

**Neutral Citation No: [2017] NIFam 15**

**Ref: KEE10436**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

**Delivered: 27/10/2017**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**FAMILY DIVISION**

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**IN THE MATTER OF A MOTHER AND A FATHER**

**AND IN THE MATTER OF APPLICATIONS UNDER THE CHILDREN  
(NORTHERN IRELAND) ORDER 1995 AND THE ADOPTION  
(NORTHERN IRELAND) ORDER 1987**

**In the matter of S and T (care, freeing, post adoption contact)**

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**KEEGAN J**

**Introduction**

[1] This case involves applications for both care orders and freeing orders regarding two young children, namely S who was born in November 2015 and T who was born in December 2016. I have anonymised this judgment given that it involves children and nothing must be published which identifies the children or the family in any way.

[2] The parents of the children are now separated but both have parental responsibility for the purposes of this application. Ms MacKenzie BL appeared for the Trust. Ms Simpson QC appeared for the mother with Ms Ross. Mr Ritchie appeared for the father. Mrs McGurk BL appeared for the Guardian ad Litem. I am grateful to all counsel for the way they have handled this difficult case.

**Background**

[3] This case has a sad background, the mother was removed from her parents' care along with her 8 siblings when a child due to concerns about physical and sexual abuse, poor parenting and neglect. In particular there were concerns that her mother was involving her in prostitution. The mother spent 5 years in secure accommodation or hospital care until she was moved into supported living in March

2015. She left that in January 2016 and since then has lived in the community. Unfortunately, her life since that date has been characterised by further instability and uncertainty. The mother has also been diagnosed with a range of difficulties namely emotionally unstable personality disorder, ADHD, PTSD, mild learning disability and schizoaffective disorder. Dr Christine Kennedy, Consultant Psychiatrist, has assessed the mother and commented upon her very real difficulties which she opines would require significant therapeutic input in the long term.

[4] The father has a criminal history, a history of drug abuse and schizophrenia. He has a history of self-harm and serious mental health difficulties. Dr Kennedy also assessed the father and recommended that he could not care for a child and that no work would really assist in relation to that.

[5] The mother and father met whilst they were both placed in a residential unit about 4 years ago. The two children were then born in 2015 and 2016.

[6] The case first came to my attention when I was asked by the Trust to make a declaratory order on an ex parte basis prior to the mother giving birth to her first child. The Trust was so concerned that the mother might harm the child that they wanted a court order that she should not be told of the plan to remove the child from her care on birth. I heard evidence from the mother's consultant psychiatrist in relation to that application and I decided that I should decline the application. I ordered that the mother should be told of the plan rather than have to deal with it after the birth of the child. The plan did progress as I anticipated and I am pleased to say that the mother acted very appropriately. Whilst distressed she engaged with her psychiatrist and staff and the child was removed a few days after birth.

[7] Then the issue of the care of this first child and the second child came to the court as Interim Care Orders were granted in relation to these children following their birth. In late 2016/2017, there were improvements made by the mother which I was very pleased about and as a result the Trust agreed to place her in Thorndale in early 2017 with her baby. This was to be heavily monitored. Sadly, within a relatively short period of time the mother herself came forward and said she could not cope and the residential placement broke down. Her relationship with the father also ended and sadly that started a downward spiral for the mother which resulted in her stability decreasing quite significantly.

[8] The mother is now pregnant with another child who is not the child of the father. Sadly, since the children have both been in care the mother's contact has been sporadic particularly with the older child. The father's contact has been more consistent however he has suffered serious deterioration in his mental health from time to time which has interrupted contact and there are issues about the quality of it. At the date of this hearing the father was a detained patient in hospital pursuant to the Mental Health (Northern Ireland) Order 1986.

[9] Both parents have accepted that the threshold criteria is met in this case. The mother has signed a threshold document which I approve and the father in his statement accepts that the threshold is met as regards to him. So I make a finding that the threshold is met on the basis of the agreed facts that were put before me.

**Core issues: care plan and post adoption contact**

[10] The issue of care planning was really the focus of the case. The father through Mr Ritchie indicated his consent to a care plan of adoption for both children. I should say that I had asked for a report from the father's consultant psychiatrist, Dr McDonald, regarding his situation and competency. The report dated 11 October 2017 contains the following:

“Despite this profound upset he understands the legal process and is capable to instruct his legal team. He is fluent and coherent and able to remember and recall the relevant issues in the legal proceedings. He understands why it is in his best interests for the children to be freed for adoption and also accepts that he himself would be unable to care for them. He has been consistent in his view. It is my opinion that although apparently suffering from anxiety and depression this does not impair his judgment and he is competent to both understand the legal proceedings and instruct his legal team. It will be in his interests to have these legal proceedings concluded and a final judgment made so that he can begin to process his grief and work towards his future.”

[11] The mother attended in the morning of the court hearing and through Ms Simpson QC effectively asked whether the court would consider giving her another chance with the children. I gave a preliminary ruling in relation to that and stated that I was sorry that I could not agree that course, albeit I understood it, but I could not accept a further period of assessment given the mother's own instability, her previous failure and the need to achieve some certainty for the two children.

[12] Ms Simpson then made submissions as what was really the main thrust in the case. Firstly, she argued that the contingency part of the care plan was not well defined in relation to adoption because the mother wanted the two children placed together. Secondly, Ms Simpson contended that there should be better contact post adoption than the once per year direct and once per year indirect offered in the Trust plan. The father neither consented nor objected to the freeing orders. Both parties through counsel accepted that I could consider the matter on the papers. No oral evidence was required by either parent. However, given the draconian nature of the orders I was asked to make and the Supreme Court authority of *Re B* [2013] UKSC 33, I myself wanted to be sure of the appropriateness of the adoption plan. I therefore allowed the Trust some time to file an addendum to the care plan in

relation to the issue of placing the children together and likelihood of placement. I also heard evidence from Karen Mullan, Senior Social Worker.

[13] I then turn to the evidence of Ms Mullan. This evidence was particularly important in a number of respects. Firstly in view of the fact that given both parents' mental health history it was likely that the children may have mental health problems. I wanted to be sure that the Trust felt that notwithstanding this they could place the two children. I summarise the evidence as follows. Ms Mullan confirmed that she was a senior social worker with the Domestic Adoption Team. She said that she had been in post for 2½ months. She said that before that she was a senior social worker in the Looked After Team and in total she had been a social worker for 20 years. Ms Mullan described the children as very well settled and showing no difficulties. She gave evidence about the issue of parental schizophrenia which she said was a medical issue which had been addressed before the Adoption Panel. She said that this would be discussed with prospective adopters. In terms of finding a family the witness said that one couple had been identified who matched the criteria and she thought they were strong contenders for these children. On top of that she said there was an Aris day on 17 October which she thought would drum up much interest in relation to prospective couples.

[14] Ms Mullan said there was no reason why the children could not be placed together, she said they were a great age, there are no developmental concerns. She confirmed the children are currently in separate placements which are short-term with foster carers. Ms Mullan confirmed that the Trust position was to find a placement for the children together. It would only be if this was unachievable after approximately 6 months that they would look to another option which might involve separation of the children. Ms Mullan gave evidence that foster care was not the right option for these children of this age and that adoption was the better option in terms of providing security, ownership and setting up attachments. Ms Mullan then referred to contact, she indicated that adopters would be sought who would be open to contact. She confirmed in this case that she thought that potential adopters would have a great deal of sympathy for the natural parents. Ms Mullan stressed that the contact must be kept under review. She said really it was down to what was best for the children but also what the parents could manage.

[15] Ms Mullan explained the current process whereby, post care order and before the children were placed, the contact would reduce to monthly. Then she said if the children were put in placement there would be a period of no contact. This was to allow the children to settle. During that period she would meet with the birth parents and the adopters and hopefully both the adopters could meet the birth parents and agree the parameters and the expectations for contact. Ms Mullan quite openly said that she had no difficulty in informing the solicitors on behalf of the natural parents of the date for an adoption hearing. She said that with the adoption papers she would also file a note of the agreement regarding contact. She said that she hoped contact would develop naturally after a meeting with the adopters and that she was confident that this would not need court adjudication. She indicated

that she did not see this as an insurmountable case. She said that if there was an issue about court the Trust would take on the baton as the adopters would not likely be legally represented.

[16] Overall, Ms Mullan stressed that these parents were not wilful, that she had a great degree of sympathy for them and that she agreed that contact in this type of case could work very well. All she said was that the frequency of it depended on a number of variables and whilst there was an indicator as to the once per year direct and once per year indirect contact that would be subject to review and would come before the court and be finalised at the adoption hearing.

[17] I must record my thanks to Ms Mullan for the balanced and sympathetic way she presented in evidence. In particular when the Guardian ad Litem expressed some reservation regarding giving the parents notice of the adoption application Ms Mullan was not so concerned. This is exactly the good and open practice that post adoption services needs.

[18] The Trust amendment to the care plan refers to the preference to place together. If after 6 months a placement together cannot be found the Trust commit in this amended plan to review the situation and carry out a Together or Apart assessment prior to commencing any search for separate placements.

The plan also states that:

“The Trust undertakes to notify [the parents] upon the issuing of adoption proceedings.”

[19] The Trust addendum report dated 18 October 2017 confirmed that S and T were presented to the Aris Exchange Day on 17 October and that the day went well with many couples expressing an interest in them. It states that on the day five couples expressed a specific interest and one further couple had already expressed an interest.

## **Conclusions**

[20] The facts of this case were not substantially in dispute. Applying the test in Article 50 of the Children (Northern Ireland) Order 1995, the threshold having been satisfied and looking at the Article 3 tests I consider that a Care Order is the appropriate order in this case for each child. I also consider that such an order is proportionate pursuant to Article 8 of the European Convention on Human Rights (“ECHR”). Having considered that Care Orders should be made I must now consider the applications to free the two children for adoption.

[21] Regarding the Freeing Applications, there is sadly nothing else that will do in this case. Counsel did not present any legal argument on the outworking’s of *RE B* and so I will not analyse the law in this case. Suffice to say that I have examined this

case closely notwithstanding the low level of contest on the core issue. My own view is that the “nothing else will do” test is a useful articulation of the proportionality and necessity test within Article 8 of the ECHR which must be assessed in the context of the legislative duty contained within Article 9 of the Adoption Order to safeguard and promote the welfare of the child.

[22] My analysis is dictated by the facts of this case and a welfare assessment in relation to each child. Ms Mullan’s evidence was of great assistance to me. In my view foster care is not the best option for two children of this age in these circumstances. I accept the point that the test in Article 18(2)(b) of the Adoption (Northern Ireland) Order 1987 is that there is a likelihood of placement. Ms Mullan has satisfied me in relation to that. This test has been clarified by the case of *Down Lisburn Health & Social Services Trust & Another v H & Another* [2016] UKHL 36 before the House of Lords and then the European Court of Human Rights *R and H v The United Kingdom* [2011] ECHR 844.

[23] The application for freeing is brought on the basis that both parents are unreasonably withholding their consent pursuant to Article 16. This test has also been explained in the *Down Lisburn* case. I, without dilating upon it, consider that on the facts of this case the parents are both unreasonably withholding their consent. This test does not mean that they are unreasonable people but on the facts of this case it seems to me that the test is met. I also consider that the Article 9 test is met in terms of adoption being in the best interests of both of these children. I consider that Freeing Orders are proportionate in the case of each child.

[24] There is a point of practice in this case which I consider merits some articulation. The fact that the children are not placed yet makes this a classic *Down Lisburn* case. The point there was that no guarantees could be made regarding post adoption contact in the absence of an identified placement and the birth parents in the *Down Lisburn* case were ultimately joined to the adoption hearing to secure their contact.

[25] In this case contact is a live issue. It is hard to say what exactly will happen in the future and I consider that there should be a flexible emphasis on post adoption contact in these cases. I have examined that issue in the case of *ZH v Mr and Mrs H A Health & Social Care Trust* [2016] NI Fam 6. I am content that adopters will only be sought that are open to post adoption contact. I am also content that final arrangements will be settled after placement. The aspiration is that there will be at least one direct and one indirect contact a year. However, that will obviously depend on how the children have settled and the stability of the parents. I note that the Trust has given an undertaking to inform the parents through their solicitors of the adoption application. I consider that course to be appropriate in a case such as this where placement is not identified at the freeing stage. That does not automatically mean that the parents will become parties to the adoption. I will review this adoption file prior to hearing and decide as to the appropriate case management. The Trust has agreed to include a note regarding contact with the

papers. I am confident that Ms Mullan will do her best to establish contact arrangements on a consensual basis but if not I will deal with the issue at an appropriate stage.

[26] In my view this is a case where the siblings should be placed together. The Trust is committed to doing that. Ms Mullan is confident that this will happen. It is only after all efforts have been exhausted that there should be any focus on separate placements.

[27] My final word is for the parents in this case. They both have had sad lives. In particular with the mother, that is no fault of hers. Neither parent, it seems to me, is likely to disrupt an adoptive placement. I hope that they can both achieve some stability in their own lives which will enable them to have an input into contact with their two children. I also note the point made by the father but also by the mother through their counsel that they both want this case finished because of the distress it causes them and they want to be able to move on and go through the grieving process. That seems to me to be a mature attitude and I hope that they will avail of post adoption counselling services whereby specialist people can help them through this difficult time.

[28] Accordingly, I consider that all of the statutory tests are met. I will accede to the Trust's applications and make Care Orders and Freeing Orders in this case.

[29] I discharge the Guardian. I will hear from the parties as to any other matter that needs to be addressed.