

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION

Re L (DISCLOSURE TO THIRD PARTY)

GILLEN J

[1] Nothing must be reported in this case which would serve to identify the children who are the subject of these proceedings of this application or any of the parties named therein.

[2] In this matter a Health and Social Services Trust which I do not propose to name ("the Trust") applies under Article 4.24 of the Family Proceedings Rules (Northern Ireland) 1996 for leave to release two medical reports and the threshold criteria agreed and found to be proved in this matter to the Child Protection Unit of a specified Social Services in England which I do not propose to name ("CPU"). The reasons put forward for the application are that:

(a) Disclosure is necessary to provide relevant information to the CPU in England to enable them to make an informed decision relating to the welfare of two young children who are currently in the care of a man M and his female partner J and who are residing with them in the area covered by the specified CPU.

(b) To provide and ensure for the protection of these children whilst in the care of their father and his partner.

The two children are A and L and M is their father.

Background to the Application

[3] On the 15th day of October 2002 this court made an Order that a child L should remain in the care of the Trust. M was the father of that child and H was the mother. The court made a finding of threshold criteria pursuant to Article 3(3) of the Children Order (Northern Ireland) 1995. A list of the threshold criteria is appended to this order. These threshold criteria were

agreed and signed by the mother and by a firm of solicitors acting on behalf of the father. Inter alia, the threshold criteria which were agreed contained the following references to the father:

“(10) While living with the respondent father, the child was a scapegoat within the family.

(11) The respondent father was unable to provide appropriate care for the child and required her admission to care.

(12) The respondent father sought respite care for his child but failed to return to receive her back into his care. The child was abandoned by her father who did not seek her return until 16 October 2001.

(13) Whilst in her father’s care the child suffered emotional abuse.

(14) Whilst in the care of her father the child was sexually abused.

(15) Each respondent has limited insight into the needs of the child.

(16) As a result of the care afforded to her by her parents, the child has suffered significant harm.”

[4] During the course of the proceedings, a number of medical reports had been obtained by the Trust including a report of Dr Alice Swann of 22 January 2002 and 5 March 2002 which dealt with the background to the abuse of this child and in particular made reference to the allegations of sexual abuse of the child L. In earlier proceedings it had been ordered by His Honour Judge Markey that these reports of Dr Swann should be released to the CPU in England.

[5] Legal representatives of M then obtained on his behalf a report of a Chartered Forensic Psychologist Dr Wenban-Smith which dealt with, inter alia, the credibility and validity of L’s allegations in respect of the alleged inappropriate behaviour of her father and his partner J. The conclusion of Dr Wenban-Smith was similar to Dr Swann namely that this child had been sexually abused. It is against this background that the concessions were made in the threshold criteria. Ms Walsh QC who appeared on behalf of M, and opposed this application, highlighted the fact that M had never admitted that

he had sexually abused the child. The height of his concession was that whilst in his care the child was sexually abused.

[6] Rule 4.24 of the Family Proceedings Rules (Northern Ireland) 1996 (“hereinafter called the 1996 Rules”) states:

“Confidentiality of Documents

4.24-(1) Notwithstanding any rule of court to the contrary, no document, other than a record of an order, held by the court and relating to proceedings to which this Part applies shall be disclosed, other than to –

- (a) a party,
- (b) the legal representative of a party,
- (c) the guardian ad litem,
- (d) the Legal Aid Department, or
- (e) a welfare officer

without leave of the judge.

(2) An application for leave shall be made in Form C2 setting out the reasons for the request”

[7] I have concluded in this case that the documents with which we are concerned, namely two medical reports from Dr Wenban-Smith and the threshold criteria come under the protection of confidentiality under this rule.

[8] I have determined that they should be disclosed to the specified CPU in England for the following reasons:

(1) Inter-disciplinary and inter-agency work is an essential process in the task of attempting to protect children from abuse. There has therefore to be the free exchange of information between the agencies in order to facilitate that work and the protection of children. This requires the sharing and exchange of relevant information, in particular, between social workers of different areas where the child has been living and may now be living. As a consequence of the passing of the Children Act 1989 in England, in 1991 four Government departments jointly published a guide to arrangements for inter-agency cooperation for the protection of children from abuse, “working together”. The local authority Social Services Act 1970 as amended by Section

50 of the National Health Service and Community Care Act 1990 includes at Section 7a:

“Without prejudice to Section 7 of the Act, every local authority shall exercise their social services functions in accordance with such directions as may be given to them under this Section by the Secretary of State. The guidance given in ‘working together’ sets out in detail the procedures for the close working relationship between, inter alia, social services departments.”

Although this Act and this guide apply to Social Services in England, I believe that the spirit of the legislation and the guide is precisely the same in Northern Ireland. It is crucial that social workers work together even in different jurisdictions, to ensure the safety of children. Family judges ought not to frustrate the exchange of information between Social Services areas. Obviously there will be cases where the evidence is peripheral and the harm of giving leave will outweigh the value of the information. However I do not consider this to be such a case. I find authority for these propositions in Re W (Disclosure to Police) [1998] 2 FLR 135 and Re V (Sexual Abuse: Disclosure) [1999] 1 FLR 267.

(2) The extent of the authority’s belief in the truth of the allegations is a relevant matter. Even the limited extent of the concession made by M in this case, is a relevant factor in fuelling the deep concern of the Social Services in the context of a judicial finding albeit that they were not criminal proceedings. (See Re C (Sexual Abuse: Disclosure to Landlords) [2002] 2 FCR 385.

(3) The court must consider the interest of the third party to whom the information is to be disclosed has in receiving it. This is particularly high where there is a statutory duty of child protection on the party to whom the information is to be disclosed. In Re C (Supra) a housing association was held to have sufficient interest to be informed about information on a serial sexual abuser of children notwithstanding that the duty of the Housing Executive to protect children was less high than that cast on a local authority. Accordingly I consider this CPU has a very substantial public interest in receiving this information.

(4) Disclosure is being made in this instance to a limited class of people in a close and confidential relationship with not only the Trust here in Northern Ireland but the family in England. Thus no breach of the “curtain of privacy” imposed by the family court for the protection of the child has occurred. (See Re X (Disclosure of Information) [2001] 2 FLR 440.

(5) The willingness of perpetrators of sexual abuse and of others to cooperate in care proceedings, and their frankness in giving evidence, will not in any way be compromised by disclosure of the limited type sought in this application. In this instance M can be assured that the only disclosure will be to a limited group of people within the local authority and will not be made to the public at large. (See Re X (Disclosure of Information) (*supra*)).

(6) In deciding whether or not to grant permission for disclosure, the court has to exercise a discretion, in the process of which it has to carry out a balancing exercise of competing rights and interests. There had to be real and cogent evidence of a pressing need for the requested disclosure. In this case, the fact that other young children are living with M, in circumstances where he has admitted that a child of similar age was sexually abused whilst in his care, amounts to real and cogent evidence of a pressing need for this disclosure. There is no doubt that there is a public interest in preserving faith and encouraging frankness for those who have given evidence to the family court in the belief that it will remain confidential and who have undergone medical examination in such a belief. (See Re D (Minor) (Wardship Disclosure) [1994] 1 FLR 346). Nonetheless, where it is obvious that other children may be exposed to potential danger by living within the household of someone who has made concessions similar to those made by M in the threshold criteria, the particular need arises. I agree with the views expressed by Munby J in Re X (Disclosure of Information) (2001) 2 FLR 440 when he said:

“Whilst persons who give evidence in child proceedings can normally assume that their evidence will remain confidential, they are not entitled to assume that it will remain confidential in all circumstances.”

I consider this principle also extends to documents, including medical reports, that they tender in evidence on their own behalf. In coming to this conclusion I take into account the right of M to respect for his private and family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. I accept that M's rights under Article 8 are implicated, but his rights are of course subject under Article 8(2) to the rights and freedoms of others, in particular potential victims of abuse.

[9] Accordingly I will make the order sought by the Trust in this instance. It will be clearly understood that there must be no further disclosure of the documents beyond that permitted by the order that I am making without further leave of the court.