Neutral Citation No: [2022] NICA 37	*Ref:* **McB11886**
	ICOS No: **20/038811/A01**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **30/06/22**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Between:

HM

Appellant

and

VM

Respondent

The Appellant appeared as a Litigant in Person
Mr Chambers, Solicitor (instructed by Russell & Co Solicitors) for the Respondent
Ms Murphy BL (instructed by the Official Solicitor's Office) for the Children

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Before: Maguire LJ and McBride J

McBRIDE J (*delivering the judgment of the court*)

Introduction

[1] Nothing must be published which would identify the children or their family. The names given to the children are not their real names.

Application

[2] There are three appeals before the court namely; an appeal by HM against the order of Keegan J dated 26 August 2021; an appeal in respect of a non-molestation order and an appeal against the decision of His Honour Judge Fowler QC, Recorder of Belfast sitting as a Deputy High Court Judge, on 7 September 2021 when he granted a decree nisi of dissolution of the marriage of VM and HM and, in particular, declared that he was satisfied with the arrangements in respect of the two children of the marriage. At the commencement of the hearing HM withdrew the appeal in respect of the non-molestation order.

Representation

[3] HM acted as a litigant in person. The respondent mother was represented by Mr Chambers, Solicitor, who was granted leave by this court to have a right of audience. Ms Murphy BL, instructed by the Official Solicitor, acted on behalf of the two minor children.

Background

[4] The present appeals are part of a long running family dispute between HM and VM in respect of the residence and contact arrangements for their two children. The parties married on 17 March 2012 and then lived in Scotland, where HM comes from. VM is from Northern Ireland. The parties' first child, who has been referred to as Mary, for the purposes of these proceedings was born in 2013 and is now nine years of age. The second child, referred to as Jack, for the purposes of these proceedings was born in 2015 and is now seven years of age.

[5] In October 2014 the mother removed Mary from the nursery and left the matrimonial home without the father's knowledge or consent. There followed a brief period of reconciliation in November and December 2014 when the parties continued to live in the matrimonial home. At the end of a family holiday in Belfast in December 2014, however, the mother decided to remain in Belfast with the child Mary without the father's consent. At this stage the mother was two months pregnant with Jack who was later born in Belfast in 2015.

[6] Court proceedings to settle the arrangements for the children commenced on 23 October 2015. Since that time there have been multiple court hearings before all court tiers and Keegan J in her judgment dated 2 October 2020 sets out a detailed chronology of those court proceedings.

[7] The case was initially referred to Keegan J by the Court of Appeal. When it was listed before her in July 2019 she appointed the Official Solicitor to represent the interests of the children. The case was then the subject of active case management and review and during this time various interim contact arrangements were put in place and contact took place between the father and the children.

[8] The matter eventually came on for hearing on 10 February 2020 and the hearing proceeded by way of a contest for two days. Covid then intervened and the case was regularly reviewed thereafter. On 9 October 2020 Keegan J gave a written judgment determining that Northern Ireland was the appropriate jurisdiction for the determination of the dispute. She granted HM's appeal in respect of the granting of a non-molestation order and the non-molestation order was discharged. She adjourned the contact issue as at that stage she did not consider "… the scaffolding can be removed in this case as yet, otherwise arrangements will not work" (para 40).

She then listed the contact dispute for a final hearing and interim contact arrangements continued in the intervening period.

[9] Prior to the hearing significant work had been undertaken by the Official Solicitor and the parties and by the date of the hearing a large degree of consensus had been reached. Only minor areas of disagreement remained between the parties with regard to the contact arrangements in respect of the children.

[10] At the hearing on 26 August 2021 the court heard evidence from the parties and the Official Solicitor. Keegan J gave an ex tempore ruling and made an order for contact in HM's favour, which largely reflected a draft order which had been circulated by the Official Solicitor and with which the parties had largely expressed their agreement. The order provided that HM have both direct and indirect contact with the children both in Northern Ireland and in Scotland together with holiday contact. Keegan J then transferred the divorce to the matrimonial judge and the divorce was listed for hearing on 7 September 2021.

History of Divorce Proceedings

[11] VM issued a petition for divorce grounded on five years separation. As required under the Family Proceedings Rules (NI) 1996 she filed a statement of arrangements for the children. HM filed an acknowledgement of service and in this indicated his intention to defend the divorce. By document dated 29 July 2020 and lodged in court on 9 October 2020, whilst acting as a litigant in person, HM stated that this was his "answer" to the petition. As appears from this document he sought to defend the petition on the basis that the future arrangements for the children were uncertain. He did not, however, contest or dispute that the parties had lived apart for a continuous period of at least five years. HM also filed his own statement of arrangements for the children and in this document he stated that the divorce should not be granted "as this would not be good for the children" and he stated that the information provided by VM in her statement of arrangements was incomplete and inaccurate.

[12] As HM failed to file an answer in the appropriate form in accordance with the Family Proceedings Rules 1996 rule 2.14 the case was listed by the court office as an uncontested hearing. Thereafter, the case was reviewed and on 9 November 2020 the court directed HM to file submissions and the case was adjourned to Keegan J. HM filed submissions and the case was then listed with the Children Proceedings before Keegan J. As appears from the chronology set out above Keegan J adjourned the divorce proceedings to the matrimonial judge. The divorce was then listed for hearing before the Recorder and although it was listed as an undefended divorce HM, appeared and made a number of submissions to the court in respect of the question whether the arrangements for the children were satisfactory. After hearing the submissions of the parties the judge granted a decree nisi of dissolution of marriage on the grounds of five years separation. He noted that Keegan J had made

a final order in respect of the contact arrangements for the children and in those circumstances he stated that he was satisfied with the arrangements for the children.

[13] HM lodged an appeal on 9 September 2021. VM's solicitors applied on 18 November 2021 to have the decree nisi made absolute and in error the decree was made absolute.

Submissions of the Father

[14] In respect of the contact order HM submitted that he was happy with the order made by Keegan J but nonetheless wished to pursue his appeal against this order on the basis that she:

(a) Erred in making a final order;

(b) Failed to address a core issue, namely parental alienation and in particular failed to address the fact that the views expressed by Mary to the Official Solicitor in the most recent report before the court represented a major shift in her attitude to contact;

(c) Made an unworkable "order";

(d) Erred in discharging the Official Solicitor;

(e) Made a perverse and illogical decision in respect of who was responsible for the costs of contact.

[15] He requested that this court remit the case for a fresh hearing before a family judge in the High Court.

[16] In respect of the divorce HM submitted that the learned trial judge erred in granting a decree nisi in circumstances where, in his view, the arrangements for the children were not satisfactory.

Submissions on behalf of the Mother

[17] Mr Chambers on behalf of the mother submitted HM was happy with the order made by Keegan J and his only dispute was in respect of the implementation of this order. In such circumstances his remedy lay in another forum. He submitted that Keegan J made no error in law. She had considered the best interests of the children and in all the circumstances her decision lay within the wide ambit of discretion afforded to her.

[18] In respect of the divorce, whilst accepting the rescinding of the decree absolute would only cause, at most, inconvenience to VM, he submitted the learned trial judge did not err in concluding that the arrangements for the children were

satisfactory as the court did so in a context where there was a final order for contact which had been made some weeks before the divorce hearing.

Submissions on behalf of the Official Solicitor

[19] Ms Murphy, on behalf of the Official Solicitor, referred the court to the authorities dealing with the test to be applied by the Court of Appeal when hearing appeals concerning the welfare of children. She submitted that Keegan J carefully considered all the evidence and took into account the fact that there was a large measure of agreement between the parties in respect of the contact arrangements. In making her determination Keegan J was satisfied she had sufficient information to make a final order and only did so after considering the best interests of the children and the no delay principle. In such circumstances Ms Murphy submitted that the decision of the learned trial judge was within the band of reasonable decisions open to her and in those circumstances the Court of Appeal ought not to interfere. She further submitted that once a final order was made the responsibility then fell to the parties to implement that order and in circumstances where there were difficulties in implementation it was then appropriate for the parties to come back to court to have those matters resolved.

Consideration

[20] We have carefully considered the transcript of the hearing which took place before Keegan J on 26 August 2021. As appears from this transcript during the course of the hearing the learned trial judge questioned the Official Solicitor about the appropriateness of making a final order. In response to this query the Official Solicitor stated:

> "Ongoing interim orders are problematic themselves … the proposals are so close and agreement is so close to be reached that it should be a final order … (and is) the best thing for the children."

[21] In her ex tempore ruling Keegan J stated:

> "I will not set out the full history of this case, as I have done so previously, but suffice to say that there has been an extremely fraught family situation, and in a case that, in my view, has been before the courts for too many years. It is a case that clearly needs some finality. … There will be ups and downs going forward, however, given that the principle of contact with the children and their father is agreed by all, including the Official Solicitor, it would be wrong and against, in my view, the no delay principle to postpone this case any further. Ms Coll, the Official Solicitor also rightly pointed out that

> ongoing court proceedings have caused stress all around and so this case should be concluded."

[22] We are satisfied the learned trial judge carefully considered whether she should make a final order or keep the case under review by way of interim orders. For the reasons set out by her we are satisfied that she did not err in law in making such a determination. We consider the decision to make a final order after six years of litigation in circumstances where there was a large measure of agreement between the parties was one which was well within the ambit of reasonable decisions she could make. Given that a final order had been made it was appropriate to discharge the Official Solicitor and HM did not object at the time to this course of action.

[23] Second, the learned trial judge did take into account the most recently expressed view of Mary but notwithstanding Mary's objection to contact the learned trial judge nonetheless made an order retaining the contact and therefore we do not consider this forms a ground of valid objection by HM to the order which the learned trial judge made.

[24] Third, the learned trial judge considered the different submissions of the parties and the evidence in respect of the costs of contact. Again, we consider that the decision made by the learned trial judge in this regard was a matter well within the band of reasonable decisions she could make in the exercise of her discretion. In the absence of some error of law we do not consider we can, or should, interfere with her decision, especially in circumstances where HM advised this court that he was content with the order.

[25] HM's real concern was about the fact the order, in his view, was unworkable due to parental alienation and he submitted that this was a matter the learned trial judge had not taken into consideration.

[26] Such a submission is not an attack on the order but rather its implementation and therefore we do not consider that it is an appropriate or proper ground of appeal in respect of the order made by Keegan J. In *G v G (Minors – Custody Appeal)* [1985] 1 WLR 647 Lord Fraser set out the test to be applied by the Court of Appeal in hearing appeals in respect of cases about the welfare of children at page 651. He stated as follows:

> "The jurisdiction in such cases is one of great difficulty, as every judge who has had 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."

[27] Having carefully considered the transcript and the ex tempore ruling and the previous rulings of Keegan J we are satisfied that the judge did not do anything which would require this court to set aside her decision. We are satisfied that she made no error of law. She considered the best interests of the children and took into account the no delay principle and had regard to the welfare checklist in assessing all the evidence and material which was before her. This court is satisfied that her decision was not wrong. In our view, her decision fell well within the ambit of reasonable decisions open to her in the exercise of her discretion. Further, in circumstances where HM advised this court that he was happy with her order it would be unusual, indeed, for this court to interfere with that order.

[28] HM requested that even though he was content with the order made by Keegan J nonetheless we should remit the case for a fresh hearing. In circumstances where we are satisfied there is nothing wrong with the order there is no reason to remit. Accordingly, we dismiss the appeal in respect of the order of Keegan J dated 26 August 2021 and refuse the application to remit the matter to another judge of the High Court.

Divorce

[29] Section 35 of the Judicature (Northern Ireland) Act 1978 provides:

> "(2) No appeal to the Court of Appeal shall lie—
>
> …
>
> (e) from a decree absolute for the dissolution or nullity of marriage by a party aggrieved thereby who, having had time and the opportunity to appeal from the decree nisi on which the decree absolute was founded, has not appealed from that decree nisi."

[30] In the present case HM issued his appeal before the decree absolute issued. Accordingly, we are satisfied that an appeal lies to this court notwithstanding the fact that a decree absolute has issued as we consider the decree absolute issued in error.

[31] Article 44 of the Matrimonial Causes (Northern Ireland) 1978 provides:

> "(1) The court shall not make absolute a decree of divorce or nullity of marriage, or grant a decree of judicial

separation, unless the court, by order, has declared that it is satisfied —

…

(b) that the only children who are, or may be, children of the family to whom this article applies are the children named in the order and that –

(i) arrangements for the welfare of each child so named have been made and are satisfactory or are the best that can be devised in the circumstances …"

[32] As appears from the transcript of the divorce hearing HM, notwithstanding the matter was listed as an uncontested divorce, appeared and made submissions in respect of the arrangements for the children. The learned trial judge was advised that final orders had recently been made by Keegan J in respect of the contact arrangements for the children and after hearing the submissions he stated that he was satisfied that the arrangements for the children were satisfactory and made a declaration to this effect when granting the decree nisi of dissolution of marriage.

[33] We are satisfied that it was within the discretion of the learned trial judge to make the declaration, that he was satisfied regarding the arrangements for the children, especially in circumstances where the court had recently made a final order in respect of contact. We are therefore satisfied that the learned trial judge did not err in making this declaration and, accordingly, we dismiss this appeal.

Costs

[34] The court will make no order as to costs.