Neutral Citation No: [2024] NICA 68 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **McC12630** *ICOS No:* **15/106137/12/A07** *Delivered:* **21/10/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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Between:

A FATHER

Appellant

-v-

A MOTHER

Respondent

IN THE MATTER OF NI (A MALE CHILD AGED 12 YEARS) (No 3)

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The Appellant was self-representing
Suzanne Simpson KC and Maeve Mullan (instructed by John J McNally Solicitors) for the Respondent

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Before: McCloskey LJ and Rooney J

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McCLOSKEY LJ (*delivering the ex tempore judgment of the court*)

[1] The court has given careful consideration to all of the materials which have been assembled for the purpose of today's listing. We have considered, in particular, the parties' written submissions which, in the case of the father, the appellant, were supplemented by extensive and articulate oral submissions this morning. We have addressed our minds to the question of whether we need to hear anything from respondent's counsel over and above what is contained in their written submissions. We are satisfied that their written submissions are comprehensive and, therefore, we can bring the hearing to completion at this stage. The judicial panel has formed a unanimous view about this appeal.

[2] This case comes before the Court of Appeal as a result of an application brought by the appellant in the Family Division for leave to commence residence order proceedings and, further, to re-evaluate handover arrangements. Mr Justice McFarland heard the application on 23 April 2024 and, with commendable expedition, provided a reserved written judgment on 29 April 2024. By his judgment and order,

he refused the application. There is, before this court, a notice of appeal dated 4 May 2024. The grounds of appeal recite the following:

(i) the judgment and contents are contrary to fact; and

(ii) the judge failed in his duty to the system of justice to refer clear crimes to the Public Prosecution Service.

The appeal is constituted by that notice together with accompanying extensive written submissions and further abundant written submissions which this court has received and considered.

[3] The fundamental question for this court is whether there is any arguable error of law in the judgment of Mr Justice McFarland. In his judgment, having rehearsed the history quite extensively, the judge directed himself on the test to be applied. He did so in para [4]ff and, more specifically, in para [12] of his judgment where he states the following:

> "The test for leave is well established. The court considers the history of the case, the risk of potential harm to the child and whether there has been a material change of circumstances since the last time the case was before the court that would warrant the making of the order sought. Taking these factors into account, the court must then consider whether the father has an arguable case that would have a real prospect of success."

Having directed himself in this way the court made what it described in para [16] of its judgment as the only available conclusion, namely that the application for a residence order and contact order had no realistic prospect of success. Permission to bring these applications was refused accordingly.

[4] It is unnecessary for this appellate court to rehearse the sadly protracted history any further. Fundamentally, there are two questions before this court. The first is whether the judge's self-direction in law was in any way flawed. We are satisfied that it betrays no aberration and we would add that in any event the grounds of appeal do not engage with that fundamental issue.

[5] The second question for this court is whether there is any arguable error in how the judge, having directed himself correctly in law, applied the appropriate test in determining the application. The judge's reasons are set out in paras [13], [14] and [15] of his judgment. Once again, the appellant has not engaged meaningfully with this issue. We are unable to identify any material defect in those passages. What the judge decided, and the reasons for so deciding, comfortably fell within the margin of appreciation available to him as first instance judge.

[6] To summarise, in the appellant's voluminous written and oral submissions there has been no intelligible engagement with the test to be applied or the way in which the judge applied it and, moreover, this court has identified no material error.

[7] There is one further issue. There is before his court material which is technically new evidence. The court drew attention to this at the case management stage. There is no application for leave to adduce new evidence before this court and there is, therefore, no determination to be made. In those circumstances, and giving the appellant some quite generous latitude, taking into account his status of unrepresented litigant, we have, in his favour, considered all of the material before us without making any formal ruling on whether procedurally and technically it forms part of the evidence before this court.

[8] Once again, the appellant's sad inability to leave the events, including litigation events, of past years behind him and to focus exclusively on the present and the future, giving precedence to his son's best interests and discarding his own purely self–interested wishes and ambitions, to his son's manifest detriment, is the stand-out feature of this latest litigation chapter in a saga of some 12 years duration. Whether this results in a vexatious litigant application to the High Court remains to be seen.

[8] For the reasons given, the appeal is dismissed and the judgment and order of Mr Justice McFarland are affirmed.

[9] The respondent's solicitor will have a period of seven days within which to formulate in writing any application for costs. Any such application will not exceed one single A4 page, font size 12 minimum. By the same token, if there is to be no such application that fact will be communicated to the court within the same period of seven days. If there is an application of that kind the appellant will have a further period of seven days within which to respond in writing, subject to the same spatial restriction. Paper judicial resolution of any contested costs issue, without any further listing, is most likely.