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Judgment: approved by the Court for handing down
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

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RE: A (DISCLOSURE TO THIRD PARTY)

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GILLEN J

[1] Nothing must be reported in this case which would serve to identify either of the children mentioned who are the subject of these proceedings or any of the parties named therein.

[2] In this matter a Health and Social Services Trust, which I do not propose to name ("the Trust") applies under Article 4.24 of the Family Proceedings (Northern Ireland) 1996 for leave to release two medical reports from Dr Pollock dated 18 September 2002 and Dr Fleming dated 3 October 2002 to a review of a child protection case conference convened in relation to a child C. The persons to whom the reports will be released are suggested as follows:

(a) G and M, the mother and father of C;

(b) SS Assistant Principal Social Worker;

(c) FR Senior Social Worker;

(d) MMcD Social Worker;

(e) CG Health Visitor;

(f) CMMcC Guardian ad Litem;

(g) Mrs K, Class Teacher at a primary school which I do not propose to name;

(h) CG Child Protection Nurse Advisor;

(i) MR Community Services Manager;

(j) AF Family Support Worker;

(k) Dr L Family General Practitioner;

(l) LH Senior Practitioner;

(m) MMcC Team Leader at a Family Centre.

BACKGROUND TO THE APPLICATION

[3] A, born on 6 June 2002, is a sibling of C born 19 February 1998. A is currently the subject of an Interim Care Order obtained by this Trust and is in foster care. C is not the subject of any pending court proceedings but has been on the Child Protection Register since 8 November 2001. C remains at home with her parents G and M. A review child protection case conference has been scheduled for C upon the conclusion of this application.

[4] The background proceedings in relation to A are as follows. He is the fifth child of G and his father is F. They are unmarried. In October 2001 G informed the applicant Trust that she wished A to be adopted. Discussions continued with the Trust subsequent to the birth and since shortly thereafter A has remained in foster care placements. The Trust decided to initiate proceedings for a Care Order in relation to this child and successive Interim Care Orders have been made since in and around June 2002. The mother G and her husband M have indicated they wish to care for A if G's daughter A2 was not deemed suitable to adopt the child.

[5] It should be noted at this stage that on 26 June 2002 at a Family Proceedings Court in Lisburn, the court, whilst making an Interim Care Order in relation to A, ordered a psychiatric assessment of G to be carried out and a psychological assessment to be carried out of both G and M. This resulted in a report being made by Dr Pollock Consultant Forensic Clinical Psychologist dated 18 September 2002 and a report of Dr Fleming, Consultant Psychiatrist dated 3 October 2002. I pause to observe that the power of the Family Proceedings Court to make such an order was not revealed to me and indeed in the skeleton arguments prepared by counsel on behalf of the applicant Trust and the Guardian ad Litem, it was expressly doubted that the court had any such power. Nonetheless it was accepted that both the mother and father of A agreed to the assessments and the same were voluntarily undertaken.

[6] The case of A was subsequently transferred to the Family Care Centre at Craigavon and thereafter to the High Court because of its complex nature.

[7] I have read both the report from Dr Pollock and Dr Fleming. Dr Pollock assessed both G and M her husband. Inter alia, he reported that the mother had been under the care of psychiatrists for a number of years and that she experienced a number of personality difficulties and symptoms which significantly affected her functioning and psychological health. He stated he was concerned about the chronic and severe nature of her difficulties and considered her to exhibit a psychological vulnerability to distress which had resulted in a range of symptoms including anxiety, depression and suicide attempts. He reported that the mother's statements to him about her relationship with her husband suggested an underlying uncertainty about commitment and instability within the couple's relationship exacerbated at times by M's abuse of alcohol. He also recorded that the mother was not capable of discussing the children's needs and the differing professional expectations of her parenting. In relation to M, Dr Pollock recorded that he denied that he experienced any particular problems necessitating any work whether due to alcohol abuse, marital instability or work related difficulties and appeared to externalise responsibility and blame onto others including his wife's mental problems and Social Services staff. He felt that M perceived Social Services with suspicion, resentment and passive aggression and he could not foresee him being receptive and open to working in partnership with Social Services.

[8] Dr Fleming, inter alia, reported in relation to the mother on 1 October 2002. He dealt in detail with her mental health history. In particular he referred to her history of hearing voices which had been a feature of her presentation to date. He described her as having a depressive personality and likely to experience an increase in neurotic symptoms of anxiety and depression at times of stress in her life. The report referred to her being poorly equipped to cope with the vicissitudes of life, her lack of insight and understanding of professional concerns in relation to childcare issues and he referred to her having a diagnosable mental health condition with a neurotic personality disorder and dysthymia. These reports were of course obtained at that stage for the purpose of the proceedings being then mounted by the Trust in relation to A.

[9] The historical concerns with reference to C were first outlined to this court by the Trust in a statement of 6 March 2003 by MM Senior Practitioner. I was not satisfied with the adequacy of this statement and I afforded the Trust an opportunity to make a fuller and more detailed statement by the same senior practitioner. This was done in the course of a statement dated 18 March 2003. C presently lives with G and M. The history of C as set out in this statement is that there have been a number of concerns about C's self harming behaviour since her birth. This behaviour includes the child biting her hand and lip and nipping herself. The health visitor reports that G has described extreme difficulty in managing C's behaviour between June 2001 and November 2001. The mother has described C rubbing her feet together

until they bled. During this time M was not living in the home. G was at this stage having a relationship with A's father. By August 2001 the concerns of this Trust in relation to C and her family have been set out in the statement of 18 March 2001 as follows:

(1) G's mental health. She had a recent admission to hospital as well as long standing mental health problems.

(2) C's self harming behaviours.

(3) G and M's unstable relationship. According to GP records, C was present during fighting between her parents.

(4) G's ability to manage household and childcare tasks on her own.

(5) Frequency and number of people in the home and implications for safety and supervision of C.

(6) Non attendance at health appointments by G (health visitor's report dated 6 November 2001).

[10] The Trust's statement of 18 March 2003 goes on to describe the current situation as follows:

> "Since the last case conference 28 August 2002 until the present, there appears to be an improvement in the family's situation. Significantly C's self harming behaviour ceased when M returned to the family home. C's school teacher reports that C presents as a content child whose attendance and behaviour have given no cause for concern. The health visitor's views are that there appears to be an improvement in the home situation, largely due to M returning to the family home. The family support worker has visited on three occasions. She reports she has no concerns at present. However, while there appears to be an improvement in the family situation, concerns remain with C and her family's current situation. These are as follows:
>
> (1) M and G's relationship remains unstable. G has referred to their difficult relationship on several occasions. The Trust's contact records indicate that on 29 August 2002 G told the social

worker that she was unable to talk to her with her husband present. …

On 14 November 2002 G informed the social worker that the relationship between her and M had deteriorated and that he was no help.

On 23 January 2003 during a home visit, the social worker noted that when F's name was mentioned, M became irate.

(2) Since there was instability and uncertainty about M and G's relationship this has implications for C's care and well-being. When M left the family home between April to November 2001, there were grave concerns about C's care and self harming behaviours. …

In Appendix 2 of a report to the court dated 13 August 2002, concerns are expressed in relation to C's supervision. The report noted that C and her friend were locked outside in the back yard of the house which is a fenced in steep bank. This report noted also that the health visitor found C at home alone while her mother was in a neighbour's house. The report continues that the previous week, C had fallen and severely cut and bruised her forehead and nose while in the yard. G had acknowledged that she finds it difficult caring for C. She welcomed family support services. …

There is reason to believe that M may leave the family home. For example, he may leave if it is necessary for him to go into hospital to seek treatment for his alcohol problem or he may leave due to problems in the marital relationship.

(3) M's hostility and lack of cooperation remains a concern. The Trust's contact records state that M presented as aggressive and informed the social worker that he was withdrawing all cooperation.

(4) Concerns remain in relation to M's alcoholism. …. On 29 January 2003 M stated that the psychiatrist had referred him to the

> Community Addictions Team. Contact records state that on 6 February 2003 when the social worker had been visiting the home, C pulled out a half filled bottle of whiskey from behind the settee and stated it was her daddy's. She proceeded to lift up another bottle which was empty and indicated that there were more bottles behind the settee."

[11] The Trust is due to convene a Review Case Conference in relation to C. The reason for convening a Review Case Conference is because C's name is on the Child Protection Register under the category of potential physical and emotional abuse. Since her name was placed on the Child Protection Register on 8 November 2001 there have been regular Review Case Conferences at six monthly intervals. A case conference is described by the Trust as a multidisciplinary meeting of professionals involved with the child and their family. The professionals will share information about their involvement with the family. This information will be used to assess the level of risk to which the child is exposed and consider which supports and services may help to minimise such risks. A child protection plan if necessary will be agreed and formulated. The Trust description of such a conference is as follows:-

> "Normally any information that pertains to the child's well-being and parenting experience will be shared by the members of the case conference. The sharing of information allows professionals to view the wider family circumstances and to place any concerns in context. This enables the conference members to be sufficiently informed to then make reasoned decisions to determine if the child's name is to be placed/retained on the Child Protection Register. If this is the case, then a child protection plan will be agreed."

LEGAL PRINCIPLES GOVERNING THIS APPLICATION

[12] Rule 4.24 of the Family Proceedings Rules (Northern Ireland) 1996 (hereinafter called "the 1996 Rules") states:

> "*Confidentiality of Documents*
> 4.24-(1) Notwithstanding any rule of court to the contrary, no document, other than a record of an order, held by the court and relating to proceedings to which this part applies shall be disclosed, other than to –

(a) a party

(b) the legal representative of a party

(c) the guardian ad litem

(d) the Legal Aid department or

(e) a welfare officer

without leave of the judge.

(2) An application for leave shall be made in Form C2 setting out the reasons for the request."

[13] I have concluded in this case that the medical reports which are the subject of this application are held by the court having been obtained by a court order and that the information contained in them makes specific reference to the private and family life of the mother and father. I consider therefore that these documents fall within the ambit of Rule 4.24.

[14] The question then arises as to whether the words "a party" referred to in Rule 4.24 embrace all employees or personnel of the Trust even though they are not connected with the case of A in respect of which the medical reports were obtained. In my view such a finding would offend against the principles underlying disclosure. I consider that there is an implied undertaking that documents obtained in disclosure in children's cases should be used only for the purposes of the case concerned unless the court makes an order to the contrary. Accordingly only those employees of the Trust directly involved in the case in which disclosure was made should have access to such documents.

[15] There is an unbroken line of authority that the court does have power to order disclosure of documents filed in Children Order proceedings to non parties. (See Re L (Police Investigation: privilege) [1995] 1 FLR 999, L v UK [2000] 2 FLR 332 and Re L (Disclosure to Third Party) [2002] NI Fam 24.

[16] There have been a number of instances in the authorities where attempts have been made to set out criteria to which a judge ought to have regard when deciding whether to order disclosure. The categories of such criteria are not closed but a good starting point is found in the judgment of Swinton Thomas LJ in Re EC (a Minor) (Care Proceedings: disclosure) [1997] Fam 76 at p773:

> "(1) The welfare and interests of the child or children concerned in the care proceedings. If the child is likely to be adversely affected by the order in any serious way, this will be a very important factor.
>
> (2) The welfare and interests of other children generally.
>
> (3) The maintenance of confidentiality in children's cases.
>
> (4) The importance of encouraging frankness in children's cases.
>
> (5) The public interest in the administration of justice. Barriers should not be erected between one branch of the judicature and another ..
>
> (6) The public interest in the prosecution of serious crime and the punishment of offenders … There is a strong public interest in making available material to the police which is relevant to a criminal trial …
>
> (7) The gravity of the alleged offence and the relevance of the evidence to it.
>
> (8) The desirability of cooperation between various agencies concerned with the welfare of children, including the Social Services departments, the Police Service, medical practitioners, health visitors, schools etc. This is particularly important in cases concerning children."

[17] In addition, as I indicated in Re L (Disclosure to Third Party) (Unreported: GILC3791), interdisciplinary and interagency work is an essential process in the task of attempting to protect children from abuse. There must be free exchange so far as possible between agencies in order to facilitate that work and protect children. This requires the sharing and exchange of relevant information between social workers of different areas. I regard child protection teams as an important component of interagency work to protect children.

[18] In deciding whether or not to grant permission for disclosure to third parties, the court has to exercise its discretion, in the process of which it has to carry out a balancing exercise of competing rights and interests. There must be real and cogent evidence of a pressing need for the requested disclosure to third parties.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

[19] I do not need to recite the wording of Article 8(1) of the European Convention on Human Rights which is now widely known and which gives to all individuals a right to respect for their family and private life, their home and (as interpreted) their personal autonomy and "space". However these are qualified rights, in that by Article 8(2) there is to be no interference with them by a public authority except as is in accordance with the law and is necessary in a democratic society in the interests of (amongst other things) "the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." Thus the three components which may justify the state's interference with the Article 8(1) rights are first, that it is in accordance with the law. Disclosure of the type now sought is permissible if, but only if, there is "a pressing need" and if necessary checks and safeguards are applied. The second component is that the interference must be in pursuit of one of the legitimate aims identified in Article 8(2) as to which the protection of health and morals and the rights and freedoms of others clearly covers the interests of C in this case. The third component is that the state's interference must be "necessary in a democratic society", which means that it must meet a pressing social need and be proportionate to such needs. The more drastic the interference, the greater must be the need for it. (See Re C (Sexual Abuse: disclosure to landlords) [2002] 2 FCR 409. In short, all rights within the family are qualified and liable to be displaced by the rights and interests of other members of the family. The human rights pursuant to the European Convention on Human Rights, despite their fundamental nature, are no different in this respect.

CONCLUSION

[20] I have come to the conclusion therefore that these two medical reports must be disclosed to the members of the child protection case conference named in the application of the Trust dated 28 February 2003 which will be appended to this order pursuant to Rule 4.24 of the Family Proceedings Rules (Northern Ireland) 1996. I have come to this conclusion for the following reasons:

(1) I am satisfied that the child A will not be adversely affected by this order in any material way.

(2) The welfare and interests of C are very important matters and given the historical background to this case conference, I am satisfied that there is much material of relevance to the welfare and interest of C contained in both these reports. Counsel who appeared on behalf of the first respondent has argued that the report of Dr Fleming adds little to that of Dr Pollock. I do not agree and in any event the cumulative weight of the two reports, even where there are similarities, may be crucial. In my view it is imperative for the safety of this child that this multidisciplinary child conference have the information contained therein at their disposal before making any future plan for her.

(3) I am satisfied that by confining the disclosure of the material that became available in A's case in these medical reports to the specified persons in the case conference dealing with C, I can maintain the confidentiality necessary for A. The court does have the power to attach conditions to an order directing release of papers to third parties (see A Health Authority v X [2002] 1 FLR 1045. I am satisfied that the release in this case should be confined to those named in the C2 application as likely to attend the case conference.

(4) I am aware of the necessity of encouraging frankness in children's cases. It was argued that G underwent psychological and psychiatric examination so that the reports could be prepared for a court hearing dealing only with A. I agree however with the views expressed by Munby J in Re X (Disclosure of Information) [2001] 2 FLR 440 when he said:

> "Whilst persons who give evidence in child proceedings can normally assume that their evidence will remain confidential, they are not entitled to assume that it will remain confidential in all circumstances."

As I mentioned in my judgment in Re L (Supra), I consider this principle also extends to documents, including medical reports that are tendered on their behalf. G should not have assumed that either of these reports might not become relevant to her other children.

(5) It is desirable that there be cooperation between various agencies concerned with the welfare of children. Exchange of relevant information such as in this case is an important component of the multidisciplinary approach now adopted in children's cases.

(6) I am satisfied that the Trust has produced real and cogent evidence of a pressing need for such disclosure in order to ensure that C is fully protected and that an informed plan is arrived at in her case.

(7) In my view any interference with Article 8 rights of the mother and father in this case is in accordance with the law in that there is a pressing need for it and that I have applied the necessary checks and safeguards. The promotion of the welfare and protection of C is clearly a legitimate aim and in my view disclosure meets a pressing social need and is proportionate to such needs.

(8) In conclusion I pause to observe that I am indebted to counsel in this case who have all presented skeleton arguments with conspicuous skill and informed content.

[21] I therefore accede to the application of the Trust in this matter and make the order in the terms sought.