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ICOS: 20/010306 and
20/012270

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

Delivered: 01/08/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant

-v-

A MOTHER

and

A FATHER

Respondents

IN THE MATTER OF AB, CD and EF (CHILDREN AGED 10 YEARS, 9 YEARS
and 7 YEARS)

Ms M Connolly KC with Ms C McGrane BL (instructed by the Directorate of Legal
Services) for the Trust

Ms S Ramsey KC with Ms L Clarke BL (instructed by Jack McCann Solicitors) for the
Mother

Mr A Magee KC with Ms A McHugh BL (instructed by John McCaffrey & Co Solicitors)
for the Father who was self-representing for the latter part of the hearing

Ms M Smyth KC with Ms W Davidson BL (instructed by O'Rorke McDonald & Tweed
Solicitors) for the Children's Court Guardian on behalf of the children

McFARLAND J

Introduction

[1] This judgment relates to two separate applications brought by the Trust seeking care orders in respect of the three children of the mother and the father who are unmarried, although they did take part in a Nikah, an Islamic ceremony. They

did not take part in a civil marriage ceremony recognised under United Kingdom law. ICOS reference 20/010306 relates to the eldest child, a boy now aged 10 years. I will call him AA. The father is named on his birth certificate. ICOS reference 20/012270 relates to a boy now aged nine years and a girl now aged seven years. The father is not named on either birth certificate. I will call the boy CD and the girl EF. These are randomly selected cyphers.

[2] The mother was born in England and has a white Caucasian background. The father's parents are of Pakastani origin and were settled in England. The father was born in Pakistan when his mother was visiting family, and he came to England after several months to live with his parents.

[3] Two weeks after they met, the parents had undertaken the Islamic ceremony in October 2012 in England. The mother later claimed that she was unaware of the father's age as she said he told her he was four years older than her rather than being 18 years her senior. The three children were born in England to the relationship but two months after EF's birth the mother left the father. After a period of different addresses in late 2017, in early 2018 the mother came to Northern Ireland with the children. Neither the mother nor the father had any connections with Northern Ireland. The mother's motivation appears to have been a desire for geographic separation from the father. Initially, the mother had the support of Women's Aid staff but after she acquired her own accommodation, she entered into what was to be an abusive relationship with another man.

[4] At the time of the Nikah the mother changed her first and second names adopting Islamic names in line with her conversion to that religion. On birth each child was given an Islamic set of first names and the father's surname. At some stage the mother changed her names. She reverted to her first name given at her birth, acquired a second English name and adopted a new English surname. After the mother came to live in Northern Ireland she executed deed polls to change the names of the two younger children. In 2019 EF's name was changed using two English first names and the mother's new surname. In July 2020 CD's name was changed. He retained his original first name but acquired two further English first names and the mother's new surname. The name changes appear to have been carried out without the knowledge of the father. As the father shared parental responsibility for AB, his name has not been formally changed, but the mother has altered the usage of his names and he is now known by a new English first name and his mother's new surname. The father was not in agreement with the name changes but with the passage of time he appears to, if not accept at least, acquiesce in the usage of the new names. (Although I have described the names as being English some of the acquired names are Latin and Gaelic in origin.)

[5] The parents were involved in contentious Family Court proceedings in England in 2018 and 2019. Further details about that court's findings are set out below.

[6] In Northern Ireland various reports began to emerge about the care being provided by the mother to the children. These included from a health visitor, the police, the school and a friend and they reflected a growing concern about the mother's relationship with her new partner. The mother returned to the Women's Aid refuge in October 2019 with the children. The Trust became involved with the family by way of formal intervention on 10 October 2019 and the children were voluntarily accommodated on 17 October 2019 when they were placed in foster care.

[7] The mother has recently had another baby and lives with her new partner and that child. The father has two older children from a relationship during the 1990s. They are now aged 18 and 23, and there is one four year old grand-daughter.

Threshold

[8] On 10 October 2022 a hearing to deal with threshold was convened and a document was agreed between the parties, and accepted by the court, setting out the facts upon which it was determined that the children had suffered harm by the date of intervention in October 2019 and were likely to continue to suffer harm if left in the care of their mother or returned to the care of their father.

[9] The threshold document in respect of the mother stated that:

- The children were exposed to risk from the relationship between the mother and her partner which included the partner abusing her children.
- That partner was convicted of assaulting AB and CD.
- The mother was present during, or immediately after, numerous incidents of violence towards the boys.
- The mother failed to involve professional help
- The mother was dishonest with professional staff when contacted
- The mother mis-used drugs
- The mother breached safeguarding arrangements
- The mother had unresolved trauma and a history of abusive relationships, including with the father.

In respect of the father:

- There were significant findings of fact made by an English Family Court on 27 April 2018 including violent abuse of the mother
- That court determined that the children should live with the mother with only

limited indirect contact by email with the father

Care Planning hearing

[10] A care planning hearing commenced on 18 June 2024 and was scheduled to last for five days. Much of the 18 June was taken up with discussions between parties and the matter was adjourned into 19 June. On the morning of 19 June, Mr Magee KC made an ex parte application in the presence of the father. That application was that he, his junior counsel and his solicitor be permitted to come off record for the father as the professional relationship with the father had broken down. The father had sent an email at 17.24 on 18 June stating his wish that his lawyers no longer act for him. Having heard from both Mr Magee KC and the father I considered that the relationship had broken down and that the father no longer wished his legal team to continue acting for him. The father's legal team were permitted to come off record as legal representatives of the father.

[11] I then convened a hearing involving all parties, with the father representing himself. The father stated that he had not identified a new firm of solicitors and had not spoken to any lawyer since the previous evening. He requested an adjournment of up to several months to enable him to instruct a new solicitor. The Trust, the mother and the Guardian all opposed the application to adjourn given the delay in the case to date and the need to reach a determination of the case as soon as possible.

[12] Taking into account all the circumstances I refused the father's application as this situation had been created by his own actions. He had been represented by a very experienced and competent legal team and although he was entitled to terminate the retainer, he had to accept the consequences that would flow from such an action by him in the middle of the final hearing of the case.

[13] I decided to adjourn the matter to the following Monday, 24 June 2024 when the case would proceed. This would give the father an opportunity to instruct new lawyers, and if he was unable to do so would afford him some time to prepare for the hearing. When the court reconvened on 24 June 2024, the father had still not instructed a new solicitor. He did not renew his application to adjourn the hearing and it proceeded with the father representing himself. In the intervening period, he had returned to England and I permitted him to attend remotely using the video link.

[14] On 24 June 2024, the Trust called Aaron Martin, social worker who gave evidence concerning care planning. In the afternoon, the Trust called Dr Christine Kennedy, consultant forensic psychiatrist who gave evidence about her examination of and report on the father. Both witnesses were cross-examined by the father. The mother had filed two statements and, in the circumstances, she decided not to give oral evidence. The father then gave evidence and was cross-examined by counsel for the Trust and the Guardian. Finally, the Guardian gave evidence and was cross-examined by the father and by counsel for the Trust and the mother.

[15] I am satisfied that the father was given ample opportunity to present his case and did so by giving evidence and by cross-examination in a satisfactory manner.

The Care Plans

[16] Rehabilitation into the mother's care had been ruled out in May 2022, and into the father's care in January 2024. There are no wider family members available to care for any of the children. The Trust's care plans for each child involved long-term separate foster placements in Northern Ireland. The proposals for contact are separate contact between the mother and each child once a week, with contact between the mother and all the children the following week, with that pattern repeating itself. Contact with the father is proposed at once a month, although there are ongoing issues in relation to this.

[17] The Trust's plans had the support of the Guardian. The mother has recently given birth to a child and she is continuing to care for that child. She is satisfied with the content of the care plans. The father opposes the care plans primarily because he considers that the children should be rehabilitated back into his care, and if that cannot be achieved then he seeks further contact with his children.

Consideration

[18] The court's function is to determine whether it is necessary that care orders should be made and if so, to approve the proposed care plans. In doing so the main focus will be the application of the 'welfare check-list' set forth in Article 3 of the Children (NI) Order 1995, a care order being a Part V order. Article 3 states:

"3.—(1) Where a court determines any question with respect to ... the upbringing of a child ... the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

- (c) the likely effect on him of any change in his circumstances;
 - (d) his age, sex, background and any characteristics of his which the court considers relevant;
 - (e) any harm which he has suffered or is at risk of suffering;
 - (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
 - (g) the range of powers available to the court under this Order in the proceedings in question.
- (4) The circumstances are that ... the court is considering whether to make, vary or discharge an order under Part V.
- (5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all."

[19] Given the court's obligation to ensure that the rights of the parents and children under article 8 of the ECHR (the right to respect for private and family life) are taken into account it is always appropriate to ensure that any interference in those rights is both necessary and proportionate, subject to the paramountcy of the child's welfare. To this end the court will always examine very carefully firstly the need for any care order as this will, by definition, interfere with the parental responsibility exercised by a parent and secondly any care plan which envisages separation of a parent from his or her children. Should separation be necessary then there is an obligation to ensure that contact between an absent parent and a child is maintained at an appropriate level.

[20] Given the acceptance made on behalf of the mother much of the focus of the hearing had been on the father's position.

[21] I have used as a starting baseline the threshold facts that had been conceded by the father. In my view these were significant. The court in England made findings of fact against the father. There was a catalogue of domestic abuse and coercive control over the mother. This included:

- (a) In September 2013, he attacked her pulling her hair and hitting her;
- (b) In November 2014, when she was seven months' pregnant, he made her walk home alone in the rain;
- (c) On a date unknown he kicked the child's pushchair when in a rage;
- (d) In June 2017, he made her walk home alone from the hospital when she was in the advanced stage of labour;
- (e) In July 2017, he tried to kick the doors of the family home and shouted abuse through the door;
- (f) In 2017, he sat outside the family home watched her;
- (g) In August 2017, he followed her so that she had to flee to a refuge;
- (h) During August 2017 he made over 100 telephone calls using a withheld number;
- (i) On occasions he made racist remarks against her and her sister;
- (j) On occasions he made abusive remarks to her and to the children.

[22] This evidence clearly displayed the father's abusive approach to the mother, a lady with whom he had entered into a Nikah, but also was evidence concerning his attitude towards his unborn child in 2017 and to his children generally.

[23] In addition to assaulting the mother, the father has had several dealings with the police and the courts. His convictions include affray in 1994 and 1996, and blackmail in 2002 (for which he served a sentence of 45 months). There was further police involvement with him in more recent times as he had been accused of further crimes including assault, false imprisonment, harassment, and wounding with intent, but these allegations were ultimately withdrawn.

[24] Dr Christine Kennedy, a consultant psychiatrist examined the father and prepared her report (with an addendum) dated 3 August 2023. Her clinical impression of the father was that he tended to talk about himself in a positive way and to downplay any negatives. When carrying out an assessment of the risk posed by the father to his children and others, Dr Kennedy expressed the view that there was limited information available from England but felt that there was no current risk of imminent or serious physical harm, although there was a potential for antisocial behaviour in a specific context. On being asked whether a return of the children to his care could be safely managed, Dr Kennedy considered the move would be unsettling for the children, and that a form of residential assessment would be premature as the father lacked insight, was reluctant to accept advice, and had problems with emotional regulation when stressed.

[25] For the children to return to their father's care, he would need a high level of insight into each child and their individual needs, to manage his own emotional reactions, to work collaboratively with staff, and to seek help and be able to offer consistent responses to his children's emotional and physical needs.

[26] Dr Kennedy's oral evidence expanded on the opinions that she had expressed in her reports. I consider that her opinion is based on a sound factual background and her assessment of the father is valid. The father's presentation and approach to the hearing, both in how he questioned witnesses, behaved in court and when he gave his evidence, confirmed, in my view, many of the points made by Dr Kennedy in her reports.

[27] Dr Kennedy's evidence must be assessed in light of the overall context. This involves consideration of other reports obtained in connection with the father and the needs of each of the children.

[28] Professor Davidson, a consultant clinical psychologist undertook an assessment of the father in November 2020 which was largely positive indicating that the risks may be lower than had been assessed in the private law proceedings in England. Mrs Harrower from the Family Assessment Service reported in May 2021 that the father was highly motivated and well intentioned with regard to his children.

[29] In December 2021, Dr Coman, a consultant clinical psychologist reported about the instability in the children's lives since the parents separated. This included the cutting off of the paternal family, but also multiple house movements which have included movement to Northern Ireland, the change of names to use of anglicised first and second names and a new cultural environment. This has been compounded by domestic abuse within the mother's new relationship, and then separation from the mother and from each other.

[30] Dr Coman noted that the AB (then seven years) had experienced a loss of trust in those trusted to care for him and had assumed a role which developed the need for control and power. This was impacting on CD with AB's domineering and aggressive approach. EF was different as she was too young to have experienced the trauma of the separation of her parents or the change of name. In conclusion, Dr Coman believed that all three children would face significant challenges and there was a need for stability and security in their relationships with each other and with their carers.

[31] Ms McBride, an independent specialist risk assessor, carried out a 'together and apart' assessment in respect of the children in May 2023. It was noted that although the father engaged with Ms McBride, she described his tendency to get side-tracked and him being fixated on issues blaming Social Services for all difficulties. He had to be asked to stop shouting several times. Her conclusion was

that it was not in the interest of any of the children for them to be placed together at that time. The children's competing needs, damaged attachments and familial dynamic were assessed to pose a significant risk of emotional harm, potential physical harm and increase the likelihood of placement breakdown for each of them. She was also of the view that each child required intense, therapeutic and attuned parenting to help them to recover from the trauma and disruption they lived with during their early childhood. Her recommendation was that AB should be placed in a home with no other children. There was potential that CD and EF could eventually reside together, but in the interim CD should be placed in a home which could include a second child, and that EF should remain in her current placement.

[32] In December 2023, Ms Green provided a further family assessment service report in relation to the father. This followed the father being afforded the opportunity to engage in a programme of work concerning his profile of the children and his perception of the impact of their lived experiences to date, exploration with the father about the Trust's concerns and the father's relationship history and his role in, and the conflict within, those relationships. Ms Green identified the father as displaying empathy for each of his children, and particularly AB. She noted a shift in the father's thinking and she concluded that despite the potential risks, there was merit in exploring if those risks can be offset for both formal and informal support for the father in the context of him caring for AB.

[33] The positive nature of Ms Green's report and recommendations have to be then set beside incidents in January 2024. The father had supervised contact with AB and CD on 12 January 2024. This was assessed as being of poor quality, with the father's conduct considered to be inappropriate. The father struggled to listen to and accept advice and guidance from Trust staff. The father's conduct impacted on the children. Several days later, AB's foster-carer reported that AB was very unsettled expressing suicidal ideation. AB also reported that the father had been telling him secretly over the last number of contacts that the child wants to live with his father. A subsequent lengthy meeting between the Guardian and AB on 15 January 2024 confirmed significant concerns about the relationship between the father and AB, with AB feeling "awkward, scared and overwhelmed."

[34] A LAC meeting convened on 23 January 2024 ultimately decided that the children could not be rehabilitated back into the father's care because of the concerns about the father. Since that decision, the situation has remained difficult. On 1 March 2024 the father described Social Services and police as being corrupt and that he did not accept any concerns regarding his parenting ability. On 4 March 2024 AB said that he was scared that his father might hit him. A contact session with all three children involved the father commenting negatively about the facilities and the social work staff with reference to the father and children being kept like prisoners. Social workers noted that the children looked scared and uncomfortable.

[35] Also of concern is the reaction of all three children to a contact session on 21 March 2024 with AB describing his father as crazy and how the father was

shaking with anger, CD describing his father as being angry and EF describing her father as angry and scary. The father rejected many, if not all, these concerns as being inaccurately recorded and not based on fact. I have no difficulty in resolving this issue in favour of the Trust's and Guardian's records as being both accurate as to detail and as to interpretation of the impact on the children. I did not find the father to be a convincing witness and, as Dr Kennedy observed, he was quick to promote what he considered were his positive attributes and ignore the negative ones.

[36] The mother has accepted that at present, and for the foreseeable future, given the demands on her own time with her young child and the particular needs of AB, CD and EF, she would not be in a position to care for any of the three children. She has a long-term aspiration of some form of rehabilitation of some or all of these children. I consider that to be a realistic, and responsible, attitude which is clearly child-focused. The mother would not be able to care for any of the three children at this stage. The Trust has not sought to undertake a significant intervention in relation to the newly born child, and the court will infer from this that the Trust have concluded that there is no need for any court order at this stage.

[37] When assessing the father's ability to care for his children there is a need to consider holistically various welfare related factors – the harm which each child has already suffered both when in the care of the father and later when separated from him and the emotional damage that the harm has caused each child and the needs that flow from the damage; the limited capability of the father to meet those needs; and in light of that limited capability the likely negative effect on the emotional well-being of each child arising from the change in the child's circumstances should they return into the care of the father. Given the ages of the children their ascertainable wishes and feelings which currently manifest themselves in a reluctance or refusal to attend contact, are not determinative of the issue but do signpost problems in the future following any rehabilitation into the father's care. The Guardian has reported at 12:18 of his final report that none of the children are advocating for being in their father's care and that the father represents for them uncertainty, anxiety and not feeling safe.

[38] There is no doubt that the father appeared to present with a high level of commitment to the children. This, however, must be balanced by clear evidence of his limited insight and the tendency to respond inappropriately when stressed. As the final hearing approached the father's inappropriate responses appeared to increase with evidence of a confrontational and aggressive approach to social workers, sometime in the presence of the children. This is evidence of his inability to receive and act upon expert advice and would cast serious doubt as to whether the father would be able to manage the care of any of the children, either in a placement under a care order or under a residence order. As the Guardian succinctly put it in his final report at 12.6 "[The father] had the [better] opportunity of the children being rehabilitated to his care. However, increased scrutiny allied to his demeanour over the past 18 months in particular has negated his opportunity and diminished confidence in his capacity to provide good enough care to his children."

[39] In addition, that high level of commitment may appear to be a temporary position given the father's approach since March 2024, when he took the decision to step back from contact. The Guardian at 12.16 of his final report referred to the father indicating that should the court's decision be adverse to the father then he will not be returning at all for contact.

[40] The Trust did actively consider the possibility of rehabilitating AB back into his father's care. However, the recent hardening of the father's attitude coupled with the emerging negative feelings that AB was displaying towards his father and the anticipated change in AB's circumstances with relocation to England and all that that would entail for a 10 year old boy including restricting contact with his mother, it is highly likely that AB's emotional needs will escalate. This would create a situation which would be well beyond the capabilities of the father to manage. He has an element of family support in England, but the history of him being unable to receive advice, would not augur well for AB's well-being.

[41] This case has been before the court for a significant period of time. Part of that time has been taken up with the multiple assessments of the father, and even now a clear picture about the father has not emerged to the extent that confidence could be placed in him to care for any of his children to an adequate level.

[42] The father has also raised the issue concerning the children's heritage and cultural background. The heritage and background are complicated. The mother has an English heritage and would be classified as 'White English'. She converted to Islam at the time of the Nikah but has now rejected that conversion. Her current belief system is understood to be agnostic in nature. The father is from a Pakistani background and has lived most of his life in England and would be classified as 'Asian British'. He observes the tenets of the Islamic faith.

[43] No issue arises under the provisions of Article 52(6) of the Children Order (relating to the religious upbringing of a child in care) as at the time of the Trust involvement all three children were living with the mother, who had by then renounced her Islamic faith. She had been granted a residence order and, in any event, had sole parental responsibility for both CD and EF.

[44] The care plans envisage the children remaining in the current placements. In AB's case, this would not be a long-term placement as his current carers (since July 2023) cannot commit until AB is 18 years old but will continue to care for him until a suitable long-term placement is identified. CD and EF have been in their separate placements since October 2019 and these are their intended long-term placements. In general terms these placements would have more in common with the mother's heritage and background.

[45] Respect for the children's heritage and background is primarily catered for by the narrative given to each child, the ability of each of the foster-carers to expose the

children to that heritage and background, and, critically, what can be achieved through contact with the parents. The value of this exposure will depend on the quality of contact with each parent, and the ability of that parent to speak of their heritage and religion in a child-sensitive way. As previously indicated, this is a complex area. The father has raised it as a concern however I am satisfied that the Trust through the care plan relating to both the placements and the contact arrangements have dealt with this as best it can in all the circumstances. Given the father's stated ambivalence towards continuing contact with his children there remains an element of uncertainty about the children's exposure to their paternal heritage and background.

[46] It also must be noted that the English family court has made findings of fact concerning the father's racist comments about the children's mother and their maternal aunt. Should any of the children be placed with the father there would be concerns about how the mother's heritage and background would be portrayed to the children by their father.

[47] I am satisfied that on an holistic analysis of the welfare checklist that the care-plans for each of the children are entirely appropriate. They are both necessary and proportionate, taking into account the current and anticipated needs of each child. Rehabilitation into the care of either the mother or the father is not ruled out but is not feasible within the near to mid-term. Should the situation of either parent change, the LAC process will be capable of analysing that development.

[48] As for contact under the care plan, the arrangements are perfectly satisfactory. The plans envisage individual contact with the mother for Week 1 and a joint contact with the mother for Week 2. The plan for the father is once a month, but the current situation is fraught with difficulties given the children's attitude to contact with their father, and his stated intentions about not attending. A document headed "Agreement on the progression of contact between the children and their father" has been shown to the court. It is understood that this had been the product of discussions between the parties when the father was legally represented. The document does appear to provide for some sensible proposals to try to reach contact at a regularity of every three weeks, but I understand that it has not been formally agreed and the parties do not feel bound by its terms. In the circumstances, I am content to leave the matter of contact with the father to the LAC process and for it to manage the situation as it develops.

[49] For the reasons given above, I will make a care order in respect of each child, approving the care plans. The Guardian is discharged and legally assisted parties will have their costs taxed in accordance with the provisions of Schedule 2 to the 1981 Order.