

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
(OFFICE OF CARE AND PROTECTION)

AC and CH's Application [2015] NIFam 9

IN THE MATTER OF THE ADOPTION (NI) ORDER 1987

IN THE MATTER OF AC AND CH

O'HARA J

Introduction

[1] This judgment is delivered in anonymised form to protect the interests of the two young children to whom it relates. Nothing must be published which would lead directly or indirectly to either of them or their families being identified.

[2] This case involves an application by a health and social care trust to have two children freed for adoption. The Trust contends that the welfare of the children is clearly best served by adoption and that the consent of the parents should be dispensed with by the court because that consent is being withheld unreasonably. There are three parents involved – the mother of both boys (Ms H), the father of the older boy (Mr C) and the father of the younger boy (Mr H).

[3] Mrs Keegan QC represented the Trust with Ms Martina Connolly. The mother was represented by Mr McGuigan QC with Ms Mullally, Mr C by Ms Lisa Casey and Mr H by Mr Michael O'Brien. Ms McBride QC appeared with Ms G Murphy for the Guardian ad Litem ("the Guardian"). I am grateful to each of them for their helpful submissions.

[4] The positions adopted by the three parents who are all from Slovakia are not identical. Ms H neither consents nor objects to her sons being adopted but she is

anxious that they be kept together and on the same basis. Mr C neither consents nor objects to his son AC who is eight years old being adopted but he too is anxious that the two boys are kept together on the same basis. Mr H strongly objects to his son CH who is four years old being freed for adoption. He wants him to be placed in the care of his paternal uncle's family in Slovakia on the basis that CH should be given a kinship placement if possible, even if that means separating him from AC his half-brother. Failing that Mr H wants CH to stay in long term foster care rather than be adopted. If that happened, he contends, there would be greater protection of his Slovakian identity, culture and language. The position of the parents will be expanded upon below but it is important to note that they each accept that they are not in a position, either now or in the foreseeable future, to have the children returned to their own care.

Background

[5] Ms H and Mr C came to Northern Ireland together in or about 2007. They went back to Slovakia briefly to get married and then returned to settle here. AC was born later that year. The marriage soon began to disintegrate due to excessive drinking, domestic violence and financial pressures. By 2008 they had separated with AC remaining in his mother's care but with his father seeing him regularly.

[6] Later in 2008 Ms H became involved with Mr H who had come to Northern Ireland in the late 2000's and who has been in steady employment ever since. She gave birth to their son CH in 2010 after which they married in Slovakia. By 2011 they had come to the attention of social services as a result of domestic violence, alcohol misuse and neglect of the boys. In February 2012 the children were removed on foot of an emergency protection order. The boys were temporarily separated for approximately four weeks but then reunited and they have been together ever since. At no point since that time have any of the three parents cared for them.

[7] Later in 2012 Ms H started a new relationship with another Slovakian whose child she gave birth to in 2013. That child, a daughter R, is in Slovakia and is not involved in these proceedings.

[8] The Trust obtained care orders for the two boys at the Family Proceedings Court in February 2013. Appeals from the parents to the Family Care Centre were not finally disposed of until July 2014, in part because of assessments which were carried out on the maternal grandmother and the paternal uncle. These involved the Trust in considering whether the maternal grandmother could be a long term carer for AC and whether CH's uncle, M, could be a long term carer for him. In the end the grandmother ruled herself out, partly because she was by then caring for the third child, R. Uncle M was in some respects favourably assessed as a carer but he was only putting himself forward for CH, not AC. Primarily for that reason the Trust decided against pursuing the possible placement with him any further.

[9] Since 2014 the mother's position has become even worse. She is now in jail in Portugal serving a sentence for cocaine smuggling. It is unlikely that she will be released before May 2016. At that point her intention is to return to Slovakia to her mother and R. At some point after that she may return to Northern Ireland to seek contact with her sons but there is no certainty whatever about her plans.

[10] Until the last few weeks Mr H wanted to be assessed with his latest partner, another Slovakian lady who had come to live in Northern Ireland. However, after an initial meeting the Trust was informed that this lady had left Northern Ireland and that it was not known whether or when she would return. Mr H no longer advances a case for rehabilitation of CH to him with the assistance of this lady.

[11] In August 2014 the Trust issued the freeing applications for the two boys who in October 2014 were moved together to a dual approved placement ie a home where the couple in question have been assessed and approved to be either long term foster carers or adoptive parents. Evidence given during the hearing by Ms Birney, senior social worker with the Trust, has satisfied me that this couple has been carefully considered as suitable for these boys. I heard about their backgrounds and their employment record and that they were one of a number of suitable couples put forward across Northern Ireland for the boys. I have been reassured, as much as one can be, that they are capable of providing a safe and secure home for the boys who have already settled well with them and who have responded positively and warmly to their care. They were willing to meet Mr C recently. When they did so, he was reassured that his son would be well looked after by them. (I note in favour of Mr C that despite his significant problems he behaved impeccably on that occasion which must have been a trying one for him.) It is also significant that the prospective adopters have considered with the Trust and the Guardian different ways in which the boys' Slovakian heritage can be maintained.

Submissions

[12] As I have outlined above it is accepted by Ms H and Mr C that they cannot care for AC and that it is better for him that he remains with his present carers. Ms H also accepts that position in respect of CH but his father does not.

[13] For Mr H, Mr O'Brien has presented his case on the following basis:

- (i) That it cannot be said that it is necessary to free CH for adoption by strangers when he has an uncle in Slovakia who has a stable life with his family and who was reasonably favourably assessed in 2013.
- (ii) That the Trust has wrongly put forward the two freeing applications as one without properly considering the circumstances of each child separately.

- (iii) That CH's Slovakian identity and culture will be all but lost if he remains with the prospective adopters.
- (iv) That uncertainty or concern about what might happen to AC if he is separated from CH is not a good reason to free CH.
- (v) That there is no evidence that CH will be harmed by being separated from AC to live with his uncle and aunt in Slovakia.
- (vi) That there is no discernible advantage to CH of being adopted rather than being kept in long term foster care.
- (vii) That if CH is placed with his uncle, his uncle and aunt will come to Northern Ireland two or three times a year to allow him to see AC.

[14] For the Trust, Mrs Keegan QC, made the following main points which were supported for the Guardian by Ms McBride QC:

- (i) While CH is born of Slovakian parents, it was their intention that as with AC he would be raised in Northern Ireland, that he would be educated here and that he would make his life here. Beyond holidays to Slovakia to meet his extended family and to see where they came from, he was not intended to have any more extensive links with Slovakia.
- (ii) He was removed from his parents into care in February 2012 when he was approximately 18 months old. Since then he has been with English speaking foster carers and with his older brother who goes to a school which CH is intended to attend with him from September 2015.
- (iii) The closest and by far the most important relationship in CH's life is with his brother AC, not his uncle M - AC has acted protectively to him since they were taken into care as damaged children. That protective relationship continues to the present day.
- (iv) The suggestion that CH would not be seriously damaged by being separated from AC and moved to Slovakia to a family who are in effect strangers to him is entirely unrealistic. No expert evidence is required to establish something so obvious.
- (v) While it is of value to maintain and develop an appreciation of CH's Slovakian heritage, that is far less important than giving him the most secure and stable home possible which in this case is with his half-brother.
- (vi) There is no up-to-date evidence from or about Uncle M to confirm his ongoing commitment to the proposal advanced by Mr H.

- (vii) Only a few weeks ago Mr H's plan was something entirely different ie rehabilitation to him and a woman who was then his partner.
- (viii) Mr H's evidence was that if CH was placed with Uncle M he would follow him back to Slovakia. This raises disturbing questions about what role Mr H would then seek to play in his son's life and whether his brother M could or would protect CH and resist undue interference from Mr H.

[15] I received a submission from the Central Authority in Slovakia setting out their observations in this case. In that paper the Central Authority asked for the two boys to be relocated to Slovakia to "strengthen their biological and family ties with their relatives". The suggestion endorsed by the Central Authority is that CH should be placed into the substitute personal care of Uncle M and that AC should be temporarily placed in a facility to allow for the execution of the judgment of the court in Slovakia. In the event that I decide not to place CH with Uncle M, the Central Authority proposes that the brothers should both be placed in a facility until a Slovakian court decides what should become of them.

Discussion

[16] The test for freeing children for adoption without the consent of the parents is a demanding one as it should be because the consequences of adoption are so great. In their judgments in Re B (A Child) [2013] 2 FLR 1075 the Justices of the Supreme Court re-emphasised that the need for proportionality when determining whether to sanction a step such as freeing means that such a course should only be approved as a last resort when all else fails. The test was also phrased as being that "nothing else will do". In reaching any such conclusion it is necessary to look at each possible option for a child and to weigh the pros and cons of those options. This necessarily involves looking at the risks or disadvantages associated with the Trust's proposed way forward rather than just picking holes in whatever suggestion a parent such as Mr H makes.

[17] In most cases a viable kinship placement is preferred to a route which leads to adoption by strangers or non-family members. That is because there is generally less interference with family rights if a child stays within the extended family than if the child is placed outside it. And that is the core contention on behalf of Mr H who says his brother M, with his wife, is willing to take in CH and care for him. That being so, Mr O'Brien contends, freeing CH for adoption is an excessive and disproportionate step. I agree that in most cases that would be so but for the following reasons I do not agree that it is the case here:

- (i) I have heard nothing from M who has not sought to be heard in any way in these freeing proceedings. I have no up-to-date information about him, I have read no recent statement from him and I have no idea about his current commitment to CH beyond the oral evidence of Mr H.

- (ii) The extent of M's family relationship with CH is at risk of being overstated - while he is obviously the uncle of CH, he has barely seen or visited CH.
- (iii) M and his wife speak no English and CH does not speak Slovak. The suggestion in evidence was that CH would learn Slovak quite quickly (which may well be correct) but that M's two children aged 20 and 18 years who live at home speak English and could therefore help. Regrettably I have no information from or about them to confirm for how long they intend to live at home or what their plans are.
- (iv) M and his wife have been quite clear that they will not bring AC into their home. While they are quite entitled to take that approach, and I do not criticise them for it, the consequence of their position is that the bond between the boys would be hugely weakened unless I approve the idea that AC be returned to live in an institution in Slovakia. I can think of no worse option for AC than for that to happen to him. That is not a reflection on Slovakia - I would not countenance placing him in an institution here either.
- (v) Mr H stated in his evidence that if AC stayed in Northern Ireland, his brother would bring CH here two or three times a year to see him. There is no evidence from M to support that suggestion. It would in any event be problematic in the extreme to try to enforce such an agreement.
- (vi) Essentially the problem with Mr H's preferred way forward is that placing CH with his uncle so as to keep him with his extended family would simultaneously separate him from his half-brother who he has only ever been apart from for four weeks since birth, who has acted as his protector and with whom he has a bond which is incomparably more significant and developed.
- (vii) The fact of CH's Slovakian heritage is relevant and must be acknowledged in practical terms but in most ways he is really a Northern Irish boy. This makes the cultural issues of less consequence than they might be in other cases.
- (viii) The assessment of M and his wife in 2013 was conducted over a four day period. A number of strengths were identified such as the couple's commitment and motivation to offer a home to CH, evidence that they had given meaningful consideration to the potential placement and the fact that there was a loving and warm relationship within the family. However, there were significant limitations. One was that M cared very much for his younger brother Mr H and ideally would like CH returned to Mr H's care in the future. In addition while M recognised the Trust's concerns which had led to CH's removal from the care of his parents, he did not appear to appreciate the Trust's concerns in respect of Mr H. These points cause particular concern when taken with Mr H's oral evidence that if CH was placed with M in Slovakia he too would return there. He stated that he would do so for two reasons - the first being that there would be nothing left for him here and the

second being that he would see more of CH there because social workers in Slovakia are less strict than those in Northern Ireland. Inevitably, I am driven to wonder whether the placement of CH with his uncle is anything more than a route for him back to his father.

- (ix) I reject Mr O'Brien's submission for Mr H that the Trust case must fail because it has not proved, through the evidence of a psychologist or social worker, that there is something "particularly untouchable" about the relationship between the boys so that separating them would have an impact of particular significance on CH. On the contrary the evidence is quite clear – there is a relationship between CH and AC which is of enormous importance to each of them. That relationship would be lost or at least substantially damaged if CH went to Slovakia, even if AC followed him there to an institution. There is no near equivalence between the actual relationship between CH and AC and the potential relationship between CH and his aunt and uncle – the established value of the former relationship greatly outweighs the potential but unknown value of the latter.

[18] In these circumstances I turn to the alternative suggestions which are advanced in support of the proposition that in this case something short of freeing will do. In fact the only remaining option short of freeing which has been suggested by Mr H is that CH be placed in long term foster care. There are cases in which that would be an acceptable and appropriate outcome. In this case it might be argued that it would bring with it more contact for CH with his father than would normally be associated with freeing. That in turn might keep alive his Slovakian heritage to a slightly greater degree. However, unless AC was also kept in long term foster care rather than being adopted it would mean ongoing and indefinite social work input and LAC reviews for CH alone. I see no purpose in this. There is no prospect of rehabilitation to his mother or his father. And that is not just the view of the Trust and the Guardian – in the course of the care order appeal to the Family Care Centre an expert witness was briefed to advise on Mr H's acceptance of the care order but his opposition to the care plan and his alternative suggestion of working towards rehabilitation. That expert was Mr Ken Wilson, a hugely experienced former social worker and social services inspector for child protection who has worked since 2005 as an independent social work consultant. His conclusion was that the preservation of CH's relationship with AC "is of paramount importance" and that their best interests are found in adoption.

[19] At that time the current carers and prospective adopters had not been identified. Since then things have moved on. I am not asked to consider just the possibility of a suitable placement – there is one which is working and developing already and doing so very well according to the Trust, the Guardian and Mr C. When one looks for the risks or disadvantages of that plan it is hard to identify any beyond the fact that one can never rule out the possibility of things going wrong. There was no challenge on behalf of Mr H to the Trust case that this couple is very likely indeed to give the boys a secure and stable home together in the long term.

While they could do so as foster carers, I conclude that it is better for these two damaged boys, especially AC who endured longer and more difficult times at the hands of the three parents, that they be adopted.

[20] For all these reasons and taking account of the evidence before me both oral and written, I conclude that all three parents are unreasonably withholding their consent to the two boys being freed for adoption. I am satisfied that for each of the boys adoption is the proportionate way of protecting them for the future. I do not believe that anything short of adoption is appropriate or acceptable. Accordingly, I dispense with the consent of Ms H, Mr C and Mr H. Ms H and Mr C are neither consenting nor objecting to adoption. While I understand their positions, the fact is that their consent is being unreasonably withheld. The same applies to Mr H's active withholding of consent and his advancement of other options which I believe are entirely unsuitable and inappropriate.

[21] I welcome the Trust's agreement, and that of the prospective adopters, that Mr C should have direct contact three times per annum with AC and indirect contact two times per annum. I also welcome the door being kept open to some level of contact for Ms H although it is quite unclear how that will develop in light of her present circumstances. I hope that some progress might be made for contact between Mr H and CH, even if it is only indirect, but that will depend on Mr H's acceptance of this judgment and on him not threatening the placement in any way. It should be understood however by all of the parents that it cannot be guaranteed that contact will inevitably continue indefinitely. There can be any number of reasons for the approach to contact to change. If things do change a birth parent such as Mr H can seek leave from the court to pursue a contact order but that is a relatively untested area in the current era of open adoptions. He and others in similar positions must understand that if adoptive parents offer reasonable and coherent reasons for stopping or reducing contact judges are likely to be very slow to find against them.