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*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Re C1, C2 and C3 (Child's Evidence: Interviews)

MORGAN J

[1] This is a threshold hearing in relation to an application for a care order in respect of 3 children whose ages are 5,4 and 17 months. Nothing should be reported which would identify either the children or their family.

Background

[2] J is the mother and D is the father of five children aged 10, 8, 7, 5 and 4 including the 2 elder children in this application. The family came to the attention of social services in July 2004. At that time D was accused of sexually abusing a male teenage child and was convicted on one count of buggery and four counts of indecent assault. He was sentenced to a period of imprisonment and his earliest date of release is 2011.

[3] In 2006 there were concerns about inappropriate sexual behaviour between the children. The children were referred to the Child Care Centre. It is alleged that in August 2006 J withdrew 2 of the children from the Child Care Centre and also denied social services access to her home. Sometime thereafter she again agreed to provide social services with access to her home and agreed to allow the children to return to the centre. By that time she had begun a relationship with R.

[4] In November 2006 the school reported that the eldest child had made a range of disclosures alleging inappropriate punishment at home and it was agreed that she should attend the centre in respect of those disclosures. In the course of their work at the centre the 8 year old and 7 year old described sibling sexualised behaviour and J requested professional support on how to meet their needs. It appears, however, that an issue then arose about the continued attendance of the children at the centre. It was alleged by the Trust

that the children had been told not to talk to the workers at the centre about certain aspects of their life by J. The centre stopped therapeutic work with the children in March 2007. J has subsequently accepted that the work for which the 4 eldest children were referred was interrupted and disrupted by inappropriate and obstructive conduct on her part.

[5] On 19 April 2007 an interim care order was made in respect of the 10 year old, 8 year old and 7 year old and on 23 April 2007 an interim care order was made in respect of the 2 elder children the subject of this application. The care plan envisaged the children remaining at home with J. Thereafter the 10 year old made allegations against J and R and J expressed a fear of being alone with her. The 5 year old reported at school that his father had hit him. He also claimed that his father had given him a Chinese burn and always choked him. The Trust considered it likely that the reference to his father was in fact a reference to R. R accepts that he gave the child a rub on the arm which he described as a Chinese burn in play but denies causing any injury or hurt to the child.

[6] On 14 September 2007 the Trust became aware of injuries sustained by the 8 year old. He was examined by Dr Primrose and I had the advantage of a report prepared by her and hearing her evidence on 27 September 2007. The child had a mark on his face which she felt was probably a belt mark. He had three marks under his chin which were consistent with finger marks from gripping. He also had a bruise behind his left ear which raised the possibility that this was caused while he was being gripped by the left hand. The finger marks indicated the probability that he had been gripped. J initially told her GP that the 8 year old had fallen at school but then disclosed that he had been in a fight with the 10 year old. Dr Primrose indicated that the injury showed a sustained and violent attack upon the 8 year old and she noted that the second linear bruise which measured 7 cm was almost the length of an adult female index finger. J and R accept that on the medical evidence the injuries inflicted on the 8 year old were probably inflicted by an adult and that they were in the pool of possible perpetrators.

[7] R is the father of the youngest child who was born in August 2007. After the events of 14 September 2007 the five oldest children were placed in foster care and a place was secured in a parenting assessment facility for the youngest child with J and R. J has had difficulty controlling her conduct and aggression and on 5 February 2008 she physically assaulted a social worker without cause or justification. R sought to excuse her conduct. On 20 June 2008 I made a care order in respect of the three older children. The 10-year-old is now in a residential facility and the eight and seven-year-old are in foster care. The relationship between J and R was volatile and tempestuous and was marked by disagreements and arguments, sometimes in the presence of the children and at other times in the hearing of the children. There have been physical exchanges between J and R in particular on 22 November 2008

when there was a physical altercation between them in which each accused the other of a physical attack.

Threshold

[8] The threshold hearing came before the court on 9 December 2008. On that date J signed a document accepting a range of matters relevant to the threshold hearing.

“1. The longstanding involvement of Social Services with J in respect of legitimate concerns about her ability to care for her children and J’s failure to understand consistently and take on board legitimate professional concerns including those expressed by the Child Care Centre. The work for which the eldest four children were referred to the Child Care Centre, for their own help and protection, was interrupted and disrupted by inappropriate and obstructive conduct on the part of J.

2. The children were exposed to the domestic violence visited on their mother by D and J failed to acknowledge the resulting negative emotional impact on the children and failed to protect the children from further harm by remaining in the marital relationship with D. The 4 older children have at times behaved in an aggressive and violent manner mirroring the aggression and violence witnessed at home with D and J.

3. J’s experience of being the victim of domestic violence in the marital relationship with D has negatively impacted on her own parenting capacity.

4. The eldest five children have engaged in inappropriate sexualised behaviours with one another, both while in the care of J, while in the care of J and R and subsequently while outside their care. There has been a failure to protect these children from inter-sibling sexual abuse which has resulted in these behaviours and there has been a failure to supervise said children, evidenced by the continuation of these behaviours.

5. The injuries sustained by the second oldest child in September 2007 were, on the medical

evidence, probably inflicted by an adult rather than by the oldest child, despite the assertions of the eldest three children to the contrary. At the time the second oldest child was in the care of J and R who are, therefore, in the pool of possible adult perpetrators.

6. The relationship between J and R was volatile and tempestuous and was marked by disagreements and arguments, sometimes in the presence of the children and at other times in the hearing of the children. There have also been physical exchanges between J and R. These culminated in a physical altercation between them on 22 November 2008 (in the absence of any of the children) which, they say, marked the end of their cohabitation. Each has accused the other of a physical attack in the course of that episode.

7. J has been unable or unwilling to control her conduct and aggression. By way of example, on 5 February 2008 she physically assaulted a social worker without cause or justification. However, R sought to excuse her conduct.

8. While in care, the 5 and 4 year olds have presented with significant behavioural problems which are attributable to the way in which they were treated while at home from birth until their removal into care in September 2007.

9. J has suffered from depression and physical ill health which has impacted negatively on her ability to maintain a clean presentable home and to ensure the hygiene and clean presentation of her children.

10. D sexually abused a male child from the age of 13-16 from 1989 to 1992. D was convicted of one count of buggery and four counts of indecent assault and is currently imprisoned. He was subsequently convicted of further serious sexual offences against another male child. His release date is likely to occur in 2011. He has had no contact with any of the children since 2005."

I accept that these matters show evidence of significant neglect and exposure to violence which would have had a significant effect upon the children and

undoubtedly would have been sufficient to engage the threshold. The Trust contend, however, that there are four additional matters upon which the court should make a finding.

1. Whether any of the children were subjected to cold baths or showers.
2. Whether any of the children were put into the bin as a punishment.
3. Whether any of the children were locked in bedrooms or cupboards
4. Whether any of the children were deprived of food as a punishment.

Each of these matters is in my view different in kind from the admissions accepted by J in that they raise allegations of direct infliction of inappropriate punishments by J or R. The resolution of these issues may well be important in determining the future for these children and I consider it appropriate that I should make findings in respect of these allegations.

[9] The principal evidence in relation to the 4 matters at issue consisted of accounts of disclosure made by the children at interview with social workers in the Child-Care Centre. The Child-Care Centre is a multidisciplinary team focusing on the investigation and treatment of children suspected of being the victims of sexual abuse. In respect of confirmed abuse the treatment is generally by way of therapy. Video facilities were available for such interviews but at that time the decision to video was made on an individual basis. None of these children were videotaped and it does not appear that any consideration was ever given to so doing. The practice since July 2008 is that in any case involving a specific allegation the interview is videotaped.

[10] The first of the children to be referred was the eight year old. He had made disclosures of physical abuse by his birth father in late 2005 and was first seen at the Child-Care Centre on 9 May 2006. On 30 May 2006 he made a disclosure of inter-sibling sexual activity. J was adamant that this did not happen. At his next interview on 6 June 2006 the child spoke in whispers and was anxious that his conversation not be heard and that J should not see his notes. The child was then withdrawn from the Child-Care Centre for two months. At a later session on 11 October 2006 he was reluctant to talk for fear that J might hear. Throughout his attendance at the Child-Care Centre until recently this child, like the other two older children, was abnormally keen to get food, eating anything in the kitchen including the staff lunches. This child made no disclosures in respect of the matters at issue until 3 March 2008 when he said that R put him in the bath with cold water and poured a jug of cold water over him. He said that this happened also to the two older children. He also said that he had been put in a wheelie bin and that all of these events had been by way of punishment.

[11] These disclosures were made at a time when a number of the other children were making similar allegations. On 11 February 2008 this child's foster carer had been told not to prompt the child about what the other children were saying. At the very least it seems clear that this child was aware of what the other children were saying at that time. They all attended the same school and met regularly for contact. The child also told his foster mother that he was locked in his bedroom at night and not allowed out. This child had a problem with faecal incontinence.

[12] The eldest child was the first to raise an allegation of cold baths as a punishment. She did so during an incident at school on 16 November 2006 when it appeared that she had spent her taxi money. She alleged that she would get a cold bath as a punishment if J found out. The school contacted Social Services and an interview was arranged. This interview had to be abandoned because of the prompting of the school principal and all are agreed that this was the correct course to take in the circumstances. This child is extremely emotionally disturbed. In September 2006 she alleged that she had been the subject of an attempted kidnapping at a shopping centre. CCTV subsequently showed that this was not true. In May 2007 she pretended that she was being choked by R when I am satisfied that no such event occurred. In November 2007 she threatened her foster carers that she would allege that they were hurting her. Professor Iwaniec accepted that she was so disturbed that she could be making up these allegations.

[13] The seven-year-old disclosed on 30 January 2007 that R gave a cold shower to the other children. He said that he liked cold showers. No further disclosures of this kind were made until 25 February 2008. There were a number of interviews where this topic was revisited and on 11 April 2008 this child alleged that the children had been lined up in the garage to choose who should go into the wheelie bin as a punishment. In June 2008 the child said that the children should only go home if there were no cold baths and no wheelie bin.

[14] On 23 September 2007, shortly after the children were taken into care, the five-year-old disclosed that R had put him in the bin because he was a bad boy. On 16 November 2007 he referred to having a cold bath with the other children. On 7 January 2008 he is recorded as asking his foster carers if he was having a cold bath and on 4 February 2008 he said that daddy, R, put him and the eight-year-old in the bin. He was asked about cold baths again on 1 May 2008 and confirmed that this had occurred. The four-year old told his foster carers that he was put in a cold bath with his clothes on and was also put in the rubbish. On 13 March 2008 he said that he did not want to be put in a cold bath and on 11 November 2008 he said that R had placed him in a wheelie bin.

[15] J denied that these allegations occurred or could have occurred without her knowledge. She said that she met R in late June 2006. She had a miscarriage in September 2006 and he stayed overnight for a period of approximately 2 weeks. During that time he met the children. She explained that the children's toys were in the garage where the wheelie bin was kept and she accepted that from time to time the children got into the wheelie bin in order to stamp down the rubbish. She said that the only gates in the house that she moved into in March 2006 were at the kitchen so as to keep the area safe when she was cooking. She denied that the children were locked in the bedrooms but stated that the second oldest child did spread faecal material from time to time throughout the house. In her direct evidence she said that R had not assisted with the bathing of any of the children until May 2007. In cross-examination she changed that to sometime between March and May 2007 and then eventually said that it was not before Christmas 2006. She denied that any of the children had been subject to cold baths although she did state that on one occasion in R's house the heating was not working but the bath was warm.

[16] In his direct evidence R said that he was first introduced to the children in October or November 2006. He said that he met the children individually and then first met them in a family context at the end of October or beginning of November 2006. He first stayed over in J's house at Christmas 2006. He explained that in light of the history of the birth father and the difficulties that the children were having he distanced himself from them even at the start of 2007. He had no recollection of staying over at J's house in September 2006. He said that he thought the heating was broken in J's house in November or December 2006 and that his heating was broken in August or September 2007 around the time of the youngest child's naming ceremony. He accepted that the second oldest child in particular had abnormal eating patterns and that he had found him on one occasion eating the contents of the bin on the floor of the garage. In cross-examination he accepted that he had stayed over at J's house for a week in September 2006. He claimed that he had forgotten this. He still maintained that he had not met any of the children other than the five-year-old. He pointed out that he had a very busy work schedule. He then accepted that he had stayed a couple of nights per week after that but that his visits were more frequent at Christmas 2006. He said that he was never involved at bath time with any of the children. He said that he was not in the bathroom with any of the children before the birth of the youngest child. His only recollection of bathing the children was at his house at the time of the naming ceremony. He said that he generally was not in the house at bath time because of his work commitments. He said he did recall the 8 year old and seven-year-old putting the rubbish down in the bin two or three times but said that this was at their request.

Conclusion

[17] Obtaining reliable information from young children is a skill which is developed over the years by those with expertise in facilities such as the Child Care Centre. The courts have recognised at least two approaches. The first is an interview, often involving police, where the objective is to obtain information for use in subsequent criminal or other proceedings. Experience has indicated that the form of the questions and the subtlety of the child's response are critical to the understanding of what is being communicated. In those circumstances, therefore, a videotape of the interview is invariably obtained. That enables the court and those not a party to the interview to form judgments about the responses. A second type of interview is the therapeutic interview where the objective is to enable the child to unburden themselves in relation to troubling issues. Generally these are not taped. There the approach to questioning is different and on occasions may even involve a prompt in order to help the child deal with the issue. Such interviews are generally of little assistance to the court because the weight given to them has to reflect the possibility that the child is led into the answer, the possibility of misinterpretation of the answer and the absence of any independent check on the interpretation conveyed by the interviewing witness (see *Re D (Child Abuse: Interviews)* [1998] 2 FLR 10). There is nothing new in this approach. The case law was reviewed recently by Treacy J in *Re L and M, Minors* [2008] NIFam 10 and by the Court of Appeal in England in *re B (Allegation of Sexual Abuse: Child's Evidence)* [2006] EWCA Civ 773.

[18] It is clear that the Child Care Centre had concerns about the permission given to the children by J to participate in the interview process and certainly from March 2007 I am satisfied that the approach to the children was low-key and essentially therapeutic. There were a number of allegations relating to the matters in issue made by the children particularly in late 2007 and early 2008. I consider that there was certainly evidence of prompting of the children in early 2008 and that in particular the children were being informed of allegations made by their siblings. I have taken into account the view of Professor Iwaniec that young children would not be likely to make up allegations of this sort but she like the court is entirely dependent on the accounts given by others of the disclosures and her opinion in my view must inevitably be treated cautiously by the court. Accordingly I do not consider that *Re M and R (Child Abuse: Evidence)* [1996] 2 FLR 195 can take her evidence further.

[19] There are 2 disclosures made prior to March 2007. The first was by the oldest child in November 2006. I have already indicated that Professor Iwaniec accepts that this child was so disturbed that he she may have made this allegation up and have set out some of the other incidents involving this child. I could not place significant weight on this disclosure. The second disclosure was made by the seven-year-old on 30 January 2007. The complaint appears, however, internally inconsistent in that the child said that he liked cold baths. I could not place significant weight on such a statement.

I have considered whether there are any exceptional grounds which would justify me in taking a different approach as to weight in this case. J accepts that she interrupted and disrupted the work of the Child-Care Centre by inappropriate and obstructive conduct. I was entirely unconvinced by her assertion that this was because she wanted to examine alternative therapies for her children. The background to this case makes it plain that the interruption and disruption was a serious matter for these unfortunate children. I consider that J's evidence about the circumstances in which R came into the contact with the children was contradictory. The evidence of R on this matter was entirely unsatisfactory. Either he was so indifferent to the issues in this case that he could not be bothered to remember back to the beginning of his contact with children or he was attempting to mislead the court in his direct evidence. Although these matters may set the context for the allegations that have been accepted I do not consider that they can enhance the evidence on the issues with which I had been asked to deal. I accept that there is clear evidence that the children had bizarre and abnormal eating habits. There is, in my view, little evidence to indicate that they were undernourished and the diet of the children was assisted by breakfast in school and visits from Bryson House three times per week at mealtimes. The bizarre behaviour noted in my view is entirely consistent with evidence of serious emotional damage to these children.

[20] The onus is on the Trust to make out these allegations in accordance with the standard set by the House of Lords in *Re H and R (Child Sexual Abuse: Standard of Proof)* [1996] 1 FLR 80 and *Re B (Children) (Care Orders: Standard of Proof)* [2008] UKHL 35. For the reasons set out above I am not satisfied that the allegations had been proved to that standard although I am entirely satisfied on the basis of the admissions made that the threshold conditions have been established in this case.