

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

CAITRIN, DONA AND ELLIOT (PSEUDONYMS)
(No 5)

(Care proceedings: Remitted hearing)

STEPHENS J

Introduction

[1] On 26 May 2010 under reference STE7847 I gave judgment in relation to what if any order I should make in respect of care proceedings brought by a Trust in relation to three children whom I called Caitrin, Dona and Elliot, though those are not their real names. I called their father Fergus and their mother Marcail though again those are not their real names. Nothing should be reported which would identify any of the children or any member of their extended family. Any report of this judgment should make it known that the names used are not the real names of any of the individuals. I had earlier made findings in relation to the threshold criteria ([2010] NIFam 1).

[2] In the introduction to the judgment dated 26 May 2010 I summarised the proceedings up to that date and then for the reasons given in respect of:

- (a) Caitrin and Dona I declined to make care orders but rather made supervision orders for 12 months and residence orders settling that they should reside with Fergus. In arriving at that conclusion I found that it was probable that Caitrin, Dona and Fergus would return to country ~A~ ;

and in respect of

- (b) Elliot I made a supervision order for 12 months and a residence order settling that he should reside with Marcail.

In arriving at that conclusion it was clear that Marcail intended to remain in Northern Ireland.

In addition I made various contact orders making it clear as I did so that Elliot's placement was more important than paternal and/or sibling contact so that if his placement was under threat from contact then it should not occur.

[3] The key factor in arriving at those decisions was the control of all three children by Fergus. All three children being so heavily influenced and controlled by him that they were almost mesmerised. That control had not prevented Elliot from returning to school and settling down in a positive placement with Marcail where he was blossoming but in relation to Caitrin and Dona it meant that they were bent on a destructive path in relation to their education and future employment prospects. They were living in separate residential homes without direct or indirect contact with Fergus or Marcail and with supervised sibling contact. At paragraph [107] of that judgment in relation to a potential outcome where Caitrin and Dona remained in care in residential homes I expressed the control exercised by Fergus in the following terms:-

"I also consider that there is a very limited chance of [Caitrin and Dona] gaining insight and realistically they will not progress so that they remain out of the education system and unable to form a relationship with Marcail. The key is Fergus. He will continue to control and destroy them."

[4] That destruction, a tool, was being and was to be wrought to achieve Fergus' overriding objectives of:-

- (a) excluding Marcail from the lives of all three children and to have them in his sole care; and
- (b) to leave Marcail with nothing financially and emotionally after a 20 year relationship.

[5] I was concerned that both Caitrin and Dona would continue on a destructive path if they remained in care but if they were returned to the care of Fergus and in particular, if as I held was probable, they returned to country ~A~ then they would both return to mainstream education with the benefits that would bring to their emotional development and with excellent prospects of tertiary education and fulfilling careers together with contact with their extended family and cultural benefits. If they remained in care in Northern Ireland I considered that Fergus would continue to control and destroy them and in addition there was the potential for negative peer influence in their residential homes. I previously termed the destruction that arose as a result of that control

“self destruction” but it should have been termed “destruction” it being destruction wrought by Fergus.

[6] In arriving at the decisions in respect of all three children I considered them individually and also how their interests interacted with each other. There were and are differences between Caitrin and Dona. Their ages, personalities and vulnerabilities were and are different. The differences are not static. Dona was the most vulnerable to Fergus’ manipulation and control. The therapeutic work being undertaken by the Trust was making greater progress in respect of Caitrin than Dona. There were positive indications in relation to Caitrin as a result of that therapeutic work and her separation from Fergus. Fergus had previously made all the decisions in her life but since a period in care she struggled to make decisions including even the smallest decisions. This was a response to her greater independence and responsibility and was a positive sign of growing independence. Despite antipathy towards her mother there was physical contact with her though at that stage she was not speaking to her. There was growing doubt as to whether Dona was influencing Caitrin’s wishes and feelings whereas previously there was a hierarchy in which Dona was dominant. Again a positive sign of a more independent personality being nurtured. In respect of education Caitrin had agreed to undertake written work in her residential home. A further positive sign of independence from Fergus’ control.

[7] The evidence in respect of the care proceedings concluded on 14 May 2010 and I heard closing submissions on 25 May 2010. I gave judgment on 26 May 2010. In the event the position in respect of Caitrin had continued to improve since 14 May 2010. I was not informed of those improvements until immediately after I had given judgment. I make it clear that I would have considered evidence of this improvement as highly relevant to my decision dated 26 May 2010. I would not have come to the conclusion that Caitrin was so under the control of Fergus that she would not return to education in Northern Ireland if she remained in care had I known of this further evidence. In the event as things have turned out the decision I made has enabled Caitrin to change her mind as to where and with whom she wants to live. The decision in the case remains mine but if the decision accords in whole or in part with her present wishes and feelings then it should lead to a settled, stable, long term outcome. However harm could have been caused and the court should have been informed without prompting of any material change in circumstance since the evidence had been concluded and prior to giving judgment.

[8] The Trust and Marcail appealed my decision dated 26 May 2010 not to grant care orders in respect of Caitrin and Dona. On 21 June 2010 the Court of Appeal were informed that there had been developments since I had concluded the evidence on 14 May 2010. The case has been remitted to me to hear evidence as to those developments and to determine whether I would make any different order in respect of any of the children and if so what orders in light of any further factual findings.

[9] The case was relisted before me on the afternoon of 21 June 2010. I heard further evidence on 22, 23 and 24 June 2010. In light of the further events that had occurred the Trust care plan required amendment and in order to facilitate consideration and if appropriate approval and adoption of those amendments at a looked after child meeting on 29 June 2010 I adjourned the hearing initially relisting the case during the vacation in mid July. Circumstances then occurred which meant that the proceedings were adjourned to 23 August 2010 upon which date and on 25 August 2010 I heard further evidence and final submissions.

The developments in relation to Caitrin since 14 May 2010

[10] Since the evidence concluded on 14 May 2010 and prior to giving judgment on 26 May 2010 progress continued to be made in relation to Caitrin's return to school in Northern Ireland. She had agreed to attend the library in the school and to meet with pupils and teachers. As a result of that agreement arrangements had been made for her attendance in the school library on the Friday of the same week as that in which I gave judgment. This was the further significant evidence about which I should have been informed.

[11] After 26 May 2010 the judgment I had given was explained to Caitrin by her legal team. Then on 1 June 2010 CD, a Principal Social Worker, met Caitrin. Again the judgment was explained to her. The judgment settled that Caitrin would reside with her father. Having had the judgment explained to her by CD Caitrin asked her what she should do and was told that the decision was hers. CD's evidence, all of which I accept, is that Caitrin's reaction to the judgment was very balanced and that she felt very ambivalent to the decision. Caitrin informed CD that she had to think through a lot quicker what she wanted to do than she thought she had to. In effect I find that Caitrin now appreciated that she had to think through questions such as whether she did not wish to return to the care of Fergus, whether she wished to remain out of mainstream education in Northern Ireland, whether she wished to move to country ~A~, whether she wished to be in close physical proximity to and contact with Elliot and Marvail, and whether she wished to repair her relationship with her mother. She knew and understood all the short and long term ramifications of the decision that I had made on 26 May 2010 and she wished to have an opportunity to reconsider her previously expressed wishes and feelings and to arrive at her own decision.

[12] Nine days later on 10 June 2010 Caitrin met CD and discussed options for the future. Caitrin in her own handwriting set out options A-D. She was struggling to put her views forward. CD left and after she had done so she reflected as to whether she had given Caitrin sufficient support to arrive at her own decision. Accordingly she returned to the children's home to meet Caitrin again. She explained to Caitrin that she felt that she had not offered the support that she needed. Caitrin was emotional and said that the decision was very hard

and very difficult and that she felt so bad about the decision she was going to make. She didn't want to hurt anyone. She didn't speak it but she wrote option E and was very upset. That option was for Dona to go home to country ~A~ that Caitrin would remain in her residential home in Northern Ireland and that she would have the opportunity of seeing Dona, Elliot and Fergus. She expressed this as a preference. She was and is very concerned about her relationship with Dona and how this decision would affect that relationship. She has not been able to offer any reason for this decision though she did say that Dona was more like her father, that Dona can cope, that it is what Dona wants and that Dona does not like it in the children's home. She has not been prompted to give any further reasons and that decision not to prompt or press her is one which I entirely endorse. To prompt her to do so would cause her significant emotional harm. She presently feels guilty and selfish in relation to her decision. Those feelings are understandable but not justified as I will later explain. It is not hard to envisage a whole series of reasons for her decision ranging from an acknowledgment of the truth of the factual findings which I have made at one end of the spectrum to a desire to be in the same country as and having regular contact with Elliot at the other end of spectrum. To compel her to articulate and express those reasons, some of which could add to her inappropriate feelings of guilt and selfishness would cause her significant emotional harm.

[13] On 14 June 2010 Caitrin informed her legal team that she wished to remain in care in Northern Ireland in her present residential home. She did not wish to be in a foster placement. She did not wish to return to the care of Fergus. She did not wish to return to country ~A~. She wanted to return to education at the school which she was previously attending in Northern Ireland. She wished to have contact with Fergus. Having made that decision Caitrin's mood has improved remarkably. She is manifestly happy and content. She is enjoying her placement and enjoying placement activities. Her relationship with staff is excellent. Her self esteem has improved. Her physical presentation has improved. She has gone to the library in her previous school. She knows the support that is available in that school from the pupils and staff whom she has met. Her relationship with her mother has continued to improve.

[14] As I have indicated Caitrin stated to CD that she had to think through a lot quicker what she wanted to do than she thought she had to. In effect prior to the judgment dated 26 May 2010 Caitrin had been edging towards a return to school and a greater appreciation of the short and long term ramifications of the different outcomes of the care proceedings. It is clearer now than it was on 14 May 2010 that she had been moving towards expressing her own wish to return to mainstream education in Northern Ireland. The judgment and thereafter the appeal process with the hearing before the Court of Appeal then listed in June was a catalyst to her reconsidering her wishes and feelings and making up her own mind. I find as a fact that the decision which she then made was her own genuine considered decision made with full knowledge of the consequences. I make that finding not only on the basis of the social workers and the guardian's

evidence but on the basis that senior and junior counsel and the solicitor instructed by Caitrin have consulted with her. They have fully explained the position to her and have carefully taken her through her instructions. I have been assured by both senior and junior counsel and they are satisfied that this is her own genuine independent considered decision. Caitrin's counsel on her instructions contended that I should now make a care order so that she could remain in residential care and return to full time education in Northern Ireland. They did not wish there to be any changes to the care plan now put forward by the Trust in relation to Caitrin. I was also assured by her counsel that she is aware of the obligation on Fergus not to misuse contact so as to disrupt placement and that contact is conditional on that obligation. She is also aware of the amount of contact with Fergus in the care plan.

[15] I indicated that Caitrin has feelings of guilt and selfishness in relation to the decision that she has made. In particular she feels that she has let Dona down. The disruption to her relationship with Dona grieves her terribly. She is concerned that her decision could impact on the decision in respect of Dona and that she would be responsible for that. I make two points absolutely clear. The first is that any decision in this case in relation to Caitrin, Dona and Elliot is my responsibility and mine alone subject to the appeal process. That Caitrin and indeed Dona bear no burden of responsibility for any decision in this case. It is simply not their responsibility. The second is that to attribute effect to Caitrin's decision is to ignore the entire antecedent history and all the harm, fault and blame that rests with Fergus for the emotional abuse that he has perpetrated on all three of his children. He is the person who has betrayed trust, distorting and manipulating his children and causing them significant harm. The person who should, but does not, feel any guilt or remorse is Fergus. He acts entirely in his own self interest and he is quite prepared to and continues to cause significant harm to all three of his children.

The evidence of Fergus as to the change in Caitrin's wishes and feelings

[16] On 14 June 2010 Caitrin had informed her legal team of her present wishes and feelings. The appeal was due to be heard in the Court of Appeal on 21 June 2010. Fergus personally drafted and lodged an additional skeleton argument in his appeal against the fact finding judgment. He was and remains a personal litigant in that appeal. The additional skeleton argument however also addressed the change in Caitrin's wishes and feelings. Paragraph 2(e) of the additional skeleton argument (15/54) states:

"After final judgment Trust agonisingly tried to persuade (Caitrin) to change her position via tremendous pressure, blackmailing and deception. In this manner Trust manipulate (Caitrin) to wear school uniform and attend school library, and further to change her mind about care plan."

[17] Fergus effectively rejected any suggestion that Caitrin's change of mind was free, genuine and fully informed. In evidence he postulated the possibility that the Trust had surreptitiously used drugs to influence her mind by adding them to her food or her drink without her knowledge, that they may have used "Ericksonian hypnosis" on her or compelled her to change her mind by intensive and repetitive suggestion. He also called in aid to support these propositions his assessment (which I reject) of the agony on the face of Senior Counsel for the Trust when I delivered my judgment dated 26 May 2010. He suggested that what the Trust could not achieve by litigation they set out to achieve by techniques including deception, blackmail, hypnosis or drugs. He also relied on Caitrin's previous indecision and what he contended was her sudden change of mind.

[18] I had seen Caitrin and Dona at an earlier stage of these proceedings. Fergus wished me to see Caitrin again in order to investigate the bona fides of her decision though he adhered to the view that only he would know whether that decision was genuine, free and independent. He also stated that it would not be possible for me to determine whether she had been drugged because this could have been done surreptitiously by the Trust. In effect Fergus wished to place a burden on Caitrin in relation to the decision making process in these proceedings but would not accept any outcome except one favourable to him. Accordingly meeting her would not be determinative unless I found an outcome which was favourable to Fergus. Mrs Keegan QC on behalf of Caitrin informed me that Caitrin did not wish to see me again for the understandable reason that the nature of such a meeting and the matters to be discussed would put her under too much strain. I accept that assessment and Caitrin's wish not to meet me again. Caitrin was emotional when informing CD of her decision. She has formed an excellent relationship with CD over a period of time. The surroundings in which she informed CD of that decision were familiar to her. If I was in any doubt about the bona fides of Caitrin's decision then I would have pursued further the question of meeting with her again but in the event I do not consider that there is any doubt and I consider that it is not necessary to see Caitrin to form a view as to the bona fides of her decision.

[19] I entirely reject Fergus' evidence. Prior to 26 May 2010 Caitrin had been making progress in arriving at a more balanced and independent view and I have set out the details of those improvements. Her change of mind was part of a process which had its beginnings long before 26 May 2010. Part of that process of making up her own mind rather than being controlled by Fergus was a period of indecision. I have seen and assessed the witnesses called on behalf of the Trust and I am entirely satisfied that they enabled and encouraged Caitrin to make her own decision. To say, as I do, that I was particularly impressed with CD, does not diminish in any way the professional and sympathetic way that all the Trust witnesses have interacted with Caitrin. Caitrin has the benefit of her own legal advisors all of whom are entirely satisfied that she has not been put

under pressure or blackmailed or deceived or drugged or subjected to hypnosis or to any other improper process.

[20] I have given consideration as to why it is that in the face of such compelling evidence Fergus persists. I consider that an insight into the continuance by Fergus of his approach to his family can be taken from his own evidence. At an earlier stage he compared his career and that of Marvail. He expressed the assessment that she would never be as successful as he was because he had the ability to decide on a course of action and maintain his position where she would not follow through but would adapt. He was describing his approach to his work but it is apparent and I find that it is an approach that he adopts in relation to his family. He is intent on his overriding objectives and he will disregard his children's welfare and the truth in pursuit of those objectives and he will do so with passionate intensity.

Fergus' plans if a care order was made in respect of Caitrin and if Dona was returned to his care

[21] It was clear to Fergus that one potential outcome of the case being remitted to me was that Caitrin would remain in residential care in Northern Ireland and that Dona would be returned to his care. In those circumstances Fergus should have been assisting Dona and the court in relation to his future intentions and plans. His future intentions and plans being particularly relevant given that Dona is the child who is most under his control. Mr Ferris QC, on behalf of Fergus, initially stated that Fergus was not prepared to give evidence but his instructions were that if Caitrin remained in care in Northern Ireland that Fergus would stay in Northern Ireland with Dona on the basis that he felt he could be positively instrumental in repairing the relationship between Caitrin and Dona. That he had a preference in such circumstances that Dona would not return to mainstream education but would avail of a home tuition internet course organised from country ~A~. However he would support her decision if she wished to return to mainstream education in Northern Ireland. As far as tertiary education was concerned this would be in country ~A~ but she could receive it in the United Kingdom.

[22] In view of Fergus' decision not to give evidence the guardian ad litem was the next witness called. However Fergus then changed his mind and decided to give evidence. He was called by Mr Ferris and he was asked if Dona alone was returned to his care would he go to country ~A~ with her. He replied that he would consider this with Dona and that his personal feelings were quite evenly balanced. His views were 50/50 as to whether they would return to country ~A~ and Dona's views would be definitive. He was asked what he would say if she replied that she did not know and asked for his advice. He replied that she would have a view which could be quite nuanced. He was then pressed if she didn't have a view even nuanced what his advices would be and he replied that he would then involve the wider family in the decision. In short he had changed

his position from that which had been articulated the previous day on his behalf by Mr Ferris and he then either evaded formulating a plan or evaded informing the court of that plan. I consider that it is the latter. I have previously held that Fergus is an evasive witness. I maintain that finding.

[23] In evidence ~X~ social worker stated that there was no knowledge as to Fergus' present plans in circumstances where Dona alone was returned to his care. Indeed that the Trust did not know whether he was presently working, what his immigration status was, whether he would return to country ~A~ or remain in Northern Ireland. That it was entirely a blank canvass with no information available to the court upon which a decision could be made. That evidence of ~X~ was not challenged in cross examination by senior counsel on behalf of Fergus. Final submissions were made to the court on behalf of Fergus without any plan having been formulated in relation to Dona if she alone was returned to his care.

[24] In closing the case on behalf of Dona Mrs Farrell stated that there was no plan by Fergus for the future care of Dona. That there was no reason why a plan had not been formulated by Fergus. That it would be accurate to describe a return of Dona to the care of Fergus in such circumstances as a "jump in the dark". Mrs Farrell accepted that in itself was a reason why Dona could not return to his care. It was only at that stage that Fergus proffered to the court an undertaking that he would return with Dona to country ~A~ if Dona alone was returned to his care. That in effect he would implement the plan in respect of her that he had previously formulated if both Caitrin and Dona were returned to his care. I have previously held that Fergus is a dishonest witness. I maintain that finding. I do not accept that Fergus would voluntarily comply with the undertaking that he has proffered to the court. I come to that conclusion for a number of reasons individually and also cumulatively. That is on the basis of his dishonesty, on the basis of the passionate intensity with which he pursues his overriding objectives and on the basis of his difficulty in leaving two as opposed one child in Northern Ireland. Rather I consider that it is likely that he would remain in Northern Ireland with Dona seeking to bring about a change in the placements of Elliot and Caitrin and that he will remain at least until it was apparent *to him* that he could not achieve those objectives. It is not possible to say how long that will be except to anticipate that it will be for a substantial period. I repeat that Fergus is perfectly entitled to pursue a change in the placements of Elliot and Caitrin by the appeal process but not by manipulation and inappropriate means.

[25] I have given consideration as to whether in the circumstances of this case the undertaking which he has proffered could be enforced effectively so that he could be compelled to do what he now states he will do. If in breach of the undertaking Fergus remained with Dona in this jurisdiction then steps could be taken to punish him for the breach of the undertaking with a view to compelling him to comply. However this would lead to disruption to the care of Dona and

would not in my estimation lead to his compliance. Furthermore I consider that he would seek to justify his non compliance and to be relieved from his undertaking on numerous grounds all of which would cause delay and disruption. As far as enforcement of the undertaking in another jurisdiction is concerned one of the circumstances is that he is employable on a world wide basis. He has previously worked in country ~B~. He presently has offers of jobs in not only country ~A~ but also in yet another country. The enforcement of such an undertaking could easily be evaded, by the simple expedient of him obtaining employment in a country in which it would be extremely difficult if not impossible either legally or practically to enforce the undertaking.

[26] I do not accept that Fergus' present plan is to return to country ~A~ if Dona alone was in his care. I consider that he will remain in Northern Ireland to pursue his overriding objectives and if those objectives were no longer achievable then that he would suit his own interests, particularly his work interests. Whether that would mean that he remains in Northern Ireland or moves to Country ~A~ or to some other country would primarily be determined by offers of employment and he is employable in effect on a world wide basis. Fergus initially stated that he would remain in Northern Ireland if Dona alone was returned to his care. As is apparent I accept that statement but I reject his explanation that he would do so to repair the relationship between Dona and Caitrin. He has done nothing positive to repair that relationship and indeed has obstructed repair of it. I also find that if Dona is returned to his care in Northern Ireland she will be alone with Fergus in the same poor housing conditions, isolated, not in main stream education but rather being educated at home by a home tuition internet course organised from country ~A~.

Further evidence as to Fergus' lack of co-operation

[27] In paragraph [73] of my judgment dated 26 May 2010 I referred to an agreement (13/58) signed by Fergus dated 26 April 2010 setting out standards with which Fergus would comply during contact with his children. That agreement came about as a result of prompting by the court encouraging Fergus to take positive steps to assist in the re-establishment of contact with his children. The draft agreement was prepared on Fergus' behalf and its terms did not emanate from the Trust. The proposals in the document were all his proposals. Fergus signed the document but maintained that he had adhered to those standards in the past. I found that he had not adhered to those standards in the past and also recorded doubts which had been expressed as to whether he would comply with those standards in the future.

[28] In 2009 Fergus' then Senior Counsel, Mr Kennedy QC, had made an application that contact should be conducted in a language of country ~A~. I recognise that contact in one's own language is preferable to contact in a foreign language and that is so even if, as here, one is able to converse and analyse at a high level in that foreign language. However the need for supervision was such

that I ruled that contact should be conducted in English. The provision of an interpreter would slow down the natural speed of communication between a parent and a child and there could be disputes as to interpretation and the nuances of what was said. In circumstances where, as here, there were serious allegations of manipulation and abuse of the children the balance came firmly down in favour of supervised contact in English.

[29] One of the matters contained in the agreement dated 26 May 2010 was that Fergus agreed to speak in English during contact. During the hearing in June 2010 I was assured by Mr Ferris on behalf of Fergus that he was ready to co-operate in whatever was needed to resume contact. Fergus was present in court when that assurance was given.

[30] Since June 2010 contact between Fergus and Caitrin and Dona has been re established. However despite his earlier assurances that contact would be in English and on 4 August 2010 Fergus in an email to the Trust stated:-

“I have right and intend to speak (in a language of country ~A~) to my children during contact. If you want to supervise it - arrange interpreter. I DEMAND very clear answer URGENTLY - whether you are ready for contact in (a language of country ~A~) with (Caitrin) at 6 August as planned. If no - I will instruct my legal team to apply to court about this issue and therefore I forbid you to manipulate (Caitrin) again on this issue. Do not dare to bring (Caitrin) on our contact without confirming your position regarding my demand. Stop ruthlessly blackmail us. Again, I DEMAND URGENT response - are you ready for planned contact in (a language of country ~A~)?”

[31] The Trust responded that it was not their intention to provide an interpreter for contact as it is a condition of contact that it is conducted in English and supervised. Fergus, then in a personal capacity, brought an application to the court dated 18 August 2010 seeking, inter alia, a direction that contact with Caitrin and Dona be conducted in a language of country ~A~ with an appropriate interpreter present.

[32] As is apparent from the foregoing Fergus does not comply with his agreements. The doubts previously expressed about his compliance with the agreement dated 26 April 2010 were entirely justified. Mr Ferris accepts and I find that to date there has been no engagement or co-operation from him. That he has not worked with professionals for the benefit of his children. This lack of engagement and co-operation has been despite my encouragement on numerous

previous occasions to work honestly with the professionals so that his children can benefit.

[33] A further illustration of his failure to abide by the agreement dated 26 April 2010 is to be found in relation to indirect contact between Fergus, Caitrin and Dona. In the agreement Fergus agreed to contact supervised by a Trust social worker. However Fergus refuses to have indirect contact with Caitrin and Dona as any letter or card would be seen by a social worker before it is delivered. He agreed to supervised contact in April but refuses to avail of supervised indirect contact in July and August even to the extent of not sending a birthday card to Caitrin.

[34] Fergus has not used direct contact to repair the relationship between Caitrin and Dona. He has done nothing positive and indeed in the presence of Dona he refused a request by a social worker to him to pass on to Dona a present from Caitrin.

[35] The manipulation by Fergus continues. He wished to give a birthday present to Caitrin but the present he chose was the very present a request for which had caused such problems between Caitrin and Marcail – see paragraph [79] of my judgment dated 6 January 2010.

Dona

[36] Dona has not changed her wishes and feelings. She wishes to live with Fergus and move to country ~A~. I find that Dona's cognitive processes and her ability to think for herself are not as mature as Caitrin's. She is unable to and unwilling to think through the permutations. She is socially immature. She is under the influence of her father. She has idealised views in relation to Country ~A~ and polarised views in relation to her mother both demonstrating a lack of balance and an inability to think about country ~A~ and her mother in a rational way.

[37] Dona has been offered one to one therapeutic assistance but has refused it saying that her father told her not to engage in therapy and that she did not need therapy. The therapeutic assistance provided by the Trust is not however confined to one to one therapy. It also encompasses providing a nurturing environment to promote social, emotional and cognitive development. The staff at the residential home are trained and also have the assistance of a specialised team comprising a clinical psychologist, child psychotherapists, social workers and primary mental health workers. Members of that team in respect of Dona teach the staff how to help her improve her emotional vocabulary and to be aware of non verbal communication. They urge the staff to increase Dona's capacity for enjoyment in things, challenge her thinking, help increase her esteem and to help her to be an independent free thinker. The Trust therapeutic work includes providing a community and an environment within which Dona can

thrive and develop. That can be compared to the technique employed by parents reacting on a daily basis to the needs of their children and providing a safe nurturing environment. Ordinarily parents bring far more commitment and love to such an environment but this is no ordinary case. Dona has been in a therapeutic environment and she has been responding to it. Prior to Caitrin's change of decision the staff in Dona's residential home had noted that she was starting to enjoy herself, starting to blossom, starting to engage, starting to accept other people's opinions and views. The advances in relation to Dona were not as marked as those in relation to Caitrin but some advances had been made. Dona has not responded positively to the change in Caitrin's decision but the potential for change has been seen by the experience of her development prior to 26 May 2010.

[38] On 14 May 2010 ~Y~ had given evidence that both Caitrin and Dona were in a state of limbo as a result of the court process. That the lack of a decision was not helping the engagement process. That they did not feel the need to engage because the decision might be that they would leave their residential homes and return to their father. That if a care order was made that they would then just engage.

Care Plans

[39] The essence of the care plans proposed by the Trust for Caitrin and Dona remain as described in my judgment dated 26 May 2010. There have been amendments including provision for supervised contact with Fergus and the potential for both Caitrin and Dona to be in the same residential home. The care plans were the subject of consideration during the remitted hearing. The final care plans are dated 25 August 2010. In closing the case on behalf of Caitrin and Dona and on the basis that if I made care orders Mrs Farrell did not propose any alteration to the terms of the care plans.

Welfare checklist

[40] I will set out my consideration of the conclusions in relation to the particular matters contained in Article 3(3) of the Children (Northern Ireland) Order 1995. I do not intend to repeat all the factual findings that I have made when giving consideration to the individual matters set out in Article 3(3) of the Children (Northern Ireland) Order 1995 but rather I summarise my reasons and incorporate those findings to which I have not specifically referred. I have considered each of the children individually and also how their interests interact with each other. I have approached the welfare checklist on the basis of a factual finding that if Dona were returned to the care of Fergus, Elliot remained with Marcail and Caitrin remained in a residential home in Northern Ireland then that Fergus and Dona would remain in Northern Ireland but that if Fergus' overriding objectives were no longer achievable it is not possible to determine where they would live. I also find that whilst remaining in Northern Ireland

Dona's education would be by a home tuition internet course organised from country ~A~.

Welfare checklist Caitrin

[41] In summary Caitrin has demonstrated her ability not to be controlled by Fergus to follow a destructive path. It is not a question of it being anticipated that Caitrin will gain independence of mind but rather that she is gaining it and has gained it to an extent sufficient to express her desire to return to school in Northern Ireland and to remain in her residential home. The key factor is demonstrably no longer present. Absent the destructive control of Fergus the balance comes down decisively in favour of a care order so that her education and emotional development can be supported and secured by the Trust.

[42] Caitrin wishes to remain in her present residential home, attending a school in Northern Ireland, with contact with Fergus, Dona and Elliot. She does not wish to be in a foster placement. I hold that these wishes and feelings were arrived at by her freely, independently and on an informed basis. They represent her genuine decision which is not a product of manipulation either by the Trust or as a result of manipulation by Fergus. She is 14. These wishes and feelings carry weight but are not decisive.

[43] I remain of the view that her physical needs are met in care in Northern Ireland and that the physical care of her by Fergus would be to the same low standard set out in my fact finding judgment. Her emotional need to be nurtured and given confidence and independence would not be met by Fergus. She has needed support to repair her relationship with Marcail. She now in addition needs support to repair her relationship with Dona and to maintain her relationship with Elliot. I do not consider there to be any prospect of Fergus acting in a conciliatory fashion supporting and nurturing those relationships if they remained in conflict with his overriding objectives. Caitrin has significant emotional support in her present placement and whilst this is not the support of a family member she is responding to it and she is no longer on a destructive course. The therapeutic work is proving successful and I anticipate that it will continue to provide Caitrin with the ability to develop. In those circumstances I consider that the Trust's emotional support is giving Caitrin independence and maturity and is far superior to the emotional support of Fergus. Caitrin has decided to return to her school and she is an excellent pupil. Her education has been secured which brings with it the benefits of every prospect of a tertiary education and a fulfilling and rewarding career. In addition the attendance at school brings with it all the benefits of social contact with her own age group and extra curricular activities. By contrast her educational future with Fergus would be entirely uncertain and she would be isolated.

[44] Caitrin presently is making excellent progress and if I did not make a care order she will be distraught and betrayed with enormous emotional damage to her.

[45] I have set out her age, sex and background. Caitrin's cultural background is a factor that weighs in favour of a return to Fergus and to country ~A~ but it is not of overall significance given the other factors in this case.

[46] I have set out the harm which Caitrin has experienced and in my previous judgment I set out the harm which I envisaged that Caitrin would experience in the future. I consider that she now has sufficient maturity to deal with negative peer influences in her residential home particularly given the ongoing support of the Trust's care workers. I consider that the least harm would be caused to her if she remains in care in Northern Ireland.

[47] Marcail is still unable to meet the needs of Caitrin though the prospects in an appropriate timescale in this respect are improving. Marcail yearns to provide a home for Caitrin and to demonstrate her love for her. Not only will there be no recriminations but Marcail knows that there are no grounds for recriminations given the role played by Fergus. The support that Marcail can give will be unconditional. Whether Caitrin avails of Marcail's love and support depends on her continuing to gain independence from Fergus and Dona and whether in particular Dona reacts appropriately. Fergus' capacity to meet Caitrin's needs remains and I anticipate will remain heavily qualified.

Further conclusion in relation to Caitrin

[48] Caitrin is at risk of significant harm in the future if she returned to the care of Fergus. The harm in care is now significantly less given that she is no longer on a destructive path and is comfortable and happy in her environment. She presently cannot live with Marcail. It would not be appropriate to make no order. I make a care order. In arriving at that decision I am satisfied for the reasons that I have given that a care order is both necessary and proportionate and that no other less radical form of order would achieve the essential end of promoting the welfare of Caitrin.

Welfare checklist Dona

[49] Dona has not demonstrated independence from Fergus' control and states that she will not return to school. It could be suggested that the key factor of Fergus' destructive control is still present for Dona and therefore that I should remain satisfied that if a care order is made she will continue to be destroyed by Fergus and given that factor that the overall balance taking into account all the other factors in the case should come down in favour of a return of Dona to the care of Fergus. However the other factors in relation to Dona are different now from those upon which I based my judgment dated 26 May 2010. Then the

probability was that if she returned to the care of Fergus she would return to country ~A~, there would be contact with her extended family, there would be a family unit of three and a return to main stream education in country ~A~. Now if returned to the care of Fergus she will not be in country ~A~, she will be alone and isolated in Northern Ireland, she will not be returning to main stream education and there now is a need not only to repair her relationship with Marcail but also with Caitrin. On that basis alone I would come to a different conclusion than the one reached in my judgment of 26 May 2010.

[50] I have also reconsidered the evidence that Dona would comply if presented with a decision of the court because that impacts on the question as to whether Fergus will be able to continue to destroy Dona. I previously underestimated the effect upon and the ability of Caitrin to benefit from the therapeutic environment and to gain independence from Fergus' control. In view of that experience I have re assessed the evidence in relation to the response of Dona, given the way she was settling into a therapeutic environment, if presented with a decision of the court that it is in her best interests to remain in care. I did not previously consider that evidence to be persuasive in respect of Caitrin who has a greater ability than Dona to think through the options and in the event when empowered to make a decision she did so, thinking for herself. I do however consider that evidence to be persuasive in relation to Dona. I conclude that Dona is now awaiting the court's decision and a decision on appeal before making a decision as to a return to education. That the court's decisions will be a catalyst to a return to education by attending the school she previously attended in Northern Ireland or some other of the excellent schools suggested in evidence. That presented with a plan and court orders which are in her best interests she will comply. Her compliance given her age, her attachment to Fergus and her lack of emotional development will not be the same as Caitrin's but that she will comply gradually and in an appropriate timescale. In the same way that Caitrin and Dona's characters and stages of development are different I do not anticipate that the experience in respect of Caitrin that change can occur and occur rapidly will be exactly replicated in respect of Dona. However I accept and hold that Fergus' complete control over Dona in respect of education will extend to the decision in this court and perhaps on appeal. Dona will not endure any further years absence from education with all the effects that she knows this will have on her future life. A decision that she remains in care would be a catalyst to change. I conclude that it is the indecision of the court process that is preventing her from following a sensible path securing her future, her emotional development, settled relationships with her sister, brother and eventually her mother.

[51] Dona wishes to live with Fergus. She wants to live in and be educated in country ~A~. She does not wish Caitrin to remain in Northern Ireland nor does she wish Elliot to be placed with Marcail. In deciding the weight to attach to Dona's wishes and feelings I have taken into account her age. I also take into account whether her understanding has been distorted and manipulated by Fergus. The desire of Dona to live with Caitrin and Elliot is genuinely her own

wishes and feelings. However I consider that she has been manipulated by Fergus to hatred of Marcail and accordingly that those wishes and feelings in relation to Marcail and Elliot's placement with Marcail have been distorted by Fergus. I also consider the desire to be educated in country ~A~ has been created and manipulated by Fergus in order to achieve his overriding objectives and that her desire to return to country ~A~ is based on a distorted and utopian view.

[52] I maintain my original finding that Dona is influenced by a wish to reunite the whole family. The method that Dona expressly espouses is that if all three children go with Fergus to country ~A~ then that Marcail will reunite as an entire family. She has dreams for her parents to reconcile. Her wishes and feelings are affected by that dream.

[53] I have regard to Dona's wishes and feelings but I am wary of giving them undue weight in view of the influence exerted on her by Fergus and her lack of emotional development.

[54] I remain of the view that her physical needs are met in care in Northern Ireland and that the physical care of her by Fergus would be to the same low standard set out in my fact finding judgment. Her emotional need to be nurtured and given confidence and independence would not be met by Fergus. She has needed support to repair her relationship with Marcail. She now in addition needs support to repair her relationship with Caitrin and to maintain her relationship with Elliot. I do not consider there to be any prospect of Fergus acting in a conciliatory fashion supporting and nurturing those relationships if they remained in conflict with his overriding objectives. Dona has significant emotional support in her present placement and whilst this is not the support of a family member and she is not availing of it in the way that Caitrin is she is responding to it. The therapeutic work is not proving as successful with Dona in comparison with Caitrin but it has and I anticipate that it will continue to provide Dona with the ability to develop. In those circumstances I consider that the Trust's emotional support to Dona is far superior to the emotional support of Fergus. Dona has not yet decided to return to her school though I consider that she is awaiting the outcome of these proceedings. I consider that educationally she will not remain on a destructive course. If she returned to school then her education would be secured which would bring with it the benefits of every prospect of a tertiary education and a fulfilling and rewarding career. In addition the attendance at school would bring with it all the benefits of social contact with her own age group and extra curricula activities. By contrast her educational future with Fergus would be entirely uncertain and she would be isolated.

[55] Dona is presently secure in her residential home and if I did not make a care order and she returned to the care of Fergus she would be subject to ongoing emotional abuse with no prospect of repairing her relationship with her

mother and her sister. She will be disappointed by the outcome of these proceedings but has the support of the Trust and also knows that she also has available to her the support and love of Caitrin, Elliot and Marcail. She is more confident than Caitrin and I consider that the upset will be short term.

[56] I have set out her age, sex and background. Dona's cultural background is a factor that weighs in favour of a return to Fergus and to country ~A~ but it is not of overall significance given the other factors in this case.

[57] I have set out the harm which Dona has experienced and in my previous judgment I set out the harm which I envisaged that Dona would experience in the future. I consider that she has less maturity than Caitrin and whilst there is a risk of negative peer influences in her residential home she has the ongoing support of the Trust's care workers and there is no evidence that those influences have effected her to date. I consider that the least harm would be caused to her if she remains in care in Northern Ireland.

[58] Marcail is still unable to meet the needs of Dona though the prospects in an appropriate timescale in this respect can improve in the future if Dona is allowed to develop outside the controlling and destructive influences of Fergus. I repeat my earlier finding in respect of Caitrin in relation to Dona that Marcail yearns to provide a home for Dona and to demonstrate her love for her. Not only will there be no recriminations but Marcail knows that there are no grounds for recriminations given the role played by Fergus. The support that Marcail can give will be unconditional. Whether Dona avails of Marcail's love and support depends on her ability to gain independence from Fergus. Fergus' capacity to meet Dona's needs remains and I anticipate will remain heavily qualified.

Further conclusion in relation to Dona

[59] Dona is at risk of significant harm in the future if she returned to the care of Fergus. The harm in care is now significantly less than the harm she would suffer if returned to the care of Fergus. She presently cannot live with Marcail. It would not be appropriate to make no order. I make a care order. In arriving at that decision I am satisfied for the reasons that I have given that a care order is both necessary and proportionate and that no other less radical form of order would achieve the essential end of promoting the welfare of Dona.

Conclusion in relation to Elliot

[60] There is nothing in the further factual findings which would lead me to change the orders that I previously made in relation to Elliot. I confirm those orders.