

Neutral Citation No: [2019] NIFam 1

Ref: OHA10843

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

Delivered: 15/1/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

17/110966

RE: ANDREW - A CHILD
(JOINDER OF SEX OFFENDER FATHER TO CARE PROCEEDINGS)

O'HARA J

The names of the parties in this case have been anonymised in order to protect the interests of the child to whom the case relates. Nothing must be published or reported which directly or indirectly leads to the identity of the child being revealed.

Introduction

[1] The issue in this case is whether a man whose sex crimes against a girl led to the birth of a child should be joined as a party to on-going care proceedings concerning the child.

Background

[2] The teenage girl ("Elaine") who is the mother in this case is herself the subject of a care order which was made in 2011. She has learning difficulties and is very vulnerable. She does not have the advantage of coming from a home in which she was cared for and protected. As a result she lived with her parents, then in foster care, back with her mother and then with her mother and grandmother. In early 2016 as circumstances at home deteriorated yet again Elaine moved to the home of her elder sister ("Jane"). At that time Jane was living with her partner ("Trevor") who later became her husband. They had two children. Elaine herself was 14 years old at the time.

[3] Within a short time Trevor who is eight years older than Elaine led her into having sex with him. The only factual disputes raised by Trevor about this abuse are whether he had groomed her in earlier years and whether the sexual intercourse started when Elaine was 14 or only when she was 15. Neither of those disputes

affects the outcome of this application. Elaine believed Trevor loved her and consented to having sex with him to the extent that a limited and vulnerable girl can truly consent. She became pregnant when she was 15 and gave birth just a couple of months after her sixteenth birthday.

[4] The revelation of Elaine's pregnancy led to a prosecution of Trevor. He pleaded guilty to nine charges of intentionally engaging in sexual touching involving penetration with a person under 16 years. Currently he is serving a prison sentence with the release date in approximately three months. He is also subject to a Sexual Offences Prevention Order. The restrictions imposed on Trevor by this order include a prohibition on him having any unsupervised contact with any children while they are under the age of 16 years unless supervised by or approved by Social Services and others. He is also prohibited from having any contact of any nature with Elaine. The order will expire only in four years' time.

[5] In October 2017 the relevant health and social care trust ("the Trust") issued an application for a care order for the baby ("Andrew"). Its concerns include Elaine's vulnerability, the father's criminality and the weaknesses in the extended family which are as concerning now as they have been for the last decade and more.

[6] Trevor is not named on Andrew's birth certificate but is Andrew's father as has been definitively established by paternity testing. The fact that Trevor called for such testing is a significant aggravating feature for Elaine who contends that Trevor knew full well that he was the only person with whom she was having sex.

[7] Trevor has not been joined as a party to the care proceedings. In a statement dated 3 April 2018 he said he would like to do his best for his son but that he realised that any contact or involvement he might have would be supervised. In a later statement he said, in effect, that he would like to have contact with his son at some point in the future, that he would do any preliminary work deemed necessary to pave the way for this and that he does not want to cause any more hurt to Elaine. He also said that he wants Andrew to know that he is a father who cares for him and who is interested in his welfare and in any decisions that may be taken in relation to his future care.

[8] As matters stand there is no interim care order. Andrew is with his mother in accommodation funded by the Trust. Elaine is doing well though with considerable support from the Trust. It is likely that the Trust's application for a care order will be dealt with before Easter 2019. While the case has been proceeding on a "no order" basis to date, so that Andrew is not presently in the care of the Trust, it is at least a possible, if not a likely, outcome that a care order will be made. If it is, it will not necessarily be on the basis of any fault attributable to Elaine. Fault is not a prerequisite for a care order being made.

Application by the father to be joined as a party

[9] Trevor is Andrew's father but does not have parental responsibility for him by any of the routes prescribed in Article 7 of the Children (NI) Order 1995. Notwithstanding this he was served with notice of the care proceedings as required by Rule 4.5(4) and Schedule 3 of the Family Proceedings Rules (NI) 1996.

[10] For the father, Ms Deborah Jordan of counsel submitted that the general practice is that a parent (even a father without parental responsibility) should be joined as a respondent in care proceedings. I accept that proposition. She also highlighted the fact that if the father ever wanted to apply for contact with Andrew he would be entitled to do so without first seeking the leave of the court by reason of the provisions of Article 10(4)(a) of the 1995 Order. This illustrates the fact that with obvious justification a father is treated differently to a grandparent, an aunt, an uncle or any other member of the extended family.

[11] It is clear that in circumstances such as the present a court has a discretion as to whether the father should be joined as a party, having received notice of the proceedings. The question is how that discretion should be exercised in any particular case. This has been considered at length in courts in England and Wales (and elsewhere). The principles which emerge from those authorities include the following:

- In *Re B (Care Proceedings)* [1999] 2 FLR 408 at page 413 Holman J said that joining the father as a party does not really depend on the existence of "an arguable case". He added that the father may not have any particular application that he wishes to make but nevertheless ordinarily ought to be able to be heard, if he wishes to be, before major decisions are taken in relation to his child.
- In *Re B* [2012] EWCA Civ 737 Black LJ held at paragraph [49] that the fact that a person has an arguable case may not necessarily be sufficient to entitle him or her to be joined as a party. She added that there may be situations in which when the judge exercises his or her discretion, balancing all the relevant factors, the presence of an arguable case is outweighed by other factors or any other factor which carries particular weight in the individual circumstances of the case.
- In *Re G (Care Proceedings: Joinder of Father)* [2004] EWHC 1474 Kirkwood J rejected an appeal from a decision not to grant the father's application to be joined. He held that it was hard to see what the father could have added to the deliberations of the court had he been a party to the proceedings. At best he would have been left arguing a really hopelessly unarguable case.

[12] In the present case there are powerful reasons for not joining the father. The child, his child, is the result of criminal sexually abusive conduct towards this limited vulnerable girl by an older man who was in effect her brother-in-law. It is exceptionally difficult to the point of being impossible to envisage the father having anything significant or positive to contribute to deliberations about Andrew's care or decisions about how his life should develop. He has already damaged Elaine and has the potential to damage and disrupt her life even further by seeking to have any input into decisions about Andrew. The more damaged and unsettled Elaine is, the more challenged she will be in caring for Andrew.

[13] The joint position of the Trust, the mother and the Guardian Ad Litem is that for the reasons summarised above the father should not be joined as a party. In their position paper they emphasise that there are recognised exceptions to the general principle that the father should be joined as a party.

[14] They also highlight the fact that if the father is not joined as a party, his views and contributions can be reflected in reports to the court because both the Trust and the guardian will speak to him, whether on their initiative or at the court's direction.

[15] These three parties emphasised the significance of the absence of an interim care order in the present case. They did so because if there was such an order, the Trust would have an obligation under Article 53 to allow reasonable contact with the father unless the court ordered otherwise under either Article 53(4) (at the instigation of the Trust or guardian) or Article 53(5) (at the court's own instigation).

[16] In the same vein they contended that Article 25 of the 1995 Order is not engaged in the present case. It provides that a child (such as Andrew) is a "looked after child" if the Trust is providing accommodation for him. The contention advanced was that there is a material difference between the Trust paying for the flat or house his mother lives in with him on the one hand and actually providing the building itself on the other. The reason this argument was put forward is that the Trust has a duty (Article 29) to promote contact with his parents if the child is looked after.

[17] I do not accept without further argument that there is a difference of significance between providing accommodation and funding accommodation. That may or may not be the case but it is unnecessary in the present circumstances to resolve the issue because even if Andrew is a looked after child the obligation is to promote contact "unless it is not reasonably practicable or consistent with his welfare". I am entirely satisfied that it is not in the interests of this child who is not yet 18 months old to have contact with his criminal father.

[18] Accordingly, whether or not Andrew is in the care of the Trust (which he is not) and whether or not he is provided with accommodation by the Trust (which he may be) this is clearly a case in which it would be quite wrong to promote contact with his father and pointless to join the father to the care proceedings because he has

nothing positive to contribute. That being so I dismiss the father's application to be joined to the care proceedings. This decision does not affect his right to apply for contact with his son at any time in the future. The outcome of any such application will depend on the circumstances at that time though account will always have to be taken of the circumstances in which Andrew was conceived.

[19] There is no separate or additional argument which can be advanced on behalf of the father under the European Convention on Human Rights as incorporated into the law of the United Kingdom through the Human Rights Act 1998. No argument has been advanced before me which suggests that the Convention or the Act add to the father's rights or status in a way which is not already recognised in the Children Order and the authorities which have been so helpfully cited to me.