

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**FAMILY DIVISION**

**IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995**

**BETWEEN:**

**BELFAST HEALTH AND SOCIAL CARE TRUST**

**Applicant;**

**-and-**

**J K  
GC  
JC**

**Respondents**

**MAGUIRE J**

[1] The court has considered the papers provided to it in this case, as well as the evidence of Ms Quinn, the Trust's senior social worker dealing with the case.

[2] The background is that the court is being asked to endorse a decision made by the Trust to remove a child, MJC, from the care of her mother. This removal occurred on 8 November 2013.

[3] The mother, it appears, has had seven children in total. Unfortunately, her oldest three children are already subject to care orders. She also has twin boys who have been adopted. Her son, J, is currently subject to a freeing order which is under appeal.

[4] While the court makes no findings about the circumstances giving rise to the situation described above, it appears that the mother over time has had significant problems with substance abuse and has for long been involved in domestically abusive relationships.

[5] In respect of MJC she was born in 2013 and is less than a year old. An Interim Care Order (“ICO”) was made in respect of her in March 2013 and the position since has been that that order has been renewed periodically every 28 days.

[6] While MJC has therefore been in interim care, the position in fact has been that her mother has, with the assistance of others, been looking after her. Key to the mother looking after MJC has been the operation of a child protection plan which has at its centre the objective of keeping her safe. Consequently, the mother and father are required as part of a plan to maintain “substance free” lifestyles. There was to be continual assessment and monitoring of them for alcohol and drugs. The parents, moreover, it was intended in the plan, should by their parenting provide stability for the baby and by their actions they must promote MJC’s emotional and psychological welfare. As a prelude to doing this, it is necessary, particularly in the case of the mother, for her to be able to cope and to demonstrate her parenting capacity. Much the same is also true in relation to the father. All concerned, in short, are required to ensure that the child protection plan is adhered to. This, at the least, translates to the parents acting responsibly; avoiding alcohol and drugs; avoiding incidents which undermine the stability of the arrangements, for example, incidents of domestic violence; and the parents engaging constructively with the Trust and its social workers, who, in the child protection plan, commit themselves to assist by the provision of resources, advice and guidance.

[7] Unfortunately while the child protection plan appears to have worked smoothly at the outset, it has come under significant strain in more recent times. In particular, the original arrangement under which the mother and father lived in the paternal grandmother’s house with the baby has unravelled as relationships have frayed.

[8] Notably in recent times the mother and father’s relationship has fractured and broken down, as has the relationship between the mother and the paternal grandmother. The net effect has been that the mother and baby recently moved out of the paternal grandmother’s home. They moved in with a friend of the mother’s, JA. She has children of her own living at her address.

[9] The Trust appears to have been flexible when confronted with this new situation. At the least, it did not seek to veto it and in fact it appears to have been willing to support it.

[10] The Trust’s support and confidence in the commitment of the mother has, however, regrettably, diminished and it is this which has given rise to the decision of 8 November 2013 to remove the child from the mother’s care and into the care of the paternal grandmother.

[11] A range of events have occurred, which viewed cumulatively, have led the Trust to the decision which has now been made. In fairness to the Trust, the court

acknowledges that the decision now made was not brought about easily or rushed into on its part. On the contrary, the court is satisfied that the Trust has striven to preserve the fundamentals of the existing relationships included in the child protection plan, despite the emergence of a series of concerning developments. As recently as 6 November 2013 the care plan, albeit as revised, was affirmed as the way forward by the Trust but this affirmation did not last. The Trust received further information about what it views as the mother's breach of her obligations under the child protection plan and this led it to the decision it made on 8 November 2013.

[12] In the court's view, it is unnecessary in this judgment to go into the fine detail of the various individual events and circumstances which have led to the Trust's decision. Ms Quinn gave evidence as to all of them and the reality is that her evidence, in the court's view, was not in any significant way shown to be false or exaggerated. There was, moreover, no contrary evidence adduced before the court by any party. In these circumstances the court accepts Ms Quinn's evidence as to the range and variety of factors which were considered by the Trust in arriving at its decision.

[13] A short summary of the factors Ms Quinn alluded to in her evidence and which were dealt with in the Trust's very full report provided to the court, include the following:

- The non-disclosure by the mother to the Trust over a prolonged period of domestic violence she was suffering at the hands of the father. Such non-disclosure, in a case like this with such a substantial history of domestic violence aimed at the mother by earlier partners, was always going to be corrosive of the couple's relationship yet notwithstanding this neither the mother herself or latterly JA, who has been the mother's confidant in recent days, told social workers about it. This failure is of considerable importance because a feature of the mother's past relationships which has stood out has been her subjection to domestic violence. It had been thought that her relationship with the father had broken the past pattern but unfortunately recent information now suggests otherwise. Needless to say, any young child brought up within an atmosphere of domestic violence is bound to suffer emotional, if not physical, damage as a result. Additionally, the non-disclosure of this information was bound to undermine the Trust's confidence in the mother, as indeed it clearly has done. In recent times the mother appears genuinely to have been applying herself to the task of looking after the baby and improving her parenting but as a result of the revelations which have come to light it now appears that all along she was holding back relevant information from the social workers she was supposed to be co-operating with.
- There have been further acts of non-disclosure, in particular, in respect of the full extent of the mother's activities over the week-end of 25-27 October 2013.

In respect of this it appears that the mother despite having regular contact with social workers at the time, including on Friday 25<sup>th</sup> October itself, failed to notify them of her intention to engage in the consumption of alcohol over that week-end. The evidence now available strongly supports the scenario that over the week-end the mother attended a house party with a number of others. Indeed there are two photographs which were produced to the court which show her in the presence of others at a party. It also now appears from information provided to social services that the mother at least for part of the time when she was out and absent from the home, left MJC in the care of a person who, she (the mother), had herself at an earlier stage viewed as unsuitable to look after her. The mother's actions in this regard have not been explained other than that she claims now that the period during which the baby was left with this person was short. The court is not in a position to judge whether this is right or not. But, as already noted, a key aspect of the child protection plan in this case had always been the avoidance of alcohol and/or drugs by both parents. The mother's behaviour on that week-end cannot be squared with her taking her responsibilities to her baby seriously. The mother, it also appears, on more than one occasion subsequently deliberately lied to social workers about what she had been doing and sought to minimise her actions. The mother's failure to act openly can have no result other than that of destroying her working relationship with the Trust which is a vital element in the Trust retaining confidence in her.

- There is a considerable volume of information accumulated by the Trust in the weeks leading up to its decision which suggests that the mother has not kept herself drugs free. While some of this emanates from the father, a source which the court treats with caution, who claims that the mother was regularly taking non-prescription drugs, it is not easy to understand how the mother ended up in a position where a sample she says she provided at her GPs was not sent on for testing. Further, the court has heard that the mother was to have been tested at FASA on 7 November 2013 but without adequate explanation she failed to attend. These last incidents are highly suspicious and important failures on the mother's part in the context of this particular case given the mother's significant history in respect of drugs.
- There has been a growing concern about the mother's state of mind and her ability to cope. Of particular note is an incident which occurred on 28 October 2013 when at 08.50 hours the father arrived at the office of Social Services in a distressed condition claiming that the mother was going to kill MJC. He stated to the social worker that a person with whom the mother had been socialising at the week-end had phoned him to tell him that the mother had said in her presence that "If I don't get to keep MJC, then nobody will, I will kill her and kill myself". When a social worker put this alleged remark to the mother she denied that she had made it. But at the date of the mother's denial she was also denying that she had even been to the house party where this

woman had been present – a denial later found to be false. The father’s state of distress on the morning in question suggests that he believed that the mother threatened to act in the way described. This would point to the mother acting in an unstable manner. It seems to the court that this episode from the point of view of the child protection responsibilities of the Trust could hardly be more damaging.

- There is clear evidence that the mother was acting without candour in other dealings she had with social workers. In recent times, she had made a series of allegations against the father. These include not only allegations of domestic violence, but also allegations that throughout the duration of the child protection plan the father was taking illicit drugs. While this allegation may or may not be true, what is clear is that if it was true it should have been reported to social services as the father at the relevant time was in regular contact with MJC. If he was in the condition suggested by the mother he should not have been having any contact with the baby. The mother’s failure of disclosure in this regard also seems to the court to be a serious dereliction of her obligations under the child protection plan and her obligations to protect MJC.

[14] The matters referred to above are cited as particularly important issues which arose for the Trust to consider. However it should not be thought that the court does not also accept the validity of the concerns of the Trust in relation to a range of other lesser incidents referred to in the Trust’s report. The court accepts Ms Quinn’s evidence generally. Faced with more and more information suggesting that the mother had not been straight with the social workers inevitably meant that the Trust had to be prepared to assess and re-assess the risk to the child protection plan which the mother represented. The straw which broke the camel’s back appears to have been further information which came to light between the 6th and 8 November 2013. The information was in the form of screenshots drawn from Facebook which tended to show another side to the mother when she was in contact with her friends. The side depicted seems to be borne little relationship to her role as protector of MJC and had a good deal to do with her social activities around the last week-end of October 2013. Taking all of the above together and bearing in mind the need for the Trust to be able to repose confidence in what the mother says and does, it seems to the court that the Trust were placed by 8 November 2013 in a position where it could have little confidence in the mother; little confidence in the father; and little confidence in JA. Moreover the Trust was, in the court’s opinion, entitled to take the view that the information it had tended to present the mother in a poor light. Her commitment, in particular, to remain free from alcohol and drugs, in the light of the information available to the Trust, had been eroded to vanishing point. In these circumstances the Trust was entitled to conclude that the child was not being safeguarded against harm to the minimum level required in the case of a baby under her mother’s care. In the court’s view, the Trust was entitled to feel that the mother’s absence of co-

operation with it together with her apparent complicity with others in hiding facts and information from social workers required it to see the situation as one of an emergency nature which required a quick decision on their part to safeguard the baby.

[15] In the court's view, the decision made by the Trust on 8 November 2013 to remove MJC from the mother's care to that of the paternal grandmother was a proper exercise by the Trust of its responsibilities as carer of MJC under the ICO. While the court accepts that such a decision is one which must be made consistently with the human rights of the mother, the court is not of the view that the decision made by the Trust was other than proportionate in the circumstances and consistent with the requirements of both Articles 6 and 8. In this last regard, the court reminds itself of the fact that the decision was made as a response to a continuing flow of information to the Trust which had the effect of building up a picture of the need to act quickly to protect the child. The situation was evolving and in the court's view the social workers were entitled, indeed bound, to confront the matter when they did. The court would have preferred there to have been a full discussion with the mother about all of the material which had been accumulated by the Trust before the decision to remove MJC from her was made but it appreciates that the intention had been to discuss these matters with her after the decision had been broken to her. This plan failed due to the distress the mother understandably felt on hearing about the Trust's decision. The court reminds the Trust that Article 8 of the Convention does contain a procedural dimension which gives to a parent in circumstances such as these the right to make representations to the decision maker before a decision adverse to his or her interests is taken, unless the situation is so urgent this could not be achieved without endangering the baby or child: see, for example, the judgement of Munby J (as he then was) in *Re G (Care: Challenge to Local Authority's Decision)* [2003] 2 FLR 42 at [43]-[45] and [58]. The court is satisfied that since these proceedings have begun the mother has been able to make representations to the Trust and, as will be suggested later in this judgment, these will need to be fully considered.

[16] For these reasons the court, the matter having been brought before it by the Trust, entertains no serious doubt that the Trust's decision on the evidence adduced before the court was a correct and lawful decision.

[17] This conclusion, in effect, disposes of the proceedings but the court is anxious to say something further about two matters:

- (i) The nature of the decision when placed in its proper context;
- (ii) The procedure deployed by the Trust to bring the matter before the court.

[18] As regards the nature of the decision, the court views the Trust's decision in its due context. First of all, in the court's view, the decision was in the nature of an

emergency decision taken in the light of emerging information which put a focus on the immediate risk the child was at. In the court's view, the Trust will need to give careful thought as to how to factor in this emergency decision into its future consideration of the case. The court has no real doubt about this occurring. The emergency decision should not be viewed as necessarily being the last word about whether the mother's care of the child should be at an end. In particular, the court would commend to the Trust a process of further deliberation in which it seeks from the mother, in particular, but also from others, their views as to the way forward. In the course of the hearing the mother through counsel sought to offer explanations for the circumstances which had arisen and which resulted in the information referred to above being provided to the Trust. However, in the event, the mother gave no evidence about these matters. It seems to the court that the door should remain open to the mother to put before the Trust for their consideration anything further she has to say by way of explanation of events. This should occur come what may. Indeed the court would go further and say that were the mother to offer realistic and convincing assurances that what has occurred in the past will not recur in the future the Trust should not dismiss such assurances out of hand. Secondly, the court is anxious to make clear that the Trust at this stage is clothed with the authority of an ICO only. The ICO holds the ring until the full application for a care order can be decided. The decision made by the Trust and impugned in these proceedings should not be viewed as anything more than it is: an action by the Trust to protect MJC on an interim basis because of important information received. The Trust's decision in particular should not be viewed as:

- (i) Indicating necessarily what the eventual outcome of the care proceedings will be;
- (ii) Pre-disposing the court to an outcome in which the mother cannot for all time be seen in the role of principal carer of MJC.

[19] It is in the nature of full care proceedings that even if the court views the threshold for intervention as having been passed, there remains a range of possible outcomes in terms of the care plan which will need to be considered by all concerned. In that context the need for a proportionate outcome will remain a live issue. This will mean that today's decision, while a relevant factor, should certainly not be viewed as pre-determining the outcome of the overall care proceedings. The mother, the court feels, should not go away from court today feeling that she is now out of the picture and is beyond rehabilitation as the principal carer of MJC. If she wishes to be the carer of MJC she must strive to put behind her the unfortunate events discussed above and dedicate herself anew to her goal.

[20] The procedure used by the Trust in this case for bringing the matter before the court is worthy of some short comment. The court expresses its gratitude to Mrs McGurk BL, for the mother, and Miss Lindsay BL, for the Trust, for their extensive and well composed skeleton arguments on this aspect which the court has carefully considered. However, it hopes that they will not be too disappointed if the court

chooses, in view of its finding above which disposes of the issue in substance, not to seek in this judgement to resolve the procedural issues they have so helpfully identified and exposed. The court will confine itself to a less ambitious approach and proposes in this judgement to do no more than refer to some general propositions which it considers make sense in this area. The resolution of particular points can be left to another day in order not to delay this judgement being given.

[21] Without seeking to impose any procedural straightjacket, the court offers the following general points:

- (a) While the issue of undertakings given by the Trust must ultimately be a matter for it, it seems to the court that it should be slow to offer the sort of undertaking given in this case *viz* one that says it will not remove a child from its parent or parents without the say so of the court, notwithstanding that at the material time it enjoys authority to act in respect of the child by virtue of an ICO. The court is inclined to the view that where the Trust have the authority of an ICO it is entitled, having weighed up all relevant matters, including any human rights considerations which apply to the case, to reach its own conclusion about what to do by way of the placement of a child in interim care. Moreover, as events in this case show, after the power of an ICO has been conferred on a Trust, there will often be developments in the case which have to be addressed. In effect, the Trust must react to changing circumstances often in the interests of child protection. It would be likely, in the court's view, to involve unwarranted delay which could endanger a child if the Trust could only act after it had first received the approval of the court for what it was seeking to do. Obtaining a court hearing at short notice will often not be easy (as this case shows) and in these circumstances the Trust should act on its own responsibility in the exercise of the powers it has under the ICO.
- (b) As already noted, the Trust in making its decision to remove a child from a parent or parents under its ICO powers should consider the case fully and should ensure that it acts consistently with its obligations under the Human Rights Act 1998. The removal of a child from a parent is plainly a matter of great importance which requires full justification. The decision will normally, as it did here, involve compliance with the requirements of Article 6 and Article 8 of the Convention. The Trust must appreciate this and factor this fully into its decision making. What then becomes important is the ability of the parent or parents (or any other party with standing) affected by the prospective or actual loss of their child or children to be able to mount a challenge to the Trust's decision making.
- (c) There should usually not be any significant impediment to a parent or parents (or another party with standing) challenging a Trust decision of the nature here under consideration, whether before or after removal. In the court's view



the existing procedural regime can easily enable a parent or parents to make the sort of challenge envisaged. Apart from actions which can be mounted under the Human Rights Act 1998 itself, including proceedings for an injunction to restrain a proposed course of action which breaches human rights, in the present context the court sees no difficulty in a parent seeking to make a tailor made application where there exists the framework of an ICO in favour of a Trust. Where a challenge is mounted, it ought normally, in the court's view, be made in an orderly way with proper notice to the Trust and the court, unless for a good reason this cannot be done.

- (d) The court does not consider that ordinarily it should be asked by a Trust to police the legality of its own decision. A decision made under ICO powers by a Trust enjoys a presumption of validity and what will be important is that it can be challenged in the way or ways described above.

[22] For the reasons given, the court holds that the decision which the Trust has itself brought before it, is one which was and is lawful, correct on its merits and does not breach any human right of the mother.