

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

No. 13/085386/A01

BETWEEN:

MR E

Appellant;

-and-

MS L

Respondent.

O'HARA J

Introduction

[1] This is an appeal from a decision of Her Honour Judge Philpott QC who granted the application of the respondent (the mother) to move from Northern Ireland to live in the United States with her son S whose father (the father) is the appellant. The father objects to the proposed relocation. His case is that it is in S's best interests to be raised in Northern Ireland where, despite their divorce, the mother and father can both care for S and share the responsibilities of parenthood between them. On his case the fact that this would require the mother to stay in Northern Ireland against her wishes is secondary to what is best for S.

[2] On appeal the father was represented by Ms Keegan QC with Ms M Kane. The mother was represented by Mr McCreanor QC with Ms M Connolly and the Official Solicitor was represented by Ms J Pauley. I am grateful to all counsel for their helpful submissions.

[3] In the normal course of events appeals from the Family Care Centre to the High Court are not heard by way of rehearing. However for various reasons an

unusual amount of time has passed since the decision of the learned trial judge in May 2014 and the circumstances of both families had changed. In these circumstances I heard this appeal by way of rehearing. That is not the way in which they will be typically dealt with.

[4] There are various factual disputes between the parties about their relationship and its breakdown which are of limited relevance in deciding this case. I do not intend to deal with all of these issues in this judgment. That will still leave some areas of controversy to be resolved.

Background

[5] The mother is from the United States and the father is from County Armagh. They met in 2005 when he was working in the United States where he had already lived for at least one year. After some time together they became engaged in 2007. The father returned to Northern Ireland in or about July 2007 followed by the mother in or about January 2008. She secured a senior position with a bank in Dublin while he had a good job as a marketing manager of a major company. They built a house on land given to the father by his family in County Armagh and moved into that home around Christmas 2008. In June 2009 they were married, the ceremony taking place in the United States.

[6] For some time after that the marriage seems to have progressed reasonably well. To their disappointment they were initially unable to have children but with IVF treatment the mother became pregnant and S was born in late 2012. Up to that time the mother was travelling to and from work in Dublin every day while the father worked closer to home. The time when the mother was pregnant appears to have been a happy one but tensions developed as the date of confinement drew near and in the months after the birth with the result that the parties separated on or about 25 June 2013. A divorce petition dated 2 July was issued on 18 July alleging unreasonable behaviour against the father. He denied the allegations in the acknowledgment of service but accepted that the marriage was over and did not defend the divorce or seek to agree reduced particulars of unreasonable behaviour. The Decree Nisi was granted on 5 November 2013.

[7] Before exploring insofar as it is necessary to do so how this came about and what its relevance is to the present appeal it is appropriate to set out the respective family backgrounds. The mother's parents live in the United States. She has two brothers who live close by, one of whom has a son who is close in age to S. She also has extended family and friends in the area. Her family is both close-knit and successful. Unfortunately the maternal grandmother is very ill. Her life expectancy is uncertain but limited. Understandably this development in recent months has increased the mother's desire to return to the United States.

[8] The father is an only child. Sadly his own father, the paternal grandfather, was blinded and brain damaged in an accident in or about 1972 before his own

marriage. As a result he has depended throughout his life on the care and support of others. This was provided largely by his wife but she died tragically and unexpectedly in December 2014. As a result the father now has greater responsibility for the grandfather. In this context it is an important element of the father's case that he himself missed out on a "normal" childhood and relationship with his father because of the latter's disability so it is all the more important to him to have as full a relationship as possible with S rather than a trans-Atlantic relationship.

[9] It is clear from the evidence that the mother had a good relationship with her late mother-in-law and that her sudden death has added to the complexities of the case.

[10] Inevitably there are allegations and counter-allegations between the parties about how and why the marriage broke down. It has been difficult to decide exactly how relevant they are to the sole issue which I have to decide i.e. whether it is in S's best interests to live in the United States with his mother or to stay in Northern Ireland where both parents can share his care. The father's case is that the mother's decision that the marriage was over came as complete shock to him, entirely out of the blue. He has also put forward a case that the mother contrived and planned events around the end of the marriage and their separation so as to position herself better for this application to relocate with S.

[11] I find the following relevant facts to have been established:

- (i) The pregnancy, especially the weeks immediately preceding S's birth, were very difficult for the mother as a result of which her own mother came from the United States and stayed in the family home for about nine weeks until 12 January 2013. Her prolonged stay and care for her daughter and grandson were perceived by the father as having the effect of excluding or side-lining him, even after S was born.
- (ii) Relationships generally between the father and the mother's family have been strained. He has been difficult in his attitude to them on occasions.
- (iii) In the period immediately before the mother-in-law's departure from Northern Ireland on 12 January 2013 the parties had long and difficult discussions about the father's relationship with the in-laws and about the possibility of moving with their baby to the United States, though not necessarily to the area from which the mother comes.
- (iv) The father occasionally binge drinks though less so in the last year or more. This drinking was particularly hard for the mother to accept because as the father accepts he becomes incontinent after more than about three drinks. As a result he inevitably loses control of himself

and leaves evidence of that fact on whatever floor, bed or chair he has been on. Quite why a grown man with that problem would still go out and take drink is more than difficult to understand. When he was seen by Dr O'Kane, consultant psychiatrist, for these proceedings he told her that he worried about the effect which alcohol has on his golf on Saturday or Sunday mornings as a result of which abstains the night before. This insight is astonishingly limited and unbelievably late in dawning on him.

- (v) S was christened on 7 April 2013. On the night before the christening the father drank to excess with the inevitable urinary consequences. This led to a major row between the parties the following morning. The mother said that in light of his drinking and lack of control she and S should not accompany him as planned to a wedding in Edinburgh in the near future. His very aggressive and physical response was to threaten her by saying that in that case she and S would not be allowed to go to the United States a few days later. This threat was entirely inappropriate and suggests a man who has limited tolerance for the entirely reasonable views of others.
- (vi) While in the United States during late April and early May the mother decided that the marriage was over.
- (vii) On 23 June 2013, some weeks after she had returned from the United States, the mother rang the father with the shocking news that she had left him, transferred her job to Belfast, found a place to live there and taken S with her. However much the father should have realised there were problems in their marriage this combination of moves on the mother's part without any notice to him did not have S's interests at their centre.
- (viii) On 4 July the father sent the mother an e-mail of some length. It predated his sight of the divorce petition but accurately mirrored what later appeared in that petition. It is now the father's case that the e-mail which he himself wrote is untrue. I do not believe him. I believe that on that occasion the father for once faced up to the reality and consequences of his conduct. Among the things he said were that he should have put as much energy into their marriage as he did into his hobbies, that his drinking had caused problems and was a "monster" in his life, that he did not need to challenge her or disagree with her as he had been doing, that he should have listened to her desire to stay at home with S by stopping work or taking a career break instead of being so focused on money, that he had sent inappropriate e-mails and failed to realise how he had hurt her publicly. He also said that his priorities had been wrong for a long time.

- (ix) The mother's response by e-mail was to say that her trust in him was broken, that he had said sorry too many times for her to believe him, to refer to his conduct towards her family and to complain about him being unfaithful and physically abusive. In his oral evidence in this hearing the father accepted the contents of her response as being appropriate if a little embellished.
- (x) In the following months it proved difficult, probably too difficult, for the father to establish contact with S in Belfast. However over the last year or so things have improved considerably. He has regular contact, including overnight contact, which has been arranged on an increasingly civilised basis between them. In part this came about because he became unemployed and was freer to see S at different times.
- (xi) Both parties have behaved well in the context of the health of their respective mothers. The mother took S to County Armagh to be near his father in the days following his mother's death in December 2014. Similarly he did not object to the mother going with S to the United States to see her mother after Christmas 2014 when she was ill.

[12] It is the father's case that he and the mother share the care of S. She accepts that he is a good father and that he has exceeded her expectations since they separated. She further accepts that relocation to the United States would greatly affect the relationship between S and his father - instead of seeing him every week and staying with him he would be on the other side of the Atlantic. While she would have extended family support which S would enjoy, S would never have the same relationship with his father as he does now.

[13] Having acknowledged those facts fairly and correctly, the mother has also expressed her concern that the father's conduct is an act which will not be maintained. She is able to point to controlling behaviour on his part which tends to supports that proposition. For instance:

- (i) Him telling her that her name was on the title deeds of their home when it is not despite their marriage and her considerable financial contribution.
- (ii) His threat at the time of the christening that he would not let her and S go to the United States.
- (iii) His focus on money and him pushing her to work full-time when she wanted to be at home more with S.
- (iv) His unwillingness, even before his mother's death, to consider a world beyond County Armagh. Despite various conversations and messages

about going to somewhere like Florida I am satisfied that he has never intended to leave County Armagh since his return in 2007.

- (v) His grossly insensitive and difficult behaviour as spelt out in the divorce petition which he did not defend in any meaningful way but which he now denies.

[14] To that list the evidence during the appeal hearing adds more items:

- (i) His contention that in order to reduce her isolation and loneliness she should move to Newry, thus making her world horizons as narrow and limited as his.
- (ii) His assertion, made starkly in his evidence, that now that he has secured employment in Newry from about Easter 2015 he can take S for an extra night each week and enrol him in a second day nursery, this time in Newry. The father did not raise this as something to be considered or discussed – he raised it as something which will happen.
- (iii) His reference to him having “allowed” the maternal grandmother to stay in their home before and after S’s birth as if this was something which as the man of the house he could have refused.
- (iv) His evidence about how the mother could and should go out and socialise more in order to reduce her isolation despite the fact that when she has S she largely cannot go out and when she does not have him she is often working extra hours to make up for the days when she leaves work “early” to collect him from nursery.

[15] Medical reports from consultant psychiatrists were provided by each party. They do not reveal much more in medical terms than that each parent is currently stressed and distressed about the possible outcome of this appeal. It is however worrying to read from the reports how the father interprets and twists events. For instance he sees the maternal grandmother’s illness as “another part of the plot” to get S to the United States, a statement which is wholly insensitive and grossly offensive.

[16] The position of the Official Solicitor who has provided helpful reports through Ms Penman and latterly through Ms Liddy is that it is not in S’s best interests to go to the United States because he currently enjoys a very high level of good quality contact with his father and benefits from a clear relationship with each of his parents. Ms Liddy’s view is that a reduction in the current level of contact between S and his father could not be compensated for if the mother were to relocate to the United States with S. I agree with that suggestion though I note that it is one which could be put forward in very many cases.

[17] The correct legal approach to relocation cases is now entirely clear and is set out in two recent decisions of the Northern Ireland Court of Appeal, Re L [2013] NICA 45 and SH v RD [2013] NICA 44. In SH v RD the Lord Chief Justice stated the following at paragraph [37]:

“In this jurisdiction we agree with the learned trial judge that in relocation cases the court should focus on the welfare of the child as the paramount consideration. We recognise, of course, that some of the matters identified in Payne may well be relevant in individual cases in determining that issue but the starting point should always be the welfare checklist.”

[18] In the decision of Her Honour Judge Philpott in the Family Care Centre in May 2014 it was stated at paragraph [79] that S “has not formed a strong father/son relationship”. Since then the father has undoubtedly developed a significant connection. That is an important development in the case.

Conclusion

[19] This is not a case in which there is any dispute about the life which S would enjoy in the United States as opposed to Northern Ireland in terms of housing, healthcare, education or other important basic features. He will be well cared for whatever jurisdiction he lives in. The difference is that while the care in the United States would be primarily provided by his mother with the help of her extended family, the care in Northern Ireland would be provided by his two parents. As will be entirely clear from the preceding paragraphs of this judgment I have considerable reservations about the father’s past conduct and about his perspective on life being largely confined to a parish in County Armagh. But for so long as he continues to behave as he has done in the last year or so I am driven to conclude that it is not in S’s best interests to have his relationship with his father weakened as it inevitably would be by moving to the United States. Accordingly I allow the appeal and refuse the mother’s application to remove S from the United Kingdom.

[20] This decision will undoubtedly disappoint the mother. For the most part she has behaved considerably better than the father and has cared for S with great love and devotion since his birth. I accept that at present her life here, away from her family, is more isolated than she wants. It revolves almost exclusively around S and her job and may become more difficult if she is expected to travel for work purposes. The fact is however that the relationship between S and his father is a very important one. Quite rightly and fairly she has acknowledged the unexpected improvement in the father’s attitude and conduct in the last year. At this time that relationship is one which, in the best interests of S, should be given priority over her desire to relocate to the United States.

[21] In her judgment the learned trial judge stated at paragraph [78] that she anticipated that the mother would not give up and would seek again to relocate with S. The judge's concern was that in that event the likelihood is that proceedings will become more acrimonious. That may be true but it is not necessarily so and it is not in any event a basis for allowing relocation now. As this case shows life moves on in unexpected ways - the fates of the two grandmothers illustrates that point. No one can anticipate what will happen next but it is safe to say that if the father pushes for more overnight contact, for S's time in County Armagh to be extended and for more control he will risk destabilising the present situation which has led me to reach this decision. He will also do so if he proves to be difficult about S visiting the United States with his mother, especially in the context of the illness of the grandmother. I do not dismiss as being without foundation the mother's concerns that the father's recent conduct has been an unreliable façade and that fundamentally he is still the same person he himself described in his e-mail of 4 July 2013. If his conduct deteriorates as she fears it will or if he becomes unreasonably difficult about contact with the family in the United States he may find himself facing a further application for relocation. In that event the very narrow margin by which this application has been refused may well change. The same is likely to happen if he behaves unreasonably or in a controlling way in other respects.