

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

10/099340/14

IN THE MATTER OF THE ADOPTION (NORTHERN IRELAND) ORDER 1987

BETWEEN:

SZ

Appellant;

-and-

A HEALTH AND SOCIAL CARE TRUST
AND
AF

Respondents.

O'HARA J

[1] This judgment is given in anonymised form in order to protect the identity of the four children to whom it relates. Nothing must be reported which would identify those children or any of the other parties to the proceedings.

[2] This is an appeal from a decision dated 15 September 2014 by Her Honour Judge Smyth to free four children for adoption without the consent of their parents. The appellant SZ is the mother of all four children. The identity of the father of the eldest child is unknown. AF, the father of the other three children, has opposed the freeing application in the lower court but has not appealed from the order made and is not represented in this appeal.

[3] The appellant mother was represented by Mr G McGuigan, with Mr T McCabe, instructed by Ms M Nugent of Gus Campbell, solicitors. All of these lawyers represented the appellant on a pro bono basis i.e. without receiving any fee

for their work. Legal aid had been refused for the appeal. I am most grateful to them for their contributions in a case which is of such enormous significance to their client.

[4] The Trust was represented by Ms S Simpson QC instructed by the DLS and the Guardian Ad Litem by Ms C McCloskey instructed by Ms O Boyle of MacAulay Wray solicitors. I am grateful to them for their contributions and especially for the extra steps which they took to arrange for documentation to be made available to the appellant at the stage when she was without lawyers.

Background

[5] The appellant is 26 years old. Her four children are aged from 6½ years to 10½ years. Concerns about her care for her children and the care provided by AF have been on-going for many years. Interim supervision orders in respect of each child were first made in August 2010. They were continuously renewed until interim care orders were first made in December 2011. Unfortunately matters did not improve as a result of which the children were taken into foster care in June 2012, more than 2½ years ago. Full care orders were made on 20 January 2014 with the plan being that all four children would be freed for adoption. Those orders were made in the Family Proceedings Court. While they were opposed by the parents, they were dealt with by way of legal submissions only. No evidence was called and there was no appeal from the decision to make care orders.

[6] Her Honour Judge Smyth heard the freeing application over three days in June and September 2014. At her request the parties drew up an agreed factual background extending to nine paragraphs in which the major difficulties which the parents' conduct had caused were set out. These difficulties had a significant negative impact on the children. The judge then heard oral evidence from the Trust, from both parents and the guardian. She formed the view that the father was under the influence of drugs even as he gave evidence before her. She was also unimpressed with the appellant e.g. describing her "lame excuses" for not arriving at contact with her children on time. I note from the transcript of her judgment the following points in particular:

- The learned trial judge described the neglect suffered by the children as being "at the highest end of the scale".
- She recorded that the appellant accepts that she is unable to care for the children at this point but aspires to do so at some unknown point in the future.
- For that reason she wanted the children not be adopted but to remain in long term foster care.
- She noted that the appellant had taken some steps to make changes in her life but "there is a long way to go".
- She considered the circumstances of each child in some detail.

- She considered the interests of the children in the context of long term foster care as against adoption and did so specifically with reference to their views about contact – the sad reality is that none of the four children wants to see their mother. There has been no contact with her for coming up to a year, the precise dates varying between each child.
- She concluded that there is need for regular contact with the birth parents which would justify a refusal to free the children for adoption – this point is significant because the extent and quality of contact between children and care and their parents matters a lot when deciding whether parents are unreasonably withholding their consent to adoption.

[7] It is important in this appeal that the four children are together in the same placement with a couple who are their prospective adopters. They were separated into two pairs when taken into care in June 2012. In October 2013 the oldest and youngest children moved to their current home, followed in December 2013 by the middle two. Accordingly they have been together again for 14 months. This is not a case in which one has to measure the likelihood of placement – there is a settled placement which has worked well and continuously for an appreciable time. The appellant has specifically acknowledged that fact – she welcomes the progress they have made, is relieved that they are together and is happy with the excellent care provided to them.

Grounds of appeal

[8] The grounds of appeal are identical in the case of each child. I will deal with them in the way they were presented by Mr McGuigan, noting that I was not asked to hear any evidence save in one respect which appears below.

Grounds 1 and 2

Whether the learned trial judge was correct to have refused the mother an independent parenting assessment as a single mother in light of her separation from the father and whether she failed to place sufficient weight on the positive changes made by the appellant which are relevant to her potential to care for the children in the future.

[9] An application was made to the learned trial judge at the start of the freeing hearing to adjourn it to allow for a fresh assessment of the appellant. That application was rejected. Given the history of these proceedings, that decision is beyond challenge. Support and assistance have been offered to the appellant since 2009. It was her attachment to her ex-partner which left her in a state where she did not accept, or accept consistently, the offers which were made. Her recent efforts are more promising but as the judge said there is a long way to go and the youngest child is already 6½ years. There is no arguable basis for these grounds of appeal – they both fail.

Ground 3

Whether the judge was wrong in making findings of fact in relation to recent disclosures by the children as those allegations were untested.

[10] I have already referred to the agreed facts which were drawn up between the parties at the judge's instigation. When the social workers and parents gave evidence recent disclosures made by the children were raised. The parents were cross-examined about them. Those disclosures are not in truth fresh allegations at all – rather they are examples or illustrations of what had gone wrong in the past. It is not at all clear that the learned trial judge did make additional findings but the fact that the children were making disclosures is relevant to the desire of the children to see their mother, the possibility of any rehabilitation and the question of whether the mother's consent is being withheld unreasonably. I conclude that there is no basis for the appeal on this ground.

Grounds 4 and 5

Whether the learned trial judge gave sufficient attention to alternatives to the freeing application such as long term fostering and failed to place sufficient weight on the benefits of long term foster care for the children as opposed to adoption.

[11] These grounds formed the main focus of the appeal. It is common case that children should only be freed for adoption when that step is necessary. It is no longer enough that it is a better option that children be adopted than kept in foster care. It has to be the necessary option. It is also generally accepted that the younger children are when they are freed for adoption the better are the prospects of finding them a suitable placement which will not break down. There are of course no guarantees which come with freeing – adoptions do breakdown and the consequences for the children can be traumatic. At least two and arguably three of these children are at or beyond the normally accepted and preferred upper age limit for freeing. On this analysis, Mr McGuigan submitted that I should allow the appeal on these grounds and re-open the issue of long term foster care. An alternative approach would be for me to resume the appeal by opening this aspect of it and hearing evidence about what exactly research shows happens when older children are placed for adoption.

[12] Mr McGuigan also contended that there was little evidence that long term fostering was seriously considered at either the relevant Looked After Child Review in April 2013 or by the Adoption Panel at its meetings. The minutes of those meetings were provided after I had heard the submissions. In fact they showed that in April 2013 the chairwoman of the Looked After Child Review specifically advised that in addressing the care plan for all four children the options were rehabilitation to one or both parents, long term foster care or permanency by adoption. The option selected was permanency by adoption.

[13] Further minutes were provided from an Adoption Panel meeting in August 2013. These show at page 3 a specific discussion of the options with the Panel agreeing that “adoption would appear to be the preferred option for the children ...”. In light of recent case law, which may not have been known to the Panel at the time, the true question is whether the option is the necessary one rather than the preferred one but I accept that long term foster care was in fact discussed.

[14] The Panel had to consider these children again in September 2013 in the context of the assessment of a grandmother as a possible alternative carer for some or all of them. It then met again in October 2014 to consider a report about how suitably the children were matched with the prospective adopters. The absolutely clear conclusion was that they were appropriately matched.

[15] If this case involved four children aged 6½ to 10½ years who had not yet been placed for adoption, the submissions made by Mr McGuigan would carry some weight because there would inevitably be questions about the likelihood of placement, whether they would stay together or be separated and what the timescale of any adoption might be. Luckily for them that is not the position here. The children are not only together in one place but they have been there for well over a year. Their progress has been monitored and has exceeded expectations. The current carers with support from social workers, teachers, their church and others have helped the children settle, adapt to each other again and develop. That being so, I do not need to hear any evidence about what research suggests might happen or would be likely to happen with children of these ages. These children were badly damaged in the care of their parents. They do not want to see their mother much less face the prospect of returning to her care at some entirely unidentifiable point in the future. The prospect of them all returning to her care together is even more remote. Sad as it is, and it is truly sad, there are no compelling reasons for these children in these circumstances staying in long term foster care. On the contrary I believe that the learned trial judge was absolutely correct in reaching her decision that it is necessary to free these four children for adoption.

Ground 6

Whether the decision was wrong and disproportionate especially in light of the mother’s right under Article 8 of the European Convention of Human Rights.

[16] The mother’s human rights are recognised in the way in which the need for adoption is required if an order freeing children is to be made. This must have been in the learned trial judge’s mind, given her experience as a family judge. All of her reasoning and analysis is consistent with that being the case.

[17] I am particularly struck by the way in which she avoided prescribing contact in any limited way and thereby kept open the possibility of contact in the future, depending on the mother’s progress and the individual and collective progress of

the children. That approach is consistent with her trying to protect some last link between the appellant and her children.

[18] I hope the appellant's personal progress continues and that this judgment which will inevitably be distressing for her will not lead to her becoming excessively discouraged. Her children are too old ever to forget her. If she starts to make indirect contact, with which the Trust has offered to assist her, she may re-open the door to seeing one or more of the children again.

Conclusion

[19] I find no basis for any of the grounds of appeal or challenges to the decision made by the learned trial judge. Accordingly I dismiss the four appeals made by the mother and affirm the orders that each of these children be freed for adoption.