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

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Delivered: 30/06/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

BETWEEN:

A MOTHER

Applicant

-v-

A HEALTH AND SOCIAL CARE TRUST

-and-

A FATHER

-and-

A FATHER

Respondents.

IN THE MATTER OF AN APPLICATION FOR INJUNCTIVE RELIEF
PURSUANT TO THE HUMAN RIGHTS ACT 1998

AND IN THE MATTER OF THE DISCHARGE OF CARE ORDERS

IN THE MATTER OF ST A BOY AGED 10½ YEARS AND
EA A GIRL AGED 5 YEARS

Ms M Connolly QC with Ms B Cleland BL (instructed by Fisher & Fisher solicitors) for
the mother

Ms S Simpson QC with Ms J Lindsay BL (instructed by the Directorate of Legal Services)
for the Trust

Ms M Smyth QC with Ms N McCartney BL (instructed by Keown Nugent solicitors) for
the father of ST

Ms K McAleavey BL (instructed by Mark McNulty solicitor) for the father of EA
Ms N McGreenera QC with Ms C Steele BL (instructed by Brian Scullion solicitor) for the
guardian ad litem

McFARLAND J

Introduction

[1] This judgment has been anonymised to protect the identity of the children. I have used the ciphers ST and EA for the names of the children. They have been chosen at random and are not their initials. Nothing can be published that will identify ST or EA. The father of ST is referred to as F1 in this judgment and the father of EA is referred to as F2. The guardian ad litem is referred to as the GAL.

[2] ST is now 10½ years of age. He was made the subject of a care order on the 5 July 2017. EA is now 5 years of age and she was made the subject of a care order on the 9 November 2017. Both children have lived with their mother all of their lives, and since 2017 under the auspices of the care orders. ST now lives with his father F1 for approximately one half of the week at a time in what could be regarded as a shared care arrangement. On the 15 April 2021 a Specific LAC review was conducted and a decision made to remove both children from the care of their mother. At the time it was considered that they should be placed with foster carers, but the Trust have since decided that ST could be cared for by F1 on a full-time basis, subject to further assessments.

[3] The mother has made an application to discharge the care orders. She has also applied for injunctive relief pursuant to the provisions of the Human Rights Act 1998 ("the 1998 Act"). She is seeking a declaration that a decision of the Trust to remove the children from her care is unlawful and in breach of the rights of ST, EA and the mother under Article 8 of the ECHR (the right to respect for private and family life). The mother's applications are opposed by the Trust. Both fathers, F1 and F2, and the GAL support the altered care plan for the children, and oppose the mother's application to discharge the care order. The Trust, F1 and F2 do not consider that there has been any breach of the mother's or the children's human rights. Although the GAL has no direct involvement in the human rights application the position of the GAL in respect of the discharge application is such that she is content with the revised care plans for each child and as such has indicated a position when representing the interests of both children which approves of the Trust's position and approach to the matter.

Background facts

[4] The most telling fact in this case is the court involvement with the mother, with the need for a guardian ad litem, over a period extending to 15 years. Every child born to her, and EA is her sixth, has been taken into the care system reflecting the fact that each child has either been subjected to the risk of serious harm or was likely to suffer from serious harm when in the care of the mother.

[5] To some extent the cases of ST and EA were a limited success story because there was a level of stability which permitted them to continue to live with their

mother. It was not an ideal situation but in the widely used and understood phrase it was “good enough parenting.” It was however a matter of peaks and troughs, with the peaks not particularly high, but just enough to keep the children’s heads above the water line of acceptable safe and secure family life.

[6] One important set of features about the mother’s life is that there are no particularly significant issues present that would appear to point to the deficiencies in her ability to parent the children. This was acknowledged by her counsel Ms Connolly QC. There are no significant mental health issues, no alcohol or drug misuse issues, no anti-social behavioural issues, and no environmental issues such as relationships characterised as abusive. Had any of these been present, steps could have been taken to address them either through assistance, therapy, mentoring or some other form of help.

[7] In 2020 matters started to deteriorate. These appear to have arisen from events involving two of her older children both in the care system. An older son aged 17 died from a drug overdose in February. An older daughter aged 15 fell pregnant and started to spend more time in the mother’s home. Trust professional staff regarded the daughter’s presence in the home as inappropriate and certain warnings were issued to the mother.

[8] The mother issued proceedings to discharge the care orders and for injunctive relief at this time, but subsequently withdrew the proceedings after the Trust agreed to allow the children to remain living with her.

[9] During February 2021 routine social work visits to the home revealed what could only be described as squalid conditions including rubbish lying about, part eaten food on the floor, general build-up of dirt within the home, no food in the fridge, no light bulbs, no toilet seat, and a worrying development of unknown young people frequenting the home and becoming acquainted with ST and EA. The mother has been less than forthcoming about the identity of these youths, and it is difficult to ascertain why they are present. It also appears that ST had engaged in attempts to mislead a social worker as to the presence of one of these youths. This situation continued to be recorded on numerous visits by social workers during February.

[10] F2 was sufficiently concerned to contact the Trust about the level of care being given to EA, and there was a further incident with a member of the public contacting EA’s school concerning reckless behaviour by EA when crossing a road on her own without any adult supervision.

[11] This state of affairs could be regarded as a trough, as there was a recorded improvement in March and April. On behalf of the mother, it was submitted that the state of affairs in February developed as it marked the first anniversary of her son’s death.

[12] The Specific LAC review in April made the decision to remove the children. That decision was based on the inability of the mother to achieve any degree of stability in her parenting of the children. The Trust had poured in a significant amount of resources to assist the mother over the years but had been unable to achieve any meaningful progress. The considered view was that the long-term impact of the mother's parenting on the children is likely to be significant. The home environment was such that both children were enduring ongoing adverse experiences and this was impacting on their social, emotional and physical wellbeing.

The Legal Position

Discharge of a care order

[13] Lady Justice King in a recent judgment of *Re TT* [2021] EWCA Civ 742 reviewed the existing case-law in respect of applications to discharge care orders and helpfully set out the legal principles that should apply at [31]:

"In summary, when a court is considering an application to discharge a care order the legal principles are clear:

(1) The decision must be made in accordance with [Article 3 of the Children (NI) Order 1995], by which the child's welfare is the court's paramount consideration. The welfare evaluation is at large and the relevant factors in the welfare checklist must be considered and given appropriate weight.

(2) Once the welfare evaluation has been carried out, the court will cross-check the outcome to ensure that it will be exercising its powers in such a way that any interference with Convention rights is necessary and proportionate.

(3) The applicant must make out a case for the discharge of the care order by bringing forward evidence to show that this would be in the interests of the child. The findings of fact that underpinned the making of the care order will be relevant to the court's assessment but the weight to be given to them will vary from case to case.

(4) The welfare evaluation is made at the time of the decision. The [Article 50(2)] threshold, applicable to the making of a care order, is of no relevance to an application for its discharge. The local authority does not have to re-prove the threshold and the applicant does not have to prove that it no longer applies. Any questions of harm and risk of harm form part of the overall welfare evaluation."

[14] This is a succinct and accurate statement of the law. In later comments at [42] King LJ rejects any notion of a new line of authority emerging from the decision of Mostyn J in *GM v Carmarthenshire CC* [2018] EWFC 36 when the judge suggested at [4] that whilst acknowledging the lack of any formal requirement to demonstrate the existing of the statutory threshold test “*something close to that applies.*” As King LJ points out when a court discharges a care order, it can make a supervision order, and in doing so, it is not required to determine if the statutory threshold criteria for making such an order are made out.

Human rights applications

[15] Section 6 (1) of the 1998 Act provides:

“It is unlawful for a public authority to act in a way which is incompatible with a Convention right.”

Section 8 (1) provides:

“In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.”

[16] Article 8 of the ECHR provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

[17] When a Trust has decided to alter radically a care plan, for example by removing a child from an approved placement with a parent as it has done in this case, respect for that parent’s family life requires that the parent is protected against inappropriate interference with that right and is properly involved in the decision-making process. This engagement with the process continues throughout the entirety of any care proceedings up to the making of a care order but also after the care proceedings have come to an end and whilst the Trust is implementing the care order (see Munby J in *Re G* [2003] EWHC 551 at [30] and [36]).

[18] The mother takes no issue with the Trust in relation to her involvement in the decision-making process. Her main complaint is against the decision to remove the

children from her immediate care. Essentially the Trust are intending to put into operation a new care plan for the children, radically different from the one previously approved by the court.

[19] In *Re DE (Child) (Care order: Change of Care Plan)* [2014] EWFC 6 Baker J suggested a protocol to deal with cases of this nature. This protocol has received judicial approval on numerous occasions. It states that where the plan is removal, the local authority must have regard to the fact that permanent placement outside of the family should be the last resort, that nothing else will do, and there should be a rigorous analysis of all realistic options.

Discussion

[20] The mother has the burden to show that the discharge of the care order is necessary. She must bring forward evidence to show that the discharge would be in the interests of the child. She has not put forward any evidence to prove this, and from considering the other evidence that is available, the court is driven to the conclusion that for the Trust to lose parental responsibility for either or both of the children would not be in the interests of either child. Applying the welfare checklist, this application must fail. The mother is at present struggling to meet the physical, emotional and educational needs of the children. The likely effect on each child of the change in their circumstances should the Trust lose parental responsibility would result in an enhanced risk of them coming to serious harm. F1 may be capable of meeting ST's needs and ST could be protected by a residence order in favour of the father with a supervision order in favour of the Trust, but the father does not want that outcome as he would prefer that the Trust maintains parental responsibility. With F2 unable to look after EA, her position would become very serious as she would be placed in the sole care of her mother a lady whose parenting skills are severely deficient.

[21] The mother's application to discharge the care order is therefore dismissed.

[22] With regard to the human rights application, the amended care plan is not to remove ST from a placement outside the family, just to place him with the other parent. This is not a particularly radical alteration as the father already looks after ST for one half of the week. EA's care plan will involve a 'stranger' foster placement. Human rights considerations are therefore slightly nuanced in respect of ST. The mother's rights are interfered with to a degree as the decision involves removal of ST from her care for one half of the week. I do not consider that ST's rights are engaged as he is just moving to live with another parent with whom he already lives one half of the time. Both the mother's and EA's rights are interfered with in respect of her planned move as she will be leaving life with her mother and going to live with foster parents with whom she has no connection or knowledge.

[23] When rights are interfered with the Trust must show that such interference in the words of the ECHR "*is necessary in a democratic society in the interests of national*

security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." (Article 8 (2)). When Baker J spoke of placement outside the family as a last resort, when nothing else will do, he was alluding to the judgment of Lady Hale in the seminal case of *Re B* [2013] UKSC 33. When considering if 'nothing else will do' the court is required to carry out a proportionality assessment by carrying out a proper balancing exercise (see Black LJ in *Re P (Care Proceedings: Balancing Exercise)* [2013] EWCA Civ 963).

[24] This exercise has a slightly different approach to the assessment of the welfare check-list in relation to the application to discharge the care order. In a human rights application the change of circumstances is the proposed move, in the case of ST to live full-time with his father, and in the case of EA to live in a 'stranger' foster placement.

[25] The life for the children in the peaks and troughs that is the mother's home life will ebb and flow depending on the mother's ability and inclination at any one time. There are times when she appears to be able to cope but these periods cannot be sustained. Improvements appear to result from increased social work intervention or court intervention. The children's welfare cannot depend on the Trust and the court being able to supervise and monitor their home conditions on a regular basis. The mother is unable to sustain any improvements which she achieves from time to time.

[26] Without any significant negative factor in her personal life or environment there is nothing obvious that can be identified and improved. There is, unfortunately, a chronic inability to provide for the basic needs of her children.

[27] It is acknowledged that February 2020 was a difficult time for the mother with a teenage child, who was not in her care, dying from a drug over-dose. The anniversary in 2021 would also have created difficulties. The court is, however, considering the basic needs for the two children in her care. The dirtiness of the house would have been evident to her every day. In the winter months she would have known that there were no light bulbs in the rooms of her home. She would have known about the need to buy food for the children, and to clean up discarded half-eaten food. These are all basic core responsibilities of parenthood which must continue whatever problems a parent may have in their own lives. If they are not carried out properly the welfare of the children will deteriorate.

[28] The need for the intervention in this case is driven by the health and well-being of the two children and the need to protect their rights to be brought up in a safe and nurturing environment. There is no evidence before the court to show that that environment can be provided by the mother.

[29] The Trust has attempted to provide support for the mother on numerous occasions over the years. The sad reality is that the mother has not been able to

benefit from this support and the lives of all her children up to Trust intervention have been blighted by chronic neglect.

[30] In addition to this ongoing chronic neglect there is also a worrying additional factor in recent times. The mother is permitting or acquiescing in older youths, both children and young adults, frequenting the home and having contact with her children. It is uncertain what is happening and why the mother is permitting it. She has offered no explanation. There is no evidence to date that the children have come to any actual physical harm from any interaction with these individuals but it is difficult to appreciate how their presence in the home is of any benefit to the children, or the mother. Removal of the children from this aspect of their current family life could only be seen as a positive factor.

[31] My overall assessment of each child's welfare is that the only negative feature of the proposed removal would be the ending of their home life with their mother, who has been a significant person in their lives and with whom they have an attachment. Contact will still allow that attachment to be maintained but at a significantly reduced level. All other factors have to be seen as positive. In particular they will be moved to separate environments which are likely to cater for their physical, emotional and educational needs and reduce the level of risk of harm that they currently live with.

[32] In all the circumstances I consider that the Trust has not only carried out its consideration of the changes in the children's care plans by following the correct procedures and allowing all the parents, particularly the mother, to engage in the process, but has come to a decision relating to the two care plans, which is a justified interference with the mother's human rights and the children's human rights.

Conclusion

[33] I therefore dismiss both of the mother's applications, the first to discharge the care order and the second to grant a declaration and relief in respect of the alleged human rights violation.

[34] I discharge the GAL in respect of the care order proceedings.

[35] I will hear the parties in respect of costs.