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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF ORLA AND MARTIN (2)
(SHARED PARENTING: BREAKDOWN)

O'HARA J

The parties in this judgment have been anonymised so as to protect the identity of the children to whom the proceedings relate. Nothing must be disclosed or published without the permission of the court which might lead to their identification or the identification of the adult relatives.

Introduction

[1] On 31 July 2018 I gave a substantive judgment in this case. In it I set out the long history of parental acrimony which has severely damaged these two children. Neither parent has protected them from the appalling relationship between them. There was a shared parenting plan which was formalised in a joint residence order in January 2015. In the case of Orla, who is now 16½ years old, that plan only worked for a few months. In the case of Martin, who is now 13½ years old, it lasted until February 2016 but then broke down.

[2] I revoked the joint residence order which was of no continuing meaning in my judgment of July 2018. I then found that threshold criteria had been established against each parent and I refused the Trust's application to withdraw its application for a care order in the hope that some way might still be found, with the Trust's input, to re-establish contact between the father and his two children. There is no contact whatever at present and there has not been for a very long time.

[3] To date those efforts have been unsuccessful. It seems to me in light of all that has happened and been tried that they are likely to remain so for the foreseeable future. This makes it necessary to decide whether the time has come to make final orders and, if so, what orders in both the public law the private law proceedings.

Orla

[4] In light of Orla's age and the lack of progress with contact I granted the Trust leave on 19 December 2019 to withdraw its application for a care order and I discharged the Guardian ad Litem. The father accepted this as the only realistic way forward.

[5] Furthermore, with the agreement of the parents, I made a specific issue order which is attached to this judgment. In light of the exceptional circumstances of this case, being the damage to Orla, the duration of the litigation and the remoteness of the father from Orla's life, and notwithstanding the fact that Orla is already 16 years old I provided that an order should be made and remain in force until Orla is 18. The order requires the mother to notify the father in writing without delay of any significant injury, trauma, illness or inpatient hospitalisation of Orla. It further requires the mother to inform the children without delay of any significant injury, trauma, illness or inpatient hospitalisation of the father which has been notified to her.

[6] The reason why an order in these terms is necessary is that the mother cannot be relied on to provide even this basic information, either to the father or to the children. Her conduct over a long period has been to try to obstruct and minimise the relationship between the father and the children in every way she can.

Martin

[7] In Martin's case I received submissions on 19 December as to the best way forward. The Trust, the Guardian and the mother support the end of the public law case and the making of a specific issue order equivalent to the one in Orla's case. They submit that no further court intervention is appropriate save that Ms Sholdis for the Trust suggested that in light of Martin's terrible school attendance record I might direct a referral to the Educational Welfare Service. The effect of such a referral might be to speed up the timescale within which his circumstances are considered and action taken.

[8] The father submitted that in Martin's case this just is not good enough. He sees his son as failing in his education because he is absent more than half of the time. He believes that the mother is encouraging these absences from school or at least failing to discourage them. The mother rejects this and contends that there is some illness or physical explanation for his absences which she has tried her best to have identified by experts.

[9] Since Martin is not going to school regularly he is losing out on more than his academic development. He is also missing out on everything else that goes with school – friendships, interaction with others and all of the various experiences which schooling inevitably involves.

[10] In these circumstances the father urged the court to act as the "super parent" and take the dramatic step of removing Martin from his mother and placing him in his father's care. He suggested that this could be done under a care order or, more likely, by the private law route of a residence order. The father advised that he can arrange to take 3 months off work in order to give this proposal the best chance of success.

[11] I agree with the father that Martin's situation is desperate. I am not convinced on the medical evidence before me that he suffers from any condition which justifies his absences from school. The mother intends to have him examined by another consultant in the coming months. This might possibly lead to some revelation but I am more inclined to think that the real reason for Martin's misery is not physical but is the anguish of having been fought over by his parents and being denied, by their acrimony, of anything approaching a normal childhood. This is the gist of the submission of both the Trust and the Guardian ad Litem – Martin just wants to be left alone.

[12] I have considered the father's contentions carefully but I fear that it would damage Martin even more to try to force him from his mother's care into his father's care. I have no reason to believe that he would accept such a course of action. There is no evidence that he would. And it might very well cause him even more damage even to try it. I must also take into account the fact that this proposed course would necessarily separate him from his sister, not just his mother.

[13] In all the circumstances I do not believe that any public law order is appropriate so I grant the Trust leave to withdraw its application for such an order and I discharge the Guardian. In doing so I confirm that I accept the Guardian's analysis that what Martin wants is to be left alone without continuing court cases and visits from professionals.

[14] I should add that the father asked me to consider a further intervention, namely to engage, or refer Martin to, another expert who might provide positive therapeutic work and a better way forward for Martin. By extension this would be a better way forward for the father also and for the rest of the family. I will not take that course. In my earlier judgment I reflected grave concerns about Martin, for example at paragraph [22]. The up-to-date evidence suggests very strongly to me that the grim future foreseen by the experts, who gave evidence previously, has come to pass. I conclude that the best way forward for Martin, imperfect as it is, is to strip out from his life all the professionals – social workers, the Guardian, other experts – in the hope that this liberates him to lead something approaching a normal life or closer to a normal life and in turn frees him up to establish some sort of relationship with his father.

[15] Of course the unavoidable reality is that for the foreseeable future it is unlikely that Martin will make any contact with his father. As a result he will be deprived of his father's love, presence, influence and support. On any view that is a

bad outcome to these proceedings but continuing them under any guise is in my judgment even worse and contrary to Martin's best interests. I just cannot see how anything better can be achieved.

[16] Accordingly, the only orders which I will make in Martin's case are as follows. There will be a specific issue order mirroring the terms of the one made in Orla's case. Orla's was made under the powers given to me in Article 9(7) because she is already 16. In Martin's case I make the order and extend it until he is 18 under Article 9(6) because the same exceptional circumstances which apply to Orla apply to him also. In addition I will make an order directing the relevant Education Authority to refer Martin's circumstances to the Educational Welfare Service for urgent investigation. The precise terms of that order are to be agreed between the parties and submitted to the court.

[17] That leaves as a final issue a matter which I raised earlier in the proceedings, namely whether my June 2018 judgment and this one should be made available to any individuals or bodies such as schools or doctors. The purpose of taking that step would be to share with people who are involved professionally with either of the children my findings about their childhood. This would inform and hopefully assist them in any of the work they are required to do. Subject to any further representations from the parties I will direct that the judgments are available to Martin's school through the principal, to the children's general practitioner/s and to any consultant who sees either of them. In addition they should be available to the Educational Welfare Service if and when it becomes involved with Martin in respect of his absences from school.