

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

BETWEEN

CHW

Applicant;

-and-

CMJ

Respondent.

MORGAN J

[1] I have anonymised this judgment to ensure that the names of the children and their parents are not disclosed. Nothing should be published which would disclose the identity of either of the parties or their children.

[2] This is an application for the residence order by the applicant father in respect of two children of the marriage now aged 12 and 6. The applicant and respondent met in 1987 and quickly formed a strong relationship. They lived together for a number of years and married in 1992. They have 4 children and the youngest 2 are the subject of this application. The older children are aged 17 and 15.

[3] Throughout the marriage the applicant was a professional person who practised on his own and the respondent worked as a manager in the practice. I have no doubt that both are extremely able and intelligent people. I am also entirely satisfied having heard evidence from both of them that they both have a deep love and affection for their children.

[4] The applicant and respondent separated in July 2002 when allegations were made to the Trust and police that the applicant had abused the children. These allegations were denied by the applicant and investigated by police who decided that there was insufficient evidence to maintain a prosecution.

The children resided with their mother after the separation but there were immediate difficulties in relation to contact. The Trust became involved in order to supervise contact but within a period of months the applicant's direct contact with all three older children had ceased because none of them were willing to attend. The applicant contends that this was because of the influence of the respondent on the children as a result of her hostility to him. The three older children continue to vehemently oppose any contact with their father. The youngest child has been having regular contact with her father which has been informally supervised but the continuation of this contact on an unsupervised basis is opposed by the respondent. There have been numerous court proceedings since 2002 in relation to the children. Arrangements have been made for them to have therapy, to be interviewed with a view to assessing disclosure and with a view to assessing the likelihood of successful contact with their father. The respondent and the older children resent the continuation of these proceedings and largely want the applicant to disappear from their lives. The applicant wishes to re-establish a relationship with his children and is fearful that if he does not pursue this by way of proceedings he will never succeed in that aim.

[5] The respondent makes 129 allegations against the applicant and the applicant makes approximately 60 allegations against the respondent. Many of these allegations were not originally made but have developed over the years. Despite the multitude of court proceedings no finding has ever been made in relation to these allegations and this hearing was directed for the purpose of making those findings. I have considerable reservations about the extent to which this process will be of assistance in resolving the difficulties in respect of this family. I accept that some of the allegations are extremely serious and need to be resolved. The problem is that this hearing is taking place nearly 6 years after the separation of the parties. This case demonstrates the catastrophic consequences that can ensue when disputes of this nature persist over such a length of time. These proceedings have materially affected the lives of these children during important years and that consequence is the principal reason for the need for the family justice system to act robustly and decisively when faced with contact disputes of this nature.

[6] I do not intend to publish the annex to this judgment which contains my findings on the allegations because of the high risk that this would identify the children. Suffice it to say that I have concluded that none of the matters proved are such as to justify preventing the applicant and the children enjoying a full parent and child relationship. I further find that the respondent actively discouraged the children from engaging in contact with their father in the period after the separation and that thereafter she has taken refuge in the mantra that she must respect the wishes of the children. In my view that is a gross abdication of her responsibility as a parent to inform, guide and assist her children in proper decision-making.

[7] The exclusion of a birth parent from the life of a child is a denial of the child's right to understand aspects of the past which can be very relevant to the present and the future. Cutting their father out of their lives does not make him any less the father who was with them in the early years of their lives and a person who has still much to offer them. Bringing him into their lives ought not to diminish in any way the strong bond of love and affection which I am sure each of these children feels for their mother.