

IN THE HIGH COURT IN NORTHERN IRELAND

FAMILY DIVISION

**Caitrin, Dona and Elliot (Pseudonyms) (No. 3)**  
**(Application to vary a no contact order)**

**STEPHENS J**

**Introduction**

[1] On 19 February 2010 I heard and dismissed an application made on behalf of the children's father to vary a no contact order. In this judgment I now give my reasons.

[2] I anonymise this judgment in the same manner as the judgment I delivered on 8 January 2010 under citation [2010] NIFam 1. The names used are not the real names of any of the individuals. Nothing should be reported which would identify any of the children or any member of their 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. Accordingly in this judgment I refer to:

- (a) The children, two girls and a boy, as **Caitrin, Dona** and **Elliot**.
- (b) The father as **Fergus**.
- (c) The mother as **Marcail**.
- (d) The country of which Fergus, Marcail, Caitrin, Dona and Elliot are nationals as country ~A~.

Though there is some logic to the choice of the pseudonyms they are primarily chosen at random. Prior to publication of my judgment dated 8 January 2010 on the Court Service website I afforded the parties the opportunity of considering the pseudonyms and if they considered them inappropriate to suggest alternatives.

[3] 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whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication.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.

[4] In my judgment dated 8 January 2010 I recorded that the father was for the majority of the proceedings a litigant in person. He has obtained legal representation in respect of the public law proceedings with Mr Ferris QC and Miss Hannigan being instructed on his behalf. The appearances for the other parties remain as set out in my judgment dated 8 January 2010.

### **Background to the application to vary the no contact order**

[5] Sadly the children's paternal grandmother died in country ~A~ on Saturday 13 February 2010. At a hearing on Monday 15 February 2010 I gave a ruling in relation to an application by Fergus to vary a no contact order to allow him to take all three children from Northern Ireland to country ~A~ for the funeral. I recognised that ordinarily the paramount consideration of the welfare of each of the children, applying the welfare checklist in Article 3(3) of the Children (Northern Ireland) Order 1995, would lead to the conclusion that the children should attend the funeral. For instance the grieving process is facilitated by attendance. The sense of both close and extended family ties are enhanced by attendance. The support that the children can give to their father is not only a consolation to him but enhances their own sense of worth as important and significant members of both a close and extended family. Furthermore they gain the sense that as their paternal grandmother is an important and loved member of a family group so also are they. Those illustrations of some of the powerful factors in favour of attendance ordinarily dictate that each of the children should attend the funeral in county ~A~. In addition the children wished to attend.

[6] However in the particular circumstances of this case if the children were to travel to the funeral in country ~A~ that would mean them travelling with Fergus, as it is recognised that it would not be possible for Marvail to care for Caitrin and Dona, both of whom are beyond her control. I have made a number of factual findings in relation to Fergus in my judgment dated 8 January 2010. Those findings were made after a lengthy hearing involving evidence being given by a considerable number of witnesses. I will not rehearse all the findings which are set out in that judgment nor will I summarise them all. I will however give a short summary of some of those findings. Fergus is a highly intelligent, domineering and manipulative individual who has set out to and has destroyed the children's relationship with their mother engendering, particularly in Caitrin and Dona, hatred of her or similar emotions. He is a domineering individual both physically and mentally. Physically through his size and presence: though not through physical violence. Mentally through his intelligence, his manipulation, his

use of the pressure of uninterrupted speech, the lack of proportion of his responses, the use of concepts that have to be analysed to be understood as to what they are and whether they bear any relationship to what has occurred. I also found that Fergus' overriding objectives are to exclude Marcail from the lives of all 3 children and to have them in his sole care. All 3 children are so heavily influenced and controlled by Fergus that they are almost mesmerised by him and each of them have suffered significant emotional harm. He manipulates his children's emotions to achieve his overriding objectives regardless as to the significant harm that he causes to them. Since I gave my judgment therapeutic work has commenced in particular with Caitrin and Dona. Fergus' emotions run high as do the emotions of his extended family in country ~A~. The views that he and his brothers hold can be discerned from two e-mails dated respectively 13 February 2010 and 15 February 2010. He has not engaged with social services and he has not supported any therapeutic work for the children. In view of the detailed factual findings that I had made in my judgment dated 8 January 2010 and the lack of any change in Fergus' attitude together with the hostility of Fergus' extended family and applying the welfare checklist with particular emphasis on Articles 3(3)(e) and (f) I declined the application.

[7] On Monday 15 February 2010 I also gave consideration to the question as to who should inform the children as to the death of their paternal grandmother. That decision was informed not only by the submissions of each of the parties but also by expert evidence. Fergus strongly opposed the proposal that Marcail should inform her son suggesting that if she did so she would do it in an entirely inappropriate way. In the event I ruled that the no contact order should be varied to allow Fergus to inform Caitrin and Dona. I ruled that Elliot should be informed by his mother, Marcail. Subsequent to that ruling Fergus met with Caitrin and Dona and informed them as to the death of their paternal grandmother.

[8] On Friday 19 February 2010 I was informed by Mrs Farrell, who appears on behalf of Caitrin and Dona, that having been informed of the death of their paternal grandmother by Fergus, they would like further information such as the cause of her death, who was with her when she died, whether she was at home or whether she was in hospital. I am concerned that accurate information should be given to Caitrin and Dona who need assistance and support in a grieving process.

### **The application**

[9] Fergus wishes to meet Caitrin and Dona again to give them this information. Accordingly he applies to vary the no contact order to enable him to meet them. He initially did not wish any other person to inform them nor did he wish to set out the information in a letter to be sent to them. He objected to informing them by way of a letter because the letter would be

checked before it was seen by Caitrin and Dona and he does not wish the information to go outside his family.

[10] Fergus' final position is that either he tells Caitrin and Dona by way of direct contact with them or a member of his extended family tells them in a telephone call. If neither of these occurs then he will not impart the information to anyone else regardless as to whether that person is the guardian ad litem for Elliot, the legal representative for Caitrin and Dona, a social worker, or an independent expert. Also regardless as to whether the information is given to such a person in confidence not to be past on to any other person and regardless as to any precaution that could be put in place to guard against further dissemination of this information. He will also not agree to the information being set out in a letter from him to them because it would be checked before it was received. This objection is maintained regardless as to who checks the letter and as to the precautions that could be put in place to maintain confidentiality. In effect if neither Fergus nor a member of his extended family can tell Caitrin and Dona they will not be told. Accordingly in order to consider what is in the best interests of Caitrin and Dona and as part of a general consideration of all the factors in the welfare checklist in Article 3 (3) of the Children (Northern Ireland) Order 1995, I have to weigh the advantages and disadvantages of a direct contact session between Caitrin and Dona and Fergus and the disadvantages of Caitrin and Dona not having this information together with the desire of Caitrin and Dona to meet again with their father or to be informed by a member of his extended family.

[11] I will start with the disadvantages to Caitrin and Dona of not being provided with the information. Mrs Farrell, who appears on their behalf, informed me that some of the answers to the questions posed by Caitrin and Dona can be discerned from information already available and that whereas Caitrin and Dona were upset this issue should be kept in proportion. It is and remains in their interests that they are told but on the present information I do not consider that this outweighs the disadvantages to them of further direct contact with Fergus or a telephone call from other members of Fergus' family.

[12] As I have indicated on 15 February 2010 I had ruled that news of the sad death of the children's paternal grandmother should be given by Fergus to Caitrin and Dona and by Marvail to Elliot. Elliot was therefore being informed by his mother with whom he resides. His mother is deeply concerned as to his welfare. There are perfectly appropriate ways of finding out what Elliot has been told by his mother for instance by asking the court to request a report from the assigned social worker or from Elliot's guardian ad litem or indeed to ask the court for a report or statement from Marvail. In contrast for Fergus to ask Caitrin or Dona to pass on information to Elliot carries with it the implication for them that Marvail cannot be trusted to perform this function and that she is an inappropriate person to do so. This

does not support but rather undermines the restoration of a close and loving relationship between Caitrin and Dona and their mother.

[13] Fergus duly met Caitrin to inform her of the death of her paternal grandmother and during the course of that conversation said to Caitrin words to the effect that he wanted her to tell Elliot because he was not allowed to do so. After Fergus had left Caitrin's anger and distress was all directed to and focused on her mother and Elliot's position. She enquired as to why "that woman" was allowed to give Elliot the information and that she was not even married to her father. The major impact on Caitrin of the meeting with her father was this remark made by him so that she was left angry and frustrated at her mother. Caitrin had been reported as making progress with her mother and this represents a very negative step backwards for her.

[14] It is clear that Caitrin and Dona should be given accurate answers to the questions that they have posed. Fergus is quite prepared to ignore their interests so that they do not acquire the information that they have requested. For no justifiable reason he refuses to impart the information even on the most confidential terms to some independent and professional individual. He was entirely dismissive of any such idea. I consider that this reflects a continuation of the attitudes adopted by him which I have set out in my judgment dated 8 January 2010 in that he continues to demonstrate a disregard for the best interests of Caitrin and Dona.

[15] In the context of these findings including the effect on Caitrin of the recent meeting, the factual findings I made in my judgment dated 8 January 2010, the expert evidence that I have received as to the best therapeutic course for Caitrin and Dona and the views that he holds that can be discerned from two e-mails dated respectively 13 February 2010 and 15 February 2010 I do not consider it appropriate for Fergus to have a further meeting with them at this stage. I emphasise that the no contact order will be kept continuously under review in the hope that it may be removed.

[16] I reject the idea that another member of Fergus' family should impart this further information to Caitrin and Dona. It is unclear as to what information Fergus has given to his family as to these proceedings but the strength of their emotions, their antipathy to the proceedings and the views that they hold can be discerned from two e-mails dated respectively 13 February 2010 and 15 February 2010. I do not consider that it is in the interests of Caitrin and Dona at this stage to have contact with any member of Fergus' extended family who express such strong and hostile feelings. Again I consider that such hostility will seriously undermine the therapeutic work presently being carried on to re-establish a relationship between both of these children and their mother, and to return them to education.

[17] I am confirmed in the conclusions that I have reached by some further information which was provided to me on Friday 26 February 2010. The guardian ad litem for Elliot has since seen Caitrin. Some of the answers to the questions posed by Caitrin and Dona which can be discerned from information already available were imparted to her. She was asked as to whether there was any other information that she wanted and she said no. Also at the hearing on 19 February 2010 I directed the trust to obtain expert advice in relation to this discrete question. I have now been provided with advice from a consultant clinical psychologist involved in the therapeutic work in respect of Caitrin and Dona. It is his view that the further information requested could come from someone apart from Fergus or any member of his extended family. He was also of the view that given Fergus' propensity for subtle manipulation that it would be best if a letter was not sent by Fergus and that it would be best if some other person spoke to Caitrin and Dona.

### **Conclusion**

[18] For the reasons I have set out I dismissed the application. I am confirmed in that decision by the further information that is now available.