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

Delivered: 25/05/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF AN APPLICATION UNDER THE
CHILDREN (NORTHERN IRELAND) ORDER 1995 AND THE ADOPTION
(NORTHERN IRELAND) ORDER 1987

A HEALTH AND SOCIAL SERVICES TRUST

Applicant

-v-

Ms X

Respondent

HER HONOUR JUDGE SMYTH

The nature of the proceedings

[1] This is an application by a Trust for a care order and a freeing order in respect of JR who was born on 27 July 2016 and is now almost 2 years old. I have anonymised this judgment because it involves a child and no report may be made of this judgment that could lead directly or indirectly to the identification of the child or any family member.

[2] JR's mother, Ms X, is still only 19 years old. She has had an exceptionally sad and troubled life and the traumatic experiences of her childhood have significantly affected her ability to care for JR. She feels unable to take part in these proceedings and I am grateful to her counsel Ms Overing BL for the careful and sensitive way in which she has explained the mother's position.

[3] It had been thought that JR's father was Mr Y and consequently he was joined to the proceedings. However, shortly before the hearing commenced DNA tests confirmed that he was not the father and he was dismissed from the proceedings. Another man, Mr Z, agreed to undertake DNA testing but the result was also negative.

The background

[4] The mother was raised in an abusive and neglectful home. Social Services have been involved with the family since 2003 and her name was on the Child Protection Register until she was 18 years old on the basis of confirmed emotional, physical and sexual abuse.

[5] As a young teenager, the mother was known to the Child Sexual Exploitation Management Team as a result of substance misuse and her relationships with older men, including Mr Y. Mr Y has subjected the mother to physical, sexual and emotional abuse and it is a feature of this case that she has minimised the extent of the ill-treatment she has suffered.

[6] During her pregnancy, which was not revealed until she was 17 weeks pregnant, she was assaulted by both Mr Y and the maternal grandmother, who kicked her in the stomach when she was 7½ months pregnant. She was moved to the care of a maternal aunt but the placement broke down and she was then moved to a hostel.

[7] After JR's birth in July 2016, she was discharged from hospital into the mother's care and her name was placed on the Child Protection Register under the categories of potential neglect and potential physical and emotional abuse. A robust child protection plan was put in place which included a prohibition on any contact with Mr Y. However, the relationship continued and in September 2016, the mother was charged along with Mr Y and the maternal grandmother with offences relating to a violent attack. Mr Y is currently serving a lengthy prison sentence in respect of that matter.

[8] Shortly after this incident, the mother's mental health began to deteriorate and she made serious threats to self-harm. JR was voluntarily accommodated in Trust care in October 2016 where she has remained ever since.

[9] The mother left the hostel because concerns were raised about the risks posed by Mr Y, who was on bail. She returned to live with the maternal grandmother but they were evicted due to anti-social behaviour and for a period she lived at a variety of temporary addresses.

[10] The Trust care plan for JR at that time was twin track, seeking to achieve rehabilitation with the mother but in the alternative, permanence by way of kinship care or adoption. Social workers continued to encourage the mother to engage with services to address her underlying issues and a significant number of supports were offered to her. Referrals were made to Women's Aid, Barnardo's Safe Choices, the Adverse Childhood Experience Assessment, Dr Kavanagh, consultant clinical psychologist, a trauma centre and her GP. Services were also offered to assist her to engage positively with JR. The mother either refused to engage at all or engaged to a limited extent.

[11] However, on 14 December 2016 there were hopeful signs when with the assistance of her aunt acting as next friend, the mother took the unusual step of making an application to become a Ward of Court in an attempt to distance herself from the malign influence of Mr Y and achieve some stability in her life. Sadly, she was unable to do so and her life has continued to spiral downwards into mental ill-health and addiction.

[12] In March 2017, the mother was located by PSNI after a party in a distressed state and taken to hospital where she was detained because of mental health concerns. She was discharged to an after-care assessment unit but on a number of occasions was reported as a missing person and when located she refused to disclose her whereabouts.

[13] In April 2017, she moved to a placement in a supported living unit but declined a number of opportunities to meet with Social Services apart from occasions when she was in need of further support and financial assistance. Since then, she has given up her accommodation to live with a new partner but is believed to have slept on the street on at least one occasion after a row.

[14] Dr Lisheen Cassidy, Consultant Child and Adolescent Psychiatrist, assessed the mother in May 2017. Her report confirmed that the mother was competent and that although not formally tested, there was no evidence of difficulties that would place her in the intellectual disability range.

[15] Dr Cassidy referred to letters from a therapist in the DAMHS service to the mother's GP confirming treatment for polysubstance abuse, post-traumatic symptoms and significant anxiety relating to domestic violence and assaults in the community. The mother had attended only some of the appointments offered.

[16] Having interviewed the mother and reviewed the reports, Dr Cassidy considered the effect of the harsh and neglectful parenting the mother had received and concluded that her:

“social, emotional and moral development had been negatively impacted upon. Her coping strategies are based on conflict and violence, reacting and surviving the moment rather than dialogue, consideration and understanding...”.

[17] In particular, Dr Cassidy considered the reasons why the mother found it difficult to break ties with Mr Y and why she put her daughter at risk by continuing the relationship. She opined that the mother's familiarity with conflict and violence provided an explanation for her relationship with a violent older man and described her as “traumatised” and “fearful” of him. She is emotionally immature and vulnerable and does not fully understand that JR's needs need to be prioritised, and that she is responsible for her well-being.

[18] In terms of the future, Dr Cassidy expressed the view that:

“how [her] life trajectory proceeds will depend on how well she is able to accept and work with the supports offered to her. The temptation to return to her chaotic lifestyle is likely to be high even with a robust package of support.”

[19] Following this report, in May 2017 the care plan changed from twin track to permanence by adoption since there was no realistic prospect of rehabilitation and no kinship placement was available. At that time, JR had been in the care of her prospective adopters since she was 7½ months old. They also care for two older children on a long-term basis and JR is part of that family unit.

[20] Since JR was voluntarily accommodated, the mother’s attendance at contact has been sporadic. A plan for weekly contact was reduced to fortnightly because of poor attendance in May 2017 and then further reduced to monthly for the same reasons. By November 2017 she had attended only three out of a possible 14 contacts and has not had contact with JR since February 2018. The mother’s inability to maintain contact is due to the sad deterioration in her circumstances and her distress at having to leave her after contact.

[21] On 20 December 2017, JR was presented to the Trust Adoption Panel which concluded that adoption was in her best interests. On the same date, she was formally matched with her current carers.

[22] The mother accepts that she is unable to care for JR, but objects to a care plan of adoption or an order freeing her for adoption.

The law

[23] In Re DAM (Children) [2018] EWCA Civ 386, the English Court of Appeal stated that judges hearing care cases “are engaged in one of the most difficult of all judicial tasks”. In every case, the requirement is to answer four questions [6]:

- What are the facts?
- Has the threshold been crossed?
- If so, what order is in the child’s best interests?
- Is that outcome necessary and proportionate to the problem?

[24] Article 50 of the Children (Northern Ireland) Order 1995 states that threshold will be crossed where the court is satisfied, on a balance of probabilities, that the child is suffering or is likely to suffer, significant harm and that the harm, or likelihood of harm, is attributable to the care given to her, or likely to be given to her if the order were not made, not being what it would be reasonable to expect a person to give to her.

[25] The Trust relies on the following facts, which have been approved by the Guardian, to establish threshold:

- The mother has had a seriously disrupted and fractured childhood, being on the Child Protection Register herself since 2009 up until she became a mother aged 17. Her parenting ability has been seriously affected by her own dire childhood experiences.
- The mother has a history of drug and alcohol misuse. She was on the Child Sexual Exploitation Register from the age of 15.
- The mother has been involved in personal and family relationships where serious domestic violence, even during pregnancy, was common. She was unable to protect either herself or her baby from serious risks of emotional and physical harm, and herself breached civil injunctions and No Contact orders involving Mr Y. She was seriously assaulted on a number of occasions by him before, during and after her pregnancy and allowed him to have contact with JR. He attended the hospital to see X and JR after she was born.
- The mother has suffered bouts of poor mental health, there were serious concerns about her mood and suicidal ideation shortly before the EPO application was brought and she did not engage with her GP.
- The mother repeatedly had unexplained absences from her hostel placement with JR contrary to the child protection plan and was reported missing for 5 days while her daughter was in respite care in late October 2016. She was often in breach of agreements with the Trust regarding JR's safe care plan.
- The mother did not avail of supports and professional help to assist her with her own wellbeing and that of her new born baby.
- The mother has been involved in criminal offences of violence, disorder and does not always comply with bail conditions.

[26] The Senior Practitioner involved in this case adopted the reports which she has prepared, as did the Guardian, and both confirmed the truthfulness of the contents. Ms Overing BL had no instructions to challenge the facts and accepted that they reflected the evidence presented to the court. Having considered all of the evidence in this case, I am satisfied that the threshold has been crossed for a care order. The threshold is concerned only with harm, while the welfare checklist addresses a much wider range of factors.

[27] I therefore turn to consideration of the order that is in JR's best interests, taking into account the Article 3 welfare test. The Trust and Guardian submit that a

care plan of adoption is in her best interests because there is no realistic prospect of rehabilitation to the mother, she is very young and the prospective adopters have nurtured her since infancy. They wish to safeguard and promote her welfare throughout her childhood and JR regards them as her parents.

[28] The Trust and Guardian have set out the advantages and disadvantages of both adoption and long-term foster care. Long-term foster care would retain the legal bond but it would mean Social Services' involvement for the entirety of JR's childhood and teenage years. Her carers would not be able to take the decisions which they consider to be in her best interests without the approval of the Trust.

[29] Whilst long-term foster care may be the best option where there is a significant relationship between parent and child, this mother has been unable to maintain contact consistently, and as a result they have not been able to develop a meaningful relationship.

[30] Adoption would give JR a greater sense of "belonging" and give legal effect to the reality of the situation, which is that JR has been a part of a new family since she was 7½ months old and has no memory of any other home.

[31] The welfare checklist requires a proper welfare evaluation and a proportionality assessment. In addition, since the care plan is one of adoption, I must be satisfied that the Trust has surmounted the high hurdle that the law requires before a plan severing the legal relationship between parent and child can be approved.

[32] In Re B (A Child) Care Proceedings: Threshold Criteria [2013] UKSC 33 the Supreme Court confirmed that the interference in the article 8 ECHR family rights of both the mother and child which adoption brings will only be justified where "nothing else will do" (per Lord Kerr).

[33] In my view, given the mother's current tragic circumstances and her inability to engage with services which are essential to enable any prospect of rehabilitation, it is in JR's best interests that she is allowed to have a permanent home with her prospective adopters. Any question of uprooting her from her current nurturing environment could not be contemplated.

[34] In all of the circumstances, I am also satisfied that a care plan of adoption is both necessary and proportionate to the need to protect JR. The mother accepts that she is unable to care for JR, there is no prospect of rehabilitation in the foreseeable future and there is no kinship care available.

[35] The court must then go on and determine whether JR should be freed for adoption without her mother's consent. Before doing so, the court must be satisfied that adoption is in JR's best interests pursuant to Article 9 of the Adoption (Northern Ireland) Order 1987, that there is a likelihood of placement and that the mother is withholding her consent to adoption unreasonably, pursuant to Article 16(2)(b) of the Order.

[36] Even where the court has determined that adoption is in the child's best interests, that does not inevitably mean that a parent is withholding her consent to adoption unreasonably. The question has to be answered according to an objective standard. In R and H v United Kingdom [2012] 54 EHRR 2, which concerned an application for a freeing order by Down Lisburn Health and Social Care Trust, the judgment of the European Court of Human Rights said at paragraph 88:

"It is in the very nature of adoption that no real prospect of rehabilitation or family reunification exists and that it is instead in the child's best interest that she be placed permanently in a new family. Article 8 does not require the domestic authorities make endless attempts at family reunification; it only requires that they take all necessary steps that reasonably be demanded to facilitate the reunion of the child and his or her parents.... Equally the court has observed that, when a considerable period of time has passed since the child was originally taken into public care, the interests of a child not to have his or her de facto family situation changed again may override the interests of the parents to have their family reunited."

Consideration

[37] JR is now almost 2 years old and she has been in Trust care since she was three months old. Fortunately, she has been in the care of her prospective adopters since she was 7½ months old and they have forged a deep attachment. They have cherished her and promoted her welfare and they wish to do so throughout her childhood and no doubt beyond.

[38] In order to ensure her physical and psychological well-being, JR has a pressing need to be part of a permanent family. In circumstances where the mother is unable even to maintain contact consistently, I am satisfied that she is withholding her consent to adoption unreasonably. Adoption, by those who are committed to her, is necessary for JR's protection.

[39] The mother, still only a teenager herself, has been deeply affected by the abusive and neglectful relationships that she has endured since childhood. The professionals in this case, particularly Ms Brenda Burns, Senior Practitioner, who was the mother's social worker before taking responsibility for JR, have supported her and repeatedly tried to help her, without success.

[40] While those attempts have proved unsuccessful, it must be remembered that the mother is still very young. There may yet come a time when she is ready to deal with the issues that have marred her life. When that time comes it is important that she understands that she is not to blame for her inability to care for JR and that the influences of her childhood were outside her control.

[41] It is also important that in the future, JR understands the reasons that her mother was unable to care for her and that she was not abandoned. Ms Overing BL told the court that the mother describes JR as “beautiful”, and wishes that she could turn the clock back to her birth. Adoption counselling must be made available to the mother when the time is right.

[42] There is an aspirational plan for the mother to have direct contact with JR twice yearly and one indirect contact. While the mother is currently unable to avail of contact, that avenue must always remain open in the future.

[43] I therefore make a care order with a care plan of adoption and free JR for adoption. I approve the arrangements for contact.