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

Delivered: 29/11/2021

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 AR
(A FEMALE CHILD AGED 6 YEARS)

Ms S Simpson QC with Ms K Murray BL (instructed by Wilson Nesbitt solicitors) for the
Father

Mr G McGuigan QC with Mr N Jones BL (instructed by Breen Rankin Lenzi solicitors)
for the Mother

McFARLAND J

Introduction

[1] This is an application by the Father for contact with his 6 year old daughter.

[2] The ruling has been anonymised to protect the identity of the child. I have used the cipher AR for the name of the child. These are not her initials and the cipher has been chosen randomly. Nothing can be published that would identify AR, without leave of the court.

[3] The Mother, with whom AR has lived for her entire life, has been very resistant to contact between AR and her Father.

[4] As with any application relating to the upbringing of a child, the court will be guided with Article 3 of the Children (NI) Order 1995. The specific factors to be taken into account are set out in Article 3(3). AR's welfare is the paramount consideration of the court.

[5] With echoes of the exhortation of the Supreme Court's landmark decision setting out the principle that adoption should only be considered as a last resort for looked after children (*Re B* [2013] UKSC 33), in the following year Black LJ in *Re J-M* [2014] EWCA 434 at [25] used similar language when setting out a court's obligations when dealing with a contact dispute between parents –

“(1) The welfare of the child is paramount.

(2) It is almost always in the interests of a child whose parents are separated that he or she should have contact with the parent with whom he or she is not living.

(3) There is a positive obligation on the State and therefore on the judge to take measures to promote contact, grappling with all available alternatives and taking all necessary steps that can reasonably be demanded, before abandoning hope of achieving contact.

(4) Excessive weight should not be accorded to short term problems and the court should take a medium and long term view.

(5) Contact should be terminated only in exceptional circumstances where there are cogent reasons for doing so, as a last resort, when there is no alternative, and only if contact will be detrimental to the child's welfare.”

[6] International rights conventions have embedded this principle recognising that contact with a parent who does not live with a child is a core right pertaining to a child and a parent, the protection of which is clearly beneficial to the child's welfare. Article 24(3) of the EU Charter of Fundamental Rights (which is no longer directly applicable to AR) states –

“Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.”

and Article 9(3) of the UN Convention on the Rights of the Child (to which the United Kingdom is a signatory) states –

“States Parties shall respect the right of the child who is separated from one or both parents to maintain personal

relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."

[7] Article 8 of the ECHR is less specific about detail and speaks of a right, of both a child and a parent, to respect for their family lives. The ECtHR recognised in *Glasser v UK* [2000] 33 EHRR 1 at [66] that respect for family life included a duty to facilitate contact -

"The key consideration is whether [the national] authorities have taken all necessary steps to facilitate contact [between child and parent] as can reasonably be demanded in the special circumstances of each case."

[10] It is also recognised that contact between a child and his or her parent must be regulated according to the circumstances of each case. In some cases it may not be facilitated at all if contact in any form is not in the child's best interests. In other cases, although facilitated, conditions will be put in place to safeguard the welfare of the child. That is the key feature in this case as the Mother's stated concern is that contact between AR and her father would create a risk of harm to AR. The Mother refers to certain features in the Father's life which she says creates a risk of harm.

[11] Modest progress has been made in this case, which has been before the courts for most of AR's life. Initially the Mother was refusing all contact expressing concern that even seeing the Father was a risk factor. Her current concern is that all contact must be supervised. In the absence of a suitable adult to carry out the supervision, contact had been occurring in contact centres. It had moved out of contact centres into a local shopping and recreational facility ("the centre") without direct supervision but with it occurring in a setting with the presence of members of the public using the facility, security staff in the centre and the provision of CCTV cameras, there was a degree of monitoring.

[12] Despite the Mother's concerns, there has been no evidence presented to the court to suggest that AR has come to any physical or emotional harm either during, or as a result of, this monitored, or in fact any, contact with the Father. Despite this, the Mother wants contact to revert back to contact centres after Covid-19 restrictions had closed the centre. The Father wants to move contact away from the centre to permit contact at other locations including at his residence. This contact, he asserts, would be more conducive to the development of a relationship between him and his daughter. The Father ultimately seeks to have overnight contact with AR, although he appreciates that that may not be feasible at this stage.

[13] I have mentioned the fact that this case has been before the court for some five years now. Various reports and assessments have been carried out.

[14] The court had directed a report from the local Trust under Article 4 of the Children (NI) Order 1995. Unfortunately, due to staffing issues a full report was not

filed and a social worker from the Trust wrote to the court on 3 February 2021 setting out that it could not provide an Article 4 report. The letter did recommend that three matters are dealt with before unsupervised contact is permitted – the Father is to engage meaningfully with addiction services, provide evidence of a clear hair follicle test and provide evidence that he can sustain this over a number months; to engage with mental health services and any recommended treatment; and to complete a parenting assessment. It is a very brief letter and does not really comply with the Trust’s obligations under Article 4. Those obligations relate to the welfare of the child and there is no attempt to address the ‘welfare check-list’ in Article 3. In fact, AR is not even mentioned in the letter, save in the briefest of terms.

[15] The hearing proceeded on 18th October 2021 and it was agreed by the parties that it would proceed by submissions only, the parties having lodged statements. The court adjourned the hearing to 9 November 2021 to facilitate the attendance of a senior social worker who could speak to the content of the letter of 3 February 2021. That social worker who did attend had a knowledge of the case but no in-depth understanding of it.

[16] With regard to the three recommendations, evidence has been provided that the father has undertaken hair follicle tests in July 2021 and October 2021 and both were free of cannabinoids, the major concern of the Mother. In relation to his mental health, there is no formal diagnosis of any mental health disorder. The father consented to his GP providing a letter about his condition, and in that letter of 3 September 2021 the GP confirmed an attendance in April 2021 with reported anxiety low mood and panic symptoms. His medication (co-codamol for physical pain relief) and diazepam (anxiety) remains unchanged. Although there had been an attempted suicide in 2010, the current medical history does not indicate a current disorder about which the court would have a concern.

[17] The GP, because of limited engagement with the Father, was reluctant to provide any opinion or assessment about the Father’s parenting ability, and suggested that if one was required a specialist assessment should be sought from either social services or mental health psychiatry.

[18] I consider that the conditions set out in the letter of 3 February 2021 have either been met or are not necessary when one takes a realistic approach to safeguarding and the welfare of the child. There is no evidence before the court to suggest that the supervisory role facilitated by a contact centre is required to deal with any perceived risk. The court also recognises that the Father has contact with, and looks after, both his god-daughter and god-son. Such caring responsibilities are undertaken without any supervision. There is no recorded adverse incident concerning this and there is no evidence to suggest that either child has come to any physical or emotional harm. The court would consider it far-fetched to suggest that, in these circumstances, the Father poses a different and greater risk to his own child, and that she somehow requires special protection over and above what is required by his god-children.

[19] The Mother's approach to this case has been to resist all attempts by the Father to have any involvement in AR's life. There have been incremental increases, but only after detailed court involvement. The Mother does not wish the child to have any relationship with the Father. The Court cannot allow this attitude adopted by the Mother to prevail as it would not be in AR's best interests. The Father has undoubtedly certain problems in his life. He has attempted to deal with them, and the court recognises that certain therapies and assistance can be extremely hard to access within a reasonable time frame. The court must consider that time frame in the context of AR's life and whether her relationship with her father can be put on 'hold' during this period. I consider that the approach of the social workers has been too cautious. My perception is that the main thrust of the approach from social services has been determined by social workers who, for valid reasons, are not immersed in this case and is mainly a risk averse reaction. Risk aversion can be the correct approach in some cases, but in this case, when one actually examines what are the actual risks involved in permitting AR to meet the Father for relatively short periods, one struggles to identify any that require a regime of constant supervision.

[20] When this is then weighed up against the evidence of the positive benefit and enjoyment that AR achieves from having contact with her father, the court considers that the Mother's objections, although genuinely held by her, cannot be allowed to determine the extent of the relationship between AR and the Father.

[21] The court would prefer if it could state general principles about contact, and then allow the parents to work out how best to achieve an outcome that would be convenient and workable for them and AR. I do not consider that we are at that stage yet, and the Mother is likely to remain resistant to efforts to establish contact at a meaningful level. The court will therefore set out specific contact arrangements which will be embodied in a court order. Should the parents wish to 'fine-tune' these arrangements then the court would encourage them to do so, provided that any alteration is recorded in writing, so as to avoid confusion.

[22] Some degree of engagement between the parents is essential as AR grows older as her needs will undoubtedly change. At this stage the court is only contemplating day-time contact, but there will be a time in the near future when over-night contact has to be seen as being beneficial to AR. The court will not set any projected date for over-night contact to start, but the parents should be aiming at the latter part of the school summer holidays in 2022.

[23] The contact arrangements are set out in the schedule to this judgment. The main purpose of these arrangements is to re-establish contact at a meaningful level and to permit it to develop in a more natural and conducive environment.

[24] Although there has been reference to a 'penal' notice attaching to this order, the purpose of which would be to seek compliance from the Mother, I do not think that it is necessary at this stage. The failure of the court to impose such a notice

should not be seen by the Mother as an indication that the court will not enforce, if required, the terms of its order.

[25] There will be no order as to costs between parties with the usual taxation order in respect of the costs of any legally assisted party.

SCHEDULE

1. Twice weekly contact between AR and the Father at the centre. Existing conditions relating to this contact shall continue to apply. The contact will be unsupervised.
2. The contact shall be 1½ hours in duration and shall be on days agreed between the parents, and in the absence of an agreement will be on Wednesday and Saturday afternoons. The Mother shall be responsible for bringing AR to, and collecting her from, contact.
3. Contact will not take place on Christmas Day.
4. This arrangement will cease after the last contact before Christmas.
5. On Boxing Day contact will take place, unsupervised, in the father's home for a period of 4 hours. The father shall be responsible for collecting and returning AR to the Mother's home. The 4 hour period shall include travelling time.
6. Thereafter contact will continue, unsupervised, twice weekly, once (on Wednesday or other week-day agreed by the parents) at the centre for 1½ hours, and once (on Saturday, or on Sunday if agreed by the parents) at the Father's home for 4 hours (travel time included). The same travel arrangements as set out above shall apply.
7. After Easter (from and including the week commencing 17 April 2022) contact at the centre shall cease. In substitution there will be a contact at the Father's home during a week-day for a period of 3 hours (travel time included). This contact will take place on a Wednesday, or other week-day as agreed by the parents. Week-end contact shall continue and shall be extended from 4 hours to 6 hours, travel time included.
8. Any of these arrangements can be subject to change by agreement, in writing, by the parents.