

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

~H~ and ~P~ (Residence application)

STEPHENS J

Introduction

[1] This is an application under Article 8 of the Children (Northern Ireland) Order 1995 brought by a father for a residence order in respect of his children, a daughter and a son, ~H~ and ~P~. The children are of mixed nationalities. Their father is from a North African country which I will anonymise by referring to it as country ~C~. Their mother, who has unfortunately died, was Northern Irish. There is at present a residence order in respect of the children settling that they should reside with their maternal uncle. The maternal uncle opposes the father's application and instead proposes that there should be shared residence between himself and the father. The maternal uncle also seeks continuation of a prohibited steps order preventing ~H~ and ~P~ being removed from the jurisdiction without the leave of this court. The father does not oppose the continuation of the prohibited steps order.

[2] The children are represented by the Official Solicitor. A Trust, which I will not name, has provided an Article 4 report, has had concerns as to child protection issues and is represented at the hearing of these private law proceedings between the father and the maternal uncle. The Official Solicitor and the Trust supports the application by the father for a residence order settling that the children should reside with him. Also they both support the continuation of the prohibited steps order.

[3] Nothing should be published which would identify the children. I have anonymised this judgment by identifying some individuals by reference to their relationship to the children and identifying others by the use of one or in some cases two initials. I refer to -

- (a) the children as ~H~ and ~P~

- (b) the mother as **the mother**
- (c) the father as **the father**
- (d) the maternal uncle as **the maternal uncle**
- (e) the mother's extended family as the **~O~ family**
- (f) individual members of the mother's extended family by two initials. The first initial representing a forename and the second initial **O** representing the extended maternal family
- (g) the close friend of the mother and her extended family as **~HH~**
- (h) the husband of **~HH~** as **~IH~**
- (i) the North African country of which the father is a national as **country ~C~**

[4] At the conclusion of the hearing I made a residence order settling that both children should reside with their father. I also made a prohibited steps order and a contact order providing for contact between the children and the maternal uncle. I now give my reasons.

[5] O'Hara QC and Ms McGurk appeared on behalf of the father, Mr Ferris QC and Ms Ross appeared on behalf of the maternal uncle, Mr. McGuigan appeared on behalf of the Official Solicitor and Ms Lindsay appeared on behalf of the Trust. I am grateful to all of the counsel involved for the care and attention with which they conducted the litigation.

Legal principles in relation to the residence and the prohibited steps applications

[6] In determining the applications for residence and prohibited steps orders I seek to apply the course which is in the best interests of the children whose welfare is the court's paramount consideration. I have particular regard to the matters set out in Article 3(3) of the Children (Northern Ireland) Order 1995.

[7] The father is the children's natural father. The significance of that factor was considered by the House of Lords in *Re G (Children)* [2006] 2 FLR 629. In *Re Luiz (Application for a residence order by Northern Irish step mother in respect of a Brazilian National)* [2009] NIFam 16 I stated that:

“The application of the welfare test requires the court to consider in the individual circumstances of each case any special contribution which natural parents in that case can make to their child. The relationships between natural parents and their children cover a wide spectrum and accordingly there may be cases in which a consideration of the individual circumstances leads to the conclusion, for instance, that a particular natural parent has and will have no love for or

commitment to a child and accordingly the child is unable to benefit in that respect. Examples of the special contributions to the welfare of a child that a natural parent can make are referred to by the Law Commission at paragraph 6.22 of its "1986 Review of Child Law: Custody, Working Paper No. 96 (HMSO), 1986") and include a contribution to the sense of identity and self-esteem of a child. Any list of examples would not be exhaustive but rather as Lord MacDermott observed in *J and Anor v C and Others* [1970] AC 668 the claims and wishes of parents "can be capable of administering to the total welfare of the child in a special way". Lady Hale stated in *Re G (Children)* that a natural parent can bring a very special sense of love for and commitment to a child which will be of great benefit to the child. The child can reap the benefit of that love and commitment. That knowledge of origin and lineage is also an important component in finding an individual sense of worth as one grows up. That the knowledge of a genetic link can be an important component in the love and commitment felt by the wider family. That in the vast majority of cases for the natural mother carrying and giving birth to a child brings with it a very special relationship between mother and child. It is the totality of, together with the individual components of, the impact of the natural relationship on Luiz's welfare to which I will have regard during the course of a detailed consideration of all the individual circumstances of this case."

[8] I also stated in *Re Luiz (Application for a residence order by Northern Irish step mother in respect of a Brazilian National)*:

"In addition to considering genetic parenthood, gestational parenthood and social and psychological parenthood I seek to appreciate and consider the factors pointing in each direction in this case to arrive at the right solution which is in Luiz's best interests of the alternative wrong or flawed solutions with which the court is presented, see *Clarke Hunt v Newcombe* [1982] 4 FLR 482 at 486. Such factors include the importance of the status quo in a child's life as emphasised by Ormrod LJ in *D v M (Minors: Custody Appeal)* [1983] Fam 33 at 41 in which he said:

‘It is generally accepted by those who are professionally concerned with children that, particularly in the early years, continuity of care is a most important part of a child’s sense of security and the disruption of established bonds is to be avoided whenever possible to do so. Where, as in this case, a child of two years has been brought up without interruption by the mother (or a mother substitute) it should not be removed from that care unless there are strong countervailing reasons for doing so. This is not only the professional view; it is commonly accepted in all walks of life.’”

[9] The significance of being a natural parent of a child was further considered by the Supreme Court in *Re B (a child)* [2009] UKSC 5. It is the principles set out in that case by the Supreme Court which I seek to apply in this case.

[10] The rights under Article 8 of the European Convention on Human Rights of all the family members are engaged. Any interference has to be in accordance with the law and necessary in a democratic society, in other words that it can be justified as a proportionate response to a legitimate aim (protecting health or morals and the rights and freedoms of others): or as the European Court puts it when considering the substance of the interference, that the reasons for the interference are “relevant and sufficient”.

Family structure

[11] The children are twins, a girl and a boy, born on 15 June 2006, both now aged 5. Their surnames at birth were registered using the mother’s maiden name which was also then her surname as their surname. ~H~ is the elder by a matter of minutes. On 3 September 2006 they were baptised in the Catholic faith again with the mother’s maiden name and her then surname as their surnames (1/81 and 82). Following the marriage of their parents their surnames were changed to their father’s surname (1/223). They are presently not coping well with the strain between their maternal uncle and the mother’s extended family on the one hand and on the other their father.

[12] ~H~ and ~P’s~ mother tragically died on 15 May 2009 from a heart attack. She was born in Northern Ireland and had lived here all her life. She was of the Catholic faith. She was the youngest of eight siblings. In 2004 she met the father whilst she was on holiday in Spain and a relationship

developed. They never lived together but rather stayed in Northern Ireland and in Spain meeting whilst on holidays. On 15 June 2006 the mother gave birth to the children. She wished them to be raised in the Catholic faith. She continued to live in Northern Ireland with the children in the house that she shared with her brother, the maternal uncle. The father continued to live in Spain. They continued to meet. He would travel to Northern Ireland each year and she would travel each year to Spain. On 14 January 2008 the mother and the father were married though thereafter the mother continued to use her maiden name as her surname. The relationship between the mother and the father was unconventional in that they did not live together on a full-time basis. However the relationship between them lasted for six years, and then came to an end not because of any disagreement between them but because of her sudden and tragic death. They had two children together and they were married.

[13] The children's father was born on 8 January 1979 and he is now 32. He is a national of country ~C~. He has lived and worked in Spain as a waiter and/or chef. His parents continue to live in country ~C~. He is of the Muslim faith attending at a local mosque in Northern Ireland every Friday and celebrating the festivals within the Muslim faith. He now lives in Northern Ireland and he states that he does not wish to return to either Spain or country ~C~. He wants the children to reside with him and continue to be educated in the same school in Northern Ireland (1/470). The father's English has improved. He is able to assist the children in relation to the present level of their homework. He is making efforts to learn to speak and write in English. The assessment that I have formed based on the evidence of the social worker and the evidence of Professor Iwaniec together with my own assessment as he gave his evidence is that he is a good, devoted and loving father. That he interacts well with the children, that he provides stability for them, together with consistent routines. That the children settle well in his home and in his company. That he supports them both physically and emotionally. The maternal uncle acknowledges that he has witnessed the children "really really enjoying themselves" with the father. I consider that assessment by the maternal uncle is correct. I also consider that the father is a reliable and honest witness.

[14] The children's maternal uncle was born in Northern Ireland on 4 February 1964 and is now 47. He is of the Catholic faith and has lived in Northern Ireland throughout his life. As I have indicated he and the mother lived in the same house and they continued to do so after the children were born. He has been a constant figure in the lives of the children and they have an attachment to him. The children have always lived in the same house. The maternal uncle is not married and he is not in partnership.

[15] The maternal uncle has a close knit extended family. He has three surviving sisters and three brothers together with twenty nieces and

nephews. The sisters are ~AO~, ~BO~ and ~CO~. The brothers are ~DO~, ~EO~ and ~FO~. ~AO's~ children are ~GO~ and ~HO~. ~BO's~ children are ~IO~, ~JO~ and ~KO~. ~CO's~ children are ~LO~, ~MO~ and ~NO~. ~DO's~ children are ~PO~ and ~QO~. ~EO's~ children are ~RO~, ~SO~ and ~TO~. ~FO's~ children are ~UO~, ~VO~ and ~WO~.

[16] An illustration of the support available to the children from the extended family at an earlier stage in their lives of the children was that on Monday's ~LO~, ~CO's~ daughter came to the home in the morning to plait ~H's~ hair and then she took them to pre-school with the maternal uncle. On Tuesday ~BO~ came to the home in the morning to plait ~H's~ hair and she would also pick the children up from pre-school and they would have dinner at her home. On Wednesdays ~HH~ who is a friend of the family, arrived in the morning to do ~H's~ hair. The maternal uncle took the children to pre-school and then to the contact centre with his sister ~CO~. ~AO~ cooks the dinner at the family home for when they return from contact. On Thursday ~BO~ arrived to do ~H's~ hair and the maternal uncle did the school run and also facilitated transport for contact with the father. On Friday ~CO~ arrived in the morning to do ~H's~ hair and the maternal uncle facilitated transport to and from pre-school. The maternal uncle also cooked dinner for the children. On Saturday ~AO~ arrived to do ~H's~ hair and also facilitated transport for contact in the morning. On Sunday ~CO~ arrived to do ~H's~ hair and also took her to mass if she wanted to go.

[17] The maternal uncle is not only able to avail of the support of his extended family but he also has the benefit of the support of longstanding friends that he and his family have made in Northern Ireland. An example of a particularly strong friendship is that between the extended family and ~HH~ and her husband ~IH~.

[18] The maternal uncle undoubtedly deeply loves the children to whom he is highly committed. I had the opportunity to assess him in the witness box. His personality and abilities are such that he is not able to bring critical analysis to the allegations which are made against the father nor is he able to disassociate himself from allegations made by his family members. He has a large extended family and he does not have sufficient authority to give clear direction to the rest of his extended family. I consider that he is deeply attached to and reliant upon his extended family for support generally and particularly for emotional and physical support in relation to the care of the children. I consider that the maternal uncle allows things to "snowball" without any proportion or control on his behalf. That, at the least, he is carried along on a tide of hostility towards the father and through his lack of critical abilities he participates in that hostility.

[19] I did not form a favourable impression of the reliability of the maternal uncle's evidence. There were differences between his evidence and what

Professor Iwaniec recorded him as saying and I prefer the record of Professor Iwaniec. I found that he was on occasion evasive though in arriving at that conclusion I have made allowances for the difficulties he faced in the context of his personality in giving evidence in relation to these difficult emotional issues. Also I found it hard to reconcile his assertion that he had no doubt that the father had the best interests of the children at heart with the repetitive raising of doubts as to for instance whether the father physically assaulted or sexually abused the children. In relation to any conflict of evidence of any substance between the father and the maternal uncle I prefer the evidence of the father.

Mistrust of The father and a sequence of events in relation to the litigation

[20] A major feature of this case is the mistrust of the father by the maternal uncle and the extended ~O~ family. There have been numerous allegations made against him including:-

- (i) That he never provided financially for the children (1/476).
- (ii) That he will always put himself first before the children (1/476).
- (iii) That he slapped and smacked the children (1/476, 1/72/10).
- (iv) That he could snatch and abduct the children (1/476 and 1/477) and cut off all contact with the extended maternal family.
- (v) That he never sent them birthday cards or made any contact with them except for an annual visit prior to their mother's death (1/3; 1/72/8).
- (vi) That he put pressure on the mother to marry him (1/65/21), to change the names of the children and for ~P~ to be circumcised.
- (vii) That he never showed a good deal of interest in the children when he did come to Northern Ireland before The mother's death (1/71/5).
- (viii) That he was lazy (1/72/7).
- (ix) That he would complain about the children crying (1/72/7).
- (x) That the mother did not seem to trust him and would never have left the children in his care alone during holiday periods (1/72/10).

- (xi) That he did not organise family activities with the mother (1/72/10) and that he did not appear interested.
- (xii) That he has told lie after lie (1/76/21).

It would be unusual if the children's father was perfect and he is not. Criticisms can be made of him but the degree of criticism which is contained in these allegations is unjustified and some of them are totally without any credible foundation. Furthermore there is and still remains an enduring degree of exaggeration on the part of the maternal uncle and the extended ~O~ family.

[21] The mistrust of the father by the maternal uncle and the extended ~O~ family has predated the commencement of the litigation concerning the children. It has also been evident in and has been an enduring and pervasive feature of that litigation.

[22] The litigation between the maternal uncle and the father in relation to the children commenced in the Family Proceedings Court on 19 May 2009 over two years ago and it has continued since then. The initial application dated 19 May 2009 was brought by the maternal uncle for an ex parte prohibited steps order and an ex parte residence order (1/1). Interim prohibited steps and residence orders were made on foot of that application. Those orders were followed on 7 July 2009 and 31 July 2009 by contact orders in favour of the father. Contact was to be supervised.

[23] The proceedings were transferred to the division. On 10 March 2010 the father sought a residence order in respect of the children (1/61). It can be seen that by 2010 there were competing residence applications in respect of the children by the maternal uncle and the father. A hearing in relation to those applications commenced, before me, on 17 May 2010.

[24] On 20 May 2010 and before the conclusion of the hearing the maternal uncle and the father entered into an agreement. The terms of the agreement were that there should be a residence order in favour of the maternal uncle settling that the children should reside with him, that the prohibited steps order preventing the removal of the children from the jurisdiction without the leave of the court should continue until further order and that there should be a defined contact order in favour of the father with a progression of contact moving to overnight contact. The parties also agreed to participate in mediation.

[25] As part of the settlement the parties noted that they had agreed in their evidence during the course of the hearing that:-

- (a) ~H~ and ~P~ should be raised in the Catholic faith.

- (b) The children should attend a Catholic school.
- (c) The children should be advised of their father's cultural background and religious faith.
- (d) The maternal uncle and the father should display respect for each others culture and religion for the benefit of the children.
- (e) Neither the maternal uncle or the father or any member of their families should do or say anything to undermine the other in the eyes of the children.
- (f) The maternal uncle and the father should seek advice from Barnardo's in respect of bereavement counselling for the children and, if this service is deemed appropriate, shall ensure that the children may attend.
- (g) Appropriate measures shall be put in place to prevent the removal of the children from the jurisdiction without the knowledge and consent of both the applicant and the respondent.

[26] The basic structure of the agreement was that the children should live with the maternal uncle and that they should be brought up in the Catholic faith attending a Catholic school. Accordingly they would be seated in the culture of Northern Ireland. Their father would remain in Northern Ireland and they would have increasing contact with him learning about his religion and his culture. Accordingly the children would benefit from forming a close and loving relationship with their father and knowing and respecting his culture. That the adults would work together to ensure that the children would benefit from both the love and affection of their father and their maternal uncle and his and their extended family. In essence there was to be a change from conflict and distrust to a determined effort to work together for the benefit of the children. The children should not be torn between two families and two cultures nor should they be in the middle of a dispute between two adults.

[27] I considered and approved the terms of that agreement emphasising as I did so that it was important to recognise that its implementation would depend on goodwill between the adults. That it was their obligation to work together and not in opposition to each other.

[28] The implementation of that agreement rapidly ran into difficulties. I find that those difficulties were caused by a continuation by the maternal

uncle and the extended ~O~ family of their mistrust of the father and antipathy towards him.

[29] I say that the agreement rapidly ran into difficulties but there was an initial period where the contacts between the children and their father went well and were facilitated by the maternal uncle and the extended ~O~ family. This initial period was between the agreement on 20 May 2010 and the first overnight contact for the children with their father which occurred on 2 July 2010. However events surrounding that overnight contact marked a turning point.

[30] On 2 July 2010 the social worker was present at the start of the overnight contact and the children were very well settled and happy to be staying overnight (2/3/33/3.3). On 3 July 2010, the following day, Mrs Meek telephoned the father and spoke to him and ~H~. ~P~ shouted hello in the background in a cheery bright way. There was nothing to suggest that anything untoward had occurred.

[31] The position changed on 9 July 2010 when the social worker was informed by the maternal uncle that the children had made allegations on 8 July 2010 of a sexual nature implicating the father as the perpetrator (2/3/33/3.7). The police were informed and a joint protocol interview was conducted with both children on 15 July 2010. They made no disclosures. Immediately after the joint protocol interview the father tried to encourage ~H~ to speak about a pink mattress out the back of their father's house but ~H~ refused to speak. It was explained that encouraging the children to talk was not appropriate (2/3/46). The maternal uncle was informed that there was to be no further police action. The maternal uncle and members of his extended family remained adamant that the allegations disclosed by the children had not been investigated properly and that the children had a story to be told. They lodged complaints to the Children's Commissioner, the PSNI Ombudsman and the Trust (2/3/43/4.7).

[32] The maternal uncle and his extended family persisted in the allegations in these proceedings despite the views of the police and the social workers. I directed that statements be lodged by the maternal uncle and other members of his family. Those statements were filed in August 2010. They not only contained allegations relating to what occurred on 2 July 2010 but also in relation to May 2010. Those earlier allegations had not been reported at the time (2/3/43/4.8.).

[33] Whilst these complaints were being investigated contact between the father and the children became supervised and overnight contact ceased. The supervision did not reveal any concerns and on 19 August 2010 the Trust recommended that the contact should move to unsupervised (2/3/44/4.12).

[34] In view of the continued belief of the maternal uncle that sexual abuse had occurred a date was fixed for a fact finding hearing in October 2010 which was adjourned but came on for hearing in December 2010. In the event the allegations were orally withdrawn by the maternal uncle in December 2010 and a written statement of withdrawal was filed in court by the maternal uncle on 4 January 2011 (2/1/56). In that statement he recorded that he did not believe that the father had sexually abused the children, though he offered no apology. At that stage there was no express withdrawal of the allegations by other members of the maternal uncle's extended family nor any apology from them (though it is appropriate to record that at the hearing of the application by the father for a transfer of residence there were express withdrawals together with expressions of regret).

[35] The allegations of sexual abuse were vigorously pursued by the maternal uncle for months after the joint protocol interview until they were finally withdrawn orally in December 2010 and in writing on 4 January 2011. It is perfectly appropriate on some occasions to complain about or to have reservations about investigations which have been undertaken by the police or Social Services. However I consider that what occurred in this case went far beyond what was appropriate and was driven by deep seated mistrust of and hostility towards the father by the maternal uncle and the extended ~O~ family. That there was considerable exaggeration on behalf of members of the extended ~O~ family (2/11/12). The maternal uncle has proved himself unable to allow the children to have a proper relationship with their father. Rather I find that he has created and has allowed to continue a corrosive atmosphere of distrust and suspicion. I have given encouragement to the maternal uncle at numerous review hearings to adopt a more open attitude towards the father but despite this encouragement this atmosphere of mistrust has continued. I consider that it will continue in future. The maternal uncle has not and will not be able to bring himself to respect the father nor has he or will he in my estimation have an ability in the future to work in any substantive way with the father.

[36] As I have indicated even though there was a withdrawal of the allegations of sexual abuse of the children in a written statement from the maternal uncle dated 4 January 2011 (2/1/56) there was no apology contained in that statement. These allegations were extremely serious and struck at the very core of the father's person and his capacity to parent. If true he should rightly be considered as highly unreliable, untrustworthy and a danger to his own children. He would be the antithesis of a good, caring and loving parent. I consider that the lack of an apology at that stage from the maternal uncle shows a lack of regard or respect for the father together with an inability to consider and appreciate how he felt or alternatively an indifference to his feelings of deep upset and hurt.

[37] The persistence in relation to these allegations of sexual abuse obviously led to upset to both children who were confined to supervised contact with their father. Overnight contact did not resume until January 2011. However the major disruption for both children was that they had to continue to live with ongoing disputes, accusations and counter-accusations between the maternal uncle, his family and friends on the one hand and their father on the other. The children were being given conflicting messages, information and stories. I agree with Professor Iwaniec's assessment that in the long run this conflict will have devastating effects on the children's formation of personality and behaviour.

[38] The mistrust of the father has also been demonstrated in other ways. A further illustration is that the maternal uncle blames the father for the children using bad language. The social worker has never heard the father using swear words and indeed there is no credible evidence to the effect that the father does use swear words. Furthermore the father is able to set appropriate boundaries for the children and gently seek compliance with those boundaries. The maternal uncle on occasions fails to set boundaries, for instance he allowed ~P~ to play an entirely age inappropriate Nintendo game which was very violent, very graphic with sexual content. There was bad language in that game and the maternal uncle's response was to turn down the volume but ~P~ was still exposed to the graphic nature of the game.

[39] The mistrust of the father by the maternal uncle and the extended ~O~ family, continued during the course of the hearing before me, with support being given to further disclosures from the children (2/1/13 and 2/1/15). The maternal uncle was not prepared to make his own assessment about these disclosures but took the view that there was the potential that the children continued to be abused by the father. I accept the evidence of the father in relation to these disclosures. He did not slap or abuse the children. Rather I consider that this is an example of the children saying things the adults wished them to say. I also do not accept that the father deliberately burnt ~H's~ hand.

The evidence of the social worker

[40] The social worker involved with the children gave evidence. She stated that the Trust was recommending that there be a transfer of residence from the maternal uncle to the father. She stated that she had observed the children in the care of their father on numerous occasions carrying out both announced and unannounced visits. That the standard of care he provided was very appropriate both physically and emotionally. That the father was open to building relationships with the maternal uncle. She did not support shared residence between the maternal uncle and the father. There was not a good relationship between them. There was a lot of mistrust. The children needed the stability and security of a main carer. Given the background of

distrust she did not see shared residence giving the stability and security that the children needed.

Expert Evidence

[41] I had reports from Professor Iwaniec and Dr McCartan. In addition both of these experts gave evidence. Professor Iwaniec is Emeritus Professor at Queen's University Belfast having held a chair there since 1992. She has extensive experience in child care and child protection work, extending to over 40 years in clinical and research work. Dr McCartan is a Clinical Psychologist and an Honorary Research Associate of the Institute of Psychiatry, King's College, London.

[42] I prefer the expert evidence of Professor Iwaniec. Her assessment was consistent with what was observed by others such as the social worker and what was observed and acknowledged by the maternal uncle. For instance on the family relations test conducted by Dr McCartan ~P~ stated that he did not want a box for his father and wanted his father to go away. This is totally at conflict to what was observed during contact between ~P~ and his father. That contact was beneficial for ~P~ who positively enjoyed it. Good quality contact between ~P~ and his father was observed by the social worker, by the maternal uncle and also by Professor Iwaniec. Also I just do not accept that there has been, as suggested by Dr McCartan, deterioration in the relationship between the children and their father. Factually I consider that there has been an improvement in their relationship with greater attachment developing between the children and the father.

[43] In Professor Iwaniec's report dated 14 March 2011 she recorded the father's account of a continuing lack of support by the maternal uncle and the extended ~O~ family in his relationship with the children. She recorded the father as stating that:

- (a) There were frequent allegations of him and the children's paternal grandmother abusing the children or not providing adequate care.
- (b) That ~P~ told him that he had heard his maternal aunts saying that he does not need to go to see his father if he does not want to.
- (c) That ~H~ and ~P~ had told him that they were told by the maternal uncle and his sisters that they are their family and they do not have any other family. They dismissed the paternal grandmother as the children's grandmother.

- (d) That ~H~ and ~P~ stated that they were told by BO that she can be their grandmother and that they do not need a new grandmother. The children allegedly said that the paternal grandmother was not their grandmother and that she was a smelly and dirty woman.

[44] In so far as these allegations depend on what the father was told by the children the evidence is hearsay evidence. I do not consider it to be entirely factually accurate as to what was said to the children but I do consider that there is a stratum of accuracy. More significantly I consider that it is indicative of continuing feelings of hostility by the maternal uncle and the extended ~O~ family towards the father and the paternal grandmother. Also I consider that that hostility is insidious, persistent and endemic.

[45] Professor Iwaniec saw the children in the father's house and she had no concerns whatsoever. She states that they present as happy, relaxed and interacting very well with their father. She did not see any problems and on the contrary she felt that the father provided a good quality of care was emotionally available to them, provided boundaries, rules of behaviour and corrected them when they were doing something wrong. She stated that the atmosphere at home was relaxed, caring and loving and that they get on very well together. Professor Iwaniec found that the father children relationship was caring, loving and highly committed. That the father is affectionate and attentive to them and that they respond to him with equal affection and joy. She considers that they each enjoy the others company and time spent together. That he is proud of them and totally committed to their welfare and wellbeing.

[46] Professor Iwaniec also found that the children had strengthened their attachment to their father and appear to see him as emotionally available and helpful when in need of assistance and ready to come to their rescue when they are distressed or frightened. That they behave freely and confidently when with their father and appeared to be at ease when in their father's house.

[47] Professor Iwaniec considered that the children were not only familiar with the maternal uncle but were also attached to him. She then went on to consider what would be the psychological impact on each child if she/he were removed from the maternal uncle's care to their father's care. She considered, and I agree, that the move has to be seen in the context of moving to an environment that they know well and love and to a place with which they have become familiar and where they feel comfortable, wanted and appreciated. In that context Professor Iwaniec felt and I find that the transition from the maternal uncle's care to the father's care would not be hugely traumatic. That they may be upset, but the duration of that upset would be limited.

[48] Professor Iwaniec went on to consider whether in her opinion a transfer of residence to the father's sole care would be in the children's best interests. She advised that children living in a conflict driven environment with adults who use them for their own needs, fears and anxieties will be affected emotionally and socially. That the children could not wait indefinitely for their current carers to change. That they needed stability, security and a model of behaviour from which to learn to prepare for life inside and outside the house. She supported a transfer of residence as being in the children's best interests. However she considered that the father would have to honour and respect the children's late mother's tradition, religion and culture as well as the children's attachment and established relations with the maternal family. She considered that developing a sense of belonging to both families on an equal and positive basis would secure their wellbeing and would enrich their lives.

[49] Professor Iwaniec was also asked to consider the merits of shared care/joint residence between the maternal uncle and the children's father. She was not optimistic that joint residence would be workable given the resentments, lack of trust, fears and anxieties, vindictiveness and ongoing accusations and counter accusations.

Welfare checklist

[50] I now turn to the welfare checklist. I will set out my consideration of and my conclusions in relation to the particular matters contained in Article 3(3) of the Children (Northern Ireland) Order 1995. I do not intend to repeat all the factual findings that I have made when giving consideration to the individual matters set out in Article 3(3) of the Children (Northern Ireland) Order 1995 but rather I summarise my reasons and incorporate those findings to which I have not specifically referred. For convenience I set out my conclusions in relation to both children but by adopting that approach in this judgment it does not mean that I have not considered each of the children individually and also how their interests interact with each other. I have.

- (a) *the ascertainable wishes and feelings of the children (considered in the light of their age and understanding).*

The children are attached and have feelings for their father and their maternal uncle. They also are familiar with and have feelings for members of their extended maternal family. On the maternal side they have a primary carer and a number of other significant carers. This leads to confusion on their part as to their relationship within the maternal family. In so far as their feelings have been established over a longer period of time for the maternal uncle and the extended maternal family I consider that on balance the greater feelings are still for the maternal uncle and the extended maternal family. However those

feelings have to be seen in the context of their age and understanding. I consider that they do understand the love and affection that the father lavishes on them but are not able to assess how their attachment to him will grow in the future. They have no understanding of long term consequences.

(b) *The physical, emotional and educational needs of the children*

The children have ordinary physical needs. They have a need for consistent education and assistance in that education. That assistance should be by setting clear boundaries and direction and by increasing help with their homework. Emotionally they need to be removed from conflict and have a settled primary carer who will provide clear boundaries and deep commitment and love. They also emotionally need a primary carer who is prepared to support their attachment to the other side of their family.

(c) *the likely effect on the children of any change in their circumstances;*

I accept the evidence of Professor Iwaniec that the adverse effects of a change from living with the maternal uncle to living with the father will be slight and short lived. Ordinarily continuity of care is a most important part of a child's sense of security. However for these children the continuity of care will be a continuity of conflict with serious long term consequences for them both. The long terms effects of a change in their residence to the father far outweigh any short term upset.

(d) *the age, sex, background and any characteristics of the children which the court considers relevant.*

I have set out the age, sex and background of each of the children. They are of mixed nationalities and cultures. They need a primary carer capable of respecting both nationalities and both cultures.

(e) *any harm which the children have suffered or are at risk of suffering;*

The children have suffered harm as a result of the conflict between the maternal uncle and the extended maternal family on the one hand and the father on the other. They are at risk of suffering significant harm if that conflict continues.

- (f) *how capable each of the children's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs;*

I find that the father is able to provide a good consistent standard of parenting both physically and emotionally. That he will support the children's education. That he brings a very special sense of love for and commitment to the children which will be of great benefit to them. That he will support the children in knowing about both his and their mother's cultures and accordingly they will gain a sense of place and worth in both of their cultural backgrounds. That he will support contact between the children and the maternal uncle and the extended ~O~ family.

I find that the maternal uncle provided a supporting role in respect of the children whilst his sister was alive. He presently is able to provide for their physical needs with considerable support from members of his extended family but I do not consider that the maternal uncle has the ability to support the emotional development of the children. Rather he has created and permitted others to create an atmosphere of conflict and mistrust between himself and the children's father. This is a corrosive atmosphere for the children and will cause them long term harm. They are prepared to and do adopt positions to please the maternal uncle and the extended ~O~ family. I do not consider that the maternal uncle is able to support the children in knowing about both their father and his culture and accordingly they will not gain a sense of place and worth in both of their cultural backgrounds. I do not consider that the maternal uncle will be able to support contact between the children and the father.

This contrast in the capabilities of the maternal uncle and the father is a major factor in this case and I place considerable weight on it.

In addition the maternal uncle is unable to provide a settled regular routine with clear and consistent boundaries for the children. The children in the maternal uncle's care do not have one consistent carer but rather rely on support from the extended ~O~ family. They are confused as to their relationships. They call the maternal uncle "Da", the father "Daddy". They are confused as to the absence of maternal grandparents. Their relationship with their paternal grandmother is undermined or at the least is not supported by

the maternal uncle and the extended ~O~ family. They refer to ~IH~, who is no relation, as "Da Da".

I do not consider that the maternal uncle and the father would be able to work together sharing residence of the children or either of them. A shared residence order would be a continuation of conflict and this would result in serious harm to both of the children.

(g) the range of powers available to the court under this Act in the proceedings in question.

I make a prohibited steps order preventing ~H~ and ~P~ being removed from the jurisdiction without the leave of this court. I make a contact order in favour of the maternal uncle.

[51] Having reached these conclusions I step back and ask the overall question as to what would be in each of the children's best interests. I have concluded that each of them would be best served by a residence order settling that they should reside with the father.

Conclusion

[52] I grant the father's application for a residence order settling that the children should reside with him. I have discussed with counsel and obtained the assistance of the social worker as to the details of the procedure to manage the transfer. There is to be a settling in period during which there will be no contact with the maternal uncle and the extended maternal family. Thereafter contact is to occur but it should not be a source of conflict.

[53] I continue the prohibited steps order preventing ~H~ and ~P~ being removed from the jurisdiction without the leave of this court.