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

Ref: OHA10300

Delivered: 11/5/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

16/22237

BETWEEN:

A HEALTH AND SOCIAL CARE TRUST

Applicant;

-and-

Ms T

Respondent.

LONG TERM FOSTER CARE - REDUCTION OF CONTACT

O'HARA J

[1] The identities of the parties to these proceedings have been anonymised in order to protect the interests of the child to whom the proceedings relate. No information is to be disclosed or published without the permission of the court which may identify the child or any associated adults in any way.

[2] Ms Martina Connolly represented the Trust for the purposes of these proceedings. The mother was represented by Ms Adele O'Grady QC and Ms Niamh Devlin while the Guardian Ad Litem was represented by Ms Grainne Murphy. I am grateful to all counsel for their assistance and their submissions during the course of the hearing.

[3] This case involves an application by the Trust under Article 53 of the Children (NI) Order 1995 to reduce the frequency of the mother's contact with her son F. He is four years and a few months old. A care order was made two years ago in April

2015. At that time the care plan was that an application would be made to free him for adoption. There was then and is now no intention to return him to his mother's care, however much she would like that to happen.

[4] The mother appealed to the High Court against the making of the care order. One way or another, partly due to a lack of legal representation, that appeal dragged on until November 2015 when I dismissed it. Subsequently the Trust applied for an order that F be freed for adoption but it decided in 2016 not to pursue that course because there had been an important change in circumstances. That change was that F had settled well with a couple who had not originally intended to be long term or permanent carers. Over time however their position changed to the extent that they agreed to become long term foster carers (but not adoptive parents). The Trust accepted that course as being in F's best interest. It was correct to do so. Moving F to a prospective adoptive family would inevitably have been disruptive and problematic, assuming of course that a freeing order had been made. That would not have been a formality - no freeing application is.

[5] Accordingly the current and likely long term position is that F will stay with his existing foster carers under a care order until he is 18. It is essential that the home which they have provided for him remains stable and secure so that he is free to enjoy the best childhood possible. It is in his interests that the damage which he suffered as an infant which resulted in his removal from his mother in October 2013 when he was 10 months old is not allowed to resurface by him being exposed to any destabilising and upsetting intrusions in his life. The Trust case is that contact with his mother is or can be destabilising and upsetting. For that reason it wants to reduce the frequency of his contact from once per month. The Guardian supports that case. She and the Trust agree that while contact should be and has to be kept under review, primarily through LAC reviews, it should be reduced to four times per annum. That case is vigorously challenged by the mother who not only wants to maintain her monthly contact but also aspires to have the care order revoked and F returned to her care as soon as that can possibly be achieved.

[6] It is relevant to note that in her original judgment in April 2015 Her Honour Judge Smyth found at paragraph [48] that the mother had made unfounded allegations against the foster carers, the same people who still care for F. She held that these were motivated by a desire to destabilise F's placement in the hope that he might then be returned to her. Tellingly the judge further held that the mother had done the same thing for the same reason with an older son J. At paragraph [66] she held that an adoption placement would be more likely than long term foster care to give the best chance of security in the future. The judge held:

"It is likely that she would be unable to support a long term foster placement and therefore there is a very real risk that such a placement would be undermined and would break down."

[7] The foster carers supported F while contact with his mother took place five days a week. It was eventually reduced to once per month with the inevitable prospect that if a successful freeing application was made it would most probably reduce further to something like the level of four times per annum (or even less) now sought by the Trust and Guardian.

[8] At its heart this hearing was an apparently straightforward application to reduce contact, the sort of case which is dealt with day in and day out by judges in family courts. The extended hearing before me was necessary because a careful and detailed analysis of the case showed that it is more complex than could have been anticipated. Having acknowledged that fact, the ultimate question remains the same - what level of contact with his mother is in F's best interests and is compatible with his and her rights under domestic and European law.

[9] In answering that question I have to take into account one element which was certainly not contemplated when the care order was made two years ago. That element is the fact that F would still be having such regular contact in May 2017 as once per month. This significantly extended period of regular contact with his mother has made her a more important on-going figure in his life than would have been the case if a freeing order had been made or if court hearings had finished, say a year ago. While the mother is an important figure in F's life, the concern is how positive a figure she is.

[10] There are two important and fundamental points advanced by Ms O'Grady on behalf of the mother. The first is that her life is more stable than it was when the care order was made. I can accept that proposition to some extent. When I was dealing with her appeal against the care order up to November 2015 her life was clearly still troubled and chaotic. Since then she has made progress, largely as a result of her own determination and initiative. While she is proud to be from a traveller background, she has recognised that in certain respects that has been a source of some of her problems. She is shortly to give birth to a child by a father who is not a traveller. These changes are as welcome and positive as, to be frank, they are unexpected because her issues and problems long pre-date her care of F.

[11] The second major point made for her is that the Trust and Guardian have repeatedly understated how consistently good her contact with F has been. There is some truth in that submission. The detailed scrutiny of the records in the course of this hearing revealed a more complex picture of contact than some of the reports before me suggested. They showed many warm and touching moments proving real love and affection for F from his mother and from him to her in return. It would have been helpful and appropriate if those positive aspects had been acknowledged more freely and without equivocation.

[12] In her closing submission for the Trust Ms Connolly accepted that there would probably have been no application to reduce contact but for the fact that repeatedly the mother has made inappropriate comments to F which have affected

his behaviour and unsettled him or are likely to do so. Those comments have been made in the context that the mother has said on many occasions that her goal and intention is to have F returned to her care. As Judge Smyth predicted, she does not support a long term foster placement. That is her right. It is not in any way illegitimate for her to aim to have her children home with her. What is entirely illegitimate, damaging to F and unacceptable is for her to convey that message to him no matter how often she is told not to do so.

[13] Ms O'Grady took issue with the Trust case, contending that some of the comments were not actually made in F's presence and contrasting the number that were with the significantly greater number of contacts. She also contended that the correlation between the comments he did hear and his unsettled behaviour is not clear cut. The fact that once again those submissions carried some force makes this case unusually difficult to determine.

[14] Ultimately however I have concluded that some reduction in the current level of contact is necessary for the following reasons:

- (a) While issues have been raised about some things said and done by the foster carers, they were raising concerns about F's behaviour and his reactions to contact before they emerged as the couple who would care for him for the rest of his childhood. This adds weight to their concerns.
- (b) The mother either won't or can't stop herself from communicating to F that she wants him back in her care. It does not matter whether it is "won't" or "can't" - the message he receives is the same.
- (c) That message does not have to be relayed at every contact for it to unsettle F and make it markedly more difficult for his carers to raise him. Nor does it have to be loud and blunt in the way in which it is heard by him.
- (d) Some of the things said to F by his mother were unambiguous and she must have known them to be inappropriate. For instance on 4 June 2015 when he said to her "I need you" she replied "I need you too baby - that's why I'm going to keep fighting for you". Similarly on 21 July 2015 she said "I went to all the pony clubs looking for you and I cried because I missed you".
- (e) Some of the comments made by the mother about the foster carers to F are deliberately unsettling for F. For instance on 3 March 2016 she said to him "you only have one mummy - that is me - M [the foster mother] looks after you for me". On 18 March 2016 she said to F "you only have one mummy". Comments such as this self-evidently affect

F, leading him to correct himself during contact on 6 October 2016 by saying “mummy M” after having initially said only “mummy”.

- (f) I am satisfied that in his own childish way F most probably senses the conflict between his life with his long term carers and his mother who asserts her position and does not at heart support his placement.

[15] The final question is how much contact should be reduced by. There can be no absolute right or wrong answer to this. That is why LAC reviews are so important – they allow issues like contact to be re-assessed rather than set in stone. I am conscious of the imminent arrival of another baby. It is beyond me to know what effect that will have on the mother or F but I am concerned that reducing contact excessively at this stage might send a message to F that he is somehow less important than the baby. Taking account of everything I am not inclined to reduce contact as much as had been proposed, especially because contact is better than was initially conceded by the Trust and Guardian. I do however agree that it needs to be reduced and I approve its reduction to six times per annum.

[16] I finish with three points:

- (i) The first is that the long term foster carers stepped in and took responsibility for F at a point in his life when it was entirely beyond his mother’s ability to do so. What they have done deserves considerably more recognition from the mother than she has given to date.
- (ii) If the mother does not stop making inappropriate, critical or negative comments at contact, it is likely that contact will have to be reduced further in the future. The mother has taken important steps proving that she can exceed expectations and make a better life for herself. She needs to prove that she can allow F to have a better life too by accepting and endorsing his life with the foster carers. He will always know who his birth mother is. He is not going to forget her somehow. But for him to maximise his prospects in life he must be free from concern or worry about where he will live, who he will live with and how long he will be there for. Those decisions have already been made.
- (iii) F’s contact with J is hugely important for them, both now and in the long term. It is a matter which will be kept under review at LAC reviews but I agree with the indication that as matters stand that contact should be approximately every six weeks with discretion to add special events and occasions where appropriate.