Neutral Citation No. [2005] NIFam 16 | *Ref:* **MORF5417**

Judgment: approved by the Court for handing down | *Delivered:* **18/11/2005**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF JM (CARE ORDER)

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MORGAN J

[1] Nothing must be reported concerning this case which would serve to identify the child or the mother with which this case is concerned.

[2] In this case a Health and Social Services Trust seeks a Care Order pursuant to article 50 of the Children (Northern Ireland) Order 1995 in relation to one child, JM, born on 17 November 2001. The Trust rely on the following facts to establish that the threshold criteria contained in article 50(2) of the 1995 Order:

> "(i) The mother suffers from Bipolar Affective Disorder and has been hospitalised between 21 September 2004 to 6 January 2005 and from 3 May 2005 until 18 October 2005 as a result of this condition. Bipolar Affective Disorder is a relapsing and remitting illness. The mother's prognosis is guarded in the short-term and unknown in the longer term. However, the longer she remains well the better her prognosis.
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> (ii) The mother has a serious psychiatric history. She attempted suicide on occasions in the past.
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> (iii) She has a history of unpredictable, volatile and impulsive behaviour, which has adversely affected her ability to meet JM's needs in terms of providing a settle home environment with child-focused boundaries, routines and

structure. She has a history of failing to recognise and prioritise JM's needs over her own and failing to offer JM predictable and consistent levels of care.

(iv) She has a history of conducting a lifestyle that is not consistent with meeting JM's needs, such as alcohol and drug misuse and successive transient sexual relationships.

(v) She has been unable to offer stability and security to JM. JM was admitted to voluntary care on 2 December 2003 but the mother removed her from her foster placement the following day. JM was again admitted to voluntary care between 5 to 15 April 2004. JM has been in the continuous care of the Trust since 21 September 2004.

(vi) On 2 December 2003, the mother was driving under the influence of alcohol at 3.30 am with JM in the car.

(vii) She has a history of failing to engage with professionals who wish to offer her advice and guidance in relation to her own mental health and JM's needs."

[3] Those facts are not in dispute between the parties and I accept on the basis of them that JM is likely to suffer significant harm affecting her physical and emotional wellbeing and that the likelihood of that harm is attributable to the care likely to be given to the child if an order were not made. I further find that the care likely to be given to the child in those circumstances is not what it would be reasonable to expect a parent to give to her.

[4] The Trust has devised a Care Plan in respect of the child. The objective of the plan is to support the mother in her recovery from illness with a view to reuniting the mother and child in a family setting in the community. In order to achieve that result the Trust and the mother have agreed a set of basic requirements with which the mother will comply during her return to the community from hospital. The basic requirements are as follows:

- Comply with the in-house rules and regulations of the House
- Take all prescribed medication as directed

- Refrain from abusive substances known to interfere with either her mental health or the effective working of her prescribed medication eg. alcohol, medication prescribed to someone else, illegal drugs etc.
- Keep Review appointments with Mental Health Team
- Keep Review appointments with Community Addiction Team
- Keep appointments/meetings with Child Care staff
- Use the individual and group support sessions available through the House
- Get involved in some constructive activity
- Maintain regular child focused contact with JM
- Refrain from confrontation/hostility with supervising Social Worker during contact.

[5] That period started on 19 October 2005 and the mother is in the process of completing the first assessment process in supervised accommodation. I have heard evidence from the psychiatrist who was treating the mother until her discharge from hospital and she has indicated to me that the mother is complying satisfactorily at present. In the event of any failure to comply the Care Plan treats the failure as jeopardising the assessment process and triggering a LAC review. That review will have the advices of the mother's treating psychiatrist as well as other professionals involved in providing assistance to the mother. The Care Plan envisages the establishment of further agreements between the Trust and the mother over the ensuing period with similar consequences in the event of breakdown.

[6] In the event of a failure of the arrangements the Care Plan envisages a concurrent alternative approach whereby an application would in due course be made to free the child for adoption. That course would not be followed unless the arrangements with the mother had broken down and the Trust had taken into account the views of the mother's treating psychiatrist and others at a LAC review.

[7] In this case the mother has not consented to the proposed Care Order but her counsel has on instructions made no submissions to me in order to resist it. There have been amendments to the Care Plan which have been incorporated as a result of representations made by the mother to the Trust and these have been welcomed by the psychiatrist who gave evidence before me. The Guardian ad Litem supports the application and is content with the Care Plan as amended.

[8] Any measures taken by the state which interfere with the mutual enjoyment by parent and child of each other's company constitutes an interference with the right to family life protected by article 8 of the Convention. It is therefore necessary for the Trust to demonstrate that the intervention in this case is proportionate and necessary to a legitimate state aim. The aims visualised by article 8 are the protection of the rights and freedoms of others and the protection of health and morals. The jurisprudence of the Court requires that there be a pressing social need for the relevant interference. Where the measures impinge on the parental right of access and enjoyment of family life the interference could only be justified if it were motivated by an overriding requirement related to the child's best interests. There can be derived from this approach an obligation on the part of the state to promote reunification of parent and child.

[9] The European jurisprudence is reflected in the provisions of the 1995 Order. The emphasis on the welfare of the child set out in article 3 of the said Order mirrors the proposition that any interference with the parent/child relationship could only be justified by an overriding requirement related to the child's best interests.

[10] I have concluded that the justification for the interference is made out in this case. In light of the age and understanding of the child I do not consider it appropriate to place significant weight on the wishes and feelings of the child except to note that the child has recently been relating well to the mother as she has been recovering from illness and that she has throughout been well cared for by her foster parents. I consider that the child's physical and emotional needs have been put at risk as a result of the mother's illness and would be further imperilled in the event of relapse which remains a distinct possibility on the medical evidence. Similarly I consider that the child in those circumstances would be at risk of harm. There is ample evidence within the papers of the physical and emotional symptoms noted in respect of the child particularly prior to the mother's admission to hospital in September 2004. Lastly I have placed weight on the fact that the mother's capacity to meet the needs of the child must depend on the course of her illness and her ability to withstand the social pressures to which she is by her nature susceptible.

[11] I am satisfied that the Care Plan now in place represents a satisfactory commitment on the part of the Trust to reunite parent and child. The concurrent element of the plan is a necessary precaution taken in the interests of the child if reunification cannot be achieved. The background to this case makes it appropriate to have such a mechanism in place so that the child is not further placed at risk by reason of delay in securing satisfactory permanent arrangements. Accordingly I make the Order sought.