

Neutral Citation No: [2020] NIFam 29

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

Ref: KEE11375

ICOS No: 19/023742  
19/023758

Delivered: 25/11/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

A HEALTH AND SOCIAL CARE TRUST

Applicant

and

A MOTHER

and

A FATHER

and

A FATHER

Respondents

IN THE MATTER OF IAN AND JACK (MINORS)  
ARTICLE 15 BRUSSELS IIR TRANSFER TO THE REPUBLIC OF IRELAND

Ms Hannigan QC (instructed by DLS Solicitors) for the Applicant  
Ms Smyth QC with Ms McNulty (instructed by Fahy Corrigan Solicitors)  
for the Respondent mother

Mr McGuigan QC with Ms Austin (instructed by Murphy Mc Manus Solicitors)  
for a father

Ms Simpson QC with Ms McHugh (instructed by Fergusons Solicitors) for a father  
Ms Grainne Murphy (instructed by TT Montague) for the children

KEEGAN J

**Nothing must be published which would identify the children or their family.  
The names I have given to the children are not their real names.**

## Introduction

[1] This case relates to two children whom I have called Ian and Jack for the purposes of these proceedings. Ian the elder child is the child of the first father and was born in 2009 and Jack, the younger child, is the child of the second father who was born in 2015. There are care order proceedings currently listed before the court in relation to these two children issued by the Trust on 27 February 2019 when the mother and the children were living in Northern Ireland. The situation has now changed in that as of July 2020 the mother and the two children have been living in Co Cavan in the Republic of Ireland with the mother's new partner and the mother gave birth fairly recently to a new baby. This application is now brought by the Trust to have proceedings heard in the Republic of Ireland pursuant to Brussels IIR Article 15.

[2] In that regard the situation is that all parties live in County Cavan, that is the mother, the two subject children and the two fathers. There is no one actively involved in the case who resides in Northern Ireland. The Guardian agrees with the Trust that the case should be heard in the Republic of Ireland as does the mother. The two fathers disagree. The Irish Care Authorities, TUSLA, are already involved given that the new baby was born there.

[3] Also, as the papers reveal, the mother was born in County Cavan, she is an Irish national. The eldest child was born in the Republic of Ireland. His father was born in the Republic of Ireland and lives there. Both sets of grandparents live in the Republic of Ireland. The youngest child was born in Northern Ireland but has been living in County Cavan since July 2020. The youngest child's father was born in the Republic of Ireland and is an Irish national who lives there.

[4] It is correct that the parties moved around border counties, that is the mother and Ian's father moved to England in October 2014, as Ian's father was serving in the British Army, but he went AWOL in America, the mother was homeless, and the army housed her in Enniskillen in accommodation. That father had no contact with his child between 2016 and 2019 when contact resumed. In January 2016 the children moved to the maternal grandparents in Cavan due to a suspicious injury to the elder child's arm. TUSLA became involved. In 2016 private law proceedings took place in Cavan. The mother moved back to Fermanagh in September 2017 and then there is the latest move in July 2020 to Cavan. Ian was having contact with his father but that was suspended after an incident in August 2020 when the younger child, Jack, disclosed that Ian's father had chased him with a knife. This is subject to a current Garda investigation in the Republic of Ireland. There have also been difficulties with Jack's contact with his father and the father is keen to resume the contact. In fact the rationale for both fathers to oppose this application is grounded in delay in that they say that contact matters need to be heard urgently.

## Legal Provisions

[5] The relevant jurisdictional regime is found in Regulation (EC) No 2201/2003 known as Brussels 11R. Article 15 makes provision for cases to be transferred from one Member State to another. Where courts of a Member State with jurisdiction over a child consider that:

- “(i) The courts of another Member State with which the child has a particular connection would be better placed to hear the case or a specific part thereof, and;
- (ii) transferring the case is in the best interests of the child, they can cause the case to be transferred. This can be done by either:
  - (a) Staying all or part of the proceedings and inviting the parties to make an application to the courts of the other Member State, or
  - (b) Requesting a court of the other Member State to assume jurisdiction.”

[6] In this case I have been asked to request the Republic of Ireland courts to assume jurisdiction. That is on the basis that it is argued that the Republic of Ireland would be best placed to hear this case given that all the parties live there including the grandparents who are potential carers. The children live there. Social Services are involved with the family in the Republic of Ireland and there have been previous proceedings in the Republic of Ireland. The case of *Child & Family Agency (CAFA) v JD* CJEU Case C-428/15 [2017] 2 WLR 949 confirms that public law child protection proceedings fall within the Article 15 rubric.

[7] A transfer under Article 15 is by way of exception to the usual jurisdictional rules. It should only take place if the specific conditions applicable to Article 15 are met and the case is exceptional; it follows that a transfer under Article 15 is not available if the conditions are not met. In this case I was referred to the three parts of the test, namely whether or not the child has a particular connection with the Republic of Ireland. The answer to that is clearly yes in relation to both children. The second question is whether the Republic of Ireland would be better placed to hear the case or a specific part thereof. The answer to that is also clearly yes given that all the relevant parties live in the Republic of Ireland. TUSLA are involved in the Republic of Ireland with the new baby. There is a Garda investigation in relation to Ian’s father. It seems quite clear that this is the best jurisdiction to hear the case in terms of witnesses and the family location.

[8] It was only the third question which caused me to consider whether or not this was correct. The third question emanates from the decision in *Re N (Adoption: Jurisdiction Children)* [2016] UKSC 15. In that case the Supreme Court emphasised that the assessment of whether a transfer would be in the best interests of the child “should be based on the principle of mutual trust and on the assumption that the courts of all Member States are in principle competent to deal with the case.” It is not for the courts of this or any country to question the “competence, diligence, resources or efficacy of either the child protection services or the courts of another state.” This issue of best interests has developed in the jurisprudence. It is not an assessment of ultimate outcome but the court can take into account the effect of transfer on the children as part of the analysis.

[9] I have listened carefully to what the two fathers in opposition have said about the effect on the children of further delay given that some expert reports from Mr Quinn and Dr O’Rawe have been generated in Northern Ireland. The fathers are desperate to move on with their contact. They effectively argue that there are negative effects in relation to delaying this which impact on the children. There cannot be any other argument made in relation to this given that the children now all live in Cavan and so there is no issue of them being uprooted from placements were I to order transfer. I have considered the argument which is understandably made about delay and I have considered the expert reports in this context. As is apparent from the expert reports further work is required in this case and in particular a look at the wider family as carers. So ultimately, I do not consider that this argument should defeat the transfer application.

## **Conclusion**

[10] Accordingly, I consider that the test under Article 15 of Brussels IIR is met and that I should request a court of the Republic of Ireland to assume jurisdiction. I have asked counsel to draft the necessary Order in relation to this. I have also, I should say, indicated to counsel that it is appropriate that there is judicial liaison about this case with the court which I assume is going to be the Circuit Court in Cavan. This should happen immediately as it has in other cases to ensure a smooth transfer and no further delay in this case. I also give leave for release of the relevant papers including the expert reports of Mr Quinn and Dr O’Rawe to be released immediately to the courts in the Republic of Ireland.

## **Postscript**

[11] I asked the parties to agree a judicial liaison request and this was duly sent. On 18 December confirmation was received that jurisdiction will be accepted by the Republic of Ireland. The correspondence states that: “I confirm that Judge Denis McLoughlin has read the papers sent by yourselves and he is happy to accept transfer of the proceedings. He is willing to accept Jurisdiction in this case. Please arrange to forward an Order transferring the matter to Cavan District Court District No 5 sitting at Courthouse Farnham Street Cavan and directing the parties to

file applications here.” I am grateful to the authorities in the Republic of Ireland for dealing with this matter so promptly. The parties can now pursue their claims before the Cavan District Court.