

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

12/142684

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

BETWEEN:

R AND T

Appellants;

-and-

THE HEALTH AND SOCIAL CARE TRUST

Respondent.

O'HARA J

Introduction

[1] This case involves an appeal by the parents from a decision made on 4 August 2014 by His Honour Judge Sherrard who made care orders in respect of their four children. The effect of the care orders is that the children are to be removed from their parents and placed in foster care. Pending the outcome of the appeal the Trust agreed to the children staying in the family home.

[2] In this appeal hearing the mother (R) was represented by Mrs Keegan QC with Ms J McCaffrey. The father (T) was represented by Ms McGreenera QC with Ms L Casey. The Trust was represented by Ms C Sholdis and the guardian by Ms L Murphy.

[3] On 25 September I heard opening submissions on the appeal. As a result I gave an interim judgment on 1 October 2014 in which I remitted the case to the trial judge to allow him to expand on the reasons for his decision. He did so on

24 October following which the appeal was heard on 14, 20, 27 and 28 November. By the time it ended there was some degree of consensus on a number of issues with the main outstanding issue being the orders which should be made for the middle two children, both girls.

[4] Before setting out the background and my decision on what the final order should be, I have to record that these are cases which have not been served well by the court system. They started in the Family Proceeding Court in late 2013 but were transferred to the Family Care Centre when it became evident that it would not be possible to find consecutive days to hear the evidence of the various witnesses. Unfortunately the pressure of work in the Family Care Centre, combined with other Crown Court and County Court hearings, meant that the hearing of these cases was fragmented and protracted. That is far from ideal and is difficult to reconcile with the statutory obligation imposed in the Children Order to avoid delay. It is unfair on the children, the parents, the Trust and the judge.

Background

[5] The mother was 15 when she started a relationship with the father who is 17 years older. She had their first child P shortly before her 17th birthday, their second child S just after her 18th birthday, their third child H when she was 20 and their fourth child E when she was 24. She is now 27 years old and the children are aged from 2 years to 10 years.

[6] There has been long term intermittent social work involvement with the family, starting as far back as 2005. That involvement was fitful because the extent of the concerns was limited. It is one of the contradictions of the case that in her evidence the Guardian Ad Litem described the children as “four of the loveliest children you will ever meet”. She said “they can’t do enough for you” and that they are bright with the potential to do really well. It was also accepted that their school attendance is good, their clothing is good, their preparation for school is acceptable and there is a lot of warmth shown to the children and between the children. There is no suggestion of abuse of alcohol or drugs and there is no evidence of violence by the father against the mother.

[7] The central issue, identified in the threshold criteria which were proved to the satisfaction of the trial judge and which are no longer part of the appeal, revolves around the father T. He has punished and chastised the three eldest children roughly and inappropriately. R did not or could not stand up to him to protect the children even though her parenting style was much less severe. The conflicting parenting styles of the parents damaged the children, especially P who at 10 is the oldest. He has been beyond their control at times and like his sisters S and H has been damaged emotionally in his home surroundings.

[8] On the evidence I believe that this lack of consistent appropriate parenting came about primarily because of the dominant personality of the much older father.

He was described in a series of reports as being unable or unwilling to acknowledge the harm that he was causing to the eldest three children by his parenting and by the conflict in the styles shown by him and his partner. Various efforts were made, especially in 2012-13, to correct or improve what was going wrong. These included courses for the parents, intervention by Mr S Whyte and a placement in Thorndale Family Centre. Such progress as there was was limited and was not maintained. The three older children all showed signs of emotional damage.

[9] In September/October 2013 the Trust decided to apply for care orders with the care plans being for the removal of all four children. For reasons which are not the Trust's fault and which I have set out at paragraph 4 it took until August 2014 for final orders to be made in the Family Care Centre. In the meantime no on-going work of any significance was carried out with the parents. In June 2014 when the trial judge made his findings on the threshold criteria he declined to make interim care orders and suggested instead that more work could be done by the Trust – it was not. By August 2014 when he made his final decision R said that she had separated from T and wanted to be considered as a sole parent with only limited support from T. The trial judge was not persuaded of this and made full care orders for removal of all four children on the basis of actual emotional harm suffered by the oldest three and the likelihood of emotional harm in the case of E.

The appeal

[10] If the facts in these cases had stood still, the appeal would have required me to resolve a difficult and important issue – is it proportionate to remove children because of well-founded concerns about their welfare despite the fact that since September 2013 the Trust had taken no further steps to try to keep them at home with one or both parents. This entrenched position on the Trust's part was adopted despite the trial judge's specific encouragement in June 2014 to do more. The Guardian has effectively aligned herself with the Trust to the extent that since February 2014 she has not seen the children even once or had more than a brief exchange with the parents at court hearings.

[11] In fact there has been a significant change in circumstances. The trial judge and the Trust were both sceptical of the mother's suggestion in August 2014 that she had separated from the father. That scepticism was understandable in that, even if the mother was to be believed, it had only just happened immediately before the final hearing. On the appeal I have heard both parents give evidence, three to four months later. I am satisfied that there probably has been an effective separation with R living in the family home and T moving to his mother's. I am not sure how clean a break this is but I would not expect it to be perfectly clean after a relationship of 12 years. Moreover the parents have received little or no advice from the Trust on how to manage their separation from the perspective of their children. Nevertheless I am persuaded that the mother is doing her best, albeit belatedly, to live an independent life from T. The Guardian said in her evidence that this development is welcomed by R's extended family of older sisters and parents who do not support

R's relationship with T because they have found him extremely difficult. This is encouraging because it suggests that if R weakens and seems set to allow her relationship with T to be rekindled she may be dissuaded from doing so by her own family.

[12] I found T in his evidence to confirm the impression of him given in the various reports. He is negative, dogmatic and hostile in his views. At one point in his evidence he dismissed an entirely reasonable and likely proposition as "rubbish". I believe that his much younger and immature former partner R would have deferred to him over the years if they were at odds with each other about the children. However much he cares for his children, and I accept that he does, his parenting of them has caused many problems and continues to do so.

[13] R was a subdued and a limited witness. The reality is that she missed out on her teenage years and much of her 20s by reason of her relationship with T. She has now expressed a wish to repeat some of the courses she did previously when she was in her relationship with T because she wants to learn more from them than she did when she was with him and then put what she learns into practice. I believe that she has been trying to develop a routine for the children since August which is still heavily reliant on extended family support but which is positive for the children and her. Examples of this include the three eldest children going to a youth club and S both having a birthday party which her classmates attended and going to their birthday parties in turn.

[14] I accept the analysis of the Guardian that R will face a complex few years herself as she becomes independent of T and develops in the way she might have done but for becoming involving with him at the age of 15.

[15] When I told the parties at the end of the evidence that I was satisfied that R had separated from T discussions took place which led to the following positions being advanced:

- (i) It was agreed that a care order should be made for P, the 10 year old boy, and that he should be placed in a kinship placement. There is however an issue about who that placement should be with and how frequent his father's contact with him should be.
- (ii) It was agreed that E, the youngest child, should stay with his mother under a supervision order with a residence order in his mother's favour and an order for contact with his father.
- (iii) There is no agreement about S and H, the girls who are 9 and 7. The mother consents to a supervision order but the Trust seeks a care order, for now at least.

- (iv) The Trust will source further work to help R with her care of E and the other children as soon as possible.
- (v) The father seeks contact within the family home, not just outside it.

[16] I welcome the positive and realistic direction of these discussions. In order for a final issue to be taken on contact the parties need to know my decision about the future of S and H in particular as well as my decision on a number of associated issues. These are set out below.

[17] Dealing first with P, I acknowledge the significance of the concession by each parent that a care order should be made with him living outside the home. The evidence shows that P is very damaged as a result of his childhood experiences. While he is a boy who the Guardian has described in the manner set out at paragraph [6] above, he has outbursts of foul language, bad temper and bad behaviour which have not yet been explained. He has spent most of the last two years outside his normal primary school in a specialist learning centre for children with social, emotional and behavioural difficulties. Unfortunately the teachers there have been unable to break through to the root of his problems. I am certain that he has suffered substantial emotional damage and that he needs to be looked after on foot of a care order even though that interferes with his right to family life and the equivalent rights of his parents and siblings.

[18] For some time the Trust proposal has been to place P with a couple in their 40s, G and A, who are related to R and who have raised their own children. However P is also close to another relation in his mid-40s, RB, who he stays with on Friday nights if he has behaved well during the week. R and T prefer that P be placed with RB as the kinship placement. (It should be noted that all of these people live within a few hundred yards of each other in the same locality.) RB has not yet been assessed and approved as a foster carer though that process is underway and should be completed within a few weeks. I believe that at this stage it is better and safer for P to be cared for on a full-time basis by experienced parents who have been through the ups and downs of parenthood with their own children. Accordingly I approve the care plan to place P with G and A. That said, I also believe that if RB is approved as a foster carer he can help with P in the future, whether on a Friday night reward basis, as a respite carer or as an alternative carer if G and A have significant difficulties with P.

[19] So far as the father is concerned, I consider that at this stage his contact with P should be limited to two times per week and not the three times per week which he seeks. I also believe that for reasons which will be expanded on below that contact should take place outside what was the family home from which T has now moved.

[20] So far as S and H are concerned, the starting point is that there is an established positive obligation to support families and to avoid the removal of children if possible. There is also a continuing positive obligation to reunite a family

which has been separated if and when changing circumstances allow that to happen. The concerns about S and H are similar to those about P even though S is becoming more outgoing and more willing to make friends than before. H is very outgoing and attention seeking. At this point I have two major concerns about their future. The first is that while each of the girls is reported to be bright, each is significantly behind her expected attainment level at school. The second is that R has a significant amount of work to do in the near future, in order to develop herself as she emerges from T's shadow and in order to learn to care for her children by redoing some of her earlier work with the Trust.

[21] My assessment of R is that she is limited and vulnerable. She needs to develop and flourish. She needs to be able to care for E. I do not want to risk her being overwhelmed by caring for three children and losing some or all of them. In order to avoid that I grant the Trust's application for a care order for S and H. They will be placed with R's sister M who lives only a short walk away. While all of this has to be reviewed every six months in any event I wish to make it clear that in this case my expectation is that if R makes the progress which has been referred to above and if the girls fare better at school, R might well be in a position to resume the care of her daughters in the relatively near future, within one to two years. In the meantime she should have extensive contact with them. This might come to include overnight stays every week or fortnight.

[22] In respect of E, the two year old boy, I agree that a supervision order is necessary and appropriate. It is required because of the history of concerns about his mother's ability to care for his older siblings but it is sufficient because the risk to E from his mother is inevitably reduced by her separation from T and if he is the only child in her full-time care.

[23] With these basic orders in place, some final decisions have to be taken about contact. I have agreed to conduct a short final hearing on that issue on 9 December if there is no consensus after this judgment has been considered by the parties. For the moment I make the following observations:

- (i) The Trust agrees that the father will have contact with all four children at the paternal grandmother's home (where he himself now lives) for 2-3 hours each Sunday. I approve that contact.
- (ii) The Trust also agrees that the father will see E alone on Monday afternoon for 1-2 hours at the same venue while P spends time alone with his mother. I approve that contact also.
- (iii) The extent of the mother's contact with P and with the girls is to be decided as is the venue for that contact.
- (iv) The extent of the father's contact with the children beyond Sunday with all four of them and Monday afternoon with E is to be decided.

There is a tension about the venue in that the father wants to see them in the family home. Understandable as that may be, I do not consider that it is appropriate for some time to come. These children are reported to be unclear about the exact state of the relationship between their parents. They need to understand that their parents have separated. Bringing everybody together in the family home may confuse them on that issue.

- (v) P is to be taken to football each Saturday. The mother and father will do this week about.
- (vi) The extent of inter-sibling contact is to be decided along with the venue or range of venues for that contact. This should be discussed between the parties subject only to the proviso that given the number of children and their different ages some degree of flexibility will have to be built into the arrangement.

[24] This has been an unusually difficult case in which the Trust put an enormous amount of effort into helping or trying to help the parents over a number of years but particularly in 2012/13. To a considerable degree the efforts of the social workers were rebuffed by the parents. It is frustrating in the extreme that the mother's change of position came so late but if she adheres to her new position her prospects are much better as are those of the children. If on the other hand she resumes her relationship with T it is unlikely to take very long for things to unravel.

[25] Having acknowledged the efforts which the Trust went to, I have to finish by expressing concern about the position taken by the Trust and by the Guardian after September 2013. While the delay in court proceedings was not their fault, it is simply not good enough for statutory bodies to adopt a position and stick to it month after month, even after being encouraged by the trial judge to consider what more could or should be done. There are not many children's cases in which the point is reached at which a Trust can legitimately say that it is not going to make any further effort to keep the children, or at least some of the children, with the parents or at least one of the parents. And this was not such a case.