

Neutral Citation No: [2021] NIFam 50

Ref: McF11709

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

ICOS: 20/041865

Delivered: 17/12/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

Between:

A MOTHER

Appellant

-v-

A HEALTH AND SOCIAL CARE TRUST

-and-

A FATHER

Respondents

IN THE MATTER OF HL
(A MALE CHILD AGED 4 YEARS AND 3 MONTHS)

Ms S Simpson QC with Ms K Downey BL (instructed by Joseph Magee & Co solicitors)
for the Mother

Ms C Sholdis (instructed by the Directorate of Legal Services) for the Trust

Ms K McGrane (instructed by solicitors) for the Father

Ms M Smyth QC with Ms N Devlin BL (instructed by MD Loughrey solicitors) for the
Guardian ad Litem ("GAL")

McFARLAND J

Introduction

[1] This is an appeal by the Mother against an order made by His Honour Judge Kinney ("Judge Kinney") on 23 July 2021 at Belfast Family Care Centre. The order was to free the child for adoption.

[2] This ruling has been anonymised to protect the identity of the child. I have used the cipher HL for his name. These are not his initials and the cipher was

chosen randomly. Nothing can be published that would identify HL without the leave of the court.

Background

[3] HL is one of four children born to the Mother. The older two (now aged 18 and 11 years) were removed from her care in 2016 and live with the maternal grandmother. Both have contact with the Mother. The youngest child is now 2 years old and although there was social services involvement from her birth, following a successful outcome to a Thorndale residential assessment in late 2019/early 2020, she now lives with the Mother. The case of the youngest child has still not completed its way through the Family Care Centre and is listed for a two day hearing in January. HL was removed from the Mother's care in October 2017 as a baby, and placed with his current carers under the auspices of an interim care order. HL has remained in that placement and is very well settled there in what is intended to be the adoptive placement. It includes a female child of the carers.

[4] In January 2019 the Family Care Centre made a care order, approving a care plan for adoption. The Freeing application was made on 22 February 2020. Judge Kinney heard evidence over two days, including evidence from the Mother, a social worker and the GAL. He then reserved judgment, and gave a reasoned oral judgment. The transcript of the judgment has been made available.

Appeal

[5] The Mother has lodged a Notice of Appeal running to 12 grounds. Three specific grounds were raised:

- a) The decision to free the child for adoption in isolation to his siblings would cause long-term emotional harm;
- b) Judge Kinney's refusal to obtain an independent assessment on the issue of attachment;
- c) Judge Kinney gave too much weight to the GAL's assessment of attachment

The other grounds were more generalised and based on a failure to apply the well-known Supreme Court direction that when considering 'stranger' adoption the court is required to ensure that 'nothing else will do.' These grounds were supplemented by oral submissions that Judge Kinney gave undue weight to two incidents involving the Mother's perceived dishonesty with health professionals and social workers.

[6] The Mother's appeal is opposed by the Trust and by the GAL. The Father who maintained a neutral position before Judge Kinney now supports the Trust's application to free HL for adoption and opposes the Mother's appeal.

The Law

[7] The law in respect of appeals from the Family Care Centre to the High Court is very well established. This court will not interfere with a decision of the Family Care Centre unless the decision was plainly wrong or Judge Kinney erred in law or in principle.

[8] Maguire J in *SMcC* [2013] NI Fam 2 at [64] set out six propositions in relation to the conduct of an appeal:

“(i) The High Court will not interfere with the lower court’s decision unless the decision was plainly wrong or the court erred in law or principle.

(ii) In appeals the High Court will be reluctant to take oral evidence or receive additional evidence but can do so in exceptional circumstances. Decisions to take oral evidence or to receive additional evidence will be likely to be case sensitive.

(iii) Accordingly, a High Court appeal will usually not be conducted by way of full re-hearing.

(iv) The High Court on an appeal will consider any transcript of what occurred in the court below, if available, and in particular will consider the reasons given by the lower court in support of its decision.

(v) In hearing the appeal the High Court will pay due regard to the fact that judges work under enormous time and other pressures. Accordingly, it would be quite wrong for the High Court to interfere simply because an ex tempore judgment given at the end of a long day is not as polished or thorough as it might otherwise be.

(vi) In considering an appeal the High Court will bear in mind that in family cases there is often no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong and the best that can be done is to find an answer that is reasonably satisfactory.”

[9] The law in relation to freeing a child for adoption is very well established and does not require to be repeated. The court carries out a two-fold exercise, the first is to consider whether adoption would be in the best interests of the child, and the second is that, in the absence of parental consent, whether that consent is being withheld unreasonably on the basis of what a reasonable parent would do. In addition the overall assessment requires the court to consider whether the freeing for adoption is a proportionate result. When it involves a proposed ‘stranger’ adoption this will mean a consideration of all other realistic options and a determination that

'nothing else will do' (see *Re B* [2013] UKSC 33).

Consideration

[10] Judge Kinney has had an extensive familiarity with this case having made the care order after a contested hearing. In this case, he was clearly aware of the position in relation to the fourth child, and specifically adjourned the hearing so that the evidence from Dr Lavery, a consultant clinical psychologist, in respect of the fourth child and the Mother, could be before the court.

[11] One further advantage has been the ability to hear and assess the Mother, particularly in relation to the two incidents involving medical professionals and social workers. This evidence was relevant because it confirmed the attitude taken by the Mother towards professionals. It was an issue that the Mother, through her counsel, still wished to press on appeal.

[12] Her main argument is that the incidents themselves did not involve any risk to the youngest child and her approach was guided by her desire that her privacy, and the privacy of a friend, be protected. I will call that friend 'X.' Judge Kinney's findings concerning what the Mother said are not particularly controversial and having heard the evidence, he was well placed to make those findings. On the first occasion, the Mother had brought the child to hospital with suspected fever. It is agreed that this was an entirely proper thing to do. She also alerted her social worker. At the hospital, she gave deliberately misleading information to staff concerning social work involvement. Her stated reason for this was her desire for privacy. The failure to provide accurate information did not impact on the treatment or the welfare of the child. The second incident occurred during the court hearing itself. The Mother had brought the fourth child to the courthouse and had left her in the care of X. She knew that X was the subject of ongoing social work concerns. The Mother was reluctant to reveal the name of X, giving initially a first name and then eventually the surname. Her stated reason was to protect the privacy of X. (The nature of X's social work involvement is that she is not allowed to care for her child and has a very strict supervised contact regime with her child.)

[13] Judge Kinney made findings in respect of both these matters and referred to the relevance, namely that the Mother had, in the words of Judge Kinney, "*pulled away from professional support.*"

[14] At one level the Mother is correct in that both incidents are not significant in themselves and there were no serious welfare issues. The hospital were still able to treat the child, and the child was unlikely to come to harm in the care of X in the vicinity of the courtroom, and probably within the confines of the courthouse. There are clearly wider issues. The first, and obvious, is that if there are no real concerns, then why mislead medical professionals and frustrate social workers. The stated reasons were the protection of her privacy and the privacy of X. Herein lies one of the problems in this case. I perceive that the Mother has an inflated sense of entitlement about what she perceives as her right, and the right of X, to privacy.

Everyone is entitled to a view as to how important their privacy is. It also involves making decisions about where privacy sits in their overall priorities. The Mother obviously places her right to privacy very high, and she also places X's right to privacy very high. The fact that she still tries to justify her misleading of medical and obstruction of social work professionals indicates that she can prioritise this above all other issues, including her children's welfare.

[15] The issue is not really about whether or not the Mother is untruthful. It is whether or not, she can work positively with social workers and whether she can be trusted to be honest with social workers should she be allowed to retain parental responsibility for HL. This evidence, and her continued failure to not only appreciate the issues involved but to attempt to justify her conduct, would clearly suggest that she could not.

[16] Judge Kinney was entitled to find these facts and to draw appropriate inferences from them.

[17] Another issue was Judge Kinney's failure to permit an attachment expert to be instructed. Judge Kinney refused this application on 5 March 2021. This refusal was based on delay, both delay in respect of the Mother in taking five months to make the application after first raising the issue and the overall delay to the proceedings. It was also rejected on the merits, namely that it only was to be an attachments assessment of HL's attachment to his carers.

[18] This was an entirely correct decision. It was a case management decision and an appellate court will rarely interfere with such a decision. HL was brought up in the placement since being about a month old. The court did not really need the benefit of an expert's report of the attachments within that placement. There was sufficient expertise at a basic level concerning attachment with both the social workers and the GAL. The key concern about attachment was how a transfer of placement from the current carers to the Mother would impact on HL's welfare, and in particular how the Mother would manage that transition should the attachment between HD and his carers and 'step-sister' be severed.

[19] The Mother also criticised the approach of Judge Kinney by relying on the GAL's assessment of a single short contact session between her and HL, which the GAL viewed by video link.

[20] I consider that these arguments are not really central to the issue in this case and are not based on the actual reasoning given by Judge Kinney for his decision. Attachment to the carers is not really a controversial issue in the sense that everyone accepted that there was a strong attachment. The issue then became whether the Mother could manage a change of care regime. Her attachment was derived from a very basic level - contact at once a month at that stage. The GAL gave no real opinion concerning the HL's attachment to his mother. The Mother would therefore have to rely on a strong network of support for her to manage the change. Judge Kinney noted that she was struggling with her current caring responsibilities

for the youngest child, she had no proper kinship support and her wider network was limited, and she was mistrustful of social workers and could not be relied on to be honest with them.

[21] I consider that Judge Kinney's approach to both the need for an attachment expert and how he dealt with the issue was entirely correct and it cannot be argued it was wrong.

[22] The Mother's core argument appears to be that as she has been assessed as being capable of caring for the youngest child then this should have been sufficient to deal with the decision in respect of HL. This argument is not sustainable for several reasons. Although it is accepted that the outcome for the youngest child appears to moving in a direction that would involve her remaining in the care of the Mother, the final decision has yet to be made. When that final decision is made, it will be based on the evidence relating to that child. The main focus of the decision making is a report from Dr Lavery. Her opinion is guarded concerning the Mother's ability to care for the youngest child, but is sufficiently positive to justify the current approach. Dr Lavery did not comment on the possible rehabilitation of HL into the Mother's care and any additional strains that would be placed on the Mother both in relation to HL and the youngest child. Even a cursory assessment of Dr Lavery's report would lead one to have concerns about the Mother caring for two young children.

Conclusion

[23] Standing back and reading Judge Kinney's judgment it is clear that he was aware of all the relevant issues. He made findings in respect of disputed evidence which could not be faulted. He set out the correct legal principles applying to the case, and his judgment involved an assessment of the evidence relating to the welfare of HL. He carried out an appropriate and proportionate assessment of the strengths and weaknesses of the proposal for adoption. He was perfectly entitled to come to the decisions that he made as they are based soundly on the evidence before him.

[24] I do not consider that he was wrong in coming to the conclusions that he came to, or that he erred in law.

[25] I therefore dismiss the appeal. There will be no order as to costs between parties. Legally assisted parties will have their costs taxed in the usual way. The GAL, having been appointed for the purposes of this appeal, is now discharged.