

Neutral Citation No. [2014] NICty 6

Ref:

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

Delivered: **05/12/2014**

ICOS NO: 12/106348

**IN THE COUNTY COURT DIVISION OF BELFAST
BELFAST FAMILY CARE CENTRE**

BELFAST HEALTH & SOCIAL CARE TRUST

APPLICANT

-V-

R and C

RESPONDENTS

HER HONOUR JUDGE PHILPOTT QC

[1] The Belfast Health & Social Care Trust brought an application before the Court on 8th October 2014 to dispense with parental consent to permit EC and AR to be freed for adoption pursuant to a summons issued on 3rd April 2014 under Article 18 of The Adoption (Northern Ireland) Order 1987.

[2] Article 18 states:

"Where an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that his

agreement for the making of an adoption order should be dispensed with on grounds specified in article 16(2), the court shall make an order declaring the child free for adoption".

- [3] The ground on which the Trust are asking the Court in this case to dispense with consent is 16(2)(b) which states that the parent or parents are withholding their agreement unreasonably.
- [4] The children in this case have two siblings; EC born in 2009 and CC born in 2008. E was born in 2012 and A was born in 2012. Care proceedings commenced by way of an emergency protection order in respect of the three older children, which included E on 21st September 2012. They were voluntarily accommodated by the Trust in foster care from 28th September 2012 with C and E returning to the care of the maternal grandmother on 3rd October 2012. A was born in 2012 and was taken into care at birth.
- [5] The threshold criteria pursuant to Article 52 of the Children's (Northern Ireland) Order 1995 was agreed by the parties and approved by the Court on 19th June 2013.
- [6] The nature of the problems identified in the threshold criteria and accepted by the parties were as follows: parental alcohol abuse; domestic violence; mother's mental health difficulties; lack of insight into the effect of her mental health difficulties; lack of insight as to the effect her mental health difficulties had on her ability to care properly for the children; her noncompliance with medication.
- [7] As a result of these difficulties, the children suffered chronic neglect, which included missed medical appointments in respect of all the children, neglect of the children's nutritional needs and failure to meet the emotional needs of the

children.

- [8] A kinship placement was originally sought for E and A firstly with the paternal grandmother, who subsequently withdrew from consideration; and a paternal uncle and his partner who underwent a full kinship assessment, which was ruled out as a possibility on 21st November 2013.
- [9] Judge Smyth had granted full care orders in respect of all four children on 23rd October 2013. At this stage a decision was taken as a kinship placement had been ruled out for E, that he and A would be presented to the Adoption Panel with the Trust recommendation being that adoption was in their best interests.
- [10] Since birth in May 2012 E had been in the care of both parents until September 2012 with the assistance of the maternal grandmother. An issue arose as to the paternity of E and C did not see him for a period of three months. Between September 2012 and February 2014 E had been placed in a foster placement. In February 2014 to April 2014 E was then moved to a short term placement. On 8th April 2014 E was placed with A in his foster home.
- [11] It was noted at a pre-adoption medical by Dr McGinn on 11th June 2014 that E had developed alopecia which the GP indicated may have been stress induced, most likely connected to his placement moves. It is quite clear that this child, who is now approaching three, cannot continue to have no secure home.
- [12] When E first went into foster care Dr Livingstone, consultant community paediatrician, reported to the Court on 20th May 2013 that these behaviours were likely to be linked to his emotional abuse. This refers to his slapping and banging his head. It appears that once this child was given appropriate attention that the behaviours resolved within a period of two weeks.

- [13] Dr Mark Conachy, consultant clinical psychologist, stated in his report of 16th July 2014 that the behaviours referred to above were suggestive of extreme neglect and lack of stimulation which is traumatising for an infant. E continues to have behavioural issues. He is hard to handle and is easily distressed. Dr Conachy considers that he will need two years of dyadic development therapy.
- [14] The Court is aware that E and A cannot stay in their current placements. A has lived with his current foster carer since birth and has received consistent care and is attached to these foster parents. These were originally short term foster carers and they have been supported by the Trust to look after E at this time as well, but that placement cannot continue as the carers cannot provide a long term home for the boys.
- [15] Mrs Barbara Williams, senior social worker on the adoption team, gave evidence in respect of how difficult it would be to remove A from his current foster placement and it was her view that, because he had not suffered any emotional damage as a child because he had been removed from his natural parents at birth, that he would be able to successfully, with the help of his current foster parents assisting him, to move and form a bond with the prospective adopters.
- [16] It was recognised that there would be more difficulties experienced by E. However, he was going to have to move, in any event, and that it was preferable that his next move would be permanent and he would be in a position to form long term attachments which would not be interrupted.
- [17] Mrs Williams indicated that it would be the plan to have these two young boys adopted together. She informed the Court that she was confident that a placement would be found for both boys. However, she indicated the sooner

this was done the better. Because of their ages at this stage, it was likely that they could be adopted together but, the older they became, it may prove more difficult.

[18] Mrs Armstrong, senior social worker, gave evidence as to the importance of the future development of these boys to find a secure and permanent home. She indicated that foster care placements break down more frequently than adoptive placements. She spoke in particular about the needs of E, who had had four moves already, to get the benefit of real security before he became much older.

[19] The mother in this case did not give evidence and was represented by the Official Solicitor. She had a lengthy history of poor mental health. She has been diagnosed as suffering from schizoaffective disorder and bipolar disorder. She has had five periods of in-patient admission as a result of her mental health. Her first hospitalisation occurred when she was 18 years of age. Her periods of in-patient treatment ordinarily lasted for some months. Her fourth in-patient admission occurred during her pregnancy with A between October 2012 until March 2013. More recently she was remitted to hospital on 19th July 2014 and at the time of hearing she was still a patient.

[20] She did not give evidence but counsel on her behalf cross-examined and advanced her case that she did not want the children to be adopted but recognised that they would have to remain in foster care, but that they were her children and she would have the advantage of seeing them. She did, however, tell the Court when it was suggested that she had not cared for the children properly that it was not her fault, that it was because of her mental health difficulties. In view of this response, it was the Court's view that she had the capacity to understand what the issues were but, nonetheless, she was not capable of putting the needs of her children before her own.

- [21] C is the father of all four children and, although they are not together at the moment, there is a strong attachment still between him and R. However, he made it clear to the Court that he had no intention of resuming their relationship.
- [22] Mr Walsh, who was called to give evidence on behalf of the father and who was a cognitive behavioural therapist who had been helping C to come to terms and deal with the issues of alcohol addiction, anger management, the impact that his own childhood had on him, stated that his relationship with R when she was unwell was destructive to him as he could not cope with her criticisms of him, which was a major trigger to domestic abuse between them. Mr Walsh further stated that the relationship between R and C was a toxic one and, with a more supportive partner, he, in turn, would have had a better chance of dealing with his own issues.
- [23] During the care order proceedings C underwent a psychological assessment by Dr McCartan. Dr McCartan reported in April 2013 that problems which had occurred in C's childhood had resulted in him regarding aggression in a household as normal, having to deal with rejection and instability in his own upbringing which made it difficult for him to understand the impact of aggression and instability on his own children. In short, C had no assistance in his early life in seeing appropriate parenting which he could develop as an adult.
- [24] Dr McCartan also found that C had failed a lie test in that he was faking good, which meant that he was giving social workers the answers that he felt were appropriate and would impress them rather than honest responses as to what he really felt or what he didn't understand. It was her view that it was unlikely that he would work consistently in an open and cooperative manner with all professionals involved.

- [25] After the care order was made on 23rd October 2013, C was given the opportunity to continue working with the Trust to see if he could improve his position. To that end he undertook parenting work at the Beersbridge Family Centre. Ms Carmel Mongan, a social worker at the centre, gave evidence of his progress. The staff felt, she indicated to the Court, that because of his background difficulties the work was slow and that it brought to the fore his own difficult childhood memories. He found the work stressful and, on 18th November 2003, the work at Beersbridge Centre was suspended to enable him to work with Caring Dads in relation to domestic violence. It was anticipated that C would return to the programme after completion of Caring Dads, although it is not clear that he fully understood this.
- [26] It later came to light that while attending Beersbridge Road he had still been consuming alcohol and, as a result of a disagreement with R in which the police were called to investigate in January 2014, he stopped the work with Caring Dads.
- [27] C has indicated that, if given more time, he would intend to continue working with Mr Walsh and, in due course, return to a parenting programme and that it was his desire that the children should remain in foster care in the hope that eventually they would be able to be returned and live with him.
- [28] In the view of the Court that is unrealistic.
- [29] C, when giving evidence, recognised that E in particular needs a permanent home now. At this stage of his evidence he broke down and had to leave the witness box. When he returned in terms he told the Court that while he recognises the issue that another 18 months to two years was too long for E to

wait in particular, he could not agree to allow the boys to being adopted. Because his assessments at the Beersbridge Family Centre and Caring Dads did not continue, that that work still needs to be done and, in the view of this Court, even on the evidence given on his behalf from Mr Walsh, it is not unreasonable to be looking at a further time scale of between 16 months to two years before he could even hope to parent these children and there is no guarantee that he could do it successfully in the long term.

[30] C recognises the needs of E in particular and there is no doubt that he loves both his sons. But even when he knew that adoption was a real possibility if he could not show within a reasonable time scale that he was able to care for them, he was unable to do that, no doubt to some extent because of the stresses of the situation he found himself in.

[31] Dr McCartan has indicated that he lacks coping strategies for periods of emotional difficulty without which he is likely to continue to become easily overwhelmed.

[32] In the view of this Court, even if C could meet in two years' time the immediate needs of his children, it is, in the view of the court, unlikely that he would be able to meet the developing needs of growing children. He has no experience with his own family of seeing that being done. Once he stopped attending Caring Dads in 2014 it is apparent to this Court from the evidence he himself produced on his own behalf that his alcohol dependency has increased. Two reports were put before the Court from Mr Sweet, senior therapist and head of clinical services Addiction Northern Ireland, between 8th August 2012 and 18th October 2012 and from 8th April 2014 to 7th August 2014.

[33] During the first period of work his alcohol dependency was deemed to be

medium. During the second period of work this year his dependency was deemed to be high, yet he was telling the Court that his alcohol dependency, and it was submitted, that it had gone down.

[34] Mr Walsh gave evidence before the Court that C had told him he had been drinking 15 tins of beer and a number of shorts in an evening. C had also indicated that he did not regard eight tins as heavy drinking. Mr Walsh also indicated that C had a borderline personality disorder as a result of his own childhood experiences.

[35] R sat in Court for most of the first day's hearing. During the time the Court could observe her fidgeting and, on occasions, being extremely agitated. It also appeared that she was trying to get the attention of C. Eventually she left the Court and did not return. Her mental health problems, the Court was told, are likely to persist.

[36] The law in Northern Ireland in relation to adoption is no longer actually the same as it is in England. The Adoption (Northern Ireland) Order 1987 mirrored that of the English Adoption Act of 1956. The 1956 Act was substantially amended in 2002 with the enactment of The Adoption and Children's Act 2002. The provisions of Article 16(2)(b) of the 1987 Northern Ireland Order were exactly the same as Section 16(2)(b) of the 1956 English Adoption Act. Therefore, the leading authority on the withholding of parental consent unreasonably is Re W [1971] 2AER, 49, which was decided on the basis of the English 1956 Act and still represents the law in Northern Ireland today.

In Re W Lord Hailsham stated:

"... the test is unreasonableness and not anything else. It is not culpability. It

is not indifference. It is not failure to discharge parental duties. It is reasonableness, and reasonableness in the context of the totality of the circumstances. But although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent would take it into account, it is decisive in those cases where a reasonable parent must regard it so".

[37] The test of reasonableness is stated in the same case to be an objective test.

[38] Counsel for C in her final written submissions referred the Court to a great many decisions dealing with the considerations a court should take into account when deciding whether or not parents could be said to be withholding their consent unreasonably. Perhaps the comments made in RGB (Adoption: Parental Agreement) [1985] FLR 719 are the most relevant in helping the Court reach a decision in the instant case.

[39] In deciding whether the parents were withholding their agreement to adoption unreasonably:

“the test was what a reasonable parent, taking into account all the circumstances would decide. A reasonable parent would give great weight to what was better for the child. The chances of a successful re-introduction of the child to the parent was a crucial factor in assessing the reaction of the hypothetical reasonable parent”.

[40] It is the opinion of this Court important to note that when giving evidence C did realise the adverse affect on E in particular of not having a permanent home. He, in terms, did recognise that the time E would have to wait for him to be able to provide a home was 18 months to two years and that that was too long for the

child. The authorities all make it clear that permitting children to be freed for adoption is not something that a court should do lightly. The Article 8 rights of parents to family life, to be allowed to bring up their own children must be considered and taken into account, although Article 8 rights do not trump the best interest test in relation to a child.

[41] The Court should guard against social engineering. The test for interfering with family life is not whether the children would be in a better position with more advantages being brought up by someone other than their natural parents, but whether the parenting offered by their natural parents was good enough. This point is made clear by Lord Wilson in R v B(a child) (Care proceedings: threshold criteria) [2013] UKSC 33, at paragraph 34.

"Thus domestic law makes clear that:

- (a) it is not enough that it would be better for the child to be adopted than to live with his natural parents;
- (b) a parents consent to the making of an adoption order can be dispensed with only if the child's welfare so requires.

There is, therefore, no point in making a care order with a view to adoption unless there are good grounds for considering that this statutory test will be satisfied".

[42] The same thread, therefore, runs through both domestic law and convention law, namely that the interests of the child must render it necessary to make an adoption order.

[43] Both parents for the time being, particularly in C's case, would be content with the foster placement for the boys. The mother would know the people they were with and C, he believes, would have the time to do the necessary work, to enable

him to have the children returned with the help of social services to his care.

[44] At this stage in the children's lives I have considered the position of long term fostering of both boys together over adoption. I have taken into account also that they have two older siblings who reside with the maternal grandmother and what difference adoption may make to the relationship between them and their brothers and sister if adopted.

[45] The Trust have made it clear that even with adoption, sibling contact would take place. Black LJ considered the advantages of adoption over fostering in Re V (Children) [2013] EWCA Civ 913 in relation to a four year old child. At page 98 of the judgment she noted that:

"V is only four and has a very long time in foster care ahead of her. Adoption is likely to be easier for her to accommodate and its benefits are more obvious for a child of her age as are the potential disadvantages of spending the majority of her childhood in foster care".

[46] These comments, in my view, are particularly apposite to the instant case in view of the ages of the boys.

[47] Black LJ also points out in the same case:

"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 local authority foster carer whose circumstances may change however devoted he or she is and who is free to determine the caring arrangement".

[48] E has already had three foster placements. In the opinion of this Court neither parent are able to provide E and A with adequate parenting. In the view of this Court, because of the children's current ages, nearly three and just over two, it is essential that they get a permanent home now, particularly in relation to E so that he can make a firm attachment within a family where he knows he is going to stay and have the emotional abilities to adjust to new situations in life, such as starting school. Also, I have said herein above, the chances of them getting a home together if they are freed now is greater than if we postpone a decision to see if there is any prospect of C being able to deal with his emotional problems, including anger and his alcohol dependency and learning the skills to provide a stable home not only to E and A as young children but as they develop in to adult life.

[49] On the evidence before the Court, this case reaches the requirements succinctly stated by Baroness Hale SCJ, at paragraph 215 of Re B:

"We all agree that an order compulsorily severing the ties between a child and her parents can only be made if justified by an overriding requirement pertaining to the child's best interests. In other words, the test is one of necessity, nothing else will do".

[50] O'Hara J had said in R v J [2014] NIFam 5 at paragraph 27 that:

"Agreement is not unreasonably withheld by a parent who is not capable of making a decision in the first place".

[51] On the evidence before this Court from the reports and R's own ability to express the view that the failures in her parenting were down not to deliberate neglect in

terms, but her mental health, I am of the view that she does understand the proceedings and while she may not have had the attention span to give evidence or advance her case through oral evidence, that does not mean that she did not have the capacity to understand to the requisite degree what was being said in respect of the needs of her children and as she knows she cannot provide a home at this time or in the near future for her children and merely wants to retain them with people she knows so that she can see them, I am holding that she is unreasonably withholding her consent to an adoption which is in the best interests of the children.

[52] The fact that she required the Official Solicitor to deal with the proceedings, in my view, does not necessarily mean that she could not understand the issues that were before the Court and her clear interruption of the Court indicated that she did.

[53] She, like C, although she knows she cannot provide an adequate home for her children, cannot bring herself to consent and that is understandable.

[54] The Court in this case envisages post adoption contact, provided the parents can avail of it without causing disruption to the adoption placement. The Court indicated at hearing that, if necessary, it would hear submissions on the nature of that contact and make a specific order if required.

[55] The matter of sibling contact has been accepted by the Trust.

[56] For the reasons contained herein, I am dispensing with the consent of both parents to free both boys for adoption.