

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Luke (a pseudonym) (Allocation of Proceedings: Administrative Transfer)

STEPHENS J

Introduction

[1] This case concerns a child whom I shall call Luke, though that is not his real name. He was born in Northern Ireland in 2008. His mother is a national of South Africa who came to live in Northern Ireland in 2001. His father is Northern Irish. His parents met in 2004 and married in 2007. Unfortunately their marriage has broken down and they separated in 2009. Luke's mother wishes to return to South Africa with Luke so that she can be near to and gain the support of, her extended family. That move is opposed by Luke's father.

[2] I have anonymised this judgment. Nothing should be reported which would identify Luke or any member of his extended family. Prior to publication of this judgment on the Court Service website I afford the parties the opportunity of considering the pseudonym and if they consider it inappropriate to either suggest an alternative or to request anonymisation by the use of initials. If any party wishes to avail of this opportunity then the Office of Care and Protection should be informed in writing within one week. If the Office is not so informed then the present pseudonym will remain.

[3] The parties are also requested to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication.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.

[4] On 27 November 2009 the mother commenced proceedings in the Family Proceedings Court seeking a residence order in respect of Luke under

Article 8 of the Children (Northern Ireland) Order 1995 together with leave to remove Luke from the jurisdiction in order to return to her home in South Africa. She planned to move in June 2010 and in order to achieve this a final decision in these proceedings would have to be made in sufficient time for her to give four weeks notice to her employer, to make arrangements in Northern Ireland as to the matrimonial home and packing and in South Africa as to a home there. The date upon which she commenced proceedings was sufficiently far in advance to enable the proceedings to be concluded in time.

[5] The proceedings have been transferred from the Family Proceedings Court to the Family Care Centre and then to the High Court. The case has first appeared in my list today, 26 March 2010, some 4 months after the proceedings commenced on 27 November 2009 in the Family Proceedings Court. It is only now that we can set about fixing a date for hearing. I have no available dates in April or May. I have one free date in early June and two dates at the very end of June. The senior judge in this division has no dates during the course of next term. This means that another case has to come out of the list to facilitate the hearing of this case or alternatively attempts will have to be made to secure a hearing by a judge not in this division.

[6] I consider that the 4 month period that it has taken for the case to progress from the family proceedings court into my list is a period of delay which could have been avoided. The legal representatives should have requested that allocation and transfer be dealt with on an *administrative* basis without the need for dates being fixed and hearings taking place in either the Family Proceedings Court or the Family Care Centre. Whether it was dealt with on an administrative basis would have been for the judge concerned. There are some cases where a hearing is necessary to determine whether to transfer. In others there is no need for such a hearing. In order for the judge concerned to make a decision as to whether to transfer administratively the applicant's legal representatives on the same day that proceedings were initiated should have written to and telephoned asking the court staff at the first judicial tier to bring the case to the immediate attention of the judge. Similar contact should have been made with court staff at each subsequent judicial tier. On the facts of this case transfer was an *administrative task*. There are tools available to practitioners to deal with any delay in administration. It is incumbent on practitioners to timetable and to draw the court's attention to administrative tasks which need to be performed within a tight timescale.

The sequence

[7] The sequence is that the proceedings were first listed in the Family Proceedings Court on 31 December 2009. No directions were sought in the Family Proceedings Court as to, for instance, the father filing a statement or, in the circumstances of this case, for the disclosure of his medical notes and

records. The Family Proceedings Court ordered the transfer of the proceedings to the Family Care Centre.

[8] On 22 January 2010 the case was first listed in the Family Care Centre. Again no directions were sought. The case was transferred to the High Court.

[9] On 9 February 2010 the case was first listed in the High Court before the Master. She gave directions as to the steps that should be taken by the parties and also directed a listing for review before me on 26 March 2010.

[10] The case appears in my list today. There is still no statement from the father. The issues have not as yet been defined.

The obligation

[11] The guide to case management in public law proceedings does not apply to these private law proceedings. The provisions of the guide are however instructive as to the practice which should have been followed. If these were public law proceedings then on the issue of proceedings there would have been:-

- (a) A proposed timetable for the child with detailed reasons. A feature of such a timetable in this case would have been the need for a final determination by April or May 2010 at the latest.
- (b) The terms of any immediate order sought, for instance in this case that the father files a statement, discloses his medical records and the period within which he was to do so.
- (c) The applicant's proposals for allocation with detailed reasons for instance in this case allocation to the High Court by virtue of the need for mirror orders in relation to residence and contact if leave was granted to Luke's mother to move Luke to South Africa.

In this case if a timetable had been made available with proposals as to allocation with detailed reasons then *administratively* the Family Proceedings Court and the Family Care Centre could have immediately transferred to the High Court. The process of transfer should have taken a period of days and should have been completed certainly within a period of a week.

[12] Upon its transfer to the High Court if the Master had been aware of the timetable to conclusion then immediately she would have asked the staff of the Office of Care and Protection to bring the case to my attention or alternatively

listed it in front of me to fix a date for hearing. The matter would have been before me in early to mid December 2009 rather than at the end of March 2010 which is the very last day of the present term.

[13] If in the event, for some reason, the case was not transferred administratively then an opportunity presented itself before the District Judge and before the judge in the Family Care Centre for directions to have been sought and obtained in relation to the preparation of the case for final hearing. There is an obligation on all the practitioners to take that opportunity and they also have an obligation to co-operate with each other and the court as to the directions which are appropriate for the particular circumstances of each individual case.

Conclusion

[14] This case required *administrative* transfer and required to be in my list expeditiously to fix a date for hearing. Luke's welfare is my paramount consideration. It is in his interests that with whom and where he is to live together with contact arrangements should be settled without delay.