

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

Ciaran

Applicant:

and

Niamh

Respondent:

STEPHENS J

Introduction

[1] Ciaran brings an application for a contact order in respect of his daughter Deirdre. The application is opposed by Deirdre's mother, Niamh, on the basis of an allegation that Ciaran had sexually abused Deirdre and had also been physically and verbally abusive to her. A guardian ad litem has been appointed to represent Deirdre and in view of the concerns for Deirdre's welfare an investigation had been ordered under Article 56 of the Children (Northern Ireland) Order 1995. The Trust responsible for that Article 56 investigation was also involved in these proceedings.

[2] The matter came on for hearing on 21, 22 and 23 September 2009 as a fact finding hearing to determine whether any abuse had occurred. Mr Devlin appeared on behalf of Ciaran, Mr Ferris QC and Miss McHugh appeared on behalf of Niamh. Mr O'Hara QC and Ms O'Flaherty appeared on behalf of the guardian at litem representing Deirdre and Ms McCloskey appeared on behalf of the Trust. I am grateful to counsel for their thorough and helpful presentation of all the issues in this case.

[3] I have anonymised the transcript of this judgment. The names used are not the real names of either of the parties or their children. Nothing should be reported which would identify either the child or the parties or any member of their extended family. 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writing within one week as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication.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] This case involves serious allegations being made by Deirdre's parents against each other. It is a necessary feature of this judgment that I am required to find that one parent is incorrect and an inevitable consequence is that one parent has caused harm to Deirdre. The competing allegations are that Niamh alleges that Ciaran has sexually, physically and verbally abused his daughter causing her to sustain significant harm. Ciaran for his part alleges that Niamh has caused Deirdre to wrongly believe that she was subjected to abuse and as a result has caused Deirdre to sustain significant emotional harm and to isolate her from her father and her extended paternal family. In that respect it is important to emphasise that genetic parenthood has a deep significance on many levels. The knowledge that a child is a child of a parent can bring a very special sense of love for and commitment to that child from that parent, which will be of great benefit to that child. The child reaps the benefit of that love and commitment and also of knowing his or her origins and lineage which is an important component in finding an individual sense of self as the child grows up.

[5] The genetic link can also be an important component in the love and commitment felt by the wider family from which the child has so much to gain. Accordingly to remove a parent from the life of a child is a step which should not be contemplated unless a reason for doing so can be established on the balance of probabilities.

[6] As I have indicated one or other parent has caused harm to Deirdre either through committing abuse or by the consequences of Deirdre wrongly believing that abuse was committed. However I consider that it is also important to emphasise the positives. Niamh has undoubtedly lavished love and care on Deirdre. Deirdre has undoubtedly reaped enormous benefits. She is a bright, cheerful, confident girl. She has formed a very close attachment to her mother. She is confident with others. She is intelligent and articulate. Accordingly the degree of harm sustained by Deirdre has to be kept in perspective. There is a good sound platform on which to build for the future but it will involve an ability on behalf of Niamh to accept that matters will have to be approached differently in the future.

[7] The focus of these proceedings is Deirdre's welfare. This case is not about one or other parent being vindicated. It is not about adults winning or losing. It is part of an on-going process for the benefit of Deirdre. Niamh has stated on a number of occasions that she will not countenance any contact

between Deirdre and Ciaran regardless of the outcome of court proceedings. In effect she has declared herself to be the final arbiter of Deirdre's welfare regardless of expert advice or the judicial process. During these proceedings she has assured me that this is not her present intention. She has stated that she will abide by the outcome of these proceedings. I accept that she has changed her mind and that she will positively engage and will accept the outcome of these proceedings.

The Allegations

[8] The central allegations relied on by Niamh relate to abuse which is alleged to have occurred on a number of occasions. The first occasion is an incident which is alleged to have occurred in April 2003 when Deirdre was some 6 months old. Niamh alleges that she surprised Ciaran, who was alone with Deirdre, and had her on the floor without any lower clothing with his face at a distance of approximately 1" to 1 ½" away from Deirdre's vagina. The second is an incident which is alleged to have occurred in March 2004 when Ciaran shook and squeezed Deirdre saying "I'm your father and you will do as I say". Niamh says her concerns about sexual abuse increased on 11 November 2004 when she saw Deirdre rubbing herself in her vaginal area and when asked about this she thought that there was nothing unusual saying that she was just "tickling her bum and that her father tickles her bum". The third incident involving Ciaran is alleged to have occurred on 2 January 2005 when he compelled Deirdre to wait whilst he used the toilet with the result that she was physically and emotionally embarrassed when she passed urine whilst waiting outside the toilet. The fourth incident was on 17/18 December 2005 when Deirdre had unsupervised overnight contact with Ciaran in his brother's house. After this contact Deirdre is alleged to have made a series of disclosures about physical and verbal abuse and also sexual abuse.

The initial relationship between Niamh and Ciaran

[9] Niamh left her parents' home in or about 1995/1996 when she was approximately 15 to 16 years of age. This was as a result of some difficulties that had arisen between her and her mother. Niamh considered that her mother was violent and verbally abusive. That a paternal grandfather had sexually molested Niamh's cousin and also her sister. Niamh was informed about this by her sister when Niamh was about 16 to 18. I conclude that this was a precipitating factor in Niamh's decision to leave her parents' home and also that it has made her very wary of and suggestible about potential sexual abuse. Also that she knows of the destructive effect that allegations such as this can have on family relationships and the long term lasting damage that the mere allegation itself can have on the reputation, standing and self esteem of the person accused.

[10] Niamh and Ciaran first met at a party in January 2000. A relationship commenced. Niamh stated that they fell into a relationship and that as far as she was concerned she never saw it as a long term commitment on her part and that overall it was not of any great significance. Ironically she asserted that a positive aspect of the relationship was that she did not see a lot of Ciaran which suited her independence. She initially considered that he could be very charming but after the passage of a relatively short period she formed the view that this was a false charm and that he was not a very mature person. She could think of no other positive aspects about the relationship and couldn't remember ever telling Deirdre anything positive about her father. Niamh states that she and Ciaran only lived in the same house for a few months, less than one year, but even when they were living in the same house he was not there for significant periods by virtue of his work commitments. I conclude that Niamh never had a close emotional attachment to Ciaran nor did she hold him in regard. That she did not wish him to be a significant part of her life.

[11] Ciaran described his relationship with Niamh in different terms. He described a close initial attachment and regard for her. I accept his evidence. It can be seen that from the outset of the relationship there were markedly different expectations which would inevitably cause problems. I make it clear that my assessment of Ciaran is that he had a considerable amount to contribute to Deirdre and that the perception held by Niamh that he was not mature and had no positive contribution to make is incorrect.

Deirdre's birth

[12] Deirdre was born in 2002 in Northern Ireland. Prior to her birth Niamh and Ciaran had been living in County A in the Republic of Ireland. After Deirdre's birth they moved back to County A and shortly thereafter moved to County B again in the Republic of Ireland to be closer to Niamh's family. Ciaran was at that time working in the region of County B.

The April 2003 incident

[13] In April 2003 Niamh alleges that she surprised Ciaran in a most compromising position with Deirdre in a state of undress with his face within 1 to 1 ½" of Deirdre's vagina. Ciaran states that he was preparing Deirdre for bed at about 9.20 pm. That he was changing her nappy and that she was crying. That to distract her he was blowing on her belly button and her face. Niamh stated categorically that Ciaran was not blowing. However that is not what she said in her statement dated 21 January 2008. At that stage she was quite clear that he was blowing though she described it as being on Deirdre's genital area. To Dr Siddiqui she described the incident as Ciaran "kissing her daughter's private parts".

[14] I have formed an assessment of the reliability of the evidence of Niamh and Ciaran. As a general proposition I prefer the evidence of Ciaran. I make it clear that that general preference applies to this specific incident. In relation to this incident there was an inconsistency in the descriptions given by Niamh. Also having seen her in the witness box I have no doubt that she would have taken the matter up immediately with Social Services and the Police at the time. She did neither. I refute any suggestion that she makes either in relation to the events at this stage or at any subsequent stage that she failed to report matter to the police in the Republic of Ireland due to her perception that the police would be biased against her due to some family members of Ciaran serving in the police force. Niamh has demonstrated a determined capacity in recent years to contact numerous organisations for support and assistance. I consider that that is an enduring aspect of her personality. That is not an ability acquired by her as a result of increasing maturity and knowledge. I also make it clear that Niamh did not present as afraid or timid. I also reject any suggestion she made that she failed to report any matter out of fear of retribution from Ciaran.

[15] I will explain at this stage why I prefer Ciaran's evidence on a general basis to that of Niamh. I had the opportunity of seeing and assessing both of them in the witness box. Ciaran's evidence was clear and detailed. I considered his presentation and manner to be that of a truthful witness dealing with difficult emotional issues. I did not form a positive view of the demeanour and presentation of Niamh. I consider that she lacked candour both as a matter of how she presented and also in respect of the contents of her evidence. In relation to the contents of her evidence I will illustrate with one example. The last contact that occurred between Ciaran and Deirdre was on 18 June 2006. Niamh initially explained that thereafter she was relieved because Ciaran did not turn up for contact in July and September 2006. The impression that she created was that contact had come to an end through inaction by Ciaran and that she couldn't remember anything else. However it transpired that Ciaran had attended for the next contact on 25 June 2006 which was to take place in Niamh's mother's house. Niamh did not bring Deirdre to that contact. Indeed Niamh had made a decision not to bring Deirdre to contact and to disobey orders made by the courts in the Republic of Ireland. That she had gone further and in what would have been a most distressing incident for Deirdre during the course of a telephone call between Ciaran and Niamh, Niamh put Deirdre on the telephone to speak direct to Ciaran to say that she did not want contact with him. Ciaran had telephoned in an attempt to obtain confirmation that Deirdre would be presented at contact. This incident provides an insight not only in relation to Niamh's lack of candour, because she could not have interpreted any of this as Ciaran not turning up for contact, but also as to what she then considered to be permissible behaviour in relation to Deirdre who then was just between 3 and 4 years of age. Deirdre would have heard a part of the telephone conversation before she spoke to her father. She would have heard her

mother tell her father that was confirmation that Deirdre did not want to see her father. Deirdre has not subsequently seen her father. It was entirely inappropriate to involve Deirdre in this way. I have given careful consideration as to whether this involvement of Deirdre was a one off loss of control by Niamh pressurised during a telephone call. However I conclude that it is in fact a reflection of what she considers to be appropriate boundaries. I have no doubt that she has involved Deirdre for years now in inappropriate conversations which have led Deirdre to believe or at the very least to say, that abuse was perpetrated by Ciaran. I find that any statement by Deirdre to the effect that she was abused physically, verbally or sexually by Ciaran has in fact emanated from Niamh either unintentionally or deliberately.

[16] I have given anxious consideration as to whether Niamh has been deliberate or for instance due to her personality, her perceptions of her own family background that she genuinely believes that abuse was perpetrated by Ciaran on Deirdre. Niamh has had the results of Social Services investigations in the Republic of Ireland and in Northern Ireland. She has had the assurances of her own family that Deirdre enjoyed contact with Ciaran when that contact occurred in their homes. She has the evidence before her of a bright, self confident, articulate child not emotionally scarred by abuse. She has the evidence of experts including Dr Berg. She has been through the court process in the Republic of Ireland during which there was never any finding of sexual abuse. She has a motive to distance Deirdre from Ciaran in that she never viewed her relationship with Ciaran as being long term or permanent. All these factors and others together with her presentation point towards at least the persistence of these allegations being deliberate. I consider that at an earlier stage there may have been a degree of over anxiety and confusion but I consider that the position is different in relation to the persistence in these allegations and this will need to be carefully addressed in the future.

The other incidents

[17] My conclusions in relation to the other alleged incidents of sexual, physical and verbal abuse are the same as my conclusions in relation to the April 2003 incident. I reject the evidence of Niamh. I accept the evidence of Ciaran. Any disclosure made by Deirdre were the result of suggestions made by Niamh to Deirdre.

The conclusion of the fact finding hearing

[18] I find that no abuse whether sexual, physical or verbal was committed by Ciaran on Deirdre.

The future

[19] I emphasise again that Niamh has in large measure provided an excellent and loving environment for Deirdre and as a result Deirdre has prospered. Both parents with the assistance of Social Services will now have to work towards improving Deirdre's welfare. Questions will now arise as to -

- (a) By whom and when Deirdre should be informed as to the outcome of these proceedings. To potentially believe something for years and then to be informed that it is incorrect needs sensitive handling. Above all it will need endorsement from Niamh. Deirdre will look to her as her primary carer for permission that it is acceptable to say that abuse did not occur and that she wishes to see her father. Niamh needs support and advice as to how to give that encouragement to Deirdre.
- (b) The speed and manner of the reintroduction of Ciaran into Deirdre's life will have to be considered informed by the paramount consideration of Deirdre's welfare.

Prohibited steps

[20] I consider that Niamh moved from the Republic of Ireland to Northern Ireland primarily because she was dissatisfied with the outcome of the court proceedings in the Republic of Ireland. This should not be repeated. It would disrupt Deirdre and would not be in her welfare to move again. At the conclusion of the evidence I made a Prohibited Steps Order that Deirdre's place of residence should not be altered from Northern Ireland without the leave of the court. I also required Deirdre's and Niamh's passports to be lodged in the Office of Care and Protection. I did not impose a restriction that Deirdre could not leave Northern Ireland without the leave of the court because I did not wish to disrupt Deirdre's contact with her extended maternal family who reside in the Republic of Ireland. I have given further consideration to the terms of the Prohibited Steps Order. There is a need for Deirdre to maintain contact with the same social workers in the same home environment. Therefore I impose a Prohibited Steps Order that Deirdre's place of residence should remain the present address except with leave of the court.

Further directions

[21] I will now consider with counsel the further directions that are needed to bring these proceedings to a conclusion without delay particularly bearing in mind the entirely regrettable delay that has already, but which should not have, occurred.