

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION

**IN THE MATTER OF J (THRESHOLD CRITERIA:
PARENTAL CONCESSIONS)**

JUDGMENT

GILLEN J

Nothing must be reported in this case which would serve to identify the child who is the subject of these proceedings or any of the parties.

The applicant in this case is a community health and social services trust which I do not propose to identify ("the Trust") and applies for a Care Order in respect of J born on 5 May 1986. Unusually the application is made with the support of the respondent who is the mother of the child (hereinafter called "G"), the Guardian ad Litem and J.

Whether or not the court does or does not make a Care Order depends on a two stage process. First the court must consider whether or not the criteria for making a Care Order had been satisfied ie the threshold criteria. Secondly, in the light of the care plan and after proper consideration of the matters contained in the welfare checklist in Article 3(3) of the Children (Northern Ireland) Order 1995, the court has to consider if it is proper to make

a Care Order. Thus whilst the parties may be agreed as to the best way forward, there is still an overriding duty on the court to scrutinise the matters put forward for its consideration. I must also take into account Article 8 of the European Convention on Human Rights and Fundamental Freedoms (1950) to ensure that I have accorded the right to respect for family and private life and that the order that I make is proportionate to the legitimate aim of ensuring the paramount interests of the child.

In this case, it was agreed between the applicant and the respondent G that the threshold criteria as contained in Article 50(2) of the 1995 Order were satisfied on the following grounds;

(1) On 11 January 2002, J left home and stayed away for 10 days. J had no change of clothes or fixed abode during this time and G did not alert the applicant Trust of J's circumstances until 16 January 2002. G did not want J at her home nor did J want to be there.

(2) G is unable to exercise parental responsibility in respect of J.

(3) J is beyond the control of G who is unable to impose appropriate boundaries and provide the guidance, support and supervision necessary to protect J from harm.

When the case was opened to me it was also agreed that J had witnessed domestic violence between G and her partner Mr B. However in the course of the evidence this was retracted and I heard evidence on this matter.

The Trust, with the support of the Guardian ad Litem, asked the court to make findings of fact in relation to other alleged threshold criteria which had not been agreed. These grounds were;

- (1) The relationship between G and J is troubled and difficult. G has employed inconsistent and harsh discipline and management techniques, including verbal, physical and emotional chastisement.
- (2) J acted as a significant carer for his younger siblings whilst they resided with G.
- (3) J witnessed domestic violence between G and Mr B.
- (4) G disregarded J's individual needs to the detriment of his social, emotional, physical and educational welfare.

The first matter to be considered is whether or not where, as in this instance the parent has offered a compromise in the care proceedings that concession offered by her is sufficient to meet the justice of the case and the best interests of the child. Will further investigation of these allegations which are not agreed constitute an unnecessary investigation thereby wasting court time and incurring unnecessary expense? I must be mindful of Rule 1(a) of the Rules of the Supreme Court (Northern Ireland) which states where relevant;

“1(a) - (1) The overriding objective of these rules is to enable the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable - ...

(b) Saving expense;

...

- (d) Ensuring that it is dealt with expeditiously and fairly; and
- (e) Allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases."

I consider the relevant principles are as follows;

1. It is a matter of discretion in each instance. A balance between not wasting court time by an unnecessary investigation and, in certain cases, the need for a further investigation must be struck. (See Butler-Sloss LJ p735b in Re M [1999] 2 FLR at 728). Accordingly the individual facts of each case must be considered and the decision taken whether the concessions made by the parents are sufficient to meet the justice of the case and the best interests of the children.
2. Re W (Children) (Threshold Criteria: Parental Concessions) is authority for the proposition that in a case where the threshold criteria has been met concessions made by the parents in care proceedings must be considered to see whether they met the reasonable requirements of the local authority and the Guardian ad Litem seen in light of a judicial decision. In that case the parental concessions were inadequate because they had not accepted any responsibility for their children's sexualised behaviour and a court therefore had no firm basis on which to deal with any future contact applications in relation to the children whether made by the mother the father or coming from the children themselves.

3. Increasingly the view is being expressed by the courts that children should be seen and heard in child cases. This may well lead to an increased use of guardians in private law cases for example. In Re A (Contact: Separate Representation) [2001] 1 FLR 715 at para 31 Hale LJ noted that children “need a voice, someone who is able to listen to anything they wish to say and tell them what they need to know”. Wall LJ picked up the same theme in Re M (see above) at page 734a when he said;

“The children have had their credibility impugned and been accused of lying. In these circumstances it seems to me that it may well be appropriate for the Guardian ad Litem on their behalf and L, if she continues to be separately represented in the proceedings, to be able to put the relevant material before the court and invite a judge to make findings upon it. That might be only fair to the children and will demonstrate to them that the court has listened carefully to what they have to say”.

It has been made clear to me in this case that J does want these outstanding matters determined and I believe that this in itself can be, and in my opinion is in this case, a reasonable basis for concluding that the best interests of the child require a further determination even though it involves pursuing a lengthy investigation. Had this child not wished the matters to be determined or investigated then this court might well have determined that pursuit of these matters constituted unnecessary litigation in light of the concessions made.

Applying these principles I have concluded that funding on the criteria in dispute should be made by this court.

Before going on to make a determination of these outstanding threshold criteria, I make certain preliminary points by way of background;

1. The standard of proof which is applied by all courts in these proceedings concerning the welfare of children is that of proof on the balance of probabilities. On the other hand one must recognise that the more serious the allegation, the more cogent is the evidence required (see Re H & Others (Minors) (Sexual Abuse: Standard of Proof) [1996] 1 AER 1. In this context I must recognise that the person who has made the allegations, namely J, has indicated on a number of occasions that he is extremely angry at his mother and therefore I must be wary of the danger of prejudice and embellishment. I must also recognise that I have admitted his evidence under Regulation 2 of the Children (Admissibility of Hearsay Evidence) Order (Northern Ireland) [1996]. It is clearly evidence “in connection with the upbringing, maintenance or welfare of a child”. Nonetheless I must recognise that it is hearsay evidence and the use to which such evidence is put has to be handled with great care so that the rights of the person accused, namely the parent in this case, are fully and properly observed. In this context I must recognise what the Guardian ad Litem has said about J at paragraph 9.8 of a report of 10 May 2002;

“J’s emotional state has repeatedly given rise to concern. At times of acute distress and stress, he has serious difficulty in coping with the intensity and range of feelings. As a result he has left care placements and placed himself at risk of harm. Whilst some of these behaviours are linked to adolescent experimentation and peer pressure, J has recently been made subject to a Probation

Order in relation to car theft. ... He is aware that he has some difficulties managing his anger which is currently focused on his mother and his frustration over the uncertainty of his brothers' futures. J has queried whether it would be possible for him to assume full-time care of his siblings in five years time when he hopes to be in a position to support them."

It might be argued therefore that this boy has been given to acts of dishonesty in the past and has a motivation for attacking the credit of his mother. On the other hand I could not fail to be impressed by the number of professional witnesses who had engaged with J and who found him honest, open and believable. These included Ms H the Deputy Unit Manager of the Linden Project, Ms K the Senior Social Worker and Ms McA from the Linden Project. I also got the firm impression that the Guardian ad Litem found him to be an impressive young man.

2. I have read the statements of G and she gave evidence before me. I found her a very unconvincing witness. She exhibited an impulsive and distorted way of thinking together with a propensity to extremities of behaviour not only in her dealings with the social workers but also in her behaviour in court. She regularly displayed excessive anger in relation to the statutory services' involvement in the welfare of her children and demonstrated a profound lack of insight regarding the validity of social services concerns in relation to her child's well-being. She repeatedly accused them of lying in circumstances where I found each of the people that she accused of lying to have been demonstrably honest and forthright exhibiting an all too patient indulgence for her unacceptable behaviour. I have a great

deal of sympathy for G. She has clearly suffered greatly during her developing years which I suspect has had a severe impact on her developing personality. She has been a victim of prolonged domestic violence at the hands of uncaring adults and is clearly not in control of matters that shape her own destiny. Nonetheless, I am bound to say that I found her extremely unreliable as a witness.

I turn now to make my factual conclusions on the outstanding threshold criteria;

1. "The relationship between G and J is troubled and difficult. G has employed inconsistent and harsh discipline and management techniques including verbal, physical and emotional chastisement."

J told Ms K, Senior Social Worker, that he and his sister S were locked in a bedroom with a child's potty and made to stare at a dot on the wall. He specifically adverted to an occasion when his mother grabbed him by the cheek and caused him to bleed. He repeated these allegations to Ms H, the Deputy Unit Manager of the Linden Project. The respondent G steadfastly denied these allegations. A particularly chilling piece of evidence that emerged from J was that the children were locked in the room on the occasions described. The respondent admitted in cross-examination that there was a bolt on the outside of J's door. I found her reason for this bolt to be completely unconvincing. She gave evidence before me that the purpose of the bolt was to prevent one of the younger children gaining access to some television and video equipment. It seemed completely illogical to me that this

would be done only with J's bedroom when similar equipment was in other parts of the house and the fact that it was her own evidence that J and his sister often chose to climb out of an upstairs window to leave the house despite the bedroom door being open.

Whilst I am extremely suspicious as to the presence of this bolt, and whilst I found G's evidence unconvincing, nonetheless I must recognise the burden of proof for such a serious set of allegations as these. Other than witnesses saying that they tended to believe what J said, I could find no independent evidence to corroborate what J and S were saying in the voluminous documentation before me. I wish to make it clear that I am not rejecting what J has said and I recognise that it may well be true. On the other hand I cannot be convinced to the requisite standard of proof on this allegation and accordingly I am not prepared to make a finding that this criterion has been established.

2. J acted as a significant carer for his younger siblings whilst they resided with Mrs P.

I am satisfied that this has been proved and I accept entirely the allegations made by J in this regard. J consistently made the case that he cared for his brothers for long periods and that in particular S would not settle without him when he was admitted to care. There was an abundance of evidence that J participated in escorting S to and from the nursery and A to and from the childminder. Ms H from the Linden Project gave evidence that J had concern "beyond his years" for his siblings and I have no doubt that she

was correct in attributing this to his previous experiences of caring for them. J was far too young to be exhibiting concerns of this kind. I share entirely the conclusion of the Guardian ad Litem when she said at paragraph 8.5;

“J’s primary concern is of Trust permanency plans in relation to his five brothers. He is at times overwhelmed by his fears for his brothers and in particular the prospect of not having any contact in a post accommodation scenario.”

I share the view of Donal Giltinan that J “has carried a burden of responsibility for his mother and his younger siblings that is not appropriate for a boy of his age”. J spoke very clearly to the Guardian ad Litem about routines for his younger children including eating routines, what they wore and how they slept. I have no doubt the Guardian ad Litem is absolutely correct when saying that J had great insight into what the needs of the younger brothers were and this clearly exhibits that he had more intimate knowledge of his younger brothers than one would normally expect for a 14 year old boy.

I found independent evidence to corroborate what he has said from the evidence of the social workers and in particular Ms B. The entry of 6 September 2000 on the contact sheet reads;

“Called in, was very upset feels she cannot cope with children. Is relying heavily on J, does not wish to do this, misses his help a lot now he is at school. Was asking S to keep an eye on E today and knows this is ridiculous, has real difficulty getting children ready to go out.”

An entry on 10 October 2000 records;

“Called to say that she feels she cannot cope with children, is exhausted. J has been staying off school to help her with children. Has to get up at 5.30am. Would like to get more help.”

An entry on 1 December 2000 records;

“G finding it very difficult to cope with children. J has been off school to assist her.”

An entry on 1 February 2001 reads;

“Whenever J arrived S was always calling for him and would not settle without him. Wanted J all the time.”

An entry on 2 March 2001 reads;

“Says she has not had a rest and will not be able to cope without J if he has run off.”

Virtually without exception G denied ever having made such statements. I reject completely her denial of these matters and I accept unequivocally that she did make these admissions.

I am satisfied therefore that this threshold criterion has been established.

3. “J witnessed domestic violence between G and Mr B.”

I am satisfied that J did witness domestic violence between G and Mr B. J told Ms K, Senior Social Worker, that he had seen Mr B violently assaulting G, that J had tried to stop him and on one occasion he was hit with a vodka bottle by Mr B. Ms H, the Linden Project Worker, gave evidence that J had spoken to her on 27 February 2002 about this domestic violence and recalled a particular occasion of lying in bed listening to Mr B at the door, letting him in and taking a beating rather than exposing his mother to this.

He exhibited a great deal of anxiety and concern in Linden about his mother's well-being and confirmed that he suffered significant sleep disturbance. Such was the extent of his upset that the social workers took him to a general practitioner and he was given medication for this. Ms McA, also at the Linden Project, gave similar evidence of conversations with J about his fear and hatred for Mr B. Mr McD, who I found a particularly impressive witness, and is in the employment of Breakaway, gave evidence that J spoke to him on two occasions in relation to witnessing domestic violence. He referred to recurring dreams, flashbacks and strong feelings of guilt, anger and revenge in relation to Mr B's behaviour towards his mother.

I have already indicated that I have a great deal of sympathy for G in this matter. I have no doubt that she was subjected to severe domestic violence in her adult relationships. She emphatically denied to me that she ever was assaulted in the presence of J. I reject her evidence entirely in this regard. I found corroborative evidence of the truth of J's allegations in a contact sheet recording by Mr TT, Social Worker, dated 20 July 2001. This records that G admitted that "Mr B regularly physically assaulted her ... and that J had on occasion seen him assault her". I am also mindful that she initially conceded this criterion. She subsequently told me that what she meant by this concession was that J witnessed Mr B punching his fist off a table. She later refined this to say that this had not happened in the house but that he had seen it through a window. I do not believe for one moment that

she accepted that this amounted to the allegation of domestic violence and I think it was another example of her being untruthful in her evidence to me.

I therefore conclude that this threshold criterion has been established.

4. “G disregarded J’s individual needs to the detriment of his social, emotional, physical and educational welfare.

I have concluded that this criterion has been established to the relevant standard. I therefore accept what J has said in this regard. I have already adverted to the number of instances where G admitted to social workers that J was necessary for help in the house and that he was off school for this purpose. Moreover I also consider that the criteria which she has admitted, for example not alerting the Trust to his circumstances when he left home until 16 January, her inability to exercise parental responsibility in respect of him, her recognition that she was unable to impose appropriate boundaries and provide guidance for him, the requirement that he inappropriately cared for the younger siblings and the witnessing of domestic violence all contributes to the detriment of his emotional and physical welfare. His social welfare was partly disregarded because he was obliged to spend so much time caring for the children. A key part of the evidence however in this regard, particularly in reference to his social, emotional and educational welfare, was the telling evidence of Mr S the Educational Welfare Officer. He produced computer evidence which showed an appalling level of attendance at school for J whilst in the care of G. I am satisfied that G was completely inconsistent in cooperating with the Educational Welfare Officer, and that she

took inadequate steps to ensure J's attendance at school. It is an immeasurable benefit to be a parent but with that comes responsibilities. Such responsibilities involve taking positive steps to ensure a child's attendance at school including taking him to school if necessary, and availing of the benefit of assistance offered by professionals. It certainly is not reflected in keeping a child off school to help with care for the other children as happened in this case. I have no doubt that the appalling attendance at school evidenced by Mr S caused this child to suffer great detriment in terms of educational and social development.

G denied any blame at all in this regard in evidence before me and I regard this as yet another example of her blinkered approach to the responsibility she owed to her child. In conclusion I have no doubt that this final criterion has been proved to the requisite standard.

I turn back now to the Care Order which is sought by the Trust. Whether or not the court does or does not make a Care Order depends upon a two stage process. First, I am satisfied that the threshold criteria for making the Care Order have been satisfied. Secondly I have considered the care plan and I have considered the welfare checklist in Article 3(3) of the 1995 Order and I consider it is proper to make a Care Order having done so. In my judgment this is a proportionate and appropriate response to the need to ensure that the welfare of this child is properly looked after and that his interests are paramount. The child is in agreement with his care plan and has contributed in making the decisions and arrangements. He is placed in Ballee

Adolescent Unit as a bridge for him towards independent living. A number of services to target his particular needs have been identified.

So far as contact is concerned he does not have any form of contact with G and accordingly I consider that the no order principle ought to apply. He has resumed contact with his sister and it is anticipated that these visits will be weekly. The timing and frequency of contact with his other siblings is more complicated given the care plans for them. However I consider once again that the no order principle ought to apply and that the flexibility so necessary to deal with this aspect should be left with the Trust.

I address my final comments to G. I am satisfied that J has suffered significant harm whilst in the care of his mother but equally so I am satisfied that G's own sad history and personality traits have, as the Guardian ad Litem has shrewdly pointed out, inhibited her ability to parent. I do not believe that she has acted maliciously or with intent to harm this child. She is a victim and a prisoner of her own past. Sadly it has occasioned harm to this child. I sincerely hope that the future will witness a reconciliation between J and G. Behind all the tragic events that I have revealed, I think they probably do have a deep affection for each other which hopefully will crystallise in the future and bring about a reconciliation between mother and son.

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J U D G M E N T O F

G I L L E N J
