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

**ICOS No: 13/065700**

**Delivered: 29/07/2021**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**FAMILY DIVISION**

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**IN THE MATTER OF THE CHILDREN (NI) ORDER 1995**

**Between:**

**A HEALTH AND SOCIAL CARE TRUST**

**Applicant**

**and**

**F and M**

**Respondents**

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**O'HARA J**

All of the parties in this judgment have been anonymised so as protect the identities 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 any adult relatives.

**Introduction**

[1] In July 2019 I gave judgment following a fact finding hearing in which the primary issue was who was responsible for an assault on a girl, E, who was 2½ years old at the time her injury was inflicted. My finding that it was the mother was unsuccessfully appealed by her to the Court of Appeal. It is unnecessary to go through the detail of that finding but it should be noted that E had suffered an earlier non-accidental injury in May 2013 when she was only 3 months old. That issue was dealt with on the basis that while each parent denied being responsible, each accepted it must have been one or other of them who inflicted the injury.

[2] At the final hearing on 30 June 2021 I heard submissions from all parties on whether I should make care orders in respect of the two children, a boy who I shall call C who is now 11 and E who is now 8. There is also an issue about what the care

plan for each child should be. The parties agreed that no oral evidence was required with the various reports and statements being taken as read. Instead I heard oral submissions only from the parties.

[3] It will be helpful to outline the sequence in which various adults have looked after these children to explain their current circumstances and the care plans proposed by the Trust:

- They lived with their mother and father until May 2013 when E's first injury was discovered.
- From May 2013 to July 2015 they lived with their maternal great aunt, Ms R, who moved into their family home as the parents moved out. That arrangement lasted until July 2015 when Ms R was unable to cope any longer with various stresses.
- From July to December 2015 they lived with the paternal grandmother, Ms B, and a paternal aunt.
- From December 2015 until June 2017 they lived with one set of foster carers.
- From June 2017 to February 2021 they lived with a second set of foster carers.
- In February 2021, at short notice, they returned to the care of Ms B.

[4] In broad outline the Trust's care plan of 26 May 2021 for each child is that they should remain with Ms B, the paternal grandmother, under a care order. She has been approved as a long-term foster carer. The plan as originally presented envisaged that each child would have supervised contact with their father once per week in the community but none at all with their mother, at least for the present.

[5] On 29 June 2021, the day before the final hearing, an addendum to the care plan was presented. It was triggered by demands from the children, but particularly C, that they should be allowed to live with their father immediately. The Trust was concerned that C would "vote with his feet" by going to his father's and then refuse to leave. Accordingly, the addendum set out a basis on which the father's contact would be significantly increased during the summer. If, but only if, that progressed well the plan then envisaged contact increasing even further in September, leading to a review on 21 September 2021 at which a view would be taken as to whether rehabilitation to the father was viable.

### **The Children's Views**

[6] At their request I met the children on 1 July 2021 after hearing submissions the day before from the various parties. While C spoke more than E, E was not shy about adding her contribution throughout the meeting. They both became more

open and talkative as our meeting went on. The main issues which they spoke to me about were as follows:

- (i) They had liked their last foster carer until another foster child, a teenage girl, joined them in the home after which everything went wrong – they were very tearful about that series of events.
- (ii) They are both much happier now with their paternal grandmother and aunt than they were before.
- (iii) They both really want to live with their father as soon as possible.
- (iv) They became very upset talking about their mother, especially about her distressing and disruptive interception of them as they came out of school on 22 April 2021.
- (v) They were very reluctant even to think about seeing their mother again.

### **The Mother's Position**

[7] The mother rejects entirely my findings of fact against her. She contends that I was wrong to conclude that she had assaulted E in any way. Against that background she wants to be assessed, with her current partner, as the best long term carer for C and E. In addition, she is entirely opposed to the children staying with the paternal side of the family, even Ms B who she believes has turned the children against her. She says that whilst she initially accepted the children moving to Ms B in February 2021, she did so because the foster placement had broken down and she recognised a short term need for C and E to move to Ms B. She now regrets that and believes it was a mistaken position for her to have taken.

[8] The mother contends that the care plans are inadequate for these reasons but also because there is no identified route for her contact with the children to be restored. She wants that issue to be given priority because, she says, for the most part her contact with them was positive and enjoyed by them until Ms B turned the children against her after February 2021.

[9] So far as her presence at the school on 22 April 2021 is concerned, the mother acknowledges that it was a mistake for her to go there but she says it should be seen for what it was, an act of desperation on her part to see her children. In relation to the Trust's application for an exclusion type order to be made against her, keeping her away from the home of Ms B or the father or whatever school the children attend, she says that that is not necessary because she will not repeat her mistake.

[10] The mother submitted that the final hearing on 30 June 2021 should be adjourned so that she and her partner could be assessed or alternatively that I

should reject the care plans and therefore dismiss the Trust's application for care orders with the consequence that C and E would be returned to her care.

[11] It will be immediately obvious that I must reject entirely these unrealistic submissions. To do otherwise would be to reverse my findings of July 2019. The mother will not or cannot accept those findings. To make matters worse she (and her father) threaten to publicise "the wrongs" which have happened to their family in the media or social media.

[12] When the children were having contact with their mother and her father they reported being whispered to, to the effect that they, the children, were being told lies. This upset them and deters them from wanting contact. The truth is that contact was problematic long before February 2021 when C and E moved to Ms B. The reason that it was problematic was directly because of the conduct of the maternal family during contact. What happened as the children left school on 22 April 2021 was terrifying for them. C was in tears as he told me about it on 1 July 2021. It has had a hugely negative effect on their attitude to seeing their mother.

[13] The school incident did not just involve the mother turning up in the school car park to observe her children. She parked her car in such a way as to block Ms B's car. Then she pushed aside the paternal aunt who was collecting C (as Ms B collected E at another door) and grabbed C by the arm, shouting that she just wanted a minute with them to tell them the truth as they were being told lies. The school principal and staff intervened to safeguard the children until the mother finally left. When spoken to the next day by the social worker, the mother said she had no choice but to do what she did because the children were not safe with Ms B and social services were not listening. She added that she had "plenty more up her sleeve" and "she was going to keep it going" until it ends "either way."

[14] The mother's main problem, apart from my July 2019 findings, is that her threats and conduct make it close to impossible for the Trust or anyone else to work with her positively. I agree that some contact should be achieved, if at all possible, but the children were very hesitant about this happening when I spoke to them.

### **Other Parties**

[15] The father, Ms B and the Guardian ad Litem all support the Trust's applications for care orders on the basis of the care plans plus the addendum of 29 June 2021. Whether the children will move gradually to live some or all of the time with their father remains to be seen but since that is what they want it is agreed that it should be worked towards for so long as that is feasible.

[16] In this context Ms B, the paternal grandmother, agrees that her application for a residence order should be dismissed.

[17] All these parties agree that nothing less than a care order is enough for C and E, given the long and damaging history of their childhood and the uncertainty about what lies ahead. The threats from the mother (and her father) add weight to this being the only possible course of action.

### **Position of Ms R, the maternal great aunt**

[18] As indicated earlier Ms R cared for these children for two years and made a considerable sacrifice in doing so. This year she applied for leave to apply for a residence order, an application which I rejected in a ruling dated 8 June.

[19] The Trust's care plans provide for Ms R to have some direct contact with the children but only as part of their mother's contact. In light of the uncertainty about that contact happening at any point in the near future I raised during the hearing on 30 June 2021 the question of whether the care plan could allow for the possibility of independent contact for Ms R. This would achieve two things. Firstly, it would maintain some level of connection with the maternal family. Secondly, it would recognise the important contribution which Ms R made between 2013 and 2015 in particular.

[20] In light of exchanges in court the Trust agreed to amend the addendum to allow for this as a potential way forward. On that basis Ms R's representatives did not pursue the possibility of a contact order. I welcome that progress which is explicitly based on the acceptance by Ms R, through counsel, of my factual findings of July 2019. How and when any such contact starts may be a little difficult given what is planned for the children in respect of their father but the principle is accepted by all parties that it is not dependent on the mother having contact.

[21] Another potential positive step was Ms R's suggestion that she would meet with Ms B to try to restore what had previously been a respectful and helpful relationship between them. Without ever expecting these two families to become friendly, it would help if there was an adult link between them. On behalf of Ms B it was indicated that she would prefer an initial meeting to be facilitated by a professional. That seems reasonable to me in that it might assist in allowing some open discussion and plain talking which did not at the same derail the prospect of progress. The Trust agreed to develop this proposal and has helpfully done so by amending the addendum on 24 July 2021 after discussions between the parties.

### **Exclusion Zone**

[22] After the events of 22 April 2021 at the children's school, an order was made under Article 57A of the Children (NI) Order 1995 excluding the mother from the area of the school and from an area around Ms B's home where the children live and where it is alleged the mother had been seen from time to time. The mother has denied those sightings but in light of her position generally and specifically in light of her response to the social worker on 23 April 2021 (see paragraph 13 above) I

regard the risk of her interfering and causing further significant harm to be a real one.

[23] Curiously, and rather unhelpfully, the exclusion order which I made under Article 57A can only be made in the context of an interim care order, not a full care order. There may be a reason for that but it is not clear what that reason might be. On the face of it, it makes no sense for the legislation to provide that there can be an exclusion order only in the event of an interim care order but not if there is a full care order. It seems more likely that there has been an oversight in the drafting of the legislation or amending legislation. It would be helpful if this matter could be attended to as has been recommended to the relevant government department.

[24] There is however an alternative, if imperfect, possible route to roughly the same end via Article 20 of the Family Homes and Domestic Violence (NI) Order 1998. Article 20(2) provides as follows:

“(2) The court may make a non-molestation order –

...

(b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.”

It is then provided at Article 20(6A) that:

“(6A) A non-molestation order may exclude the respondent from a defined area in which a dwelling-house is included, any other defined area and any premises defined in the order.”

[25] In the circumstances of this case I am firmly of the view that C and E need to be protected from any threat of being confronted or grabbed by their mother or otherwise being interfered with or molested (in the legal sense) by her. Accordingly, I agree that it is appropriate to make a non-molestation order which will continue until further order in favour of C and E against their mother and to include in it as defined areas any area within 100 yards of:

- (i) Ms B’s home.
- (ii) The father’s home.
- (iii) The school which C will attend from September 2021 onwards.

- (iv) The school which E currently attends and any other school she attends in the future.

### **Conclusion**

[26] For the reasons set out above:

- (i) I make a care order in respect of both C and E on the basis of the care plans of May 2021 plus the addendum of 29 June 2021 as that addendum was amended in relation to Ms R on 24 July 2021.
- (ii) I dismiss the application for a residence order brought by Ms B.
- (iii) I do not make a contact order in favour of Ms R on the basis that (as she agrees) such an order is not required because of the amendment to the addendum care plan.
- (iv) I make a non-molestation order under Article 20 in the terms outlined above which are to be fully defined by agreement between the parties.
- (v) I discharge the Guardian with my thanks to her, especially for her important contribution to the invaluable meeting I had with the children on 1 July 2021.
- (vi) I make an order for legal aid taxation of the costs of all assisted parties.