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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF T AND P (CARE ORDER; RESIDENCE ORDER;
SEXUAL ABUSE; STANDARD OF PROOF)

GILLEN J

In this case T (DOB 4 October 1993) and P (DOB 19 December 1995) are the children of M and P. M and P had commenced cohabiting in or around 1992. Subsequent to the birth of T they separated for a time but reconciled before P was born. There is an unhappy history to their relationship which, so far as court proceedings are concerned, first surfaced on 21 July 1998 when M obtained an interim personal protection order and exclusion order alleging violence against P. P contested this matter and M withdrew the summons when the matter came to court on 4 August. Thereafter there emerges a history of frequent court appearances arising largely out of applications for contact orders and applications under the Family Home and Domestic Violence (Northern Ireland) Order 1998. These are accurately and well set out in the contents of Bundle 4, namely the report of the guardian ad litem dated 21 June 2001 at pages 4-11. There is some dispute between the parties as to

when they separated finally with M alleging that it occurred in December 1996 and P alleging it occurred in December 1997.

The key events relevant to the applications now before the court seem to have occurred in and around February 1999 when M made allegations of child abuse against P and his partner S. The Causeway Health & Social Services Trust (“the Trust”) claim that since this date there had been a large number of allegations of sexual abuse made by M against S which has triggered a number of investigations, none of which has substantiated a gravamen of the allegations save for one occasion at the outset when S took a bath with P. It is the Trust case that M’s inability to accept that these allegations are unsubstantiated has invaded all areas of her child care and the result has been that the children engage in sexualised behaviour in statements totally inappropriate to their age. In short, it is the Trust submission that had these children remained with their mother, they would have suffered significant emotional harm and an abuse of their sexuality. In the event the Trust obtained on 30 June 2000 an Emergency Protection Order. Thereafter the children and M took up residence with M’s parents and have remained with them ever since notwithstanding that M left her parents home on 10 February 2001 after making allegations of physical abuse against her parents. Since that date M has had supervised contact with the children three times per week. Subsequent to that date M has accused her mother of sexually abusing her when she was young. There has also been a complete breakdown of relations between M and the Trust.

While I shall deal in detail with these allegations later in this judgment, it is appropriate at this stage that I set out the background issues:

1. The applications before the court

The Trust have sought a care order pursuant to Article 50 of the Children (Northern Ireland) Order 1995 (“the 1995 Order”). P has made an application for a residence order and parental responsibility order under the 1995 Order. Since June 2001 the Trust position is that they are supporting P’s application and if he is successful then they would seek leave to withdraw their care order application. If he is unsuccessful, then they seek to pursue the care order application. M opposes these applications.

2. Legal issues

P’s application for a residence order under Article 8 of the order is initially governed by the general provisions of Article 3 of the order. In the first place, the child’s welfare shall be the court’s paramount consideration. It is important to appreciate that a residence order under Article 8 settles the arrangements to be made as to the persons with whom a child is to live. It automatically gives parental responsibility to any person in whose favour it is made for as long as the order is in force. However the order is intended to be more flexible than a custody order under the earlier legislation. This order does not affect the legal relationship between this child and its parents. It simply settles the practical arrangements relating to their accommodation. When considering whether or not to make a residence order, the 1995 Order

provides a statutory checklist that Article 3(3) to assist the court in determining what is for the child's welfare and I shall return to each of these in turn later in this judgment. Under Article 3(2) the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of these children and hence I consider it essential that a measure of certainty be introduced into this whole matter as soon as possible. Under Article 3(5) the court shall not make an order unless it considers in doing so it would be better for the child than making no order at all. This embodies the so-called "non-intervention" principle, the effect of which is to require in each case justification of why it is in the child's interest that an order be made.

3. A care order

Under Article 50(2) a care order may be made only if the court is satisfied:

- (a) that the child concerned is suffering or is likely to suffer significant harm; and
- (b) that the harm or likelihood of harm is attributable to the care given to the child or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him.

Whether or not the court does or does not make an order depends upon a two-stage process. First, the court must consider whether or not the criteria for making a care order has been satisfied ie the threshold criteria and

secondly, in light of the care plan and after consideration of the matters contained in the welfare checklist in Article 3(3) of the 1995 Order, whether it is proper to make a care order.

4. Significant harm

It is a matter for the court to determine in the balance of probabilities whether the harm in a particular case is significant. However, when the harm suffered turns upon the child's health or development, the court must compare the child's health or development with that which could reasonably be expected of a similar child. It is important to recognise that it must be the harm which is significant rather than any act or omission which leads to the harm occurring or being likely to occur. It is of course difficult for a qualitative term such as "significant" to be accurately defined. Humberside County Council v B [1993] 1 FLR 257 is authority for the proposition that the dictionary definition of "considerable, noteworthy or important" is an appropriate guide.

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JUDGMENT

OF

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