

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

11/62027

N's (a minor) Application (Relocation Appeal) [2015] NIFam 12

IN THE MATTER OF N (A MINOR)
(Relocation Appeal)

O'HARA J

[1] The identities of the parties have been anonymised in order to protect the interests of the child to whom this judgment relates. Nothing must be published or reported which allows him or his family to be identified in any way.

[2] The appellant mother who is from Eastern Europe and the respondent father who is from Northern Ireland have a son N who is 7, almost 8, years old. They separated a little more than a year after his birth since when he has lived primarily with his mother but with contact (especially in recent years) with his father. Ms S applied to the Family Care Centre for leave to move with N to her homeland. The father opposed that application successfully, Her Honour Judge Philpott QC concluding that N's best interests are served by staying in Northern Ireland. This decision was reached despite a report from the Official Solicitor which described relocation as "the least worst option". The mother has appealed against that decision.

[3] Mr Toner QC appeared with Ms F McNulty for the appellant mother. Ms O'Grady QC appeared with Mr E Cleland for the respondent father and Ms M Rice was instructed by the Official Solicitor on behalf of the child.

[4] Appeals from the Family Care Centre are conducted on a confined basis for the reasons set out by Gillen J in McG v McC [2002] NI 283. What typically happens is that written submissions are presented. If it appears from those submissions that there are issues which need to be explored further that can be done by way of oral evidence or additional statements or reports being filed. That can happen in a

number of scenarios but especially when it is contended that circumstances have changed in some truly important way since the decision of the lower court was reached.

[5] The conduct of this appeal illustrates how that approach operates. At the time of the original hearing Mr P was living and working in Scotland, a fact which somewhat limited his ability to take full advantage of his contact with N. Furthermore the report from the Official Solicitor stated that while N very much enjoyed his contact with his father, he wanted to go to his mother's homeland to live there with her. It emerged during the appeal hearing that both of those aspects of the case had changed. Mr P has returned to work in Northern Ireland and expects to be securely employed here for the foreseeable future. This enables him to have more frequent contact with his son. It also makes any trips to Eastern Europe to see his son longer in distance and potentially more expensive. While that is significant, a point of greater importance is that N's views about going away with his mother have changed.

[6] The Official Solicitor's report for the lower court explained that N wanted to go with his mother though this would make his father "very very sad". He came across from the report as a boy who was understandably torn between his parents but one who was reasonably clear that his preference would be to relocate provided he could still see his father. During the course of the appeal hearing Ms O'Grady stated that her client's instructions were that this was no longer N's position. As a result the Official Solicitor (Ms Liddy) met N at short notice and provided a very helpful report. From that report it is apparent that N wants to stay in Northern Ireland. This will allow him to enjoy the better and more regular contact which he now has with his father and which realistically would not be maintained from the other side of Europe. He also expressed his general happiness with his life here, with his school and his friends. Of course a central reason for his happiness is the effort which his mother has put into caring for him as best she can. His desire to stay here is not in any way a slight on her - if anything it shows how content he is with his life. N told Ms Liddy that he would like her to tell me "that I would like to stay here and I am really happy here".

[7] It is clear that this application was finely balanced when it was heard by the Deputy Recorder. There are significant points which can be made on behalf of Ms S and which were made by Mr Toner. However the balance has now swung more clearly against relocation as a result of the change in Mr P's employment and the change in N's expressed wishes and feelings. In light of those changes it is not necessary or appropriate to explore the other issues which have been argued in the lower court and on appeal. Whether the appeal would have succeeded without those changes is hypothetical - with the changes, it cannot succeed.

[8] There are however some points which should be recorded before the appeal is dismissed:

- (i) At paragraph [65] of her decision the Deputy Recorder stated that Ms S had shown “a selfish attitude” by wishing to go home. While the trial judge had the advantage of hearing evidence from Ms S, I have to say that even though I am refusing it I found her application to be both understandable and reasonable. The facts that N was in favour of relocating with his mother and that the Official Solicitor was supportive of the application make it harder to understand or agree with the criticism of the mother for being selfish. She has few enough reasons to want to stay here, certainly fewer than she did when she had meaningful relationships with Mr P and with a subsequent partner. As Mr Toner emphasised that in itself is a legitimate basis for seeking relocation.
- (ii) At paragraph [66] of her judgment the Deputy Recorder stated that she would have allowed relocation if the application had been made when N was younger and before he had started school. For my part I do not agree that such importance should be attached to the timing of an application to relocate, especially because children start school later in his mother’s homeland so that if he did relocate he would have the advantage of having already been in formal education for a few years before entering another education system. If circumstances change in the years ahead the fact that N is settled in school here will be a factor against any further application to relocate but it is unlikely to determine the outcome of such an application.
- (iii) I expect that Mr P will agree that N should have extensive holiday contact with his extended family in his mother’s homeland. That aspect of his life is clearly important for a child whose parents come from such different backgrounds. It can only be fostered by him spending time with his mother and her family so that he understands where she comes from, meets her family and friends and comes to appreciate their culture which is also his.

[9] In all the circumstances this appeal from the decision of the Deputy Recorder is dismissed.