Neutral Citation No. [2004] NIQB 75 | *Ref:* **GILC5127**

Judgment: approved by the Court for handing down | *Delivered:* **17/11/04**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION (CROWN SIDE)

_____

IN THE MATTER OF AN APPLICATION BY J FOR JUDICIAL REVIEW

_____

GILLEN J

Introduction

[1] This is an application by the mother (whom I shall identify as J) of a child whom I shall identify as A in order to protect his anonymity. Any report of this case should not disclose any matter which would reveal his identify or whereabouts.

[2] The applicant seeks judicial review of a decision of His Honour Judge Curran QC made on 17 September 2004 by which the judge granted the boy's father direct unsupervised contact with A for an initial period of three months, the first contact being set to take place on 26 September 2004.

[3] The applicant seeks the following relief:

(i) a declaration that the decision of the court is unlawful;

(ii) an order of certiorari removing the decision to the High Court of Justice in Northern Ireland and quashing the said decision;

(iii) an order of mandamus removing the said decision into the High Court of Justice in Northern Ireland and directing the Family Care Centre to review or rehear the case.

Background

[4] The child who is the subject of this application is now aged nine years of age and resides with his mother. His parents have been separated for over five years. Until the 17 September 2004 the father had been permitted only indirect contact with A. There had been a number of court proceedings. In May 1999 a joint residence order was made by the Family Proceedings Court and after a number of other court proceedings, and intervention by the local Health and Social Services Trust, the child was at one stage placed on the Child Protection Register. On 14 June 2002 the Family Proceedings Court directed that the father should only have indirect contact with A. That decision was appealed by the father to the Family Care Centre. After directions hearings had been entertained in that court, the father then withdrew his appeal. Indirect contact has been operating ever since. Fresh proceedings were issued by the father in the Family Proceedings Court on 28 October 2003 in order to obtain direct contact with A. Before the Family Proceedings Court on 3 February 2004, the resident magistrate ordered that indirect contact should continue and that there be no direct contact between the father and the boy. At that hearing the resident magistrate heard oral evidence from Dr Gerry McDonald a clinical psychologist and also a Dr Simpson who was a consultant psychiatrist then responsible for the care and treatment of the father. I pause to observe that an issue arose in this case as to whether or not Dr McDonald had been appointed by the court as suggested by Ms Armstrong, solicitor for the applicant. I caused this matter to be investigated at the hearing before me because it became a matter of some dispute. The parties availed of the opportunity that I gave them to research the totality of the previous hearings in this matter and it became clear that there never had been any order emanating from any court purporting to appoint Dr McDonald on behalf of the court. A series of orders had been made by an extremely experienced resident magistrate and no reference had been made in any of them to a "court appointment" or indeed as would have been the conventional approach, any order pursuant to Article 4 of the Children (NI) Order 1995 ("the 1995 Order") whereby a court considering any question with respect to a child under the Order may ask an authority to arrange for a suitably qualified person to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report. It emerged that Dr McDonald's intervention in the case had emanated from his earlier appointment by the Trust to look into the question of contact and thereafter he was called to the court at the request of the applicant. However for the removal of any doubt, I intend to deal with this case on the basis, which I have found, that he was not a court appointed official and also on the alternative basis that he had been appointed as a result of a court order. In any event at the hearing before the resident magistrate, having heard the oral evidence of Dr Gerry McDonald and Dr Simpson, the order hereinbefore referred to was made.

[5] The case was appealed to the Family Care Centre. It is common case that at a directions hearing before the learned judge, he considered that he should retain carriage of the case. I endorse entirely the thinking of the judge which he has averred in an affidavit of 8 October 2004 ("the judge's affidavit") in which he set out his belief that it was important in such cases that there is a judicial continuity in order to bring clarity and certainty. Judicial continuity, wherever possible, is a vital ingredient of the family justice system and the efforts by this judge to ensure that he retained a grip on this case throughout the directions hearings and the ultimate decision making process was entirely appropriate.

[6] In the statement pursuant to Order 53 of the Rules of the Supreme Court a number of criticisms were made of the judge which, at the hearing before me, were very wisely withdrawn. Their presence in my view betrayed a fundamental misunderstanding of the nature of family justice proceedings. The comments in *Re E (a minor) (Wardship; Courts Duty)* [1984] FLR 457 at p488 concerning wardship proceedings are entirely apposite today when looking at the general family justice system;

> "but a court exercising jurisdiction over its ward must never lose sight of a fundamental feature of the jurisdiction that it is exercising, namely that it is exercising a warship, not an adversarial, jurisdiction. Its duty is not limited to the dispute between the parties: on the contrary, its duty is to act in the best way suited, in its judgment, to serve the true interest and welfare of the ward. In exercising wardship jurisdiction, the court is a true family court. Its paramount concern is the welfare of its ward. It will therefore sometimes be the duty of the court to look beyond the submissions of the parties in its endeavour to do what it judges to be necessary".

In any hearing under the 1995 Order, the child's welfare shall be the court's paramount consideration. Accordingly in the Family Court judges may be somewhat more interventionist than in the purely adversarial system of other divisions. Thus it was entirely appropriate for this judge to have intervened during the case to assist the parties in, as he described it, "providing some framework or context for negotiated outcome to the matter". Such an approach is not evidence of pre-judging the matter but rather an exercise in appropriate and measured judicial activism to secure the best interests of the child. Similarly I entirely endorse the practice of this judge to write out before the hearing a statement of the history of the case and the various stages that the case had passed through as evidence not only of

the required careful and considered approach to family cases but also as a helpful aide memoire to identify all the issues to be considered at the hearing. It is a fundamental prerequisite in family law cases that the judges and magistrates have fully read what is often voluminous material provided prior to the hearing in order to approach the case in an organised and informed manner. The original criticisms of this judge for taking both of these steps was in my view entirely misplaced. Similarly I note that Mr Lavery did not pursue suggestions contained in his skeleton argument that the court had been seen as hostile, that cross examination was curtailed or that the hearing did not have the appearance of fairness to the extent that counsel, solicitor and Dr McDonald did not feel that there would be any point in calling evidence. I consider that such suggestions were entirely groundless and in particular the last of these arguments was positively risible. Solicitor, counsel and professional witnesses have a duty to the court to ensure that all the evidence that they consider relevant is placed before it. Accordingly a judge is entitled to proceed on the basis of the evidence placed before him and to assume the absence of any particular piece of evidence has been based on rational and informed consideration rather than on a basis of professional pique.

[7] In any event judicial review is not generally suited to resolving disputed facts although there is no inherent limitation on the part of the court to do so. In the absence however of these matters being even argued in front of me, I wish to make it clear that I fully accept the version of events put forward by the judge in this instance.

[8] Before turning to review the arguments on which Mr Lavery did rely, it may be helpful at this stage to outline the background facts of the hearing which is now the subject of this application. It is common case that at a directions hearing prior to the appeal, the father had been permitted to submit further expert evidence from Dr Horner as to his suitability to have contact with A albeit he did not permit a re-interview of A. Dr Horner was to form an opinion after reading all the papers and reports in the case together with an interview of the father. In the event Dr Horner was ill and unable to attend. The judge indicated, properly in my view, that the hearing should proceed on the basis of the evidence that was available and, if necessary, an application could be made to call Dr Horner at a later date. I accept that the judge then rose to allow time for Dr McDonald to attend, albeit no explanation was ever given to the court for his delayed attendance. In the event the case commenced and the father gave evidence. At paragraph 10 of his affidavit, the judge described his evidence as follows;

> "In general terms I found him to be an impressive witness. He was calm and polite. Of particular relevance, in my opinion, (the father) did

> acknowledge that he had behaved badly in the past and in particular in and around 2002."

Thereafter Dr Simpson was called. At paragraph 11 of his affidavit the judge records as follows;

> "It will be noted that Dr Simpson had treated (the father) over a period of time and had seen him on approximately 20 occasions. He had last seen him on 4 August 2004, approximately 5 weeks prior to the hearing. He had concluded, in essence, that (the father) was a changed man. It appears that (the father) had indicated that he would willingly undergo any further treatments that Dr Simpson may have thought to be necessary but, in fact, Dr Simpson did not believe that any such treatment was indicated. I find Dr Simspon's evidence to be impressive and reasoned. I was impressed with the apparent change in (the father) over the years as reflected in Dr Simpson's clinical findings and her views as to the necessity of further treatment."

[9] It is common case that upon counsel for the father having indicated to the court that she longer proposed to call Dr Horner to give evidence at any adjourned hearing, counsel on behalf of the mother then either applied for the case to be adjourned because Dr Horner was not present (as asserted by Ms Armstrong in paragraph 9 of her affidavit on behalf of the applicant) or, as stated by the judge in his affidavit at paragraph 12, counsel indicated to him that she wished to cross examine Dr Horner in respect to his qualifications. The judge ruled that as Dr Horner was not to be called to give evidence she could not cross examine her and he made it clear that he was not taking Dr Horner's evidence into account. It is also common case that thereafter counsel on behalf of the mother applied for an adjournment to enable Dr McDonald to examine the father again and that this application was refused. The judge sets out his reasons for so doing at paragraph 12 of his affidavit;

> "My reasons for doing so was that it was completely inappropriate halfway through a hearing, after the close of the appellant's case and 11 months after proceedings were first issued by (the father). At no time, so far as I am aware, was it ever suggested by the solicitor or counsel for (the mother) or by Dr McDonald at the time of the application that it was necessary that Dr McDonald should examine (the father) or needed to in order to come to a

> clinical opinion. As I understand the matter Dr McDonald had been confident in his clinical opinion prior to Dr Simpson giving evidence. I would make it clear to the honourable court that my decision to refuse an adjournment application was not intended to be any sort of sanction imposed upon (the mother's) legal or medical advisers for failing to prepare the case, if indeed this is what happened. I exercised my judgment on the basis of what was in the best interests of the child. These proceedings had gone on for a considerable period of time. If Dr McDonald was to examine (the father) and report there would be a delay. It could only be fair then to allow Dr Simpson, and if thought appropriate, Dr Horner to comment on Dr McDonald's updated views. (The father) and Dr Simpson would then have to give evidence again in order to deal with any points raised by Dr McDonald effectively rendering all proceedings to date of little, if any, use. The evidence before the court formed an adequate basis for me to come to a reasoned decision. Dr McDonald was free to give evidence at the discretion of (the mother's) legal advisers."

[10] Turning then to the affidavit of Ms Armstrong on behalf of the applicant, it is recorded as follows at paragraph 9;

> "In consultation over lunchtime Dr McDonald stated that he was reluctant to give evidence given the judge's hostile attitude towards the respondent (the mother). The judge had already twice in the morning indicated in open court to counsel that he was going to give some sort of contact to (the father). … Therefore, upon the refusal of the adjournment application and in light of the indications given by the judge it was decided that to lead any further evidence would not only be a waste of time but would cause stress and anxiety to our client (the mother). It was clear that the judge had already made his decision. No evidence was tendered therefore on behalf of the respondent. … The judge made an interim order for three months of direct unsupervised contact twice per month at weekends for six hours.

> Dr McDonald has indicated in his reports and at consultation that there should be no contact between (the father) and A until (the father) completes therapeutic work on his personality disorder."

[11] At paragraph 14 of his affidavit, the judge avers;

> "Accordingly I was obliged to make my decision on the basis of the evidence of (the father) and Dr Simpson. I did not take into account Dr Horner's evidence."

At paragraph 15, inter alia, the judge avers;

> "I was not given any basis why the contact should be limited. There was clear evidence that (the father) loved his son and that his son loved him. There is no evidence of risk to A. In those terms I made an interim order to be reviewed after three months, that (the father) should have direct contact with A on a fortnightly basis."

The applicant's submissions

[12] In essence the applicant through Mr Lavery made three submissions:

(i) that judicial review in a case involving The Children (NI) Order 1995 should not be confined to Wednesbury principles where there a genuine concern of danger to the child.

In my view the fundamental nature of judicial review does not change simply because it is heard in the context of an application brought in relation to the 1995 Order. The remedy of judicial review is still concerned with reviewing the decision making process. The purpose is to ensure that an individual has been given fair treatment by an authority to which he has been subjected. It is still not concerned with reviewing the merits of the decision in respect of which the application is made, this being a matter for appeal. The basic approach is that set out by Lord Roskill in *Council of Civil Service Unions and Others v Minister for Civil Service* [1984] 1 All ER 935 at 953J where Lord Roskill said;

> "… Evolution has established that executive action will be the subject of judicial review on three separate grounds. The first is where the authority concerned has been guilty of an error in law in its

> actions, as for example, purporting to exercise a power which in law it does not possess. The second is where it exercises a power in so unreasonable an manner that the exercise becomes open to review on what are called in lawyers shorthand, the Wednesbury principles (see *Associated Provincial Picture Housing Ltd Corporation* [1948] 1 KB 223). The third is where it has acted contrary to what are often called 'principles of natural justice'… better replaced by speaking of a duty to act fairly. But that latter phrase must not in its entirety be misunderstood or misused. It is not for the courts to determine whether a particular policy or particular decisions taken in fulfilment of that policy are fair. They are only concerned with the manner in which those decisions had been taken and the extent of that duty to act fairly will vary greatly from case to case."

However in considering the grounds for judicial review the court will take into account that the decision under review should have been taken in light of the principles set out in Article 3(1) of the 1995 Order that "the child's welfare shall be the courts' paramount consideration." The court will investigate how the decision making process reflected and applied that statutory requirement. To this extent the statutory obligation under Article 3 of the 1995 Order will therefore play a prominent part in any judicial review of a case determined under that Order but the fundamental tenets of judicial review remain unchanged.

Moreover different considerations apply to judicial review applications brought in relation to a complaint of a breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 ("ECHR") and the Human Rights Act 1998 ("HRA"). In *R v Secretary of State for the Home Department ex parte Daly* [2001] 2 WLR 1622 Lord Steyn said;

> "The starting point is that there is an overlap between the traditional grounds of review and the approach of proportionality. Most cases will be decided in the same way whichever approach is adopted. But the intensity of review is somewhat greater under the proportionality approach… First, the doctrine of proportionality may require the reviewing court to assess the balance which the decision make has struck, not merely whether it is within the range of rational or reasonable decisions. Secondly, the proportionality test may go further than the traditional grounds of review in as much as

> it may require attention to be directed to the relevant weight accorded to interests and considerations. Thirdly, even the heightened scrutiny test so developed … is not necessarily appropriate to the protection of human rights."

[13] Those are the principles that I intend to apply in this case.

(ii) Mr Lavery submits that the applicant in this case has suffered a breach of her rights under Article 6 of the ECHR including in particular the right to a fair hearing. He argues that she was so denied by virtue of the refusal to adjourn the case to enable Dr McDonald to update his report, the court's failure to take into account Dr McDonald's report and the judge's failure to insist on Dr McDonald being called to give evidence albeit he was aware of his presence in the precincts of the court.

[14] After anxiously scrutinising the facts I have come to the conclusion that in this case that there has been no breach of Article 6. In the first place I consider this judge was entirely justified in refusing the adjournment and I find nothing unreasonable or disproportionate in his decision to do so. *Re C (Abused children: orders)* 1992 FCR 57 is authority from the Court of Appeal that the decision of the judge to refuse or grant an adjournment is peculiarly a matter for him and the Court of Appeal will certainly not interfere where there is no indication that it would make any difference. In *Re G (Children) (Adoption proceedings: representation of parents)* (2001) 1 FLR 353, the Court of Appeal held that particularly in public law cases where the outcome advocated by a local authority and the guardian ad litem was the permanent loss of the children to their natural parents it is important that parents have equality of representation and the sense that they have had a full and sympathetic hearing even if they were unsuccessful. Judges must be wary lest their determination not to have the timetable of the matter derailed in order to recognise the importance in all children matters of an early determination leads them to ignore the nature of the draconian outcome sought. In this instance however, the judge was perfectly entitled to take into account the fact that these proceedings had gone on for a considerable period of time. Mr Lavery relied on this to indicate that a delay of a few more weeks would not be of great moment. I disagree. I consider that the scenario depicted by the judge and to which I have already referred was calculated to engender further delay in this case and I consider that it was within the ambits of reasonable discretion for the judge to conclude that a decision was now required without further delay. It is important to appreciate that contact is not a fixed notion. Contact arrangements can change as parents and children's circumstances change and they enter difference stages of life. This judge has made the current arrangements for a period of three months and thereafter the matter will doubtless be reviewed. The judge has clearly paid appropriate attention to Article 3(2) of the 1995 Order which declares "the

court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child". Dr McDonald had had ample opportunity to indicate that he wished to update his report prior to the hearing and had chosen not to do so. Not only was he present in court to enforce the point if he so wished, but his requests, faithfully articulated by counsel, did not emerge until over half way through the hearing after other important witnesses had testified. I regard the judge's conclusion as unchallengeable.

[15] Mr Lavery submitted that the judge had not indicated that he had taken into account Dr McDonald's report. Indeed the judge said that he was obliged to make his decision on the basis of the evidence of Mr McCavitt and Dr Simpson and that he specifically did not take into account Dr Horner's evidence, making no reference Dr McDonald's report. However everyone was well aware that prior to this hearing the judge inevitably had sight of Dr McDonald's reports. He specifically said so at paragraph 15(b). On the other hand, the judge had to take into account the Article 6 rights of the respondent father as well as the applicant mother notwithstanding the paramount interest of the welfare of the child. Where there is an oral hearing, a tribunal must consider all the relevant evidence submitted, inform the parties of the evidence taken into account, allow witnesses to be questioned and allow comment on the whole case. *(See R v Deputy Industrial Injuries Commissioner, ex p Moore* (1965) 1 QB 456 at 490. Even in the Family Division, a court should not rely on points not argued or private enquiries made (see *R v Mental Health Review Tribunal, ex p Clatworthy* [1985] 3 AER 699 at p 704). I find nothing whatsoever in the statements made on behalf of the applicant or the respondent which suggest that the judge prevented argument being mounted on behalf of the applicant to the effect that Dr McDonald's report as it stood should be taken into account so long as he afforded counsel for the father the opportunity to respond or that he interfered with the right of the applicant to cross-examine Dr Simpson on the basis of what was contained in Dr McDonald's reports. This is particularly relevant where, as everybody knew, Dr McDonald was present in court and could have availed of the opportunity to give evidence and refute any statement which he considered contrary to his professional view.

[16] The third point under Article 6 is that Mr Lavery submits that the judge ought to have called Dr McDonald to give evidence notwithstanding the decision by the applicant's own counsel not to call him and, apparently, the decision of Dr McDonald himself that he did not wish to give evidence. I have already determined that Dr McDonald was not present in court pursuant an order under Article 4 of the 1995 Order. It may be of some assistance however that I should consider this aspect of the case on the basis that he had been there under an Article 4 Order and on the alternative basis, which I have found, that he was there essentially at the behest of the applicant:

(a) The Impact of Article 4 of the 1995 Act

It was erroneously submitted to me initially that Dr McDonald had been brought to the court as a result of a direction of a magistrate at the Family Proceedings Court. In *Re Downey* (2000) NIQB 10 Higgins J dealt with circumstances of an Article 4 direction. Under Article 4 of 1995 Order, a court considering any question with respect to a child under the Order may request a welfare report either orally or in writing. Article 4 provides:

> "4(1) A court considering any question with respect to a child under this Order may ask an authority to arrange for a suitably qualified person to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.
>
> (3) The report may be made in writing, or orally, as the court requires.
>
> (4) Regardless of any statutory provision or rule of law which would otherwise prevent the court from doing so the court may take account of –
>
> (a) any statement contained in the report; and
>
> (b) any evidence given in respect of the matters referred to in the report,
>
> (i) insofar as the statement or evidence is, in the opinion of the court, relevant to the question which it is considering.
>
> (5) An authority shall comply with any request for a report under this article."

[17] Higgins J in *Re Downey* said of this Article:

> "Thus a court may request an authority to arrange for a suitably qualified person to report in writing to the court about the welfare of a child. Where a court makes such a request and a report is presented the court may take account of its contents regardless of any rule of law or statutory provision if it is relevant to the issue before the court. Thus once a court is commissioned it is admissible and the court may take

it into account in its discretion if it so wishes and if the report is relevant."

[18] Rule 4.14 of the Family Proceedings Rules (NI) 1996 provides for the service of a welfare officer's report (defined in Rule 4.1 as a person who has been asked to prepare a report under Article 4 of the 1995 Order) and for his attendance at court and is without prejudice to any power to give directions under Rule 4.15.

[19] Accordingly, I am satisfied, that if Dr McDonald had furnished his report pursuant to Article 4, the judge would have been entitled to direct that he should attend court and provide any oral evidence of that report. However even if had this been an Article 4 report, I do not believe that it would have been necessary in this case for the judge to have so done. He was aware that the witness was present in court (indeed he had specifically risen to allow time for the witness to belatedly arrive at the court), that he had consulted with counsel on behalf of the applicant and that he was therefore fully available to give any evidence to assist the court. Moreover this witness had heard the evidence given before the judge, had indicated through counsel that he wished to avail of the opportunity of an adjournment which had been refused, and was perfectly able to have given evidence had he chosen to so do. I consider a judge within his discretion would have been perfectly entitled to have relied on the good sense of experienced counsel and an equally experienced clinician to take the view that there was nothing that they could sensibly contribute to the judge's determination. As the judge indicated at paragraph 15(b) he did have sight of Dr McDonald's reports and accordingly even if the judge believed that Dr McDonald was there at the request of the court, it would have been a perfectly proper exercise of his discretion to defer to the view of counsel and doctor not to give evidence. Counsel had had the opportunity to consult with Dr McDonald and therefore was in a far better position than the judge to form a view as to whether or not he had anything substantial to contribute. That in the event the decision not to give evidence was apparently triggered by some perceived concern at the judge's attitude is a matter that would never have been contemplated by the judge and in any event was in my view wholly unjustified.

[20] In the event, I have already found that the witness was not in attendance pursuant an Order under Article 4. In those circumstances, whilst the family courts do have a quasi inquisitorial aspect, a judge must in normal circumstances still adhere to the normal rules of evidence and court practice. A judge is entitled to conclude that experienced counsel has formed a rational view as to what evidence needs to be called and what evidence it is wished to adduce. An expert of course will advise the court, but ultimately the judge must decide on the basis of the evidence before him. Ms Hughes, who was a noticed party on behalf of the father, drew my attention to *Re B (Care: Expert Witnesses)* 1996 1 FLR 667 at p 670f where Ward LJ said:

> "Another success of the Children Act has been the training, including and especially the training in related disciplines, which all judges receive. By their special allocation to this work they acquire a body of knowledge which, strictly speaking, cannot be substituted for the evidence received, but which can be deployed to spot any weakness in the expert evidence. That is the judicial task. The expert advises, but the court decides. The judge decides on the evidence. If there is nothing before the court, no facts or no circumstances shown to the court which throw doubt on the expert evidence, then, if that is all with which the court is left, the court must accept it. There is, however, no rule that the judge suspends judicial belief simply because the evidence is given by an expert."

Absent an Article 4 report, I consider that it would have been quite improper in this case for a judge to attempt to exercise a power to compel a witness to give evidence when his own counsel had decided not to call him on what the judge must have assumed was a rational analysis of the proceedings. Mr Lavery urged on me that in cases under the Children Order, the courts should act irrespective of the decisions of counsel and that the welfare of a child should not be sacrificed to the vagaries of the decisions made by counsel or expert. Notwithstanding the obvious duty on the court to ensure the paramountcy of the welfare of children, I consider that a judge should be very slow to override the discretion of counsel in these matters absent some clear or unequivocal evidence that the interests of the child was being sacrificed. It would always be open to a judge to invoke Article 4 of the 1995 Order to elicit further evidence if he felt that he was being wrongfully deprived of some matter of assistance or to suggest to counsel that they should reconsider the exercise of their discretion. I find nothing in this case to suggest such a circumstance. As the judge indicated, he had clear evidence from Dr Simpson that the father was a changed man, that he was prepared to undergo any further treatment and that Dr Simpson felt that such treatment was not indicated. In the event the judge received absolutely no evidence to the contrary <u>at the hearing</u> from Dr McDonald notwithstanding of course that the judge did have Dr McDonald's earlier reports in his possession. I consider that it would have been a capricious and legally injustifiable exercise of the judge's discretion in these circumstances to have overridden the discretion of counsel not to adduce such evidence and to have instituted further enquiries which in themselves would have engendered further delay, uncertainty and expense.

[21] The third point raised by Mr Lavery was that the welfare of A and the avoidance of any harm to him should have been paramount in any court hearing. He submitted that the overwhelming weight of the evidence in this case was that contact would be detrimental to the boy given the view of Dr McDonald and the alleged lack of any material change in the condition of the father. He drew my attention to the fact that the judge had indicated in an earlier directions hearing that it would be for the father to show that he had changed. He reminded me of the right to a family life for both the applicant and the child under Article 8 of the ECHR. In particular he challenged the assertion of the judge that there was no evidence of any risk to the child in light of the report of Dr McDonald. I reject that argument. The judge was not only impressed by the evidence of the father but he also had the first hand evidence before him of Dr Simpson, an experienced clinician who had treated the father over a period of time, and who concluded that the father was in fact a changed man contrary to the submission of Mr Lavery. Presumably he was cross-examined about this by the mother's counsel acting on the instructions she derived from Dr McDonald. Dr Simpson did not believe that any treatment was indicated and the judge came to the conclusion that the evidence of this witness was impressive and reasoned. The judge came to this conclusion having had sight, as he expressly said, of Dr McDonald's reports. I have determined that this conclusion was comfortably within the discretion which must be afforded to Family Judge in hearing these difficult cases and was a proportionate response to the evidence before him . I remind myself of what Lord Frazer of Tullybelton said in *G v G* (1985) FLR 894 at p 897 in the context of cases concerning the welfare of children:

> "The jurisdiction in such cases is one of great difficulty, as every judge who has to exercise it must be aware. The main reason is that in most of these cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory."

I consider that the judge in this instance conducted this enquiry with conspicuous care endeavouring to afford to all parties their appropriate rights bearing in mind that the paramount interest was the welfare of the child. He has approached this difficult and emotive matter with due deference to the legal principles that bound him and the rights of all the parties under the Human Rights Act 1998 never straying from the informed detachment required of a judge of his great experience. In my view his decision was appropriate and a proportionate response to all the evidence.

[22] I have therefore come to the conclusion that I must refuse this application.