

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

CHW

Applicant;

-and-

CMJ

Respondent.

(Welfare hearing)

MORGAN J

[1] I have anonymised this judgment to ensure that the names of the children and their parents are not disclosed. Nothing should be published which would disclose the identity of either of the parties or their children.

Background

[2] The applicant and respondent met in 1987 and quickly formed a strong relationship. They lived together for a number of years and married in 1992. They have four children aged 17, 16, 12 and 6. The second oldest is a boy and the other three children are girls. The parties separated in July 2002. All of the children now live with the respondent. In these proceedings the applicant seeks a residence order in respect of the youngest child and a contact order in respect of the second youngest child pursuant to article 8 of the Children's (Northern Ireland) Order 1995.

[3] Unfortunately there has been a long and tortuous history of proceedings and assessments involving these children which has been undoubtedly to their disadvantage. At the time of the separation in July 2002 there were a series of allegations made about the behaviour of the applicant.

Over the years new allegations have been made. These matters were first investigated by police in August 2002 and social services became involved.

[4] Proceedings were issued by each of the parties for residence orders in the latter part of 2002 and the matter was transferred to the Care Centre by the end of that year. An article 56 investigation was directed and a psychologist became involved with the older children. During the latter part of 2002 the applicant had direct contact with his son on a number of occasions. The second youngest child had indicated a willingness to have contact with her father although she did not do so apparently as a result of her view that her mother did not wish her to have that contact. The applicant did have direct contact with the youngest child who was then a baby.

[5] By the time the psychologist became involved in July 2003 the three older children were resolute in their view that they wished to have no contact whatsoever with their father. It was clear that they had developed entrenched views and it was considered that therapy would be required if they were to move from that position. The Care Centre decided on advice not to hold a fact-finding hearing but to pursue therapy with a clinical psychologist and resolution by way of mediation. This was not a success. The applicant had no contact with any of the children from in or about May 2004 until November 2005. By that stage the case had been transferred to the High Court and direct supervised contact arrangements established in relation to the youngest child.

[6] In September 2006 further mediation work was commenced at Diamond House Family Resource Centre. The few sessions which did occur were fraught with difficulty and no progress was made in resolving the issue of contact between the children and the applicant.

[7] In October 2006 Mr Justice Gillen made an Order that the applicant should have contact including overnight contact with the youngest child. In June 2007 the respondent alleged that the youngest child had made a disclosure to her of sexual abuse by the applicant as a result of which it was ordered that the overnight contact should cease and that contact thereafter should be supervised. By this stage the respondent was making extensive allegations of violent and sexually abusive behaviour by the applicant which required a fact-finding hearing.

[8] On 8 August 2007 the Trust applied for an interim care order in relation to the youngest child. On the previous Friday the youngest child had been interviewed by a psychologist retained by the applicant in the presence of a representative of the Official Solicitor's office. In the course of that interview she had indicated that there was no substance to the sexual abuse allegations concerning her. The following Monday the child was taken without the respondent's knowledge by the eldest child to the Children's

Commissioner and there made a halting claim in the presence of her elder sister that she had in fact been abused. The respondent also produced a DVD allegedly showing sexualised behaviour of this child apparently in support of the allegation. I took the view at that stage that there was a significant risk this child was being exposed to a significant degree of emotional abuse within the home and as a result decided that I should make an Interim Care Order as a result of which she was taken into foster care until December 2007. I had by that time commenced the fact-finding hearing which took some seven weeks in total and considered that the need for a safe haven for the child had diminished so that she could return to her mother and siblings.

Fact Finding Hearing

[9] As a result of the fact-finding hearing I was satisfied that the applicant had subjected the children to inappropriate discipline from time to time. On occasions he put them under the stairs and on one occasion the second youngest child, C, was so distressed that she soiled herself. On other occasions I am satisfied that he pushed the children, that he pulled them by the hair and may even on occasions have kicked them. He accepted many of these findings prior to the hearing and has taken steps to seek advice in relation to parenting. I am satisfied that he is now appreciative of the harm that such inappropriate disciplining gives rise to. I am entirely satisfied that this behaviour will not be repeated.

[10] During 2001 the evidence clearly establishes that the applicant was depressed. That gave rise to numerous arguments within the house and the applicant was undoubtedly difficult to live with. This had an adverse effect on the applicant's relationship with the children. In particular the oldest child, F, is strong-willed. She appears to have had little appreciation of the boundaries of good behaviour that one would expect from a child of her age. That may reflect the fact that the respondent is not inclined to confront the children even where their behaviour requires correction. By contrast the applicant's irritation during his period of depression has probably resulted in some degree of conflict between himself and this child.

[11] There was an incident on the beach in April 2002 when the pram containing the youngest child who was only a few months old overturned. The oldest child interpreted this as an attempt by the applicant to cause injury to the baby. I am not satisfied that the respondent saw much of the incident but she has accepted the account given by the oldest child even though there was an account by the second oldest child which appear consistent with the applicant's account which explained that this was an accident caused by the pram been caught by rocks. I mention this incident because it is a clear indication that even at that stage, before the separation, the eldest child had begun to form a view of her father as dangerous and was encouraged in this view by the support of the respondent.

[12] Just before the separation in July 2002 there was a further incident when the applicant together with the two eldest children was taking the youngest child in her pram along the seafront at Newcastle. The applicant sought to take the pram from the second oldest child because the footpath was narrowing and he was concerned about approaching vehicular traffic. The boy resisted the father's attempts as a result of which there was a struggle between them. The eldest child interpreted the father's intervention as a direct attempt to push the pram containing the baby into the flow of traffic. She therefore took the child out of the pram and marched off along the seafront. The respondent and the second youngest child, C, came upon the scene shortly thereafter.

[13] There are a number of aspects of this event which in my view are important in understanding the family dynamics at that time. Firstly this shows the readiness of the eldest child to interpret what in my view was a perfectly sensible intervention by the father to protect the baby as a hostile act. Secondly the fact that the applicant's intervention led to a shoving match between himself and his 10-year-old son supports the view that the applicant at that stage was not well attuned to the appropriate methods of dealing with the children. Although I am satisfied that his intentions were directed towards the protection of the baby it seems likely that the manner of his intervention appeared aggressive to the children. Thirdly it is of some importance that the respondent apparently accepted the version of events advanced by the eldest child without demur. Fourthly the fact that the eldest child who was then 11 was permitted to walk off with this baby in her arms without any kind of supervision and apparently without any kind of reprimand from the respondent suggests to me that the child was beginning to take on a role in relation to the family which was entirely inappropriate having regard to her age and obvious lack of maturity.

[14] Each of the children was interviewed shortly after the separation towards the end of July 2002. Even at that stage the eldest child was in my view advancing allegations which were intended to achieve the outcome that the father was excluded from family life. One example is the allegation that the father had caused the second youngest child to suffer a hand burn when she was very young. This injury did occur but was caused by the young child trying to remove some hot milk from a microwave. The eldest child sought to present this as a deliberate act of the father.

[15] The eldest child refused to have any contact with the father after the separation. The second oldest child had successful contacts with his father immediately after the separation but they soon stopped. The second youngest child expressed a desire to have contact with her father with whom prior to that she had had a good relationship but she then changed her mind because, she said, her mummy did not want her to have contact. I am satisfied that the

respondent at that stage actively discouraged the children from developing any relationship with their father. The applicant did, however, have contact with the youngest child.

[16] Although there have been interruptions to that contact it has continued. The present pattern is that the applicant sees the youngest child every Thursday after school and on alternate Saturdays. Until recently the contact has been supervised. There have been well documented disputes surrounding the handover of the child to the applicant. It has been proposed to address this by having an independent third party, known to each of the parents, transport the child from the respondent's home to an agreed collection point. In June 2007 the court imposed a condition that the contact be supervised because of an allegation by the respondent that the youngest child had made a disclosure to her that she had been sexually abused by the applicant. Having heard the evidence I am satisfied that there was no incident of sexual abuse but I do not rule out the real possibility that the youngest child was encouraged to make such a disclosure to the mother with a view to preventing the father's continued contact with her. Despite the conclusions reached in the fact-finding hearing the mother continues to believe that there is a high risk that the applicant did abuse the child.

Present Situation

[17] The respondent's position in this application is that she believes that the applicant should have supervised contact with the youngest child. The reason for the supervision is to protect the child in light of the allegations of abuse. The eldest child is positively opposed to any contact and is likely to try to undermine it. The second oldest child is also opposed but appears now not to take such an active part. The youngest child has a close bond with the second youngest child. Unfortunately the second youngest child has now moved to a viewpoint similar to that of her eldest sister. I consider that there is a very real risk that she will seek to undermine any continuing contact. I also take into account the position of the maternal grandparents. I am satisfied that the maternal grandmother in particular plays a substantial role in the lives of the children. She provides care while the mother is working. I am also satisfied from the Trust reports that she has displayed extreme hostility to the father and I have no reason to believe that she has changed her view.

[18] All of this has led to emotional pressures on the youngest child. I am satisfied that this child does not perceive herself as having emotional permission from her mother and the other members of her family to see her father. The respondent has persistently refused to take any positive or active step to promote among the other children a positive view towards the contact which has occurred. The views of the older girls have now become so

entrenched that it probably would be difficult for even the respondent to change their viewpoints.

[19] The youngest child copes with these difficulties by compartmentalising her life. She conducts two separate groups of relationships and seeks to maintain a complete barrier between them. The role of the court during the interim period has been directed towards protecting the child from emotional abuse and seeking to maintain all of these important relationships. That required a period of approximately 4 months where the child was placed in foster care. Despite all of this the child presents as settled, performing well in her school environment and making appropriate relationships among her peer group.

The Expert Evidence

[20] I had been provided with numerous expert reports in relation to this family covering the period from 2003 to date. I heard evidence from Dr Blincow and Dr Fitzpatrick. I accept that each of them had expertise in the areas in which they offered their opinions.

[21] The experts were agreed in relation to the second youngest child. At present there was no prospect of establishing contact that would not create problems for the child, her mother and her father. The preconditions for direct contact simply were not present. Neither expert recommended counselling or therapy at this stage. I will say something about indirect contact towards the end of this judgment.

[22] In relation to residence of the youngest child Dr Blincow considered that there was a strong argument for residence to be changed to the father. He stopped short of making a recommendation to that effect, however, because he felt that he would require further information in relation to the child's circumstances. He had not interviewed the mother or any of the children. He recognised that the advantages to continuing residence with the respondent were continuity and day-to-day contact with the mother and siblings. He considered that the negative aspects arose around contact with her father in that situation. He considered that there was a real risk of emotional harm to this child if she continued to have contact with the father while residing with the mother and that the effect would eventually be that the contact would cease. He accepted that the child's attachment to the mother was secure in virtually every aspect of her life but was of the view that it was insecure in relation to issues surrounding the father.

[23] Dr Fitzpatrick was of the view that the child should continue to reside with her mother. Her development appeared to be quite normal in many ways. Dr Fitzpatrick recognised that the child had suffered emotional neglect

because the mother had been unable to facilitate contact with the father. She was not prepared to characterise this as emotional abuse.

[24] Each of the experts recognised the particularly close relationship between the youngest child and the second youngest child. Each recognised that if the children were to reside with different parents there were a wide variety of feelings and adjustments which would have to be accommodated. In that circumstance good-quality contact would be very helpful. Each recognised that contact in those circumstances was likely to be extremely difficult.

[25] Dr Blincow was of the view that the issue of residence for the youngest child needed to take into account the risk of emotional harm to the child if she remains in the mother's environment against the risk to her if she is separated from her mother and siblings. The latter risk is more uncertain. Dr Blincow contends that the trauma associated with such a move may well have an underlying effect on the perception in particular of the second youngest child of her father. Dr Blincow accepted that there were few overt signs of emotional damage to the youngest child but he warned that the absence of such signs was not in itself an indicator that the child was at this stage free from emotional damage. In any event he considered that the emotional pressures likely to arise from the child's continued residence with the mother and the other siblings was likely to give rise to harm.

[26] Dr Fitzpatrick recognised the real risk that, if the child continued to reside with her mother, she would be subject to emotional pressures that might well affect the continuation of contact with her father. She considered, however, that there was evidence that the mother had sustained the contact ordered by the court to date and that encouraged her to the view that contact could be sustained without significant harm to the child in the longer term. Dr Fitzpatrick noted that the child presented as a very normal little girl leaving aside the problems associated with contact.

Conclusion

[27] In determining this application for residence article 3 (1) of the Children's (Northern Ireland) Order 1995 provides that the welfare of the child is the court's paramount consideration. Having regard to the comments that I made on the fact-finding hearing I note that article 3 (2) of the 1995 Order requires the court to have regard to the general principle that any delay in determining these questions is likely to prejudice the welfare of the child. In a case of this kind the court is required to have particular regard to the following considerations:

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
- (g) the range of powers available to the court under this Order in the proceedings in question.

The submissions of the applicant in particular have drawn to my attention a number of cases where the courts have had to deal with intractable or implacable hostility. Each of these cases demonstrates in its own way how the courts have responded to the welfare needs of the child or children involved. Each of them has focused on the fact that the court's concern is with the welfare of the child as the paramount consideration while taking into account the proper rights of parents which are, of course, protected by article 8 of the ECHR. It does not follow, however, that the conclusions reached in those cases are appropriate in this case. Every child is entitled to have her individual welfare circumstances considered by the court.

[28] There was some debate at the trial about the ascertainable wishes and feelings of the child. In particular Dr Blicow noted that when the child was transferred into foster care she appeared to settle down quite quickly without any obvious signs of significant distress. He relied upon this to sustain his opinion that this child's attachment to her mother was mixed but also to call into question whether the child had a strong view about where she should live. In his evidence the Guardian indicated that the child had on a number of occasions expressed a strong desire to return to her mother and siblings. Dr Fitzpatrick also noted a similar statement when the child was seen by her. Both the Guardian and Dr Fitzpatrick relied upon these statements as indicators of the child's view.

[29] I appreciate that one of the difficulties in this case is that it is often never entirely clear whether the statements made by this child are expressions of her own wishes and feelings or expressions which she has been encouraged by others to assert. I pay particular regard to the views of the Guardian who has seen this child on a number of occasions and is therefore in a position to exercise some judgment as to whether these are expressions of the child's true wishes. I also note that the child expressed her pleasure at being home when returned from foster care by the Trust. Again one has to be careful because this child is perfectly capable of expressing views that she believes that others want to hear. I consider, however, that there is sufficient evidence before me to come to the view that this child wishes to reside with her mother and siblings.

[30] There were some criticisms of the mother's provision for the child's physical needs. The applicant pointed to the fact that the child was provided with inadequate clothing when sent to foster care. I pay very little weight to this as this was an extremely emotional and difficult period for the entire family. Of more significance is the fact that the child has missed vaccinations although these have now been administered. There is abundant evidence that in every other respect the mother has adequately catered for the child's physical needs and her educational needs have also been satisfied.

[31] The experts have, however, recognised that the failure of the mother to give emotional permission to this child to see her father has exposed her to harm. I also take into account that if the child continues to reside with her mother there is a real risk that there will be further emotional pressure on her to terminate continuing contact. I recognise that this exposes the child to the risk of significant harm. I also have to take into account the risk to the child if residence is transferred to the father. It is highly uncertain that the child will enjoy any form of normal relationship with her mother and siblings in the short-term in those circumstances. The medium and long-term is in my view impossible to forecast. It may be that the needs of the siblings to continue their relationship with the youngest child will enable a possible relationship to develop but I consider that the entrenched views of the older children mean that the more likely outcome is that there will be considerable short-term distress to the child as a result of the removal and a prolonged period of unsatisfactory contact between the siblings thereafter. I have taken into account that the father has indicated that he will take all possible steps to ameliorate these difficulties but in my view the risks for this child are high in those circumstances. The issue of emotional needs in this case clearly takes into account the likely effect on the child of any change in her circumstances and any harm which she has suffered or is at risk of suffering.

[32] In terms of the physical and educational needs I am entirely satisfied that each parent could properly provide for these. I am also satisfied that outside the area of contact each parent is perfectly capable of catering for this child's emotional needs. I recognise that whatever course I take in relation to residence I have a wide and comprehensive power to make orders which will be effective to ensure contact between the child and the non-custodial parent under article 11(7) of the 1995 Order (see *Re O (Contact: Imposition of Conditions)* [1995] 2 FLR 124).

[33] In considering the child's welfare in this case I take into account the enormous benefit which she would obtain from the maintenance of a harmonious and secure relationship with each of her parents and siblings. I consider that the present contact arrangements where the father sees the child every Thursday and every other Saturday goes some way towards ensuring that the child enjoys a meaningful relationship with her father while living at

home with her mother and siblings. I consider that the child's needs at this stage should include opportunities for the child to learn about her extended family on her father's side and to experience some aspect of home life with her father. The introduction of some element of staying contact is likely to increase the risk that attempts may be made to interfere with any such arrangement.

[34] Dr Blincow has not recommended a change of residence but it is his opinion that such a change should be considered. He recognises that such a change is likely to cause short-term emotional upheaval. He further accepts that the outcome is difficult to predict although he is optimistic that thereafter the bond between the second youngest child and the youngest child is such that a secure and harmonious contact relationship will be established. He also points to the fact that opportunities will be made available by the father to ensure meaningful contact for the mother and the other siblings. I accept, however, that this is a high risk strategy which, if that fails, could cause very significant damage to this child which might not be easily repaired. If it resulted in the termination of the relationship with the siblings and the mother in any meaningful sense it would expose this child to the risk of developing significant emotional symptoms.

[35] I have come to the conclusion that the child's needs could still be secured by continuing residence with her mother. I consider that the existing pattern of contact should continue but should be augmented by staying contact on the following basis:

- (A) one week over New Year commencing on 27 December 2008, 26 December 2009, 1 January 2010, 31 December 2011 and 29 December 2012, pick up at 10 am and return at 6 pm;
- (B) staying contact to replace the applicant's last Saturday contact in February each year from school on Friday until 6 pm on Sunday;
- (C) staying access from school on the Friday before the May Bank Holiday until Monday at 6 pm each year;
- (D) one week commencing on the Saturday of or Saturday before 12 July in each year, pick up at 10 am and return at 6 pm;
- (E) staying access from school on the first Friday of the Halloween half term until 6 p.m. on the following Monday.
- (F) the mother and children may take up to 3 weeks holidays out of the jurisdiction as long as they do not conflict with these arrangements. The mother should give at least four weeks notice of these arrangements to the father either by means of an electronic diary or through Social Services;
- (G) if the child is not at school on a date when she is due to be picked up from school the pick up shall take place at noon on that day;

(H) any of these arrangements can be varied by agreement.

The success of these arrangements will depend to some extent on the applicant ensuring that full information on activities during contact is provided. The child may also need to have a reasonable opportunity to contact her mother and siblings by phone if she wishes.

[36] The parties have recognised the importance of conditions in ensuring that these arrangements are effective and I intend to adopt the proposed conditions set out in paragraph 26 of the Trusts submissions;

- during school term G shall be collected from school on Thursdays by the applicant father;
- all handovers, to include those outside school term, shall be facilitated by an independent third party, which with the consent of the trust shall be a trust voluntary driver;
- in the event of voluntary driver is unavailable, the Trust shall give each party a minimum of seven days notice, and in such circumstances the handover shall take place at an identified location and each party is to secure the attendance of an authorised third party on their behalf (with reference to those already authorised by the court);
- to secure the services of the voluntary driver each party shall meet an equal share of the financial cost. In this regard the voluntary driver shall confirm to the Trust at the end of each fortnight how many handovers she has facilitated. The Trust shall then confirm to each parent the total cost (which shall be five pounds for each hand over) and each parent shall be responsible for payment to the Trust of their 50% share in cash within seven days;
- neither parent shall question the voluntary driver about arrangements for contact or G's presentation, on the understanding that she shall report any concerns to the responsible Social Worker who will take any action considered necessary to include advising the parents as appropriate.

[37] At present G and her siblings are registered on the Child Protection Register and are therefore subject to monthly visits from the Trust. There is an Interim Supervision Order in place which arose from the decision to make an Interim Care Order in August 2007. I do not consider that there is a need for a further supervisory role by the Trust. It is for the parents to now implement this Order which is designed to secure the welfare of their children.

[38] In relation to C I had previously indicated that neither expert considered that direct contact was appropriate. I agree. I consider, however, that the provision of some information in relation to C by the mother to the

father is appropriate both to respect the father's proper interest in the child and to ensure that he is aware of information that may be discussed by G. I direct, therefore, that the father should be provided with copies of the school reports each term in respect of this child within 7 days of receipt and that he should be informed through the electronic diary or Social Services if the child suffers any significant illness as soon as possible.

[39] Finally I have considered my power under article 179 (14) of the 1995 Order to prohibit any further applications by way of residence or contact in relation to these children. I take into account the guidelines in relation to the exercise of this power set out in *Re P (Section 91(14) Guidelines)(Residence and religious heritage)* [1999] 2 FLR 573.

"Guidelines

(1) Section 91(14) should be read in conjunction with s 1(1) which makes the welfare of the child the paramount consideration.

(2) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.

(3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.

(4) The power is therefore to be used with great care and sparingly, the exception and not the rule.

(5) It is generally to be seen as an useful weapon of last resort in cases of repeated and unreasonable applications.

(6) In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.

(7) In cases under para (6) above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.

(8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.

(9) A restriction may be imposed with or without limitation of time.

(10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.

(11) It would be undesirable in other than the most exceptional cases to make the order *ex parte*."

The important feature in this case is that there has been extensive litigation with a mass of allegations made by each party against the other many of which do not materially bear on the issues of residence or contact. The effect of these prolonged hearings has in my view been extremely detrimental to the welfare of the children who now require a period of calm and certainty. I envisage that the Orders which I am making today will continue to be effective until the youngest child becomes a teenager but having regard to the unusual character of this order I will direct that no residence or contact applications should be made in respect of either of these children without the leave of the court for the next three years. That period provides a substantial opportunity for the family to benefit from these Orders while properly recognising that circumstances can change.