Neutral Citation No. [2014] NIFam 9 | *Ref:* **MAG9313**

Judgment: approved by the Court for handing down | *Delivered:* **10/09/2014**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

Between

THE SOUTHERN HEALTH AND SOCIAL CARE TRUST

Applicant

and

A McS

First Respondent

JJ

Second Respondent

J McI

Third Respondent

MAGUIRE J

Introduction

[1] The issue before the court in these proceedings is whether the court should make a care order in respect of E who is a female child born on 1 November 2012 – therefore now some 21 months old. E's mother is A McS. Her father is JJ. Her father's mother is J McI. The father and mother no longer live together. E currently resides in the kinship care of J McI. E's father lives with J McI and E. In these proceedings A McS was represented by Ms McGrenera QC and Ms Steele BL; JJ was represented by Ms McBride QC and Ms McKernan BL; J McI was represented by Mrs Keegan QC and Ms Davidson BL; the Guardian Ad Litem was represented by Ms Walsh QC and Ms Flaherty BL; and the Trust was represented by Ms Louise Murphy BL. The court is grateful to all counsel for their helpful oral and written submissions.

[2] At an earlier hearing, the court held that the threshold criteria contained in Article 50(2) of the Children (Northern Ireland) Order 1995 had been met. This followed concessions which had been made by each parent. These concessions were made on 11 December 2013 and in their relevant parts they read:

> "In the case of the mother
>
> (a) The first named respondent has been assessed as unable to undertake the primary care of her elder child (called RPF born on 28 November 2009) safely, so that a Care Order was made in respect of him on 15 February 2012;
>
> (b) The first named respondent has taken part in numerous assessments in respect of her ability to parent her eldest child including the following parenting assessment:
>
> (i) A PACT assessment from 10 December 2009 – 5 July 2010 (almost seven months) which noted the first named respondent had difficulty in adapting to and managing the changing needs of her eldest child. The first named respondent required continual and constant guidance to safely meet the needs of her eldest child.
>
> (ii) A Parenting Capacity Assessment concluded on 18 March 2011 undertaken by Stuart Whyte, independent social worker, Ms Amanda Pollock, independent health visitor with a contribution from Angela De Mille, independent infant mental health specialist. That assessment reached the following conclusions:
>
> "It is further our view that the outlook is very doubtful that A McS will be able to care for her son even with the constant support of a competent adult due to her need to be in constant control and avoid making herself vulnerable to hurt from any competent adult." (Paragraphs 5.2 and 16.2)
>
> It is our view that A McS's eldest child would be at risk of significant harm as a direct result of his mother's limited knowledge, skills and confidence,

if placed in her care at this time …" (Paragraph 14.2)

(c) The first named respondent did not have a positive parenting role from her own parents, and suffered a childhood of physical, emotional and sexual abuse.

(d) Full time supervision and support would be required for the first named respondent to safely meet the needs of the subject child".

In the case of the father

"(a) The second named respondent has a low level of understanding in relation to attending to and recognising the physical and emotional demands of a baby.

(b) Supervision and support would be required for the second named respondent to safely meet the needs of his baby given his level of ability and functioning.

(c) In all the circumstances the second named respondent is likely to expose the baby to significant harm as a result of his limited parenting abilities."

[3] It was, therefore, clear that the mother could not alone be the principal carer of E and that she could not perform that role without full-time supervision and support. Likewise, the father could not perform that role as he had only limited parenting abilities. The court has now moved on from the issue of threshold. As is normal in cases of this type, the Trust has prepared an up-to-date care plan in respect of the future care of E. Under this plan it is proposed that E should remain in her current placement with the paternal grandmother, J McI. Contact arrangements would then be put in place dealing with E's contact with (a) her mother, (b) her father and (c) others. A key feature of the Trust's plan is that it has ruled out rehabilitation of E to her mother's care.

[4] The Trust's care plan in these proceedings has been supported by the father, by the paternal grandmother, J McI, and by the guardian ad litem.

[5] The mother, however, does not support and indeed opposes it. She wishes E to be placed in her full time care. In her view, the Trust's plan is not in E's best interests. The proposal the mother appears to favour in respect of E's future is one in which she and E would reside in the home of E's paternal grandfather, JB, and his female partner, AD, both of whom, the mother submits, could provide support and assistance for her. JB is now retired and is 53 years of age. He resides with AD, now aged 48 years, in their own house in Lisburn. His relationship with the paternal

grandmother broke up in or about 1987. He has lived with AD since 1988. As a couple they have no children of their own. Their relationship with A McS appears to have begun around 2012 but it was only after the breakdown of her relationship with JJ that they have befriended her. At one point JB's sister showed an interest in becoming a kinship carer for E but for reasons the court need not go into this plan failed. However, in the aftermath of this failure JB and AD offered to help. This can be dated to around the end of 2013. Initially, the plan was that A McS and E could come and live with them for a limited period of two - three years or so but later in or about February 2014 this was changed to A McS and E living with them until E's majority. Since in or about March 2014 JB and AD have been attending a weekly contact session with A McS and E but apart from this they have no contact with E, who has never been in their house. Indeed, it appears that while A McS has been a visitor to their house she has not resided there for any significant period, even though recently in April 2014 when A McS had to leave a Women's Aid Hostel in Lisburn she had an offer from JB and AD to come and live with them which she declined in favour of her residing in poor quality accommodation provided by the Northern Ireland Housing Executive in Newry. By way of explanation for this choice, A McS has maintained that she wanted to be near her other child, RF, who was in foster care in Newry.

<u>The Child's Life To Date</u>

[6] E, as noted above, was born on 1 November 2012. Following her birth she resided with her parents and J McI at the latter's house. At this time the parents were the chief carers with J McI acting in a supervisory or assistance role. However, this arrangement did not last for long as the parents' relationship fractured in early January 2013. As a result of this, the mother left the house. E continued to live in the house with her father and J McI. The latter became her principal carer, an arrangement later formalised by the Trust. Since this time JJ has been in a relationship with another partner. Indeed, the couple have had a child, A, who was born on 31 December 2013. Unfortunately A suffers from significant health difficulties which have meant that JJ in recent times has been staying with his son, A, and partner, for part of the time and staying with his mother, JMcI, and E, also for part of the time.

[7] According to the extensive reports and records which have been filed in these proceedings E has thrived in the care of J McI and is well looked after and healthy. While some of the witnesses who gave evidence, in particular, JB and AD, appeared to cast doubt upon how well she had been doing in J McI's care, the court rejects their evidence in favour of the evidence called by the Trust and the evidence of other witnesses. There was abundant evidence before the court – from social workers, from the health visitor, from the Guardian ad Litem and from others, including J McI herself – which strongly supported the conclusion that E since birth was being very well looked after in the care of J McI. When that volume of evidence is set against the criticisms made by JB and AD the court has no difficulty in preferring the former. The accounts of JB and AD arose out of only limited contact they recently have had

with E and it seemed to the court that these allegations were more of a sniping than significant nature. In the course of A McS's evidence it should be recorded that she sought to impugn some aspects of J McI's care of E but when her evidence is weighed against the volume of evidence to support the high standard of care provided by J McI, the court has no difficulty in rejecting the accuracy of it. Overall, therefore, the court has no hesitation in finding as a fact that the standard of care provided by J McI to E is high. The court also has no hesitation in accepting that E's current placement is stable and works well.

The Father's Circumstances

[8] The picture in respect of the father has been discussed above. He does not present himself at this time as a future principal carer for E. Rather he supports the Trust's care plan and wishes E to continue to be brought up by J McI, his mother. JJ admits to having at the date of E's birth no prior experience of caring for a baby. He is a man who lacks literary skills but he does not otherwise suffer from any general learning disability. He has undergone parenting assessment, which had significant positive features, but it is anticipated that he will find it difficult in some areas to fulfil E's needs as she gets older without family support, particularly in respect of issues where his lack of literary skills have an impact. In this litigation his ambitions *vis a vis* E extend to seeking to advance contact on an unsupervised basis leading, he hopes, to overnight contact in due course.

The position of the Mother

[9] The mother is still a young woman. She is currently aged 23. There is no dispute between the parties that she is a vulnerable person. She experienced in childhood physical and emotional abuse perpetrated by her parents. No one doubts that the mother loves her child and this is well evidenced in the testimony of witnesses and in the documents before the court. For example, she has been assiduous about attending contact with E; comes well prepared and demonstrates an affectionate relationship with her. The difficulties which undoubtedly have arisen in respect of her parenting derive from her troubled past. While she can carry out basic tasks, she lacks insight and is unable, according to the reports, to look after and protect E and react to her cues without assistance from others. As matters stand all of the experts are agreed that she cannot on her own provide good enough parenting. Her problem in this regard is compounded by the fact that unfortunately, by reason of her personality, she is unable easily to accept the advice, support and guidance of others. Her tendency is to react poorly to help and on occasion to be hostile to those who seek to provide it. In addition there is evidence that on occasions she acts impulsively and with insufficient thought to the course of action she is taking. This has created concern over whether she may indulge in risky behaviour in which the child might become involved. There is also concern that the mother might be easily led on by others and that she would not have the capacity to discern that by following the path of others she may be endangering the child.

[10] The various difficulties just mentioned have not been only recently discovered. Indeed, they have been known about for some time. The mother has another child, RF, who is now over 4 and a half years. He has been the subject of Trust intervention in recent years. Earlier this year the mother gave her consent to an Adoption Order being granted in favour of his current carers. In respect of the ability of the mother to care for RF the traits referred to above were identified and steps were taken to try to see if the mother could provide good enough parenting following the provision to her of advice, assistance and assessment. As part of this, the mother entered into and engaged in a PACT (Parent and Children Together) placement over a lengthy sustained period. This, however, was little to her benefit as the view which emerged from it was that she could not herself provide the requisite standard of parenting without support, a point conceded in the present case at the date when the threshold concessions referred to above were made. The PACT assessment ended in July 2010. The result of this was influential in RF's case. The PACT assessment, however, was not the only assessment carried out in respect of A McS. There was a psychological assessment of the mother by Dr Moore in November 2010 and a community PAMS (Parenting Assessment Manual Software) assessment in March 2011. Once the present case began, attention was devoted to seeing if any significant improvement may have occurred in respect of the mother's parenting. Mr Stuart Whyte, an independent social worker, was contacted, as (at Mr Whyte's suggestion) was Dr Moore. The latter provided to the court a report as recently as August 2013. Dr Moore gave evidence to the court, as indeed did Mr Whyte. Their evidence, however, only has had the effect of copper fastening the conclusions reached in RF's case *viz* that the mother could not provide good enough parenting by herself for a young child.

[11] In fairness to the mother, the court acknowledges that she has generally been co-operative with the process of investigation and assessment. This is in her favour but the court is unable to ignore Dr Moore's assessment, in particular, as repeated in the witness box in these proceedings. He was unable to discern anything more than limited change in terms of the mother's insight into her child's needs. In his view there remain ongoing concerns. His conclusion was that the mother was not in a position satisfactorily to care for E.

[12] A feature within the evidence has been whether it might be feasible to improve the mother's understanding and parenting abilities by the provision of therapeutic work. The evidence of Dr Moore was that this might be possible, albeit that he was very guarded about whether in the case of A McS success would actually be likely given her limited intellectual functioning – her full IQ was within the borderline just above the learning disability range of scores. A further concern related to her from time to time expressed unwillingness to go down this road. In recent times, the mother has put forward in her statements provided to the court the view that she would be willing to do whatever assessments or avail of whatever services which might assist her in her quest to be E's carer. The court, however, is not convinced that the mother would avail of therapeutic help. She has refused it in the past and the basis for this has been her concern that to go through with such a

process would be too painful for her. As recently as 28 May 2014 there is a record of a discussion between social workers and the mother in which counselling with a specialist agency was discussed. In this context the mother is quoted as saying that:

> "I have done counselling 5 different times and it is no good. It just gets me upset."

On this basis the mother refused to take up offers to be put in touch with relevant agencies. The court is satisfied that the prospect of the mother actually undergoing therapy is poor. Moreover, even if she did undergo it, there is little reason for believing that it would, within a reasonable timescale appropriate for E, be successful.

[13] In the mother's case, it appears to the court that, consistently with her threshold concessions, the issue is whether there is any realistic prospect of her being able to care for E without the assistance of others. In the court's view, there is not. Unsurprisingly, before the care planning hearing, the mother applied to the court for a direction that the Trust should provide her with a further residential parenting assessment in order to enable her to demonstrate her suitability to care for E. The court, with regret, rejected her application for reasons set out at paragraphs [15]–[18] of its written decision: see MAG9146 dated 31 January 2014. In essence, it was the court's view that there was an insufficient evidential foundation to merit what would, in effect, be a repeat assessment which necessarily would have involved the removal of E from her current placement with J McI for a period. In the court's opinion such disruption could not be justified on a speculative basis and in the absence of real evidence to support the belief that the assessment sought would be likely to have a different conclusion from that which was arrived at in 2009/2010. The court did, however, indicate that it would keep its ruling under review in case at the final hearing something should emerge which would change the position. At the hearing the court has kept in mind this commitment but unfortunately there has been no development which would cause the court to alter its earlier decision. The court therefore remains of the view that a further residential parenting assessment is not the way forward in this case.

<u>The options before the court</u>

[14] As is required by law the court has considered whether in this case a "no order" solution would be appropriate and would be in the best interests of E. If such an approach was taken E would return to the care of her mother or father. In the court's view, this would not be in E's interests given the position of the parties and the conclusions which the court had set out above.

[15] In these circumstances it appears to the court that the principal issue now before it is whether it should maintain (in one form or another) the *status quo* with E remaining under the care of J McI or whether it should accept A McS's proposal that E should return to her care in the context of her living with JB and AD.

[16] The court has carefully considered which of the above courses it should favour. It has reminded itself that in reaching a conclusion it is determining a question in respect of E's upbringing. Hence it must treat E's welfare as the paramount consideration and it must have regard, in particular, to the welfare checklist found in Article 3(3) of the Children (Northern Ireland) Order 1995. In arriving at a conclusion, the court has taken the welfare checklist into account particularly those parts of it which appear to have particular importance on the facts of this case. Thus it bears in mind the age of this child; her physical, emotional and educational needs; the likely effect on her of any change in her circumstances; any harm which E has suffered or is at risk of suffering; the capability of the parents (and each of them) to meet E's needs; the capability of J McI to meet E's needs; and the range of powers available to the court. The court has also borne in mind the general principle that any delay in determining the question before the court is likely to prejudice the welfare of E.

[17] The conclusion reached by the court is that the option which would best serve E's welfare is that she should remain in the care of J McI. The reasons for reaching this view are as follows:

(i) E has lived in the same household as J McI since birth. Moreover, since January 2013, J McI has been her principal carer.

(ii) As already noted, the court is fully satisfied that the standard of care provided by J McI is high and that E is thriving in her current environment.

(iii) The current arrangement is by far more likely to provide E with a stable environment going into the future. The court believes that if E continues to live under the care of J McI there is every reason to believe that the current level of stability which the court judges E enjoys will continue into the future.

(iv) Having heard J McI give evidence before it, the court found her to be an impressive witness who would keep E's welfare at the forefront of her mind.

(v) The court was also attracted to the way in which J McI approached the issue of facilitating E's contact with other family members. From the evidence the court heard it is clear that J McI has regularly acted to promote E's contact with her mother and others. In doing so, she plainly was trying to ensure that E's interests were promoted and safeguarded.

(vi) While an issue was raised by A McS about inappropriate sexual behaviour towards her in or about June or July 2012 (while she was pregnant with E) on the part of J McI's father, who lived and lives with J McI and therefore would be in the same household as E at this time, the court does not regard this as a barrier to E continuing to live with J McI. This allegation was investigated and resulted in no prosecution. The court bears this in mind. But, in

addition, the court retains a degree of suspicion about the circumstances in which E's mother raised her complaint. It was not raised contemporaneously with the alleged event complained about but seems to have surfaced on the eve of a decision being made by the Trust in June 2013 to approve J McI as a short term carer for E. The court therefore harbours a concern that the raising of the issue by the mother may have been more about her taking a step designed to waylay the Trust's approval of J McI as a carer than a step motivated by the imperatives of child protection. In any event, the court also notes that immediately upon the mother's allegation being made, a risk protection plan was put in place which required that at no time should E be left alone with the paternal grandfather. This has operated since. J McI has also recently completed an "Ability to Protect Course" which appears to be appropriate in the circumstances.

(vii) The court notes the support of the Trust in its care plan; the support of the guardian ad litem in his final report before the court and the support of JJ for the course which the court favours.

(viii) In contrast with J McI's record as the carer of E, it is clear that JB and AD have only been in contact with E very recently. E has not been to their house as of this time. Initially their proposal, made towards the end of 2013, had been that A McS and E could live with them for a 2 or 3 year period and that she and E would move on elsewhere after that. It is clear to the court that this proposal would have been unattractive and would have offered little in terms of long term security for E. JB and AD soon altered their proposal in early 2014 so that A McS and E could stay with them until E reached adulthood. JB's sister, it was also proposed, could lend general assistance. This, the court accepts, is a more realistic proposal but when it is compared with the proposal that E remains in the care of J McI, the court is impelled to the conclusion that the latter is to be preferred. This conclusion is based on a consideration of the totality of factors in this case but the following factors, in particular, have been influential. Firstly, JB and AD's relationship with E is very far from developed and could best be described as limited. Secondly, the history of the proposal is unpromising, the initial proposal being plainly flawed. Thirdly, the experience of JB and AD in bringing up a child is very limited. JB appears to have had little involvement in the bringing up and caring role in respect of his two sons, JJ and W, while AD could only cite as relevant experience a weekly short period of a few hours in which she looks after a relative's two year old child, which she said she enjoyed doing. Fourthly, the court heard JB and AD as well as A McS give evidence about the proposal. It found JB's evidence, in particular, unimpressive. The court formed the view that the proposed plan on careful analysis had not been rigorously worked out or tested. When JB was cross examined about problems which might occur once A McS and E had been living with them for a period he was unable to give an example of the sort of problem which might arise and how he would deal with it. This did not suggest that any thought had been given to contingency

planning for events which might plausibly occur: for example, a falling out between the couple and the mother, the mother disappearing for a period, or the mother contracting a new relationship. Fifthly, the court retains a concern that the underlying relationship between A McS and JB and AD has not been tested and remains rather undeveloped. Whether it could endure and be capable of providing stability for E in the medium and long term, for the court, remains an open question, especially when it is appreciated that the professionals in this case relate concern about the ability of A McS to sustain relationships and in some cases to sabotage them. Relationships have to be capable of working in bad times as well as good and the court was left wondering what would happen if there should be conflict between the mother and the couple, for example, in relation to an issue concerning E.

Should the court make a Care Order?

[18] The conclusion of the court in respect of who should be the principal carer of E going into the future gives rise to the issue of what species of order the court should make. The court has already ruled out a "no order" solution. The available dispositions appear therefore to be whether to make it should make a care order (as the Trust, father and guardian contend for) or whether it should make a supervision order or, an option brought before the court by J McI, a residence order in her favour.

[19] The main advantage of a care order at this time is that it provides the Trust with parental responsibility for E and so enables it actively to manage future relationships and to be able, when necessary, to have standing in relation to significant decisions about E's future. In the court's view this is of great importance.

[20] The making a residence order *simpliciter*, in the court's view, is not an attractive option and would be premature at this time. While the court has been impressed with the way J McI has looked after E to date, and with her attitude generally, it is still an early stage in the life of E and, in the court's estimation, the involvement of the Trust remains an essential.

[21] Interestingly, the court suspects that J McI herself recognises that this is not the time for the making of a residence order in her favour and though it was she who raised this issue, by the end of the hearing she was not actively contending for it, if the court was minded to make a care order in accordance with the proposed care plan. Her chief concern was that she should be able to perform the role of principal carer of E.

[22] The option which remains to be discussed is that of the making of a supervision order. No party before the court contended for this. While the court accepts that such an order is a less interventionist approach, the main issue, in the court's eyes, is whether this is a case where the Trust need both to remain involved in the care of E and have parental responsibility. The former can be achieved by the

making of a supervision order but not the latter. In the court's view it will be in E's best interests for the Trust to have parental responsibility.

[23] The court will, therefore, make a care order in favour of the Trust. In so deciding the court has not overlooked the fact that such an order interferes with the right to respect for family life enjoyed by mother and child alike under the European Conventional on Human Rights. However, given the particular factual matrix of this case, in the court's view, such interference as there will be as a result of the making of the order proposed will serve the best interests of E and is necessary and proportionate.

The care plan

[24] The essence of the proposed care plan has been referred to above at paragraph [3] above. The court, as by now will be plain, supports the plan in that it considers that E should remain in the care of J McI and that the option of a return of E to his mother's care (even with the assistance of JB and AD) is not a viable one at this time. The care plan also deals with the issue of contact. The court is also content with this aspect of the plan. While there may be a reduction, in particular, in relation to the mother's level of contact with E, such a reduction should not be set in stone. A balance needs to be struck in this area between setting a level of contact which enables E to benefit from it and which will inure to her future welfare and setting a level which may have the effect of undermining or destabilising the placement. The court is content to leave the assessment of this delicate balance on an on-going basis to the Trust but it sees no reason in principle why it should not be possible for there to be a flexible approach to continuing contact between E and her mother and father and with other significant adults, such as JB and MD, and indeed with her half sibling, RF. Contact can be developed over time, especially where relationships are working well. In this regard the court noted that at the hearing JMcI appeared to be open to working with A McS, particularly in the area of developing contact arrangements. The court hopes that this will be possible, and commends this approach to A McS, but it is not appropriate for it at this juncture to be prescriptive about this.

Conclusion

[25] The court does not leave this case with the negatives predominating over the positives. It is confident that E's welfare can and will be advanced by the arrangements which have been put in place. J McI is a kinship carer and there remains scope for the various relationships, particularly that between her and the mother, to settle down and develop constructively in E's best interests. This decision will, it is hoped, assist in procuring a stable future for E but it can also be a new point of departure for all involved.