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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF O AND S
(RESIDENCE ORDER: CONTACT: IMPLACABLE HOSTILITY)

GILLEN J

[1] This is a poignant and unhappy case concerning two children – O a girl aged 8 and S a boy aged 5 – who have become involved in an intractable contact dispute. Currently there are before the court applications by the non-residential father for a residence order and by the mother for a reduction in contact. The pattern is now wearily familiar. It is a sad but telling commentary on this case that since the mother (L) and the father (N) first engaged the court in a contested residence order by the mother on 19 January 1999, over the ensuing years I am told by counsel that there have been approximately 70 court appearances for directions and court orders in all of the family jurisdictions, literally hundreds of pages of statements made by the parties, the engagement of a number of medical experts, social workers and an expenditure of many thousands of pounds of public money in an attempt to resolve this case. A recitation of every court appearance over the last 6 years would not contribute to an understanding of this case, but it is important to highlight some of the steps along this 6 year odyssey;

(a) L and N were married in October 1997. It would appear that both children were born during periods of difficulty within their relationship. The couple have now been separated for several years and the courts have been treated to a long history of acrimonious dealings between them in connection with contact arrangements between N and the children, who have resided at all material times with L.

(b) The first court appearance would appear to have been in the Family Proceedings Court at Belfast on 11 March 1999. In April 1999 the first of numerous interim contact arrangements were agreed between the parties

permitting N to have direct contact with his children. Thereafter on 11 March 1999 a resident magistrate made an specific steps order that on the birth of S, the baby was to be known by the surname of H. Notwithstanding that L proceeded to register the child under her maiden name. On 31 March 2000 the resident magistrate made an order that the child was to be known by the name of H. N appealed that order to the family care centre but the order was affirmed by the county court judge.

(c) In March 2000 it was agreed between the parties that L would have residence of both children and N would have contact with both children every other weekend.

(d) By November 30 2000 proceedings were yet again brought before the court alleging breaches of the contact agreement by the mother L. It is the father respondent's case that the mother admitted on that occasion that she had been in breach of the contact orders on a number of occasions and the resident magistrate conditionally discharged her for 12 months on foot of these breaches. This seemed to trigger thereafter an application by the father N for a sole residence order which has been the subject of a number of subsequent applications by him. A residence and contact application were transferred from the Family Proceedings court to the Family Care centre and then against to the High Court for determination. The all too familiar pattern emerges again. The case was contested for 2 days culminating in another agreement with contact orders for the father to see the children. Mediation was proposed but sadly that proved of no avail.

[2] The case again came up for hearing before this court on 9 September 2002. Extensive time was allowed for negotiations and once again an agreement for contact was arrived at. Subsequently, in the face of further allegations of breach, a contact order was made with a penal notice attached on 21 November 2002. On 9 December 2002 a further application was lodged by the mother seeking an end to contact alleging that O said that S had been hit in the face by the father. That application was dismissed.

[3] The Official Solicitor thereafter was appointed to represent the children in this case and has made a very helpful contribution to the overall case culminating in Ms McGaghey's appearance in this case today. The Official Solicitor has therefore been involved in this case now for well in excess of 2 years. In January 2003, at the request of the Official Solicitor, Dr Fionnuala Leddy, a child and adolescent psychiatrist, was introduced into this case to assess the children for the purposes of assisting the court with a report. With various interruptions the court heard evidence on the issues during April and May 2003 during the course of which Dr Leddy gave evidence. On 30 May 2003, I gave a written judgment in the case (unreported, GILF3940, 30 May 2003) refusing the residence application by N but making a contact order in specific detailed terms covering various possible circumstances including the

summer holidays, school holiday times, Easter holidays, Christmas holidays, bank holidays etc so that no party was in any doubt as to when L was to afford direct contact to N. In the course of that judgment I said:

> "If (L) continues to fail to promote their (ie O and S) emotional and behavioural development as she should, frustrating the need for these children to identify with both parents, and persists in investing N with threatening characteristics in order to undermine his position as a role model, a court is likely to conclude that it is implausible for the children to continue to reside with her."

I have no doubt therefore that at that court hearing, and with the written judgment that I gave, L was well aware that this court was contemplating a transfer of residence to N unless she ceased attempts to frustrate the court orders and deprive him of contact.

[4] Typically that judgment was to no avail in resolving the contact difficulties. By December 2003 L was making allegations, this time against the paternal grandmother that she had slapped O. Attempts to re-arrange contact at the Christmas period again met with failure to agree. The matter came before Master Hall who directed that contact was to take place and that the paternal grandmother (Y) could attend. N alleges that L refused to permit contact if Y was present and that for a while contact took place without the grandmother being there. L alleges that an official complaint was made to the police who investigated the matter but the Director of Public Prosecutions directed no prosecution in the matter. The pattern of contact breakdown continued. A cursory glance at the voluminous correspondence that was put before this court revealed numerous objections put forward by L to comply with the order that I had made. Once again family mediation was suggested but L was reluctant to engage. Needless to say the matter was again referred back to the court. At the request of the court a social work report was prepared on behalf of a Health and Social Services Trust and a report from Mr McC, social worker, was presented to the court in September 2004. Significantly that report includes the following paragraph;

> "(L) feels that, although the court order is quite specific, she was not doing anything wrong by contravening the conditions of the order as O does not want to go and she would like her to have the opportunity to say so herself. I do feel that O should not be put under this pressure."

The social worker made a number of recommendations to the court including the following;

> "(i) That a change of residence, bearing mind that J (a half sibling) of S and O is an integral part of their family life, would be too traumatic for these children but L needs to realise that, for the children's' emotional well being, contact with N and his extended family needs to be a positive integral part of their lives.
>
> (ii) That the alternate weekend, bank holiday and main school holiday contacts remain in place with N picking up the children from school and leaving them back to school. This will prevent further confrontation and alleviating the resultant pressure upon O in particular as well as allowing N direct involvement in their education.
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> (iii) That N in order to promote continuity should be allowed to have contact with the children between visits, if not a Friday sleep-over as requested, then at least regular telephone contact."

[4] Mr McC's report contained a refrain which has been picked up and echoed throughout this case. The previous year in the course of a report in March 2003 for the hearing where I determined the residence and contact order, Dr Leddy had recorded that O would suffer harm if her primary residence was changed from her mother's home to her father's home. However L had shown that she was not able to support contact between the children and their father and that this caused emotional distress and harm to O and S. Dr Leddy went on to state at that time that L was unable to provide this important aspect of O and S's emotional needs and she concluded that report by recommending that O and S should continue to reside with the mother and have contact with their father. She recommended that social services were to become actively involved in an attempt to assist N in providing for the children's emotional needs. Dr Leddy was yet again engaged in the quest for a solution in November 2004 arising out of the problem of the allegations concerning the paternal grandmother. Extracts from Dr Leddy's report of November 2004 include the following;

> "3.01 – the statements of L, and the statement and letter of N, indicate that there have been some improvements over the past year, with both children attending for contact at a much higher frequency than they would have done in the past. Difficulties have continued to arise, perhaps the most significant of these being O's refusal to see her paternal

grandmother. Reports indicate that L does continue to disrupt contact arrangements and ignore agreements."

5.01 – L continues to elicit and encourage negative stories from O in relation to N and has extended family. This remains a cause for concern.

5.02 – O has a very strong desire to please her mother. Unfortunately this is all too likely to result in O misinterpreting or exaggerating events, which might then reflect badly upon contact with her paternal side of the family.

5.03…however I believe that if L supported the contact fully O would be very happy with the arrangements her father makes including contact with his extended family. Rather than this however and despite her assertions that she recognises the importance of N to the children, L makes quite irrelevant complaints, which have a disruptive effect upon contact.

6.02 – L states that she does now appreciate the positive contribution that N makes to O and S's lives; it may be that she has begun to do so, but this has not yet impacted sufficiently upon her behaviour in dealing with her children's' relationships with their father. L should try to grasp the fact that it is she who is putting O under pressure in respect of contact, by presenting O with choices, by making O feel bad about contact, by producing an environment in which O feels she must pick which parent to side.

6.05 – N has shown himself to have good parenting skills and has consistently shown an interest in his children. He is as aware as can be expected of his children's' needs and he should be allowed to plan his allocated contact with his children as he sees fit. L should not attempt to define who N can include during contact. N is capable of determining this himself. L should leave that part of the children's lives to N and the children and should not involve herself in conversations with O as to who will be or who has been present during contact."

In that report Dr Leddy had set out detailed and specific steps that L was to adopt in order to fortify appropriate contact between father and children and which in my view should have been simple and easy for her to follow.

[5] Yet again all the endeavours of the Official Solicitor, Dr Leddy and the court have been to no avail. Difficulties continued, a fresh residence order application is now before the court by the father and the mother has a fresh application to vary the terms of the contact. In December 2004 an unhappy incident occurred at the home of L. Each of them put enormously detailed statements in about this incident. The gravamen of L's case was than N assaulted her at the door of the house when she had indicated that neither O nor S wished to avail of the contact. N admitted approaching the house contrary to the usual arrangement of waiting in the car when the children did not appear. I heard both of them given evidence before me as to their respective accounts of this incident. Dr Leddy has also interviewed the children concerning it. I was satisfied that L exaggerated the incident enormously and had deliberately telephoned the police in order to heighten the significance of the event. Equally so, N was foolish to have approached the house in breach of the normal arrangements. I believe that there was an exchange at the door at which N may well have resisted being pushed outside by L although when one considers the physical size of N compared to the petite size of L it is clear that he could not have resisted to any great extent. That physical exchange between the parties may well have happened when N had the car keys in his hand and the children have adopted the mother's version that N hit her on the arm with his car keys. L instituted a non-molestation order application which was resolved and withdrawn when N agreed not to approach the house in the future.

[6] The end result of this has been that N has not seen the children since December 2004 and has only spoken to them on two occasions by way of a telephone call to thank him for a present that was given at Easter. I believe that this was the aim of L namely to bring about a cessation of contact save at the most perfunctory level and she believes she has achieved her goal.

[7] A witness was called on behalf of N at this hearing who had been a former boyfriend of L and the father of the child J born 23 August 2003. He said that he and L had co-habited from late December 2002 until March 2003, the relationship ending early in April 2003 before J's birth. In the course of a statement he said;

> "During the last few weeks of our relationship she had become more and more blatant about breaking court orders. She believed that the court had no power over her and she mocked the judge and …….. the legal representatives in vulgar terms and laughed

> at them. She said that she was giving N the run-around".

I watched this witness carefully and whilst I recognised that he might have had an axe to grind in the wake of the break up of his relationship with L, nonetheless I believe the general thrust of what he was saying and in particular the paragraph I have quoted, chimes with my own perception of how L perceives the role of the legal system in the context of contact.

[8] In a final attempt to resolve this issue the court and the parties again availed of the services of Dr Leddy. She prepared her report and gave evidence before me.

[9] In the course of that report dated 16 March 2005, she made, inter alia, the following points;

> "4.01 S and O are now suppressing warm positive memories of their father. They have decided upon a story in which their father is all bad, and their mother is all good. The fact that their father is effectively cut out of their lives at present, means that they are not exposed to the balanced view that they would have if they were meeting him in contact. They are sacrificing their relationship with their good father, with all the benefits that this would incur, for the sake of preserving the primary attachment relationship. This is adaptive; to them it seems to be the safest course. The job of the primary attachment figure, the mother, in this situation is to provide reassurance, and to promote healthy emotional development. Instead (L) has seen the children develop a slanted view of their father as toxic, dangerous and as a threat. She promotes negative descriptions although these are neither accurate nor in their best interests.
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> 3…I do not believe that the children have been coaxed in the sense that it is unlikely that they have been repeatedly rehearsed in telling lies. It is my opinion, however, that they are continually exposed to a negative view of their father, to the undermining of their relationship with him and to the general attitude that the father is not an important figure. All of this leads them to the conclusion that life would be much easier if their father were not in their lives.
>
> 4…Ways Forward

(L) is causing harm to her children by failing to support their relationship with their father, and by allowing them to develop a distorted view of his motivations and of his feelings for them. She is not assisting them as they attempt to understand their emotional world, indeed encouraging misinterpretation of events. Living with (L) means that the children must choose her and reject their father. Having no contact with (N), leaves them even more exposed to (L's) skewed beliefs about him. (L) has disrupted the development of the children, causing stress, anxiety, problems with identity and moral development. She is not thinking clearly and effectively about the needs of her children. N would offer a home to his children, and stated that he would encourage contact between the children and their mother. However, if the children were to move to live with N, they would grieve for their mother. The children are still highly dependant upon their mother. Their beliefs and perceptions about their father are entwined with her. N is a good father, and would be likely to understand that grief, and to assist them in dealing with it, but the amount of distress and disturbance around each contact visit with their mother would be tremendous, heart rendering and overwhelming. The impact would be such that the children would experience difficulty in concentrating, sleeping and socialising. The amount of work required to support the move would be enormous and indeed contact with the mother would probably have to be suspended if such a move were to be contemplated. It could then be anticipated that adolescence would bring with it intense rebellion, and acting out behaviour which would be extremely challenging to deal with….when they are older they may be more free to reflect upon their mother. They may indeed rebel against her and express anger over her behaviour and become extremely difficult for her to manage. They may eventually reject her because of her attitude towards their father; or they may continue in adult life to experience difficulty in managing relationships and integrating conflicting views and different facets of personality. I believe that the best course at present is that the father should keep the door open emotionally through maintaining

> indirect contact. Family centre work is unlikely to succeed because L's influence is so powerful and so negative. Moving the children from their father to their mother is likely to do more harm than good. Remaining with L means that O and S will continue to suffer, but this will appear to be the least worst option."

When she appeared before me to give evidence Dr Leddy had made an alteration to her view. In essence she made the following points and added another option to the situation previously postulated by her.

(i) Despite what L has said, she cannot support or promote contact with the father. She finds it threatening and she wishes for there to be no contact between the children and their father.

(ii) Whilst the mother is able to provide for many of their needs, it would be valuable now to conduct an exercise to assess her overall parenting ability.

(iii) It is necessary to weigh the risk of upsetting the children further by transferring the residence to their father against the risk of exposing them to further negative views and depriving them of contact with their father. These circumstances need further investigation of the parenting skills of the mother and an attempt to ascertain if she is willing to change. Without support to her, there is little chance of her changing. Looking back on the contact over the years Dr Leddy felt it was remarkable how well N had managed it in face of the evident opposition of L. He has demonstrated an ability to put the children at their ease when he is with them and despite the relatively limited nature of the contact he has been permitted, he has exhibited skills when with them.

(iv) If residence was now transferred, even temporarily, whilst the children would suffer, history does reveal that they do settle with their father and this option of a temporary change of residence could prove beneficial. Dr Leddy had spoken to Dr Sturgner an English psychologist concerning 4 cases in England where transfer of residence had successfully occurred as a result of court orders and this encouraged her in the view that she was now expressing. If the children were transferred, and if there was support for it by mother and father with the involvement of social services and the children realised that this had been a decision taken by the court for their own benefit, there was a real chance that resolution of this issue could occur. Investigations of the mother could proceed during this time with perhaps the benefit of professional help to her and the father would be afforded an opportunity to rebuild a relationship with them. By repeated assurances to them, it could be explained to the children that this move was to help their mother understand the need for the children to see both mother and father. It

would be conveyed to them that mother was still there, still loved them and would be seeing them albeit that perhaps contact should be withdrawn for the initial 2-3 weeks. Dr Leddy recorded that children regularly spend such periods away from one parent on holiday with the non-resident parent. Hopefully in this case it is going to be a temporary arrangement and the chances of success would be increased if all other activities of the children remained as before.

(vi) Dr Leddy explained her introduction of this option on the basis that this possibility had occurred to her after some anxious thought. She was concerned that her earlier suggestion was tantamount to giving up and in that hopeless state she has now considered the alternative option. When the Official Solicitor had asked her to consider the possibility of the court initiating an investigation under Article 56 of the Children Order (Northern Ireland) 1995, Dr Leddy had felt that L would probably not co-operate and further delay would simply be brought about. Therefore the idea of a change of temporary residence became a viable option. She was satisfied that the children would feel safe with their father once they were with him because they know him and in the past have felt safe with him. It would be necessary for some independent person to speak to them, explain to them the basis of the change and emphasise the importance of their father in their lives.

[9] It was put to Dr Leddy by Ms Robinson on behalf of the mother that an alternative was that in the short term, during the course of an Article 56 enquiry, each weekend would be spent with their father. Dr Leddy's reaction was that if L was supportive of contact this would be a solution but to date L had never proved able to be supportive of contact in this way and more radical changes were now required. It is Dr Leddy's hope that after a period of perhaps 4 weeks, there would be evidence of change and co-operation on the part of L to enable the new relationships to develop and eventually lead to the return of the children to L with adequate and appropriate contact for N.

[10] The applicant N then gave evidence me relying on previous statements he had made. He indicated that he was always prepared to be guided by what was in the child's best interests, Dr Leddy and the social workers. He indicated that his employer was aware of the problems and was prepared to be co-operative with him. To that end it was his intention to give up work for 4 weeks if the children were transferred to him. His mother and father, who are present in Northern Ireland at the moment, would come from England and say with him to render him assistance. He emphasised that since he lived within 2/3 miles of L, he would be able to ensure that the children follow precisely the same pattern in terms of school, activities etc as now exist. He emphasised that the had not seen the children since 28 December 2004 and has had no contact apart from 2 brief telephone calls after he had sent some gifts. If the period of residence was longer than 4 weeks, he did have the

option of working largely from home and his parents re-locating to assist him. I found this man a plausible and convincing witness.

[11] L then gave evidence before me. She indicated that she had been completely taken by surprise by Dr Leddy's views and that she was strongly opposed to them. She asserted that the views of the children were nothing to do with her, that they would be devastated if they were taken away from her, that she could not live without them, and that she did not understand why anyone would want to do this. In her view contact had been going perfectly well until December 2004 when N had assaulted her. She claimed that she had never been to this point before where the experts said she was causing significant harm and she felt that she carries a very small percentage of blame for the current position. She rejected the suggestion of Ms McGaughey on behalf of the Official Solicitor that throughout the period of dispute she had been attempting to dictate the terms of contact eg not permitting the presence of the grandmother, not permitting letters when she wanted to, questioning the children about the nature of contact and encouraging complaints etc. I pause to observe that I found her disingenuous in her assertions. I have not the slightest doubt that her aim has been to frustrate appropriate contact and the building of a proper relationship between father and daughters. I am equally satisfied that her determination knows few boundaries and in order to achieve her object she is quite prepared to ignore the assertions of experts that the children are being significantly damaged and wherever possible to flaunt and ignore court orders.

Principles of governing cases of intractable contact disputes

(i) Cases of this kind fuel the current public perception that the court system is at times failing both parents and children in the resolution of contact disputes. In Re D (2004) 1 FLR 1226 Munby J, in the course of a case which had involved a 5 year court battle involving 43 hearings and 16 different judges in order to resolve contact which was being denied by the mother, said as follows;

> "The melancholy truth is that this case illustrates all too uncomfortably the failings of the system. There is much wrong with our system and the time has come for us to recognise that fact and to face up to it honestly. If we do not we risk forfeiting public confidence. The newspapers – and I mean newspapers generally, for this is a theme taken up with increasing emphasis by all sectors of the press – make uncomfortable reading for us all. They suggest that confidence is already ebbing away….

> Responsible voices are raised in condemnation of our system. We need to take note. We need to act and we need to act now."

This echoed views which have been simmering in our courts for some time. Bracewell J in a subsequent case V v V (Contact: Implacable Hostility) [2004] 2 FLR 851 expressed similar views. In that case a father was ultimately awarded residence to his children after 3 years of court proceedings involving 17 court appearances and numerous different judges despite a direction that the case should be reserved to a particular judge. The judge stated;

> "This is neither a unique nor even unusual case to come before the court. Unfortunately the courts at all levels are well accustomed to intractable contact disputes which drag on for years which little or anything to show for the outcome except numerous court hearings, misery for the parents, who become more entrenched in their positions, wasted court resources, and above all serious emotional damage to the children. These disputes are expensive, and most of them are funded by public finances. They take up a disproportionate amount of time in court, thereby depriving other cases of timely hearings. Litigation in respect of residence and/or contact is not only de-stabling for parents and children who become a battleground to be fought over at any cost, but it is a process which progressively results in entrenched attitudes as if engaged in a war of attrition. Frequently, as in the current case, it is a mother caring for the child who is against making contact work…. There is a perception among part of the media, and some members of the parents' groups, as well as members of the public, that the courts rubber-stamp cases awarding care of children to mothers almost automatically and marginalise fathers from the lives of their children. There is also a perception that courts allow parents with care to flout court orders for contact and permit the parent with residence to exclude the non-residential parent from the lives of the children so that the other parent is worn down by years of futile litigation which achieves nothing and only ends when that parent gives up the struggle, or the children are old enough to make their own decisions, assuming that they had not been brainwashed in the meantime."

I regret to say that this present case is a classic example of such an instance and is illustrative of a wearily familiar pattern in all our courts. Resolution of this matter has been a festering sore since 1999 and has proved incapable of resolution despite the efforts of several courts, a number of medical experts, social workers and other professionals. The court system has to date been reduced to a role of useful impotence. Usefully able to crystallise the problem but impotent to resolve it.

(ii) Currently in Northern Ireland, remedies available to judges or magistrates in intractable contact disputes are very limited. First there is a possibility of imprisonment or fine. This is often a blunt instrument which is likely to cause damage to family life without necessarily achieving the desired objective of re-instating contact. Secondly there is a possibility of abandoning contact entirely for the non-residential parent. This is an approach which not only is liable to bring the law into disrepute but is an admission of failure and inability to protect significant damage accruing to children.

(iii) The third possibility is a transfer of residence to the other parent.

[12] Legislation is pending in England and Wales which will invest the court with further powers to refer a defaulting parent in contact/residence cases to a variety of resources including information meetings, meetings with counsellors, parenting programmes and to attach conditions to orders which may require attendance at such classes or programmes. Further remedies will include imposition of community based orders with programmes specifically designed to address a default in contact and the award of financial compensation from one parent to another. Such legislation, if implemented, would have been of an inestimable help in this case. The benefit of a family assistance order has already been attempted in this case but to no avail and that failure illustrates the need for these further remedies here in Northern Ireland.

[13] In a number of cases recently, in England and Wales, the option of a transfer of residence from the non-residential parent to the residential parent has been effected in order to further protect the children. In Re M (Intractable Contact Dispute: Interim Care Order) [2003] 2 FLR 636 Wall J (as he then was), in a case where a mother had disobeyed contact orders, ordered an investigation under Section 37 of the Children Act1989 (comparable to Article 56 of the Children Order (Northern Ireland) 1995) resulting in care proceedings being issued by the local authority, the removal of the children from their mother under interim care orders and the subsequent making of a residence order in favour of the father and a two year supervision order to the local authority.

[14] It may therefore be of assistance if I set out the relevant parts of Article 56 of the 1995 Order;

"56 – (1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or a supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child's circumstances.

(2) Where the court gives a direction under this Article the authority concerned shall, when undertaking the investigation, consider whether it should -

(a) apply for a care or supervision order with respect to the child;
(b) provide services or assistance for the child or his family; or
(c) take any other action with respect to the child.

(3) Where an authority undertakes an investigation under this article, and decides not to apply for a care or supervision order with respect to the child concerned, the authority shall inform the court of -

(a) its reasons for so deciding;
(b) any service or assistance which the authority has provided, or intends to provide, for the child and his family; and
(c) any other action which the authority has taken, or proposes to take, with respect to the child.

(4) The information shall be given to the court before the end of the period of 8 weeks beginning with the date of the direction, unless the court otherwise directs.

(5) The authority named in a direction under paragraph (1) must be -

(a) the authority in whose area the child is ordinarily resident…

(6) If, on the conclusion of any investigation or review under this article, the authority decides not to

apply for a care or a supervision order with respect to the child -

(a) the authority shall consider whether it would be appropriate to review the case at a later date; and
(b) if the authority decides that it would be, the authority shall determine the date on which that review is to begin.

[15] I consider it timely to record the views expressed by Wall J in Re M at para. 8 et seq:

"First, of course, section 37, … can only be used if the facts of the case meet its criteria. It must appear to the court that it may be appropriate for a care or supervision order to be made with respect to the children in question. In other words, at the very lowest, the court must be satisfied that there are reasonable grounds for believing that the circumstances with respect to the children met the threshold criterion under section 31(2) – that is to say that the children are suffering or are likely to suffer significant harm. Section 37 is, accordingly, a well-focused tool to be used only when the case fits its criteria.

(9) It is sometimes forgotten that the court has the power to make an interim care order when it gives a direction under section 37… in these circumstances a children's guardian must be appointed under section 41(1) unless the court is satisfied that it is not necessary to do so in order to safeguard the children's' interest

…

(11) Although this case is but an example, it does seem to me that it is possible to extract some general considerations of wider application from it. I put these forward tentatively, as each case is different, and what fits one may not fit another. Some points are self evident, but need stating nonetheless. I will state them in short form and expand on them where necessary;

(i) The court must be satisfied that the criteria for ordering a s37 report are satisfied,

(ii) The action contemplated (removal of the children from the residential parent's care either for an assessment or with a view to a change of residence) must be in the children's best interest. The consequences of the removal must be thought through. There must, in short, be a coherent care plan of which temporary or permanent removal from the residential parent's care is an integral part.

(iii) Where, as here, the allegation is that the children have been sexually or physically abused by the absent parent, the court must have held the hearing in which those issues are addressed and findings made about them.

(iv) The court must spell out it reasons for making the s37 order very carefully and a transcript (or a very full note of the judgment) should be made available to the local authority at the earliest opportunity.

(v) The children should be separately represented.

(vi) Preferably, the s37 report should be supported by professional or expert advice.

(vii) Judicial continuity is essential. Apart from saving time and resources, this means that applications can be made to the judge at short notice and he or she can keep tight control over it.

(viii) Undue delay must be avoided.

(ix) The case may be kept under review (as in the instant case) if the decision of the court is to move the children from one parent to another."

[16] In all of this it is important to recognise the obligations on the court under the European Convention on Human Rights and Fundamental Freedoms ("the Convention"). In the first place there is the right of the child or children to family life under Article 8. Secondly Hansen v Turkey, App.No.36141/97 September 23, 2003 (judgment) is one of a number of authorities which makes it clear that there is an obligation under Article 8 to ensure that children are given a real opportunity to develop a relationship with their father in a calm environment so that they can freely express their feelings for each other without any outside pressure. Public authorities, and this includes courts, must take steps or measures, including realistic coercive measures, against those who fail to comply with orders to ensure that such

rights are protected. Thirdly of course there are the rights of the mother to a family life.

Conclusions

[17] In considering these applications by N for a residence order and by L to alter contact by way of reduction in light of recent developments, I have come to the following conclusions;

(i) I am satisfied that the mother in this case has shown an inability to put the children's interests first. Her implacable opposition to the children having meaningful contact with their father has occasioned to date significant harm to them. She has caused them emotional abuse by allowing them to develop a distorted view of his motivations and of his feelings for them. I am satisfied that she has disrupted the development of the children, causing stress, anxiety, problems with identity and moral development. I was singularly impressed by the evidence of Dr Leddy on these matters and I accept her assessment. I am satisfied that her views provide a sure foundation upon which I can rely with confidence. Unless there is a major change in this mother's attitude, I consider that her continued care of the children is incompatible with them enjoying and benefiting from a normal relationship with their father and that such continued circumstance would merit in all likelihood a transfer of residence to the father. In so far as the mother has asserted the contrary to me on a number of occasions, I completely disbelieve her. I have watched her carefully giving evidence before me and I am satisfied that she is disingenuous, determined and manipulative. Her evidence failed to convince me and became a testament to her lack of candour throughout these proceedings.

(ii) It is necessary to balance the value of the children having a normal relationship with both parents against the risks involved in transferring residence to the father with the consequent trauma that might be occasioned to the children. The mother has brought about a situation whereby the children, still highly dependant upon her, deal with her confusion by shutting their father out. On the face of matters, this mother's care of these children is good except in relation to contact with the father. A change of residence would involve emotional and physical upheaval for the children. In her report of March 2005, Dr Leddy echoed my own views when she said that the impact of moving these children away from their mother would be such that the children would experience difficulty in concentrating, sleeping and socialising. She went on to add;

> "The amount of work required to support the move would be enormous and indeed contact with the

> mother would probably have to be suspended if such a move were to be contemplated. It could then be anticipated that adolescence would bring with it an intense rebellion and acting out behaviour, which would be extremely challenging to deal with."

On the other hand before me she ventured the possibility of a temporary total change of residence which she felt the children eventually would come to terms with as they had done in the past when staying with their father. I have no doubt that there may well be circumstances in which a parents' denial of contact could justify a transfer of residency of the parent. It may be that there is a palpable sense of inevitably about this case and that this mother's abject refusal to change and strive to undo the damage that has been caused to these children will result in that occurring. The question is whether the influence of this parent upon the children's situation is irremediably malign. I have come to the conclusion however that that moment may not yet have been reached pending an investigation by the appropriate Trust into the circumstances of her parenting skills and the current circumstances of these children. The children's current opposition to their father has to be take into account but cannot be determinative of the outcome partly because of their young age and partly because their views have been tainted by the influence of their mother. Nonetheless I am prepared to afford one final opportunity for a review of this case in the hands of the Trust and in the meantime far from reducing contact, I believe contact should be increased from that set out in my order of May 2003.

[iii] In my judgment the terms of Article 56 are directly applicable to this case. I am in no doubt at all that it may be appropriate for a care or supervision order to be made. In my judgment these children are suffering significant harm and I would have no hesitation in finding that the threshold criteria under the Children Order (Northern Ireland) 1995 are met. I do not have any power to compel the Trust to institute proceedings, nor would I seek in any way to interfere with the professional exercise of the Trust's investigative functions under Article 56. The responsibilities of the Trust if it decides not to institute proceedings are set out clearly in Article 56. However I can properly say that I am dealing with 2 children who are suffering what I think is avoidable significant harm and for whom the threshold criteria are met. My other reasons for invoking the procedure under Article 56 of the 1995 order are as follows;

(a) This is a case where there needs to be a careful plan for these children. I require the assistance of the Trust and in particular the facilities which it can offer these children and this mother. Whilst I cannot direct the Trust to undertake any particular steps in the investigation of the children's circumstances, that investigation should include perhaps Dr Leddy's suggestion that this mother's parenting skills require to be assessed and she

be introduced to the possibility of professional help and assistance to challenge her present thinking. This case is a standing testament to the possible benefits of the new powers to be given to courts in the forthcoming Children and Adoption Act in England and Wales. I hope that it will not be too long before Northern Ireland courts are similarly empowered. In the meantime however this court must work within the confines of the existing law. Whilst it is a matter for the Trust whether or not they decide to institute proceedings having read the papers (including this judgment and the transcript of the evidence of Dr Leddy which she gave on 19 April 2005) and carried out their investigation, I think I can, however, properly say that if that is the local Trust's decision to implement public law proceedings, I would welcome it. It would, it seems to me, substantially widen both the welfare and the implementation options open to the children and to the court and could prove to be very much in their best interests. I am satisfied that the Trust will carry out a competent, professional investigation and give me sound advice in the interests of the children. However if the Trust does intervene in this case it is of absolutely crucial importance that the children should have an identified social worker or social work assistant who would remain the same and with whom they could all form a long term relationship so as to ensure that any improvements in this case are neither perfunctory nor ephemeral. The children should be told that this was the person in whom they could confide. I also note that Dr Leddy has indicated that she is prepared to play some role in speaking to the children and this might be availed of. It should also be observed that whilst I am neither making an interim care order nor appointing a guardian ad litem in this case, I am not doing so because of the input from and presence of the Official Solicitor in this case. I have found the presence of both the Official Solicitor and her counsel Ms McGaghey to have been invaluable in this matter to date and the Trust should be aware of the need to liaise with that office. I direct a copy of this judgment, together with the papers in the case and the transcript of Dr Leddy be released to the Trust by the Official Solicitor as soon as practicable.

(b) I direct that the period of investigation shall be no more than 8 weeks although in my opinion given the comprehensive set of papers in this case, it may be possible to perform it rather sooner than that. I will therefore give the Trust until 15 June 2005 to complete this task in the hope that they may complete it sooner with a plan for the children which will meet current difficulties.

[18] I have anxiously considered whether or not I should avail of the new option proposed (although I emphasise not chosen) by Dr Leddy that in the interim for a period of 4 weeks or more there be transfer of residence to the father with no contact to the mother in order to restructure the relationship between father and children and afford mother the opportunity to commence a change in her thinking on the whole matter. I do see the strength of that option but I have come to the conclusion that whilst ultimately this may be

the final solution to this problem if this mother does not reconsider her position and show tangible evidence of change, complete transference of residence may be premature at this stage. Given that the father has not had contact with these children since 28 December 2004 together with the dependency of these children on their mother, I have formed the view that complete transference at this stage might prove too dramatic and possibly traumatic for the children. Wherever possible, changes in children's lives should be as seamless as possible. Accordingly I intend to suspend the contact order which this court made on 30 May 2003 and, until 22 June 2005, substitute an order under Article 8 of the 1995 Order whereby these children will visit and stay with the father between each Friday and the following Monday. I believe that by ensuring that the father now has contact with them every weekend for the next 8/9 weeks that will in itself afford him a opportunity to restructure his relationship with them and it would also provide a touchstone as to whether this mother is prepared to co-operate. I direct that the Official Solicitor shall inform the school of the new arrangements and I am hopeful that a social worker, who was present at court during the course of this hearing, will assist in a trauma free transfer when the children are picked up at school commencing this Friday. That new contact order shall therefore operate until 22 June 2005 when this case will next be before me. I conclude by addressing my final remarks to the mother in this case. She must co-operate with a Trust investigation. It may be that the dye has now been cast in this case and that a conclusion may yet be reached that transfer of residence to the father of these children must occur. However, it is not too late even now, for her to reconsider her position and recognise the harm she has caused and continues to cause the children. Neither the court nor the Trust will be fooled by protestations which are manifestly false or insincere or which are not backed up by action on her part. I have no absolutely no doubt that she has it within her power to ameliorate some of the damage which has been caused to these children and to contribute to an effective and meaningful relationship between father and children. If she fails to do this, either in the very short term or in the longer term, then not only may the consequences for these children be dire but the court will be left with no option other than to order an immediate transference of residence. I intend to grant liberty to all parties, including the Trust and the Official Solicitor to apply to me on short notice at any time during the ensuing 9 weeks if any attempt is made to frustrate this order or if there is evidence that the damage current being occasioned to these children continues.