

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

Delivered: 11-2-10

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Breno (a pseudonym) (Care Proceedings: Portuguese kinship placement)

STEPHENS J

Introduction

[1] This case concerns a 3 year old boy, a Portuguese national of African descent, whom I shall call Breno, though that is not his real name. He was born in and has lived in Northern Ireland. He has never been to Portugal.

[2] A Trust, which I will not name, has brought an application for a Care Order under Article 50 of the Children (Northern Ireland) Order 1995 in respect of Breno. He has been left in Northern Ireland by his mother who has returned to Portugal and his father is in prison in Portugal.

[3] As I have indicated I have anonymised this judgment. The names are not the real names of any of the individuals. Nothing should be published which would identify the child or any member of his extended family. Any report of this judgment should make it known that the names used are not the real names of any of the individuals. I refer to:

- (a) The child as **Breno**.
- (b) The mother as **Marcia**.
- (c) The father as **Filipe**.
- (d) The maternal half sibling as **Nathalia**.
- (e) The maternal aunt as **Theresa**.
- (f) The partner of the maternal aunt as **Timoteo**.
- (g) The son of the maternal aunt and her partner as **Lucio**.
- (h) The maternal grandmother as **Gloria**.
- (i) The individual with whom Breno was left in Northern Ireland as **Jorge**.
- (j) The individual who also cared for Breno in Northern Ireland after he was left in Northern Ireland as **Antonia**.

Though there is some logic to the choice of these pseudonyms they are primarily chosen at random. Prior to publication of this judgment on the Court Service website I afford the parties the opportunity of considering the pseudonyms and if they consider them inappropriate to either suggest alternatives or to request anonymisation by use of initials. If any party wishes to avail of this opportunity then the Office of Care and Protection should be informed in writing within one week. If the Office is not so informed then the present pseudonyms will remain.

[4] Mr Mulligan has been appointed as the guardian ad litem for Breno.

[5] Ms Ramsey appears on behalf of the Trust and Ms Murphy appears on behalf of the guardian ad litem. Both Marcia and Filipe have been aware of these proceedings but have chosen to play no active part in them.

[6] The parties are requested to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be submitted to the Library for publication in its present form.

The proceedings

[7] The trust commenced care proceedings on 30 April 2009. In summary the Trust alleges that in March 2009 Breno, who was then just over 2 years of age, was left by his mother, Marcia, in Northern Ireland, a country in which he had no other family members whilst she returned to Portugal. That he was left purportedly on a temporary basis with Jorge, a male friend of Marcia who was clearly unable to care for Breno on a permanent basis. That prior to Breno being left in Northern Ireland the care that Marcia provided caused him to suffer significant harm. It is alleged that a dramatic illustration of the lack of care was that Breno's diet was so unhealthy and high in sugar and his dental care was so neglected that he required a general anaesthetic to remove eight teeth on 29 June 2009.

[8] An interim care order was made by the Master on 4 June 2009 upon which date Breno was placed with his present foster carer. The case was reviewed by the Master up to 22 October 2009 when it first appeared in my list. The practical welfare options being considered during the review of this case up to a final hearing date on 5 February 2010 were a kinship placement in Portugal or freeing for adoption in Northern Ireland. There was a lack of information as to the kinship placement in Portugal. That lack of information arose out of a combination of factors but it might well have lead to a situation where it was not possible within an appropriate timescale to obtain a kinship placement for Breno in Portugal. It is in that context that I express my

gratitude for the judicial liaison that has occurred in this case through the European Judicial Network with the Portuguese liaison judge and her legal assessor which I initiated on 17 December 2009. But for their intervention the administrative problems which arose in this case might well have adversely affected the outcome. If any lesson is to be taken from the liaison process it is that on the first occurrence of any administrative difficulties it is to be utilised.

Family members and potential kinship placements

[9] Breno, and his parents Marcia and Filipe, are all Portuguese nationals of African descent.

[10] Breno has a maternal half sibling, a girl, Nathalia, now 7 years of age, who lives with and is cared for by her maternal grandmother, Gloria, in Portugal. I do not have precise details as to the circumstances in which Nathalia came to be cared for by Gloria but it appears that when she was 2 years old she was left by her mother.

[11] Gloria has been interviewed in Portugal by a social worker from Northern Ireland and by the guardian ad litem. The guardian ad litem considers that she presents as a competent and gentle woman who displayed a strong sense of family values. That she was capable of playing a significant role in the life of Breno. As I have indicated she already cares for Breno's half sibling Nathalia. In addition whilst Theresa works she minds Theresa's son, Lucio, who is now 1 year old.

[12] One of Breno's maternal aunts is Theresa. She has also been seen by a social worker from Northern Ireland and by the guardian ad litem. She indicated that she wanted to care for Breno. She has a partner Timoteo who is the father of Lucio. Timoteo has not been interviewed by the social worker from Northern Ireland or by the guardian ad litem though social services in Portugal have raised no concerns in relation to him. Theresa works. If Breno was to reside with her then whilst she is at work Breno would be looked after by his maternal grandmother Gloria along with Theresa's own son Lucio. This would mean that Breno would regularly spend time in the company of his maternal grandmother, Gloria, his half sibling, Nathalia and his first cousin, Lucio. That he would be part of an extended family group in Portugal.

[13] The assessment of Theresa by the guardian ad litem was positive. He was impressed with the life that she and her partner have established. Her responses during interview in relation to the conduct of Marcia were entirely appropriate. Theresa recognised that any future contact between Breno and his mother Marcia would have to be carefully handled to ensure Breno's emotional security. If Breno is to reside with Theresa it is a vital component of any transfer from Northern Ireland that she has parental authority for him

either by virtue of an order made by a court of competent jurisdiction in Portugal or by virtue of an order of this court which is recognised and enforced in Portugal.

[14] Marcia, whilst in Northern Ireland, was unemployed. She could be pleasant and entertaining in her relationship with social services but also could present as demanding and verbally aggressive. She was reluctant to follow the advice of social services or to avail of the support proffered to her.

[15] Breno is a strong willed, stubborn but pleasant and affectionate boy. His present foster mother describes him as a lovable child who willingly displays physical affection. Not surprisingly, considering the physical and emotional trauma he has endured, he presents at times with temper tantrums and can also display other inappropriate behaviours. His language is English. He does not speak any Portuguese.

Sequence of events

[16] Following Breno's birth in early 2007 Marcia only engaged with the health visitors' service for some 8 weeks. Thereafter she moved address on several occasions. Marcia did not arrange for Breno to receive immunisation.

[17] In March 2008 Breno and Marcia became known to social services in respect of a delayed response by Marcia in seeking medical attention for Breno and poor supervision of him. It was reported by hospital staff that Breno had fallen off a sofa at approximately 7.00 *a.m.* and was not taken to hospital until 10.44 *p.m.* It transpired that Breno had suffered a broken arm and wrist.

[18] Also in March 2008 social services became aware of a domestic violence incident in Marcia's house whilst Breno was present.

[19] Breno attended the dentist in April 2008 and this was the last occasion on which he did so until after social services became involved in his dental care in March 2009.

[20] In October 2008 social services provided financial assistance to Marcia. From October 2008 to March 2009 Marcia intermittingly engaged with social services though for instance it was unclear at some stages during this period whether Marcia had returned to Portugal with Breno.

[21] In November 2008 Marcia moved into a house with a male friend Jorge.

[22] On 12 February 2009 Marcia presented to social services with Breno requesting financial and housing assistance. Breno was inappropriately dressed at the time for the cold weather.

[23] On 15 March 2009 Breno was brought by ambulance to hospital with a cut lip. It became apparent at this stage that Marcia had been in Portugal for approximately 2 weeks having left Breno in the care of Jorge.

[24] On 19 March 2009 a social worker in Northern Ireland was able to speak by telephone to Marcia who remained in Portugal. Marcia stated that she would return to Northern Ireland. However she did not return despite financial assistance being offered to her by social services.

[25] On 4 April 2009 a further flight was booked for Marcia from Portugal to Northern Ireland by social services. Again she did not return.

[26] Social services continued in their attempts to persuade Marcia to return to Northern Ireland. Whilst these efforts continued Breno was looked after by Jorge. However Jorge had a full time job and in providing care he had to rely on numerous friends.

[27] On 21 April 2009 Marcia informed a social worker in Northern Ireland that she would be returning to Northern Ireland. She did not return.

[28] On 12 May 2009 again Marcia stated that she would return to Northern Ireland. Again she did not.

[29] Jorge could no longer care for Breno and therefore made an arrangement for another Portuguese national, Antonia, to look after him.

[30] Antonia and Jorge travelled to Portugal and spoke to Marcia. This was at a time after care proceedings had been commenced by the trust in Northern Ireland. There is hearsay evidence to the effect that upon being informed by Jorge as to the commencement of the care proceedings Marcia stated "let them take him". I accept that evidence.

[31] On 4 June 2009 Breno was moved to his present foster mother where he has since remained and with whom he has formed attachments. The present foster placement is not, for perfectly appropriate reasons, a long term placement. Breno will have to move from this placement in the near future. It is important that any move is handled sensitively so that there is on-going contact with his foster mother during a transition period. Furthermore it is essential that there is one move for Breno from his present foster placement to a permanent placement.

Facts

[32] I summarise the factual findings as follows:-

- (a) Following Breno's birth at the beginning of 2007 Marcia exhibited little co-operation with healthcare services. Health visiting services had little access to Breno since he was approximately 8 weeks old. The family did not engage with the service and moved address several times with the Health Visitor believing the family had returned to Portugal.
- (b) In March 2008 Marcia delayed in seeking medical care for Breno following Breno falling and sustaining an injury. Breno had fallen off a sofa at approximately 7 a.m. and was not taken to hospital until 10.44 p.m. Breno suffered a broken arm and wrist which was required to be set in plaster.
- (c) In the period after October 2008 Marcia only engaged intermittently with social services. Marcia requested assistance regarding housing and finance. Meetings regarding housing and benefits issues were made by the social worker but not kept by Marcia.
- (d) Breno was left by Marcia in the care of other Portuguese nationals residing in Northern Ireland in March 2009. Marcia has not returned to resume her care for Breno since this date. The Trust have not had direct contact with Marcia since 12 May 2009
- (e) Marcia has had no contact with Breno since March 2009.
- (f) Between March 2009 and prior to his reception into care on 4th June 2009, whilst Antonia and other carers appeared to be meeting Breno's basic daily needs there was concern about the instability of his care. Breno often moved from home to home without any regular or stable routine. He was often left with various carers who were not known to Social Services or to Breno. Breno's routines were unclear and fluctuated dependent on who was caring for him at any particular time.

- (g) Marcia failed to take care of Breno's basic medical needs. Upon his reception into care on 4 June 2009, Breno was found to have outstanding 4 sets of immunisations
- (h) Marcia failed to take care of Breno's dental health needs. Breno did not see a dentist from April 2008 until he was received into care. Following his reception into care on 4 June 2009 Breno had eight teeth removed.

Harm to Breno

[33] Subsequent to social services involvement in March 2009 Breno was observed to be demonstrating indiscriminate attachment seeking comfort from any available adult. I accept that this behaviour was caused by serious disruption to Breno's care arrangements and a lack of opportunity for Breno to bond with his primary care giver due to the number of people who cared for him during his early years of development. Breno had sustained significant emotional harm as at 30 April 2009.

[34] I have already referred to the significant physical harm that Breno had sustained in relation to his teeth, eight of which had to be extracted under general anaesthetic on 29 June 2009.

[35] It is self evident that a child is likely to suffer significant harm both physical and emotional in circumstances where as here Breno was left in Northern Ireland by his mother without any contact with his family, without financial support and removed from his cultural and ethnic background.

Attribution of harm

[36] It is also self evident that the harm that Breno has suffered and which I have found it is likely that he will suffer is attributable to the care given to Breno not being what it would be reasonable to expect Marcia to give to him.

Threshold findings and preliminary indication as to what is in Breno's welfare

[37] On the basis of those findings I am satisfied as to the threshold criteria under Article 50(2) of the Children (Northern Ireland) Order 1995.

[38] The outstanding matter for my determination is the order that I should make and in that respect my paramount consideration is Breno's welfare having particular regard to the welfare checklist in Article 3(3) of the Children (Northern Ireland) Order 1995. The research and investigation that was facilitated by the assistance of the Portuguese liaison judge led the trust in its final care plan dated 4 February 2009 and the guardian ad litem in his final

report dated 4 February 2009 to recommend that Breno is placed with Theresa in Portugal. Those positions were informed not only by the interviews carried out in Portugal by the responsible social worker from Northern Ireland and the guardian ad litem on 20 January 2010 but also by direct liaison between social services in Northern Ireland and their counterparts in Portugal.

[39] As a result of the information that was made available to me and on 5 February 2010 I gave a preliminary indication to the Trust and to the guardian ad litem that it is my present intention to find that it is in the best interests of Breno to be in a kinship placement in Portugal with Theresa. That preliminary indication, based on the welfare checklist, is informed by the lack of any realistic prospect of rehabilitation to Marcia and the positive advantages for Breno of a kinship placement in Portugal with contact with his extended family and bearing in mind that his ethnic origin and cultural background will become more relevant to him as he gets older. If he remains in Northern Ireland then he may develop feelings of isolation with a distinct loss of cultural identity which could exacerbate the emotional turmoil experienced during adolescence.

[40] However before making a final determination as to what is in the best interests of Breno a number of important matters will have to be resolved and resolved within an appropriate timescale for him. It is not possible for Breno to remain in limbo. The next best option after a kinship placement for him in Portugal with Theresa is to revert to a care plan to free Breno for adoption in Northern Ireland. If he was adopted in Northern Ireland then he would automatically become a British citizen entitled to a British passport. In order to consider a care plan which has as one of its components freeing Breno for adoption, I consider that it is appropriate to invoke the assistance of the Department of Health, Social Services and Public Safety under the joint protocol with the Northern Ireland Court Service. If a care plan has as one of its components freeing a foreign child for adoption then it is a necessary part of the investigation of that care plan that consideration be given as to whether the United Kingdom immigration authorities will object to an adoption order. Another aspect to be taken out of this case for the future is that early notification should be made to the Department of Health, Social Services and Public Safety in any care proceedings involving a child who is a foreign national where there is the potential for the care plan to include as one of its components freeing the child for adoption.

The matters which remain to be resolved to achieve a kinship placement in Portugal

[41] I turn to the matters which have to be resolved prior to the final determination of the welfare aspects of the care proceedings. To achieve the outcome of Breno moving to Portugal to be in a kinship placement with

Theresa the most important matter which has to be addressed is the question of a passport for Breno so that he can travel. The timescale, in which a passport should be obtained, being informed by the fact that Breno is now 3 years of age, is continuing to form attachments to his present foster carer the disruption to which will become progressively more difficult for him to bear and that he urgently needs to be in a permanent placement. Again for the future another aspect to be taken out of this case is that in any care proceedings in which a foreign national child is involved directions should be sought and given at the earliest review hearings dealing with obtaining a passport for the child.

[42] I have set Easter 2010 as the timescale within which the outstanding matters are to be resolved. Breno is one of the most vulnerable members of our society and it is incumbent to settle him in a home with the best potential to have a stable and secure childhood within the shortest possible period. To have a deadline of Easter 2010 is to acknowledge, sadly, that it has taken over a year to sort out problems which are not of his making.

[43] In order to move Breno from Northern Ireland to Portugal the matters which have to be addressed are as follows:-

- (a) Reintroduction of Breno to the Portuguese language and culture through a child appropriate DVD and material obtained from Theresa and Social Services in Portugal. Also utilising the links of Breno's present foster carer with a family that has a Portuguese child so that Breno is afforded the opportunity to socialise with this child to further aid his language development and enhance his potential to communicate upon arrival in Portugal
- (b) Introducing Breno to Theresa through a scrapbook prepared of photographs taken by the social worker during her visit to Portugal, including photographs of Theresa and her accommodation and by Theresa visiting Northern Ireland, with her son, Lucio, for 5 days. The length of the visit of Theresa to Northern Ireland being informed by her work commitments in Portugal and the need for her to keep her employment.
- (c) Obtaining a passport for Breno. Passport applications should be made concurrently to the authorities in Portugal, the United Kingdom and the Republic of Ireland. The timescale for all the other steps in this case are dictated by the likely timescale for obtaining a passport. It is not possible to start preparing Breno for a move and for Theresa to start making arrangements

unless and until it is either known that Breno has sufficient documentation to travel or there is a clear timescale within which those documents will be provided.

- (d) Obtaining financial support from the Trust to “resettle” Breno in Portugal.
- (e) Obtaining details from social services in Portugal as to the financial assistance that is available in Portugal to provide for Breno.
- (f) Liaising with social services in Portugal to ensure that Theresa has an enforceable court order in Portugal giving her parental responsibility.
- (g) Liaising with social services in Portugal to determine whether if Theresa needs to obtain a court order in Portugal there is funding in place for her to seek such an order.
- (h) Making arrangements for contact, both direct and indirect, after Breno has moved to Portugal for him with his present foster carer to assist him to settle in Portugal.
- (i) Obtaining health, reference and police checks in Portugal in respect of Theresa and her partner Timoteo.
- (j) Obtaining a police check in respect of Breno’s father, Filipe. He is presently serving a 6 year sentence of imprisonment stating that he has served 3 years, with 3 years still to serve. Filipe has recounted that he was convicted of “stealing”. The length of the sentence raises concerns as to whether this information is accurate or complete.
- (k) Confirmation from social services in Portugal that they will take Breno under their procedures for “protection and promotion of a minor” for 12 - 18 months post-placement. It is unclear as to whether this requires an application to a court in Portugal and it is also unclear as to the level of visiting of Breno that can be expected of social services in Portugal. Furthermore Breno may require to utilise the services of a psychologist in Portugal to assist with his transition. Clarification is sought as to whether this facility is available.

- (l) For Theresa to obtain full state benefits for Breno in Portugal there needs to be confirmation that she will not achieve maintenance from the birth parents. Clarification is needed as to the timescale for obtaining full state benefits for Breno in Portugal.
- (m) Enrolment of Breno in a state school in Portugal.
- (n) Registering Breno with a medical practitioner in Portugal.
- (o) Translating his medical notes and records and dental records into Portuguese to facilitate his ongoing medical and dental care in Portugal. Breno suffers from some medical conditions which will require follow up in Portugal.
- (p) Making arrangements for ongoing liaison between social services in each country after transfer to ensure that Breno has settled and is receiving appropriate services.

[44] The most pressing matter is to obtain a passport for Breno. On Friday 5 February 2010 I directed the Trust to that day contact the office of the Chief Immigration Officer to determine exactly how long it would take to process an application for a British passport. I permitted the release of the guardian ad litem's report to the office of the Chief Immigration Officer. I anticipated that there could be some administrative problems and accordingly asked a member of the Crown Solicitor's office to attend at a review on Tuesday 9 February 2010 and for that individual in the meantime to have contacted the office of the Chief Immigration Officer. In the event the Trust, despite numerous attempts, was unable to contact the office of the Chief Immigration Officer. Mr Wimpress of the Crown Solicitor's office kindly attended the review on 9 February 2010 and indicated that he had spoken to an official in the office of the Chief Immigration Officer. The preliminary view indicated was that it was unlikely that a British passport would be issued to Breno. Assistance was requested to identify an individual in the Immigration office to whom an application for a British passport could be made together with that persons contact details and any relevant guidelines as to how discretion should be exercised. Also an assurance that the matter will be handled expeditiously. Also assistance was requested from the Office of the Chief Immigration officer to identify an individual in the relevant office in Portugal to whom an application for a Portuguese passport could be made again with contact details. I emphasise that this court is indebted for the assistance afforded to it from the office of the Crown Solicitor. I set the next review date

as 11 February 2010 to keep the question of a passport for Breno under close review.

[45] On 11 February 2010 Mr Wimpres informed the court that he had been able to enlist the assistance of Mr Soutter the United Kingdom's Border Agency Immigration Inspector for Scotland and Northern Ireland region and that there had been contact at a high level between officials on behalf of the United Kingdom Border Agency and the Portuguese consul. The result achieved was that, provided various documents could be produced, a Portuguese passport would be issued to Breno. I have given directions in relation to the documents which can be produced and it is anticipated that this issue will be resolved in an appropriate timescale. Planning should now take place on that assumption. I am grateful for the speed with which this matter was addressed by both the United Kingdom Border Agency and the Portuguese consul.

[46] Before I can make a final determination there are still a number of outstanding issues that need to be addressed.

[47] I have initiated further judicial liaison in relation to some of the outstanding matters.

Interim conclusion

[48] I am satisfied as to the threshold criteria under Article 50(2) of the Children (Northern Ireland) Order 1995. I have given a preliminary indication as to the outcome of the care application provided it can be achieved in a suitable timescale. There are a number of outstanding matters which need to be addressed urgently. I have set the next review as 1 March 2010 keeping in mind the potential that a final order could be made on that date.