Neutral Citation No: [2018] NIFam 8	*Ref:* **OHA10684**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered: 21/5/2018*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

BETWEEN:

MS

Appellant;

-and-

IC

Respondent.

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O'HARA J

[1] The names of the parties and of the child who this case is about have been anonymised in order to protect the identity of the child. Nothing must be reported or published which discloses her identity in any way without the leave of the court.

[2] This is an appeal by a father against part of an order made by His Honour Judge Kinney in Belfast Family Care Centre on 12 March 2018. The relevant part is that which prohibits the father from making any further applications under the Children (NI) Order 1995 for six months without leave of the court. On the appeal Ms C McKeown represented the appellant father and Ms K Downey represented the respondent mother.

[3] The background to the case is that the daughter of the former relationship between the parents is now 7½ years old. Her father has an on-going problem with drug addiction for which he is not seeking help. There have been proceedings on and off for many years. In recent years the directly relevant proceedings have been as follows:

- On 24 November 2016 at the Family Proceedings Court the father was allowed contact with his daughter on a weekly basis for a set period of nine months but only at a Contact Centre where both he and the contact could be observed.

- The father appealed against that order to the Family Care Centre. His appeal was dismissed on 14 February 2017 with the only change being that the starting date for the nine month period was varied. The County Court Judge agreed with the District Judge that while contact would be in the child's interests it had to be monitored because of the father's drugs problems.

- In October 2017 the mother applied for a no contact order because of incidents during and around contact which, she said, were causing distress to her daughter. In the event she did not have to pursue this application because the nine month period of the original order expired on 14 November 2017.

- In November 2017 the father applied for a fresh contact order. He contended that it was in the daughter's interests to have on-going contact even if only once per week at a contact centre.

- On 11 December 2017 the father's application was dismissed in the Family Proceedings Court because, it seems, the father was simply refusing to engage in any effort to curtail or overcome his drug use. He refused to submit to drug tests, allegedly because he was an acquaintance of drug users and suggested that the tests might be positive because of them, not because of his own drug use. That was a false position for him to adopt.

- On 12 March 2018 the father's appeal from the decision of 11 December 2017 was dismissed in the Family Care Centre. The learned judge had directed position papers from the father and mother in advance of that hearing. The father's statement expressly concedes at paragraph 1 that the understanding from the previous proceedings was that if the father was able to deal with outstanding issues about drugs during the nine months of the order, his contact might move outside the Care Centre. Since he had not done so, it was conceded on his behalf that contact had to remain in the Contact Centre.

[4] It is not in any way surprising that the learned judge dismissed the father's appeal on 12 March 2018, effectively denying him contact with his daughter. The father is either unwilling or unable to address his drugs issues. In submissions in this court it was conceded on his behalf that he is a habitual drug user. This is at least a more honest position than the earlier posturing about the results of drug tests

being affected by the company he kept, but the father is simply not addressing the issue. In effect he wants to see his daughter, asserts a right to see his daughter but will not confront the issue which has contributed to the destabilising of his relationship with her and to incidents at contact.

[5] The father has no right to appeal from the Family Care Centre to the High Court when the Family Care Centre decision is on appeal from the Family Proceedings Court. Accordingly the refusal of contact is not an issue which is before me to rule on. What does bring the case into the High Court arena is the element of the order, added by the learned judge, in prohibiting further applications under the Children Order without leave of the court for six months.

[6] The appeal is advanced on two grounds:

(i) The lack of a formal application by the mother in advance of the appeal hearing in March 2018; and.

(ii) The absence of extreme circumstances which might justify such an order being made under Article 179(14).

[7] So far as the formality of the application for the order is concerned, the position agreed by counsel is that the issue was not raised in their written submissions filed in advance of the Care Centre hearing on 12 March. However, counsel for the mother did advise counsel for the father of her intention to apply for the order before the hearing began. Accordingly, Ms McKeown was able to make representations to the court on the issue. I am satisfied that the father was not disadvantaged in any meaningful way and he was not denied a fair hearing in the circumstances outlined above.

[8] It would have been open to counsel for the father to apply to adjourn any consideration of the issue had she felt unable to respond adequately to the application but she did not do so. That is not surprising because the principles involved in Article 179(14) are well established in a series of decisions with which all family law practitioners are familiar. Accordingly, the lack of a C2 application or some other formal notice was not an issue of any significance once counsel was put on notice of the application and responded to it. There is no merit in this part of the appeal.

[9] On the second issue, the extent of the judge's discretion and the limited circumstances in which that will be interfered with on appeal are all well established in the authorities and need no repetition here. Those authorities make clear that there must be something extra or special about a case or series of cases before a judge will make an order under Article 179(14). Provided there is a reasonable basis for him doing so, an Appellate Court will not be easily persuaded to overturn his judgment.

[10] In the present case the rationale for the time limited order restricting further application is entirely clear. The order for contact at a Contact Centre for nine months was made so as to allow the father to deal with his issues with drugs while some having some level of contact with his daughter. It was then intended or hoped that the contact would move away from the Contact Centre in to more relaxed and natural surroundings in the community. That is set out clearly at paragraph 1 of the father's position paper in the Family Care Centre dated 1 March 2018. Unfortunately the father chose not to address his issue with drugs. Incidents happened in and around contact but he still chose not to do so. His position seems to be that it does not matter whether he is using drugs, he still has some sort of unqualified right to see his daughter.

[11] The learned judge's decision rejects that notion. According to counsel the judge said that the father needs to do something to prioritise the needs of the child. The logic of the judge's position is beyond challenge. He has not prohibited the father from seeking contact with his daughter for six months. He has only imposed on him an obligation to obtain leave to apply for contact. In the period during which leave must be sought is a limited one. If the father comes to court with a leave application and shows that he is making genuine and sustained attempts to address his drugs problem, he is very likely to be granted leave to proceed with the contact application.

[12] I therefore dismiss the father's appeal against the order made in the Family Care Centre. I also emphasise that the decision of the learned judge does not just stand because I accept that it is within the ambit of the discretion allowed to him. It stands because in my judgment it is beyond question the correct decision, one which focuses on the interests of this 7 year old girl and her mother who should not be dragged back to court repeatedly by a father who will not take or even recognise the steps which are within his power to change the situation.