

Neutral Citation no. [2005] NICA 47(2)

Ref: **CAMF5422**

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

Delivered: **22/11/05**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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**ON APPEAL FROM THE HIGH COURT OF JUSTICE
IN NORTHERN IRELAND**

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FAMILY DIVISION

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**IN THE MATTER OF THE ADOPTION (NORTHERN IRELAND)
ORDER 1987**

BETWEEN:

DOWN LISBURN HEALTH AND SOCIAL SERVICES TRUST

(Applicant) Respondent;

-and-

H

(First named Respondent) Appellant;

-and-

R

(Second named Respondent) Appellant;

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CAMPBELL LJ

[1] I am grateful to Nicholson LJ for the comprehensive description that he has provided in his judgment of the history and background to this appeal.

[2] In cases such as this involving the welfare of children this Court should only intervene when it considers that the judge at first instance has exceeded what has been described as the generous ambit within which judicial

disagreement is reasonably possible, and he is in fact plainly wrong, and not merely because it prefers a solution which the judge has not chosen. (*G v G (Minors: Custody Appeal)* [1985] 1 WLR 647 and *AR v Homefirst Trust Community Trust (2005) NICA 8*). Lord Fraser of Tullybelton said in *G v G* at page 651:

“The jurisdiction in such cases is one of great difficulty, as every judge who has to exercise it must be aware. The main reason is that in most of these cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory. It is comparatively seldom that the Court of Appeal, even if it would itself have preferred a different answer, can say that the judge’s decision was wrong, and unless it can say so it will leave his decision undisturbed.”

[3] The way in which the trial judge approached this opposed application to free N for adoption cannot, in my view, be faulted. He began by reminding himself of the “draconian nature” of the legislation and made particular reference to the rights of both the parents and the children under article 8 of the ECHR to family life and the interference with those rights that would occur if an adoption order, to which a freeing order is an essential preliminary step, is made. In doing so the judge made it clear that he was conscious that any intervention had to be proportionate to the legitimate aim of the protection of the welfare and interests of the child N.

[4] When he applied the child’s welfare test in article 9 of the Adoption (Northern Ireland) Order 1987 the judge concluded that adoption was in the best interests of N. Then he considered, as a separate issue, the question under article 16 (2)(b) of the Order as to whether the Trust had satisfied him that on the balance of probabilities each of the parents was unreasonably withholding consent to the child being freed for adoption. He decided that it had so persuaded him.

[5] In reaching the conclusion that adoption was in the best interests of N, the judge referred to the history of alcohol abuse and domestic violence over the years and the way in which this has impacted on the two older children as well as on N who is described as a troubled child. He expressed the view that it was extremely unlikely that the mother would be able to come to terms with the stressors in her life within a reasonable time or within a time appropriate to N.

[6] N's mother H has sought to address her addiction to alcohol and according to her and to other sources she has abstained since 28 July 2003 and attends meetings of Alcoholics Anonymous four or five times a week. Dr IG Hanley, a consultant clinical psychologist, examined her in March 2004 and he is of the opinion that there is a relatively low risk of relapse. Dr D S Allen, a consultant psychiatrist, said in his report of 22 December 2004 that he thought that Dr Hanley was, in broad terms, right to be optimistic as there has been a major change in her approach to the problem. However, in his report he went on to explain that alcohol should not be looked at as a factor in isolation as H's underlying persona also requires to be addressed. The importance of this is that at present she lacks good foundations to parenting and if this is done then the chances of poor parenting and relapse into alcoholism will decrease. In his report Dr Allen said:

“Essentially, what she lacks are good foundations to parenting; she can learn techniques, she can reduce dysfunctional responses by not drinking alcohol but what she has not addressed is what she did not have as a teenager growing up and that is positive parenting, leading to self - confidence, independence and a sense of self worth.”

Support for this opinion in the report of Dr Ian Bownes, a consultant forensic psychiatrist, who wrote in April 2004 following an examination of H :

“Clearly the likelihood of [H] not experiencing a destabilisation of her support networks or the onset of insurmountable pressures from the present day to the time [N] achieves independence is extremely unlikely. If one examines closely the periods in the past that [she] has relapsed to a state of alcohol dependence it is probable that there was a critical shift in the dynamics of her life and hence the periods of abstinence were not dependent solely upon her level of determination or commitment to avoid alcohol but rather her ability to cope with aversive external and internal negative influences.” He continued,

‘As previously outlined I consider that the core factors influencing [her] mental health and her need to utilise alcohol emanate from her underlying personality based deficits and deficiencies...’”

It is to this aspect of H's mental health that I understand the judge to refer when he speaks of her inability to cope with the stressors in her life.

[7] In the opinion of Professor John Triseliotis if N is returned to her mother and she were to relapse into using alcohol in two or more years time, this would be catastrophic for N and her older siblings whose future would be seriously marred. It is essential therefore that her recovery should be as complete as possible if N is to be returned to H's care.

[8] N is now three years and seven months old. There was expert evidence before the court that she is a very insecure and needy child and that she has to receive the most favourable parenting soon and adoption provides better emotional security than any other form of arrangement such as long term fostering. She is at an age when children can secure families and can settle down with them.

[9] When Professor Triseliotis gave evidence on 25 January 2005 he said N has to receive fairly soon optimum kind of parenting to develop the kind of attachment that she now misses. He went on to say that perhaps 6 months might not be too important but anything beyond that is taking her almost to a Rubicon point where the making on what she has missed so far will recede exceedingly. This Court must look at matters as they stand today and we are now at a stage where there cannot be any further delay if N is to find the security she requires.

[10] I do not find myself in full agreement with the judge either in his assessment of the expert evidence as giving no realistic possibility of H continuing to remain abstinent during N's childhood or that the prospects of success of the course of treatment that is proposed are not good. I am satisfied that the pressing needs of N today cannot wait to be met until H has successfully completed the course of treatment.

[11] The problem on the part of R (the father of N) is that he minimises domestic violence and the expert evidence is that he has not addressed this problem in any significant way and a fundamental change in his attitude would be necessary before it could be said that he has learned that domestic violence is wrong. Dr Loughrey, a consultant psychiatrist, who examined him agreed that he presented with a very casual attitude to some very troubling aspects of his relationship with H.

[12] It remains to be considered if adoption is a proportionate way in which to deal with this pressing need for stability in the life of N and if it could be met by long term care. Ms. Susan Rogers, the social worker assigned to the family, has explained both in a written report and in her evidence that adoption gives a child a feeling of belonging to a family and a greater sense of security. She said research has shown that children who are adopted grow

into better adjusted adults and as adults have better relationships than children who grow up in the care system. Professor Triseliotis made reference to his own work in this area in which he has reviewed the merits of long term foster care and adoption and come down strongly in favour of adoption. In the light of the expert evidence it is clear that adoption would be best for N with long term care only if this proves impossible.

[13] A stable home must be found for N at the earliest opportunity and such is the period of time that must pass before any realistic assessment can be made as to whether her parents can provide this for her I agree with the judge that adoption is in her best interest.

[14] N's parents are withholding their consent to her being freed for adoption not only because they do not agree that it is in the best interests of their daughter in general but also because of the importance that they attach to continued contact with N not only for themselves but also for their older daughter who has been referred to as H1.

[15] In such circumstances an adoption order is not to be made unless in the case of each parent the court is satisfied that his agreement should be dispensed with on the ground that he is withholding his agreement unreasonably. (Article 16 (2) (b)). As Lord Hailsham L.C. explained in *Re W (An Infant)* [1971]AC 682 at 693 "in adoption cases what is in issue is the parent - child relationship itself and in that relationship the parent as well as the child has legitimate rights.". Lord Hailsham went on to say at page 699:

"... the test is reasonableness and not anything else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness, and reasonableness in the context of the totality of the circumstances. But, although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent would take it into account. It is decisive in those cases where a reasonable parent must so regard it."

[16] Lord Steyn and Lord Hoffman in *Re C (A Minor)* [1993] 2 FLR 260 at 272 put the question that has to be asked as being, " whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents."

[17] The Trust is opposed to N having direct post adoption contact and it has put forward a number of factors as showing that the parents would be unable to cooperate appropriately with professionals and that their actions might affect N's attachments to her adoptive parents, so increasing the risk of disrupting her placement. When Professor Trisiliotis was asked about this he said that he disagreed with the Trust's plans for no contact after adoption. In his view it is in the interests of N that she has some form of direct contact with her parents but it is a requirement that they must accept the adoption plan. He said that if N were to be cut off without post adoptive contact this could generate and increase feelings of rejection and loss and he suggested three or four annual face to face contact meetings.

[18] In March 2004 Professor Trisiliotis had observed one of the contact sessions between N and her parents. He thought that she was demonstrating important attachments to her parents. He put them at significant which he said does not mean strong.

[19] When he gave evidence on 25 January 2005 the Professor was asked this question "What is more important finding adoptive carers within N's time scales or this issue of contact?" In his response he said that contact can be as paramount as finding a family. Later in his answer he said that if he were pushed too far he would say that if no family could be found to accommodate this need then the Trust may have to look for a long term foster family which could develop subsequently into adoptive one. He suggested that an adoptive family be sought who can accommodate this periodic contact not selected first and then the contact issue raised.

[20] On 15 February 2005 Professor Trisiliotis returned to give evidence. By then the Trust had altered its position on contact to one where it will look for a placement which will offer contact but it cannot guarantee that this can be achieved. The Professor said that he would want to be satisfied that genuine efforts had been made to find adoptive parents who would agree to contact. It was in this context that he was asked if such adoptive parents could not be found what is view would be. He said that in the end knowing the case he would go for adoption but with some regret that adoptive parents would be so exclusive. He said that what had made him change his mind was that the Trust had said that there would be proper advertisement and the court would be satisfied that everything had been done.

[21] If it is a question of such a finely balanced judgment over contact are the advantages of adoption to the welfare of N sufficiently strong to justify overriding the views of her parents? The judge was satisfied that the need for adoption was so pressing that whilst it would be preferable to have some limited measure of post adoption contact, nonetheless adoption must proceed even if this cannot be achieved. The reasonable parent, faced with this decision and with the welfare of N in mind, would in my view be driven to

this conclusion. Accordingly I would affirm the judge's decision and dismiss the appeal.

[22] I wish to add that I agree with Ward LJ in *Re G (Adoption Contact)* [2003] 270 at 275 where he said "The right time to consider what kind of contact natural parents are to have to children being adopted is on the occasion adoption is under consideration".