

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

LA

-v-

UJ AND RF

STEPHENS J

[1] These are applications brought by LA under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 for non-molestation orders against her aunt UJ and her cousin RF. UJ is the mother of RF.

[2] Proceedings were commenced by LA bringing two ex parte applications under Articles 20 and 23 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 for non-molestation orders against UJ and RF. Leave was granted in the Family Proceedings Court for the applications to be made ex parte and orders were made against UJ and RF forbidding each of them from:

- (i) using or threatening violence against the applicant LA and from instructing, encouraging or in any way suggesting that any other person should do so;
- (ii) intimidating, harassing or pestering the applicant, LA, and from instructing, encouraging or in any way suggesting that any other person should do so.

The Family Proceedings Court afforded UJ and RF an opportunity to make representations relating to the order at a full hearing. The full hearing has been transferred to the Family Care Centre and then to the High Court.

[3] Ms Mullan appears on behalf of the applicant LA, and Ms Casey appears on behalf of both respondents UJ and RF.

Reporting restrictions

[4] 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 may be identified by name or location and that in particular the anonymity of the child and the adult members of the family must be strictly preserved. All counsel in this case are directed to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week of today's date as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be submitted to the Library for publication in its present form.

The family relationships, the allegations and the respective positions of the parties

[5] The family relationships are as follows:-

- (a) The applicant is LA.
- (b) DC is the mother of the applicant LA. DC resides with LA.
- (c) RO is the partner of LA and he also resides with the applicant, LA, and her mother, DC. He is 25 years of age.
- (d) UJ, one of the respondents is the sister of the applicant's mother, DC. UJ is therefore the aunt of the applicant LA.
- (e) RF, the other respondent, is the daughter of UJ. She is 15 years of age (a child, Article 2(2) the Children (Northern Ireland) Order 1995 and under the age of sixteen, see Article 17 of the Sexual Offences (Northern Ireland) Order 2008).
- (f) NO is the partner of UJ and the father of RO, who is the partner of the applicant, LA.

[6] The applicant, LA, states that the differences between herself and UJ commenced in October 2008. The two sisters, DC and UJ together with the applicant, LA, went on holiday. On the day before they left the applicant, LA, states and the respondent, UJ, agrees, that UJ told the applicant that the

applicant's partner RO would never go out with her and her friends again. No explanation was given at the time but in these proceedings UJ states that this arose because, on an occasion when RO had been out with her and her friends, he had "got very drunk and behaved in a loud and aggressive fashion".

[7] On her return from holiday the applicant LA, is informed by her partner, RO, that he is receiving text messages from RF, one of the respondents. These text messages are stated to suggest that RO was in "some kind of a relationship with" RF. One text on 1 November 2008 exhorts RO, in offensive language, to get rid of LA. RF denies that she sent "any direct text messages suggesting that RO should get rid of the applicant LA".

[8] The applicant, LA states that she received a telephone call from UJ in which UJ screamed and shouted abuse. LA states that she reported this threatening telephone call to the police.

[9] Since a young age RF has visited and stayed at the applicant's house at weekends. RF, who is under sixteen, states that RO, who is over eighteen, engaged in a sexual relationship with her over the period June 2008 until the end of October or early November 2008. RF discovered that she was pregnant and she told her mother on 20 November 2008. It is presently not clear from RF's account what she told the mother. However UJ states that she was told by her daughter, RF, that RO "had raped her and that she was pregnant".

[10] On 20 November 2008 LA, the applicant, states that UJ rang her to say that her boyfriend RO had "hit" on RF and two other girls and that the police would be coming to arrest him. UJ states that she did ring the applicant LA on that date to advise her "of the situation" that is presumably what she had been told by her daughter RF. UJ denies threatening or harassing the applicant LA in any way.

[11] On 21 November 2008 there were a number of developments.

- (a) RO was arrested by the police and interviewed in relation to the alleged rape of RF.
- (b) RO was charged that on 23 October 2008 he had raped RF. He was released on bail to appear in court on 10 December 2009.
- (b) Ex parte applications were made by LA for non molestation orders.
- (c) Non molestation orders were made to remain in force until 4 December 2008.

[12] As can be seen from the events that occurred on 21 November 2008 there is an association in time between the arrest of RO and LA's applications

for ex parte non molestation orders. I will require information as to whether, in compliance with the obligation to make full disclosure on the hearing of the ex parte application, the District Judge was –

- (a) informed of the fact that RO had been arrested, charged and released on bail
- (b) whether his attention was drawn to the age of RF
- (c) whether his attention was drawn to the decision of the Court of Appeal in *Wallace v Kennedy* [2003] NICA 25. In that case the Court of Appeal quoted with approval from *Emergency Remedies in the Family courts*, 3rd ed, para 15.93 that –

“Orders which interfere with civil liberties ought not to be made without notice unless they are clearly warranted; audi alteram partem is a fundamental legal principle of great importance.”

The Court of Appeal in that case also stated that Hoffmann LJ described the proper practice in generalised terms in *Loseby v Newman* [1995] 2 FLR 754 as follows –

“An ex parte order should be made only when either there is no time to give the defendant notice to appear, or when there is reason to believe that the defendant, if given notice, would take action which would defeat the purpose of the order.”

[13] The applicant, LA, does not believe the allegations which have been made against her partner RO. She states “I know that this allegation is completely untrue and is designed to harass me and RO. I believe that UJ is encouraging her daughter RF to make such allegations in some misguided hate attack on me.” It is relevant to note that the criminal allegations against RO are one of the allegations of harassment made by LA against UJ and RF.

[14] On 22 November 2008 the non-molestation orders were served on both respondents.

[15] The applicant states that on 25 November 2008 her landlord contacted her to state that she had received a telephone call from an unidentified caller to say that if he did not get the applicant out of the house it would be burnt.

[16] The applicant states that on 28 November 2008 she received an anonymous text message stating that three bullets were coming her way.

[17] On 4 December 2008 the non molestation orders came back before the Family Proceedings Court on notice to the respondents and interim orders were made to remain in force until further order. The proceedings were also transferred to the Family Care Centre in view of the age of RF.

[18] On 6 December 2008 the applicant's mother, DC, states that she received a telephone call from her sister, the first respondent, UJ. That UJ states that during the course of that telephone call UJ stated:-

“tell that daughter of yours that I'm going to kill her stone dead and (RO) too. You're no longer my sister.”

DC states that she reported this telephone call to the police.

[19] On 9 December 2008 the windows were smashed in the house in which the applicant, LA, her partner RO, and her mother DC, live. This was reported to the police.

[20] On 17 December 2008 RF had an abortion.

[21] On 18 December 2008 His Honour Judge Rodgers gave directions as to statements being lodged for the full hearing which he fixed for 22 January 2009.

[22] The respondents subsequently applied to His Honour Judge Rodgers to adjourn the hearing which was due to take place on 22 January 2009. A new trial date of 30 January 2009 was fixed.

[23] On 27 January 2009 DC states that she received a telephone call from the first respondent UJ threatening to kill the applicant LA stone dead referring to a paramilitary threat to RO and threatening to attack the applicant when she was at court on 30 January 2009.

[24] On 30 January 2009 the matter was adjourned to 4 February 2009. This adjournment may have been prompted by the applicant indicating that further statements were to be filed. Those statements were filed. This in turn led to an adjournment on 4 February 2009 to enable the respondent to file their replying statements of evidence. 20 March 2009 was the date then fixed for the full hearing.

[25] On 18 March 2009 an application was made and granted to transfer the proceedings to the High Court because of complexity.

[26] The matter was listed before me on 20 March 2009. Counsel had just been instructed in the case.

The representation of the minor, RF

[27] As I have indicated Ms Casey appears on behalf of both UJ, and her daughter, RF. Counsel drew to my attention Rule 6.2(1) of the Family Proceedings Rules (Northern Ireland) 1996 which provides that:

“A person under a disability may defend (any family proceedings) by his guardian ad litem.”

The proceedings have been commenced against RF and no guardian ad litem has been appointed. Ms Casey applied to adjourn the hearing so that a guardian could be appointed for the child, RF.

[28] The Family Proceedings Rules (Northern Ireland) 1996 apply to any proceedings with respect to which Rules may be made under Article 12 of the Family Law (Northern Ireland) Order 1993. Article 12(3) of the Family Law (Northern Ireland) Order 1993 defines “family proceedings” as “proceedings which are family business ...”. The same Article defines “family business” as “business of any description assigned to the family division and to no other division by the rules of court”. There are exceptions which do not apply in this case. Order 1 Rule 12 of the Rules of the Supreme Court (Northern Ireland) 1980 assigns to the Family Division proceedings under the Family Homes and Domestic Violence (Northern Ireland) Order 1998. The Family Proceedings Rules (Northern Ireland) 1996 therefore apply to these applications.

[29] A person under a disability for the purpose of the Family Proceedings Rules (Northern Ireland) 1996 is defined in Rule 6.1(1) as including a minor (though the requirement to comply with, inter alia, Rule 6.2 does not apply to proceedings which are specified proceedings within the meaning of Article 60(6) of the Children (Northern Ireland) Order 1995. These proceedings are not specified proceedings).

[30] Rule 6.3 creates a presumption that the Official Solicitor shall, if he consents, be guardian ad litem except where the disability of a person who is entitled to defend any family proceedings is not solely due to minority. RF’s disability is solely due to her minority and therefore there is no absolute requirement that the Official Solicitor shall be the guardian ad litem.

[31] The scheme of the Rules is that a person who is a minor cannot give notice of intention to defend or file an answer or affidavit unless the person doing so is either the Official Solicitor or a person who has filed certain documents, for which see Rule 6.2(5). That rule permits another person, which can be any other person but is usually a person such as a mother or father, to be the next friend or guardian ad litem of the minor provided

certain documents are filed. The documents to be filed cover matters such as the consent in writing of that other person and a certificate by the solicitor acting for the person under disability, inter alia, that the guardian ad litem has no interest in the cause or matter in question adverse to the person under a disability and is a proper person to be next friend or guardian ad litem.

[32] There is no person who has consented to be the next friend or guardian ad litem for RF. In any event I consider that it would be extremely difficult for RF's solicitor to file the necessary certificate that for instance RF's mother UJ has no interest in these proceedings adverse to RF. The applicant LA claims that UJ is encouraging her daughter to make allegations of rape against her partner RO. The investigation of that allegation by LA at the full hearing could quite clearly give rise to a conflict between UJ and RF. If that allegation is true then RF could have been manipulated or had pressure exerted on her by her mother UJ. The minor, RF, is clearly entitled to having her instructions taken separately from the interests of her mother UJ by a dispassionate and disinterested individual. This is even more so in this case where I have concerns as to the welfare of RF and am considering ordering the relevant Trust to investigate her circumstances under Article 56 of the Children (Northern Ireland) Order 1995. There is the potential that RF is suffering or is likely to suffer significant emotional harm either by virtue of the conduct of RO or UJ and that harm, or likelihood of harm is attributable to the care given to RF not being what it would be reasonable to expect a parent to give to her. For instance, if RF was in a relationship with RO, and/or was raped by RO, then there is the potential that UJ did not protect her from that relationship or the situation in which she came to be raped. If UJ is manipulating or pressurising RF into making false allegations against RO, then if she is suffering from significant emotional harm as a result, that would be attributable to the care of UJ. I have also been informed that RF has not been receiving counselling in relation to the matters which she alleges occurred involving RO.

[33] I accordingly order that the official solicitor be appointed to represent RF and adjourn the full hearing. The respondents have consented to a continuation of the interim non molestation order which I will accordingly continue but for a limited period. I will also set an early review date to consider a number of issues.

Issues to be considered at review hearing

[34] The issues which I wish to consider at the review hearing include -

- (a) Whether to order the relevant Trust to investigate RF's circumstances under Article 56 of the Children (Northern Ireland) Order 1995.

- (b) Whether to adjourn the full hearing of the application for non molestation orders until after the conclusion of the criminal proceedings against RO. In that respect RO is not a party to the application for non molestation orders but it is suggested by Ms Casey on behalf of UJ and RF that there is a real risk of serious prejudice in the related criminal proceedings to both RF and RO if the present proceedings are heard and determined before the conclusion of the criminal proceedings. In that respect it is submitted that the limitation to self incrimination contained in Article 171 of the Children (Northern Ireland) Order 1995 does not apply to proceedings under the Family Homes and Domestic Violence (Northern Ireland) Order 1998.
- (c) Whether to give leave to issue Khana Subpoena's on the Police Service of Northern Ireland in relation to RO's interview records, the statement of RF, any DNA evidence arising out of the termination and any reports or investigations into the incidents of alleged harassment about which the applicant complains.