

Neutral Citation No: [2022] NICA 33

Ref: KEE11876

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

ICOS No: 18/92650/A01

Delivered: 09/06/2022

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Between:

A MOTHER

Appellant

v

A HEALTH AND SOCIAL CARE TRUST

and

A FATHER

Respondents

IN THE MATTER OF LD, A CHILD

The appellant appeared as a Litigant in Person
Mr T Ritchie (instructed by the Directorate of Legal Services) for the Trust
Ms M Smyth QC with Ms S Jones (instructed by Conor Downey & Co Solicitors) for the
father
Ms N McGreenera QC with Ms P McKernan (instructed by McShane & Co Solicitors) for
the Guardian ad Litem on behalf of the child

Before: Keegan LCJ, Treacy LJ and Maguire LJ

KEEGAN LCJ (*delivering the judgment of the court ex tempore*)

As this is a family case we have applied anonymity to our judgment. Nothing must be published which would identify the child or his family

Introduction

[1] The court has had the benefit of reading in advance of today the appeal bundle including the submissions made by the mother in this case who has presented a case to us on appeal in writing and today made further submissions to us. We have also considered the papers filed by the Health Trust and the Guardian

ad Litem (“the Guardian”) and listened carefully to what has been said today at the hearing. I will therefore deliver the judgment of the court on this appeal ex tempore.

[2] This is an appeal relating to a child, LD, born in May 2009, so he is now a boy of 13 years. In dealing with an appeal in the Court of Appeal we start by explaining the role of the Court of Appeal which is different from the role of a judge sitting at first instance. A judge at first instance has the benefit of hearing witnesses and assessing evidence. The Court of Appeal has a different role. This is most recently explained in the family law case of *Re B (A Child)* [2013] UKSC 33 which related to an appeal of a care order. The Supreme Court held unanimously that in such a case, the question for the appellate court is simply whether or not the trial judge was wrong.

[3] In this case, we have the benefit of a written judgment from the trial judge, Mr Justice McFarland. We have to decide, taking into account the opposition to the judgment and order he made by the mother, whether he was, in fact, wrong in the decision that he reached.

[4] The decision of McFarland J was delivered on 17 December 2021 and is reported at [2021] NIFam 51. That judgment was in relation to a care order application brought by the Health and Social Care Trust in this case to place LD under a care order pursuant to the law in Northern Ireland, namely Article 50 of the Children (Northern Ireland) Order 1995 (“the Children Order”).

[5] As is apparent from the judgment, the Trust’s application had the support of the father with whom LD lived and continues to live and the Guardian, but it was opposed on all issues by the mother on bases which the judge summarises accurately at para [5] of his ruling as follows:

“The mother made the case that the draft threshold facts were not proved.

She also made the case that if they are, there is no need for a care order.

She said that in the absence of a care order there should be a residence order, or if there was a care order that LD should reside with her under it; and finally she said that if the care order was granted with the care plan as it stood for LD to live with his father, there should be more contact and it should not be supervised.”

[6] We observe that all parties were legally represented by counsel at the hearing before McFarland J, including the mother who had the benefit of experienced senior counsel and junior counsel. It is very clear that the judge heard from counsel and he also heard some evidence in this case including evidence from the mother, from social services and from an expert who had been involved in the case,

Mr Paul Quinn. That is important because the judge had the benefit of hearing from all of these people before he made a decision about what was right for LD.

[7] So, having heard the evidence and considered the papers in this case, which included a lot of expert reports which we will not summarise here, the judge made a care order. He did that having been satisfied that the threshold criteria were met and approving a care plan that LD live with his father. The judge also clearly considered contact arrangements and decided that for the mother it should be once a fortnight to be supervised by the Trust at such locations and with such other conditions in place as the Trust consider appropriate. In addition, the judge provided for weekly and direct telephone contact for the mother supervised by the father.

[8] The mother, who is now self-representing, appeals this decision by way of a notice of appeal dated 4 March 2022 in which she sets out three core points. The first is in relation to what she says is “parental alienation”, the second is in terms of what she says is “injustice by social services” and the third is in relation to interference with LD’s own rights as a child.

[9] The first point that we make about this notice of appeal is recognised by all parties in this case, namely that the appeal is out of time. The court rules are clear and are set out in Mr Ritchie’s position paper, namely that an appeal of this nature should be within six weeks so it should have been lodged by 28 January 2022. We know that the mother had legal representatives and we note the view expressed by them, which Mr Ritchie refers to in his position paper. The mother has told us that there was some closure of solicitors’ offices over Christmas but nonetheless she was aware that there was going to be an appeal given her opposition to the judge’s ruling.

[10] We cannot really see any good reason as to why the appeal is so late but in this particular case, we take into account that the mother considers that this appeal is important and she is self-representing so we have proceeded even though the appeal is late to consider the merits of this case. We do so particularly because it is a family case and there are important points to be raised about LD’s future that we have listened to very carefully.

[11] We also before giving our ruling on the merits of the appeal reflect that, during the case management reviews in this case and again today, we heard from the mother, some complaints that she has about contact arrangements. The mother has, most recently, sent written requests to this court to have two social workers removed from the case and raised an objection to the Guardian. We have listened carefully to those points and we understand that the mother wishes us to consider them.

[12] We turn to the merits of the appeal. We are not going to recite the history in this case in great detail because it is set out comprehensively in the judgment of

McFarland J save to say that LD has been the subject of court proceedings for some time. He was the subject of private law proceedings from 2018 which resulted in an Article 56 investigation because of concerns that emerged and then a care order application by the Trust. LD has now had settled living arrangements with his father since 2019 although the mother does not accept that that is where he should be. We think it is important to acknowledge that LD is clearly doing well at school and he is a bright boy. He also seems to be a very impressive and thoughtful boy. We note that he consistently says that he wants to see his mother. In relation to his mother, we note from the papers that during proceedings she did go to Poland for a period of time but she has come back to Northern Ireland and we take it from that that she is committed to staying here and maintaining a relationship with LD.

[13] Turning to the first aspect of any care order consideration, the threshold criteria as explained in the Children Order. The threshold criteria is important as a gateway to the making of any public law order and it requires the court to look at whether there is harm or potential harm in the future. The judgment of McFarland J sets out the threshold criteria proposed in this case, which he ultimately found proven, and records the criteria in the Annex part of his ruling which we attach for completeness sake. We cannot see that there is any sustainable appeal to any of these facts raised by the mother.

[14] In our view, the judge was clearly entitled to make the findings he did on the basis of the evidence, including the expert evidence, and having heard from the mother. We are not rehearing this case, we are deciding whether the judge was wrong and, in our view, he was entitled to find the threshold criteria were met. We make this assessment reflecting that the judge did acknowledge the mother's own particular mental health issues and difficult background in a sympathetic way. Ultimately, the judge decided on the evidence specifically at paragraph 8 of his judgment that the significant harm test was met on the basis of the harm categorisation that LD had suffered, and would likely suffer, significant emotional harm.

[15] We do not see any merit in any appeal in relation to the threshold criteria which is correctly described by McFarland J at para [8] of his judgment as follows:

“[8] The Trust relies on significant emotional harm; it says LD was suffering at the time of its intervention in or about late 2018, and was likely to suffer without intervention. The force of the threshold document relates to numerous false allegations made by the Mother against the Father some relating to the child, some relating to other people and one relating to a dog. In keeping with current safeguarding practice these allegations have had to be investigated by various agencies including the police and social services. Invariably the investigations required direct police involvement at various locations

including the Father's home and at LD's school. They have also directly involved approaches to LD. No corroborating evidence has been found by any of the investigations."

[16] That is, of course, only one aspect of any care order application. In truth, this case boils down to whether the judge was wrong in relation to his assessment at the welfare stage. There are a number of elements of the welfare stage under the Children Order that the judge has to consider. Firstly, he had to consider whether a care order should be made and, in doing so, he obviously had to take into account the mother's representations that in fact she wanted social services out of her life and out of LD's life. We consider that the judge assessed this issue correctly, in particular, due to the ongoing arrangements in this case and the need for the Trust to have parental responsibility. In our view, it was inevitable that a care order would be made. That was in our view, the right order for LD to allow the Trust to have parental responsibility in order to settle his arrangements and to approve a care plan that had successfully been in place since 2019. We see no reason to doubt why this was not correct in law and also proportionate, applying the European Convention on Human Rights' tests. We do not consider the judge was wrong in relation to his assessment that a care order was necessary in this case.

[17] There is, however, a final point raised during this appeal which we consider is probably the point of most merit. That relates to the operation of the contact arrangements approved by the judge. The judge in his ruling clearly considered contact very carefully and, in our view, he rightly looked at it from a number of perspectives. The first perspective and the core perspective is that of LD. We have read the Guardian's report in relation to LD's views and we have heard what the mother has to say about those. There is some disagreement between the two sides as to this. However, the judge carefully balanced what he thought was manageable in terms of contact in a very sympathetic way, and a good level of contact was maintained.

[18] In our view, the judge was not wrong about how he came to this assessment in approving a plan for contact going forward. The judge did not make an Article 53 order in relation to contact which is in keeping with most cases where contact is reviewed at looked after children reviews.

[19] An issue now is about how contact is working and is going to work going forward. In that respect, we understand the mother's anxieties about contact arrangements. For instance, she has said that some visits have been cancelled and that the location of contact is oppressive and that the contact is not in keeping with LD's current wishes. The Trust may also have concerns about the workability of arrangements. We understand that the contact plan has been approved by the judge recently and we agree with his analysis in principle. However, in the nature of family law, matters such as contact are often reviewed as sometimes arrangements do not work as planned. We are content that this issue is going to be dealt with

under the auspices of an Article 53 contact application and associated specific issue order applications which have already been brought to the High Court by the mother. The issue of future contact arrangements will therefore be considered by the High Court at which stage the mother will have the right to make her case, the Guardian can represent LD, and the Trust can make its case. This is an application which will likely require some careful analysis of evidence by a first instance judge and is in any event a matter raised post the appeal by way of the Article 53 application.

[20] We will therefore dismiss the appeal. We will order legal aid taxation for the legally assisted parties and we will discharge the Guardian in the appeal but we understand the Guardian will be reappointed for the Article 53 application.

[21] Finally, we want to thank all parties, including the mother, who has self-represented, for the way in which this case was presented today. We do hope that arrangements are settled soon for LD given the potential that we think he has. Our final words are that LD is the main concern in any case of this nature and we think that everybody, including the mother, will hopefully be able to recognise that in the future.

Postscript

[22] After the handing down of this judgment the mother asked that the reasons for our decision be provided in writing. We have done so as above. For the sake of clarity we mention a number of other matters. Firstly, we entirely agree with the reasoning of McFarland J as to why a care order should be made. None of the mother's grounds of appeal were developed by her and in any event they are not sustainable given the facts of this case and the considerable expert evidence which is not in her favour. We are also entirely satisfied that the order made by McFarland J is in LD's best interests and in accordance with his rights as a child to have a happy and stable home.

[23] Second, we saw no reason why the case should be adjourned for further evidence on the issue of whether a care order should be made. The mother confirmed that she had the core bundle of papers and had appeared at reviews where the case was discussed. We were also satisfied that the mother could raise any ongoing concerns about contact at the forthcoming Article 53 application which she has lodged before the High Court. Finally, this court is not empowered to remove social work professionals from the case or the Guardian ad Litem. The mother can again raise any ongoing issues in the contact proceedings.

[24] Accordingly, as there is no merit in this appeal we are not persuaded to extend time and we dismiss the appeal.

ANNEX

At the date of intervention on 16 September 2018 LD had suffered and was likely to suffer significant harm, and that the harm and likelihood of harm was and is attributable to the care given and likely to be given to him, not being what it would be reasonable to expect. The court makes the following findings:

1. The Mother has made a number of false and inaccurate allegations about LD being exposed to sexual behaviour including witnessing adults having sex, being shown pornography, seeing naked women.
2. The trauma experienced by the Mother impacted on her thought processes and decision-making and impacted on her ability to provide for LD's emotional needs. This was evidenced by the following:
 - a. The Mother has alleged that the Father has sexually abused her, other women, LD and a dog. These allegations are denied by the Father and have been investigated by police and social services who have raised no child protection concerns in respect of the Father.
 - b. The Mother has alleged that LD had suffered sexual abuse and that he will not disclose this for 30 years.
 - c. The Mother does not believe that her past experiences influence her behaviour or impact on LD yet she recorded LD on a device where she asked him questions about abuse and LD did not make disclosures.
 - d. The Mother has at times contacted the NSPCC and police for urgent visits to be undertaken about alleged abuse of LD by the Father. These incidents increase at times when the Mother's mental health presentation is deteriorating. LD and his caregivers have been disturbed by such police visits which were unnecessary as there was no cause for concern.
3. LD had experienced emotional abuse living with his Mother at times when she has been suffering trauma related to her past. LD had experienced police attendances as a result of perceptions his Mother holds about abuse he is suffering. These incidents continued to cause LD harm, unsettling his stability of placement.
4. The Mother was influencing LD with her erroneous perceptions about the Father evidenced by:

- a. Her telling LD that the Father had “done bad things” when he was little.
 - b. By reporting that LD was refusing to go for contact when in fact LD has informed social workers of his desire to see the Father for full weekends.
 - c. The Mother stopped facilitating contact between LD and the Father.
5. Whilst in the care of the Mother, LD had experienced reduced attendance at school year on year. LD’s educational needs and his emotional needs had not been met as a result of this lack of attendance at school.
 6. Whilst in the care of the Mother LD snacked too often with high sugar foods and drinks such that LD was overweight, the Mother did not follow a diet plan for LD and he continued to gain weight.