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

Delivered: 26/11/13

In the Family Care Centre sitting in Belfast

In the matter of C, M and R

Her Honour Judge Patricia Smyth

Introduction

1. This is an application for care orders in respect of C who was born on the 6th June 1999 and is now aged 14 years, M who was born on the 21st February 2001 and is now aged 12 and R who was born on the 29th March 2004 and is now aged 9.
2. All three children have specific needs. C is diagnosed as having a moderate learning disability and is academically 1 year behind her peers in school. M has diagnoses of severe learning disability; Dysmorphic Syndrome; faltering growth; Chronic Serious Otitis Media (recurrent inner ear infection) and challenging behaviour. M requires adult support and supervision for all aspects of her personal care and safety. The level of care required by her is compared to that of a baby. R has diagnoses of severe learning disability, Downs Syndrome and challenging behaviour. R requires adult supervision for all aspects of his personal care and safety, and his care needs have been described as those of a young child.

The Background

3. The parents were married and thus share parental responsibility. They separated in and around 2007, and from that date the mother was the sole carer of the children. The father did not have contact with the children until approximately October 2011, when contact was re-established with C, who was then aged 12 years old. It is accepted by both parents that their relationship was marred by serious domestic

violence. In May 2003, C who was not yet 4 years old, disclosed to the health visitor that she had witnessed her father pull her mother down the stairs by the throat. On the 29th June 2007, the mother was arrested for assaulting the father. The mother also made a counter allegation of assault arising from the same incident. The health visitor later documented that C had witnessed this incident. Both parents accept that the impact of the violence and their inability to protect their children from its impact constitutes threshold for the purposes of a care order.

4. On the 14th November 2011, C disclosed to a school teacher that she had been subjected to physical, verbal and emotional abuse by the mother. In particular she alleged that she was forced to take on a parenting role in respect of M and R, and was abused by the mother if she did not carry out this role to her satisfaction. C went to live with her father and his new partner following these disclosures. M and R were placed with the paternal grandparents where they have remained to date. The mother asserts that the allegations are false and that C has been influenced by her father to make them. The mother points out that during the years that she parented the children alone there were health professionals in and out of her home on a regular basis, as was the paternal grandfather, and no concerns were noted.
5. Whilst initially the mother conceded facts regarding her behaviour towards C which amounted to threshold, she later retracted those concessions. The threshold facts in question are as follows:

'4. the mother was under significant stress, parenting three children, each with specific needs and at times behaved in a way towards the children that was inappropriate.

5. C became a "parentified" child, with some responsibilities assumed by her towards the younger siblings, and it is accepted that this was not a normal life for C.

6. At times the mother behaved in an inappropriate way towards C, and this caused C distress.'

6. The Trust submitted that it was necessary for the court to determine whether these particular threshold facts had been established, because professionals working with C in a therapeutic way were firmly of the view that she could not recover unless either the mother acknowledged her behaviour or the court determined the matter in C's favour. The Trust also submitted that the mother's refusal to accept the deficiencies in her behaviour was relevant to care planning for all of the children. The court heard evidence from a counsellor who was working with C and on the basis of that evidence was satisfied that C's ongoing emotional welfare required a determination of the facts.

The Disputed Threshold Facts

7. The court had the benefit of watching an ABE interview with C about her allegations. The court considered that C answered the questions in a straightforward manner and there was nothing to suggest that her allegations were untruthful or exaggerated. Whilst the mother referred to a comment which the father had made to the social worker after C had been placed in his care that he '... [had] information which he [would] disclose should C be removed from his care which would 'blow this whole arrangement out of the water...'' in support of her assertion that C had been influenced by her father to make these allegations, the court is not satisfied that this is the case. C subsequently decided to leave her father's care and live with her paternal grandparents who do not have a good relationship with the father. C did not retract the allegations against her mother. The mother insists that until November 2011 she and C had an excellent relationship. If this is so, it is difficult to accept that a renewed relationship with her father of only weeks' duration could cause C to make such serious allegations against her mother.
8. Recently, C has been dissatisfied with the strict boundaries imposed by her grandparents and has chosen a foster placement rather than any family placement. Since leaving her mother's care in November 2011, C has not wavered in her allegations and has refused to have any contact with her mother, because she will not accept that the allegations are true. C continues to have contact with both her father and the paternal grandparents. Whilst C has also expressed a wish to have

contact with her maternal grandmother, she has been reluctant to do so because her grandmother also will not accept that C's allegations are true.

9. The court also took into account the assessment by Dr Angela O'Rawe, Psychiatrist Consultant Child and Adolescent that C presented as a "parentified child". C spoke to Dr O'Rawe about her experience of living with her mother. She described "*lots of stuff behind doors... mum getting drunk*". She also described the tasks that she was required to carry out for her brother and sister: "*she (mum) would have left me for hours, I couldn't do it, R would go to hit her in the face and grab her hair, he would have hit me... it was really hard for me to lift them. We have hard wood stairs and M pushes back, I was scared of dropping her. If I said no to mum, she swore at me and hit me in the head. She blamed me on her relationships. There were four or five different men. They had good money and good cars. They would just sit there and mum would tell me to go upstairs. If they went, she would tell she wished I would die. This was her last words. She came into my face*". Dr O'Rawe described C's need for a secure "family" base to enhance her sense of self-worth and to empower her to eventually make more robust decisions in relation to herself. She also pointed out the psychological risks facing C in adolescence and adulthood as a consequence of the experiences C has suffered within her family.
10. Having heard the evidence of both C and her mother, the court was concerned that the mother's perception of reality may not be reliable. In reaching that conclusion, the court took into account the mother's behaviour during contact sessions and her reaction to concerns raised following a detailed parenting assessment conducted using the PAMS model, which is specifically designed to assess people with learning disability, or other cognitive vulnerabilities. Whilst assessment confirmed that the mother does not have a learning disability, her intellectual functioning is very low.
11. The social worker recounted two incidents in particular which led to concern about the reliability of the mother's evidence. In one incident, the social worker had collected the mother and M and R to take them to an activity-based contact. The social worker said that the mother sat in the rear of the car, with the children on either side of her, in order to ensure the children's safety, and in particular, to safeguard them from any choking hazards. When the children were being removed

from the car, M attempted to put something in her mouth, and the mother did not act appropriately because she did not see what had happened. The social worker had recorded this detail in a contemporaneous contact record. Some weeks later, the mother made a complaint that the social worker had compelled her to sit in the *front* of the car, which she knew to be dangerous, but felt unable to raise any objection. She blamed the social worker for the child almost choking. Having heard the evidence of the social worker, and considered the written contact record, the court does not accept the mother's account of the incident.

12. In the second incident, the social worker described how, during a fraught activity based contact the mother had let go of R's hand and the child had run across a car park, causing him to be at risk of danger. R has no perception of danger. Whilst the point being made by the social worker was that one person alone cannot meet the needs of both children, the Court was concerned that the mother's account of that incident was entirely different, and she did not accept any criticism of her behaviour.

The Parenting Capacity Assessment

13. The mother's inability to appreciate the concerns raised about the safety of her parenting is a recurring feature of this case. The detailed Parenting Capacity Assessment which was carried out identified significant areas of risk which are relevant to the particular needs and challenges of parenting these children. Basic considerations such as ensuring a safe feeding regime to ensure M does not choke needs to be consistently followed without the need for prompting. M also needs to be properly secured in order to prevent falls or injury and the assessment demonstrated that the mother can become distracted and may not consistently ensure that proper precautions are taken. R has no danger awareness and requires an adult to keep him safe at all times. Both the assessment and the mother's behaviour during activity based contact have raised concerns about the mother's ability to consistently ensure R's safety. R may also be violent and has assaulted the mother. It is essential that the mother can clearly manage his behaviour because the danger that his behaviour will present in the future as he becomes older and stronger could result in harm. The mother repeatedly dismissed suggestions that

R's behaviour is attributable to his condition and has insisted that it is caused by illness resulting in unnecessary attendances with health professionals.

14. The mother asserts that if the recommendations of the assessment are properly analysed, some major priority areas can easily be rectified by buying appropriate equipment and some can be rectified by teaching. Others are said to be unnecessary, although desirable. The Trust assert that the assessment cannot properly be analysed in that way. Mr Stuart Whyte, Principal Practitioner, who is experienced both in the use of the PAMs model and teaching others throughout the UK to use the model, explained that the outcome has to be understood in terms of the impact of the risk factors on the particular child. In this case, M and R suffer from significant cognitive and physical disabilities and the risks have to be understood in that context.
15. The real issue in this case is whether the mother can develop insight into the deficiencies in her parenting of the children, given their specific needs, and implement the advice consistently and appropriately. Unfortunately, the evidence to date is that the mother refuses to accept the issues raised by the Trust. The Trust acknowledges that the mother was under enormous stress attempting to parent three children with specific needs alone. Having assessed the children's needs it is the Trust's view that no one could parent the children without permanent help and assistance. M and R have been cared for by the paternal grandparents since C's ABE interview with extensive assistance and respite care. The difficulty is that the mother does not fully accept that she was under significant stress.

The Law

16. In accordance with Article 50 of the Children (NI) Order 1995, it is open to the court to make a care order only if satisfied of two matters. The first is that the child is suffering, or is likely to suffer significant harm. The second is that the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given, if the order were not made, such care not being what it would be reasonable to expect a parent to give to the child. This constitutes the statutory threshold for intervention by the court. This must be considered in the context of the "threshold

criteria” in this particular case. If satisfied that the statutory threshold is met, the court will then consider whether it is appropriate to make an order, giving effect to the welfare and non-intervention principles enshrined in Article 3 of the 1995 Order. In making its determination, the court must be alert to its duty as a public authority under section 6 of the Human Rights Act 1998 and, in this context, the right to family life, guaranteed by Article 8 ECHR. At the heart of the legislation is a determination of what is in the child’s best interests, which must be the court’s paramount consideration.

17. Ms Murphy BL on behalf of the Trust referred the court to the relevant passage in the Judgment of Lord Nicholls in *Re H and R (Child Sexual Abuse: Standard of Proof)* [1996] 1 FLR 80 at page 96 regarding the standard of proof the court should apply when determining whether the threshold facts are established:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under-age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a serious degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

Conclusion on the Disputed Threshold Facts

18. I am satisfied, on a balance of probabilities, that C's allegations against her mother are true. C has consistently maintained the allegations since November 2011 to professionals working with her, and in the course of an ABE interview. She has refused all contact with her mother since that date and has stated that she will not have contact unless her mother acknowledges the truth of the allegations.
19. There is no evidence that the father influenced C to make these allegations, as the mother has maintained. If the mother's account of her happy relationship with C prior to the allegations is correct, it would seem highly unlikely that the father could exert such an influence within a matter of weeks of reinstating his relationship with C after a gap of almost four years. If this were the case, the court would have expected C to retract the allegations, at least to some degree, once she decided to leave her father's home and leave with the paternal grandparents. They currently have no contact with the father. She did not do so, nor has she done so since leaving the care of her grandparents and voluntarily moving into a foster placement. I am therefore satisfied that threshold is met in respect of the Trust statement of facts.

Conclusion on Care Planning

20. In terms of care planning taking into account the welfare checklist, both parents accept that given C's age, wishes and feelings, a care order is necessary. The mother has always maintained that if C did not wish to live with her, the best placement would be a foster placement to reduce the influence of the paternal family. The father would also wish C to return to his care, but he accepts that she does not wish to do so. Given the difficult and fractured family relationships that C has had to navigate over the years, I agree with the Trust and the guardian that currently this is the best placement for C. She will require the active assistance of the Trust to manage the contact arrangements between the adults, who have been unable to put their personal differences aside for the sake of the children.
21. C asked to speak to me prior to the conclusion of the proceedings to express her views about the placements for M and R in particular. The guardian was present

and a note was taken of the conversation, which was then relayed to the parties in open court. C wished to make it clear that M and R would not be safe in their mother's care, and if the court was minded to return them to their mother, she would also have to return in order to protect them.

22. M and R have been cared for by the paternal grandparents since November 2011. The evidence before me is that they are well cared for, and there are no current concerns. The Trust has put in place supports, both practical and respite in nature. It has been emphasised to the Trust that it must ensure that the grandparents are appropriately supported, particularly as the children get older, and their needs become more challenging. Having accepted C's account of her experiences living with her mother, the outcome of the PAMS assessment and the evidence of the social worker and guardian, I am not satisfied that the mother is currently able to ensure the welfare of M and R. Although the demands of caring for one of these children would clearly be less than caring for both of them, I am satisfied that it would not be in their best interests to separate them because they have always lived together. In any event, unless the mother can take on board the issues in this case, I don't consider that either child would be safe in her care. Whilst the mother makes the point that she was the sole carer for all three children for a number of years without any concern being raised, it is clear from C's evidence that what was really happening "behind closed doors" was very different to the image of family life portrayed to professionals who visited the home. All parties agree that care orders are necessary to assist and support the grandparents.

23. However, there are particular reasons why the Trust must continue to actively strive to work with the mother once these proceedings are concluded. Firstly, the Trust is under a statutory obligation to continually assess whether rehabilitation to a birth parent can be achieved. Secondly, the particular needs of R are such that as he reaches adolescence his behaviour is likely to become increasingly challenging and as the grandparents increase in years they may struggle to offer the children an appropriate level of care even with Trust supports. In the future, the mother will have an important role to play in offering some level of care *if* she can develop

insight into her difficulties and take on board the advice and guidance of the Trust. The fact that she has not accepted the concerns to date must not prevent the Trust from working with the mother as part of future planning for the children. It may be that the conclusion to these proceedings will mark a new beginning for the mother in terms of her relationship with the Trust.

24. Before the court can make a care order, it must be satisfied with the contact arrangements proposed by the Trust. The contact arrangements proposed envisaged one contact per week with both children for one hour and on alternate weeks a further individual contact for the same duration. Additional contact will be arranged for holiday periods. Following the views expressed by the mother and the guardian that the weekly contact was set at too low a level, the Trust revised its proposals and suggested that the mother should have contact three times per week, one contact with both children and one individual contact with each child for one hour duration.
25. In my view contact should take place at least three times per week and for no less than one and a half hours. When the children are not at school contact should take place for two hours on each occasion because the Trust argument that the children are tired after a long day is not applicable. Although the mother would prefer both children to be present on each occasion, I agree with the Trust that given the special needs of the children both the children and the mother are likely to benefit from some individual time together. This will also allow the mother the opportunity to demonstrate that she is taking on board the advice of the Trust. I also agree with the guardian that contact arrangements should not be set in stone and should reflect the ongoing needs of the children.
26. If the Trust is prepared to amend its contact proposals I am satisfied that care orders should be made in respect of all three children.