

Neutral Citation No. [2012] NIFam 1

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

Delivered: 02/02/12

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

BETWEEN:

SL

Appellant;

and

RG

Respondent.

WEIR J

Anonymity

[1] This Judgment has been anonymised to protect the identities of the children concerned. Nothing may be published concerning this matter that would lead directly or indirectly to the identification of the children or their parents.

Background

[2] This is an appeal by the mother against two orders made by Her Honour Judge Loughran whereby she firstly dismissed the mother's application to permanently remove the two young children of the parties, K, a girl now almost 5 and J, a boy now just 3, from their present home in a provincial town in Northern Ireland to the Republic of Ireland and secondly defined the future contact arrangements for the respondent father with the children. Significantly the mother had not however appealed against the Judge's third order for joint residence as, according to her counsel, Ms McBride QC, the mother acknowledges the important part that the father plays in his children's lives and his significance for them.

The Evidence

[3] I heard the evidence afresh and mean no discourtesy to the parties by not repeating it *in extenso* here. I take that course because the evidence before me and in relation to which there was little dispute between the parties bore a close congruity with that given before Judge Loughran and set out by her in detail in the course of her thorough judgment.

[4] In short summary therefore, the mother who was born and brought up in Dublin came to Northern Ireland with the father who is from Northern Ireland and their child K in December 2007. The parties had commenced their relationship in April 2006 conceiving K who was born in March 2007 and they had lived together in Dublin from the January of that year. After coming to Northern Ireland they lived firstly with the father's mother before moving to their own accommodation, in which the mother and children still remain, in October 2008. J was born in December 2008 and in January 2010 the parties separated since which time they have been in ongoing dispute as to whether the mother should be allowed to return to Dublin bringing the children with her.

[5] As Judge Loughran explained in some detail, the mother has never felt at home in this jurisdiction. She feels different and considers that she is so regarded by those who live around her. Apart from a short period of temporary employment in the Civil Service she has not worked since coming here, has few friends or social contacts, has not taken up any recreational or church-based activities and is isolated from the community around her both psychologically and in fact. Her entire focus apart from the children is upon her family in Dublin and she returns there as often as possible to stay with an aunt and to visit her father, other aunts, brothers, nephews and nieces. She has, in short, been preoccupied with her plan of getting back to Dublin.

[6] In her evidence before me the appellant was plainly most unhappy at the idea of having to remain in Northern Ireland although it was indicated that she intended to do so if permission to relocate with the children were not granted. Her intention if allowed is to move back to Dublin where she could stay initially with the aunt without any time limit while seeking to obtain her own rented home. She has researched the State benefits available to her there which seem to be likely to be greater at present rates than those she receives here, has obtained a place for K in a local Church of Ireland school and is confident that J can be placed in a suitable nursery. She did not intend to seek employment until both children are full-time at school but would have hoped to undertake courses before then so long as they fitted in with the children's hours.

[7] The mother's unhappiness at remaining in Northern Ireland has, since Judge Loughran's decision, caused her to seek medication for depression, she having previously suffered an episode of post-natal depression after J's birth.

[8] Various allegations of unsuitable behaviour on the part of the mother's father and brothers were levelled by the father together with allegations of improper behaviour towards J by an old boyfriend of the mother during visits by him from Dublin to her home here. I have attached no weight to any of these matters as they were insufficiently substantiated by evidence.

[9] The father for his part is also clearly extremely attached to the children. He is a great deal more "hands on" than many in his situation and his mother in particular is also very interested in the children. The nature of his employment means that he is only at home one weekend out of three and he plainly seeks to maximise all his available opportunities for contact. The mother agrees that the children want to see him and benefit from doing so. Since the hearing in the Family Care Centre he has obtained his own Housing Executive accommodation with bedrooms for the children which he has invited the mother to view and with which she was reportedly pleased. K has begun at primary school and seems to have settled well there. She has expressed a wish to remain where she is but, as Ms McBride reasonably observed, only limited weight can be attached to that view given her age and consequent level of understanding.

[10] The social worker who was present throughout the hearing gave helpful evidence at my invitation. Her assessment was that the children are well looked after by both parents who are each assessed by Social Services to be protective. The Trust's only interest in the family therefore is in seeing the present private law proceedings through to a conclusion after which it does not feel that it will be necessary for it to be further involved. The view of the social worker was that the appellant is disabled by her isolation and that she so much wants to be in Dublin that she feels unable to make a life here. In the social worker's view the aunt in Dublin with whom she wishes to live is a "mother figure" for her, her own mother having sadly died when she was 15. It is the belief of the Trust that the children should reside with their mother as their main care giver: "K is happy with her mother and happy to see her father." The Trust did not oppose the mother's relocating to Dublin with the children.

The Law

[11] There have been several attempts in the past, chiefly in the English Court of Appeal, to lay down what are sometimes described as the "principles" and

sometimes now as the “guidance” to be followed by Courts in relocation cases. The high water mark of those endeavours was Payne v Payne [2001] 1 FCR 425 the overly-prescriptive nature of which successive English Courts have sought to row back from or circumvent in the years that have followed. Fortunately I am not bound by decisions of the English Court of Appeal although by custom our courts accord them, when appropriate, due deference. The most recent decision of the English Courts seeking to grapple with the problems created by the very detailed principles (or guidance) to be derived from Payne is that of MK v CK [2011] 3 FCR 111. For my own part I am content to embrace as my guiding approach to relocation cases the proposition contained in the judgment of Black LJ in that case that:

“The only authentic principle that runs through the entire line of relocation authorities is that the welfare of the child is the court’s paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child.” Ibid at [141].

The circumstances of each child, each family and the dynamics surrounding both are so variable that I also adopt with gratitude the further formulation of Black LJ:

“When a relocation application falls to be determined, all of the facts need to be considered.” Ibid at [145].

[12] In the present case Ms McBride invited me to consider:

- (a) The motivation of the mother. Is she motivated by thinking that it is better for the children to be in Dublin? She is unhappy at the thought of remaining in Northern Ireland – will that unhappiness impact upon the children?
- (b) The well thought out practical arrangements that the mother has put in place for her plan to move to Dublin.
- (c) The impact of the removal upon the father and the relationships between him and his children.
- (d) Would the mother’s proposals for contact following removal enable the father and children to have a good and meaningful relationship? In her submission their present relationship would not be diminished by the move.

- (e) The fact that the mother agrees to mirror orders being put in place in the Republic of Ireland to guarantee her good faith in relation to future contact arrangements.

[13] Concerning the welfare checklist she submitted:

- (a) That while the elder child has expressed a wish to remain where she is (the younger child being too young to have or express a view) the opinion of that older child cannot attract much weight because of her age and her consequent level of understanding.
- (b) Their physical, emotional and educational needs are in her submission finely balanced whether the children live in Northern Ireland or in Dublin.
- (c) The likely effect of change upon the children is that they would quickly adapt and that there would be very little disruption especially since they are accustomed to visit Dublin and their family there.
- (d)-(g) Are in her submission effectively neutral.

[14] I accept the approach proposed by Ms McBride from which the respondent father who appeared in person with the able assistance of Mr Breen, his McKenzie friend, did not demur. As I have earlier said, I agree that no decisive weight can be attached to the reported preference of the elder child to remain here but it may at least indicate that she is content with her present arrangements whereby she lives with her mother and sees her father regularly, a position that the social worker also reported. I agree that the children's physical and educational needs can as well be met in Dublin as here. However the same cannot so easily be said of their emotional needs as the level of contact with their father, which everyone agrees is important to them, will inevitably be significantly diminished throughout the 40 or so weeks of the school year. This is clearly illustrated by an examination of the detail of the mother's albeit generous and well-intentioned proposals for future contact which would nonetheless result in the father having none of the mid-week contact presently enjoyed and very restricted weekend contact on those two weekends out of three when I satisfied his employers do require him to work.

[15] As to the effects of relocation, the immediate results of the move upon the children may not be long-lasting due to their young ages and familiarity with their Dublin family, but the longer term effect of the considerable and in my view

significant inevitable reduction in the level and quality of contact if the children have to be driven to and from Dublin every weekend rather than be within a few minutes' drive or, in later years, perhaps even walking distance from each parent's house, while now difficult to gauge accurately will certainly not be positive but rather detrimental. In my judgment the mother has underestimated the effect upon the children and herself of having to drive to and from Belfast on a Friday and again on a Sunday in all weathers when on two out of three of those weekends the father will only see the children for about three hours on the Fridays and Saturdays between returning home at about 5.00pm and the children's bedtimes and scarcely if at all on the Sundays. I conclude on this issue that the arrangements proposed are likely to adversely affect the close relationship presently existing between the father, his family and the children.

[16] I have no doubt that the mother is genuinely motivated in applying to relocate by a feeling that Northern Ireland is not "home" to her as she feels Dublin is, that she is therefore unhappy and that, were she to move to Dublin she would again feel content and that contentment would be a benefit to the children. Equally I am satisfied that the father is not motivated by any spirit of vindictiveness in seeking to prevent the move but solely by his belief that the children will benefit by a continuation of his close and loving relationship with them and, conversely, would suffer by its attenuation in time spent with and distance from them should the relocation proceed. I am satisfied, as are social services, that both parents care deeply for their children and that each can look after them very well. I was impressed by the respect that each parent showed at the hearing for the other's capabilities and significance for the children and by the emerging spirit of co-operation that seemed evident following the period of bitter acrimony that initially flowed from their separation. I hope that they can continue to build upon that generosity of spirit following the conclusion of these proceedings and that for the sake of the children the paternal grandmother will take steps to heal the breach that has lately existed between her and the mother due to this dispute about relocation. The grandmother has much to offer both the children and their mother in the future.

Conclusion

[17] I have reached the firm conclusion, in entire agreement with that of Judge Loughran, that the detriment to the welfare of the children resulting from the inevitable diminution in their relationship with their father were they to move to Dublin exceeds that which they might suffer as a result of exposure to their mother's present sadness at not being allowed to relocate. Accordingly I refuse her application. I hope however that now that the matter is settled the mother will content herself and put some of the energy and resourcefulness that she has conspicuously demonstrated in planning her move into forming relationships and

links into the local community here, something which she has felt disinclined to do over the past four years while hoping that she could return to Dublin. She is young and has much to offer and to gain socially, educationally and by way of employment if she now adopts a positive and constructive approach to her life here with the children.

[18] As to the arrangements for future contact in the light of this decision on relocation, it seemed to me at the hearing that there exists a large measure of agreement and a mutual willingness to be flexible in the interests both of parents and children. I therefore hope that agreement can be reached on the details of future contact but should there remain outstanding issues I will hear further argument on the subject.