

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

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**IN THE MATTER T, C, P, M & B (THE CHILDREN (ALLOCATION  
OF PROCEEDINGS) ORDER (NORTHERN IRELAND) 1996)**

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**GILLEN J**

[1] In this matter, a Health and Social Services Trust which I do not propose to name ("the Trust") seeks Care Orders pursuant to Article 50 of the Children (Northern Ireland) Order 1995 in relation to five children namely T, C, P, M and B. The proceedings were initiated in the Family Proceedings Court Lisburn from whence they were transferred to the Family Care Centre at Craigavon on 21 January 2003. Whilst it does not appear on the face of the order, I assume that this was done pursuant to Article 5 or 8 of the Children (Allocation of Proceedings) Order (Northern Ireland) 1996 ("the 1996 Order"). A note from the Resident Magistrate on form C18 records:

"Transfer proceedings to the Family Care Centre for the Division of Craigavon as mother's mental health difficulties require involvement of Official Solicitor, which cannot be done in this court."

The grounds for such transfer are set out in Articles 5 and 8 of the 1996 Order and I will assume that the Resident Magistrate considered each of those grounds and made a determination based on at least one of them even though that does not appear on the face of the C18 document.

[2] On 3 March 2003 the Family Care Centre at Craigavon transferred the case to the High Court according to the order "because of the complex nature of the case and the differing views of the parties concerned". Whilst it does not appear on the face of the order, I assume that this was done pursuant to Article 10 of the 1996 Order which states:

“10. Where proceedings have been transferred to a Family Care Centre under Article 5 or 8 the court shall transfer the proceedings to the High Court where, having had regard to the principles set out in Article 3(2) of the 1995 Order, it considers that the proceedings are appropriate for determination in the High Court and that such determination would be in the interests of the child.”

[3] The matter then came before this court. Both counsel and solicitors who appeared on behalf of the various parties, some of whom had appeared before the Craigavon Care Centre, indicated to me that this transfer had been made to the High Court without application or request from any of the parties and that they had no note or record of any reference to Article 3(2) of the 1995 Order being considered save that the court indicated that the matter should be transferred. It was an extremely experienced judge who was dealing with this matter and I therefore assume that all the constituent parts of Article 10 were considered notwithstanding the lack of reference to them in court or in the order. The thinking behind these jurisdictional changes is to create a flexible system under which all care proceedings can be expeditiously dealt with at an appropriate court level. The majority of cases (straightforward cases) shall be dealt with at the Family Proceedings Court level and, at the other end, only the longer and more complex or difficult cases will be dealt with in the High Court. There is no appeal against an Allocation Order.

[4] The matter is now before me and I must look at it afresh. Under Article 14 of the 1996 Order:

“The High Court shall transfer to a Family Care Centre, before trial, proceedings which were transferred by that court under Article 9(2)(b) or 10 where, having regard to the principle set out in Article 3(2) of the 1995 Order, it considers that the proceedings are appropriate for determination in that court and that such determination would be in the interests of the child.”

The parties before me were the Trust, represented by Ms Gregan, the Official Solicitor who had been appointed by the Master on 31 March 2003 to undertake the role of Guardian ad Litem for the mother and on this occasion was represented by Mr McGuigan, and the Guardian ad Litem represented by Ms McGaughey. The background to this case is that all of the children were placed on a register in the category of confirmed neglect following P's admission to hospital after falling from his mother's arms and sustaining head injuries at a time when it is alleged the mother had consumed alcohol. The mother has a history of mental health problems having been diagnosed as

suffering from paranoid schizophrenia, a condition characterised by chronic systematised delusions and auditory hallucinations. The Trust alleges that the mother continues to refuse to cooperate with the support services despite opportunities being offered to her, she has on occasions left the children unattended at home, she has engaged in inconsistent parenting, corporal punishment has been visited on the children, and she has an inability to control the children. The mother and the father have a volatile and unstable relationship with incidents of domestic violence alleged. In short the Trust alleges that the mother's lack of cooperation and unreceptiveness to support services, attributable to her mental health, present substantial risks to the safety of the children.

[5] In considering Article 14 of the 1996 Order I must have regard to the principles set out in Article 3(2) of the 1995 Order. Trial could not be guaranteed in the High Court before October 2003 given the present list of cases to be heard. Moreover I must bear in mind that the High Court should only deal with the more complex or difficult cases and if straightforward cases are introduced to the lists then those cases which should be determined in the High Court may well be occasioned delay which is neither purposeful nor justifiable. I have no reason to believe that the Family Care Centre in this instance will be unable to hear this case without any inappropriate delay.

[6] Whatever the circumstances that obtained when the matter came the Care Centre I must now consider the proceedings as they stand before me. As all counsel readily conceded, there is now nothing complex about this case. Indeed I was told that with the appointment of the Official Solicitor, there has now been some cooperation from the mother (a factor not present when before the Family Care Centre) and a meeting is planned for 16 May to formulate a way forward at which the Official Solicitor, the mother, the Trust social worker and the Guardian ad Litem will all attend to discuss an appropriate child protection plan. The fact that even now the mother may have views which are different from those of the Trust is not an unusual circumstance and one that is regularly encountered in Care Centre cases. Similarly a recognition that the mother is under a disability is once again not uncommon and a not irregular occurrence in the Family Care Centres. In short, there is nothing complex or particularly difficult about this case. For the guidance of Family Care Centres, it may be appropriate to set out some of the principles that should be considered when the discretion under Article 10 is being exercised. Whilst the category of cases appropriate for determination in the High Court is never closed examples of appropriate criteria will include cases which possess one or more of the following features:

- (a) Voluminous and/or complex issues of law.
- (b) Unusually complex psychological or emotional issues.

- (c) Considerable expenditure of public monies.
- (d) Particularly vulnerable parties and/or unusually uncooperative litigants.
- (e) An unusually long defended case.

[7] In considering what proceedings are appropriate for determination in the Family Care Centre the High Court must bear in mind the spirit of Order 1 of the Rules of the Supreme Court (Northern Ireland) 1980 as amended which at Rule 1(a) states:

“(1) The overriding objective of these rules is to enable the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable –

...

- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to ...
  - (ii) the importance of the case;
  - (iii) the complexity of the issues ...
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the Court’s resources, while taking into account the need to allot resources to other cases.”

[8] Accordingly the High Court in considering which cases are appropriate for determination in the Family Care Centre, must bear in mind those other complex and difficult cases which are properly before the High Court. These are likely to be occasioned delay if non complex cases take their places in the court lists commanding an inappropriate share of the courts resources. In this instance I consider that the proceedings are appropriate for determination in the Family Care Centre and, as constituted before me, do not contain any of the criteria which would justify a hearing in the High Court.

[9] I have also come to the conclusion that a determination of this case in the Family Care Centre would be in the interests of the child, taking its place in the local court with an expeditious resolution of the outstanding issues at the appropriate stage.

[10] I therefore make an order transferring to the Family Care Centre, before trial, the proceedings in this case which have been transferred by the Family Care Centre under Article 10 having had regard to the principle set out in Article 3(2) of the 1995 Order and having considered that the proceedings are appropriate for determination in that court and that such determination would be in the interests of the child.