Neutral Citation No. [2010] NIFam 16 | *Ref:* **MOR7991**

Judgment: approved by the Court for handing down | *Delivered:* **08/11/10**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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Re A (Discharge of care order; Residence order; Rehabilitation)

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MORGAN LCJ

[1] This is an application for the discharge of a care order and the making of a residence order in respect of a child, A. Nothing should be reported which would identify either the child or the birth or foster family.

Background

[2] The child, A, was born on 23 February 2005. She is now 5 years and 8 months old. Her mother, B, was just 17 at the time of her birth and was leading a chaotic lifestyle characterised by drug abuse and homelessness. Social services were involved prior to the birth and A was placed in foster care with Mr and Mrs S within two days of her birth. B had intermittent contact during 2005 but her lifestyle remained chaotic as a result of which a care order was made on 15 December 2005 with a care plan for adoption.

[3] By that time B had formed a relationship with M who was also using drugs. As a result of that relationship she had become pregnant and in February 2006 gave birth to K. M was not the father of A but in March 2006 B and M asked to be considered as a couple to care for A. The Trust decided that a psychological assessment was necessary and this was received in November 2006. The report recognised the progress B and M had made with K but did not recommend rehabilitation with A. In December 2006 the Trust's plan remained adoption via a freeing application. Throughout 2006 B had intermittent contact with A who remained with her foster carers.

[4] In February 2007 B advised the Trust that she wanted A to be adopted and wanted no further contact. In March 2007 she confirmed that she wanted to consent to adoption. She wanted the Trust to explore the option of A being adopted by her brother and his partner but if that was not possible she would like Mr and Mrs S to be considered given the attachment the child had with them. In May 2007 B said that she had not changed her mind but she did not

want to consent to adoption. She wanted to think about contact. The Trust established that her brother and his partner were not in a position to care for A. In June 2007 the Adoption Panel met and recommended adoption as being in the child's best interests. Mr and Mrs S enquired in September 2007 about the adoption process and were advised that a freeing application would soon be lodged. The Trust was also considering other prospective adopters. It seems clear that by October 2007 the Trust had concerns about Mr and Mrs S as they were older (both are now in their 60s) and were parenting three older adopted children with special needs.

[5] In February 2008 the Trust lodged a freeing application. It is worth noting that the child had by this time been parented by Mr and Mrs S for three years and more than two years had passed since the care order had been made with a care plan of freeing for adoption. This delay in dealing with the issue of permanence for this young child was completely unacceptable and potentially very harmful for the child. I expect that systems have been put in place to ensure that delays in similar cases do not occur in future.

[6] In March 2008 Mr and Mrs S formally made an application to adopt A. It appears that it was not until June 2008 that they were provided with information on the adoption assessment process and referred for medical examination. The medical report from the adoption medical adviser reported that Mr S had poorly controlled diabetes as a result of which the risk of future ill-health was unacceptably high. In light of this the Trust informed Mr and Mrs S that the Trust would not be undertaking an adoption assessment on them. It is not clear to what extent there was any liaison with those responsible for the treatment of Mr S or consideration of how his diabetes might be controlled. Suffice it to say that in these proceedings the Trust has now accepted that despite his diabetes there is no medical reason why an adoption application by Mr and Mrs S should not proceed.

[7] In mid-July 2008 B requested contact with A. This took place approximately 1 week later. Although the Trust sought to follow this up over the next number of months they were unable to make contact with B. The Guardian decided that an attachment assessment should be obtained from Professor Triseliotis and he eventually provided three reports in November 2008, June 2009 and May 2010. In November 2008 the Trust were successful in contacting B to tell her that the freeing application was due to be heard on 11/12 December 2008. B said that she would prefer A to stay with Mr and Mrs S because she had been there since she was a baby. At this stage B was pregnant again and she gave birth to a child, T, in June 2009. Mr and Mrs S lodged the residence order application which is the subject of these proceedings in December 2008 and instead of the freeing application proceeding the case was then transferred to the High Court. At a subsequent LAC review Mr S strongly voiced his opposition to the Trust plan to move A. Life story work commenced in February 2009. During this period attempts

were made to arrange further contact with B but she was not available. The child was now four and had spent her entire life with Mr and Mrs S as part of their family.

[8] During the first half of 2009 B was kept advised of the adoption issues in relation to A. In late May 2009 B told the Trust that A had been with Mr and Mrs S so long that she would not want A to move because of her attachment. In late July 2009 B indicated that she had had a conversation with the Guardian as a result of which she now requested to be reassessed as a parent for A. On 10 August 2009 she was interviewed by the Trust and said that it was only now that she felt capable and able to parent the child. In September 2009 B contended that A should be returned to her because there had been substantial changes to B's lifestyle, she was in a stable relationship, she believed she had matured, she was caring for two children without Trust involvement and she had a significant support network through M, M's extended family and the local church. At this point the Trust decided that it would not actively pursue a freeing order and would look at the possibility of rehabilitation. B resumed contact with A on 5 October 2009. Contact continued on a weekly basis until February 2010 when K and T joined the contact. A Parenting Capacity Assessment was carried out in relation to B and M as prospective parents for A during the first half of 2010. That assessment recognised the motivation and commitment displayed by both. They demonstrated a clear understanding of their children's needs and actively promoted security, stability, emotional warmth and care for their two daughters. Their practical skills were excellent and their communication skills were good. Both recognised that A would experience change if rehabilitated with them.

[9] By July 2010 the Trust was moving towards rehabilitation as the care plan. Contact continued on a weekly basis and in October 2010 overnight contact was introduced. A stayed for a period of about 10 days with B and M and their two children over Halloween. Although apparently promoting rehabilitation as the care plan the Trust eventually adopted a neutral stance on the hearing of this application.

The evidence

[10] I had available to me statements on behalf of the parties, a number of reports and assessments provided by the Trust and various medical reports. These reports confirmed that Mr and Mrs S have provided high-quality care to A throughout her life and formed a close bond with her. The eldest of their adopted children is now 22 and has severe communication difficulties. A has no material relationship with her. A does have a warm relationship with the next child who is now 19 and suffers from spina bifida. She shares a room with the youngest of the adopted children who is now 11. Although they

have a relationship it was not described as a warm relationship. Everyone is agreed that Mr and Mrs S. are and should remain important people in A's life.

[11] B and M have made remarkable progress. They have provided a caring and loving environment for their two children and have developed excellent parenting skills. They had been sensitive to the needs of A during the period of her introduction to her birth mother and half siblings. B has shown warmth, affection and understanding during the time that she has spent with A. The family unit now have excellent support from the local community and M's extended family. It is common case that A has much to gain from her continued relationship with this family unit. During contact A and K have enjoyed each other's company in co-operative play.

[12] In light of the positive attributes of both sets of parents neither party considered it necessary to have either of them called. The only witnesses to give oral evidence where Professor Triseliotis and the Guardian, Ms Farmer. Professor Triseliotis was of the firm view that it was not in A's best interests to be moved from Mr and Mrs S. He considered that the child had a good, warm, stable relationship with Mr and Mrs S. and was very attached to them. It was a strong relationship and any break made would be very stressful and dangerous. This was not a child in need of a family. She already had a family. If the child reunited with the birth mother he considered that there were serious risks because the child had no primary relationship with the primary carer. He was surprised that the Trust had decided to support rehabilitation. He considered that adoption by Mr and Mrs S. would provide the child with the best chance to settle. He considered that the residence order would not give the same degree of security. He said that it would be harmful if the child was exposed to conflict between Mr and Mrs S and B but said that contact with the birth family would be beneficial if the situation was calm.

[13] Ms Farmer had been appointed the Guardian in the original care order application. She had recommended that the child should be moved on by way of a freeing application quickly because at that time it was anticipated that the child would remain with Mr and Mrs S for no more than two years. Mr and Mrs S had been ruled out as prospective adopters by the Trust as a result of health issues in June 2008. The Guardian had spoken to B in July 2009 and they had discussed the question of rehabilitation. From then on the pursuit of an adoptive family ceased.

[14] Ms Farmer was strongly of the view that A should be placed with B. She said it was rare that a young mother could turn her life around as B had done. She was a completely different young woman. She has displayed a consistency of presentation, sensitivity and gentleness. She has been careful to go at A's pace. She has developed maturity through her subsequent pregnancies. Ms Farmer was concerned about the demands of the children

with complex needs that Mr and Mrs S cared for with the help of their daughter. She felt that A would benefit from having a relationship with them as pseudo grandparents but that A's most important relationships would be with her half siblings.

Conclusion

[15] Mr and Mrs S seek a residence order pursuant to article 8 of the Children (Northern Ireland) Order 1995. By virtue of article 3 (1) of the 1995 Order where a court determines any question with respect to the upbringing of a child the child's welfare shall be the court's paramount consideration. Article 3 (4) requires the court when considering whether to make such an order to take into account the welfare check list in article 3 (3). The importance of parenthood in the determination of what is in the child's best interests has been considered by the Supreme Court in Re B (A Child) [2009] UKSC 5. At paragraph 36 Lord Kerr, who delivered the judgment of the court, approved the Law Commission's conclusion that the welfare test itself was well able to encompass any special contribution which natural parents could make to the emotional needs of their child. Similar sentiments were indeed expressed by Lord MacDermott in J v C [1970] AC 668. Lord Kerr expressed the court's conclusion on this point at paragraph 37.

> "37. This passage captures the central point of the *In re G* case and of this case. It is a message which should not require reaffirmation but, if and in so far as it does, we would wish to provide it in this judgment. All consideration of the importance of parenthood in private law disputes about residence must be firmly rooted in an examination of what is in the child's best interests. This is the paramount consideration. It is only as a contributor to the child's welfare that parenthood assumes any significance. In common with all other factors bearing on what is in the best interests of the child, it must be examined for its potential to fulfil that aim. There are various ways in which it may do so, some of which were explored by Baroness Hale in r*e G*, but the essential task for the court is always the same."

[16] Against this background I now turn to the welfare checklist. The child is now five years and eight months old. She has displayed warmth and contentment within her home environment with Mr and Mrs S but has also demonstrated enjoyment of her time with B and with her half sibling K. All of those involved in this case agree, however, that she is too young to have any understanding of the issues. It is clear that the physical and educational needs of the child could be satisfied in either of the proposed homes although

the child will have to move school if it is decided that she should live with B an M. There are no particular issues concerning her age, sex, background or other characteristics.

[17] The issues surrounding the child's emotional needs, the likely effect on her of any change in her circumstances and the harm which she is at risk of suffering can in my view be conveniently dealt with together. There is no doubt that A has developed a strong attachment with Mr and Mrs S. If her placement is changed she is likely to suffer a period of distress. Both Ms Farmer and Professor Triseliotis recognise that one cannot predict the outcome of this change. There is some risk that the placement may break down and a real risk that the child may suffer psychological damage. Ms Farmer has been impressed by the motivation and commitment of B and considers that because of the strong attachments that this child has developed with Mr and Mrs S and the security that comes from that A is more likely to avoid damage than would be the case with other children. She also considers that B's sensitivity also makes breakdown and harm less likely.

[18] I accept that if this child changed her residence it is likely that she would settle down with B and M. I consider, however, that there is a risk that she may not settle down which is probably less than 10% and a further risk that even if she does so that it will be at some emotional cost having regard to the strong and close bonds which she has formed with Mr and Mrs S. I accept the views of both experts that it would be beneficial to this child to develop relationships with her half siblings and both sets of parents will, in my view, always be important people in this child's life.

[19] The decision in this case is not based on an evaluation of the parenting skills of either household. I hope that I have made it clear that I have been impressed by the warmth and commitment that each of the households has demonstrated towards this child. My paramount concern has to be the welfare of this child. Mr and Mrs S wish to give this child stability through adoption and the Trust have now withdrawn their medical objection. If I were to make an order the effect of which would be to change this child's placement I consider that I would be taking an unreasonable and unjustifiable risk with this child's emotional stability. I recognise that the provision of long term good quality contact cannot be a substitute for the relationships which this child might attain with her birth mother and half siblings if she lived with them but the potential benefit is in my view considerably outweighed by the real risks to this child's welfare if she is moved.

[20] On the basis that Mr and Mrs S now pursue an adoption application and demonstrate that they are committed to continued meaningful contact with B and her family I will in due course discharge the care order and make a residence order in their favour.