

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

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IN THE MATTER OF R1  
(CARE ORDER: FREEING WITHOUT PARENTAL CONSENT)

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GILLEN J

[1] 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.

[2] The applicant is a Community Health and Social Services Trust which I do not propose to identify ("the Trust"). R1, the child who is the subject of these proceedings, was born on 9 August 2000. His mother is R and his father is P. The latter has had no authorised contact with this child since \_\_\_\_\_ and has played no part in these proceedings.

[3] The Trust in the first instance make application for a Care Order under Article 50 of the Children (Northern Ireland) Order 1995 (hereinafter called "the 1995 Order") and thereafter an application under Article 18 of the 1987 Order freeing R for adoption without parental consent.

**The Application under Article 50 of the 1995 Order**

[4] The first matter I have to consider here is whether or not the child is suffering or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child, or likely to be given to him if the Order were not made, not being what it would be reasonable to expect a parent to give to him. This is known as the threshold criteria. I have concluded in this case that the threshold criteria has been fulfilled for the following reasons:

1. I am satisfied that Dr McDonald, the Clinical Psychologist who gave evidence before me, is correct in concluding that the culmination of this lady's mid-range borderline learning disability ie her cognitive difficulties and her form of personality disorder deprive her of the necessary reflective capacity and

insight which would allow her to progress so as to enhance her self-protection skills and make her capable to function properly on a day-to-day basis so as to be able to care for her child. She is a markedly dependent and vulnerable lady who has led an anchorless life since 1991 after the death of her mother. She has been subjected to very few positive experiences and in turn has been brutalised within those relationships that she has formed with people such as P. She really has little understanding of the needs of a young child and that absence of insight creates a significant inhibitory factor for the agencies to establish any type of remedial progress to enhance her self-protection skills. He described her having elevated avoidance traits which render her unable to accept therapeutic parameters set down by those wishing to assist her. I must emphasise that it is not purely her cognitive profile which renders her incapable of parenting this child. It is the combination of this with her personality defects which so create her incapacity. Examples of this abound. Ms C, who was her Social Worker up until about September 2001, saw a clear pattern emerging whereby when under close supervision and monitoring, for example when she was at Sydenham House after the birth of her child and at the PACT Unit subsequent to 3 January 2001, she was attentive and positive. Sadly however, when that support was withdrawn, she proved unreceptive to the lessons she had received and therefore any benefit was very short-lived. In the PACT Unit, she often left the child for long periods in the cot unattended and failed to interact with him when there was no staff there. She tended to leave the Unit in the late afternoon until the late evening. Staff formed the view in the PACT establishment that on a one-to-one basis she could care for the child, but without that close supervision, she adopted a passive role and could not put into effect such basic matters as providing the child with warm food or structuring his nap. I will deal subsequently with the domestic violence which has played a major part in this case, but at this stage I note that her complete failure to recognise the need to distance herself from violent partnerships was another example of her inability to garner any lasting benefit from those who were advising her. The same pattern emerged when Ms W, who had specifically been appointed to assist her with parenting in the Women's Aid Hostel in Belfast, gave evidence. She described the chaotic and erratic lifestyle of the mother who exhibited clear hygiene problems, inability to feed the child properly and to demonstrate routines with him. It appeared to Ms W that the mother had difficulty spending time alone with R1. She was endlessly looking for support and when that was not forthcoming the child received a lack of consistent care. She even found it difficult to bring herself to register the child with a GP despite the exhortations of the Health Visitor that it was vital she did so up to November 2001. Ms K, who had been a Women's Aid worker in Belfast when R was there from 18 October 2001, also referred poignantly to the short-lived progress that attempts to teach her would receive. She fails to understand such basic necessities as the child being fed regularly, keeping him secured in a high seat and away from dangerous stairways. As Ms K said, she was "enthusiastic but her ability to retain the information was short-lived".

Ms McC, the Health Visitor, who was also one of the support workers in Women's Aid from 18 October 2001 onwards, recorded how she observed the child being irritable, due to hunger in her opinion, but when it was drawn to the attention of the mother she was slow to react to this and reluctant to accept advice. This witness gave very significant evidence about the weight loss this child suffered on the occasions when the mother took him out of the Hostel for lengthy periods as opposed to the weight gain when the child was being cared for under the supervision of the Women's Aid employees and, for that matter, the weight gain when the child was with foster carers. I have come to the conclusion that there are real dangers to the physical health and welfare of this child which would occasion him significant harm if a Care Order is not made.

2. Her inability to reflect on historical behaviour patterns that have caused her distress are well illustrated in her inability to recognise the dangers of a tempestuous and violent relationship she had with P. Once violence has begun in a relationship such as this, it is likely to be repeated with escalating severity. It causes in persons such as R a sense of shame and powerlessness and an incapacity to escape. It was a jolting experience to read the level of abuse that this woman has tolerated from P and yet recognise that she still felt a need to establish ongoing contact with him. Dr McDonald has indicated that she craves nurturing from others at an exceptionally high level and has an exceptionally high tolerance for abuse. This court does not need the gift of insight to recognise the enormous danger that that holds for this child if he is exposed to the level of domestic violence that has permeated this case. A few examples will suffice:
  - (a) On 12 March 2002, R requested that police attend the home of P. Police observed that she had a small bump to her forehead and a slight cut to head. She alleged that P had beaten her about the head. No formal complaint was made.
  - (b) On 17 April 2002, Constable McC, from Mountpottinger Police, informed the Social Services that on 17 April 2002 R had alleged that P had assaulted her by hurting her arm, cutting her ear and bruising her face. She was brought to the hospital but she did not request any further police involvement stating that her relationship with P was over.
  - (c) On 24 June 2002, R spoke with Mr K, the Social Worker who took over from Ms C, and said she had fallen out of bed and banged her head off a bedside cabinet causing heavy bleeding and a cut above her eye. She subsequently admitted that the injury had been caused by a violent attack on the part of P. She had told the police that in fact she had invited P into her house and the two commenced consuming alcohol. She then alleged that P hit her on the head with a Hoover attachment

causing heavy bleeding and a cut above her right eye. She made a statement requesting no further police action. One of the chilling aspects of this attack was that it was made in the aftermath of her having obtained from the court an ex parte Non-Molestation Order against him. Notwithstanding this Order, she had invited him into her home and this incident had occurred.

- (d) On 2 July 2002, P attacked her on the Woodstock Road and trailed her into his home. She stated this time he threw a knife at her and eventually she managed to escape him.
3. She has regularly re-established contact with him for example on New Year's Eve 2001 and on the occasion of the incident in June 2002, notwithstanding the strong exhortations from the Trust to break off her relationship and her promises to do so. On the former occasion, she had made contact with him despite having told Social Workers a few days earlier that she lived in fear of him and wanted to move to Portadown. She has contacted him by telephone for example in November 2001 at the very time that she was telling Social Workers that the relationship was over. At other times she blames the Social Services for her difficulties with her relationship with P according to Mr K. It is simply inconceivable that this child could be exposed to this kind of behaviour. It was argued on her behalf, and she gave evidence before me, that her relationship with P is now over and that she has not seen him since July. I have concluded that this assertion is not only unreliable, but that even if it was true, which I do not accept, she is prone to develop relationships with someone of a similar bent. I have no doubt that her propensity to engage in violent relationships represents a real and significant risk of harm to this child.
4. I am satisfied that she has been earnestly afforded countless opportunities to engage with professionals and offered advice and guidance. I have no hesitation in concluding that this Trust has patiently indulged her for a very long time. I am satisfied that the Trust Social Workers during the course of 2001 until January 2002 were attempting to follow a policy which might lead to her living independently in the community with R so long as a great deal of support was provided. I believe the evidence of Mr K who in substance said that the hopes of the Trust gradually ebbed as her lack of insight and inability to engage with professionals continued unabated. I find nothing contradictory in their efforts to afford her an opportunity to obtain independent housing (which never occurred) and a diminishing expectation that this would occur. She simply proved unable to engage with the professionals or to accept the help that was given to her, often blaming the Social Services for her plight and failing to understand the nature of the help. She is completely unable to prioritise the child's needs above her own and in doing so has no insight into the consequences of her rejection of the help that is proffered. I endorse entirely the view of the Trust that whilst it was evident

that she did improve when given a high level of support, once that support was removed, the risks of significant harm to this child were enormous. In this context I cannot fail to ignore the failure in her parenting history in relation to her first child, K, who had been adopted in circumstances where she exhibited similar lack of parenting skills. Unhappily I have concluded that R lacks the motivation to address her problems and thus to move forward.

5. Finally, in some measure a defining moment was reached on 25 January 2002. The evidence before me from Mr K was that on the evening of 24 January 2002 a resident from the Women's Aid Hostel in Belfast where the mother was residing had informed staff that R had used excessive force on R1. The allegation further continued that the resident had spoken to R on the afternoon of 24 January 2002 enquiring as to the welfare of the child and R had said "Don't speak to that deaf wee bastard" and then hit R1 with strong force. The allegation was that the attack was unprovoked and excessive. Ms K was the refuge worker in the Women's Aid who gave evidence of first hand knowledge of the allegation before me. Her recollection was that the resident told her that the child had been beaten and that she recognised the severity of the beating. She had made a record that the word "smack" had been used, but her evidence before me was that the word "beating" was appropriate. Her evidence was that she and another colleague then took R into another room and told her about the allegations which she agreed were true. She said she had smacked him. Ms K's recollection was that she nodded when the allegation of excessive force was made. Ms K then relayed the matter to the Social Services, namely to Mr K. He met with R on 25 January and he was adamant that she admitted hitting R1 hard. She said this because everything was on top of her in that the Housing Executive were not obtaining a house for her despite her earnest wish. Mr K indicated to her that the child should be in foster care at this stage to allow her to get on top of her problems, but she refused to agree to this. On that date general concerns in relation to her care of R1 were discussed in addition to the events of 24 January 2002, namely the ongoing concerns in relation to his weight loss, her ability to provide him with basic needs and protection and the emotional impact that her handling was having on R1. On foot of this, R1 was removed from the care of R on 25 January 2002 and placed with foster carers. Police assistance was required to release R1 from R. A case conference was convened on 7 February 2002 and the conclusion was that despite all efforts to enable R to independently parent R1, there had been very little progress. The case conference unanimously recommended that the Trust should secure R1's permanent care apart from R. Issue was taken with Mr K and the other Social Workers about the decision at this stage to curtail the plan to return R into the community with R1. I reject the suggestion that there was anything inconsistent about this alteration in the plan at this stage. I accept fully the gravamen evidence of Mr K and the other witnesses that the Trust was gradually losing confidence in the concept of rehabilitation for this woman.

A high level of ongoing concerns had been present for a substantial period of time notwithstanding the plan to secure rehabilitation, but given the lack of progress it seems to me to have been inevitable that the Trust would eventually call a halt to the process. The incident of 24 January 2002 was but one more significant example of her complete failure to understand the needs of this child and her ability to secure his safety. It also illustrated her complete lack of insight into appropriate parenting. Mr McMahon QC suggested that at this stage the Trust “threw up its head and decided they had had enough”. I consider that to be an unfair criticism of a Trust that had patiently and tirelessly indulged this woman for many months, but now recognise that the quest was fruitless.

[5] Subsequent events have simply served to underline the correctness of that opinion. One might have thought that the removal of her child to foster care would have been such a jolting experience for R that it would have brought some changes in her lifestyle. On the contrary, nothing of moment changed. She continued to have ongoing contact with P, giving both her new address and telephone number to him despite claiming not to have done this. Consequently, the incident of 24 June 2002 occurred. Inevitably further acts of domestic violence occurred. She left the Women’s Aid Hostel in May 2002 and moved to the Woodstock Road. By 24 September 2002 she told Social Workers that she in fact was not residing at Woodstock Place, but was looking for a house in Craigavon. Social Workers simply did not know where she was having extreme difficulty contacting her. I accept their evidence that she simply would not inform them where she lived. Hence, all the indicia of the instability in her life continued unabated. Domestic violence was still a factor, her lifestyle was still chaotic with no ascertainable home within the community, and her co-operation with the Trust was never more than superficial. Even now Mr K, the Social Worker who is in care of her case, does not know where she is living. I have, therefore, come to the conclusion that rehabilitation in her case is simply not viable.

[6] Against this background I have concluded that the threshold criteria has been surmounted by the Trust and I am satisfied that this child is likely to suffer significant harm attributable to the care given to him by his mother if he remains in her care.

[7] I turn then to consider the Care Plan. That Plan is now one of permanency by way of adoption and I have come to the conclusion that the need for security and permanence in this child’s case makes such a Plan wholly appropriate.

[8] Before making any Care Order I must also look at the Welfare Checklist, namely Article 3(3) of the Children Order (Northern Ireland) 1995. I do so against the background of the factual findings I have made:

1. R is clearly too young to express his feelings or wishes.

2. At such a tender age, he needs constant supervision, regular routine with appropriate food, hygiene and a safe environment. These are the very areas where R has been falling down in looking after this child. The incident which precipitated his removal illustrated an excessive use of force which is also another matter that would need to be addressed by this mother. In short, Dr McDonald has concluded that R has a competence level which is severely below that expected for a person in her age group and that has a significant impact on her coping in everyday life. Her failure to avail of guidelines proffered to her are significant in this regard.
3. I am satisfied that the child is now in a caring environment and the likely effect of any change upon him would be detrimental to his wellbeing.
4. He is very young and, therefore, requires particular care.
5. I have already outlined my view that I consider he is at risk of suffering harm for the reasons I have set out in the consideration of the threshold criteria.
6. I am satisfied that the father has opted out from care for this child and has shown no capability of meeting his needs. Despite the assistance offered to R, the facts I have determined in this case persuade me that she is not capable of meeting his needs in the respect set out.
7. I have considered all the other powers open to me and in particular the possibility of making a Supervision Order. I do not consider that this child would be afforded adequate protection in the circumstances outlined unless there is a Care Order made. I have concluded that making a Care Order is better for this child than making no Order at all.

[9] I have also considered the European Convention on Human Rights and in particular Article 8 and the right of the father and mother in this case to respect for private and family life. I have concluded that the legitimate aim of protecting the welfare of this child by means of a Care Order is a proportionate response to his needs.

[10] Before making a Care Order I am obliged to consider arrangements for contact and to invite the parties to comment. I have done that on this instance and I have concluded that the proposals by the Trust for contact are appropriate. I shall return to these later in my judgment.

[11] I now turn to consider the statutory provisions governing the application by the Trust to free this child for adoption as in the Adoption Order (Northern Ireland) 1987 (hereinafter called "the 1987 Order"). Article 9 sets out the duty to promote the welfare of the child as follows:

“In deciding any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall:

(a) Have regard to all the circumstances, full consideration being given to:

(1) The need to be satisfied that adoption or adoption by a particular person or person will be in the best interests of the child; and

(2) The need to safeguard and promote the welfare of the child throughout his childhood; and

(3) The importance of providing the child with a stable and harmonious home; and

(b) So far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them having regard to his age and understanding.”

[12] Article 16 states where relevant:

“(1) An adoption order shall not be made unless –

(a) The child is freed for adoption by virtue of an order made in Northern Ireland under Article 17(1) or 18(1) ... or

(b) In the case of each parent or guardian of the child the court is satisfied that –

(1) He freely and with full understanding of what is involved agrees –

(aa) either generally in respect of the adoption of the child or only in respect of the child by a specified person, and

(ab) either conditionally or subject only to a condition with respect for the religious persuasion in which a child



has to be brought up, to the making of an adoption order; or

(2) His agreement to the making of an adoption order should be dispensed with on the grounds specified in paragraph 2.

(2) The grounds mentioned in the paragraph (1)(b)(ii) are that the parent or guardian –

...

(b) Is withholding his agreement unreasonably.”

**[13]** The freeing of a child for adoption without parental consent is dealt with in Article 18 which in so far as it is relevant is as follows:

“(1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of a child that his agreement to the making of an adoption order should be dispensed with on the grounds specified in Article 16(2), the court shall make an order to declare the child free for adoption

(2) No application shall be made under paragraph (1) unless –

(a) The child is in the care of the adoption agency; and

(b) The child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.”

**[14]** I have been satisfied in this case that the child is in the care of the adoption agency and I have also been satisfied that it is likely the child will be placed for adoption if I make such an order freeing the child for adoption.

**[15]** In either freeing or adoption proceedings, the court has the power to dispense with the parents’ agreement to adoption on one or more of the six specified grounds set out in Article 16(2) of the 1987 Order. In this case the ground relied on by the Trust in each case is that the parent is withholding his or her agreement unreasonably. Dispensing with agreement to adoption involves the court on a two stage process:

(1) Is adoption in the best interests of the child?

- (2) If so is a ground or grounds of dispensation proved on the balance of probabilities.

[16] These two stages are separate and must be considered by the courts in this sequence. The consideration of whether parental consent should be dispensed with must be undertaken and decided at the time when the Freeing for Adoption Order is made. The leading authority on the meaning of the ground and the test that the court should apply is the House of Lords decision in Re W (An Infant) [1971] 2 ER 49. During the course of the leading opinion Lord Hailsham described the test in this way:

“The test is reasonableness and nothing else. It is 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 not 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 must take it into account. It is decisive in those cases where a reasonable parent must so regard it.”

[17] More recent authorities and in particular Re F (Adoption: Freeing Order) [2000] 2 FLR 505 have indicated that the test may be approached by the judge asking himself 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. However the main components of the test of unreasonableness are still those applied in Re W and helpfully set out in Hershman & McFarlane “Children Law in Practice” Section H at paragraph 124 and I shall shortly return to these components when applying the test in this instance.

[18] I have taken into account all the factual findings I have made in this case in considering the duty imposed on me under Article 9 of the 1987 Order. R1 has been in his current foster placement now for a number of months and has settled very well. I have been persuaded by Dr McDonald and the other evidence that R has no real appreciation of the care and needs of a developing child and accordingly I am satisfied that there is no prospect of a safe and successful rehabilitation of this child to the care of his mother. In my opinion she does not have the capacity to protect him or the motivation to prioritise his needs over her desires. I do not believe that long-term foster care is appropriate in this case. This child is now very young and requires all the security and permanence which only an Adoption Order can hold for him. There is no suitable placement within his birth family and only adoption can provide him with the long-term care in a family setting which is so vital to the

development of his welfare throughout his childhood. I am, therefore, of the opinion that adoption would be in his best interests.

[19] I now turn to Article 16 and the principles to which I have already adverted. I shall deal with these in turn:

- (1) I have considered the reasonableness of the parents' refusal to consent at the date of the hearing.
- (2) As I have indicated, I have taken into account all the circumstances of the case. All of these persuade me that the withholding of consent is unreasonable.
- (3) I have recognised that the welfare of the child must be taken into account but it is not the sole or necessarily the paramount criterion.
- (4) I have imposed an objective test. The test is whether a reasonable parent in the position of this parent would withhold consent. As I have indicated I listened carefully to the evidence of R and to the arguments she put forward before me. I remain unconvinced that she has the capability or the motivation to change commensurate with the needs of this child. I am satisfied that given the circumstances that obtained in this case and in particular the parental instability, domestic violence and inability to avail of assistance offered, no reasonable parent could entertain a sense of grievance or injustice at the steps taken by the Trust and no reasonable parent will withhold consent to this freeing application.
- (5) I have imposed a test of reasonableness and nothing else.
- (6) I have been wary not to substitute my own view for that of the reasonable parent. I have considered whether adoption is the right Order for the child and thereafter I have looked at the question of the parents' reasonableness. I have been wary not to rely too heavily upon the views of the Guardian ad Litem, but I have taken them into account in arriving at my decision. The Guardian has recommended that the child be freed for adoption and I agree with this. I find her evidence to be compelling and cogent.
- (7) I have considered whether the proposed parental veto in this case comes within the band of possible reasonable decisions and not simply whether it is right or mistaken. However, I have come to the conclusion that there is no realistic expectation that either parent could undertake the future care of this child given the circumstances that I have outlined. Rehabilitation is inconceivable in my view and the child's security in the future demands that this Order be made.

[20] I am satisfied that both parents have been accorded the opportunity to make the appropriate declaration under Article 17(5) of the 1987 Order.

[21] I have, therefore, come to the conclusion that in all these circumstances it is a proportionate response to the needs of this child to make an Order freeing him for adoption.

[22] So far as contact is concerned, I recognise that a Freeing Order discharges a Care Order. Nonetheless, I still have power to make a Contact Order under the Children's Order (Northern Ireland) 1995. In this case I consider that the flexibility inherent in the No Order Principle is preferable. Suffice to say, however, that I consider that the suggestion by the Trust's witnesses that contact should be gradually reduced to once per week for a two hour visit and then fortnightly and thereafter monthly until an Adoption Order is sought.

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JUDGMENT

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