

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (FAMILY DIVISION)

IN THE MATTER OF AN APPLICATION BY RM AND SM FOR AN
ORDER FOR DIRECTIONS

KERR J

[1] This is an application by RM (who is the father of a young boy whom I shall refer to as J) and RM's wife, SM, for an order for directions under article 8 of the Children (Northern Ireland) Order 1995. J is now aged 11; he was born on 14 October 1992 and he lives with his mother, SMcB, and her husband, PL.

[2] I made an article 8 order in this matter some months ago. What I said then by way of preamble to my ruling can be repeated here. I said: -

“The history of contact between RM and J and attempts by social services to arrange this are littered with fractious, unnecessary disputes. Strident, often wild and unsubstantiated, allegations have been exchanged between the various adult parties to this dispute.”

and

“I am satisfied that SMcB has in the past deliberately sought to impede contact between J and his father. I have also concluded that she has discouraged J from building on and consolidating the relationship that he has begun to form with RM and his present wife SM. I am also satisfied, however, that RM and SM are not free from blame for the present unhappy state of affairs. SM has

made what I am satisfied are unfounded allegations against SMcB of physical and sexual abuse of J. Both she and RM have adopted an unwarranted confrontational stance to the issue of contact with J.”

[3] Having given the matter much anxious thought I eventually concluded that J should visit his father in Wales for one week in August 2003 and one weekend every two months thereafter; that he should spend four days with his father over the Christmas and Easter periods in addition to the weekend visits; and that he should spend two weeks with his father in the summer holidays.

[4] The first of these visits was due to take place in August of this year. J’s father collected him from his home and they travelled in a taxi to the airport. They had a meal there during which, according to RM, J behaved badly. When the time came for J to board the aircraft with his father, he either threw a tantrum or became hysterical at the prospect of leaving and eventually had to be collected from the airport by his mother and the planned visit to Wales did not take place.

[5] The case made by RM is that this episode was orchestrated and prompted by SMcB. He has complained that after collecting him from his home, J spent much of the time on a mobile telephone speaking to his mother or exchanging text messages with her. SMcB denies this, claiming that she encouraged J to travel to Wales; that she provided him with a mobile telephone only because RM had told her that his landline telephone was not operational and that she wished to have a means of communication with her available for J. She also claims that she did not encourage J to create a scene at the airport; on the contrary she had consistently sought to persuade him to be calm and to go with his father.

[6] The dispute between the parties as to whether J genuinely did not want to go to Wales lay at the heart of the present impasse. In the past he had expressed to the Official Solicitor a reluctance to stay with his father in Wales; despite this I considered that it was in his best interests to visit his father in his home so that as natural a relationship as was possible might be allowed to develop between them. But if J’s opposition to such a visit was as implacable as the scene at the airport suggested, a different view as to what was in his best interests might be warranted.

[7] Reluctantly I decided that it was necessary for me to speak to J in order to ascertain his true feelings on the subject. I readily acknowledge that this is a course that should be undertaken in exceptional circumstances only. I concluded that such exceptional circumstances were present in this instance. I had little direct evidence of the true motives of J in creating the disturbance

that occurred at the airport. I did not accept RM's assertion that SMcB was constantly on the telephone to J orchestrating the scene; the telephone records that she produced belied that suggestion emphatically but I could not be sure that J had not been prompted by his mother at some earlier stage or that he was not acting out of some understandable sense of loyalty to her.

[8] I therefore saw J alone in my chambers and thereafter reported the salient parts of our conversation to the parties in open court. I found him to be an intelligent, articulate, self-assured boy. He spoke freely and confidently. His answers were spontaneous and natural. As best I am able to judge, he gave a truthful and unrehearsed account of what had happened at the airport. I am wholly satisfied that the scene that took place there was not synthetic nor was it prompted in any way by SMcB. I am entirely convinced that J was simply seized by an irresistible sense of panic at the thought of having to travel away from Northern Ireland and his mother and that he could not cope with the prospect.

[9] Of course, the fact that J was genuinely panicked at the prospect of having to travel to Wales with his father and that he simply did not wish to go there does not necessarily supply the infallible answer to the question whether it is in his best interests not to be required to spend time at his father's home. RM is his natural father. He wishes to establish a relationship with J. He considers that this relationship can only thrive if father and son spend time together in an environment that is familiar to one of them at least. In order to achieve this RM believes that, even if J genuinely does not wish to be in Wales, he should be required to travel there.

[10] Indeed RM's goal in these proceedings is to have J come to live with him in Wales. In promotion of this aspiration RM has concentrated on the theme that SMcB has consistently thwarted court orders designed to provide for and enlarge upon the level of contact that he should have with his son. SM has taken up this theme in an intemperately worded C2 form. She has described court orders as 'shambolic' and has decried her Irish heritage because of what she considers to be the frustration of court directions by the machinations of SMcB.

[11] I have concluded that SMcB has impeded contact between RM and J in the past and I am disposed to accept that she has tried to avoid the full implementation of court orders. For this RM seeks a 'punitive order'. Put bluntly, he wishes to have SMcB punished. He has reminded me that I have warned SMcB that she would be liable to imprisonment if she wilfully disobeyed orders of the court and that a change in the residence arrangements would be considered if full implementation of contact orders was not achieved.

[12] What is missing from RM and SM's arguments on this theme is any understanding of the basic principle that the purpose of punitive orders for a failure to comply with the court's directions is to further the interest of the child. Punishment of the defaulter is not an aim in itself. Article 3 (3) of the Children's (Northern Ireland) Order 1995 enjoins the court, in making an order for the residence and contact provisions in relation to a child, to consider any contemplated order against the yardstick of what is known as the 'welfare checklist' contained in that provision. The court is required to have regard to the following particular factors: -

"(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;

(g) the range of powers available to the court under this Order in the proceedings in question."

[13] The most elementary examination of those factors in J's case permits only one conclusion: that it would be quite irresponsible to uproot this child from his present home and to send him to live with his father and SM in Wales. One does not need qualifications in psychiatry to understand the detrimental, not to say traumatic, effect this would have on his emotional health. This child must continue to live with his mother. That conclusion does not imply that his mother is free from blame in the matter of the child's contact with his father. Nor does it suggest that RM and SM would not provide a loving and stable environment in which he could grow up. It merely recognises the simple reality that the child would be deeply unhappy to be wrenched from his present circumstances and forced into an environment that is at present alien to him.

[14] My conclusion about J's residence does not, of course, dispose of the question of contact. While it is not in J's interests to be required to live with his father, it does not follow that it is equally not in his interests to spend time with him in his home in Wales. It will sometimes be necessary to introduce an element of compulsion into contact orders for the long term benefit of the child and one must frankly address the question, 'should J be compelled to spend time with his father at the latter's home for his own good ultimately'.

[15] I have reluctantly come to the conclusion that it would not be right at present to force J to travel to Wales to spend time with his father there. It is, I believe, significant that, in his conversation with me, J did not rule out entirely the possibility of spending time with his father in Wales. I believe, however, that he needs to mature somewhat before he can contemplate this with the necessary level of equanimity that would make the exercise worthwhile and of benefit to him.

[16] I will therefore vary the article 8 order that I made previously by deleting the provision in relation to staying contact in Wales. RM will be entitled to contact with J between the hours of 2pm and 7pm on the first Saturday and Sunday of each month. If he chooses to avail of this contact, RM should collect J from and return him to his mother's home at the appointed hour on each occasion. These arrangements can, of course, be varied by agreement between the parties.

[17] RM has told me that if he is not given residence rights in relation to J that he will no longer seek contact with him. I hope that he will reflect carefully before committing himself to such a course. I do not underestimate the emotional energy or the financial resources that he has invested in this dispute. Nor do I doubt the genuineness of his feelings of frustration although I believe them to be misplaced. In the final analysis what must guide the parents of this young boy in the course that they choose (and what must guide the court in deciding what order to make) is what is best for J. I need hardly remind both parents that they have produced a highly intelligent child who will be able, in a very few years from now, to apply his own scrutiny and judgment to the decisions that they have taken about his welfare. I would not envy them if those decisions are found wanting in the estimation of their son.