Neutral Citation No: [2020] NIFam 10 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **KEE11287** *Delivered:* **16/07/2020**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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Between:

AB

Appellant/Respondent

and

A HEALTH AND SOCIAL SERVICES TRUST

Respondent/Applicant

and

BD and CF

Respondents

_____

IN THE MATTER OF DAWN AND MEG (MINORS)
(APPEAL: PRACTICE AND PROCEDURE: OBLIGATIONS POST CARE ORDER)

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KEEGAN J

Nothing must be published which would identify the children or the family in this case. The names that I have given to the children are not their real names.

Introduction

[1] This is an appeal from a decision of Her Honour Judge Crawford sitting in the Family Care Centre in Belfast on 4 July 2019. I heard this case in a socially distanced court on 9 July 2020. The appellant mother was represented by Ms Ramsey QC and Ms Herdman BL. The first respondent father was represented by Ms Anderson BL. The second respondent father did not play any part in these proceedings which is consistent with his position in that he did not play any part in the Family Care Centre proceedings. The Trust was represented by Ms MacKenzie BL. The Guardian ad Litem was represented by Ms Brady BL. Both the mother and the

Guardian ad Litem were present in the court. I am grateful to all counsel and the professionals involved for the efficient and effective way in which this appeal was presented. That allowed me to give an oral ruling on the date of the hearing which was to the effect that the appeal should be dismissed. These are my reasons.

The grounds of Appeal

[2] Six grounds of appeal are contained within an Amended Appeal Notice dated 12 June 2020. These are as follows:

(i) The decision of the learned judge was wrong in all the circumstances of the case.

(ii) The court placed insufficient weight on the absence of the risk factors of BD and CF at the time of the final hearing. The appellant had broken off her relationship entirely with Father 2 who was also in custody by July 2019. The last recorded incident in respect of Father 2 had been 1 December 2017. The appellant had also distanced herself entirely from Father 1 in order to prioritise the younger children. The last recorded incident in respect of Father 1 was on 9 February 2018.

(iii) The court did not give any consideration to the complete lack of work of any kind offered to the appellant between April 2018 and July 2019.

(iv) The court did not consider the fact that rehabilitation to the appellant was ruled out by the Trust within a few weeks of receipt of Dr Pollock's first report which indicated that there was "… some scope and opportunity for the mother to demonstrate that she can prioritise the needs of the children above her own needs as a sole parent." This decision was taken without any consideration being given to any work which could be undertaken by the mother to demonstrate that she could prioritise the needs of her children.

(v) The making of the final Care Order was premature and a disproportionate interference with the appellant's Article 8 rights in the absence of the Trust having pursued or all alternative avenues which would have supported rehabilitation.

(vi) Fresh evidence which has come to light following the impugned decision indicates that the appellant is willing to engage with mental health services, her previous failure to do so having been given determinative weight in the lower court. On this basis the Orders of HHJ Crawford ought to be set aside and the matter remitted for a full hearing.

[3] There was consensus among the parties in relation to the appeal test. This flows from the Supreme Court decision of *Re B (A child)* [2013] UKSC 33 and essentially requires the court to consider whether the trial judge was wrong. In this

jurisdiction practice and procedure has developed since the decision of Gillen J *McG v McC* [2002] NIFam 10 to reflect obligations pursuant to Article 6 of the European Convention on Human Rights ("ECHR"). In the Family Division cases are usually heard on submissions but the court may hear evidence depending on the circumstances of a case. In this case there was no application for oral evidence. I did however allow some updating information to be provided by the mother in relation to her mental health. I considered this was fair as the decision under appeal was one year ago and the mother made the case that she was now dealing with some of her issues.

[4] Applying the law to the facts of this case I must look to whether or not the judge was wrong in relation to her overall analysis which found threshold criteria and approved a care plan of permanence via adoption for these two children. Realistically, Ms Ramsey did not pursue a case in relation to the specifics of threshold criteria. Rather, she concentrated on whether or not the care plan should have been approved at the stage it was by the judge.

Background Facts

[5] I have read a considerable amount of paperwork in relation to this case which I will not recite in detail save for some important aspects of the background which I gratefully extract from the ruling given by Judge Crawford as follows. The children have three half-siblings on the maternal side, two of whom are adults, and a third, R, who is in Trust care. The subject children Dawn and Meg were removed from the care of their mother under an Emergency Protection Order in February 2018. An interim care order for removal was made shortly thereafter. This order was appealed and the order was upheld before Her Honour Judge McCaffrey who heard oral evidence and made factual findings on 9 March 2018. The children have remained in the care of the Trust since that date in a short term foster placement.

[6] The factual findings made by Her Honour Judge McCaffrey are reflected at paragraphs 3 and 4 of the Draft Statement of Threshold which is filed regarding breaches by the mother of the child protection plan and safeguarding arrangements entered into at the Trust. In particular, allowing Dawn's father, who has a considerable criminal history of violence and who is the subject of a Violent Offender's Protection Order, to have access to the home and this child. Further, the mother's poor lifestyle choices and her willingness to leave the two children in the care of unsuitable people. In particular, the children having been left with a woman during which time they were exposed to domestic violence between this individual and her partner and witnessed a violent assault. Further, the events in February 2018 when the mother's son, R, attended at the home under the influence of drugs when, rather than having him removed from the home by her partner, the mother took Dawn and Meg with R and her partner in the car. As a result of which the children became caught up in a violent incident and were present in the vehicle when it was damaged by R.

[7] The mother's own history is set out in a report which was filed by Dr Philip Pollock, a Consultant Forensic Psychologist, dated 1 August 2018. She has had a sad history herself characterised by experiencing domestic violence at home and also residential care. Upon obtaining her adulthood this woman has also made extremely bad choices in terms of partners and been subjected to significant domestic violence by them. She also suffered the trauma of one of her partners being murdered. The report of Dr Pollock was commissioned on a joint basis and was, I note, put before the court without the need for formal proof. This is somewhat surprising in my view but in any event that was the course taken by lawyers at the time.

[8] Dr Pollock reported on 1 August 2018 and provided an addendum report in September 2018. In those reports Dr Pollock references the mother's traumatic childhood which he opined had an adverse effect on her emotional well-being. Dr Pollock also noted the mother denied that she had been responsible for events concerning the incidents which form the basis of the threshold criteria. He also noted that the mother did not accept that the children were at risk of harm or that there was any deficit in her parenting. Dr Pollock conducted some testing of the mother's abilities after which he concluded that the overall IQ testing may have been skewed by the mother's own presentation. Dr Pollock did not make any diagnosis of personality disorder but he did say that there were likely personality deficits which would require assistance. He noted that the mother had been referred to a self-harm intervention programme for trauma services and was discharged from this due to non-attendance. He recommended that she adhere to her programme of medication for depression and that she be re-referred to the self-harm intervention clinic. He commented that her psychological difficulties are chronic, enduring and personality based in origin.

[9] In the addendum report Dr Pollock stated that if the mother does not engage and benefit from the self-harm specialist service to address anxiety, depression, psychological crisis and emotional instability there is a high probability and risk these type of personality based concerns will persist and continue to impact upon her personality functioning, capacity to cope with parenting responsibilities in the future, her engagement with professionals and capacity to parent her children in the future.

[10] In the course of argument, Ms Ramsey QC, candidly accepted that the report of Dr Pollock, was not very positive for the mother. The other more inherent problem is the mother's evidence to the court. I have read the transcript of that. Having done so, it is clear that the mother did not want to engage in any work and that she did not see any difficulty with her behaviour in the past or her ability to look after the children.

[11] The judge also had the benefit of hearing from the social worker who gave evidence to the effect that the Trust remained concerned as to the mother's lifestyle and of the issues that pertain to the lifestyle continuing since the date of the removal

of the children. I note that the social worker acknowledged that the quality of the mother's contact with the children was good when she was focused, however this was not always the case and there had been problems in the past whereby contact had to be suspended. There was a reference to the children having been referred to Set Connects and the Trust filed an amended care plan in these proceedings which recommended permanence via adoption although at the date of the care order hearing they did not have any long term placement identified and the children were in short term placement.

[12] At the date of the hearing the fathers did not play a part and there is obviously no point taken with the threshold criteria framed against both fathers.

Consideration

[13] Having looked at the analysis of the judge in this case I do not find that she was wrong in reaching the conclusion she did on the basis of the evidence that she considered in the care order hearing. In particular, it is clear to me, that the judge did consider the fact that the mother had separated from the two fathers and as a result that appeal point does not gain any weight. The more substantial point in relation to the work that needed to be done with the mother was assessed by the judge. Understandably, she placed reliance on Dr Pollock's report which was not challenged as by agreement he was not called to give evidence. Also, in her evidence the mother did not accept that she needed to do any work at all. She was firm on this when questioned. In that sense the Trust cannot be criticised after the event for non-provision. There was also no suggestion that some time should be afforded. In this context I cannot see how the judge could have found any option other than to approve the threshold criteria and the care plan.

[14] The fact that the mother has now changed her mind is not enough to upset the care order that was made. The new evidence which I admitted shows that the mother has referred herself to mental health services. That is a very positive step but it remains to be seen what the outcome will be. The mother was referred by her general practitioner after a quite a length of time when she did not take any of the action recommended in the care plan. The report of Dr Pollock was eventually provided to the general practitioner and a referral was made. I was told that the mother has had a mental health appointment on 3 July and that she has been referred for services. Obviously, evidence in relation to the outworking of this would be material in terms of what further steps could be taken by the mother going forward, both in terms of her own personal development and her relationship with these children.

[15] It is also important to note that this was a care plan which was not going to come to fruition at any stage in the near future given placement issues. In fact, in these proceedings, when I enquired about the position I was told that no freeing for adoption proceedings had yet been issued and that there was still a quest to find a placement for these children.

[16] It follows from the above that this appeal was bound to fail. However, as I explained in my oral ruling on the day of hearing, that is not the end of the matter. It is absolutely clear to me that this case is really about planning post care order rather than appeal. The onus is on the mother to substantiate her changes and she has experienced lawyers to help her with that. There are also obligations placed upon the Trust pursuant to the ECHR to consider matters afresh and on an ongoing basis. The mother is not without a remedy via various routes which I summarise as follows:

(i) Post care order – the Trusts have a duty to act in a Convention compliant way in any case. In *KA v Finland* [2003] 1 FLR 696 the ECHR considered a claim in respect of breaches of Article 8 post care order, it was held as follows:

> "As the Court has reiterated time and again, the taking of a child into public care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing such care should be consistent with the ultimate aim of reuniting the natural parent and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child. …
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> … a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed. The minimum to be expected of the authorities is to examine the situation anew from time to time to see whether there has been any improvement in the family's situation. The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the child are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur."

(ii) There are procedural requirements flowing from Article 8(1) of the ECHR which require parents to be involved in decision making. In this case that means, that if there is to be a change of placement of these children that the parents have to be involved. In *P and Q* [2002] EWCA Civ 1151 the Court of Appeal held that:

> "There is also a procedural right inherent in an effective respect for family life: the administrative decision-making process must be such as to secure that the parents' views are made known and taken into account and that they are able to exercise in due time any remedies available."

(iii) There are remedies available under the Human Rights Act post the making of a care order established by a line of cases from *Re M* (Care: Challenging decisions by local authority) [2002] 2 FLR 1300. There are also remedies under the Children Order particularly Article 58 and Article 53 if parents raise issues about contact or want to apply to discharge a care order.

(iv) If freeing proceedings are to be pursued in relation to these children the courts look to make sure that all issues in relation to the parents are fully assessed. This is to satisfy the legal tests pursuant to Article 16, Article 18 and Article 9 of the Adoption (Northern Ireland) Order 1987. Parents, when faced with freeing proceedings in Northern Ireland, have a right to withhold consent and the public authority has to ensure that consent is unreasonably withheld to succeed in any freeing application. This, of course, differs from the jurisdiction of England and Wales which is governed by the Adoption and Children Act 2002.

[17] If anything, this case has highlighted the fact that family life is not static. There is some new information in relation to the mother which must be taken into account going forward by the Trust. Also, additional information has been provided in a report from Set Connects dated 8 January 2020. This report sets out that both children are experiencing some difficulties in care and, in particular, that Dawn has exhibited some sexualised behaviours which are problematic. Ms Ramsey rightly raises this issue because it may have a bearing on placement options and it is obviously something that needs to be closely examined going forward.

[18] Finally, I have considered some submissions about contact made in the course of this hearing. As part of the care plan the mother was to have monthly supervised contact with the children. I should say that I appreciate that contact arrangements have had to be altered during the Covid-19 crisis. The monthly contact is now indirect. I hope that these arrangements are temporary and that this case, like others, can get back to a position of direct supervised contact in the near future. The Trust says that the children have presented in a difficult manner after contact with their mother. It remains to be seen whether this is attributable to the mother, but in any event, I am sure that Ms Ramsey will advise the mother going forward to avoid a circumstance where her contact is more regulated.

Conclusion

[19] Following from the above, I dismiss this appeal as I do not consider that the judge was wrong in her assessment. As I have said, it remains to be seen what the long term plan for these children will be. Ms MacKenzie said that by August decisions will be made as to whether or not freeing applications are going to be brought. I sincerely hope that there is some clarity about the way forward for these children in the near future. That period of time will also allow the mother to engage with the interventions that she wants to take up so that her case that she has changed can be properly made.