Neutral Citation No. (2002) NIFam 8

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

Ref:	**GILC3619**
Delivered:	**13/03/2002**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF J (FREEING WITHOUT CONSENT)

GILLEN J

JUDGMENT

There are before the court now four applications in relation to a child J (date of birth 4 June 1998). The parents of this child are H the mother and J2 the father who were married in January 1999. The first two applications are on behalf of the mother and father respectively each seeking a Residence Order under Article 8 of the Children Order (Northern Ireland) 1995 ("the 1995 order"). The remaining are an application on behalf of H for a Contact Order pursuant to Article 53 of the 1995 order and finally an application by a Trust which I do not propose to name (hereinafter called "the Trust") for a Freeing for Adoption Order pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 (hereinafter called "the 1987 order") in relation to J. The effect of the Residence Orders being granted would be to discharge an existing Care Order which was granted to the Trust in respect of J in November 1999. Accordingly I shall deal with the applications for the

Residence Orders first as if I grant these, the court would cease to have jurisdiction to entertain the application to free for adoption.

PREVIOUS COURT HEARINGS

1. On 21 May 1999 an Emergency Protection Order was granted in respect of J to the Trust.

2. On 26 May 1999 an Interim Care Order was granted in respect of the child J on application of the Trust.

3. Various Interim Care Orders were thereafter granted on the application of the Trust until a hearing on 10 November 1999 when a Care Order was granted in respect of J.

THE FACTUAL BACKGROUND TO THE PRESENT APPLICATIONS

Sadly the historical background to these applications is a bleak tale of alcohol and drug abuse, domestic violence, self-harm, instability and chaotic lifestyle on the part of both parents of this child. The evidence of Ms M, a social worker with the Trust involved in this case between February 1998 and May 2001 (and contained at booklet 1 page 9-31) was largely unchallenged so far as this background is concerned. I do not propose to set out in extenso the instances catalogued therein but a consideration of them individually and cumulatively leads inexorably to the conclusion that this child was born into a life of chronic instability and completely inappropriate parental care. A summary of the background of both parents as depicted by B will suffice:

a. The Mother H

(1) She has an extremely lengthy history of alcohol abuse and, latterly, drug abuse. Certainly until August 2000 it would appear that she had an inability to abstain from alcohol or drugs for more than a 3/4 month period despite two periods of in-patient treatment for alcoholism and involvement with addiction services since 1996.

(2) Her medical history reveals repeated episodes of self-harm resulting in numerous hospital admissions.

(3) She was in an unstable home environment as evidenced by frequent house moves and evidence of damage caused to her homes on several occasions.

(4) Her relationship with the father of this child J2 was seared with alcohol abuse and domestic violence. She exhibited an inability to separate from him for any significant period of time despite repeated incidents where he physically and verbally abused her and despite her acceptance that a continued association threatened any efforts she made to remain sober or drug free.

(5) She herself exhibited aggressive behaviour, admitting on 5 January 2000 that she had physically assaulted J2 causing damage to his face and she was subsequently charged with wounding him with intent on 20 September 2000 when she allegedly stabbed him on the foot cutting an artery. Charges arising out of this matter were subsequently withdrawn. In evidence before

me she denied that she had deliberately assaulted him but I found her singularly unconvincing about this particular incident.

(6) She has two daughters from a previous relationship namely A and J3 born on 31 August 1991 and 17 October 1994 respectively. Due to the same pattern of behaviour over the years since their birth these children had been the subject of wardship proceedings and have remained in the care of their maternal grandparents since 1997. Contact with her daughters has been erratic and inconsistent over the years and she tends not to visit her daughters when she is abusing alcohol or drugs.

(7) Her contact with J has been erratic at times especially when she is abusing alcohol.

(8) Prior to August 2000 the historical pattern had emerged of short periods of stability in her life followed by rapid decline into chaos and crisis.

b. The Father J2

(1) He also has an extensive history of alcohol abuse dating back to his teenage years.

(2) Despite numerous in-patient treatment programmes for alcoholism and extensive contact with Alcoholics Anonymous he has not been able to sustain sobriety for any unlimited period in his adult life until about six months ago.

(3) He has a number of criminal convictions including a conviction for armed robbery and has served one period of imprisonment.

(4) He clearly evidenced many instances of violence when drunk and these included many recorded incidents of domestic violence against H. His contact with J has been extremely erratic and unreliable.

The historical analysis reveals opportunities for assessment and rehabilitation being offered to both parents throughout the history of the Trust involvement. Regrettably these have been to very little effect except for short periods of time.

Neither seriously challenged the historical background but each argued before me that they had turned a new leaf and had found the determination and commitment to provide good enough parenting for this child. H's case was that she has abstained from alcohol and illegal drugs since August 2000, that she has now acquired a settled lifestyle, that she has a proven ability to provide good enough parenting and that but for the unwelcome intervention of J2 into her life during 2001 she would now be rehabilitated with her child. J2's case is that he has now been abstaining from alcohol misuse for the past six months and in light of this he has been afforded insufficient opportunity to prove that he is now capable of being a primary carer for this child.

I turn now to consider the applications.

THE RESIDENCE ORDER APPLICATIONS OF H AND J2

(1) The Principles Governing These Applications

A Residence Order is an order under Article 8 of the 1995 order settling the arrangements to be made as to the person with whom a child is to live. The

making of a Residence Order will not extinguish the parental responsibility of any person and thus the order does not affect the legal relationship between a child and his parents. I must consider such applications in the context of Article 3 of the 1995 Order.

(2) The Current Factual Situation

a. H the Mother

There was evidence that during the latter part of 2000 and up until in or about mid June 2001, H, despite the inauspicious history, was attaining a greater state of stability and sobriety. Hopes were raised against a background that as far back as October 1998 and early 1999 she had been assessed at Thorndale Family Centre as a capable mother provided she kept off drink and drugs. Indeed after this she had J at home with support from Mr and Mrs T her parents for almost one year and had created an important bond with the child. When she broke up with her husband in the summer of 2000 she apparently determined to change her way of life and community supports for her were identified. H did consent to a Care Order for the child in November 1999 but she did this on the basis that the possibility of rehabilitation had not been ruled out. The care plan at one stage had been for a twin track approach of adoption and consideration of rehabilitation. To assist her in this endeavour the Trust, through Ms M had drawn up an agreement with her setting out the means of ascertaining her circumstances and the nature of continuing progress. It is helpful if I set out in extenso an extract from that letter:

> "We would therefore suggest that the following issues are addressed:
>
> (1) You are to plan with Ms M, social worker, to re-establish your independence in your own home with a view to the Trust assessing how you finance and practically manage your home. The Trust would encourage you to have contact with your two eldest daughters in this home.
>
> (2) You are to discuss with Ms M, social worker, what your long-term plans are in relation to your housing needs.
>
> (3) You are to continue to attend the Community Addictions Team and any other services you feel are appropriate to address your addiction problems.
>
> (4) You are to continue attending the monthly drug screening tests at your GP clinic.
>
> (5) You have agreed to attend Dr Pollock for a psychological assessment which is to begin on 19 February 2001.
>
> (6) The Trust have agreed that if you engage in all of the above, we will pursue our referral to Simpson Family Resource Centre to assess your capacity to care for J in the longer term.
>
> (7) On completion of the psychological assessment the Trust will set up a meeting with the Simpson Family Resource Centre to establish a timescale of when their work will begin with you.
>
> To validate your continued agreement with the above, please sign the copy enclosed and return back to our offices in the stamped envelope enclosed."

H signed this on 9 March 1901 and I regard this as a statement of her intent. I am also absolutely satisfied that she had been warned on a number of occasions that her continued association with J2 was inimical to the

interests of rehabilitation with J and that she was well aware of this. I believe entirely the evidence of the social workers Ms McS and Ms H who were adamant that this advice had been given. By following these steps it was clearly within the contemplation of the Trust that a seamless transition might be effected whereby the child would be gradually restored to the care of H provided of course that she complied with the spirit and content of the terms of this agreement. I am satisfied that the Trust patiently indulged H in this quest even to the extent of assisting her to re-establish her independence in her home by paying for the initial rental in a new flat for her and the signing of a six month lease. The evidence of the social workers and in particular that of Ms RH and Ms M was that H made progress. To utilise the Community Addiction Team services, she underwent drug abuse tests which were positive (with one exception which I consider to be irrelevant) and the Simpson Family Resource Centre contacted her on 26 March to work on her ability to meet J's needs and to explore issues of domestic violence. Contact between J and H increased to twice weekly for half days and at a meeting on 14 June 2001 with the Trust officials it was agreed to increased the contact to twice weekly for full days between 10.00am and 6.30pm. A report dated 18 June 2001 from Ms RH expressed the view that in light of the programme of assessment, rehabilitation of J to H was now a realistic option and one that should be progressed without delay. At that stage the Trust recommended therefore that the application to this Court for an order freeing this child for adoption be withdrawn albeit that the Care Order was to continue in the

short-term whilst the process of rehabilitation and monitoring continued. A clinical psychologist, had commented at this time:

> "H expresses her motivation to change and her application towards this goal will require monitoring on a longitudinal basis. She agrees to continuing involvement with professional services … her previous failures to achieve change have not engendered a pessimism which might affect her chances of success although her behaviour will require monitoring over an extensive period of time."

Sadly the evidence before me, which I accept, is that a fundamental change in circumstances occurred in or around 19 June 2001. This had been a date fixed for a meeting between Ms RH, social worker and H the applicant in this case. However on that date when Ms RH went to H's home, she discovered J2 in the house smelling strongly of alcohol acknowledging he had been drunk the previous evening. He told Ms RH that he had simply bumped into H the previous day, and he had nowhere to stay and that H had agreed he could stay at her home until the next morning. However the whereabouts of H could not be determined despite extensive efforts by Ms RH. The clear concern was that she had failed to follow through on her strategies to protect herself and J and that she had not kept J2 away from her home. She had apparently not sought legal advice regarding her application for Non Molestation Orders and she had not sought other support necessary to keep J2 away for example Social Service, Police or Women's Aid. At a meeting on 21 June 2001 between H and two social workers, namely K McS and JD she proved evasive albeit eventually admitting that she had met J2 in

the park on that occasion and, although he was drunk, she had permitted him to stay in the house. She had not called the police to seek assistance or advice nor had she accessed the various supports available to her. Nonetheless the Trust advised her that they would thereafter monitor closely the situation over the summer months and would review the plan for rehabilitation at the end of the summer.

Thereafter things went from bad to worse. Information was disclosed to RH by a friend of H during the course of an interview on 9 July 2001 that H had now resumed her abuse of alcohol and her relationship with J2. I do not know if this is true or not but what is clear is that she did not maintain her plan for her son's rehabilitation which was at a vital stage in its progression and was moving towards overnight stay in an effort to proceed onto shared care and ultimately full-time care as soon as H felt ready. Numerous unannounced visits to her home found her not there, letters left requesting that she contact the social workers were ignored, and information from other sources corroborated the evident picture of deterioration. On 4 July 2001 a telephone call from Women's Aid revealed that two members of staff had seen H and J2 together. On either 25 or 26 June a hostel worker had observed them in Dufferin Avenue in Bangor and noted that H's eyes "were rolling in her head". H did not recognise this women whom she knew. In evidence before me H denied that she had been drinking on this occasion but she did accept that she had taken an unprescribed large dose of Valium because she was very depressed and that this could have had a similar affect to alcohol on

her. My fear is that if she behaved in this way with J and took a similar unprescribed dose, she would be quite incapable of looking after the child. On 3 July 2001 another hostel worker observed H and J2 going into a diner on Dufferin Avenue, the worker believing they had been drinking from their gait and demeanour. H denied this incident in the course of evidence before me and in the absence of any witness to this effect I was not prepared to take it into account. However on 9 July 2001 when a social worker did manage to make contact with H, she alleged she had been beaten up by J2 on 3 July 2001 although she did not seek medical or police intervention. At that stage she indicated she did not want to contact J until her injuries were gone. She agreed an appointment with the worker to discuss the situation but did not attend, a pattern which displayed itself throughout the succeeding weeks. I pause at this stage to observe that H described before me in substantial detail the nature of this attack upon her by J2. Certainly an attack of this kind would be wholly in character so far as J2 is concerned and I must say that I found him somewhat unconvincing in his denial before me. On 22 August 2001 there was evidence from RH that H met with a number of social workers to update her on the Trust plan for J and at that meeting H produced a photograph of her face which apparently evidenced severe bruising which she alleged had occurred two months before. However I must recognise that the more serious the allegation, the stronger the evidence should be before the court can conclude that the allegation is established on the balance

probabilities. As Lord Nicholls said in Re H and R (Child Sex Abuse: Standard of Proof) [1996] 1 FLR 80 HL at page 26:

> "Built into the preponderance of probabilities standard is a serious degree of flexibility in respect of the seriousness of the allegation."

Two recent first instance cases in England namely Re W (a child) (Sexual Abuse) heard on 14 January 2002 in the Family Division before Holman J (unreported and cited as BLD 1601 0264) and Re W (a child) (Disputed Evidence Appeal) heard in the Family Division before Sumner J (unreported and cited as BLD 1501 0245) emphasise the need to hear evidence of such matters, to make a very full analysis of it, to recognise the seriousness of the allegations in light of the impact it may have upon any future contact between the parents and the child and to ensure that any conclusion is fully justified based on sound evidence. In this matter H in the course of her evidence gave a series of different dates when the incidents had occurred. She admitted that she had been untruthful when she had alleged in a statement provided to this court and in her statements to the social workers that J2 had used a knife during this assault. Given her propensity for embellishment, I have concluded that whilst I have a strong suspicion that she is telling the truth, nonetheless I could not be satisfied to the requisite standard necessary that this assault did take place and I therefore dismiss it from my consideration. There is always the possibility that given the violent relationships which she tends to form and the dissolute lifestyle in which I suspect she was engaging at this time, she had been assaulted by someone else. The key relevance of

this alleged assault however is that it provided the basis for H explaining why she made no contact at all with J for several weeks. I find this explanation totally unconvincing. Irrespective of who assaulted her I believe that she had plenty of help available to her in terms of Women's Aid, social workers and indeed the police. She chose to avail of none of these supports during this period. Moreover if she did have visible facial injuries which she did not wish to reveal to the child, that provides no explanation at all as to why she did not contact him by telephone or send him a note or a present to explain her absence. Moreover it fails to explain why she did not avail of the numerous requests made to her by way of letter and telephone to attend on social workers to discuss the issues. The privilege of being a parent is immeasurable but with it there comes enormous responsibilities. She became physically and emotionally unavailable for this child for many weeks. She was careless of the disappointment and emotional pain that this little boy was likely to suffer due to her unexplained absence. No turbulence in her life in my opinion justified that parental failure. Whilst it may well be that the true measure of her activity and behaviour in that period is shrouded in uncertainty, her calculated absence from this child's life during that period is inexplicable.

Accordingly I find is unsurprising that on 24 August 2001 she was informed by the social workers that she was clearly not able to protect herself and J from J2's actions and that the Trust was now proceeding to seek a Freeing Order to place J in an adoptive home. It might have been thought

that this would have provided a jolting reminder of where her priorities lay. Unhappily it did not. She had been requested at the meeting on 22 August 2001 to be present for two meetings with Social Services to demonstrate her commitment and suitability to have contact with J. The first meeting was arranged for 21 August 2001. She did not present for the meeting at 10.00am and only turned up after she had been telephoned and prompted by Ms RH. A second appointment was arranged for 29 August but she did not attend. On 4 September she contacted the office indicating by way of explanation that she had had a meeting at Bangor Technical College. There was some dispute about this. The Trust called evidence Mr Kerr who is a senior lecturer at the college and he had no recollection or record whatsoever of arranging to meet her on that date. In any event, even had it been necessary for H to meet Mr Kerr at the college it would have been quite easy to have altered in advance the arrangements to permit her to meet the social workers had she really been attuned to prioritising the interests of J.

This degeneration into unstable inconstant behaviour with the social workers was also reflected in various non-attendances with the Community Addictions Teams from in and around late May 2001. UC, the social worker from Community Addiction Team, gave evidence before. She recorded that the numerous failures on the part of H to attend appointments during June and July of 2001 made it extremely difficult to assess her. In total she was seen on only two occasions. Work had commenced on relapse management and the relationship difficulties that she was having in the context of her

future with the children. It seems to me not to be without coincidence that she chose to abandon this support once she resumed her relationship with J2. UC had arranged fortnightly appointments with her and indeed on 25 April 2001 had reported that H was very positive and things were going well. The unstable dynamic that had now entered her life in the middle of 2001 is well reflected in the following extracts from a report of UC of 19 October 2001:

"27 May 2001 – social worker tried to make telephone contact. A message was left on answering machine regarding a follow-up appointment on 23 May 2001.

23 May 2001 – did not attend alcohol problem clinic.

6 June 2001 – social worker telephoned and left message on answering machine to make contact with Community Addiction Team.

13 June 2001 – did not attend alcohol problem clinic.

27 June 2001 – did not attend alcohol problem clinic.

11 July 2001 – did not attend alcohol problem clinic."

UC gave evidence of various letters and telephone calls to H all of which served to emphasise that H was well aware of these appointments but chose to ignore the patient indulgence that was being extended to her. The same wayward behaviour and rejection of a guiding hand surfaces in the evidence of PT a social worker with the Simpson Family Resource Centre. As in the case of the Community Addiction Team resource, this was a further matter that had been mapped out for her in the letter of February 2001 to which I have already referred. Again the early pattern was promising. PT said in

evidence before me that between 26 March 2001 and 24 May 2001 they discussed with H her unhappy childhood and her mother's care for the two older children. Regretfully problems surfaced again in late June. She failed to turn up for two sessions thereafter without explanation. PT gave evidence that she had emphasised to H the need to stay away from people who were violent towards her or who were abusing alcohol. They would have discussed the nature of violent relationships and how to avoid these. Far from paying any attention to this advice, H recommenced contact with J2 despite the violent and drunken history of their past and rejected all the support mechanisms which were open to her.

The fact of the matter is that H made no contact whatsoever with J between July 2001 and November 2001. CH, a social worker in the Family and Child Care Team in Bangor who took over from RH in September 2001, found no uplifting thread in her behaviour when she commenced to deal with H. During the course of September and October a number of appointments were offered to H which she failed to honour without explanation. CH told me that H would often say she had simply forgotten or she had thought it was the next day. It seems to me that by this time she had become locked into a repeating cycle of maladaptive behaviour in which J had been relegated to a very low priority in the life of chronic instability to which H had now descended. The pattern of inconstancy continued unabated. On 10 October 2001 she told CH that she wanted a new start and wished to be admitted to Downshire Hospital to obtain some help. She failed to attend for

appointment on 16 and 17 October due to illness but when offered another appointment on 31 October she simply did not attend. Eventually however a contact with J was arranged for 9 November 2001. This had been achieved against a background of exacting and unremitting efforts by the social worker CH to set this up. On 2 November 2001 CH had gone to her house. It appeared to the social worker at this stage that H was now preoccupied with her new partner Mr O'H. She agreed to attend a meeting with her senior social worker on 6 November 2001 to arrange contact with J. She attended this meeting and discussed issues relating to support networks, contact with J, her new relationship and the relationship with her family. Contact was then arranged for 1½ hours once a month. She agreed that she would maintain telephone with J between visits. In fact she has only availed of telephone contact twice since then. In evidence before me no satisfactory explanation was given by her as to why she does not telephone the child. Once again J seems not to be a major priority in her disorganised lifestyle. On 9 November 2001 she did have contact with her son for the first time since July. Social workers record that both J and the mother interacted well and contact was relaxed. The next contact for 17 December 2001 was at first cancelled as she was unwell. Despite her denials of this, I accept entirely the evidence of CH that she advised H that no further contact could then be arranged before Christmas. In face of this H then agreed to attend. When the social worker arrived to collect her at her house, she found her in a dirty unkempt and dishevelled condition. The flat was extremely untidy and unsuitable for a

child to reside in. She had suffered a dislocated knee allegedly sustained the previous evening. Despite H being made aware that this would be her last visit before Christmas she did not bring a present or a Christmas card for J. She informed the social worker that she had a present of a bike for the child and arrangements were made for it to be collected on 19 December. H asserted before me that she was in the house all day on that date, but I believe entirely the evidence of CH who told me that when she called on that occasion and made great efforts to gain admission, there was no response. Sadly I think this fits the pattern of H's unreliable behaviour in relation to her responsibilities towards J.

Investigations into the new relationship she formed revealed that Mr O'H was a man with criminal convictions, a broken marriage, a history of domestic violence involving serious assault on his previous partner and a loss of contact with children from his previous relationships. Shortly before the end of the hearing H asserted that she had now broken off her relationship with O'H but his presence and her relationship with him fits the pattern of a chaotic and inappropriate lifestyle to which J would have been exposed. During this time it was also clear from the evidence that intermittently she was meeting with J2.

In the course of the trial I heard evidence from Dr Blincow, an extremely experienced expert in child and adolescent psychiatry with a most distinguished curriculum vitae. He is currently the clinical director of child and medical health services in Brighton and Hove. I find his evidence

extremely impressive and in the main I share the conclusions at which he has arrived. With reference to H, he drew attention to her failure to maintain consistency over long periods of time which he felt would be likely to lead to a pattern of anxious or avoidant attachment by the child resulting in him being hostile or withdrawn from his carers. He emphasised that children need sustained nurturing. In essence he pointed out that in the course of the rehabilitation programme she had failed to consistently make contact with the child or to sufficiently so monitor the quality of her relationships as to avoid undermining her capacity to parent him. He expressed the view, shared by PT from the Simpson Family Resource Centre based on her own experience, that the very prospect of rehabilitation can, and in this case had the effect of drawing the parents together and stimulating self-destructive themes. In his view rehabilitation is itself a stressful concept where the parties must learn to work with others, cope in a consistent manner, be monitored actively and in terms acquire or demonstrate the ability to deal with dependency needs of the child putting the child's needs above their own. When the stress of rehabilitation becomes a reality, it is his experience that many parents simply cannot manage it. They have too many other needs to permit the child's needs to gain priority. I am satisfied that that is what has happened in this case and it explains why the efforts of rehabilitation, although well intentioned, have completely failed. I also share his view that the prospects of successful rehabilitation are now very low indeed and the potential for disruption of this child considerable.

b. The Father J2

As I have indicated his background has been characterised by high levels of abuse of alcohol and domestic violence. He made a number of allegations against H including suggestions that she in more recent times, despite her protestations to the contrary, had been drinking to excess and engaging in drug abuse. Whilst I do not exclude the possibility that his direct evidence may contain some elements of truth, as in the case of H I found him so given to embellishment and inconsistency that it is impossible to derive from what he says the necessary certainty that could enable me to make conclusions of fact against H based on what he says. A few instances will suffice to illustrate this. He told the guardian ad litem during the course of the proceedings that H had arrived at an AA meeting recently "full drunk". Within a short time he was in the witness box telling the court on oath that he had no idea whether or not she had been drinking on this particular evening although she did look upset. This instance illustrates that this witness enjoys a very selective relationship with the truth and varies his accounts as it suits him. He made a very serious allegation against H to the effect that in January 2002 at a Pizza Hut she told him that she had Cannabis in her bag. However this is absent from a statement which he made for the purposes of the court proceedings on 21 January 2002 and he provided absolutely no explanation as to why he should have omitted this very salient fact from such a statement if it was the truth. That same thread of exaggeration and embellishment attended on his accounts of his previous criminal activities particularly when

he told me that because of drink he had absolutely no recollection of having been involved in an armed robbery for which he served a sentence of imprisonment.

Having regard to the varying accounts that he gave of a number of incidents, I therefore did not derive any substantial conclusion from what he said.

Regretfully however the facts as they unfold from the witnesses concerning his relationship with J present as a collection of raw material that tell their own bleak story. RH, gave evidence of the fluctuation in his feelings about rehabilitation that became manifest in her meetings with him. His view about being considered as a carer has changed on a number of occasions. Up until April 2001 he had made it clear that he wished to have a secondary role to H in the care for this child but put himself forward when it appeared that H was faltering in her endeavours. However even then he did not take up the offers of assessment including an arrangement to see Dr Pollock, failing to take up that initial offer on the basis that he had to attend a funeral in Sligo. Needless to say he made no effort to change the appointment or to take up at that stage an alternative assessment. His dissolute lifestyle I fear reached its apogee on 30 July 2001 when he telephoned RH to say that he did not think there was any point going ahead with contact with J, that he had sustained an injury to his face from slipping and falling in Ward Park when drunk, and alleging that during the same week he had found H completely drunk. On an office visit he clearly exhibited an eye injury and bruising to his arm and said

that it was his belief that it would be better for J to be adopted because if he had J he would never be rid of H and accordingly he did not wish to have any further contact. Prior to this his contact with J has been extremely inconsistent to say the least and I accept the view expressed by RH that in light of this it was not likely that he would develop a significant relationship with his son. I share the view expressed by a number of social workers including EM, KMcS and RH that it is not enough to say that this man can be realistic when he is sober and that he has afforded some cooperation to the Trust in recent months. He has had ample opportunity to be assessed in the past and until very recently has flagrantly failed to avail of opportunities to change his lifestyle. Late in November 1991 he did approach KMcS and asked to be reassessed. Accordingly a meeting and assessment with Dr Pollock was arranged. I consider that the approach adopted by the Trust was entirely reasonable in so far as they concluded that until they had an assessment from Dr Pollock no further step would be taken to assess his parenting skills. It is common case that this man's life has been bedevilled by alcohol abuse and until there is some realistic probability of that issue being arrested, rehabilitation is simply out of the question. It is important to realise that there are other issues in his life apart from drink which need to be addressed by him, namely, domestic violence and the long-term pattern of criminal activity and relapse. I believe that RH told him that he would need a great deal of work on his lifestyle and this would take a long time. On his own evidence he has abused alcohol virtually continually since the age of 14 and the pattern

of relapse bodes ill for the future. The fact that he now attends AA regularly and has a part-time job hopefully may lay a basis for the future but it is far too soon to tell. I found Dr Pollock to be an informed and convincing witness. He pointed out the repeated periods of relapses on the part of J2 recording inter alia;

> "J2 has been formally admitted on a number of occasions for substance detoxification (Downshire Hospital and Sister Concilios) relapse to misuse occurring repeatedly. I note that Dr D Hughes (SHO to Dr McFarland in Downshire Hospital) states in letter form dated 27 June 1997 that J2 has been afforded both in-patient treatment, education, intensive group psychotherapy, individual counselling and community follow-up after admission. He relapsed following this comprehensive treatment package. A number of medications have been prescribed for his difficulties over the years. He has typically failed to maintain community support with professionals. … He claims that he has gained profound insight as a result of his latest admission to Downshire Hospital in September 2001. He acknowledges that he has not been actively involved in parenting or care for his son to any substantial extent to date. … He acknowledges that he has failed to sustain devoted contact with his son since his reception into alternative care management. He said he had not had contact with J for five months. He admits maintaining contact has been affected by his substance dependency taking priority status and also his periods of imprisonment. To this effect he stated:
>
> > `Contact with J has always been on and off, I have either been in jail or on the drink, I can't remember how long I have being seeing him on one go, there is big chunks of my memory missing, I know I need to get regular contact with him and not

leave him any more, I have to be sure
I put his feelings first'."

I share the view of Dr Pollock that this man has very little childcare knowledge or skill, he has been irresponsible, immature and dysfunctional in the past and one must therefore query if he is even capable of assuming a responsible, consistent, confident parental attitude. In substance he considers that it is too early to consider that he has turned the corner. I have concluded that Dr Pollock is correct when he states that he considers a relapse in the case of J is a probability given the number of times of relapse despite intensive and repeated help in the past. I accept the view of the experts that it would take 18 months to 2 years to see if J2 is really rehabilitated and even then he would need a further assessment from the Family Care Centre. Children simply cannot wait indefinitely for parents to change. They cannot be allowed to drift in an uncertain situation without appropriate attention being given to planning their future especially where the prospects of parental change seem so fragile.

In considering both Residence Order applications therefore I have again looked at the welfare checklist and, relying upon the factual conclusions at which I have arrived, I have made the following assessment;

(a) Clearly this child is too young to ascertain his feelings and wishes.

(b) The physical, emotional and educational needs of this child. I have no doubt that the needs of this child at this age are such that they cannot be met by parents who engage in domestic violence and wilful and excessive abuse of drugs and alcohol.

(c) A likely effect on him of any change in the circumstances. This child is presently in a settled and happy home where he is receiving the stability, care and attention which he merits. A change back into the chaotic lifestyle that obtained with these parents would clearly be detrimental to him.

(d) His age, sex, background and any characteristics of his which the court considers relevant. In this instance it is sufficient to say that he is so young that he would clearly be highly vulnerable to the lifestyle which has been practised by the parents in the past.

(e) Any harm which he has suffered or is at risk of suffering. It must be borne in mind that this child was the subject of a care order which was properly based on the fact that he was likely to suffer significant harm. All the matters which I have outlined above – including the nature of the chaotic lifestyle, the drugs and alcohol abuse, the violence, the lack of consistent parenting and the abject failure to avail of help and assistance to turn this situation around all indicate to me that there is a complete failure to prioritise the needs of this child over their own needs. In these circumstances this child is likely to suffer significant harm in the future if a Residence Order is made in favour of either of these parents.

(f) How capable of meeting his needs is each of his parents and any other person in relation to whom the court considers a request be relevant. For the reasons I have outlined above concerning the frailties in these parents, I am satisfied that neither parent is capable of meeting this child's needs. Consistent parenting is vital in order to provide good enough parenting to

meet the needs of this child. Each was given ample opportunity to address the need to provide commitment and dedication to this child. Whilst early signs were promising with H it was clear in the last months of the assessment period that she was not prepared to avail of the assistance offered to her and I am satisfied that he had returned to her earlier decadent ways. J2 has such a prolonged history of alcohol abuse and violence that the short period of abstinence in which apparently he has now engaged is totally insufficient to provide a foundation for future care of this child. It was clear to me from his evidence that he has not come to terms with the realisation of what is involved in looking after a child of this age. As counsel for the Guardian ad litem has pointed out, he lives with his parents, he has no home of his own and expects to resume work but has made no positive arrangements as to how this will fit in with the child's needs. All this illustrates that it is far too early a stage in an potential rehabilitation for him to be considered fit for a Residence Order.

I am satisfied that the Trust have made all proper investigations into other possibilities for meeting the needs of this child. It was clear from the evidence of Ms M social worker that the Trust had considered a number of other extended family member possibilities but none provided any basis for consideration.

(g) I have considered the range of powers open to me and in particular the principle that the court should not make an order unless it considers that doing so will be better for the child than making no order at all. Having

weighed all these matters up and taking into account the overarching principle of the paramountcy of the interests of the child I have concluded that this court should not grant Residence Orders to either H or J2 and accordingly I reject their applications.

I think it is appropriate now that I turn to consider the question of the Freeing Order application by the Trust before considering the question of contact. If I grant an order freeing the child for adoption it will of course discharge the Care Order and accordingly an application for contact will no longer be entertained under Article 53 of the 1995 order.

THE APPLICATION TO FREE FOR ADOPTION WITHOUT CONSENT

Applying the factual findings which I have already made in this case to the present application to free for adoption without consent, my conclusions are as follows:

1. I have been satisfied as to the preconditions necessary for the granting of an application under Article 18 of the 1987 order namely that the child is in the care of the Trust pursuant to a Care Order and, having heard the evidence of the social workers with reference to the current foster carers, I am satisfied that if freed for adoption it is likely that this child will be placed for adoption either with his current carers or other suitable carers.

2. In deciding on the course of action in relation to this application, I have had regard to Article 9 of the 1987 order and in particular to the welfare of the child as the most important consideration. In addition I have had regard to all the circumstances with full consideration being given to:

(1) the need to be satisfied that adoption would be in the best interests of the child; and

(2) the need to safeguard and promote the welfare of the child throughout his childhood; and

(3) the importance of providing the child with a stable and harmonious home.

It has not been practicable to ascertain the wishes and feelings of the child regarding the decision having regard to his age and understanding.

I have concluded that adoption is in the best interests of this child based on the factual conclusions that I have already made. I do not consider the rehabilitation of this child with either of the birth parents is either possible or feasible within a timescale that can prevent significant damage accruing to this child. I have concluded that neither of the natural parents in this case is sufficiently attuned to changing their lifestyle on a permanent basis so as to ensure the security stability and safety of this child. I have already set out in extenso the factual findings that found this conclusion. For the removal of doubt I will briefly summarise my reasons for so concluding:-

a. The inconsistent parenting of both natural parents.

b. The failure of either parent to prioritise in the past the needs of this child.

c. The sustained abuse of alcohol and non-prescribed drugs.

d. The failure to properly address issues of domestic violence.

e. The failure to avail of professional and other help to change the chaotic lifestyle which prevails with both of them.

f. The evident lack of insight of each parent into their shortcomings.

g. As evidenced by the paucity of attendances for contact on both their parts (and in particular that of the father) the lack of commitment to the needs of this child.

h. The extremely poor prospects of rehabilitation with J.

Dr Blincow indicated that their behaviour is likely to lead to a pattern of anxious or avoidant attachment by the child resulting in him being hostile or withdrawn from his carers. Children need sustained nurturing. It was his view, which I share, that the prospects of successful rehabilitation with either of these birth parents is now very low indeed and accordingly the potential for disruption of this child is considerable. The ideal situation of course is for a child to be raised by their natural parent and the authorities have extolled that principle. That principle must yield to the best interests of the child and I am satisfied that that is the circumstance in this case.

The courts in this jurisdiction have dealt with the issue of long-term foster care as opposed to adoption in a number of instances but as I have said in previous cases the results of decided cases are very often fact sensitive. Precedent is a valuable stabilising influence in our legal system, but comparing the facts and outcomes of cases in this area of law can conceivably lead to a misuse of the only proper use of precedent viz to identify the

relevant principles to apply to the facts as found. Dr Blincow records in his report:

> "Adoption is for most looked after children the preferred option. It emphasises stability, commitment and security for the child involved. It provides a greater sense of belonging for a child and can in most respects substitute for the loss of a biological family until the mid teens when many adopted children become preoccupied by discovering the nature of their biological routes. If it has deficiencies they relate to the gap for children of a longer term identity. To address this there has been a move to open adoption ie adoption with contact over the past 20 years.
>
> There are some situations however where either a long-term foster placement or even Residence Order can be more appropriate for a particular child and set of circumstances. For example where a child has been brought up and developed strong ties with parental figures no longer able to care for them. Such children would not necessarily wish to supplant their previous parents and fostering can be beneficial without being undermining of continuing relationships.
>
> Children too who have suffered significant abuse can find adoption too overwhelming and may resist the intimacy it involves. This is not to say the later adoption may not be a possibility. What it does recognise is the experience of the child before substitute care, any vulnerability resulting and its implications for their capacity to accept and tolerate the closeness adoption signifies."

In front of me, he emphasised there are disadvantages of longer term foster care in that:

a. There is intrusion from Social Services.

b. Drift can happen with a child moving from one place to another. Long-term foster care is more likely to lead to breakdown than adoption.

c. It does tend to reinforce impermanence.

d. Matters such as a surname can be important. Self-image is important as children get older. It is becoming significant in the case of J now that he is starting school.

I am persuaded that the circumstances of this case where the mother and father are unable to maintain consistency over long periods of time provide child specific factors that point to adoption being in this young child's best interests. J needs the permanence, stability and commitment which have been absent from his life to date. I am satisfied that only adoption will fulfil this need.

ARE H AND J2 THE NATURAL PARENTS WITHHOLDING CONSENT UNREASONABLY?

Under Article 16 of the 1987, an Adoption Order shall not be made in the case of each parent or guardian of the child unless the court is satisfied that:

(a) He freely and with full understanding of what is involved agrees –

(aa) either generally in respect of the adoption of the child or only in respect of the adoption of the child by a specified person, and

(ab) either unconditionally or subject only to a condition with respect to their religious persuasion which the child has to be brought up, to the making of an Adoption Order; or

(b) His agreement to the making of the Adoption Order should be dispensed with on a ground specified in paragraph (2).

The Trust submitted in this case that both the mother and the father are withholding their consent unreasonably (which is one of the grounds specified in Article 16(2)) and that I should dispense with their agreement.

The principles governing this area of law have been set out in a number of cases recently and in particular by myself in Re DJ and D (Freeing Order) (Unreported 25 September 2001). For ease of reference I shall briefly set out the main principles:

(a) Re W (An Infant) [1971] AC 682 is a leading authority on the matter and emphasises that the test is reasonableness and nothing else.

(b) It is clear that Article 9 of the 1987 order does not apply to the court when considering whether or not to dispense with the parental agreement.

(c) Re C (a Minor) (Adoption: Parental Agreement: Contact) [1993] 2 FLR 260 and Re F (Adoption: Freeing Order) [2000] 2 FLR 505 exhort the court to approach the matter by the judge asking himself whether, having regard to the evidence and applying the current values of our society the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent. This reflects what the author of Hersman and MacFarland, "Children Law in Practice" Section H at paragraph 127 describes thus:

> "The discernable move within the decisions of the appellate courts towards greater emphasis on the welfare of the child is a factor in decisions relating to the parents reasonableness."

I have no doubt that the welfare of the child is an important factor which the reasonable parent will take into account but I observe the cautionary note

sounded in Re H and Re W (Adoption: Parental Agreement) [1983] 4 FLR 614 at 624 that short of amending legislation or further consideration in the House of Lords there must be a limit be a limit to the shift.

(d) I consider that a court is well guided if it follows the component parts of the test set out in Re W (supra) and I have done so in the following manner:

(1) I have considered the reasonableness of the mother and father's refusal to consent as judged at the date of hearing.

(2) I have taken account of all the circumstances of the case and the factual findings that I have made. I have borne in mind what Thorpe LJ said in Re D (Grant of Care: Refusal of Freeing Order) [2001] 1 FLR 862 at 869 where he observed:

> "Of course in an uncertain world almost anything can be said to be possible, but in evaluating the hypothetical reasonable parent test and in applying it, it is not open to a judge to give prominence to theoretical possibility unless the possibility has a quantifiable and realistic content. It is simply irrelevant to the judicial exercise. I simply cannot see any basis for evaluation of either possibility other than on an evaluation of the past performance. As in most aspects of predictability the past is the surest guide to the future."

I consider that the reasonable parent in this case would recognise the dangers that arise from the past and would conclude that the changes that have been made are too tenuous, ephemeral and untested over a sufficiently long period of time to justify withholding consent particularly in light of the lack of consistency revealed by past behaviour. I do not intend to repeat all the factors that I have set out above, but I am certain that a reasonable parent,

recognising the factual findings that I have made, would not withhold consent on any reasonable basis. I must address at this point the argument advanced on behalf of J2 that he may harbour a sense of grievance or injustice by virtue of not being assessed recently at Thorndale for his parenting skills. The Court of Appeal in Re E (Minors) (Adoption: Parents Consent) [1990] 2 FLR 397 has made it clear that one must distinguish between the sense of injustice, which is irrelevant, and the facts which give rise to the sense of injustice. Where there are grounds for a parent to have a sense of grievance, that factor has to be weighed alongside the other circumstances of the case and in particular the welfare of the child and the advantages of adoption. I am unpersuaded that J2 has any reasonable grounds to have a sense of grievance. He has postponed for far too long any attempt to change his lifestyle to enable him to care for this child. I share the view of Dr Pollock that it is far too early to vest any real confidence in his efforts to date and it is simply unacceptable to expect this child to wait for a prolonged period to see if the change, which has been so conspicuously absent in the past, will now take root. I consider the Trust were completely justified in taking the view that in the absence of some positive indication from Dr Pollock in the case of J2, they would not embark upon a further parenting assessment of him. In any event I consider that his repeated past failures indicate that his present endeavours must be treated with the greatest caution and reserve. In short I conclude that any reasonable parent in this case would recognise that rehabilitation would expose this child to a world characterised by

unpredictable dangers fuelled by drugs, alcohol and domestic violence and he would be therefore denied the safety to grow and develop normally.

(e) I have applied an objective test in this case. I have dispassionately assessed whether or not a reasonable mother and a reasonable father could withhold consent and for the reasons I have stated I do not believe that they could in this instance.

(f) I have applied a test of reasonableness and nothing else.

(g) I have been wary not to substitute my own views for that of the reasonable parent in this context.

(h) I recognise that there is a band of differing decisions, each of which may be reason in a given case. I do not consider that the approach of J2 and H in this case is a reasonable approach.

I am satisfied H and J2 have been given an opportunity of making if they so wish a declaration that they preferred not to be involved in future questions regarding adoption of this child.

Finally in this context I have been mindful of the Human Rights Act 1998 and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Under Article 8 of the Convention both the child and the parents have the right to respect for their family and private life. For the state to interfere with that there are three requirements. First, that it be in accordance with the law, secondly, that it be for a legitimate aim (in this case the protection of the welfare and interests of the child) and thirdly that "it is necessary in a

democratic society". (See Re C and B (Children) (Care Order: Future Harm) [2000] 2 FCR 614 at 625). Proportionality is the key. I must ensure that any order I make is a proportionate response to the risk presented. I am satisfied that Article 8 does not entitle H and J2 to have such measures taken as would harm the child's health and development. I adopt the approach taken by Hale LJ in Re W and B: Re W [2001] UK HRR 9228 where she said at paragraph 55:

> "In my view there is another way in which a public authority may act incompatibly with the Convention rights in a care case. This is by failing to take adequate steps to secure for a child who has been deprived of a life with his family at birth, a life for the new family who can become his new family for life to make up for what he has lost … the notion can be readily inferred from the concept of positive obligations inherent in Article 8."

Whilst this was spoken in the context of a care application nonetheless I think it has relevance in all applications touching upon the future of children. I am satisfied therefore that the order I am making freeing this child for adoption is a wholly proportionate response to the circumstances of this case given the factual conclusions I have made and the advantages of adoption for J's welfare override the views of H and J2. I therefore make an order freeing this child for adoption.

CONTACT

I am satisfied that the effect of the order I have made to free this child for adoption effectively extinguishes the Care Order. I therefore dismiss the application of H under Article 53(2) of the 1995 order. The Freeing Order would have permitted the court to make Contact Orders under Article 10 of

the Children (Northern Ireland) Order 1995 if the court was so minded. I do not consider it appropriate to make such an order in this case. I am satisfied that there is need to afford the Trust a flexibility in approach without immediate recourse to the court. Dr Blincow expressed the view before me that, contrary to what he had said in his report, there may now be good reason to involve birth parents in the contact process. Since A and J3 reside with the maternal grandparents this may provide the opportunity for J to meet not only his grandparents and his two half siblings but also the birth parents. If inconstancy on the part of the parents proves to be a pattern, its effect could be diluted by virtue of the presence of the grandparents and the half siblings. Dr Blincow suggested contact with the grandparents (each set) twice per year and with the paucity of the event occurring, the Trust could perhaps monitor the situation. This was an approach also shared by KMcS on behalf of the Trust albeit that the whole matter would require careful and considered assessment. The Trust's view is that it would be necessary to ensure first that the birth parents were supporting the placement and that relationships with other persons attending the contact, in particular H's parents, were amicable. One would also have to consider carefully the view of the adopters. The Guardian ad litem took a contrary view about post freeing contact. She expressed the view that the inconsistency and contact displayed by each parent and the uncertainty surrounding their relationship with the maternal grandparents bode ill for any arrangement for formal

contact between the birth parents and the child. It is her view that it is indirect contact that should be facilitated.

It is my conclusion that the no order principle should operate in this area of contact because the Trust will require flexibility to adapt to new and changing circumstances. Nonetheless I express the view that the view expressed by Dr Blincow seems to me to have much to recommend it. Inter-sibling contact with A and J3 with J seems to be an appropriate endeavour. My fear is that if J is to be deprived of parental contact whereas A and J3 are having parental contact, not only would the logistics of the operation be difficult to enforce (for example H and J2 could easily turn up for a contact with A and J3 at precisely the time when J was present) but J himself could suffer a sense of bewilderment or isolation if A and J3 were to relate to him enjoyable meetings with their birth parents from which he was to be excluded. I have some doubts that this situation could be resolved in the way that the Guardian considers possible. I therefore favour the current Trust thinking on this issue although it will need to be carefully monitored and reviewed.

I pause to make further observations at this stage directed to H and J2. I recognise that this judgment will not accord with their wishes. I trust however that they will adjust to it and recognise and that they must keep the paramount interest of J to the fore. They are both young and have the greater part of their life ahead of them. H has two other children and she must recognise that her failure to avail of professional services in the future can

only act to the detriment of a relationship with those two children. J2 has perhaps started on the path to a life free of alcohol and it would be a tragedy if he was to throw away the earnest start which he has made albeit that he has a long way to go before the ghosts of his past are laid to rest.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

____

IN THE MATTER OF J (FREEING WITHOUT CONSENT)

____

J U D G M E N T

O F

GILLEN J

____