

Neutral Citation No: [2021] NIFam 37

Ref: McF11613

ICOS: 18/045652 and
20/004121

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

Delivered: 22/09/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

Between:

A HEALTH AND SOCIAL CARE TRUST

Plaintiff

-v-

A MOTHER AND A FATHER

Defendants

**IN THE MATTER OF CW (A FEMALE CHILD AGED 4 YEARS 5 MONTHS)
AND IN THE MATTER OF OS (A FEMALE CHILD AGED 21 MONTHS)**

**Mr T Ritchie (instructed by the Directorate of Legal Services) for the Trust
Ms S Simpson QC with Ms K Downey BL (instructed by Emma Lyons Solicitor) for the
Mother**

**Ms V Ross BL (instructed by Donnelly & Wall Solicitors) for the Father
Ms L Brown BL (instructed by Flynn & McGettrick Solicitors) for the Guardian ad Litem
on behalf of CW and OS**

McFARLAND J

Introduction

[1] By two applications, one in respect of each child, the Trust is seeking care orders with care plans of adoption. The cases were consolidated and, by agreement of the parties, were dealt with at the final hearing by way of submissions only. This judgment has been anonymised to protect the identity of the children. I have used the ciphers CW and OS for the names of the children. These are not their initials. Nothing can be published that will identify CW or OS.

[2] CW was born in 2017. Her father was not named on the birth certificate and died in December 2018. Her mother married the Father in May 2019 and their child OS was born in 2020.

[3] The Mother has had long-standing difficulties impacting on her ability to provide adequate parenting. After her birth, CW was added to the child protection register, and was removed from the Mother's care under an emergency protection order in May 2018. In due course an interim care order was made. CW has not been in the Mother's care since May 2018.

[4] OS was removed from her parents' care at birth under an interim care order. Both children were then placed together with their current foster carers.

[5] There are several step-brothers. A maternal step-brother lives with his maternal grandparents under a Residence Order. There are three paternal step-brothers none of whom reside with the Father. Paragraph [32] (below) describes an incident involving two of these boys and the parents.

Threshold

[6] There is a modest dispute between the Mother and the Trust concerning the appropriate threshold criteria in respect of CW. The relevant date of intervention is in May 2018.

[7] The Mother and the Trust have submitted documents setting out what each considers to be the appropriate criteria. There is no significant difference between the documents and the dispute is more a matter of style rather than substance. The burden is on the Trust to prove, on the balance of probabilities, the underlying facts; that the child has suffered significant harm and/or is likely to suffer significant harm; and that any harm, or likelihood of harm, has been attributable to the care given to the child, or is likely to be given in the absence of an order.

[8] Munby P in his second *View from the President's Chambers* [2013] Fam Law 680 observed that:

"The threshold statement can usually be little more than a page, if that. We need to remember what it is for. It is not necessary for the court to find a mass of specific facts in order to arrive at a proper threshold finding."

He continued that the essential purpose of the threshold document, and the findings of a court when facts are disputed, is to answer four questions:

- "1. What is the nature of the Trust's case?
2. What the essential factual basis of the case is?

3. *What the evidence is upon which the Trust relies to establish its case? and*
4. *What the Trust is asking the court, and why?"*

These comments have found approval from the Court of Appeal (see *Re J* [2015] EWCA Civ 222).

[9] I have considered the documents and reports filed in this case and have taken into account the submissions made. The differences in the statements are at paragraphs 3, 7, 8, 9 and 10 of the Trust document.

[10] In paragraph 3 the Trust having set out a history of unstable relationships featuring domestic violence, added the names of six partners. The Mother seeks not to name those partners. There is sufficient evidence to include the actual names, and the detail is important to reflect accurately the relevance and extent of domestic violence in the Mother's life, the recurring nature of it, and how the history, unless challenged and changed, is likely to repeat itself, causing significant emotional harm to a child being brought up in that environment as well as exposure of the child to a risk of physical harm. (Dr Jennifer Galbraith, a consultant clinical psychologist, who reported in this case, stated in the joint experts' meeting of 3 April 2020 that this was the greatest concern (see page 10 of the transcript of the meeting)). I therefore consider that the quantifying of the number of abusive relationships by the naming of the six men is an important factor and should be set out in the threshold.

[11] Paragraphs 7-10 contain important factual details, all of which are easily proved from the evidence. Paragraph 7 includes ten dates on which the Mother was under the influence of substances when CW was believed to be in her care. Paragraph 8 gives details on one such date when CW was presented at hospital with bruising, was unclean, and her clothing was soiled with vomit, resulting in adverse comments from a consultant paediatrician. Paragraph 9 relates to the events leading up to the emergency protection order. All these details are relevant to the issue of threshold.

[12] Paragraph 10 relates to the Mother's dishonesty in her dealings with the Trust, again a relevant factor, particularly in relation to likelihood of future significant harm.

[13] I consider that the Trust document can be proved to the requisite standard, and is a more accurate record of the issues in May 2018 than the Mother's document, which seeks to minimise some of the background.

[14] The Trust document, and my findings in relation thereto, more accurately reflects the Munby P approach.

[15] In summary the Trust document covers the mother's historic and continuing

substance misuse, mental health difficulties (including drug overdoses and attempted suicide), unstable relationships with most unsuitable partners, criminal conduct, generally chaotic lifestyle, a lack of openness and honesty, and neglect of CW.

[16] There is no dispute concerning the threshold in relation to OS, the date of intervention being her birth in January 2020. It repeats the criteria attaching to CW, and sets out further criteria covering the intervening period. They include continuing drug misuse by the Mother, the brief acquaintance between the Mother and Father resulting in marriage in three months, the Father's misuse of alcohol, his criminal antecedents including a conviction for a domestic assault, an assault by the Father on the Mother when she was four months pregnant, and concerns about the Father's mental health, including suicidal ideation.

Assessments of the parents

[17] Dr Galbraith's involvement with the mother included a report in November 2019 and later in November 2020. These dates were extremely relevant in the context of the case as the intervening period saw the birth of OS. Dr Galbraith expressed alarm at the Mother's considerable lack of insight and in particular the Mother's belief that a child could not be emotionally abused by the environment of its upbringing. Dr Galbraith considered that between her two reports there was no evidence of change.

[18] Dr Michael Curran, consultant psychiatrist, reported on the Mother in February 2020 and diagnosed an emotional unstable personality disorder. This could vary in intensity although he felt that with stability in her life the prognosis for her could be positive in the medium to long term. Later reports in 2021 indicated a deterioration in the Mother's condition, which necessitated the involvement of the Official Solicitor. At the experts' meeting, Dr Curran expressed an opinion that despite gallant efforts by the Mother, she had still a long way to go.

[19] Dr Galbraith also examined the Father but considered that he had significant issues with regard to his mental health, substance misuse and relationships. She considered that timescales for improvement for the father would be long-term.

[20] Events in 2021 merely confirm the pessimism expressed by both Dr Galbraith and Dr Curran. On 4th January 2021 both the Mother and the Father took overdoses of drugs, the Mother of prescription drugs and the Father a cocktail of prescription drugs, cocaine and alcohol. The Mother also attempted to hang herself. An incident in late June 2021 is evidence of the highly unstable and abusive nature of their relationship. The Mother contacted police alleging an assault by the Father who had been intoxicated through cocaine and alcohol. She presented to police with visible bruising. The Father denied the allegations, the inference being that the Mother had lied to the police. It was not necessary for the court to conduct a fact finding exercise, but whatever the truth concerning this incident it points to continuing

difficulties within the relationship which the parents assert is adequate to care for both children.

[21] A snapshot of the Mother's ability to commit to her children was evident when CW was attending school for the first time earlier this month. The Mother was afforded the opportunity to be present at the school gate. The foster carer, social worker and CW waited for twenty minutes and when the Mother failed to attend the child went into school. The Mother arrived five minutes later. This incident, coming a matter of days before the court hearing to determine the future of the children, is evidence of the inability of the mother to achieve even a modest level of commitment to the care of her older child.

[22] The Best Interests Panel convened on the 29 April 2021 and the conclusion of the meeting was that the children should be adopted, preferably as a sibling pair.

[23] The parents oppose this plan seeking rehabilitation into their care. The care plan is supported by the guardian ad litem.

[24] No placement for the children has been identified at this stage. The intention of the Trust, should it be successful in obtaining care orders for the children, is to apply to free the children for adoption once a suitable placement has been identified.

The Law

[25] The law in relation to assessing a care plan of adoption for a child is now very well established. In *Re B (A Child)* [2013] UKSC 33 Lady Hale used the, now, well-known expression "nothing else will do" -

"It is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do." (at [198]).

[26] This does not create a presumption in favour of parents, but rather exhorts a court to conduct a proportionality balancing exercise, ensuring that before an adoption care plan is approved all other viable options for a child have been explored, and rejected. The overriding concern will be the welfare and best interests of the child.

[27] As for the welfare of the child, the Children (NI) Order 1995 ("the 1995 Order") at Article 3(3) requires the court to take particular account of the following:

- a) The ascertainable wishes and feelings of the children;
- b) Their physical, emotional and educational needs;
- c) The likely effect on the children of any change in circumstances;

- d) The children's age, sex, background and any other relevant characteristics;
- e) Any harm which the children have suffered or are at risk of suffering;
- f) How capable of meeting the children's needs is each of the parents, and any other person considered to be relevant;
- g) The range of powers and orders available to the court.

Consideration

[28] Regrettably the one prevailing feature of the case is the continuing inability of the parents to show any evidence of an ability to care for the children. This applies to the parents both as a couple, and as individuals. If a care order is not made, CW will return to the care of her mother, and OS to the care of the mother and father. This would be a significant change in their circumstances. Both parents have found it extremely difficult to achieve stability in their own lives and in their relationship. The addition of the young children into their lives would result in significant issues, and it is difficult to identify any evidence that would suggest that either parent would be able to cope with the additional pressures. There is no evidence of a support network around them.

[29] In the late 2000s Dr Marian Brandon (University of East Anglia) and other research colleagues were instrumental in coining the phrase "toxic trio" when referring to domestic violence, substance misuse and parental mental health issues as significant risk factors for child maltreatment. As the guardian ad litem correctly asserts, the toxic trio is extremely prevalent in this family.

[30] Both parents have been given ample opportunity and time to indicate that they can sort out the difficulties in their own lives but have been unable, or unwilling, to do so. The court shares the concern and alarm about the Mother expressed by Dr Galbraith at the experts' meeting of 3 April 2020. In this context it would have to be recognised that the Mother is likely to be the primary, or even the sole, carer for both children. Dr Galbraith indicates that the Mother does not lack intellectual ability, but rather her difficulties stem from her traumatic upbringing. The concern and alarm arises from the Mother's inability to appreciate that a child can suffer emotional harm from the environment in which it is brought up in.

[31] Nothing has improved since that meeting. Dr Galbraith, perhaps summed up the position at the later expert's meeting on 10 December 2020 at page 8 of the transcript -

"... I would be very concerned about timescales. I do feel for [the social worker] trying to make plans for these children. The chaotic lifestyle persists. Obviously with all respect to her difficulties, the children really are waiting for something which is fairly indefinite... I really would hold out - forgive me for saying - but I would hold out very little hope that within anything reasonable at all for these children this mum is going to make a significant enough change."

[32] The Father's route to recovery was identified by Dr Galbraith as long term. He has a significant criminal record and problems with substance misuse. Problems with domestic violence have persisted. A prolonged incident on 12 and 13 July 2020 is evidence not only of the risk the Father poses to the children, but also the inability of the Mother to protect and shield children in her care. This incident involved significant alcohol consumption, violence against the Mother, criminal damage to the home and ended with hospitalisation after an overdose. No criminal prosecution could continue as the Mother withdrew her statement and did not attend court. The fact that two children were in the house at the time puts the inability of both parents to provide a safe and nurturing environment for children into context.

[33] The guardian ad litem in her report of 14 April 2021 summed up her assessment of the parents at 9.1:

"Individually [the parents] have complex multi-layered problems. Difficulties are longstanding. There is no quick fix solution. Relapse is evident. Proceedings have been ongoing for 1069 days and counting. Parental behaviour patterns are more complex now than at the beginning of these proceedings."

There is little that can be added to this statement, save that we are now at 1230 days.

[34] The application of the 'checklist' in Article 3(3) of the 1995 Order clearly demonstrates that the welfare of either child could not be protected or enhanced by either parent looking after them. The provisions that are particularly engaged are the current and future needs of the children, the likely detrimental impact on the children living with the parents, the capacity of the parents in meeting the children's needs and the risk of harm to the children in that environment.

[35] The timescale for any improvement would be indefinite on current evidence. CW has now started school and OS is 21 months old. A decision must be made now. The only viable care plan which promotes the welfare of the children is a long-term permanent placement away from their parents. In the absence of any potential family foster placement (the father's most recent suggestion of Ms K eliciting no response from the lady who was not contactable), the option is therefore one of 'stranger' fostering or 'stranger' adoption.

[36] Black LJ in *Re V* [2013] EWCA Civ 913 set out the material differences between fostering and adoption at [96]:

"i) Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to "feel" different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a [Trust] foster carer whose circumstances may change, however devoted he or she is, and

who is free to determine the caring arrangement.

ii) Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time.

iii) Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a [Trust], the starting point is that the [Trust] is obliged to allow the child reasonable contact with his parents ([Article 53(1) 1995 Order]). The contact position can, of course, be regulated by alternative orders under [Article 53] but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement. Once the adoption order has been made, the natural parents normally need leave before they can apply for contact.

iv) Routine life is different for the adopted child in that once he or she is adopted, the [Trust has] no further role in his or her life (no [Trust] medicals, no [Trust] reviews, no need to consult the social worker over school trips abroad, for example)."

[37] For a step-sibling pair of children of 5 years and 21 months, there would be positive advantages with the environment provided for, and enhanced, by an adoptive placement.

[38] The current contact arrangements are now largely settled at twice a week, with good commitment by both parents. Contact is seen as a good experience for both children. That, to some extent, is seen as a positive aspect to this case. Contact will invariably have to be adjusted once the care order with adoptive placement care plan is in operation. The plans of the Trust deal with this in a sensitive way and in each child's interests.

[39] The court is not determining whether the children should be freed for adoption at this stage, although the approval of a care plan of an adoptive placement will necessarily involve applying the 'nothing else will do' standard.

[40] Continuing delay will only create more difficulties for the children, a point stressed by the guardian ad litem.

[41] Having considered all the evidence and taking into account the submissions the court is driven to the conclusion that nothing else is available for these children and nothing but adoption can do as far as they are concerned.

Decision

[42] There will be care orders in respect of each child, with care plans of adoption. The guardian ad litem will be discharged. There will be no costs as between parties, but there will be taxation orders for all legally assisted parties.