

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
FAMILY DIVISION

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~A~ v ~B~ (Non molestation proceedings by a child)

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**STEPHENS J**

**Introduction**

[1] These are non molestation proceedings brought by ~A~ who is 14 against her former boyfriend ~B~ which are proceeding before the Master. An ex parte order was granted. The matter has been listed for final hearing before the Master. I have reviewed the case to determine whether it has been correctly commenced in the High Court by ~A~ or whether it could or should have been commenced in the Domestic Proceedings Court by ~Z~ who is ~A's~ mother seeking an order for the benefit of ~A~ and ~A's~ daughter ~L~, see *Re Arthur (Non-molestation Proceedings by a Child)* [2009] NI Fam. 19, and *R H and Others v IH* [2009] NI Fam. 17 *Alwyn (Non molestation proceedings by a child)* [2009] NIFam 22, [2010] 1 FLR 1363.

**Factual background.**

[2] A friendship between ~A~ and ~B~ commenced when ~A~ was 12 and ~B~ was 16. ~A's~ mother is ~Z~ and ~A~ has always lived in her mother's house. She has never lived with ~B~. There was however a sexual aspect to their friendship and in 2010 ~A~ who was then 13 discovered that she was pregnant. ~A~ states that ~B~ was violent, controlling and abusive towards her. That he also abused alcohol and cannabis. That as a consequence and prior to the birth of their daughter ~L~ she had ended the relationship. Their daughter ~L~ was born in 2010.

[3] ~A~ states that since the end of her relationship with ~B~ he has molested her by sending numerous text messages and making unwanted telephone calls. That he has become increasingly threatening including making paramilitary threats towards her and members of her extended family. That he has also threatened to snatch their daughter.

### **Judicial tier for the proceedings.**

[4] Article 20(2)(a) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 provides that if an application for the order has been made by a person who is associated with the respondent the court may make a non molestation order. Accordingly for these proceedings to have been commenced by ~Z~ she would have to establish that she is associated with ~B~ within the meaning of the Family Homes and Domestic Violence (Northern Ireland) Order 1998. ~Z~ and ~B~ are not relatives within Article 2(2) of the Order though they would have been related if ~A~ and ~B~ had cohabited which they have not (see Article 2(2) of the Order). Accordingly ~Z~ could not have brought non molestation proceedings against ~B~ seeking a non molestation order for the benefit of ~A~ or ~L~ as she is not associated with ~B~.

[5] ~Z~ could have brought non molestation proceedings seeking an order for the benefit of ~L~ if she had a shared Residence Order in respect of ~L~. She would then have had parental responsibility for ~L~ and would be associated with ~B~ a parent of ~L~ see Article 3(4)(a) and (b) of the order. In those circumstances she could also have brought an application seeking to obtain an order for the benefit of ~A~ her daughter as she is a relevant child within Article 3(2) of the order. ~A~ is living with her (Article 3(2)(a)) and in any event would come within the wide definition in Article 3(2)(c) being a child whose interests the court considers relevant.

[6] At present ~Z~ and ~B~ are not associated. Accordingly the only method of obtaining a non molestation order for the benefit of ~A~ and ~L~ is for the application to be brought by ~A~ in the High Court. The proceedings have been correctly commenced in the High Court.

[7] I was concerned as to whether this case was an illustration of a gap in the definition of associated persons and as to whether representations should be made that the definition of associated persons should be widened to enable the grandparents of a child to seek an order protecting that child from being molested regardless as to whether there has been a marriage or cohabitation or a shared residence order. It is somewhat anomalous that if ~A~ and ~B~ had cohabited then the grandparents could have brought an application seeking a Non Molestation Order for the benefit of both ~A~ and ~L~ but absent cohabitation they cannot. That anomaly is worthy of consideration.

### **Procedure.**

[8] The practice of the Master is always to direct statements from the respondent and from any witness that the applicant or the respondent proposes to call at the final hearing. That is a practice that I endorse and

which I suggest should be followed in this jurisdiction, keeping in mind and subject to any potential interference with Article 6 rights if criminal proceeding are in contemplation.