Neutral Citation no. [2008] NIFam 3 | *Ref:* **MOR7054**

Judgment: approved by the Court for handing down | *Delivered:* **30/01/08**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995
APPEAL FROM THE FAMILY CARE CENTRE

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BETWEEN

NR

Applicant/Respondent;

And

AF

Respondent/Appellant.

Re DAF (Prohibited steps and contact; non-attendance at hearing)

MORGAN J

[1] This is an appeal from a decision made on 18 May 2007 whereby it was ordered that the appellant be prohibited from removing the child DAF from the jurisdiction of the Northern Ireland courts without the permission of the court and ordering indirect contact and supervised direct contact for the respondent with the child. Nothing should be reported which might disclose the identity of the child, his family or parents.

[2] The appellant and respondent are the father and mother of the child who was born on 6 April 2002. They met in June 2001. The respondents says

that they enjoyed a consensual sexual relationship until in or about October 2001. It is agreed that the child was conceived during this period. It is clear to me from correspondence exhibited to the respondent's statement that the appellant felt abandoned and hurt when the relationship ended. Pregnancy was clearly very stressful for her and she had considerable concerns as a result of illness in respect of earlier children.

[3] After the birth of the child the respondent visited the appellant and the child in hospital. The visit did not go well and the appellant resented the respondent's interest in the child. In September 2002 respondent obtained a parental responsibility order and a contact order providing that he should have contact with the child twice weekly for a minimum of 30 minutes on each occasion. In 2003 the respondent indicated that he wished to have increased contact. Shortly thereafter the appellant made an allegation that he had raped her. This was eventually reported to police by the appellant in March 2006 but no criminal prosecution will be brought. The appellant deals with this at paragraph 6 of her statement submitted to this court where she says that she believes that the respondent took sexual advantage of her as she was too emotionally vulnerable to be able to make an informed decision about having sex. Without any further detail this material is clearly insufficient to justify a conclusion that the appellant was raped by the respondent.

[4] It is clear that the appellant did not want the respondent in her life and in June 2003 she moved to England with her family where she remained for two years. After her return the respondent instituted the present proceedings which eventually came before the county court on 18 May 2007. The appellant remains rigidly opposed to any form of contact between the respondent and the child. She asserts that she finds it stressful and contends that the respondent's motives are directed towards her rather than the interests of the child.

[5] A directions hearing in preparation for the final hearing was held on 3 April 2007. An interim prohibited steps order was in place having regard to the fact that the appellant had removed the child from the jurisdiction despite the previous contact order without consultation with the respondent. The court directed that statements of evidence should be filed by 4 May 2007, a social work report be filed by 11 May 2007 and a hearing should be held on 18 May 2007. In order to comply with that direction a draft statement taken on her instructions was provided by the appellant's solicitors to her by e-mail on 3 May 2007. The appellant did not respond to the e-mail which she denies receiving but did not contact her solicitors other than to fax to them on the evening of 16 May 2007 a medical report from her general practitioner stating that she had been under enormous stress for some time and was not fit to attend court for at least three months. The GP expressed the view that if she had no proper break she was afraid of having to admit her to a psychiatric

unit. This clearly demonstrates that the appellant was aware of the date of the hearing and must have been aware of the need to take steps to prepare for it.

[6] The county court judge had available to him a medical report prepared by a consultant forensic psychiatrist dated 2 April 2007 which recorded that there was no evidence at that time to suggest that the appellant was evincing any mental health difficulties consistent with the onset of a formal mental illness process. The psychiatrist concluded that the appellant was likely to experience an exacerbation of her symptomology of a nature and severity that may well require treatment with medication as an adjunct to intensive supportive psychotherapy in order to assist her in coping with and coming to terms with a ruling that the respondent have contact with the child.

[7] The County Court judge concluded that the absence of the appellant from the hearing was designed to prevent the matter proceeding. He was unwilling to rely on the short note from the general practitioner having regard to the findings of the forensic psychiatrist. Although Counsel and solicitors were present on behalf of the appellant they had received no instructions from her. That was a further indicator that the appellant was seeking to manipulate the proceedings in order to prevent a conclusion unfavourable to her.

[8] Before me the appellant sought to challenge the approach of the county court judge. She contended that there had been in particular a tragic event concerning a relative of her partner which had produced a dramatic effect upon her. I am unable to accept what she says about that. Although I accept that there is evidence that a relative of her partner was tragically killed at or about this time the road traffic accident giving rise to this occurred on 6 May 2007. The directions given by the county court judge required statements to be launched by 4 May 2007. There is no explanation offered as to why the statement was not lodged by the appropriate date. Secondly there is no reference in the note from the general practitioner dated 11 May 2007 to any acute reaction as a result of an incident which occurred some days earlier. In fact the note refers to stress "for some time". Thirdly in a more detailed note from the GP dated 19 September 2007 designed to fill out the explanation there is reference to difficulties experienced by the appellant with earlier children but no reference to the events surrounding the road traffic accident.

[9] I am satisfied that the County Court judge was correct to take the view that the appellant in this case was seeking to manipulate the process of the court by avoiding an order directing contact between the child and the respondent. The courts have an obligation to respect the right to family life of parents and must not allow that right to be deflected by manipulation from those who indicate that they will not attend at the last moment. If the appellant was capable of contacting her GP she was perfectly capable of

contacting her solicitor to provide her with a detailed explanation as to why she claimed she would not be fit to attend court.

[10] In the circumstances I see no reason to interfere with the orders made by the County Court judge and dismiss the appeal.