

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

DONA (a pseudonym) (No. 7) (Application to discharge care order)

STEPHENS J

Anonymity and restriction on publication

[1] All the names of the family members in this judgment have been anonymised by the use of pseudonyms. Nothing should be published which would identify the children or any member of their extended family.

Introduction

[2] This is an application by Dona to discharge a care order which I made on 16 September 2010. Dona's siblings are Caitrin and Elliott. Dona's father is Fergus and her mother is Marcail.

[3] I have set out the factual background to the family in a number of judgments including *Re Caitrin, Dona and Elliott (Care Proceedings: Fact Finding)* [2010] NI Fam. 1, *Dona, Caitrin and Elliott (Pseudonyms) (No. 3) (Application to Vary a No Contact Order)* [2010] NI Fam. 3, *Caitrin, Dona and Elliott (Pseudonyms) (No. 4) (Care Proceedings: Final Hearing)* STE7847, *Caitrin, Dona and Elliott (Pseudonyms) (No. 5) (Care Proceedings: Remitted Hearing)* [2010] NI Fam. 24. I will not rehearse the details which can be found in full in those judgments.

[4] In essence private law proceedings in relation to Dona and her siblings commenced on 3 February 2009. Public law proceedings commenced on 11 September 2009. I granted an interim care order on 28 September 2009. On 8 January 2010 under citation [2010] NI Fam. 1 I gave judgment in relation to the threshold criteria. On 26 May 2010 under reference STE7847 I gave judgment in relation to what, if any, order I should make in respect of the care proceedings. In relation to Elliott I made a supervision order together with a residence order settling that he should live with Marcail. I decided not to

grant care orders in respect of Caitrin and Dona. The Trust and Marcail appealed my decision not to make care orders in respect of Caitrin and Dona. On 21 June 2010 the Court of Appeal was informed that there had been developments since I had concluded the evidence. The case was 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. On 16 September 2010 I gave judgment in relation to the remitted hearing and made care orders in respect of Caitrin and Dona on the basis of a care plan that they should remain in residential care in Northern Ireland.

[5] The decision to make a care order in respect of both Caitrin and Dona was appealed by Fergus. Dona appealed the decision to make a care order in respect of her. The Court of Appeal having heard the appeal ruled on 25 November 2010 that the appeals should be dismissed. The orders which I had made were affirmed.

Representation in relation to this application

[6] Mrs Keegan QC and Mrs Farrell appeared on behalf of Dona, Mr Toner QC and Ms McKenzie appeared on behalf of the Trust, Ms McGreenera QC and Ms Niamh Devlin appeared on behalf of Marcail and Mr O'Hara QC and Ms Steele appeared on behalf of the guardian ad litem. Fergus was a litigant in person.

Sequence in relation to the application

[7] The application was commenced on 3 March 2011. I reviewed the case on 11 March 2011, 21 March 2011 and 1 April 2011. I heard evidence on 5 April 2011 and 8 April 2011. I met Dona in my chambers accompanied by her solicitor and a member of court staff on 8 April 2011. There are voluminous papers in this case and from those papers and all the evidence I have heard I have been able to assess Dona's unique character and all the other matters pertinent to her in the welfare check list. However this second occasion on which I have met Dona has provided me with a further opportunity to understand and appreciate her character, understanding and motivation. Also to hear, at first hand, her wishes and feelings. The meeting also importantly afforded her the opportunity of assessing amongst other matters the care, the independence and the human concern afforded to her. I heard closing submissions on 12 April 2011 and after hearing those submissions I informed the parties that I had decided to refuse to discharge the care order. I indicated one of the essential reasons for refusing to discharge the care order. I reserved giving my reasons.

[8] On 12 April 2011 and as part of his closing submissions Mr O'Hara on behalf of the guardian, in addition to contending that the application should

be dismissed, suggested that I should make an order pursuant to Article 179 (14) of the Children (Northern Ireland) Order 1995 preventing Fergus from bringing any further application to the court in respect of Dona (or any of the children) without leave of the court. No notice had been given to Fergus of this application but despite the lack of notice he was prepared to deal with the matter on 12 April 2011. No formal application is required under Article 179 (14) but particularly where, as in the present case, the order is sought against a litigant in person adequate notice should be given, see *paragraph B-910 of "Children Law and Practice" by Hershman McFarlane*. Accordingly before considering that application, and despite Fergus' preparedness to deal with it immediately, I required copies of the statutory provision and of the authorities to be given to Fergus by the solicitor on behalf of the guardian and adjourned the matter to 5 May 2011 to enable him to consider his response. I also required a written application to the court on behalf of the guardian. Unfortunately there was a delay in giving these documents to Fergus and also a delay in issuing and serving a written application to the court on behalf of the guardian. These steps were not taken until 4 May 2011 and this clearly did not give Fergus sufficient time to prepare. I adjourned the hearing of the application under Article 179 (14) of the Children (Northern Ireland) Order 1995 to 23 May 2011 and then to 3 June 2011. It was also indicated to me on 5 May 2011 that the application that had been served was insufficient and I imposed terms that the new application together with a skeleton argument was to be served on Fergus by 12 noon on Monday 9 May 2011. Also on 5 May 2011 I indicated that I considered it appropriate to give my reasons for refusing to discharge the care order and my ruling in relation to the application under Article 179 (14) of the Children (Northern Ireland) Order 1995 in the same judgment.

[9] The application on behalf of the guardian under Article 179 (14) of the Children (Northern Ireland) Order 1995 was for an order that Fergus may not make an application without the leave of the court within the next 12 months:

- (i) for the discharge or variation of the care, supervision and residence orders which have been made in respect of Caitrin, Dona and Elliot; or
- (ii) for any order in relation to the residence of Caitrin, Dona or Elliot; or
- (iii) for any order which relates to contact with Caitrin, Dona or Elliot.

[10] I heard the application under Article 179 (14) of the Children (Northern Ireland) Order 1995 on 3 June 2011. I now give my reasons for refusing to discharge the care order in respect of Dona and my ruling in relation to the application under Article 179 (14) of the Children (Northern Ireland) Order 1995.

The application to set aside the care order

[11] The grounds of the application to set aside the care order advanced on behalf of Dona were that the care plan was not working. Dona continues not to attend school, she stays in bed most days until 3.00 or 5.00 pm. She does not engage with therapeutic work. She is estranged from her sister and her mother and has limited contact with Fergus and Elliott. It is contended that she is still intent on and will remain on a destructive path unless and until she can reside with Fergus and be educated in a language of country ~A~. She would prefer to live in country ~A~ and go to a school in country ~A~. Dona's dissatisfaction with her placement in Northern Ireland resulted in her absconding from the Trust's residential home and travelling on her own to the Republic of Ireland on 18 February 2011.

[12] Mrs Keegan in opening the case on behalf of Dona stated that there were three valid and better options which in order of preference were:-

- (a) Dona should reside with Fergus.
- (b) Dona should reside with a paternal aunt in country ~A~ or in some other kinship placement in that country.
- (c) Dona should reside in a foster placement.

[13] However as the case progressed it became apparent that there was no sufficiently formulated plan in relation to a placement with the paternal aunt or any other kinship placement. It also became apparent that a foster placement in this country would not result in Dona going to school and that there was no suitable foster placement available to provide for Dona in circumstances where she remained on a destructive course. Mrs Keegan stated that the only alternative plan that was sufficiently formulated was a placement with Fergus. That the application to discharge the care order could only succeed if the court accepted that it was in Dona's best interests to reside with Fergus.

[14] The issues in this case were further refined after Fergus had given evidence. As will become apparent he remains an evasive individual who is a dishonest manipulator and who lacks any ability to work openly and honestly with the court or the social workers or the guardian. Mrs Keegan conceded that if I did not accept the evidence of Fergus, so that there was a sufficient stratum of reliability in it, then the application to discharge the care order could not succeed. I have approached that concession on the basis of factual findings that I have previously made, have considered again and make again in this application, that is that Dona has been significantly harmed by Fergus

and still suffers from the significant harm inflicted by Fergus. I also find that the care presently being afforded to Dona by the Trust is motivated for her own good but unfortunately due to the harm inflicted on her by Fergus she is suffering harm in the care system. On that factual basis a major aspect of the application to discharge the care order is a balancing of the harm that would be inflicted on Dona if returned to Fergus as opposed to the harm that will be inflicted on her if she remains in care. To carry out such a balancing exercise the court has to be able to find a sufficient stratum of reliability in Fergus' evidence so that there is something to balance. For that reason I accept the concession made by Mrs Keegan as an appropriate concession.

[15] I would add that during the reviews prior to the hearing of this application and during the hearing itself Mrs Keegan was constantly seeking to persuade Fergus to provide information to the court as to what he would do if Dona alone was returned to his care. For instance to set out details of where he was proposing to live, what his plans were for the education of Dona, with whom he was going to live and what employment he was going to obtain. Fergus put in a statement dated 26 March 2011 containing one short paragraph setting out his plans (8/7). The lack of detail was criticised by Marcail (42/16) and by the guardian (17). Mrs Keegan's presentation of her client's case was hampered by this lack of detail. She called Lucy Fitzsimmons, a child and adolescent mental health nurse to support Dona's contention that the care plan was not working. That would have been her only witness but she was then left with extremely sparse evidence in relation to a placement with Fergus. She sought to persuade Fergus to be called by her as a witness and to give evidence in support of her client's case. She explained in open court and in front of Fergus the difficulties that the lack of evidence from Fergus presented for her client, Dona. I rose to enable her to speak privately to Fergus. After Mrs Keegan had spoken to Fergus he declined to be called as a witness by Mrs Keegan. This was an approach similar to the approach adopted by Fergus at previous hearings. However on this occasion he changed his mind and was then called by Mrs Keegan.

[16] Mrs Keegan's concern for details and co-operation from Fergus was to assist her client Dona. In the event at the last minute and after much persuasion Fergus agreed to be called by her as a witness. This lack of co-operation is not a new phenomenon. Throughout the entire sequence of litigation concerning this family I have repetitively implored Fergus to engage, to provide information and to work openly and honestly with others. He has been in court throughout and accordingly has heard all the evidence and seen for himself the humanity and consideration demonstrated in all aspects of the presentation of numerous witnesses. In relation to this entire litigation I have seen and heard from numerous witnesses who are patently honest, considerate and compassionate. In relation to this application I heard from ~N~ a social worker. She was a most experienced individual who demonstrated all the qualities that one would expect from a dedicated

professional. Frequently, if not ordinarily, in family cases as the evidence unfolds and a parent sees for himself or herself the witnesses and hears their evidence, there is a growing appreciation and understanding which leads to a building of trust and ultimately to the best possible resolution for the child concerned. Throughout this entire litigation and also throughout this application Fergus has shown no appreciation, no consideration, no ability to learn or to understand and no insight. What is sought from Fergus is honest co-operation maintaining his dignity and independence. A genuine desire to co-operate is something which is factually simple to discern. It has been and it remains completely absent in relation to Fergus. I consider that he continues to persist for the reasons set out at paragraph [20] of my judgment dated 16 September 2010.

Fergus's evidence

[17] In his statement (8/7) Fergus stated that

“If care order will be discharged and Dona will be transferred to my care, and court will permit us to return to country ~A~ according to her wishes, we will follow Dona's wishes and will return to country ~A~ as soon as will be practical.” (emphasis added)

He was asked as to what he meant by the words “as soon as will be practical”. In reply he stated that there were a lot of belongings which they had in Northern Ireland which would have to be sorted out before they could leave. Also that he would like to resolve Dona's immigration status in the United Kingdom before leaving so that she would be able to return to Northern Ireland in order to have contact with Caitrin and Elliott. That he wished to avail of cheap air fares and that these would have to be booked some time in advance. That he thought the timescale would be 1-2 months and no more. My evaluation of his presentation is that this was a timescale that was evolving as he gave evidence. He had not formulated any specific plans. He did not know what the problems were in relation to Dona's immigration status and had made no attempt to find out or to find out how and within what timescale they could be resolved. I did not discern any determination on his part to return to country ~A~ but rather I find that he was preparing the groundwork for subsequently justifying remaining in Northern Ireland by a whole series of reasons as to why it was not practical to leave.

[18] Fergus identified the flat in which he and Dona would live in country ~A~ and the school which she would attend. He stated that there were family and friends available to Dona in country ~A~ and that he could easily obtain employment there initially on a self-employed basis.

[19] He was asked by Mrs Keegan as to the new relationship which he had formed and replied that the lady did not live in Northern Ireland, that she comes from country ~A~ though she presently lives in a different country which he identified. That upon him going to country ~A~ she would relocate there and get employment. That she would be “quite good” as a step-mother for Dona and that he would hope to have further children in that relationship. On one view the words “quite good” could be disparaging but from his demeanour I interpret his use of those words as an affectionate understatement and that he does have regard for her. What is clear is that Fergus intends that this lady will be a part of his life and therefore a part of the life of Dona if she was returned to his care.

[20] Fergus stated that he had contacted the paternal aunt whom Mrs Keegan had suggested as a kinship carer for Dona. That the paternal aunt was not now willing to care for Dona because she considered that Dona would have emotional difficulties given that she had been in the care system in Northern Ireland for a substantial period of time. He considered in general terms that for a 13, nearly 14, year old girl who had missed two years at school that such was the seriousness of the position and the level of dedication and goodwill required that only he would be able to achieve a proper level of care for Dona. Accordingly in general he discounted any kinship placement for Dona.

[21] In his statement there was no mention of any attempt by Fergus to repair the relationship between Dona and her mother. When challenged about this omission, on the basis that it was a continuing indication of his disregard for the emotional development and security of Dona and also continuing evidence of his objective of excluding Marvail from Dona’s life, there was a sequence of answers from him culminating in an assertion that he would try if given an opportunity to do so in a way which he considered most appropriate. There was no question of him trying immediately or seeking any assistance or advice in his endeavour. I reject his assertion that he would try. At paragraph [27] of my judgment dated 8 January 2010 I set out one of Fergus’s overriding objectives as being to exclude Marvail from the lives of all three children and to have them in his sole care. I find that there has been no change in that overriding objective and I maintain that finding.

[22] Unfortunately Dona no longer sees or speaks to Caitrin. Fergus was not prepared to take any immediate steps to repair that relationship which is such a crucial relationship for both of them. I consider that he is quite content to see Dona isolated from her sister as a method of placing pressure on both of them and on the Trust’s care plan. I find that he is determined to take no positive action but rather continues to pursue both of his overriding objectives regardless of the damage that he inflicts on his children.

[23] Dona is on Fergus's passport and can therefore travel with Fergus. He was asked in cross-examination as to when he last used his passport and where he was when Dona absconded to the Republic of Ireland. It was a perfectly proper line of questioning to enquire as to whether Fergus was implicated in Dona absconding and whether Dona had any plans to travel to country ~A~. In reply Fergus stated that he had no recollection of when he last used his passport or where he was on the day Dona absconded. This was despite the fact that he was contacted by telephone on the very day that she absconded. He stated that he could not remember whether he had been to London or country ~A~ since 1 January 2011. He subsequently remembered being in London but he was not sure where he had stayed or for how long he was in London. I reject Fergus' evidence that he did not know where he was on the day Dona absconded. This was a particularly significant event and in addition he claims to have a good memory. I also reject his evidence that he could not remember whether he had been in London or country ~A~ since 1 January 2011.

[24] Fergus was asked, but refused, to give the name of the lady with whom he had formed a new relationship. He was asked when or where he had last met her and said he had no recollection. I again reject this lack of memory which I hold was used by him as an untruthful device in order not to answer proper and legitimate questions. He was not prepared to give any details as to an individual whom he plans to play an extremely important role in Dona's life. He was in effect preventing any independent assessment of the lady in question and as to whether she could be relied on to nurture and nourish Dona or whether she would be under the control of Fergus or would complement Fergus's destructive influences. This lack of information has also to be seen in the context of Dona's own reaction to this new relationship (80-81).

[25] Fergus was asked to provide the address of the paternal aunt in country ~A~ but failed to co-operate. He was not prepared to do anything to persuade Dona to go to school in Northern Ireland. He was not prepared to give information about his immigration status in Northern Ireland stating that he was not sure whether he was under threat of deportation.

[26] I approach my assessment of Fergus afresh in this application. As I have indicated I have sought to persuade him to adopt an open and honest approach and I remain and will remain open to such changes. Unfortunately there has been no change to date. Fergus is and remains a manipulator who evades, distorts, exaggerates and lies. On this occasion he resorted to a dishonest pretence of amnesia to avoid answering questions.

[27] My conclusion at paragraph [26] of my judgment dated 16 September 2010 in relation Fergus's plan if Dona alone was returned to his care was as follows:-

“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~.”

Those remain my findings but in addition I would add that Dona is being used by Fergus in pursuit of his overriding objective of undermining the placements of Caitrin and Elliot. For instance her approach to Caitrin is something that I consider has been “asked” of her by Fergus (that is asked either expressly verbally or by a nod or a wink or implicitly as a betrayer of Fergus for whom she has adulation). She would continue to be used by Fergus and the opportunities for such use in his care would increase. That increased use would cause significant damage to Dona.

The present care plan

[28] In my judgment dated 16 September 2010 and at paragraph [50] I considered that Dona was awaiting the court’s decision and a decision on appeal before making a decision to return to education. That the court’s decision will be a catalyst to a return to education by attending the school she previously attended in Northern Ireland or some other excellent school suggested in evidence. In effect that she would go to school regardless of Fergus’s influence. That change has not occurred. I consider that ongoing litigation together with Dona’s knowledge that Fergus will pursue all levels of the appeal process has led her to the belief that there is a prospect of change in her care plan or in her placement which in turn has reinforced her determination not to go to school (17). I also consider that Dona has an immature and mistaken belief that she will be able to catch up on all her

school work at age of 18 within two years. That she will be able to compress six years learning into two years. That if she is able to do that she also naively believes that it can be achieved without any adverse effect on other important aspects of her life and her personal development.

[29] The present care plan provides physically for Dona but she fails to engage. It has not been successful in its major objectives though there has been no or no substantial period where Dona has been free of litigation and allowed to settle and it has been disrupted by Fergus. The lack of success in its major objectives has been a lack of success to date and I do not consider that it is bound to remain static especially taking into account the growing maturity of Dona. Increasing maturity should lead to growing insight and a re assessment of what are her present naïve views. I do not accept that she will remain on a destructive path unless and until she can reside with Fergus.

[30] Faced with these problems with the care plan the Trust is again exploring a kinship placement for Dona. The prospects are not promising. Fergus's brother has been vocally partisan in favour of Fergus. This raises the potential that a placement with him would be the equivalent of returning Dona to Fergus in that if Dona was placed in his care he would subsequently and immediately place Dona in the care of Fergus. Fergus is not putting forward any member of his family as a kinship carer. The communication with the paternal aunt has been through Fergus. It would be helpful if direct contact could be established between her and the Trust especially if she was prepared to travel to Northern Ireland. If she did so that would be an indication of her commitment and would provide her with an opportunity to meet Dona and the rest of the family including Marvail. The Trust, the guardian, Fergus, Marvail and Dona could then form an assessment of her abilities and her independence. Fergus does not help any assessment of the paternal aunt even to the extent of failing to provide her address or other contact details. He frustrates and blocks anything that does not comply with his overriding objectives despite the effect on Dona and the rest of his family. The effect on Dona is not to be under-estimated. Upon being told by the Trust as to the process of having her aunt and uncle assessed so that she may be able to return to country ~A~ she was elated (98) (60). Fergus is aware of that response having all the papers including those pages available to him. He has responded to her elation by obstruction and he still continues to obstruct.

[31] If there is commitment from the paternal aunt then the evaluation process could take time and part of the evaluation process may well be the attitude she adopts to Dona returning to education in Northern Ireland until a move to her care in country ~A~ can be organised.

Discussion and welfare checklist

[32] Fergus is untrustworthy. I reject his evidence. At the least I cannot find a sufficient stratum of reliability in his evidence to enable me to compare the harm that he will inflict if Dona is returned to his care with the harm that will be inflicted on Dona if she remains in the care of the Trust. In those circumstances Mrs Keegan accepted that the application to discharge the care order should be dismissed. I agree.

[33] I say at the least because I do make factual findings as to what would occur if Dona was returned to Fergus' care rather than stating that due to Fergus' lack of credibility that it is not possible to make such findings. As I have indicated the factual findings that I make are that if returned to Fergus' care Dona will remain in Northern Ireland 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~. Furthermore that she would continue to be used by Fergus in pursuit of his overriding objectives. That Fergus does not co operate but rather is prepared to and does inflict harm on his children including Dona. I have also reviewed all the previous factual findings contained in my earlier judgments and maintain those findings in so far as they impact on the present risk of significant harm to Dona. I balance the harm done to Dona if she was returned to the care of Fergus against the harm done to her by remaining in the care system and I come down clearly in favour of maintaining the care order.

[34] I have indicated that a major aspect of the application to discharge the care order is a balancing of the harm that will be caused to Dona if she was returned to Fergus' care against the harm that will be caused if she remains in the care system. However it is of course necessary to go through the welfare checklist which I now do.

[35] *The ascertainable wishes and feelings of Dona considered in the light of her age and understanding.* Dona yearns to live with Fergus in country ~A~. She is nearly 14 years of age. Her wishes and feelings are potentially most important though not necessarily determinative. I would wish that Fergus was capable of working openly and honestly so that effect could be given to Dona's wishes and feelings. Everyone in this case has encouraged him to do so but he remains intransigent and dishonest. Dona remains under the control of Fergus for whom she has adulation (25). She stated to the social worker ~N~ during a conversation where she had misapprehended the question that she had done everything that had been asked of her, by which she meant everything that had been asked of her by Fergus. I consider that she has insight into the destruction of for instance her education but she does this for Fergus. She is naive in her assessments and continues to have an

idolised view of country ~A~ and those who live in it. I am unable to give any significant weight to Dona's wishes and feelings.

[36] *Dona's physical, emotional and educational needs.* I have set these out in previous judgments.

[37] *The likely effect on Dona of any change in her circumstances.* If Dona was placed with Fergus she would be subjected to ongoing abuse and this would have both a significant short and long term impact on her. There would be positives in that she would undertake education by internet but she would remain isolated. The balance comes down firmly against exposing her to abuse in a placement with Fergus.

[38] *Dona's age, sex, background and any characteristics of her which the courts consider relevant.* I have set these out in all my previous judgments.

[39] *Any harm which Dona has suffered or is at risk of suffering.* I have set out the harm which Dona has suffered in previous judgments. She has suffered, is still suffering and will suffer harm by virtue of the actions of Fergus. She is suffering harm in the care of the Trust but it is substantially less than the harm in the care of Fergus.

[40] *How capable each of Dona's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs.* I repeat the conclusions that I have reached in previous judgments and in particular my conclusion at paragraph [58] of my judgment dated 16 September 2010.

[41] Having reached these conclusions I step back and ask the overall question as to what would be in Dona's best interests. I concluded that they would be best served by her remaining in care in Northern Ireland.

Legal principles in relation to Article 179 (14) of the Children (Northern Ireland) Order 1995

[42] I seek to apply the guidelines extracted by the Court of Appeal in *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573 in relation to the equivalent statutory provision in England and Wales. Those guidelines were in the following terms:

- (1) Section 91(14) should be read in conjunction with s 1(1) which makes the welfare of the child the paramount consideration.
- (2) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.

- (3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.
- (4) The power is therefore to be used with great care and sparingly, the exception and not the rule.
- (5) It is generally to be seen as an useful weapon of last resort in cases of repeated and unreasonable applications.
- (6) In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
- (7) In cases under para (6) above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.
- (8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.
- (9) A restriction may be imposed with or without limitation of time.
- (10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.
- (11) It would be undesirable in other than the most exceptional cases to make the order ex parte.

I have also been referred to *In the matter of L and L1 (Article 179(14) of the Children (Northern Ireland) Order 1995)* [2004] NIFam 7, *MF v MF* [2003] NIFam 10, *Re NTB (a child), JN v JSEB* [1999] NIJB 117 and *Re R (Shared residence application: contact)* [2003] NIJB 86.

Consideration of an order under Article 179 (14) of the Children (Northern Ireland) Order 1995

[43] I have set out in all 6 of my previous written judgments and in this judgment the reasons for concluding that Fergus is a dishonest and manipulative individual intent on pursuing his overriding objectives. The methods he has used to date have been diverse including manipulation of his children, ill founded complaints about social workers, a distorted and one sided campaign in the press in country ~A~, in this country and in the Republic of Ireland, one sided and distorted accounts to the Northern Ireland Commissioner for Young People, unnecessary involvement of the police, allegations of impropriety against teachers, abusive language, one sided and distorted accounts to numerous bodies and individuals, the use of immigration procedures in an attempt to have Marcail deported, attempts to prevent Marcail obtaining employment, the use of his financial position, disrupting contact, and failing to obey court orders.

[44] I take into account that Caitrin and Dona have their own solicitors and counsel to whom they give instructions. They can with the benefit of their own independent legal advice from both senior and junior counsel bring their own proceedings. No restriction is sought to be imposed in relation to their ability to bring proceedings over and above what is prescribed by Article 179(5) of the Children (Northern Ireland) Order 1995. The making of an order in this case against Fergus in so far as it relates to Caitrin and Dona does not deprive them of the ability to bring their own applications.

[45] I have also taken into account in considering the welfare of the children and the effectiveness of any order under Article 179(5) of the Children (Northern Ireland) Order 1995 the question as to whether if I make an order Fergus could then manipulate and put pressure on Caitrin and Dona to make an application in his stead. That would put pressure on Caitrin and Dona and would mean that the order could be circumvented. There is a risk that this will occur and that risk has to be taken into account. I consider that the risk in relation to Caitrin is diminishing but there is a significant risk in relation to Dona. Dona does however have the protection and advice of her legal representatives. I take those risks into account.

[46] In the hearings before me Fergus has repeatedly objected to evidence and made numerous applications in the course of the proceedings. I have given rulings in relation to each of his applications only for the same application to be repeated at a later date and for a further ruling to be made. I bear in mind that he is a litigant in person though he has at some stages been represented. I consider, even making allowances for the fact that he is a

litigant in person, that a number of the applications that he has made have been unreasonable and that the majority of the repeated applications were unreasonable.

[47] Ongoing court proceedings are having a disruptive effect on Dona. Her ability to settle and reflect is adversely affected by the prospect that there may be an outcome to the litigation which corresponds with her adulation of Fergus and her idolised view of country ~A~. There is a serious risk that further court proceedings by Fergus will destabilise Dona's life. Court proceedings are also having an effect on the other children. They disrupt Elliot's primary carer and therefore disrupt Elliot. There is a serious risk to Elliot. Caitrin continues to be concerned about the outcome of the proceedings and in particular her fractured relationship with Dona. There is a serious risk to her.

[48] I consider that there has been a past history of Fergus making repeated and unreasonable applications within the context of the proceedings which I have heard.

[49] I also am satisfied that the facts of this case go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the common situation where there is animosity between the adults in dispute or between the child protection authority and in this case Fergus. Further I am satisfied that there is a serious risk that, without the imposition of a restriction under Article 179 (14) of the Children (Northern Ireland) Order 1995, Caitrin and Dona and Marcail, the primary carer of Elliot, will be subject to unacceptable strain.

[50] I make an order under Article 179 (14) of the Children (Northern Ireland) Order 1995 that Fergus may not make an application without the leave of the court within the next 12 months:

- (i) for the discharge or variation of the care, supervision and residence orders which have been made in respect of Caitrin, Dona and Elliot; or
- (ii) for any order in relation to the residence of Caitrin, Dona or Elliot; or
- (iii) for any order which relates to contact with Caitrin, Dona or Elliot.

Conclusion

[51] I dismiss the application to discharge the care order and I make an order against Fergus under Article 179 (14) of the Children (Northern Ireland) Order 1995.