various offences and was sentenced to eight months in custody. He has now completed that sentence but remains in custody in relation to his immigration status.

[4] The mother has issued a C2 asking that the current public law proceedings transfer to the Romanian court under articles 8 and 9 of the Hague Convention 1996.

[5] The care plan for E is currently one of kinship placement. If this proves impossible then the plan will move to one of long-term care as rehabilitation has been ruled out to both parents. The kinship placement is with the paternal grandmother in Romania.

[6] The Trust has actively engaged in the process of assessing the grandmother. The Romanian authorities have also been involved. At a joint meeting held on 14 March 2024 between the Trust, the Romanian authorities, the grandmother and a range of professionals from both jurisdictions, the Romanian social services present indicated a preference that the Trust would continue to care for E and, if the plan was agreed to move him to his grandmother, this would be supported by the Romanian social services.

[7] A viability referral has been made and the trust has indicated it seeks to complete a robust viability assessment of the grandmother. This would be followed by a full kinship assessment. The mother asserted there has been delay in completing the kinship assessment. Initial checks on the grandmother are clear and the Romanian authorities are prepared to support a placement with the grandmother. The Trust had planned to commence their assessment earlier this month, but this was delayed due to the current application.

[8] The law relating to the application has been set out in the skeleton arguments and I have no need to rehearse it as it is not in dispute. Under article 8 of the 1996 Convention, I may request the Romanian authorities to assume jurisdiction if I consider that the Romanian authorities would be better placed in this case to assess the best interests of E. The Romanian authorities may then assume jurisdiction if they consider that this is in E's best interests.

[9] The following matters are not in dispute.

- (i) He is habitually resident in Northern Ireland.
- (ii) He has a connection to Romania as Romania is the country of his nationality, his parents are Romanians, and his mother currently resides there.

(iii) The burden is on the applicant mother to show “by way of exception” that the transfer should be made.

[10] I was referred to various authorities including *Re N* [2016] UKSC 15, where the Supreme Court was considering article 15 of Brussels II. The issue of the meaning of “by way of exception” was considered by Lady Hale at paragraph 44. She said:

“In general, it is expected that exceptions will be narrowly construed and applied.”

[11] Article 8 was considered in this jurisdiction by Mr Justice McFarland in the case of *A Health and Social Care Trust v a Mother and a Father* [2022] NIFam 9. At paragraph 41 Mr Justice McFarland referred to the provisions of both article 15 of Brussels II and article 8 of the 1996 Convention. He said:

“Both provisions apply “by way of exception”, and are therefore a derogation from the general rule, which is that the court where the child has habitual residence should exercise jurisdiction. Transfer should therefore only occur in exceptional circumstances with a strong presumption in favour of retaining jurisdiction.”

[12] In this matter the principle of exceptionality has been accepted by the mother. She has pleaded that the circumstances of this case render it exceptional.

[13] The parties in their very helpful skeleton arguments have set out lists of the advantages and disadvantages of the transfer. A number of these are in my view neutral in their application. I do not intend to set out the lists but I have taken them all into account.

[14] Factors in favour of a transfer include the family connections with Romania and the wishes of both parents that the case transfer. The kinship placement is in Romania and the Romanian authorities are already involved. E is very young and would be able to easily settle and integrate into a new environment. Both parents have immigration difficulties in the UK. There will be language difficulties particularly for the parents in conducting proceedings in this jurisdiction.

[15] Set against that is the fact that E was born and has lived in Northern Ireland all his life. He has never been to Romania. There has been ongoing social services intervention in his life in this jurisdiction and the Northern Ireland courts have been seized of proceedings since July 2023. The trust has already undertaken significant preparatory work in this case. The witnesses in relation to the public law proceedings are in Northern Ireland and there will be language difficulties if proceedings are transferred to Romania. The Romanian authorities are already fully involved by the trust and have engaged in care planning with the trust. E is in a settled placement pending the outcome of the kinship assessment. Furthermore, although the father

supports the mother's application, he made it clear at hearing that it is his intention to remain in Northern Ireland after his release from custody and to seek employment here. Finally, there is likely to be less delay if the trust are able to continue with their assessment of the grandmother over the summer rather than the inevitable delay that will be created by any transfer request.

[16] The parties have also accepted that this is essentially a balancing exercise and there are advantages and disadvantages to both courses. The test the court must apply is one of exceptionality and the burden lies with the mother in showing that exceptionality exists. I am satisfied she has not discharged that burden. The question that must be answered is whether the Romanian authorities would be better placed to assess the best interests of E. I conclude that they would not.

[17] E is currently well settled in Northern Ireland in a placement where his needs are being met. It is unclear whether or not the proposed kinship assessment of the grandmother will be successful. One short-term consequence for E is that he will be removed from a home where he is happy and settled and transferred to an alternative placement. Such a transfer would also require the removal of E from his long-standing placement without any evaluation of the impact of this on his physical, mental and emotional well-being.

[18] The mother wishes E to return to Romania. However, she currently lives with the grandmother who has been proposed for a kinship assessment and although she has indicated she will leave that household she has not yet done so. The father, on the other hand, has indicated that he intends to stay in Northern Ireland and seek employment here subject to any issues that remain in his immigration status. A longer-term consequence of making a request to transfer is to rule out the possible options for his future care and upbringing that exist within this jurisdiction.

[19] The proposed placement with the grandmother is not in itself a matter of dispute. The same outcome of assessment of the grandmother and potential placement with her can be achieved without transferring the case.

[20] The social services in this jurisdiction have conducted a range of investigations both here and in Romania. They have significant knowledge in relation to E, his needs and his best interests.

[21] I acknowledge that there will be language and communication difficulties regardless of which jurisdiction or authority deals with the proceedings. However, I note that our courts are well versed in dealing with parties who do not have a command of English. The parents have full access to the courts in both jurisdictions, but the father remains in custody in this jurisdiction and both parents have full legal representation in this jurisdiction at public expense.

[22] The mother has also made the case of the family connections and support potentially available in Romania. However, the care plan currently being pursued by

the Trust is for E to be placed in the care of his grandmother in Romania. The Romanian social services are cooperating with the Trust and there is no basis for an argument that a kinship assessment is better completed by social services in Romania rather than by the Trust working with those social services. Similarly, E's cultural and linguistic needs will be met under the current care plan.

[23] Delay is an important factor. There has been delay, it would appear, in progress in the kinship assessment with the grandmother in Romania. However, a request to the Romanian authorities to accept the transfer of this case will undoubtedly involve further delay. The Trust has laid out for the court ~~it's~~sits plans for immediate progress in the kinship assessment with the aim to have this completed by the end of the summer.

[24] I am satisfied this is not an exceptional case such that I should derogate from the general rule which is that the court where a child has habitual residence should exercise jurisdiction.

[25] I therefore refuse the mother's application.