

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

S' Application [2014] NIFam 7

IN THE MATTER OF S (ARRANGING FOR A CHILD IN CARE TO LIVE
OUTSIDE NORTHERN IRELAND)

O'HARA J

[1] I have prepared this judgment in an anonymised form. In order to protect the identity of the child nothing must be published which might reveal her identity or that of her family.

[2] In this application the applicant trust was represented by Mrs Keegan with Miss C Sholdis. The mother was represented by Ms McGreenera QC with Mr E Cleland. Mr T Ritchie represented the father and Mr C Maguire represented the Guardian ad Litem. I am grateful to all Counsel for their assistance and for their submissions.

Introduction

[3] A Health & Social Care Trust has obtained a series of interim care orders under Article 57 of the Children (NI) Order 1995 – the Order. Such orders are made if there are reasonable grounds for believing that a child has suffered or is likely to suffer significant harm attributable to the care given to her by her parents or as a result of her being beyond parental control. The interim care order was first made in March 2014 and has been renewed without objection since then although the mother has lodged an application (to be pursued at a later date) to discharge the interim order.

[4] In this hearing the Trust is applying under Article 33 of the Order for court approval to arrange for the child (S) to live outside Northern Ireland for some time. It wants to move her to a specialist centre in County Dublin where she will receive

intensive care and support to undo the damage which expert evidence suggests has been caused to her. Both mother and daughter oppose that application – they want S to stay with M (the mother) and not to be separated from her at all, whether inside or outside Northern Ireland. In order to approve the Trust’s plan for S to live in County Dublin I have to be satisfied that:

- (a) living outside Northern Ireland would be in the best interests of S;
- (b) suitable arrangements have been or will be made for her reception and welfare in County Dublin;
- (c) S has consented to living in County Dublin or she does not have sufficient understanding to give or withhold consent;
- (d) the parents have consented to her living in County Dublin or are withholding their consent unreasonably.

[5] If S does have “sufficient” understanding of the issues to give or withhold her consent, the application made by the Trust must fail. In effect S has a veto if she has that understanding. That issue was one of the central areas of debate during the hearing. The mother does not have an equivalent veto but since she refuses to give her consent I can only make the order sought by the Trust if I am satisfied that her consent is being withheld unreasonably.

[6] Before reviewing the evidence in detail it is important to set out what this case does not involve. Unlike most cases in which care orders are made, the current case does not feature alcohol abuse, drug abuse, domestic violence or many of the other commonly found problems in family units. M is devoted to S and has cared for her in her own unusual way for all of her life. As will appear below however they are completely enmeshed with each other to the effective exclusion of the outside world. The expert evidence is that this has damaged S severely and will continue to do so unless and until mother and daughter are separated. The damage goes far beyond the fact that S who is a bright girl has never been to school and has been entirely home tutored by her mother with the result that she is at some risk of not achieving her academic potential. That would be frustrating but it is not at the heart of the case and would not be a proper basis for separating them.

Background evidence

[7] M is 49 years old. She grew up and went to school in Northern Ireland. Her mother died when she was 14 and her father when she was 32. She has 2 older brothers. M had jobs and experiences in the United Kingdom, Europe and North America prior to S’s birth in 2000. Professor Iwaniec, an expert in childcare and child protection, was engaged to prepare a developmental and behavioural assessment in this case. In her report she states:

“(M) said that she moved to live in O at 18 years and met a lot of free spirited and unconventional people with whom she interacted and made friends. She said that she travelled a lot and spent some time in

America, particularly California. She advised that she was impressed by the free spiritual life of California as well as the home education of children in America. She advised that she brought this free spirit of California back home. M said that after returning to England from America she lived and worked in O and developed friendships with people like herself eg thinking, dressing and leading an unconventional way of life".

[8] S is the result of M's association with P who is S' father and who consents to the Trust application. That consent is of legal significance but of limited practical significance in that P has not been involved in S' life in any way since she was approximately one year old. M left P because, according to her, he was violent to her. He was later convicted of sexual offences (not involving M, S or children) and has served a prison sentence.

[9] After separating from P, M returned to Northern Ireland with S. They live in a small town very close to Belfast. In the 11 or 12 years since then she has not had any further male partners. She has 2 siblings from whom she is somewhat distant though recently one of them has helped her to a limited extent. There is no other member of the extended family who is involved with her. The result of this is that she and S have lived an isolated life, made more so by the fact that at the age of 4 it was decided that S would not go to school but would be home tutored by M. M and S dispute which of them made that decision - S told Dr Conachy, a consultant psychologist, that her mother gave her the option of home schooling when she was 4 and that she chose to accept it. She gave a similar account to Dr Macpherson, a consultant paediatrician, who saw her earlier this year. M insists that it was her decision as S' mother to home school S. Whatever the truth of that, it appears that this decision has not been reconsidered since then. M said in her evidence that while she still likes the philosophy of the Rudolf Steiner school, she worries that S would be frightened to go there now, that it would be too structured for her and too big an adjustment. She asserted that at the time of the trust intervention in December 2013 she had already been exploring the idea of engaging a home tutor but nothing had yet come of that. As with much of M's oral evidence, I was unconvinced by this claim.

[10] It is perhaps surprising that no real interest was shown by statutory agencies in the education and domestic arrangements for S as the years went on. There should have been checks to ensure that S was in fact being schooled and to an acceptable level. These seem not to have taken place. There was occasional intervention by the Trust but on a limited and brief basis. Quite why that happened is unclear but it may contribute something to understanding why both mother and daughter have reacted with such hostility to Trust intervention since December 2013 given that they were allowed to live their lives so independently before then.

[11] M described in her oral evidence that there was a home routine for her and S and what that routine was. She said that S would get up at about 10 or 11 am and

have breakfast. Then she would do things like art work, read, study workbooks or look at the internet. The workbooks which S would study would be based on the school curriculum. The 2 of them would have lunch at about 1 or 2 pm and dinner between 6 and 8 pm with S going to bed at 10 or 10.30 pm. This was not consistent with other statements which are recorded in the papers about how entirely relaxed the family arrangements were. Indeed M agreed that when it was suggested to her by social workers that S should at least have home tutors her response was that she couldn't commit to that because "we are not morning people".

[12] In the context of these proceedings S was assessed by an educational psychologist, Ms Thompson. Her report of May 2014 ends as follows:

"In conclusion S has an above average level of cognitive ability/intelligence and above average levels of receptive vocabulary but she presents with some phonological immaturities in her expressive language. There are notable gaps in her learning and social and emotional development which, in my view, are best described as falling within the category of complex interaction of needs. Therefore it is my opinion that should S continue to be resident within Northern Ireland a referral should be made to the appropriate Education & Library Board for a statutory special education needs assessment".

[13] In the course of this and other assessments S has come across as an intelligent girl who can speak confidently and with some knowledge in certain areas such as history and art in a way in which is impressive for a girl of her age. This is to her credit and that of her mother. There are however significant gaps in her education such as mathematics.

[14] One issue of some concern is her mispronunciation of words. Her mother denies that this happens and asserts that "we identified as a family that it is not a problem". It is however something which has struck virtually everyone who has met S and it is exactly the sort of thing which might lead to a girl being teased or made fun of in school or in a youth club. On its own it is of limited importance but it is the reaction of S and her mother to the issue which is striking. For instance when S was 10 or 11 she was referred to a speech therapist by the Trust. When her mother took her for the appointment S became hysterical because she didn't want to be "labelled" in some way, according to her mother. M was unable or unwilling to tell or encourage S to engage in the work which did not therefore proceed.

[15] Mother and daughter live in very limited circumstances. Since M stays at home and is not available for employment her benefits have been reduced to a very low level. Inevitably the descriptions of their home suggest a Spartan existence without luxuries or treats. For example, when social workers visited their home, which is privately rented, in December 2013 they had to borrow a torch from a police officer as there were no overhead lights upstairs. They found that the door to S' bedroom was off its hinges and that she slept on a small thin foam mattress on the

floor which was approximately the same size as a cot mattress. The limitations on their finances also have the effect of making it difficult for them to travel even the short distance into Belfast and restricts their social activities thus adding to their isolation. M was anxious to persuade me otherwise and described how she and S had gone to watch the Police and Fire Games in 2013 in Belfast. She also described how they regularly visited a particular drop-in café in the Titanic Quarter where they met people and played board games. On some further investigation however it emerged that S would only meet other children there if she went at the weekends or during the summer because otherwise the children of her age would be at school. When asked who S' best friend was, M said that she was. When asked if friends ever visited S at their home, M said they didn't but that was only because of the state of their home. When asked if S visited friends, M said "we" visit people. I conclude from all this evidence that in no real sense does S have friends in the way that almost every other child of her age does. I also conclude that M herself is isolated, without meaningful support and with no trusted family or friends to turn to for advice.

Events from December 2013

[16] For the purposes of my decision in this application it is not necessary to go through the full sequence of events but significant Trust involvement started when it received information from the Police that a neighbour had reported that S behaved strangely and that M was "always very defensive". On 5 December the Police and a social worker visited M's home. They found the property in very poor repair and they were concerned about S' appearance. Her frame was so small that she sat on a booster seat on a chair in the kitchen. She looked much younger than a girl close to her 13th birthday and her clothes were too small, her skin was pale and her hair was matted and greasy. M reluctantly agreed to take S to her GP for a health assessment. When the social worker asked M about reports that S had been heard screaming, M said that she had been distressed by a film on TV but later said she only watched age appropriate programmes. As the discussion continued and as the social worker noted that a full paediatric assessment would be required to assess the extent of S' development, S appeared to be very fearful and was visibly shaking. M asserted that this was due to fear of the Police caused by an alleged PSNI break in a number of years earlier. In fact social work records record that this incident was the Police response to a suggestion by neighbours that S was screaming and yelling.

[17] On 13 December social workers attended the home unannounced. M told them that she had requested Police assistance because S had run away from the office of a local councillor. This had come about because the councillor had told M and S to co-operate with social workers. S returned home some time later but then ran away from the house again when she saw the social workers. S then agreed to stay in the Police car until the social workers left. M's contention was that S did not like social workers due to an alleged negative experience in the past (given the exceptionally limited extent of social work involvement it is hard to see any basis for this attitude).

[18] On 17 December the social worker called to the family home by arrangement with them. There was a note on the door asking her to go to the office of a local councillor. When she did so she found that S was agitated and M was hostile. When the social worker attempted to explain her role she was repeatedly interrupted by S who shouted about her Human Rights and said she would not be made to go to see a GP. S threw a bottle of water around the social worker. M did not control her daughter despite her obviously inappropriate behaviour.

[19] On 8 January S went to the GP with a cold. The doctor noted that both mother and daughter appeared to be unwashed and smelly. S' hair appeared to the doctor to be matted and unwashed but the family responded that this was a lifestyle choice. S refused to be examined in any way by the GP, a stance which her mother supported. M refused a further assessment by a paediatrician.

[20] On 16 February 2014 the Police received a call advising that S was walking along a busy road from the town in which she lived towards Belfast. They found her and brought her home. Although S was extremely cold she was very angry at the Police intervention. The following day social workers called to the home. They found that the blinds were closed and there was no response to knocks on the door and window. Eventually M responded when they called through the letterbox. Inside the house was very dark with M reporting that she preferred it that way. M said that S was extremely distressed and traumatised because she had been assaulted by Police the previous evening. It was her claim that S had been grabbed and put in the back of a Police van where she was beaten and pinned down by the Police. S claimed that she had a broken spine and that she wanted to sue the Police. During discussions about what had happened the social workers tried to calm S down so as to hold a conversation with M but M was unable to control S or to calm her. Instead S was abusive, aggressive and challenging.

[21] In light of the allegations made by S with her mother's support against the Police, social workers advised the family about the role of the Police Ombudsman. Following on from this a representative from the Office of the Police Ombudsman visited the home and subsequently reported to social workers that throughout that visit S appeared to dominate her mother. At about the same time it was reported by staff at a nearby hospital that S had attended for examination following advice from the Police Ombudsman's Office. Although she wanted her back and torso to be examined she became very distressed when the doctor started to examine her. This led the doctor to suggest that S might compose herself in the waiting room again before a second effort was made to examine her. In fact there was no further examination – instead M took S home in a taxi without any medication or pain relief.

[22] There was a further major incident on the night of 21st/22nd February. This involved neighbours reporting that they had heard further screaming by S. When social workers went to the home at about midnight M claimed that S had been traumatised by her experience with the Police but M herself presented bizarrely, rocking back and forth in an apparently nervous manner. Social workers discussed

in some detail with her their concerns about S' physical and emotional presentation and the fact that there had been no engagement of any meaning by S in the assessment process. It was agreed that there would be a meeting with social workers on 27 February to explore matters further. In the meantime however there was a further report to the PSNI which led to social workers visiting the home on 25 February. When the social workers tried to speak to S she shouted and screamed at them in a hysterical way which her mother was unable to control. This led to the GP making an immediate home visit but with M advising that she had tried to phone an ambulance for S and had been prevented by her from doing so with S accusing her mother of betraying her. The GP advised that S' behaviour was "abnormal" but did not meet the grounds for a formal detention in a psychiatric unit. By the time social workers left S had been crying and screaming for approximately 2 hours.

[23] On 28 February mother and daughter attended a hospital for a medical assessment. S blamed back pain which she said she had on the Police and then said she wanted to leave because the stress of being at the hospital was making her back sore. As a result of her behaviour the doctors decided not to persist with a medical assessment but because of her agitation and distress, contact was made with the Child and Adolescent Mental Health Service (CAMHS) who were asked to assess S urgently. That assessment led to her being admitted to hospital on 20 February and then transferred to Beechcroft on 29 February.

This was a mental health admission made necessary by S's increasingly disturbed and uncontrolled behaviour over which her mother appeared to have little or no control.

[24] On the basis of these events, the first Interim Care Order was made and M and S were referred to Thorndale Family Centre on an emergency basis on 3 March. A pre-admission meeting was arranged and was held on 4 March between Thorndale staff, Trust staff and M. S was invited to attend for part of the meeting. This turned out to be extremely difficult because not only did S not want to attend any meeting with Trust social workers, she did not want M to attend either. Accordingly she locked herself into a bathroom in Thorndale's reception area and screamed and kicked the bathroom door. At that point the Trust's request to Thorndale was to allow the family an initial period of time to settle in and then to build up a relationship with M and S, to support M in implementing a routine for S, to support M with preparing healthy meals and to support M with applying "age-appropriate boundaries". In conjunction with this, the Trust requested a psychiatric assessment and educational assessment of S with Professor Iwaniec to do her report as well.

[25] Ultimately, it became impossible for Thorndale to complete a report and it brought an end to this process after 9 weeks. Since that time mother and daughter have been continuing to live in Thorndale until an alternative placement is found. The placement which is proposed by the Trust for S is in County Dublin. The long

detailed and depressing Thorndale report helps to make clear why this came about. While there are many worrying elements, they are summarised as follows:

“Thorndale have had on-going concerns regarding M and S’s relationship. The assessment has evidenced that there is a lack of appropriate boundaries in place for S and a lack of parental control exhibited by M. M also has had difficulty in appropriately responding to S’s emotional and social needs at times during the placement. M has required a high level of on-going support and direction to manage S’s behaviour when this becomes challenging. Staff observed S’s challenging behaviour was often triggered when M discussed adult issues and themes in her presence and staff frequently needed to prompt M of the inappropriateness of this. M has had difficulty in implementing advice and guidance independently without prompting from staff. M has also been observed to provide S with inconsistent messages in terms of acceptable and respectful behaviour towards adults.”

[26] If anything this is an understatement by Thorndale of what actually happened. Although M did not accept in her evidence that the Thorndale report was accurate, it seems to me to represent a true record of the reality of the life of M and S. It records M as stating that she felt “that she had created a monster”, that S had been her “confidante for years”, that she has “placated” S for years and that she does not feel that authoritarian parenting works any longer so she now tries negotiating with S. On 21 March staff witnessed S pushing M with such force that M fell off balance. As that was happening S ran back to the flat within the Thorndale complex and locked M out. Subsequently M said that when she returned to the flat, S would not allow her in until M apologised to her for speaking with staff. M said that she had apologised. The following morning S was seen to punch M twice on her arm and went to her bedroom where she screamed continuously. Further screaming and hysterical behaviour were seen in Thorndale on 29 April and again on 3 May. On the latter date M explained to S that she may need to go to a foster placement. Understandably this caused S to become distressed, particularly because M had not discussed with staff how she might break this news or explain the circumstances to S.

Expert evidence

[27] A number of experts have reported in this case. Professor Iwaniec, who is referred to at paragraph [7] above, recorded in her report that according to M, S does not respond well to any form of disciplining “in fact it makes her worse”. She was not able to do a comprehensive assessment of S because S did not make herself available to her on a sustained basis, only answering some questions when she felt like it. The Professor reports:

“M kept asking her to talk to me but she did not take the slightest notice of her requests and M did not insist that she follow her instructions.”

When asked to comment on the best and most appropriate arrangements for S’ continuing relationship with her mother, the Professor was clear:

“S has no idea how to live without her mother and does not even have the concept of how to function without her. Being over-protected all her life she has not developed life skills and ways of looking after herself. Equally she does not know how to interact and relate to other people, participate, negotiate, compromise, take other people’s point of view and respect their wishes, preferences and decisions. Up to now S did what she wanted and when she wanted.

Placing S away from her mother would prevent extreme difficulties and disturbed emotional reactions similar to those experienced by the hospital staff or police. Since M is unlikely to support or help with placing S in alternative care, the task of placing and maintaining her there might be hard to achieve without making sure that every effort is made to provide security and strict supervision.

I have serious doubts as to whether S could be placed meaningfully and safely in a specialist foster home or children’s home

In my opinion S needs to be placed (if removed from maternal care) in a special therapeutic establishment with highly skilled staff where her various problems and developmental deficits could be fully assessed and dealt with.”

[28] In view of S’ age and her established disturbed behaviour, it was necessary to obtain a psychiatric report on her and to assess in particular her capacity and ability to instruct counsel. This is all directly relevant to the question under Article 33 of the 1995 Order about whether she has sufficient understanding to give or withhold her consent to the proposed course of action. Dr Rogan, Consultant Child and Adolescent Psychiatrist, was instructed for this purpose but was only able to give a very preliminary report and was unable to meet S within the timescale required by the court to complete a full assessment. In these unfortunate circumstances, a report was obtained from Dr Conachy, Consultant Clinical Psychologist. He concluded that at the time of his assessment, S was competent to instruct a solicitor in the case and that her views, while rigid, are well informed and articulate so that she is cognitively competent with a good grasp of the legal system. I had three reservations about this report which are:

i However skilled a psychologist Dr Conachy is, it is not typically within the competence of a psychologist to advise on competence.

ii In preparing his report he did not have the benefit of seeing the Thorndale Report which recorded some of S' most recent and disturbing behaviour including her assaults on her mother.

iii While S engaged with Dr Conachy to a much greater extent than she had ever engaged with social workers, the Guardian or Professor Iwaniec, to take just 3 examples, she literally left the room when he sought to pursue lines of questioning which she didn't like. Those lines were about her lack of socialisation and her mispronunciation of words. Instead of responding to those issues she left and returned later with her mother.

[29] In light of my reservations about Dr Conachy's report, a psychiatric report was obtained from Dr Shirley Gracias. She is a psychiatrist of many years' experience who has specialised in child and adolescent psychiatry since 1989. The circumstances in which she saw S were rather unfortunate – her flight from England to Northern Ireland was severely delayed with the result that she saw S much later than had been planned and much later than S had anticipated. It was suggested in the questioning of Dr Gracias that this had understandably upset S and affected the assessment. It was also suggested on behalf of the mother that S had become distressed by seeing Dr Gracias arrive to assess her accompanied by social workers. I accept that the circumstances of this assessment were not ideal but it was clear from the evidence that M had spoken to S entirely inappropriately throughout the history of the proceedings about what doctors and social workers were saying and reporting to the court in an entirely inappropriate way. Therefore, the appearance of Dr Gracias was unwelcome because as matters stood before her arrival, there was a single report from Dr Conachy suggesting that S was competent. I believe this is the primary cause for the outrageous behaviour shown by S and by M during Dr Gracias' assessment. The report from Dr Gracias makes dismal reading. To the extent that S engaged at all with Dr Gracias, she was abusive and insulting, both in her attitudes and in her use of language. In her oral evidence, Dr Gracias described how S would shout at her and demand a guarantee that Dr Gracias would reach the same conclusion as Dr Conachy. When Dr Gracias refused (entirely properly) to give that guarantee, S screamed, banged the desk and stormed out. None of this behaviour was controlled by her mother. It is not surprising that Dr Gracias concludes:

“This was a very difficult interview that left all of us (S, M and me) experiencing some degree of upset.”

[30] Dr Gracias brought the assessment to an end after 2 hours because she judged S to be very distressed. Dr Gracias concluded that S did not meet the criteria to satisfy her that she is competent to give or withhold consent to the proposed stay in County Dublin. According to Dr Gracias, those criteria are that S is able to

understand that there is a choice and that choices have consequences, that S is able to weigh the information and arrive at a decision, that S is willing to make a choice and that she is able to understand the alternative to the proposed interventions and the risks attached to them. Her judgement was that it was not possible for S to weigh options before coming to a decision about choices, that she did not present with capacity to instruct a solicitor and that she only partially understood the nature and purpose of the proceedings. Moreover, she did not appear to have any understanding or insight into how her enmeshed relationship with her mother and the way she had been brought up could have impacted adversely on her development and she could not see that the proposal to place her in a therapeutic facility had anything to offer. I acknowledge that in the course of her limited interaction with Dr Gracias S was able to describe with some clarity for a 13 year old what the roles were of solicitors, barristers and judges. It does not seem to me, however, that that understanding undermines Dr Gracias' conclusions.

[31] Dr Gracias was not just worried about S – she was also worried about M. At the end of her report she stated:

“I left the meeting wondering about the status of her (M's) mental health and the origins of any difficulties she may have now. From my experience of having seen similarly presenting parents in other care proceedings, my judgement was that an assessment by a skilled adult mental health professional would be helpful to the court and possibly to M.”

[32] Since M's competence had been raised as an issue, the hearing of the case was delayed by approximately 4 weeks while a report was obtained from Dr Maria O'Kane, Consultant Psychiatrist. Her conclusions were that M is competent and has capacity to give instruction and understand advice. “She is eccentric but not mentally ill or confused”. In Dr O'Kane's eyes the biggest risk to M's mental state would be that she became depressed or psychotic. In her view separation from S is likely to be the greatest threat to developing either of these conditions. In those circumstances Dr O'Kane suggested an alternative to S being removed from her mother's care. That alternative was for both of them to access psycho-therapy contemporaneously. Dr O'Kane set out what that would involve and then added:

“Both would require to attend at least 2-3 years. S would require schooling throughout – her mother now feels that she would be too frightened to go to Steiner but will accept a school tutor. I think for any of these options to be useful, M has to accept more than fleetingly that if there is no positive change, she will lose S to the care system.”

Dr O’Kane then added:

“I’ve no doubt that M loves her child dearly but unfortunately she has not parented her successfully. Success in this will depend on how well she can meaningfully engage with services and how amenable she and her daughter are to change.”

[33] In addition to these various reports, I had a number of reports from social workers and a report from the Guardian ad Litem. Those reports were necessarily limited because S refused to engage with the social workers and also refused to engage with the Guardian because he told her at the start that while it was his function to ensure that her views were made known to the court, that did not mean that he necessarily agreed with her views.

Oral evidence and submissions

[34] At the start of the hearing, I was told that there had been some movement in the mother’s position. This was confirmed in a written statement signed by the mother dated 20 August 2014. The gist of the mother’s position was that she seized on what Dr O’Kane had suggested, that she felt that the interview with Dr O’Kane was beneficial and she said that she was relieved by the recommendation to have therapeutic work for herself and S. In fact on any analysis what M conceded or accepted in her fresh statement was limited in the extreme. For instance, while she accepted that S needs more socialisation, she contended that this arose from difficulties that they had encountered “in respect of the locality in which we were living e.g. lack of activities/not near a bus route.” That contention is factually incorrect and does not begin to address the causes of S’ lack of socialisation. It is also notable that in this statement M latched on to the interview with Dr O’Kane which she thought was beneficial and expressed herself to be “relieved by the recommendation to have therapeutic work for myself and S”. When she addressed this issue in her oral evidence, it became clear that she had no understanding at all of why both she and her daughter would need to attend therapy for “at least 2 to 3 years”. Accordingly her acceptance of what Dr O’Kane had proposed was not based on any analysis or understanding of that proposal – rather it was grabbed as an alternative to separation.

[35] Dr Conachy and Dr Gracias agreed in their evidence that competence can vary so that a child who appears not to be competent on one assessment can appear to be competent in the course of another assessment soon afterwards or vice versa. On this basis it was suggested on behalf of M that it is not necessarily surprising that Dr Conachy and Dr Gracias had reached different conclusions, especially given the imperfect circumstances of Dr Gracias’ assessment. Dr Gracias was, however, influenced by just how extreme S’ anger was, an anger she described as rage when the doctor would not commit to agreeing with Dr Conachy. She was also extremely sceptical about Dr O’Kane’s alternative proposal because she questioned whether there would be any meaningful engagement with social workers or therapists by

either M or S if they left Thorndale and returned home while this therapeutic work went on over 2 to 3 years. In her view S is likely to need 24 hour support for a number of weeks, if not months, in order to start to make any progress and that cannot be achieved if she is in the presence of and influenced by her mother.

[36] In her evidence M was anxious to blame any disturbed behaviour in their own home on neighbours who had behaved badly and who had gone out of their way to disturb a previously settled and happy home life. In reality the evidence points the other way - when complaints were made to the Police and to social workers by concerned neighbours, it turned out that there was a foundation to their reports. This is borne out in the social work reports and by some of M's own previous interactions with neighbours to whom she expressed concerns about S. It is also a matter of concern that M was so hopelessly vague in her evidence about how she envisaged S' life developing. When Professor Iwaniec had raised this issue with mother and daughter she was told that S was interested in town planning. The Professor asked how she could possibly develop that interest without academic qualifications. They replied by referring to a number of people in history who had achieved great things without qualifications. That entirely unrealistic approach was evident again when M gave evidence. She said that she had wanted to move to another place closer to or in Belfast for some time but there was no credible evidence that she had done anything about that. She referred to S' love of animals and her interest in town planning. When asked how this could be achieved in light of the way S' education had developed, she said that she would continue with home schooling, that she would look at home tutoring and that "we have covered a vast array of subjects". She then said "if S wanted to do GCSEs or A levels" ... thereby indicating that this was entirely at S' option and would not be encouraged by her mother. In other words a girl of 13½ who should be starting third form in school or be at the equivalent stage with home education is in the care of a mother who has planned no way forward for her in life and who she now assaults in front of others.

[37] Evidence was given by Mr Sean Denn of Fresh Start, the company which runs the facility in County Dublin to which it is proposed that S will be sent. He indicated that Fresh Start is a private company which has 9 specialised homes in the Republic of Ireland. It takes children from the ages of 13 to 17 who are referred to it by statutory bodies. The home in County Dublin has a manager, a deputy manager and 10 staff who are all qualified and specialist social workers. The children who typically come to them have high level problems which include various forms of abuse or neglect. There is also a clinical team immediately available in County Dublin including psychiatrists, psychologists and therapists who can work with the teenagers on various forms of counselling including anger management and speech therapy. What has been discussed between the Trust and Fresh Start and what is proposed is that Fresh Start would accept S and assess her over 6 to 12 weeks after her arrival. Her care would be overseen by a psychologist and a psychiatrist under whose direction there would be a clinical assessment of her full needs with a decision about what work required to be done. For the initial weeks of S' residence in the home (which also accommodates 2 other teenagers) there would be a staff

ratio of 2:1 rather than the normal 1:1 in light of S' identified problems. She would be given education as well as being clinically assessed.

[38] Mr Denn said that most children did not want to come to this specialised placement in the first place so resistance and non-co-operation with staff is something which they regularly encounter. It is their task to work with these troubled teenagers and to induce a positive response over time from S. Since teenagers sometimes try to sabotage the placement e.g. by walking out there is an absence management plan which includes an arrangement being in place with Gardaí. In addition, if S left the home staff would follow her to prevent her putting herself in harm's way and to try to coax her back.

[39] Evidence was also given by Ms Billy Hughes who is a registered nurse, a registered mental health nurse and children's manager with the Child and Adolescent Mental Health Service. She was involved with S in February 2014 when S was subject to treatment as a mental health patient. At that time she had to be sedated. The reason for her attendance to give evidence was that there was a suggestion by the Trust in its evidence that if necessary S would be sedated in order to be transferred to County Dublin. Ms Hughes confirmed that in her opinion a Trust has the power to sedate a child in care either under mental health provisions or as part of the exercise of its parental responsibility where there is an interim care order. Having said that she added that while sedation is available it is never used and would not be used on S. She confirmed that unfortunately the CAMHS team has considerable experience in dealing with very troubled children and teenagers and has a variety of methods of calming them in order to settle them, no matter how much time this takes.

[40] Ms Heather Best, social worker, gave evidence having been involved in this case since February 2014. She has never spoken to S because S will not speak to her and because M has never encouraged S to speak to her. She is however optimistic about the possibility of change if S is separated from her mother. Such a separation is not possible within Northern Ireland because there is no specialised foster placement where S could live and it would be wrong and counter-productive to put her in a children's home with other troubled and perhaps streetwise teenagers. Ms Best's view about the lack of alternative placements to County Dublin was shared by Dr Gracias and Professor Iwaniec.

[41] It was particularly significant that in her evidence Ms Best emphasised that in the 6 months in which she has been involved in this case M has not accepted that there is any problem of substance nor has she encouraged S to engage. That being the position, it was beyond Ms Best to understand how any real weight could be given to Dr O'Kane's suggestion that mother and daughter might engage in at least 2/3 years therapeutic work if they lived together again.

Conclusions

[42] The four issues which have to be addressed are set out in paragraph 4 above. I will deal with each in turn. Counsel were unable to find any authority on the interpretation of Article 33 or its equivalent in Great Britain. This is not especially surprising. I interpret the reference in Article 33(4) to S having “sufficient understanding to give or withhold consent” as being essentially the test of competence described in another way. And I will interpret the question of whether M is withholding her consent unreasonably within the meaning of Article 33(5) as I would if I was interpreting the same term in the Adoption (NI) Order 1987.

[43] In reaching the conclusions set out below, I have considered all of the oral and documentary evidence. I have also taken into account the rights which both S and M enjoy under the Human Rights Act. Article 8 is obviously engaged in this case. It was not referred to during the course of the hearing, presumably because its application is beyond question. It follows from the fact that Article 8 is engaged that any interference which I allow must be lawful and necessary. For that reason any meaningful and realistic alternative to separating S from M and allowing S to live in County Dublin has had to be examined because it would or may involve a lesser and therefore a more proportionate interference with the Article 8 rights.

[44] Turning first to whether living outside Northern Ireland would be in the best interests of S, there can only be one answer. It is simply unrealistic to think that S will not be damaged even more by staying with her mother. All of the experts agree that M and S need to be separated. There is no available specialised foster placement in Northern Ireland and placing her in a children’s home would not help her. Professor Iwaniec suggested that “she wouldn’t last a day” in such a setting. Unfortunately there is no equivalent in Northern Ireland to the services which are provided by Fresh Start. That being the case I see no alternative to Fresh Start. S is a much damaged isolated child whose relationship with her mother has long since gone beyond being unusual. The extremes of behaviour witnessed by Police and social workers were apparent to Professor Iwaniec and Dr Gracias among others. There was a further extreme example of her behaviour during the hearing of the case when she became hysterical because the Trust objected to her being left to wander alone in Belfast during the hearing while her mother attended court. When she came to court to wait outside while her mother attended the hearing, her distress was such that a member of the CAMHS team had to attend. She is 13½ years old. Continuing to live with her mother is not an answer to any of her problems and I do not consider the alternative suggestion made by Dr O’Kane to be realistic. There are no boundaries between S and her mother. Her mother does not protect S - in fact M appears to be scared of S and will not or cannot exercise any control over her. In all these circumstances she needs urgent specialised and intense intervention.

[45] On the evidence which has been given I am entirely satisfied that suitable arrangements have been and will be made for her reception and welfare by Fresh Start in County Dublin. It would be more than helpful if there was an equivalent

facility in Northern Ireland. I also welcome the indication by the Trust that it will seek an order in the High Court in the Republic of Ireland to mirror the provisions of an interim care order in Northern Ireland in order to give legal status to the position of S in the Republic for so long as she is there.

[46] It is clear that S does not consent to living in County Dublin for any period of time. In fact S does not consent to being separated from her mother at all. Dr Conachy and Dr Gracias gave written reports and oral evidence on S' understanding and competence. While S can be articulate and knowledgeable up to a point, she simply doesn't have sufficient understanding of the issues in order to give or withhold consent for the reasons set out by Dr Gracias whose report and evidence I prefer to Dr Conachy on this issue. I accept the criteria set out by Dr Gracias in her report for assessing competence/understanding and I conclude that S does not meet those criteria. She appears to have no insight into her problems so she cannot and does not understand that the benefits of the Trust proposal far outweigh the risk of any additional trauma being caused to her by separation from her mother. That risk is acknowledged by the experts but in my judgment the greater risk to S lies in allowing her to stay with her mother in any setting in Northern Ireland. My finding on S's lack of sufficient understanding should not be misunderstood as a finding against her of some sort of fault. Her lack of sufficient understanding is simply a consequence of the way in which she has been raised by her mother.

[47] The fourth and final issue is whether M is unreasonably withholding her consent to arrangements being made for S to live outside Northern Ireland. I believe that she is being entirely unreasonable. She admitted to Professor Iwaniec that she had created a monster. She accepts that S has hit her on more than one occasion but she tries to make excuses for her doing so. She is unwilling or unable (or both) to control or even influence S' behaviour which is extreme and hysterical. It must be remembered that it was S' screaming which led neighbours to contact police and social workers in the first place. That screaming has been evidenced repeatedly since then. Any reasonable parent in M's situation would welcome the Trust's intervention, would welcome its support and would co-operate with the Trust. M has repeatedly failed to do so. I do not believe that she could be trusted to do 2/3 months of therapeutic work for herself and S never mind the minimum of 2/3 years which is outlined by Dr O'Kane.

[48] For the reasons set out above I approve the Trust's proposal to arrange for S to live outside Northern Ireland in the Fresh Start facility in County Dublin. While doing so I urge the Trust to provide, or at least offer to provide, therapeutic support for M. She does not suffer from any mental disorder but she is clearly troubled and it would be in the best interests of S if there could be some improvement in M which would in turn be productive for S. In this context it is worth emphasising that one of the possibilities raised by Mr Denn was that M could join S for some time in the Fresh Start facility in County Dublin. This would depend on progress having been made with S in Fresh Start and with M in Northern Ireland.

[49] In the event that the Trust proposal for S to be moved to Fresh Start becomes a reality, it will be necessary for progress to be reviewed in this court in 2/3 months' time. In the meantime the interim care order can be renewed unless there are new developments or M pursues her application to discharge the order.