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(subject to editorial corrections)\**

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**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**FAMILY DIVISION**

**Re Florence McT and others (Proposed guide to case management: role of  
Guardian)**

**STEPHENS J**

**Introduction**

[1] This is a case in which I granted Care Orders in respect of three siblings, whom I shall refer to for the purposes of these proceedings as Florence McT, 8, Connor McT, 6, and Finbar McT, 5. I have anonymised this judgment. The names and initials used are not the real names or initials of the children. Similarly the other names and initials used in this judgment are not the real names or initials of any of the individuals. Nothing should be reported which would identify either the children or the parties.

[2] I also granted Interim Care Orders in respect of their half siblings who are twins whom I shall refer to as Mark N and Luke N now approximately 8 months of age. Ms Rita McK is the mother of all five children. Edward McT is the father of Florence, Connor and Finbar. Richard N is the father of the twins Mark and Luke.

[3] The care plan in relation to Florence, Connor and Finbar is for long term foster care in their present foster placements with contact with their mother and siblings, it being recognised that rehabilitation to their mother is no longer a viable option either at all or within a suitable timescale.

[4] Interim Care Orders were made on the basis of a clearly defined preferred plan of rehabilitation of the twins to Rita informed by a further time limited assessment of her ability to care for two out of her five children. Also concurrent planning for permanency by long-term foster care or adoption, in either case proactively seeking a kinship placement utilising family group conferencing. The decision to grant an interim care order was made on the basis of the principles set out in *Re S (Minors) (Care Order: Implementation of Care Plan)*, *Re W (Minors) (Care Order: Adequacy of Care Plan)* [2002] 1 FLR 815

at paragraphs 89 -102. Concurrent planning was informed by the decision of Bracewell J in *Re D and K (Care Plan: Twin Track Planning)* [1999] 2 FLR 872.

[5] Edward McT, the father of Florence, Connor and Finbar, is an abusive and violent individual. He did not wish to and has not played any part in these proceedings. Richard N, the father of the twins, Mark and Luke, suffers from an addiction to illicit drugs. In these proceedings he recognised, and I am satisfied, that he is unable to care for his children and could not be involved in their care in any way.

### **History of the proceedings**

[6] Ms Rita McK's ability to care for her three eldest three children came to the attention of the Trust in 2003 within months of the birth of Finbar. The situation deteriorated and Florence, Connor and Finbar were placed in foster care with Rita's agreement on 6 September 2005. Thereafter Rita McK engaged positively with Women's Aid and addictions services. Accordingly Florence, Connor and Finbar were returned to her care in February 2006.

[7] Between February 2006 and December 2006 Florence, Connor and Finbar remained in Rita's care but unfortunately the standard of care again deteriorated. In December 2006 Rita agreed to all three children being placed in foster care. All three have since remained with the same foster carers. It is a matter of regret that all three siblings were not initially placed with the same foster parents or within a short period moved to the same foster family. Florence and Connor were placed with one foster family. Finbar, with another. Despite the different foster families sibling contact was maintained. It is clear that all three siblings are of considerable significance to each other. The sibling bonds, which are of such significance and importance over a lifetime, could have been strengthened if all three had been in the same placement. It is also a matter of considerable regret that the final disposal of the ensuing care proceedings has occurred some 2½ years after the three children were taken into foster care. What was a temporary response to circumstances has now, through the formation of attachments, turned out to be permanent. In the meantime it is clear that all three children and in particular Florence, have suffered by reason of the delay and the protracted uncertainty in their lives. Not only have they suffered but the options for their future care have been reduced as they have got older.

[8] Care proceedings were commenced in the Family Proceedings Court in October 2007; some 10 months after the 3 children were taken into foster care. Those proceedings were prompted by the withdrawal of Rita's consent. It is not now possible to say when the Trust would otherwise have commenced proceedings if consent had not been withdrawn. When care proceedings were commenced and after the passage of some 10 months after the three

children were taken into foster care, there should have been very clear primary and concurrent plans for their future which plans should have been immediately available to the Guardian for consideration and analysis.

[9] The proceedings were listed for final hearing on 17 July 2008 in the Family Proceedings Court. The Trust considered that rehabilitation to the parents was not appropriate. The threshold criteria were never seriously in issue though there had not been any formal findings in that respect nor had there been any formal concessions. The crucial issue in the proceedings was whether the court should make an order and if so what order. This, in turn, being dependent on the prospects for the rehabilitation of the 3 children to Rita. It is a feature of the history of these proceedings that the Guardian's reports were lodged in court either on the day of or very shortly before a hearing date. In fairness to the Guardian that feature is a function of the Guardian's report being required to be filed whenever all the other reports and statements have been filed. For the hearing on 17 July 2008 the Guardian's report is dated 23 June 2008. In that report the Guardian considered that there was insufficient evidence available to complete a final report and required more precise reasons as to why rehabilitation was being ruled out. She requested that the hearing date be vacated and that further investigations be undertaken. In the event the case was taken out of the list for another reason.

[10] A new hearing date of 18 September 2008 was fixed. The Guardian's final report was dated 15 September 2008. This was a lengthy 45 page report. At this stage Rita was in the final months of pregnancy with the twins. The Guardian was at variance with the Trust's proposed care plan which ruled out rehabilitation to Rita. The Guardian suggested that the case be adjourned "on a no order basis" to facilitate the phased return of the three children to Rita and for further assessment of her ability to look after the three children.

[11] The introduction of this report, just prior to the new final hearing date, and a request by Rita for expert evidence, led the District Judge to vacate the hearing date and to transfer the case to the Family Care Centre on the ground of complexity.

[12] The case was reviewed in the Family Care Centre and hearing dates of 22 to 26 June 2009 were fixed. The case was then transferred to the High Court on 2 March 2009 and after transfer the hearing date of 22 June 2009 was confirmed.

[13] The Guardian's report for the final hearing on 22 June 2009 was dated 22 June 2009. On this occasion an outcome to the proceedings was reached with care orders being made in relation to the 3 eldest children and interim care orders being made for the twins with a clearly defined plan.

## **Proposed guide to case management**

[14] The new proposed guide to case management places emphasis on early identification of issues with pro-active involvement of the Guardian ad Litem at the earliest possible stage. I expressly make clear my sympathy for the task with which the particular Guardian was presented in this case and my support for her and the dedication, professionalism and experience which she demonstrated. I intend these remarks only be helpful for the future and as to the nature of the change in the system driven by the court's proposed guide to case management which change is to be implemented by the agency. The Guardian in this case was working within a system which does not appear to place sufficient emphasis on the early pro active role of the Guardian. The present system involves the Guardian commenting on all the evidence once complete so that if there is any delay in gathering any of the evidence then an inevitable consequence is that the Guardian's contribution is delayed. That in turn has the potential to delay a hearing and most significantly delays the valued input of the Guardian at an earlier and therefore more effective stage. A shift in emphasis is required from re action to pro action. Such a shift is contained within the proposed guide to case management.

[15] Under the new guide at the first directions hearing by day 8 (or, in the case of proceedings in the Family Proceedings Court, by the next possible sittings of the court thereafter) a timetable would be set to reflect in particular the needs of the children. In this case such a timetable would have taken into account, if there was no available foster placement for all three children, the adverse effect on the sibling bond of the children being in separate foster placements. Regrettably in the event, as matters have now transpired, the three siblings will never be in the same household. The timetable would also have taken into account that the children had already been in foster care for 10 months. I would also observe that a timetable for the children of 2½ years since they were placed in separate foster homes would never have been contemplated at such a first directions hearing. The guide requires the Guardian to protect the interests of the children by reference to the original timetable or any proposed revision of it.

[16] The new guide requires the parties to identify the issues at the earliest stage. In this case, as I have indicated, the threshold criteria were never really in issue. The guide requires that Form C1, by which the proceedings are commenced, includes an initial summary of threshold facts. At the first directions hearing a standard direction, which must be completed by day 40 at the latest, is for the filing of a response by each parent to the allegations made in Form C1. Accordingly the parents must respond to the threshold facts. Similarly at the first directions hearing a standard direction is that each party files by at the latest day 40, a case summary indicating which issues the filing party considers to require determination (including any outstanding

issues as to transfer and the retention of expert witnesses) and which issues have been or will be agreed between the parties (subject to the approval of the court).

[17] Accordingly by at the latest day 40 there should be sufficient clarity to determine for instance whether there is or is not any issue in relation to the whole or any part of the threshold criteria. If there is no issue in relation to the whole or at least some of them, then that should be recorded. If there is a dispute of small compass its relevance should be considered and if relevant and capable of early determination then that should occur.

[18] The guide requires that the Guardian's initial analysis has to have been filed in time so that it is available for consideration by day 45. That analysis should include consideration of the following matters (unless any is inapplicable);

“(i) the adequacy or otherwise of each of the threshold criteria proposed by the applicant.

(ii) all possible placement options.

(iii) any family members who might care for the child if rehabilitation were not to be considered a viable option whether for the present or at all;

(iv) the views of the child.

(v) risk issues and safety planning.

(vi) analysis of key issues.

(vii) applicant's social work and plans, including any further work or planning needed.

(viii) recommendations for next steps in the conduct of the application (including the timetable).

(ix) any need for expert evidence/advice, and, if there is such a need, the identities of relevant available experts and advice as to the time within which each expert could report.”

Accordingly in this case under the new guide to case management by at the latest day 45 the Guardian would have been proactively dealing with the two different foster placements for these three children, the need for further assessments of the mother with a view to rehabilitation, together with

concurrent planning. Thus the Guardian's assistance would have been provided at an earlier and accordingly more effective stage.

[19] I should also say something about aspects of future reports from the Guardian. I do so with caution out of respect for the very considerable work undertaken by the Guardian in this case and recognition that individual Guardians work as part of the agency and under its control. I repeat my sympathy and support for the individual Guardian in this case. There have been a considerable number of experts' reports in this case. A number of pages of the Guardians 45 page report in September 2008 consisted of quotations from those experts reports. Anyone reading the Guardian's report will already have read the experts' reports. Reading sections of the Guardian's report in this case was in the event to re read sections of the experts' reports. I say in the event because it is first necessary to devote the time to reading the entire Guardian's report before one comes to that conclusion. The Guardian's analysis, criticism and suggestions based on his or her professional training and extensive experience of social work and of cases of this nature is greatly appreciated in arriving at decisions which in the vast majority of cases require anxious balancing of conflicting factors. The analysis, criticism and suggestions add value. The repetition of, as opposed to a short summary of, what has gone before does not. The Guardian's report dated 22 June 2009 ran to some 26 pages. Sections of that report repeated what was contained in the earlier report of September 2008. Having read the earlier report of September 2008 it was necessary to read the entire report of 22 June 2009 to determine what was new. It was the further information and a reasoned and considered approach as to how it affected the previous views of the Guardian that added value. The repetition of what was contained in the earlier report did not.

## **Conclusion**

[21] Florence, Connor and Finbar's representative, the Guardian, has to be appointed and allocated at the earliest opportunity. Thereafter the Guardian, with the assistance of legal representation, should then pro actively deal with the immediate short term issues including issues such as timetabling to conclusion. The substantive contribution comes in sufficient time for consideration at day 45. That is not to diminish the contribution made at day 8 (or, in the case of proceedings in the Family Proceedings Court, by the next possible sittings of the court thereafter). Nor is it to diminish the contribution that the Guardian makes by his or her investigations leading to the preparation of the interim report, which investigations might prompt appropriate and timely action by the trusts. The prompting by the Guardian of appropriate action by the trust comes about under the guide not only by the fact of early investigation but also by the Guardian's obligation under the guide to cooperate. The guide sets out that the parties are expected to cooperate with each other and the court in achieving the object as defined in

clause 1.1. The implementation by the Guardian of this expectation would for instance lead the Guardian to enter into discussions with the trust at the earliest stage putting forward the interests of the child to achieve what the Guardian perceives to be the best possible outcome (subject to the approval of the court). This emphasis on cooperation is another aspect of the Guardian taking an early pro active role on behalf of the child.