

Neutral Citation No: [2018] NIFam 6

Ref: SMY10681

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

Delivered: 08/06/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF AN APPLICATION UNDER THE ADOPTION
(NORTHERN IRELAND) ORDER 1987

K and L

Applicants;

-v-

A Health and Social Services Trust

Respondent.

HER HONOUR JUDGE SMYTH

The nature of the proceedings

[1] On 24 October 2017, K and L, who are litigants in person, lodged a C1 application for an order under the Children (Northern Ireland) Order 1995 naming a Health and Social Services Trust, two individual social workers and a Guardian ad Litem as respondents. The nature of the application is not clear, but it appears that the applicants wish to appeal orders of the High Court Family Division freeing their children for adoption and ultimately ordering their Adoption in June 2016, and in the alternative, that they seek contact orders. Upon further enquiry, it appears that the parents also wish their former solicitors to be compelled to provide them with the relevant case papers, which they have refused to do. I have anonymised this judgment because it involves children and no report may be made of this judgment that could lead directly or indirectly to the identification of any of the children or any family member.

The background

[2] The applicants are the parents of non-identical twins who were born in November 2006 and are now aged 11. The Trust applied for care orders in respect of the children after L brought one of the children to hospital where he was found to

have a broken right arm. X-rays were taken which confirmed a spiral type fracture of the child's right humerus which was suspected to be non-accidental in nature. Weir J, as he then was, found that the injury was non-accidental and that both children had suffered serious harm whilst in parental care. The children had made complaints of ill-treatment by their parents and had vociferously expressed a refusal either to see them or to return to live with them due to the harmful way in which they had been treated.

[3] Care orders with care plans of adoption were granted on 25 June 2012 and Weir J acknowledged that any contact between the children and their parents would not be a worthwhile experience at that time. Whether it would be possible at any future time to resume any form of contact would depend upon the parents' ability to acknowledge the harm that they have caused their children and upon the children's sense of security in a home away from them. Weir J was not optimistic that contact could be achieved.

[4] The parents appealed that decision but the Court of Appeal concluded that the judge's findings were correct and that the hearing had been fair. The appeal was dismissed.

[5] The Trust applied for orders freeing the children for adoption and on 21st of August 2015, Maguire J granted the applications. At that time, the children had been living with their prospective adoptive parents since July 2012 and had not had contact with the parents. Maguire J determined that adoption was in the children's best interests and that the parents were withholding their consent to adoption unreasonably.

[6] In granting those applications, Maguire J gave careful consideration to events since the care orders had been made. He concluded that there had been little in the way of change in the parents' position and they remained of the view that neither had done anything wrong in terms of the care that they had provided to the children. He noted that not only was there no working relationship between the parents and the Trust, but that social workers were clearly in fear of K in particular, and those concerns were justified. Neither parent had sought to take any action to avail of any services which might serve to assist them in particular in relation to gaining direct contact with their children.

[7] K and L lodged an appeal to the Court of Appeal on 25 September 2015 as litigants in person. The Court of Appeal listed the appeal for mention on five occasions between 22 October 2015 and 21 January 2016 but the parents did not attend. However, it transpired in early January that the court office had been corresponding with the wrong address and the parents may not have received the court notifications. The appeal was listed on 9 February 2016 and the parents were notified at the correct address. The Trust was directed to prepare and provide the appeal bundles by 20 January 2016. Copies of the bundles were directed to be made

available for the parents for collection from the court office. K and L confirmed that they had collected the papers. However, they did not attend the appeal hearing and their appeal was dismissed on the basis that the order would be affirmed unless the parents indicated in writing, within seven days, satisfactory reasons for their non-attendance before the court. No further correspondence was received from the parents and an order dismissing the appeal was issued dated 22 February 2016.

[8] On 20th June 2016, the children were adopted. The parents have not had any direct contact with them since August 2011.

The law

[9] Part III of the Adoption (Northern Ireland) Order 1987 governs the making of adoption orders. Article 12 provides:

“12(1) An adoption order is an order giving parental responsibility for a child to the adopters, and such an order may be made by an authorised court on the application of the adopters.

12(2).....

12(3) The making of an adoption order operates to extinguish-

- (a) the parental responsibility which any person has for the child immediately before the making of the order;
- (b) any order of a court under the Children (NI) Order 1995;
- (c)

12(4).....

12 (5).....

12(6) An adoption order may contain such terms and conditions as the court thinks fit.

12 (7).....”

Article 16 provides:

“16(1) An adoption order shall not be made unless-

- (a)

(b) in the case of each parent or guardian of the child the court is satisfied that:

(i)

Or

(ii) his agreement to the making of the adoption order should be dispensed with under a ground specified in paragraph (2)

16(2) The grounds mentioned in paragraph (1)(b)(ii) are that the parent or guardian –

(a) ...

(b) is withholding his agreement unreasonably.

(c)

(d) ...

(e)

(f)”

Article 18 (1) provides:

“18(1) Where on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of a child that his agreement to the making of an adoption order should be dispensed with on the grounds specified in Article 16 (2) the court shall make an order declaring the child free for adoption.

(2) No application shall be made under paragraph (1) unless-

(a) the child is in the care of the adoption agency ,
and

(b) the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.

[2(A) for the purposes of paragraph (2) a child is in the care of an adoption agency if the adoption agency is a Board or HSS Trust and he is in its care]

(3)”

[9] Part V governs specifically the status of adopted children.

Article 40 provides:

“40(1) An adopted child shall be treated in law:

- (a) where the adopters are a married couple, as if he had been born as a child of the marriage (whether or not he was in fact born after the marriage was solemnised);
- (b) in any other case, as if he had been born to the adopter in wedlock (not as a child of any actual marriage of the adopter).

40(2) An adopted child shall..... be treated in law as if he were not the child of any person other than the adopters or adopter.

40(3)....

40(4)....

40(5)....

40(6.....”

Consideration

[10] The effect of Maguire J’s decision to free the children for adoption was that parental responsibility for the children was transferred from the parents to the adoption agency (the Trust). The parents’ appeal was dismissed by the Court of Appeal. The effect of the adoption orders dated 20 June 2016 was that parental responsibility was transferred to the adopters. The Trust no longer retains parental responsibility and therefore cannot be a party to these proceedings.

[11] The adoption orders do not contain any terms or conditions relating to contact with the parents for the reasons set out in the judgments of Weir J and Maguire J. In those circumstances, the parents have no legal entitlement to apply for contact orders. In any event, there is no evidence that the situation has changed or that any contact would be in the children’s best interests. They are now part of a new family and sole parental responsibility rests with their adoptive parents.

[12] In so far as the parents' application relates to the relevant documents in the proceedings, it has been confirmed that the bundles were collected by the parents in advance of the appeal hearing relating to the freeing application.

[13] The application is therefore dismissed.