Neutral Citation No: [2018] NIFam 15	***Ref:*** **OHA10711**
Judgment: approved by the Court for handing down (subject to editorial corrections)*	***Delivered:*** **20/07/2018**

16/41161/A01

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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ON APPEAL FROM THE FAMILY CARE CENTRE

RE: W
(Proving Threshold Criteria)

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O'HARA J

Introduction

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

[2] This is an appeal by a Trust against part of a decision made in the Family Care Centre. The trial judge conducted a hearing over 21 days and concluded that threshold criteria were established against the father in respect of all three boys of the family and against the mother in respect of two boys but not the third, the youngest. The amended notice of appeal consists of a very broad attack on the way in which the hearing was conducted and the findings made.

[3] The children involved are now 9 years, 4 years and 2 years old. They were removed from the care of their parents in May 2016. The hearing in the Family Care Centre started on 23 October 2017 and culminated in a judgment delivered on 22 March 2018 after a hearing of 21 days. Two points need to be made at the start:

(a) The fractured nature of the hearing from October 2017 to March 2018 was not in any way the fault of the trial judge but an indication that more time is needed for the hearing of contested cases in the Care Centres. That matter is being addressed by the presiding county court judge, the Recorder of Belfast,

and his colleagues. The difficulties which fractured hearings give rise to are multiple – it is much harder for everyone to keep the evidence fresh in mind when the hearing is broken up, some of the hearing days are in truth only an hour or two long due to other pressing business and it is much more difficult to write a coherent judgment after such a hearing.

(b) Despite constant admonitions that this should not happen, this case is another one in which the threshold criteria proposed by the Trust went on and on for page after page. One version is 7 pages long with 17 paragraphs. Another version is 12 pages long, also with 17 paragraphs but including multiple sub-paragraphs. As has been repeatedly made clear by judges over many years, threshold criteria should be a concise summary of the main facts alleged to amount to the threshold criteria, not the evidence on which they are based. Of course those facts need to contain sufficient detail to be meaningful but when they go on and on, it suggests that there isn't a clear understanding of what is required.

[4] On the fourth day of the hearing the trial judge informed the parties that she was only going to proceed with a threshold hearing and that the hearing on care planning would follow afterwards, if it was required at all in light of the findings on threshold. No party challenged that decision but it is raised in the grounds of appeal because of the way in which some evidence was later excluded.

[5] The mother made written and signed concessions on threshold on 21 December 2017. She did so having had the benefit of advice from her senior and junior counsel and her solicitor. In January 2018, when the hearing resumed, the mother sought to resile from her concessions on the basis that she had been stressed when she made them, being under pressure from the proceedings and feeling physically unwell. She did not provide any medical evidence to support this contention nor had her representatives sought an adjournment on 21 December on the ground of her ill health. Despite this the trial judge allowed the concessions to be withdrawn. This sequence of events is not referred to in the judgment. Only in exceptional circumstances should a party be allowed to resile from concessions made, especially after legal advice has been given before those concessions are made. It is not apparent to me that any such exceptional circumstances existed in this case.

[6] In her 15 page judgment the trial judge summarised the Trust's concerns under 6 headings on pages 3 and 4. From pages 4-10 she then summarised the evidence presented to her while making it clear that she was not setting out all the evidence adduced in the case. This approach was entirely proper – no judge can or should be expected to include in her judgment all the evidence. It is quite unnecessary to do so. Instead what is typically done is to highlight the important evidence, make findings of fact and set out the conclusions which follow from those findings.

[7] In this case the trial judge's ruling which starts at page 10 included at page 13 the following:

> "I consider that threshold is met in relation to [the father] and in relation to all three children."

That finding cannot be challenged in any way on appeal. The lack of challenge is not surprising – the father's problems are significant and his role in the case is only to support the mother's efforts to have the children returned to her.

[8] So far as the mother was concerned, the trial judge referred in page 13 to "the threshold criteria agreed between the Trust and the mother really focus on …" despite the fact that the mother had been permitted to resile from the agreement. She then went on to find that only 4 of the 7 formerly agreed criteria were established and only in relation to two of the children. In relation to the third child, the youngest, she held:

> "I do not find that threshold is established in relation to him about who no specific concerns were raised and I am not satisfied that there is evidence of serious harm or significant risk of serious harm where he is concerned."

[9] In relation to that finding I hold as follows:

(i) The statutory test is whether a child is suffering or likely to suffer significant harm – it is not a significant risk of serious harm.

(ii) If the child concerned is living with his siblings and his mother in the same circumstances as them it is almost inevitable that he is as likely as them to have suffered or to be likely to suffer significant harm.

(iii) Although the trial judge referred to no specific concerns having been raised about the youngest child, it is just not possible to see how he was somehow less at risk of harm than his two older brothers.

[10] In the circumstances I am satisfied that the trial judge's finding that threshold criteria had not been established in relation to the youngest child cannot stand. In reaching this conclusion I am made more confident by the fact that counsel for the mother was unable to explain in any coherent way how a distinction could legitimately be drawn between the youngest boy and his two older brothers. I therefore allow the Trust's appeal against the trial judge's finding that threshold criteria were not satisfied in relation to the youngest child.

[11] I am reluctant to over complicate this case which has already been subject to extensive consideration but I feel compelled to add the following final two points:

(i) The December 2017 threshold criteria conceded by the mother (and then resiled from) included the following at paragraph 7:

> "At the date of intervention the mother was at times unable to provide appropriate parenting for all of her children, this was made all the more challenging by reason of the father's mental health difficulties."

The trial judge did not find that criterion proven even in relation to the older two boys. I am at something of a loss to understand why. If the mother was not at times able to provide appropriate parenting at the point of intervention then it is hard to see how any threshold criteria could be established. I therefore add paragraph 7 to the proven threshold criteria.

(ii) The threshold criterion at paragraph 5 is in the following terms:

> "The Trust rely on the opinion as expressed by Mr Quinn, psychologist, in his assessment of the mother."

Threshold criteria are supposed to be factual e.g. the mother has a drug addiction, the father is violent, the child has suffered a non-accidental injury. Paragraph 5 refers to an opinion which was presented in evidence to the court. It is not a fact. Accordingly, it is inappropriate to make a finding of threshold criterion on paragraph 5 as it is currently worded and consideration will have to be given to the re-wording of this paragraph.

[12] I will allow the parties time to consider what the next step in this case should be. In light of the decision which I have reached my provisional view, subject to representations, is that the case should remain in the High Court for the purposes of consideration of care planning rather than be remitted to the Family Care Centre.