

Neutral Citation: [2017] NIFam 2

Ref: KEE10198

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

Delivered: 10/02/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

**IN THE MATTER OF AN APPLICATION UNDER THE
CHILDREN (NORTHERN IRELAND) ORDER 1995**

(APPEAL: JURISDICTION)

Between

HM

Appellant

and

VM

Respondent

KEEGAN J

Introduction

[1] This matter comes before the court by way of an appeal brought by HM in relation to two children namely, EM who was born on in 2013 and JM who was born on in 2015. I have anonymised these proceedings to protect the interests of the two children and nothing must be published which would identify the children or the adults.

[2] This case has come to the High Court on the basis of an Appeal Notice filed by HM in relation to a decision of His Honour Judge Sherrard sitting at the Family Care Centre in Belfast. The decision is dated 6 December 2016. The decision forms the basis of an order issued on that date. The substance of the decision is that the learned County Court judge determined that jurisdiction to hear the case in relation to Children Order proceedings rested with Northern Ireland. That was on the basis that he concluded that the Article 8 proceedings were issued when EM was

habitually resident with her father's agreement in Northern Ireland. This was an appeal hearing from a decision of District Judge Eamon King made on 24 July 2016 to the effect that the Family Proceedings Court had jurisdiction to hear the Article 8 proceedings.

[3] The appellant appeared as a litigant in person and the respondent to the appeal was represented by Ms Hansen BL. The family proceedings have not been determined as yet and it is important to note at the outset that the substantive proceedings have been adjourned without any Article 8 order being made. Indeed, the Order of Judge Sherrard of 6 December 2016 indicates that proceedings stand adjourned until 14 December 2016 at 10:30 am for review at Newtownards. I was told that proceedings remain adjourned to a date in February pending my determination in this case.

[4] This case first came before me on 16 January 2017. On that date I raised an issue that I considered that there may be a difficulty with the jurisdiction of the High Court to hear an appeal from an appeal. I allowed the appellant, HM, some time to research the legal issue and I reconvened the court on 30 January 2017. In advance of that the appellant filed written submissions before the court and Ms Hansen BL also filed written submissions.

Background Facts

[5] The background facts can be stated relatively simply given that this judgment deals only with the question of the jurisdiction of the court to hear this appeal. The parties appear to have separated in December 2014 when at the end of a family holiday to see her parents the mother decided not to return to the family home in Scotland. The couple had lived in Scotland since their marriage on in 2012 although there was a brief separation in October 2014. The eldest child EM was born in Scotland in 2013. When the mother decided to stay in Northern Ireland she was pregnant with the second child JM and he was born in Northern Ireland in 2015.

[6] On 23 October 2015 the mother issued a C1 application for a Residence Order. This was lodged on 26 October 2015. On 16 November 2015 a C4 acknowledgement of service was received by the father dated 6 November 2015. At this stage the father was legally represented. On 2 December 2015 there was a directions hearing at Newtownards Family Proceedings Court. Both parties were legally represented. The father was directed to file a report on his mental health by 18 January 2016. On 21 January 2016 there was a review at Newtownards Family Proceedings Court. Again both parties were legally represented. Statements of evidence were filed and the case was listed for hearing on the residence/contact issue on 17 February 2016.

[7] I note that there was a C2 application by the mother seeking a direction for an addendum psychiatric report and a referral to the child court welfare officer. On 17 February 2016 the case was listed for hearing at Newtownards Family Proceedings Court. The case appears to have been adjourned for the court children's

officer referral. The C2 application was adjourned in respect of other directions sought. An interim contact order was granted by consent and the case was adjourned to 16 March 2016 to allow for the court children's officer referral to be completed.

[8] It appears that after this date and before 16 March 2016 that the appellant dispensed with his legal representatives and appeared thereafter as a litigant in person. On 16 March 2016 the matter was listed for review at Newtownards Family Proceedings Court. At this stage HM advised the court that he did not wish to pursue the jurisdiction issue but the case was adjourned for the court welfare officer's report. Fairly shortly thereafter, on 18 March 2016 HM corresponded with the court office requesting a hearing on jurisdiction. The case appears to have then gone to the Family Care Centre on the basis of an appeal. The exact terms of that are unclear to me but the matter was remitted to the Family Proceedings Court. On 19 May 2016 the case was listed before Newtownards Family Proceedings Court for determination of the jurisdiction issue. Unfortunately, the matter could not be heard on that date and it appears that it was adjourned a number of times to fix a date. The hearing occurred on 21 July 2016. I note that at the hearing in relation to the jurisdiction issue District Judge King heard oral evidence and received legal argument. I was told that during the course of that hearing HM cross-examined his wife in relation to the case being made. The District Judge decided that the Family Proceedings Court did have jurisdiction to hear the case.

[9] On 22 July 2016 a Notice of Appeal was lodged by HM. On 20 September 2016 the Family Care Centre gave first directions. An appeal in relation to the jurisdiction issue was then heard over 3 days, 12 and 13 October 2016 and 1 November 2016. I was informed that the appellate judge heard oral evidence and received written submissions.

[10] On 6 December 2016 the court determined Northern Ireland to have jurisdiction for the purpose of Children Order Proceedings. The court noted that the matter should return to the Family Proceedings Court to deal with the substantive case. On 8 December 2016 a Notice of Appeal to the High Court was lodged by HM.

[11] I note the following from the judgment of His Honour Judge Sherrard:

"It is regrettable that this matter has arisen as courts in both jurisdictions have similar powers and the same orders are likely to be made in either court. The time taken to resolve this jurisdictional point could far better have been spent considering the welfare of the children which has not yet been touched upon to any significant degree. I sincerely hope that this marks the end of the debate over jurisdiction and that the parties can expend their considerable energies on working for the welfare of the children."

[12] In his judgment, the judge examines the legal provisions in relation to habitual residence. He states that jurisdiction is governed by the Family Law Act 1986. He does not consider that this matter is governed by the Brussels II Regulatory regime. The judge then deals with issues of habitual residence. He refers to Section 41 of the Family Law Act 1986. He refers to the evidence in the case and his conclusion is that the Article 8 proceedings are properly grounded in Northern Ireland. At paragraph 26 of his judgment Judge Sherrard said:

“I consider it might be beneficial to offer clarity on a number of matters that have caused particular concern to Mr M. I observe Mr M to be a man who deeply regretted the breakdown of his marriage and who is prepared to make very significant and life changing compromises to meet the needs of his children and his responsibilities as a father. It is quite apparent that he dearly loves his children and wants the best for them and that this includes his sincere desire to play an active role in their lives. There is no evidence presently before this court that Mr M suffers from a psychiatric illness that would have any bearing on his relationship with the children.”

[13] I was told during the course of the hearings before me that HM does enjoy contact with his children once per fortnight. However, the issue appears to be that that contact is supervised and he wants further contact to take place. It is within this context that I turn to the relevant provisions.

Legal Context

[14] The statutory provision governing an appeal to the High Court is Article 166 of the Children (Northern Ireland) Order 1995. Article 166(1) says:

“(1) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the High Court against—

- (a) the making by a county court of any order under this Order; or
- (b) any refusal by a county court to make such an order,

as if the decision had been made in the exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under Article 60 of that Order.

- (2) An appeal shall not lie to the High Court under paragraph (1) –
- (a) on an appeal from a court of summary jurisdiction;
or
 - (b) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 in the same proceedings.”

[15] In the course of her helpful argument provided to the court Ms Hansen made the point that this appeal is not correctly brought to the High Court by virtue of Article 166(2)(a) in that it is an appeal from a court of summary jurisdiction. HM filed written submissions to the court which relied on Article 166(3)(b). In his oral submissions to me HM indicated that he was no longer relying on Article 166(3)(b) but rather Article 166(1)(a) in that the County Court had made an order or (b) refused an order under the Order. HM also made the case that given the complexity of this case involving a jurisdictional issue it should not have been heard at the Family Proceedings Court level in the first place. HM made some submissions about inadequacies that he saw in the judgment of District Judge King in relation to his alleged mental health problems in relation to other factual matters. HM referred to the fact that the jurisdictional issue was important and he referred to various authorities in this area dealing with habitual residence.

[16] Finally, HM submitted two documents to the court. The first is an opinion from Janice M Scott QC of 10 July 2016. This opinion deals with HM’s complaint against his Scottish solicitors that he wished to introduce it in these proceedings and I was told that His Honour Judge Sherrard also had a copy of the opinion. HM also provided what he described as a proposal to the court to deal with all matters which runs to 2 pages and in which he indicates that he would be prepared to accept the jurisdiction of the courts in Northern Ireland in relation to Article 8 proceedings involving the two children if various statements were agreed between the parties. It is clear that HM requires full acceptance of his substantive case before he would agree jurisdiction.

Conclusion

[17] In my view this case is relatively simple in relation to the jurisdictional matter. This is an appeal from an appeal. As such, I consider that it is not appropriate to bring such an appeal to the High Court. Article 166(2)(1)(a) of the Children (Northern Ireland) Order is clear and unequivocal. I therefore have no jurisdiction to deal with the case. It is therefore not appropriate for me to deal with any of the substantive issues. However, I do hope that this case can now be dealt

with promptly and that the focus will be upon settling contact arrangements for the children.

[18] Accordingly, this appeal is dismissed.