Neutral Citation No. [2014] NIFam 13 | *Ref:* **OHA9449**

Judgment: approved by the Court for handing down | *Delivered:* **02/07/2014**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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

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IN THE MATTER OF M A CHILD

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O'HARA J

[1] This judgment has been prepared in an anonymised form in order to protect the child with whom it is concerned. Nothing is to be published in any form which might jeopardise that protection, directly or indirectly.

[2] The application before the court is for an order that the child (M) should be freed for adoption without the consent of his parents because their consent is being withheld unreasonably. The applicant Trust was represented by Mrs Keegan QC with Ms M Smyth. The mother, Ms O, was represented by Mr McGuigan QC with Ms U McGurk. The father, Mr J, was represented by Ms McGrenera QC with Ms J Flanagan. The Guardian Ad Litem was represented by Ms C McCullagh. I am grateful to all counsel for their assistance.

[3] M was born in August 2009. On 15 April 2013 he was made the subject of a care order. The making of that order was not contested. The care plan ruled out rehabilitation of M to his parents. The Trust has now applied for M to be freed for adoption without the agreement of his parents. The parents present as a married couple who want M to be returned to them. Their basic contention is that at the time the care order was made Mr J had only recently arrived in Northern Ireland, having previously played no part in M's life. They say that his arrival shortly before the care order was made and his continued presence since then show his commitment to his son and to his wife, with his wife being in a better and more settled state than she had been for some time before. Accordingly they contend that whatever the Trust's plan was in April 2013 for M, the current state of affairs points towards rehabilitation of M to their care, gradual or otherwise.

[4] During the course of the care proceedings and the present proceedings the parents have been interviewed, examined and/or reported on by a variety of experts. It is not surprising that some inconsistencies have emerged during this process, especially when account is taken of the fact that the parents are both from central or southern Africa so that they do not have English as a first language. Having said that, Ms O gave evidence without an interpreter and Mr J gave evidence with an interpreter but only to guarantee absolutely his understanding of the evidence – he was clearly able to follow much of it without assistance from the interpreter to the extent that he answered some questions directly in English.

[5] This is relevant because the understanding of the family history and make up when the care order was made now turns out to be quite incomplete. It appears that the parents married in southern Africa in 2006. The country of the mother's birth is uncertain. She arrived in April 2009 in the Republic of Ireland, pregnant with M. At that time she said she was escaping from gangs in South Africa and had left behind a daughter, E and perhaps a half-sibling, G. The mother was quite unwell after M's birth and was treated as an in-patient with mental health problems in August 2010. During that time M was placed in care. In January 2011 her application for asylum in the Republic of Ireland was rejected and in February 2011 she was ordered to be deported.

[6] From in or about spring 2011 the mother started to come to Northern Ireland with M. In September 2011 an emergency protection order was applied for and M was taken into care because of concerns about the mother's mental health and her ability to look after M. In November 2012 the father arrived in Northern Ireland for the first time. DNA testing was carried out to prove his paternity. Previously a man who declared himself to be M's uncle had come to Northern Ireland and asked to be assessed as a potential carer - it turned out in fact that he was no relation.

[7] The care order was made on 7 April 2013. Soon afterwards the Trust received a call from a social worker in Dublin informing it that E had been in care in Dublin for approximately six weeks. It emerged that E had travelled unaccompanied from southern Africa and had arrived in Dublin with a family intention that she should then travel north to join her parents. This information had not been disclosed by either parent to the Trust before the care order was made. The end result of this reckless plan is that since that time E has been in care in the Republic. She has no right to travel to Northern Ireland or to live here. As matters stand her parents, O and M, do not have the right to stay in Northern Ireland either. Confirmation had to be obtained during the course of these proceedings that if M was freed for adoption he would be allowed to stay in Northern Ireland.

[8] There was some dispute in the course of the evidence about whether the parents had informed the Trust or Mr Stewart Whyte, the independent social worker, about the intended arrival of E. I do not believe that they did. Rather it appears that this information was provided to a solicitor who had previously acted

for the father and who (quite properly) advised against that course of action in relation to E.

[9] During the course of Ms O's evidence she referred to the fact that she had another child, D, by a different partner. She said that D is now with her aunt and that she had regular contact with her, by phone and by writing. In cross-examination it was put to her by Mrs Keegan that Mr J had said that D was his child by a different woman, not her child by a different man. The answer given to this by Ms O was that the D she was talking about was different to the D he was talking about. She also said that G was not a child of hers but was instead a cousin.

[10] If I was to accept this evidence it would mean that this couple have two children together, M who is in care in Northern Ireland and E who is in care in the Republic of Ireland. In addition they each have a child named D, the pronunciation of the names of these two girls being almost identical with the two girls being cared for by different people in southern Africa. I am entirely satisfied that before these freeing proceedings there had never been any mention of two children called D, only one child was previously mentioned. This confirms to me a view which I formed during the unsatisfactory evidence given by both parents that it is simply not possible to believe their account of their relationship, the number of children they have together and separately, how those children have been cared for in the past, how those children are being cared for currently, how they came to separate when the mother travelled to the Republic of Ireland and what their plans are for the future of their children.

[11] If M was to be returned to them, even on a gradual basis, there is no certainty that they would be allowed to stay in Northern Ireland and there is already an order for the deportation of the mother from the Republic of Ireland. Nobody knows what is likely to happen to E who is in care in Dublin or if and when there will be any reunion of either parent with their daughters D.

[12] In the course of the interviews which have been conducted with her over the years Ms O has been understood to suggest at different times that one of her reasons for fleeing to Ireland was violence which she suffered at the hands of Mr J. Her assertion in this case was that that was a misunderstanding, that Mr J had never been violent to her, that she had never been in fear of him and that he was a positive presence. If that is so, it is impossible to understand how their family has become so fractured and how it took him so many years to come to Northern Ireland to try to help her with M who was more than three years old before he appeared. There is no consistency in what has been told to social workers and experts like Dr Maria O'Kane, psychiatrist, over the years. The result is that I am disinclined to believe much of the evidence given by Ms O and Mr J.

[13] The only positive factor which can be advanced on their behalf is that since he arrived in November 2012 Mr J has stayed in Northern Ireland, that he and his wife are living together and that there does seem to be some level of stability in their

lives. Having said that, the decision which they made to bring E to Ireland was disastrous and they have no coherent explanation or plan for what they will do about their other two daughters, both named D.

[14] Over and above all of these concerns however, the greatest difficulty which the parents face in resisting this application is in respect of M. He has not been cared for by his mother since September 2011. During the previous two years of his life, in the Republic of Ireland and in Northern Ireland, the care which his mother was able to give to him was severely handicapped by her fluctuating mental health, by her almost complete isolation and by her own limitations. These experiences led M to be very damaged. None of the many experts who have given evidence or provided reports supports rehabilitation to the parents or believes it is feasible. All of the experts express on-going concerns about the parents and, more importantly, all of the experts expressed the greatest possible concern about M. The attachment which M has to his parents is extremely limited. The evidence was that M needs on-going therapy, that he needs years of stability and to develop an attachment to care givers. On the evidence neither parent, individually or together, can provide what M needs.

[15] I am not reassured that the parents have changed or can change. They can certainly not do so in any timeframe which matches the major needs of a boy of five whose attachment to them is so limited and whose contact with them brings so little to his life. Indeed the evidence, which I accept, is that contact for M with his parents is capable of re-traumatising him. That means that any contact he might have with them after a freeing order is made should be very limited indeed. I acknowledge that the making of a freeing order with very limited subsequent contact is a particularly serious interference with the individual and collective rights of the parents but in this case it is entirely necessary and unavoidable.

[16] Since November 2013 M has been in a dual approved placement. If a freeing order is made the proposal by the Trust is that the current foster carers would become his adopters. It appears that limited post-freeing and post-adoption contact will be accepted by the Trust and by the prospective adopters provided that the conduct of the parents (assuming they remain in Northern Ireland) is appropriate and assuming that contact on a very limited basis is in M's best interests.

[17] One issue advanced on behalf of the parents against M being freed for adoption was the ethnicity issue. M's skin colour is entirely different from that of the proposed adopters and from the vast majority of people in Northern Ireland. His ethnic background is also entirely different. On this basis it was suggested that even if M is not to be returned to the care of his parents it would be better for him to stay in foster care and to have regular contact with them in order to provide him with reassurance about his background. I do not accept that suggestion. As I have already indicated, all of the evidence points towards less contact rather than more. More fundamentally I am troubled by any suggestion that a court in this jurisdiction should be slower to free a coloured child for adoption than a white child. And that suggestion cannot carry any weight in this case where the child with whom I am

concerned is so troubled and traumatised by the experiences which he went through with his mother – he needs stability, therapy and reassurance even more than most children in respect of whom freeing applications are made. I believe that any reasonable parents of any race would want to see their children raised in a stable and secure setting rather than a problematic and volatile one.

[18] In all the circumstances I grant the freeing order on the basis that Ms O and Mr J are unreasonably withholding their consent to M being adopted.