Neutral Citation No. [2009] NIFam 14 **FINAL** *Ref:* **WEI7598**

Judgment: approved by the Court for handing down *Delivered:* **17.07.2009**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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08/029055

OFFICE OF CARE AND PROTECTION

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

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BETWEEN:

SOUTH EASTERN HEALTH AND SOCIAL SERVICES TRUST

Applicant;

-and-

LS
and
PM

Respondents.

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WEIR J

Confidentiality

[1] Nothing may be published in relation to these proceedings or this judgment that would serve to identify the Respondents or the children concerned.

The nature of the proceedings

[2] The Applicant Trust seeks an Order pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 ("the Order") freeing two children for adoption without the agreement of their mother, LS. Their father, PM, gave his written agreement to their adoption on 16 October 2008, shortly before the commencement of the initial hearing in this matter. LS objects to the application for freeing and wishes both children to be returned to her care. The Guardian Ad Litem ("GAL") supports the Trust's application.

The background thus far

[3] On 27 October 2008 I gave an interim judgement [2008] NI Fam 12] setting out in some detail the background to the case, the evidence that had been given and my provisional conclusions at that stage. I do not propose to again rehearse all the matters therein set out and the present judgment should therefore be read in conjunction with that earlier judgment for a full understanding of the background thus far. However, as a platform for my further consideration, I summarise the main interim conclusions that I then reached:

(i) While LS had matured with age and with the constant support of her new partner, KC, over the then previous 16 months I was not persuaded that, were she again to have to parent these children unaided, she could do so. In my estimation LS would require considerable ongoing day to day support if she were to have the prospect of successfully parenting the children.

(ii) As a result of my conclusion at (i), I considered that the assessment of KC as a long term support for LS in parenting the children was vitally important. I put it thus at paragraph [20]:

> "In short, if he and she together can provide good enough parenting that may lead to rehabilitation, if not adoption will be inevitable."

(iii) As a result of my conclusion at [ii], I was not then able to conclude that LS was "unreasonably" withholding her consent to the freeing application. I expressed the view that the evidence of the Trust and GAL had both laid too much emphasis upon events from the past and paid insufficient attention to LS and KC as a couple. I said at para [23]:

> "I consider that they and the children deserve every help and encouragement to see whether adequate parenting can be accomplished by the two of them working together."

(iv) I was also concerned by the fact that the prospect of finding a joint adoptive placement for the two children, R and C, was likely to prove difficult and it was agreed by all parties that, as no decision would be taken to try to place them separately until February 2009 at earliest, I ought not to consider freeing C immediately whilst deferring a decision on R and I agreed with that consensus.

(v) As a result of my conclusions at (ii), (iii) and (iv), I declined at that time to make an order freeing either child for adoption and instead adjourned the hearing until 23 March 2009 to enable the possibilities for rehabilitation and the prospects for adoption to be clarified.

The hearing resumed

[4] Almost five months had therefore elapsed by the time the hearing resumed. During that period LS and KC had, as the GAL appositely put it in her report of 20 March 2009, "engaged in a plethora of assessments designed to furnish further insight into their future potential as carers for R and C" during which time "the couple have demonstrated commendable engagement and attendance with the gamut of assessments co-ordinated in this time". The GAL reported that KC had "displayed a steady commitment in respect of his relationship with LS and to supporting LS in her goal of securing rehabilitation of her children; this commitment has been evidenced in the readiness and co-operation he has demonstrated to join with LS in the assessment process, engage with a plethora of professionals and undertake all assessment tasks requested". This conclusion is consistent with the impression of him that I had recorded at para [21] of my interim judgment. It is now necessary to examine in a little detail the outcome of the more significant areas of assessment which have been undertaken since the initial hearing.

The PAMS assessment

[5] This assessment was carried out in the couple's home over 16 hours spread over four separate occasions. Apparently it had been planned to complete seven observed contacts totalling 25 hours but because the referral was not made until February 2009 this could not be achieved before the resumed hearing. However Ms Wilson, the Principal Social Work Practitioner who jointly undertook the assessment with her colleague Mrs Robinson, said in evidence that they did not feel that they in fact needed any greater time to observe the parents and children than they had had. The Parenting Assessment Manual Software Programme ("PAMS") is apparently widely used in England and is now also used in Northern Ireland, principally by the Northern Trust and the South Eastern Trust has also begun to use it.

[6] The GAL said in evidence that she was very surprised at the high scores that the couple obtained and that appeared to me to be an appropriate concession in the light of the findings. In summary, LS demonstrated "Good or Adequate" practice in 134 practice areas with parenting deficits in the remaining 61 areas. The deficits were assessed as being 1% within the High Priority range, 26% of Medium Priority and 41% of Low Priority with the remaining 32% of areas being within the "Priority Criterion" ie. acceptable. So far as KC was concerned, "Good or Adequate" practice was demonstrated in 152 areas and parenting deficits in 37 areas. He had no deficits within the High Priority range, 9% were of Medium Priority and 34% of Low Priority with the remaining 57% of skills being within the Priority (or acceptable) Criterion. It is reported that the couple co-operated well with the process and demonstrated commitment towards the children. Of considerable potential significance in my view is an examination of the joint scores of LS and KC. Unfortunately these, though included diagrammatically in the Appendix to the report, were not discussed in it by the authors notwithstanding their prior awareness that the proposal being considered was for the joint care of the children by LS and KC working together. However this aspect was helpfully explored by Ms Walsh QC in her cross-examination of Ms Wilson who agreed, importantly in my view, that had the children been living with the couple at the time of the assessment the effect of their combined score would have been such that it would not resulted in a recommendation that the children be removed from the couple's care. The combined assessment demonstrated "Good or Adequate" practice in 171 practice areas with parenting deficits in the remaining 32 areas. Joint deficits were assessed as being 8% of Medium Priority, 31% of Low Priority with the remaining 61% of areas being within the "Priority Criterion" ie acceptable. The overlapping of their practice scores also resulted in the elimination within the joint summary of the 1% of deficits within the High Priority range earlier found in respect of LS alone.

[7] In evaluating the significance of this practical and objective assessment it must also be worth bearing in mind that KC's prior involvement with the children had been very limited, consisting as it did of fortnightly contact beginning in November 2008 increasing to weekly in January 2009. Similarly LS's relevant experience of the children had also been limited to contact, albeit of much longer duration. Neither had had the opportunity to "parent" the children in any meaningful way prior to the assessment being conducted. Against that background the joint success of the couple must be regarded as not only remarkable but also as potentially capable of enhancement in a realistic parenting setting.

The Knocknashinna Assessment

[8] Another assessment in the battery undertaken by the couple was carried out by exploring, in the course of a number of sessions, topics such as

parenting capacity, children's needs and environmental factors. However the conclusions from this exercise, which are not very encouraging, were written up in February 2009 when the PAMS assessment had just commenced and therefore in ignorance of its outcome. The Knocknashinna report itself acknowledges this weakness and concludes:

> "The PAMS assessment should help clarify concerns and target attention to those areas that need it most."

For that reason and because the nature of the Knocknashinna assessment was necessarily subjective, because it was dealing with LS who, by reason of her intellectual and educational deficits, is not skilled at expressing herself or dealing with concepts and with KC who is assessed, I think accurately, by the GAL as a "quiet, somewhat withdrawn and socially reticent man", and because some of the areas of discussion such as experiences of past sexual abuse have not been addressed by appropriate therapeutic interventions, I have concluded that the outcome of the PAMS assessment is likely to be a much better guide to the potential parenting abilities of the couple in this case than that of Knocknashinna and I therefore prefer it.

Exploration of past sexual abuse

[9] Mrs Valerie Owens, an independent social worker, was asked to examine the questions of the understanding of and impact upon LS of sexual abuse suffered by her in her childhood and of KC's knowledge of and role in the circumstances preceding and following the discovery that his son P had been sexually abuse by a half-sibling in KC's then home. She was also asked to assess matters surrounding the couple's ability to provide safe and protective parenting for R and C. Mrs Owens acknowledges at the outset of her report that the quantity and complexity of the issues she was asked to explore in the time available to her, the assessments being conducted by others at the same time and the specific difficulties of pace and communication in working with LS presented "significant challenges". KC demonstrated a willingness to explore difficult issues and LS participated to the best of her ability. Mrs Owens also identifies the same point as that to which I referred when discussing the Knocknashinna assessment, namely that it was difficult for LS to discuss her understanding of the sexual abuse she suffered as a young person in the context of her assessment by a complete stranger particularly as she has not to date engaged in therapy in relation to that abuse. Moreover, Mrs Owens referred to the observation by Dr Philip Moore, consultant clinical psychologist, in his helpful updating report of January 2009 that to gain any benefits from therapeutic interventions LS would require a modified therapeutic programme with a therapist aided by an adult support worker in recognition of her communication and literary difficulties. She concluded in relation to LS that the appropriate therapeutic

intervention would be needed before a fair assessment could be made of her ability to protect her children.

[10] Overall in relation to the couple, Mrs Owens concluded that both LS and KC require further work in relation to the issue of protecting their children from the risk of sexual abuse from within the extended family. Somewhat worryingly however, she does not appear to have made any detailed practical assessment of the possible sources of such abuse within the extended family. These individuals are listed in Mrs Twigg's addendum report of 10 March 2009 at pages 7 and 8 and an examination of the list does not disclose any perpetrator who is or who has in recent years been in contact with LS and certainly not during the period of about two years during which LS and KC have been living together. In my view any assessment of risk must not focus merely upon the theoretical but also upon the practical opportunities for abuse to occur in the particular case. This "broad brush" approach to the topic is also instance in what the court was told was the approach of the Belfast Trust to KC's son P visiting his father's present home. I was given a number of inconsistent explanations about this but ultimately it appeared that that Trust would approve of P visiting his father's home provided that LS was absent during the visit. No explanation for this requirement was forthcoming and it is difficult to avoid the conclusion that no, or no proper, practical analysis of the risks of sexual abuse has been made in this case. No suggestion of any impropriety on the part of LS has ever featured and it seems odd that she, as a past victim of sexual abuse, should now be portrayed as in some way constituting a risk to P. I may add that the failure of the two Trusts to discuss and arrive at a joint strategy for contact between LS, KC and P has placed a good deal of practical difficulty in the way of KC's discharging his responsibilities to both P and LS, living as they do some 30 miles apart.

Conclusions on the outcome of the further assessments

[11] My conclusion is that the overall outcome has been confirmatory of my provisional view that, provided that LS and KC work as a couple, there is the realistic prospect of their being able to provide good enough parenting for these children. There is also the further possibility, to which no thought whatever seems to have been given, that they might be able to parent C alone if C and R together prove too much, given the latter's developmental and educational needs. It is noteworthy that consideration is now being given to R and C being adopted separately but not, so far at any rate, to the possibility of C being rehabilitated to LS and KC and R being adopted. This seems on its face a surprising omission.

[12] However, as the recent assessments also confirm, any successful rehabilitation would crucially depend upon the availability of KC to work co-operatively with LS in parenting. In my interim judgment I expressed a

favourable opinion of KC's sincerity in wishing to support LS. I pressed him repeatedly about his intentions in this regard, must recently at the adjourned hearing on 21 April 2009 when I asked him whether he had thought over his commitment to LS and pointed out that if he promised to help her and then failed to do so it would cause more trouble than if he said now that he could not give that promise. He replied "my answer is still the same".

KC's alcohol consumption

[13] Unfortunately matters have come to light since I gave my interim judgment that have caused me to look rather more critically at the reliability of KC's evidence. Those matters relate to his level of alcohol consumption. In my earlier judgment at para [20] I said that I found KC an honest witness. I regret to say that, certainly in relation to his alcohol consumption, I now have cause to review that conclusion. In that paragraph I recorded his evidence that he had cut down his drinking and now only drinks a few cans of beer while watching football on television once or twice a week. In the light of the following matters that have arisen since that evidence was given I now find it difficult to accept:

(i) On 7 January 2009 during a session at Knocknashinna KC was found by two staff members to be smelling of alcohol but, when asked about this, denied that he had been drinking.

(ii) On 25 January 2009 there was a motor accident in which a car driven by KC was in collision with another. Some time later KC was collected by LS's father from the side of the road. It now seems clear that KC had been drinking – he says he had attended a christening party earlier – but his account of the incident was confused and unconvincing.

(iii) On 26 January 2009, the day following, KC failed to attend an appointment at the Northern Ireland Community Addiction Service ("NICAS"). He says, and it may be, that that was because his car was broken but he failed to cancel his appointment and thereafter did not respond to a letter from NICAS. This repeated a pattern from an earlier sequence of appointments in May and June 2007 after which he failed without explanation to attend in July 2007. The NICAS project manager, Mr Coleman, expresses the view in his recent undated report that it is a concern that KC has terminated his contact with NICAS on two occasions and recommends that he engages with a treatment agency and completes a programme addressing such areas as developing support networks and relapse prevention.

(iv) The evidence and submissions in this matter were concluded on 21 April 2009. It then came to light and was very properly brought to the court's attention that on 20 February 2009 KC had been arrested for drink driving

and that although that charge was pending at the time of the adjourned hearing on 21 April 2009 no mention was made of it when the events surrounding the car crash of 25 January were being discussed. I therefore re-listed the matter on 12 June 2009 for further evidence on this issue. At that stage KC admitted that he had been stopped by the police on the morning following a visit to his home by his daughter on the previous evening when he had obviously drunk to such an extent that he was still over the limit when driving the following morning.

[14] What is the significance of these new matters? I conclude in the first place that KC drinks more than he claimed and than I was inclined at first to accept. In the second place his lack of candour on this issue, which was debated in evidence at some length during the hearings, leads me to a greater degree of scepticism about the reliability of KC's evidence more generally. It seems to me now that what KC says on any issue is no longer to be taken at face value but requires to be confirmed by his actions. He claims to have re-engaged again with NICAS and it will be interesting to see whether that effort is sustained. At the moment I have some doubt as to whether KC even yet appreciates that he is drinking more than is sensible and whether he is therefore deluding himself as well as having attempted to mislead the court on the issue. I shall return later to assess the significance of KC's lack of candour in relation to his alcohol consumption.

Efforts to find adoptive placements

[15] Throughout the currency of this matter the Trust has expressed confidence that adoptive placements could be found for both children, preferably together but failing that certainly for C and, with some more difficulty, separately for R. That confidence has proved to be serially misplaced, the latest failure occurring when a prospective couple were discouraged by the description of R's needs that had been given to them by the Adoption Society's medical advisor. Both children have again moved foster placements, again they are not placed together and R's latest placement is forecast to last only until November or December of the present year. It is concerning that the GAL indicated in her addendum report of 12 June 2009 that R's latest carer "is able to offer the child more individual time than was afforded in the previous placement, being present in the home three full days per week." This expression of apparent satisfaction that a child with R's now well-established and documented needs can be adequately cared for by a short term carer who is present with him for less than half the week seems surprising, especially given the contrasting level of close and constant involvement expected from LS and KC by those assessing them including the GAL. The present arrangement for R seems to be much less than ideal with, additionally, no indication of anything better for him on the Trust's horizon.

Discussion

[16] What then is to be done for these children? There can in my view be no more question now of freeing R for adoption than there was at the time of my interim judgment as the Trust has failed in the interim to advance the prospects of his adoption by one iota. In the course of her evidence on 21 April 2009 the GAL said, to my surprise, that it might benefit R to have a placement on his own. The thinking behind this opinion was not explained and I can only suppose that it was a counsel of despair based upon the Trust's seeming inability, despite the period of more than three years that has passed since these children were taken into care, to place them together in a suitable foster home never mind find them an adoptive placement together. Mrs Keegan QC for the Trust, with characteristic candour, said in her closing submissions on 22 April 2009 that the position regarding adoption was, notwithstanding the period of adjournment, really the same as it had been before the adjournment in October 2008.

[17] I am not prepared to allow the Trust any further time to satisfy the "likelihood" test in respect of R and, in addition, while I consider that C might well be placed alone for adoption within a reasonable period, I remain unpersuaded that LS is unreasonably withholding her consent as there seems now, as a result principally of the PAMS assessment, to be a very real possibility that adequate parenting, certainly of C and perhaps also of R, can be achieved within a reasonable period by LS and KC working together. Accordingly I refuse the freeing applications in respect of R and C.

[18] What of the future? Mrs Keegan was kind enough to remind me that the Court is rather limited in its scope as there exist care orders in respect of both children so that their care is a matter for the Trust and not the Court. I accept that proposition without demur but I cannot forbear to say that I consider it important that some proper plan be made for these children without further delay. I have already expressed my disappointment at KC's attempt to hoodwink the court in relation to his alcohol misuse but, while that has caused me to pause and reflect upon the reliability of his other evidence, I remain persuaded of his affection for LS, his desire to work with her in securing the rehabilitation of her children to her and his commitment to her and to her children in the long term. I judge him, alcohol consumption aside, to be a steady, intelligent and resourceful man who, if he stays the course, may have the ability to co-parent one or both of these children with LS to a good enough standard. In that they would, I am satisfied, have the help of LS's father who told me in evidence, and I accept, that he would, as he has in the past, do whatever he could to help LS and her children. R in particular has a good relationship with him and he could be a real asset in helping with R's care if the Trust would harness his resource.

[19] In my view, which I accept cannot bind the Trust, LS and KC should without more delay be offered the possibility of a Thorndale assessment to

see whether they can parent R and C or either of them and to see whether KC lives up to his promise to be there for LS. Both have expressed their willingness to undergo such an assessment although LS was worried about preserving her home while she was away at Thorndale and it would be essential for the Trust to make suitable arrangements to ensure that the home remained available for her. In addition, Dr Moore in his excellent report of 25 January 2009 identified numerous practical measures needed to assist LS and offers his assistance in sourcing at least some of them. The value of engaging an expert who is knowledgeable in the particular field under discussion and with the necessary objectivity to provide unbiased advice is nowhere better exemplified than by his reports in this matter and the Trust would do well to follow closely his recommendations and enlist his assistance.

[20] In my interim judgment I said at paragraph [15]:

> "… since June 2007 KC and LS have been together and LS has had what is undoubtedly the most stable period she has enjoyed, physically and emotionally, for very many years."

I adhere to that view and express the hope that the Trust will now turn its attentions and resources to energetically assisting LS and KC to prove what they are capable of by way of parenting so that these children may achieve permanence in one form or another without any more delay.

[21] I conclude by venturing to recall the brief observations of Lord Nicholls of Birkenhead in In Re G (Children) (FC) [2006] UKHL 43 at para [2]:

> "In this case, as in all cases concerning the upbringing of children, the court seeks to identify the course which is in the best interests of the children. Their welfare is the court's paramount consideration. In reaching its decision the court should always have in mind that in the ordinary way the rearing of a child by his or her biological parent can be expected to be in the child's best interests, both in the short term and also, and importantly, in the longer term. I decry any tendency to diminish the significance of this factor. A child should not be removed from the primary care of his or her biological parents without compelling reason."

With these words I respectfully and entirely agree and I commend them to lawyers, social workers and GAL's throughout this jurisdiction.