

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION

**IN THE MATTER OF T (DECLARATION NOT TO INFORM THE BIRTH
FATHER OF CHILD'S EXISTENCE)**

GILLEN J

[1] The judgment in this case is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that, in particular, the anonymity of the child and the adult members of her family must be strictly preserved.

[2] A Health and Social Services Trust which I do not propose to name ("the Trust") applies in this case under the inherent jurisdiction of the High Court of Justice for relief in respect of a child S born on 5 September 2003 in the following terms:

- (1) a declaration that it is lawful for the Trust not to inform the birth father of S's existence; and
- (2) a declaration that it is lawful for the Trust to place S for adoption without consulting the birth father.

[3] At an early stage in this case I followed the precedent sent by the President of the Family Division in England and Wales, Dame Elizabeth Butler-Sloss, in *Re: H; Re: G (Adoption: Consultation of Unmarried Fathers)* 2001 1FLR 646 and appointed the Official Solicitor to act as an amicus curiae for the interests of the mother and child - represented by Mr McGuigan - and for the interests of the father - represented by Ms Loughran. Ms Smith appeared on behalf of the Trust. I am indebted to all counsel in this case who have conducted this difficult matter with conspicuous skill and good sense.

The Facts of the Case

[4] S is the sole child of T whose date of birth is 10 August 1986, i.e. she is now 17 years, 7 months. T has lived all her life outside this jurisdiction but has come to live in Northern Ireland with a relative in April 2003 for the purposes of giving birth to the baby. The father of the child is named by T as Mr "D". It would appear that he resides outside this jurisdiction in close proximity to T's family. I have before me an affidavit from a senior social worker in the Trust who deposed, inter alia, that the social services relevant to the area where T lived outside the jurisdiction and the local police service had confirmed that T had provided them with information identifying D as the birth father. The Trust received a letter from the social services in the other jurisdiction dated 21 May 2003 advising of T's pregnancy and move to Northern Ireland. The letter identified the birth father as D aged in or around 39 to 40 years of age. Incorrectly that letter stated that D had been charged with unlawful carnal knowledge. It appears from the affidavit, however, that a sergeant in the relevant police service had informed the local social services that whilst a charge of unlawful carnal knowledge would have been merited, since the family of T did not make a formal complaint and wished rather to support T through the pregnancy and pursue her plans to have the baby adopted, no charge was preferred against D. It would appear that D has teenage sons together with another child aged about 10 who resides outside this jurisdiction with her mother. T informed her local worker outside this jurisdiction that she and her friends frequented D's home to play computer games. She and a group of friends had accompanied D to a nightclub shortly before Christmas 2002 and thereafter she had entered D's home where she engaged in consensual sexual relations with him. T informed the social worker that this was an isolated social encounter with D and neither she or D had ever discussed the incident although D was aware of the pregnancy. T apparently informed the social worker that she considered her contact with D to have been pleasant but she considered him to be intimidating and had witnessed him being verbally aggressive towards his sons and others. She said he enjoyed a reputation "as a fighter within the local community". T informed the social worker that upon realising she was pregnant her intention was immediately to place the baby for adoption and she did not feel ready or able to assume responsibility for caring for the baby. She and her mother apparently had told everyone in the locality that she had lost the baby and accordingly in April 2003 she moved to live with her relative in Northern Ireland. T was shocked and distressed at the prospect of D being told of the baby in light of the fact that she had concealed the birth. T's mother told a social worker that she had been advised by the police service that a man convicted of statutory rape would not be contacted and she commented that she believed D had been imprisoned in another jurisdiction for rape. T's mother said that if D found out about the baby he would kill T and she went on to allege that he had burnt out the family car and was a violent man. T's

mother claims that T would have to move if D was contacted. T advised the social worker that she had contacted an adoption agency in the Republic of Ireland which informed her that, because she was not married to the birth father, he would not be informed or consulted regarding the adoption process and that T had assumed this would be the position in Northern Ireland also.

[5] It is also relevant to observe that the senior social worker from the Trust records in his affidavit that initially T had told another social worker in the Trust that entries on a family and child care service document dated 29 May 2003 to the effect that she had been raped were untrue and that the intercourse was consensual.

[6] The affidavit from the social worker and Trust recorded a conversation with T's local police service who informed a social worker that there were reports of an attack on T's parent's car and an assault on T's brother. He had identified the miscreants as being D's family members. It is clear from these facts, therefore, that a further letter which was before the court dated 19 May 2003 from T's local social services indicating that the father had been charged with unlawful carnal knowledge and that he was continually harassing the family were both inaccurate.

[7] Nonetheless key factors that have emerged in this case which are not in dispute are that this child was conceived after an isolated encounter between T and D, that T was a minor at the time of conception whereas the birth father was approaching 40 years of age, D had children of comparable age to T and that a charge of unlawful carnal knowledge would have been merited in the circumstances of this case. Although he knew she was pregnant, D appears to have made little or no contact with T.

[8] During the course of the hearing, a further affidavit in this matter was filed by N a social worker of the Trust who had made some further enquiries with the relevant social services in the other jurisdiction. Exhibited to that affidavit was a letter from the duty social worker in the relevant health board in that jurisdiction. The following additional facts emerged as set out in these extracts from the affidavit dealing with a telephone conversation between the deponent and Ms T1 a social worker with the relevant social services;

“During the course of my telephone conversation with Ms T1 on 30 March 2004, Ms T1 advised that D and his sons...were known to...social services. Ms T1 described D as an “extremely unsavoury character”. Ms T1 also indicated that ... social services had received an allegation of physical abuse perpetrated by D on his son and that she had carried out the investigative interview with D when he admitted the physical abuse incident but

attempted to minimise it. Ms T1 advised that her interview with D on this occasion lasted in or about one and a half hours, and that, for the duration of the interview, D made reference to violent encounters he had had with neighbours and members of the travelling community and she said that he used violent language throughout.

Reports received from a Trust in Northern Ireland were said to record that D's previous partner and mother of his two sons had previously obtained a personal protection order and exclusion order against D and her account of their relationship with D was that this was punctuated by him spending time was imprisonment, involvement with other women and physical violence. According to Ms T1 the reports also made reference to D having been charged with a stabbing offence and being sentenced to seven years imprisonment in another jurisdiction. Ms T1 also referred to a case note made by Ms MSL a duty social worker at [a named] social services following a telephone contact with Ms P, social worker from the (relevant Trust in Belfast) in August 1999 which states that D was allegedly charged with rape and served a custodial sentence.

During my telephone communication with Ms T1 on 30th March 2004 she advised me that there is no record of D ever contacting ...social services to enquire about the welfare of (the applicant) or the pregnancy and that there is reference in the case notes to D denying paternity of T's baby.

On 31 March 2004 I made telephone contact with (the relevant Health & Social Services Trust in Belfast) and I was informed that extensive files were held in respect of D's two sons. On this date I was informed by the duty social worker Mr M, that there is reference in the records to D's previous partner and mother of his sons being in fear of D and her not wanting him to know her address".

- (a) Following the birth of the child, S was voluntarily accommodated by the Trust pursuant to Article 21 of the Children (Northern Ireland) Order 1995 “The 1995 Order”.
- (b) Under the 1995 Order the Trust had a duty, so far as is reasonably practicable, to ascertain the wishes and feelings of each of the parents of the child and then to give due consideration to them in making any decision about the child.
- (c) Under the Adoption (Northern Ireland) Order 1987 “The 1987 Order” a birth father without parental responsibility is not a “parent” for the purposes of the Order and has no right to consent or to refuse his consent to an order of adoption under Article 16 of that Order.
- (d) A father without parental responsibility is not entitled as of right to be given notice of adoption proceedings under Rule 4A.20 (3) of the Family Proceedings Rules (NI) 1996. However, a court giving directions for the hearing of the application for adoption may direct that the natural father be given notice of the proceedings and may join him as a party pursuant to Rule 4A.15 (3).
- (e) The Trust as an adoption agency has obligations under the Adoption Agency Regulations (NI) 1989 (“the 1989 Regulations”). Regulation 7 (3) provides that where the father of a child does not have a parental responsibility order for the child and his identify is known to the adoption agency, the adoption agency shall, so far as is considered reasonably practicable and in the interests of the child, counsel him, obtain the required information about him and ascertain if he intends to apply for an order in respect of the child.
- (f) Under Regulation 11 of the 1989 Regulations, the agency also has a duty to notify the parents or guardian of the child (whose whereabouts is known to them) of their decision that adoption is in the best interests of the child and that requirement extends to a father without a Parental Responsibility Order if such notification is in the child’s interests. Pursuant to Regulation 12 (2)(f) the agency must likewise notify a father without a Parental Responsibility Order (whose whereabouts are known to them) if to do so would be in the child’s best interest.

[9] Finally, I must remind myself that under Article 17 (6) of the 1987 Order before making an adoption order, a court must be satisfied in the case of a child whose father does not have parental responsibility for him that he

has no intention of applying for a Parental Responsibility Order or a Residence Order or that if he did make such an application it would likely be refused.

The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (“the Convention”).

[10] Two Articles of the Convention are relevant namely Article 6 and Article 8. Article 8 states so far as is necessary for this application:

“(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”.

[11] I have adopted the approach taken by Dame Elizabeth Butler-Sloss P in Re: H; Re: G (Adoption, Consultation of Unmarried Fathers) 2001 1FLR646 at paragraph 38 where she said:

“The first issue is whether there is a family life in respect of which there may be a breach. The European Court accepted in B v United Kingdom (2000) 1FLR1 that it is legitimate to treat married and unmarried fathers differently. Not every natural father has a right to respect for his family life with regard to every child of whom he may be the father (see also McMichael v United Kingdom (1995) 20 EHRR205. The application of Article 8 (1) will depend upon the facts of each case. In K v United Kingdom (1987) 50D & R 199, the applicant was the natural father and the Commission said at 207:

‘The question of the existence or non-existence of “family life” is essentially a question of fact depending upon the real

existence in practice of close personal ties...”.

[12] Similarly Article 6 (1) states, so far as is necessary for this application:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”.

[13] Once again I intend to adopt the approach of Dame Elizabeth Butler-Sloss in Re: H; Re: G at paragraph 43 as follows:

“If the father is a father who is found to have a family life with the child then one would expect Article 6 (1) prima facie to apply. This raises the difficult question of the impact of the rights of other parties under Article 8, and the welfare principles, on the right to a fair trial. There must, however, in principle, be some qualification of the right of a party to be heard in proceedings. This would be likely to arise under two separate categories, namely, a policy decision of the court, in the exercise of its right to run its own proceedings within the requirements that there should be a fair trial and, secondly, the practicalities of service on a potential litigant or his attendance at the hearing. There will be cases where notice to a father would create a significant physical risk to the mother, to children in the family or to other people concerned in the case (see for instance Re: X (Care; Notice of Proceedings) (1996) 1FLR186). That might result in the court balancing the fairness to the father of notice, against the real risks of the consequences of such notice”.

[14] It is also relevant in this context to address what Ward LJ said several years ago in Re: H; (Paternity; Blood Tests) 1996) 2FLR65 at page 80:

“Every child has a right to know the truth unless his welfare clearly justifies the cover-up.”

Moreover, the United Nations Convention on the Rights of the Child 1989 which the United Kingdom has ratified provides that every child has “as far as possible” the right to know and to be cared for by his or her parents” and

the right to “preserve his or her identify, including nationality, name and family relations as recognised by law without unlawful interference.

The European Court of Human Rights in Gaston v UK (Access to Personal Files) (1990) 12EHRR36 endorsed the view of the Commission that “Respect for private life requires that everyone should be able to establish details of their identify as individual human beings and that in principle they should not be obstructed by the authorities from obtaining such very wide basic information without specific justifications”. That right, of course, is not absolute. There must be balance against a variety of competing interests in accordance with Article 8 (2) of the Convention. It must be remembered that in this case the identify of the father in will be kept on the file and that the right of the child to ascertain that identify may have to be re-visited at some later stage should the child wish to ascertain it.

Governing Principles

[15] In addition to reliance on the Convention, the other principles governing my approach to this case are as follows:

- (1) I commence with the basic principle that it is only in exceptional circumstances where it is appropriate to depart from the general rule that fathers should be informed about adoption proceedings. In the majority of cases a natural father would have to be informed of any adoption/freeing application, however unpalatable this might be for the mother or problematic for the adoption agency, and even though it might mean informing the father of the existence of a child of which he had no knowledge. The approach of the courts in this regard springs not only from the legal principles that I have already outlined, but from a totally pragmatic perspective also. With the advances in geneticism and the risk, however remote, for the development of a future incestuous relationship, it is crucial in most instances that a child should know the identify of his or her father.
- (2) Articles 6 and 8 of the European Convention and the United Nations Convention on the Rights of the Child serve to underline the necessity of this principle.
- (3) I recognise that comparing the facts and outcomes of cases in this branch of law can constitute a misuse of the only proper use of precedent viz to identify relevant rules to apply to the facts as found. (See Lord Steyn in Jolley v Sutton London Borough Council 2000 PIQR part 5, page 145). But I have found the facts of Re: J (Adoption; Contact Father) (2003) 1FLR933

instructive in considering the kind of case where exceptional facts may merit taking the case outside the general rule that fathers should be informed of an application to adopt or free for adoption. In that case, the mother gave birth at the age of 16. The relationship with the father ended just after she became pregnant although they had been seeing each other for about two years. They had no contact with each other since then and the father knew nothing of the pregnancy or birth. The mother wanted the child to be adopted and did not want the father to be informed. She gave the local authority details of the father only after receiving assurances that the father would not be informed of the child's existence. An additional factor in that case was that the child was subsequently diagnosed as suffering from severe cystic fibrosis. The court granted a declaration in that case that it was lawful for the local authority not to inform the father or his family of the existence of the child and to place the child for adoption without consulting the father. The court was influenced by the fact that there had been no family life for the purposes of Article 8 of the Convention, they had never co-habited together and never had a strong commitment to each other, the relationship took place in their teenage years and was comparably short-lived, and they had not seen each other since the relationship came to an end. The relationship thus did not have sufficient constancy to create de facto family ties and there was nothing substantial to show that the father had a right to respect for his family life with the mother. The court went on to determine that the potentially damaging consequence to the mother of the news leaking out into the community should the father or his family be informed of the birth outweighed any potential advantage to the child of informing the father. The child was likely to gain nothing from the father or his family being informed of the birth. I find, therefore, striking similarity in many respects to the facts of the present case with the crucial difference of course being that the father in the present case was a 40 year old man who had taken advantage of a 16 year old girl. Dame Elizabeth Butler-Sloss P summed up the approach to be adopted to exceptional circumstances in Re: R (Adoption; Father's Involvement) (2001) 1FLR302 at paragraph 24 when she said:

“Each case of a father who does not have parental responsibility and who may wish to be heard in subsequent adoption proceedings will have to be decided on its merits as to

whether or not it is appropriate that he should be joined as a respondent under the Adoption Rules 1984, s15 (3)... There will be extreme cases such as rape where it would be wholly inappropriate for such a father to be joined. There is a spectrum and the question is: at what point does each father without parental responsibility stand on that spectrum”.

Conclusion

[16] I have come to the conclusion that this is one of those wholly exceptional cases where it is appropriate that a declaration should be made that it is lawful for the Trust not to inform the birth father of S's existence and that it is lawful for the Trust to place S for adoption without consulting the birth father. I have come to that conclusion for the following reasons;

- (1) I am satisfied that there has been no family life between father and child for the purposes of Article 8 of the European Convention. This was a father who sought solely the fleeting pleasure of conception but has never evinced any interest in the burden of a relationship with the teenage mother. Although aware of the pregnancy he made no enquiries as to her welfare thereafter. On the contrary, it would appear that he has even denied paternity. This in itself is a very telling factor. Because of the disparity of age and the circumstances of the conception there was never any possibility whatsoever that this relationship would become a committed or loving one or that the parties would ever co-habit. It is, therefore, beyond plausible argument that this relationship never had sufficient constancy to create de facto family ties. I have, therefore, come to the conclusion that the father in this case does not have a right to respect for his family life and, therefore, no obvious issue arises under Article 8.
- (2) The question remains as to whether he should be notified of the proceedings to enable him to be joined as a party to the adoption application. The only purpose in notifying him of the existence of the child would be if there were a real possibility that he might make an application under the Children Order (NI) 1995 which the court ought to entertain. On the facts before the court, I consider there is absolutely no prospect of him making any such application and, therefore, it is not

necessary for him to be given notice or joined under any of the adoption rules or regulations to which I have adverted.

- (3) I believe that the potentially damaging consequences to this mother of the news leaking out into the community that she had misled the father, friends and neighbours about this child outweighs any potential advantage to the child of informing the father. Given the violent background of this man that has been outlined to me in the affidavits before me, I am satisfied that there would be a real risk of physical injury to this young woman and that she has good cause to have serious concerns given his background as has emerged in the affidavits before me.
- (4) The picture that has emerged of this mother is that she is a confused young girl at odds with society's expectations. The weight to be attached to the strong supposition that it is in the interests of a child to be brought up by his natural parents, must depend on and yield to the circumstances of the particular case. I find no uplifting thread whatsoever in the behaviour of this father which would lead me to conclude that his relationship can be purged of its damaging and unacceptable elements. Whilst I recognise that there may be no secrets that time may not reveal, there has been a sufficiently exacting investigation into the circumstances to date to persuade me that no benefit would accrue to this child from the father or his family being informed of the birth. If he is informed there is a real danger of news of her birth leaking out into the local community which I accept could well lead to the necessity for this girl to leave her home to avoid the opprobrium of the society in general and the potential violence of this man in particular.

[17] I have, therefore, come to the conclusion that the relief sought by the Trust should be granted on the terms of the application.