**Neutral Citation no. [2003] NIFam 6** | *Ref:* **GILC3906**

*Judgment: approved by the Court for handing down* | *Delivered:* **11.4.03**

*(subject to editorial corrections)*

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

**FAMILY DIVISION**

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**IN THE MATTER OF R AND D (CARE ORDER: INTERIM CARE ORDER)**

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**GILLEN J**

[1] I direct that there should be no identification of the name of either of the children in this application or the names of either parent or any other matter that may lead to the identification of the family who are the subject of this application.

[2] The applicant in this case is a Community Health and Social Services Trust, which I do not propose to identify ("the Trust"). The children, R born on 7 January 1999 and D born on 23 April 2001 are the children of A (the mother) and J (the father) who are a married couple. The Trust seeks a Care Order under Article 50 of the Children (Northern Ireland) Order 1995 (hereinafter called "the 1995 Order").

[3] Under Article 50 of the 1995 Order, on the application of any authority or authorised person the court may make an order placing a child with respect to whom the application is made in the care of a designated authority. A court may only make such a Care Order if it is satisfied that the child concerned is suffering or is likely to suffer significant harm and 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 a Care 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. Secondly, if the threshold criteria have been satisfied, the court must then consider whether a Care Order should be made in light of the care plan, the welfare checklist in Article 3(3) of the Order, the no order principle enshrined in Article 3(5) of the 1995 Order together with consideration of the range of possible orders including any order under Article 8 of the 1995 Order. The court must take into account the

paramount interest of the welfare of the child. The court will also need to have in mind that any delay in determining issues relating to a child's upbringing is likely to prejudice the child's welfare (see Article 3(2) of the 1995 Order).

[4] KA v Finland [2003] 1 FCR 201 has recently underlined that for the purposes of Article 8(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ("ECHR") any order related to the public care of a child has to be capable of convincing an objective observer that the measure has been based on careful and unprejudiced assessment of all the evidence on file, with the reasons for the care measures being stated explicitly. The reasoning adopted must reflect the careful scrutiny which the competent organs could be expected to carry out by balancing the various pieces of evidence in favour and against the measure. Furthermore Article 8 of the ECHR requires that the decision-making authorities and the court should provide such detailed reasons as will enable the parent or custodian to participate in any further decision-making by appealing the decision. Moreover the taking of a child into public care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit it. Any measure implementing such care should be consistent with the ultimate aim of reuniting the natural parent and the child. That positive duty weighs upon the domestic authority with progressively increasing force as from the commencement of the period of care subject to the duty to consider the best interests of the child. The court held that the minimum expected of the authorities was to examine the situation anew from time to time to see whether there had been any improvement in the family situation.

[5] In Kutzner v Germany [2003] 1 FCR 249 the court underlined the need to ensure that any interference with the right to respect for family entails a violation of Article 8 of the EHCR unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8(2) and was necessary in a democratic society for the aforesaid aims. The notion of necessity implies that the interference must correspond to a pressing social need and in particular that it is proportionate to the legitimate aim pursued. An applicant Trust in such circumstances must enquire as to what additional measures of support can be given as an alternative to the extreme measure of separating a child from his or her parents.

[6] Against that legislative and human rights background, this case came to be considered by this court. The factual background was not really in dispute. Consequently the respondents to the application namely A and J represented by Ms Walsh QC and the Guardian ad Litem represented by Mr Edmundson were ad idem with the Trust, represented by Ms O'Hagan that the threshold criteria had been fulfilled. It is not the role of the court to rubber stamp such agreements and consequently before approving the

proposed threshold criteria, I have anxiously considered the background to ensure that the proposed criteria are appropriate. Having done so, I was satisfied that the threshold criteria had been reached. Accordingly I am satisfied that the children have suffered or are likely to suffer significant harm namely physical and emotional harm by reason of the following matters set out in the agreement between the parties:-

> "(i) The parents' inability to provide consistent and adequate standards of stimulation, supervision, safety, cleanliness and hygiene within the home for the benefit of the children.
>
> (ii) The parents' inability to consistently provide for the children's most basic needs as evidenced by the failure to thrive and developmental delay displayed by the children.
>
> (iii) The continuing lack of awareness and insight of the parents into the fundamental importance of their families as set at (i) and (ii) above.
>
> (iv) The mother's inability to cope with stress and pressures arising from the demands of caring for two children and the father's failure to consistently support her at those times.
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> (v) An inadequate display of motivation by both parents to change and evidence any ability to sustain change."

[7] Crossing the threshold is not reason enough however for making a Care Order. When the threshold criteria are met the court proceeds to the welfare stage. The court must decide whether it is in the best interests of the child to make a Care Order as requested by the Trust. The paramount consideration in making this decision is the child's welfare pursuant to Article 3(1) of the 1995 Order. This involves looking at the past and also looking into the future. In considering which course is in the child's best interests, the court will have regard to all the circumstances of the case.

[8] Apart from the circumstances already outlined in the threshold criteria, other relevant circumstances are as follows. Interim Care Orders were granted on 7 May 2002 in respect of both children. Social work involved with the family commenced shortly after R's birth in January 1999. Various support packages have been put in place by the Trust including a 13 month residential assessment. The family was rehoused in March 2000 and received

an intensive community support package. On 13 March 2001 R's name was removed from the Child Protection Register in response to an improvement in the parenting response over the previous year. However on 12 April 2002 R was re-registered and D's name was added to the Child Protection Register in a category of "confirmed neglect". Following the making of an Interim Care Order thereafter, the children were initially placed with family members. Unfortunately these placements failed and both R and D were ultimately placed with separate foster carers on 31 August 2002 and 31 July 2002 respectively.

[9] The Trust have devised a concurrent care plan for a time limited assessment on the parents leading to rehabilitation of the children or permanency through adoption. The original concurrent care plan, submitted to the Family Proceedings Court on 20 May 2002, envisaged inter alia that the parents should:

> "(a) Engage fully in an assessment of their parenting and their motivation to change any aspects of their parenting.
>
> (b) Engage fully in an assessment regarding the attachment between themselves, R and D.
>
> (c) Show evidence of improved hygiene conditions in the home and demonstrate their ability to remain motivated to sustain these improvements.
>
> (d) Avail of opportunities for contact with R and D.
>
> (e) The Trust would arrange for R and D to see a consultant paediatrician to obtain a medical plan regarding their weights and developments."

The plan rehearsed that the success of the rehabilitation plan would depend on the parents' commitment to engage fully with these assessments and the subsequent outcomes of the assessments.

[10] In relation to point (a) the Trust employed the services of Dr Iain Bownes Forensic Psychiatrist and later Dr Philip Pollock Clinical Psychologist in order to assess the parents' level of ability, insight into key parenting functions and their motivation to successfully parent their children by acknowledging areas of concern identified by the Trust. Dr Bownes completed his assessment of the couple in July 2002. Dr Pollock was also instructed by the Trust and the Guardian ad Litem in October 2002 to

consider issues relating to the parents' level of functioning and motivation/capacity to change. His report was received in November 2002. Thereafter the Trust decided to further explore the issue of parental motivation and to request an expert assessment of attachment from Dr Nugent Psychologist. This assessment was received in February 2003 and, according to the care plan, these three expert reports in conjunction with ongoing social work intervention have informed the Trust's decision-making. In particular the assessment of attachment provided by Dr Nugent highlighted several pertinent factors in relation to the family. She made a variety of suggestions that the Trust might wish to consider including:

(a) A period of time limited assessment to clarify the viability of rehabilitation.

(b) A graduated increase in contact with close monitoring.

(c) Structured feedback on video sessions of contact.

(d) Direct exploration with Mr Bennett of his relationship with R. Dr Nugent concluded that "should the parents be able to build on the mutually positive experience as evident in contact sessions with their children and accept support and guidance and address in a positive manner any deficits identified, the longer term prognosis could be very positive for R and D."

They intend to allocate no more than 6 months within which to explore possible rehabilitation. They intend to explore this through motivational interviewing over a maximum of 12 sessions to commence in the near future. Should the outcome of this programme be positive, the Trust would then seek to intensively assess the parents by means of a residential assessment, initially without the children, in order to gain insight into the lifestyle of this couple and the dynamics in their relationship. The third element to the care plan would be gradually increased involvement of the children through contact and ultimately a time limited residential assessment. It is only through this final strand that an accurate assessment could be made of the parents' ability to juggle all the responsibilities and demands of parenting the two small children.

[11] The Trust have also made it clear however that if at any stage during this three step process, the plan is clearly failing, then the Trust will revert to a recommendation of permanency through adoption. Throughout the process contact will remain as it is namely two weekly supervised contacts for 1½ hours per occasion.

[12] I was satisfied that the care plan was a wholly appropriate one. I also paid particular regard to the factors set out in the welfare checklist in Article

3(3) of the 1995 Order. Without slavishly repeating each sub-article of Article 3(3) I was satisfied that an application of this checklist to the background facts inevitably pointed to a Care Order at this juncture. The history clearly made it evident that the no order principle could not be applied without endangering the welfare of these children. Given the inadequacies of the parents which were now being addressed, the consideration of the range of orders available to the court made it clear that only a care order would suffice to protect the children adequately. I was satisfied that this choice was a proportionate response to the legitimate aim of the paramount interests of these children and adequately took into account the right to respect for family life pursuant to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[13] I was reassured in my views by the unanimity on the part of counsel in this case namely Ms O'Hagan on behalf of the Trust, Ms Walsh QC on behalf of the respondent parents and Mr Long QC on behalf of the Guardian ad Litem that the real choice at this juncture was whether the court should make a Care Order or simply an Interim Care Order.

[14] Ms O'Hagan, on behalf of the Trust, argued that the care plan was sufficiently defined to merit the making of a full Care Order. She submitted that the plan was choate and clear. She argued that it was now for the Trust to decide how matters were to progress and that the court should step back from any supervisory role at this stage.

[15] Ms Walsh QC on behalf of the respondents submitted that there was a great deal of uncertainty in this case which needed to be resolved before the court could decide whether it was in the best interests of the child to make a Care Order at all. She emphasised that the crucial steps of assessment of the parents had yet to be completed and only when the first stage of this three part process was completed would the court have sufficient information upon which to make a decision. To do otherwise she argued would permit the Trust to simply abandon the first stage if they perceived it to have been unsuccessful and thereafter months might pass until a Freeing Order was mounted permitting the respondents to challenge the Trust conclusions.

[16] Mr Edmundson, on behalf of the Guardian ad Litem, agreed with the submissions of Ms Walsh QC. He called in evidence Ms Fiona Armstrong the Guardian ad Litem. Ms Armstrong had formerly held the view that a full Care Order should be made, but she had changed her mind very shortly before the hearing and now was in favour in an Interim Care Order. It was her view that there was no clear or certain future mapped out for these children. Her evidence was that in her opinion at the end of a relatively short period ie after the assessment, the Trust could then map out a clear and certain future. In her view an Interim Care Order would allow the court to effect control over the timetabling and ensure a more certain outcome. She

feared that if the process were to be ended in the middle of this three stage procedure and reunification be abandoned, the institution of further proceedings by the Trust would only occasion further delay creating its own life cycle which might potentially, by virtue of the delay, prejudice the interests of the children.

**LEGAL PRINCIPLES GOVERNING THIS ISSUE**

[17] The leading authority on the use of Interim Care Orders is Re S (Minors) (Care Order: Implementation of Care Plan); Re W (Minors) (Care Order: Adequacy of Care Plan) [2002] 1 FLR 815. In this case the House of Lords made it clear that Parliament had set out its clear intention in the Children Act 1989 that once a Care Order had been made, the responsibility for the child's care lay thereafter with the authority, not with the court and the courts were not empowered to intervene.

[18] Of particular relevance in this case however, was the ruling by the court that Interim Care Orders were not intended to be used as a means by which the court might continue to exercise a supervisory role over the local authority in cases in which it was in the best interests of a child that a Care Order should be made. Lord Nicholls described the purpose of Interim Care Orders in the following terms at p836 para 90 onwards:

> "From a reading of s38 as a whole it is abundantly clear that the purpose of an Interim Care Order, so far as presently material, is to enable the court to safeguard the welfare of a child until such time as the court is in a position to decide whether or not it is in the best interests of the child to make a Care Order. When that time arrives depends on the circumstances of the case and is a matter for the judgment of the trial judge. That is the general, guiding principle. The corollary to this principle is that an Interim Care Order is not intended to be used as a means by which the court may continue to exercise a supervisory role over the local authority in cases where it is in the best interests of a child that a Care Order should be made.
>
> (91) An Interim Care Order, thus, is a temporary `holding' measure. Inevitably time is needed before an application for a Care Order is ready for a decision. Several parties are usually involved: parents, the child's guardian, the local authority, perhaps others. Evidence has to be prepared, parents and other people interviewed,

> investigations may be required, assessments made and the local authority must produce its care plan for the child in accordance with the guidance contained in Local Authority Circular (99) 29 Care Plans and Care Proceedings under the Children Act 1989. Although the Children Act 1989 makes no mention of a care plan, in practice this is a document of key importance. It enables the court and everyone else to know, and consider, the local authority's plans for the future of the child if a Care Order is made.
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> (92) When a local authority formulates a care plan in connection with an application for a Care Order there are bound to be uncertainties. Even the basic shape of the future life of the child may be far from clear. Over the past 10 years problems have arisen about how far a court should go in attempting to resolve these uncertainties before making a Care Order and passing responsibility to the local authority. Once a final Care Order is made, the resolution of the uncertainties will be a matter for the authority, not the court."

[19] I pause to observe that I consider this to be a key factor in these cases. It must be appreciated that virtually every care plan which envisages concurrent planning is to some extent uncertain. Even the basic shape of the future life of the child may be unclear in the words of Lord Nicholls. The line dividing on the one hand those cases where the uncertainty needs to be resolved before the courts can decide what is in the best interests of the child to make a Care Order (eg C v Solihull Metropolitan Borough Council [1993] 1 FLR 290 where the court could not decide whether a Care Order was in the best interests of a child without knowing the result of parental assessment and Re SM (Interim Care Orders: Exercise of Judge's Discretion) [2002] NIJB 227) and those cases where it does not can be a somewhat imprecise one.

[20] On the one side of the line there are the cases mentioned by Lord Nicholls in Re S: Re W at para 97:

> "Frequently the case is on the other side of this somewhat imprecise line. Frequently the uncertainties involved in a care plan will have to be worked out after a Care Order has been made and while the plan is being implemented. This was so in the case which is the locus classicus on this subject: Re J (Minors) (Care: Care Plan) [1994]

1 FLR 253. There the care plan envisaged placing the children in short term foster placements for up to a year. Then a final decision would be made on whether to place the children permanently away from the mother. Rehabilitation was not ruled out if the mother showed herself amenable to treatment. Wall J said at 265a:

> `There are cases (of which this one) in which the action which requires to be taken in the interests of the children necessarily involves steps into the unknown .. provided the court is satisfied that the local authority is alert to the difficulties which may arise in the execution of a care plan, the function of the court is not to seek to oversee the plan but to entrust its execution to the local authority'.

[21] I have considered the rival arguments carefully in this case. I have come to the conclusion however that this is a case in which this Trust has a clear care plan in mind which although necessarily inchoate to some degree, is an entirely appropriate one with defined steps and clearly predicted outcomes. I am satisfied that this Trust is fully alert to the contingencies which may arise in the implementation of the care plan. This plan in my opinion represents the only practical course of action for the children and leaves the parents in no doubt as to what steps will have to be taken if this Care Order is to be successfully revoked. They must appreciate that unless they are able to demonstrate a commitment to the successful outcome of these assessments and generally manifest a change of attitude towards the welfare of these children the prospects of them being returned to their care will be gravely prejudiced.

[22] The court must be alert to the danger of using Interim Care Orders as a means of policing or supervising the Trust in this process. In my opinion to grant an Interim Care Order at this stage would be tantamount to doing this in a case where the care plan now postulated states clearly contingencies upon which a successful outcome is based.

[23] In all the circumstances therefore I have come to the conclusion that a full Care Order should be made in this case and accordingly I do so.