

Neutral Citation No: [2021] NIFam 51

Ref: McF11710

ICOS: 18/092650

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

Delivered: 17/12/2021

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 LD (A MALE CHILD AGED 12½ YEARS)

Mr T Ritchie (instructed by the Directorate of Legal Services) for the Trust
Ms S Simpson QC with Ms G Brady BL (instructed by Brian Kelly solicitors) for the
Mother
Ms M Smyth QC with Ms S Jones BL (instructed by Conor Downey & Co solicitors) for
the Father
Ms N McGreenera BL with Ms P McKernan BL (instructed by McShane & Co solicitors)
for the guardian ad litem ("GAL") on behalf of the child

McFARLAND J

Introduction

[1] This judgment has been anonymised to protect the identity of the child. I have used the cipher LD for the name of the child. These are not his initials. Nothing can be published that will identify LD.

[2] LD is now aged 12½ years. He is the child of the Mother and the Father and was the subject of a protracted private law dispute concerning his residence and contact. At the time of the commencement of proceedings he was living with the Mother and contact with the Father was limited. The court became concerned about the welfare of LD and ordered an Article 56 report.

[3] Article 56 of the Children (NI) Order 1995 provides that:

“(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or a supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child’s circumstances.

(2) Where the court gives a direction under this Article the authority concerned shall, when undertaking the investigation, consider whether it should –

- (a) apply for a care or a supervision order with respect to the child;*
- (b) provide services or assistance for the child or his family; or*
- (c) take any other action with respect to the child.”*

[4] The Trust, having undertaken its investigation, in exercise of its powers under Article 56(2)(a) has now applied for a care order with a care plan that LD shall reside with the Father with supervised contact with the Mother.

[5] The Trust’s application has the support of the Father and the GAL, but is opposed by the Mother on all issues:

- The Trust’s draft threshold facts are not proved;
- If they are, there is no need for a care order;
- In the absence of a care order she should benefit from a residence order, or in the event of a care order LD should reside with her under it; and
- If the care order is granted with the care plan, there should be more contact and it should not be supervised.

Threshold

[6] The purpose of the finding of threshold relates to the provisions of Article 50(2) of the 1995 Order. This provides:

“A court may only make a care or a supervision order if it is satisfied –

(a)that the child concerned is suffering, or is likely to suffer, significant harm; and

(b)that the harm, or likelihood of harm, is attributable to –

(i)the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him;

(ii) ... ”

[7] The burden is on the Trust to prove the underlying facts and to prove that the child has either suffered, or is likely to suffer, significant harm from the care given to the child or likely to be given to the child. The Trust must prove this on the balance of probabilities.

[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.

[9] The details of the Mother’s allegations are set out in the Annex to this judgment. I consider that the Mother has a genuine, but delusional, belief that what she has reported is accurate, however there is no evidence to support any of these allegations. They are therefore false allegations.

[10] The Mother suffers from very deep-seated mental health and psychological problems. Based on her disclosures relating to her upbringing she suffered significant abuse as a child and as an adolescent growing up in her family home. There is no need to set out the detail, suffice to say, the reported abuse was serious and has clearly impacted on her mental health.

[11] As part of these proceedings various assessments have been obtained and there is a consistent thread running through all the assessments and reports from her treating doctors. Her difficulties include complex post-traumatic stress disorder, personality disorder, delusional thinking and schizophrenia.

[12] Although the Mother disputes the threshold by asserting that her allegations are true and accurate and further disputes that LD has suffered any harm in her care, or is likely to suffer harm in the future if returned to her care, I am satisfied that the Trust has proved that the emotional harm suffered is significant. One particular feature is the damage caused to the relationship between the Mother and LD as he attempts to cope with the Mother's rigid thinking and over-bearing personality during contact, leading to LD distancing himself from his Mother at an emotional level, and causing problems with contact.

[13] I am satisfied that the Trust has made out threshold in this case. I have set out my findings in the Annex to this judgment. These findings are based on a draft prepared by the Trust but they do not follow the wording of the draft.

Care order

[14] The Trust are seeking a care order, primarily because the current situation cannot be managed and regulated by private law orders. The relationship between the Mother and the Father is so fractured and it is clear that they could not manage parental responsibility together and reach joint decisions about LD's upbringing.

[15] Mr Paul Quinn, clinical psychologist, gave evidence to the court and expressed an opinion that there were some positive developments with the Mother, when re-locating back her country of origin, seeking out medical assistance for her mental condition. However, the problems remained deep-seated and chronic in nature. The problem is that the Mother is refusing to take the anti-psychotic medication that is prescribed for her. This is a deliberate decision on her part but based on largely irrational grounds. The concerns that this raises are that although the Mother did take the decision to seek help for her condition, by refusing to take the medication prescribed for her she is unlikely to show any improvement in her condition. If she continues to present with the same delusional beliefs it is very hard to have any confidence that LD could be safely placed in her care.

[16] The danger that is present in this case is that the Mother has a genuine belief as to the factual basis for her allegations and she has a genuine belief that LD is suffering harm and will continue to suffer harm whilst in the Father's care. The rigid thought processes of the Mother create the real risk of harm. By refusing to take the medication that would have assisted her in controlling the symptoms of her condition, the Mother is not availing of the opportunity that would create a more stable relationship with LD.

[17] LD has been living with the Father since 2019. He appears to be well settled

within the family group which includes the Father's partner, twins from the partner's earlier relationship and a child to both the Father and the partner. There are no concerns expressed by social workers or the GAL about this placement. Basic concerns about LD's diet and general health no longer persist, and his school attendance is now near the 100% mark (compared to a near 50% attendance when LD was in the Mother's care). The understanding of both the Trust and the GAL is that it is LD's wish to remain living with his Father and that he does not wish to return living with the Mother. The Mother asserted that this was contrary to what LD had said to her during a contact on 13 December 2021. The Trust record of that contact is quite detailed and there is no reference in the record of LD making such a comment or making any comment about where he would like to live. Such an opportunity could have arisen for LD to make such a comment as during a car journey the vehicle passed close to the Mother's intended residence and she described its location and the number of rooms. Later she said that she would like to purchase a sofa bed.

[18] In all the circumstances there is a need for an order in this case, and a family assistance or supervision order would not be sufficient to secure LD's welfare. The care plan for LD's residence is that he continues to live with the Father and his partner. This is entirely appropriate in the circumstances.

Contact

[19] The final issue to be dealt with is contact. The proposal is that direct contact with the Mother takes place once a month, the contact taking place in Trust premises or elsewhere with its approval, and that the contact be supervised to include an interpreter. The Trust's case is that these conditions are the result of complying with the wishes of LD. In addition the plan is for continued indirect telephone contact once a week, which will be supervised by the Father.

[20] Care needs to be taken when allowing a child aged 12½ years to dictate the terms of contact with a parent. These decisions need to be taken by adults who have responsibility for the child. Whilst the adults will take into account a child's wishes and feelings, they will not be the determining factor. A child of this age should understand that their views are being taken into account, but the final decision about contact lies, not with the child, but elsewhere. One interesting record of the contact on 13 December 2021 was when the Mother spoke to LD about a contact on Christmas Eve, LD quickly closed the topic down by stating that the social worker will make the decisions regarding contact. This is evidence that suggests that LD is comfortable with others making the decision.

[21] The child's approach in this case is perfectly understandable. He cares deeply for the Mother and can be distressed by how she presents. Given the Mother's delusional thought processes, contact can often involve inappropriate statements by the Mother, or inappropriate quizzing of LD.

[22] Whenever these types of conversations are avoided by the Mother the contact between the Mother and LD appears to be of a general good quality.

[23] To date, no real narrative has been developed to explain to LD why his Mother is presenting in the way that she does. He knows that she is not well but has limited detail. Hopefully with the making of a care order, and the looked after child ("LAC") process develops this can be addressed. It would be of assistance to LD if this happens sooner rather than later.

[24] The current views of LD are that he would want contact on a monthly basis, as he feels weekly contact to be too oppressive for him because of the constant and persistent approach taken by the Mother. He also wishes the strict supervision as it would appear the presence of the social worker gives him some comfort that the contact is being monitored and that he can seek immediate assistance if required. He also wants an interpreter to be present. The conversation takes place in the Mother's mother tongue which LD can understand. He does not require the interpreter present to assist him, but as an extra re-assurance measure so that the social worker can understand what is being said.

[25] This situation has not been assisted by the Mother taking objection to some of the interpreters being used by the Trust. This objection appears to be on the basis of the individual concerned rather than their ability to translate the spoken word.

[26] It is clear that contact between LD and his Mother is very important and should be maintained, but it must be regulated to ensure that the contact is meaningful and is not contrary to LD's welfare. To this end, supervision is required both to protect LD and to provide him with the comfort and security that he will not be exposed to the Mother unaccompanied.

[27] As for regularity of contact, I have considered what could be regarded as an appropriate level. Without the Mother taking her prescribed medication it is very difficult to make predictions as there would be modest room for improvement given the Mother's rigid and delusional thinking and her persistent expression of that thinking. This dramatically reduces the quality of the contact and actually operates to disillusion, and even frighten, LD. Weekly contact does not appear to be working, although a prozed level of monthly contact is a particularly long gap between contacts. It may even fuel the Mother's suspicions and fears and lead to a repeat of previous conduct.

[28] In all the circumstances I consider that contact should take place fortnightly, and should be closely monitored by the LAC process. Should the opportunity arise for this to be increased then that would be encouraged, but should the review reveal continuing problems and potential harm to LD then a further reduction to every three or four weeks could be contemplated.

[29] As for the conditions, I consider them to be entirely appropriate. I appreciate

that it does involve an investment of time and resources, but contact at this stage will have to be on Trust premises or at other approved locations. In addition, it will be required to be supervised with an interpreter present. These conditions should be subject to review depending on how contact develops. It goes without saying that it is preferable for contact to take place in a more conducive and non-institutionalised setting. This is permitted to a degree now, but we are not at a stage of contact taking place in the Mother's home. That would be a step too far, and is likely to lead to a simple refusal of LD to attend.

Conclusion

[30] In the circumstances, and for the reasons stated, I will make a care order approving the care plan that LD reside with the Father. I also direct that LD has direct contact with the Mother once a fortnight, contact to be supervised by the Trust at such locations with such other conditions in place as the Trust consider appropriate. In addition, there will be weekly indirect contact by telephone, such contact to be supervised by the Father.

[31] All private law proceedings and applications are dismissed without order.

[32] There will be no order as to costs between parties, but legally assisted parties will have taxation orders in respect of their costs.

[33] The GAL is discharged.

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.