

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

JG's Application [2014] NIFam 2

IN THE MATTER OF AN APPLICATION BY JG

MAGUIRE J

[1] The court has before it an application by JG for an extension of time to enable her to appeal against two decisions made at the Family Care Centre on 6 November 2013. JG is the mother of JJ who is aged one year and four months.

[2] The decisions of the Family Care Centre which the mother seeks to appeal are:

- (i) The decision to make a Care Order in respect of JJ under Article 50 of the Children (Northern Ireland) Order 1995; and
- (ii) a decision to make a Freeing Order in respect of JJ pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987.

[3] It is common case as between the parties that the time limit for an appeal in respect of a Care Order from the Care Centre to the High Court is 14 days. Whereas the time limit for an appeal in respect of a Freeing Order is 21 days. In both situations, it is agreed that the court enjoys a discretion to extend time.

[4] The relevant chronology for present purposes is as follows:

Decision of Family Care Centre	6 November 2013
Expiry of 14 day Care Order Appeal Period	20 November 2013

Expiry of 21 day Freeing Order Appeal Period	27 November 2013
Notice of Appeal in respect of both Orders filed by mother	17 January 2014
Period out of time – Care Order	58 days
Period out of time – Freeing Order	51 days

[5] The court has before it an affidavit from Fiona Hunter. She is a solicitor in the firm of Archer, Heaney, Magee and has carriage of the appeals on behalf of the mother. Her affidavit was filed on 9 January 2014. In short summary, the deponent makes the following points:

- (i) She points out that since the Family Care Centre proceedings the mother has changed solicitors. The mother first made contact with her present solicitors on 9 December 2013. This contact was made in respect of a potential divorce and a potential non-molestation order against the mother's spouse (the father in this case).
- (ii) On 16 December 2013 the mother first gave to the deponent instructions that she wished to appeal the decisions aforesaid of the Family Care Centre.
- (iii) Those decisions, it is averred, concerned the mother's ability to protect her baby against her partner's violence. However, since the hearing before the Family Care Centre, it is asserted by the deponent that the mother had ended her relationship with her partner. Indeed, there had been a serious incident of domestic violence on 26 November 2013 in which threats to kill were allegedly made to the mother by the father.
- (iv) The deponent indicates that there was some delay engendered by the fact that she had no papers in respect of the matters to be appealed. Ultimately, the Trust on 18 December 2013 or shortly thereafter provided a set of papers to her.
- (v) The deponent says that she applied for legal aid in or around 18 December 2013. Counsel's opinion was obtained and sent to the Legal Services Commission by 23 December 2013. The potential parties in the event of an appeal were notified that legal aid to appeal the decisions of the Family Care Centre was being sought. This occurred on 23 December 2013. In fact, legal aid was granted on that date.
- (vi) A Notice of Appeal was received from counsel on 8 January 2014, albeit that at this stage no official or formal record of the judgment of the Family Care Centre had yet been produced, though it appears that

there was a note of the judgment of the Family Care Centre which counsel then attending on behalf of the mother had prepared.

[6] The matter was listed before this court on 2 February 2014. Just before the court sat it was provided with a transcribed record of Her Honour Judge Smyth's decision of 6 November 2013 which originally had been in the form an *ex tempore* judgment. This record indicated:

- (a) That the context in which the proceedings had been brought was one of domestic violence of which there was "a very significant and very serious history" as between the parents.
- (b) The chief concern was the baby's safety in these circumstances.
- (c) From an early date after the baby's birth, it appears, that the baby had been voluntarily placed away from the parents.
- (d) The mother herself, the judge remarks, was a vulnerable person who suffers from cerebral palsy.
- (e) At the hearing before the Family Care Centre, while both parents opposed the making of the Orders sought, they and each of them played no part in the proceedings and, in particular, they did not give evidence or instruct their lawyers to challenge the evidence of the Trust. Indeed, both left the court while the proceedings were taking place.
- (f) The mother's ability to protect her child, the judge notes, had been assessed but the outcome of this assessment had been negative. It was the view of the Simpson Resource Centre that no further work should be offered to the mother until she had undertaken work in respect of domestic violence.
- (g) Neither party, in the judge's view, had demonstrated the ability to provide a safe home or environment for the baby.

[7] The judge's conclusions were in strong terms. She states that:

"There is no question that only a Care Order can safeguard this child and that adoption is in her best interest."

[8] As a result, the judge held that:

"both parents are withholding their consent to adoption unreasonably".

[9] The Notices of Appeal, as currently drafted, as might be expected, given the circumstances in which they were prepared, are very general and seemed to take issue with every possible point which could be taken in respect of decisions of the nature of those here at issue.

[10] It is against this backcloth that the court must consider the exercise of its discretion in this case whether to extend the time to appeal.

[11] Perhaps surprisingly no decided authority which specifically deals with the criteria for granting or refusing an extension of time to appeal applications in relation to orders of this kind has been cited to the court.

[12] The court suspects that it may be the case that the apparent lack of authority arises because decisions of this type will be made on a tailor made basis and will tend to be highly fact specific. However, the court is satisfied that the sort of factors which usually inform other extension of time applications will provide at least a useful guide; so decisions like *Davis v Northern Ireland Carriers* [1979] NI 19 will be worth consulting.

[13] In the present case, before reaching any conclusion, the court will list non-exhaustively the main factors it has considered.

[14] First of all, the court has taken into account the importance of the decisions which are under appeal. Both decisions, self-evidently, are of substantial importance, but especially so the decision of the Family Care Centre to make a Freeing Order. A Freeing Order extinguishes the parental rights of the mother and father and sets the child on a wholly different path than hitherto. This court could hardly be dealing with more significant issues for the future of those involved in this family than those with which the Orders are concerned.

[15] Secondly, in considering whether to extend the time the court must have regard to the fact that the mother has failed to act within the time laid down in the relevant rules. She had a substantial period in which to serve her Notice of Appeal in respect of each matter but has failed to act within that period. The procedural rules, needless to say, are there to be obeyed and should not lightly be set aside.

[16] Thirdly, the court has regard to the extent of the mother's delay. This is not a case where the delay is marginal but nor is it a case where the delay can be characterised as enormous. The delay is less than two months which is not inordinate.

[17] Fourthly, the court must have regard to the extent of the impact which any delay has on the child. In this case, as already noted, JJ is very young. In these circumstances it is doubtful that she will perceive or be affected by the delay especially as, since the lower court's decision, there has been no change in her placement. In many other cases, delay would be likely to harm the interests of the

child in clear respects, especially if the child was older and could appreciate what is going on or if the child's placement had changed.

[18] Fifthly, the reasons for the delay will often be influential in the context of the court's exercise of discretion. The better the reason for the delay, the more likely the court will be prepared to view this reason as a positive factor in favour of extending the time.

[19] In the present case, there have been no convincing reasons put forward to explain the delay, but the court will not lose sight of the fact that the mother, the proposed appellant, is described as vulnerable and suffering from cerebral palsy.

[20] Sixthly, the merits of the case may enter into the court's calculations. Where an appeal is obviously strong this may cause the court to feel that an extension of time should be granted; and the opposite may apply where the appeal is obviously weak. In the present case, the judge seems not to have experienced much doubt about her decision but, as against this, this court must acknowledge that at this time it is difficult for it to arrive at a clear view of the strength or weakness of the appeals.

[21] Seventhly, it is right that the court should take into account the fact that the putative appellant has already had a hearing, namely the hearing she had at first instance. The court, if it refuses to extend time, is not producing an outcome where no hearing has taken place or has been provided. In the present case, however, the court is left with an uneasy feeling about the original hearing given that neither parent, despite having the opportunity to do so, participated in it, in more than a nominal way. While this was their own decision, the absence of an adversarial testing of the Trust's case in the court below, the court keeps in mind, could conceivably create injustice if the court declines to extend time.

[22] Eighthly, the court will not neglect the convention rights of the parties. But in the context of appeal proceedings the convention rights of the parties will be a much less potent factor than they would be in the context of a first instance hearing. It is well settled that Article 6 does not require there to be an appeal hearing and the Article 8 rights of the parties, the court acknowledges, will have already been considered and assessed in the lower court in arriving at its conclusions.

[23] In considering all of the above factors, the court must make it clear that extension of time to appeal will usually not be granted for the asking even though serious issues may be involved and may be at stake.

[24] In the present case, by a narrow margin, the court is persuaded to grant an extension of time to enable the mother's appeals to proceed. In the end, the combination of the importance of the issues; the relative lack of damage to the timetable for the child, unusually in a case of this type; a lingering doubt about the mother's intellectual capacity; and the fact that the delay, while significant, is not outlandish is sufficient to enable discretion to be exercised in her favour.

[25] The court, however, will insist that:

- (i) The mother's representatives consider again the content of the Notices of Appeal with a view to their amendment so that the focus of the appeal can be identified and non-essential issues can be jettisoned. The court will set an outer time limit of two weeks from today for this exercise to be carried out.
- (ii) The hearing of the appeal should be expedited so that further delay is kept to a minimum.

[26] Finally, while there was some contention in the course of the hearing of this application about the extent to which the mother and father still maintain a relationship, and the implications of this for any appeal, the court does not, for the purposes of its decision today, view this factor as carrying much weight as it is unclear to the court at this stage how significant that issue may ultimately prove to be. While it could turn out to be a very important issue at the date when the appeal is heard, the court makes no finding about this issue now.