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Ref: **Mag35**

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

Delivered: 02/06/05

THE CHILDREN (NORTHERN IRELAND) ORDER 1995

<p>WESTERN EDUCATION & LIBRARY BOARD</p> <p style="text-align: right;">Applicant</p> <p>R.B. father S.B. mother; and D.B., the child</p> <p style="text-align: right;">Respondents</p> <p>AND IN THE MATTER OF A REQUEST FOR REPORT FROM SPERRIN LAKELAND TRUST, PURSUANT TO ARTICLE 56</p>	<p>Family Proceedings Court at EAST TYRONE</p> <p>County Court Division of FERMANAGH & TYRONE</p>
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Written Response to the Article 56 Report

1. This is a case in which the Education and Library Board felt it necessary to apply to the Court for an Education Supervision Order, on foot of an Application dated 21st July 2004, which was served in August and first appeared before the Court on 16th September 2004. The young person concerned, D.B., was then aged 14 years and some 9 months and would remain subject to compulsory education through to 2006.
2. The Reports grounding the Application were more than usually a matter for concern. For the first half of 2004, D.B.'s absenteeism had run at an average of 53%, continuing a pattern which had engaged the Board since December 2000. She had already under-achieved in her Transfer Test as a direct consequence. She had just completed year 10 at High School, where she had come 5th among 100 fellow pupils in the CAT (IQ) tests at the beginning of that year.
3. The School Report [as anonymised] declared;

English written work excellent and has ability to maintain high standard of work. Art is also very strong – a very talented pupil – “A” grade. Overall, a very capable pupil ... Unfortunately, due to persistent absence [D] underachieved in a lot of subjects through not having notes and revision notes. Some subjects therefore unable to ascertain a true result of the year’s work. Also while the pupils in her class are still friendly towards her they have moved on and I feel this causes [D] concern over return to school ... I would hope to see [D] in school regularly as she is a lovely girl with lots of ability.

4. The panel also noted from the Board’s Report, that D.B. had been referred to Social Services on 1st October 2003 because of concern about the impact of family difficulties, both upon her school attendance and, indeed, her emotional state. Both she and her sister were referred to counselling, while the Community Addiction Team and Community Health Team were also contacted in respect of both father and mother.
5. On 16th September, with the agreement of all parties, the case was adjourned for 2 months to monitor D.B.’s attendance, to see whether the radical course of seeking Court involvement would of itself be sufficient to motivate D.B. - and indeed her parents.
6. The ensuing Report from Mrs. X, the Education Welfare Officer, dated 16th November 2004 made disturbing reading. There had in fact been little improvement in school attendance. The reasons seemed to be a multiplicity of medical conditions, most frequently dizzy spells and feeling faint.
7. More information was also given in that Report about the family situation, wherein most of the difficulties appeared to us to be grounded. Her father was found to be drunk on 3 occasions during home visits, while her mother had been admitted to Hospital for psychiatric assessment and her grandmother had recently suffered a stroke. On the home visit on 20th September 2004, D.B. had stated that she would like a short respite from home (it was one of those days when her father was drunk). Social Services were contacted and they did follow that up, but apparently there was little that D.B. would actually agree to. On 22nd October, the Education Welfare Officer contacted Social Services again, requesting that a Case Planning Meeting be held in respect of the family, but nothing had yet been heard in response. Meanwhile, D.B.’s sister had reported to the Officer that the subject child had been self-harming. A further referral was made to Social Services on 15th November 2004 regarding concerns for D.B.’s physical and mental state.
8. In light of all this, and in particular in view of the fact that there had already been Social Services involvement, that there was some cause for

concern as to the dynamics of such involvement, and in view of the report of ever-increasing needs on the part of the subject child, the panel considered that it was appropriate to take the exceptional step on 18th November 2004 of directing Social Services to undertake an investigation, pursuant to Art. 56 (of the Children (N.I.) Order 1995). It appeared to us that it might be appropriate to make a Care or a Supervision Order in respect of this girl. It looked as though the home situation was moving into crisis. A Guardian Ad Litem was also appointed for the child, as required by Art. 60.

9. The initial result was a Report from Mrs. Y, Social Worker with the Sperrin Lakeland Trust. With regard to the family situation, details were given of the mother's long-standing mental health difficulties, which necessitated the father providing primary care for the 2 daughters from an early stage in the marriage. The parents separated in 1991 and subsequently divorced. R.B., the girls' father, had been granted sole custody in 2001. His analysis of the school problem was that he was "too soft" with the child, that she was "nervy" and would not get out of bed in the mornings. He also mentioned that he prepared regular meals for her, but that she often did not eat them – the first account of that particular problem in the papers. He was at a loss to know what more he could do. He denied that he had an "alcohol problem". D.B. herself reported that she would prefer he did not drink. She maintained that if he had taken drink to excess the previous night the whole family would sleep in next day and miss school. She admitted to self-harming the previous November, which she attributed to anxieties about school, her father's drinking and her mother's deteriorating mental health. Her G.P., when contacted, expressed the view that the dizzy spells were most likely due to poor eating habits.
10. The Social Worker, to her credit, did discuss with D.B. at that time the idea of a shared care foster placement, whereby she would live at such a placement "during school periods", but D.B. was adamant in that conversation that she would not consent to being removed from her father and sister. And that seems to have been that.
11. Central to the Social Worker's approach was the following passage;

I believe that a Care or Supervision Order is not appropriate. It is clear that [D]'s needs are not being met in respect of her education and it is questionable as to what extent both parents are able to fully meet her emotional needs. However, I do not consider that, at present, she is suffering or likely to suffer significant harm. Hence, D.B. does not meet the threshold criteria.

And again, in closing;

From this investigation I would respectfully recommend that there is no need for public or private law intervention. Rather, I would

propose that the Court consider recommending that all professionals involved with the ... family work in partnership to provide assistance through the implementation of a care plan. If the proposed plan does not facilitate a positive change in [D]'s school attendance then The Trust will seek legal advice.

12. I must say that I found that position highly questionable. It seemed to me remarkable that a Social Worker, faced with the range of needs manifested by this child, not to mention the family history and challenges, should maintain the view that D.B. had nonetheless suffered no significant harm – nor was likely to. The child was in fact sliding down the educational ladder in front of her. While the Report did concede that, without improvement in school attendance, the Trust would seek legal advice (and whatever that phrase might mean, it certainly lacked any real commitment to effective action), there seemed to be articulated no adequate grasp of just how much harm the failure to educate represented for any child, never mind one known to be particularly talented. It was also difficult to reconcile the fact that the Social Worker had discussed the idea of shared-care foster placement with D.B., while at the same time maintaining that there was no significant harm arising from the failure to secure her education. In addition, there was a self-harm incident (though thankfully one which occasioned only superficial injury) and some medical evidence of an inadequate diet. There were also indications of depression in this 15-year-old, coupled with significant isolation from her peers (with consequent failure to develop healthy social relations). None of this, apparently, constituted significant harm, so far as this Social Worker was prepared to acknowledge in the Report to the Court.
13. I shall move shortly to the positive action initiated by the reporting Social Worker. Nevertheless, it is important to here mark the fact that these measures were based upon a false calibration of the need in question. It ought to have been acknowledged on behalf of the Trust that D.B. had patently suffered significant harm and that this was attributable to the level of care given to her, not being what it would be reasonable to expect of a parent. In other words, that the threshold for a Care or Supervision Order has been met, within the terms of Art. 50(2). That is not to say that one or other of such Orders is thereby mandated. Under Art. 3(5), after all, one would have to be satisfied that either such Order would deliver a positive benefit for the child – the so-called “no order” principle. Further, it is always a matter for the Trust as to the allocations of its resources and priorities. But where one has either not acknowledged or not recognised that the threshold has been reached there is a very real possibility that the measures put in place by the Trust will be inadequate to meet the case.
14. Those measures as instigated out of this investigation, according to the Report, were:-

- provision of a Care Worker on school mornings and one evening per week,
 - continuation of the provision of a Family Support Worker to offer advice and assistance,
 - continued monitoring by the Social Worker,
 - D. to be referred to an appropriate Counselling Service for emotional support,
 - appropriate support to be offered to R.B. should he continue to abuse alcohol
15. Actually, only the supply of a Care Worker constituted a positive gain for D.B. The Family Support Worker was already there. D.B. had already been through the Counselling Service and had not reported favourably upon it, while the notion of “support” to R.B. in his continued drinking, whilst he remains in denial as to the very existence of the problem, amounts to nothing much at all.
16. The Report of the Guardian Ad Litem, Ms. Z, dated 21st March, was considered at Court on 24th March 2005. Its terms were in striking contrast to those of the Social Worker’s Report.
17. The first concrete disclosure was that the family had been known to Social Services since 1995:-
 In February ’95, a member of staff of the NIHE referred the family to Social Services due to concerns that Mr [B] was caring for [D], aged 5, and her older sister, [N] aged 8, whilst intoxicated. Seemingly, when visited by a Social Worker, Mr [B] agreed that he had been drunk but that the incident was “a once off” At that stage, Mrs [B] who experiences mental ill health, was no longer living in the family home but she was visiting almost on a daily basis. Mr [B] was the primary carer of the children and of the home...
 Later, on 01.09.96, it is noted that Mr [B] went into Enniskillen but that he could not bring himself to attend his appointment at ATU. On 29.08.96, Mr [B] attended an appointment with Mr [C], ATU. However, it is reported that Mr [B] was resistant to change, as it was his view that he did not have a problem.
18. Clearly, then, R.B.’s resistance to assistance in overcoming or controlling his alcohol problem is long-standing and impervious to intervention. That much must have been known to the Social Worker in reporting to this Court.
19. The following is of even greater concern;

- Case records show that Mr [B] continued to drink and that his drinking impacted on [N] and [D]:
 - For example, on 12.10.00, Ms [E], Senior Social Worker met Mr [B] as he was walking along the road. He is reported to have apparently had “a lot of drink taken.”
 - At that stage, concerns were emerging about the school attendance of [N] and [D]. Mr [B] admitted that he had difficulty getting the girls to school sometimes. On 11.04.01, when the EWO, Ms [G] called at the family home, Mr [B] appeared to have been drinking.
 - Between 01.05.01 and 03.05.01, Ms [E], Senior Social Worker, had numerous contacts with Mr [B]. She wrote that she “tried to get him sobered up.” Mr [B] and the children appeared to be living lives independent of each other.
 - On 04.05.01, Ms [E] visited the home and she commented that Mr [B] was “in a terrible state – badly hungover.” Consequently, Ms [E] informed him that if Social Services were called in over the following weekend, [N] and [D] would be removed from his care.

20. Evidently, then, as of 2001, the matter of R.B.’s drinking and its impact upon both daughters was envisaged as bringing matters to threshold. Equally, it is to be inferred from the Social Worker’s remarks to R.B. at the time that she considered the threshold for public law intervention to be attained at that time.

21. The matter of inadequate diet for D.B. was also well known to Social Services, viz.;

- On 01.10.03, Ms Wright, EWO referred N and D to Social Services. At that stage, there were concerns about both girls' school attendance. Ms [X] noted that [D] appeared increasingly anxious. She complained about having dizzy spells and of having stomach and chest pains. [D] stated that she did not eat breakfast and that she did not eat in school because she did not like queuing up for meals.
- On 15.01.04, Ms [X] and the Social Worker called at the family home. It is reported that there was very little food apart from bread and milk. Furthermore, Mr [B] “admitted spending all of his money on drink.”
- On 04.02.04, Ms [X] contacted Social Services to advise that Mr [B] was continuing to drink. [N] and [D] requested respite care. Ms [X] reported that [D] was “very down” and she queried whether or not [D] was suffering

from depression. As far as I am able to establish from the case records, respite care was not provided for either girl.

- On 01.03.04, the Social Worker called at 4.00pm. [N] and [D] were in the living room in their bedclothes. Both said they had not gone to school because they had sore stomachs. It is noted that Mr [B] had been drinking and that he was unsteady on his feet. On 02.03.04, the Social Worker visited at 4.15pm. Again both girls were in their bedclothes and they had not attended school. Mr [B] was reported to have had drink taken and he was upstairs asleep during the Social Worker's visit.

22. All of this – and more – is part of a case history, out of which the Social Worker would represent to the Court there had been no significant harm done, nor any likely.
23. The Guardian Ad Litem's Report then moved on to explain a dramatic change in D.B.'s circumstances since separate representation for the child came into play. Things began to move when both the Guardian and Ms. Montague, the child's solicitor, visited her at home. Problems with school attendance persisted to a degree, despite the provision of a Care Worker. Thus, it ought to have been apparent already that this initiative was not providing the solution as had been hoped. There were also continuing issues about diet. D.B. tended not to eat breakfast and, indeed would also tend to skip lunches because she did not like standing in a queue. (I have already highlighted how socialization might be expected to be adversely effected by this young person's plight). On the other hand, D.B. was very clear at that time that she wanted to live nowhere else but in the family home, even if its state of décor tended to depress her.
24. It is also disclosed in the Guardian Ad Litem's Report that similar kinds of support services as announced in the Social Worker's Report to the Court "... have been provided to the family on numerous occasions during the past 10 years but it is clear that sustained change has not been effected. It is my view that [D] has experienced impairment in relation to her physical, emotional and educational development."
25. The next visit of significance was from Ms X, the Education Welfare Officer on 23rd February 2004;
 - [D] had told her that Mr [B] had been drinking the previous week Monday – Wednesday and he had been drinking this week again. On one occasion, he slipped on the stairs and, on another occasion, he was sick.
 - Physically, Mr [B] appeared unwell but he refused to attend his GP. [D] indicated that she felt worried about her father.

- There was little food in the house other than cereals and bread. [D] made food when Ms [X] was visiting, but she ...[i.e., D.B., presumably] ...was unable to eat it.
- [D] had indicated that she had always hoped that her father would stop drinking and that the situation at home would improve. However, she acknowledged that this may not happen.
- [D] stated that she was unable to concentrate when at school and for similar reasons she was unable to complete her homework.
- Ms [X] commented that [D] had presented as being tearful and clearly unhappy. In addition, [D] had indicated that she now wished to be placed in care.
- Ms [X] reported that she had tried to contact Social Work staff to advise them of her interview with [D] but she had been unable to contact relevant personnel.

26. Ms. Z, the Guardian, therefore visited D.B. at home again on 24th February 2005. It was confirmed that D.B. now positively wished to avail of a shared care arrangement, whereby she could live in residential care on weekdays and return home at weekends and during school holidays.

[D] stated that she wished this arrangement to be effected as soon as possible. She also confirmed that there was likely to be little food or money available for the forthcoming weekend because her father had been drinking. Immediately after this discussion, I contacted the Duty Social Worker, Ms [F] and informed her about D's situation.

27. As a result, D.B. was placed with foster parents on 9th March, under this shared residence arrangement. For the first time, a plan hit the mark and D.B.'s school attendance has been 100% since then.

28. It is important to recognise, however, that when a Court directs an Art. 56 investigation which happens to arise out of an Application for an Education Supervision Order this does not delineate the area of concern to that of whether the child can be got to attend school regularly. The Court's concern is that the child may be exposed to significant harm by reason of inadequate parenting. It is axiomatic that where the child is then placed with foster parents then, pro tanto, that concern is ameliorated. On the other hand, there remains cause to enquire whether there be good enough parenting during such times as the child is under the care of the natural parent, under a shared residence arrangement.

29. In an Addendum Report dated 15th March 2005, the Social Worker set out the revised plan, taking account of the change in circumstances;

- [D] to continue to avail of the Shared Care Foster Placement throughout the school terms,
- Extra tuition to be offered in Core Curriculum Subjects,
- Continuation of the provision of a Family Support Worker to offer advice and assistance,
- Continued monitoring by Mrs [G], Social Worker,
- Appropriate support to be offered to Mr [B] should he continue to misuse alcohol.

Should the proposed plan of a shared care placement not facilitate a positive change then I would recommend that the Trust consider a Residential Placement for [D]. Should this prove to be unsuccessful then the Trust would seek Legal Advice.

30. As to protective arrangements for both weekends and during school holidays, when D.B. would be back at the family home, under care of her father;

It does remain a concern that Mr [B] continues to misuse alcohol whilst responsible for [D] and this does adversely affect [D]. However, [N] has agreed to contact Mr and Mrs [R, the foster carers] if [D]'s care is compromised whilst she stays with Mr [B]. Mrs [R] confirmed that she would be willing to care for [D] at these times should the need arise.

31. Once again, the Guardian Ad Litem's Report elicits some other important information which affords better evaluation of the residual home situation;

An Initial LAC Review was held on 15.03.05. It was acknowledged that [D]'s placement with Mr & Mrs [R] was in its infancy. Mrs [R] reported that [D] had attended school as appropriate and, whilst in the foster home, she had been eating a nutritious, healthy diet. However, on 11.03.05, [D] returned to her father's care for the weekend. It appears that during this time, Mr [B] abused alcohol with the result that there was little food and money available for [D].

32. In other words, on 11th March, the first weekend "home visit" since D.B.'s voluntary placement (and the only one embraced within either reporting period), she returned home to a drunken father and went hungry. It is a matter of particular concern that the Social Worker's Report has so little to say about this, more particularly about the lack of adequate subsistence for the child. It need hardly be said that this is a totally unacceptable situation in which to leave any child. The bland assurance contained in the Social Worker's Addendum Report about the plan for N.B. to raise the alarm and the willingness of the foster carers to accommodate at such crises had already proven inadequate by the time that Addendum was being settled. This persisting home situation needs to be addressed by the Trust concerned, within the terms of Art. 18, which states:-

General duty of authority to provide personal social services for children in need, their families and others

18. - (1) It shall be the general duty of every authority (in addition to the other duties imposed by this Part)-
- (a) to safeguard and promote the welfare of children within its area who are in need; and
 - (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,
- by providing a range and level of personal social services appropriate to those children's needs.
- (2) For the purpose principally of facilitating its general duty under this Article, every authority shall have the specific powers and duties set out in Schedule 2.
 - (3) Any service provided by an authority in the exercise of functions conferred on it by this Article may be provided for the family of a particular child in need or for any member of his family, if the service is provided with a view to safeguarding or promoting the child's welfare.
 - (4) ...
 - (5) ...
 - (6) The services provided by an authority in the exercise of functions conferred on it by this Article may include giving assistance in kind or, in exceptional circumstances, in cash.
 - (7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).
 - (8) Before giving any assistance or imposing any conditions, an authority shall have regard to the means of the child concerned and of each of his parents.
 - (9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of income support, working families' tax credit or disabled person's tax credit or of an income-based jobseeker's allowance.
33. Amidst the provisions set out in Schedule 2 is found the following;
- 5.—(1) Every authority shall take reasonable steps, through the provision of services under Part IV, to prevent children within the authority's area suffering ill-treatment or neglect.
34. It is quite clear from an appraisal of the respective Reports that a significant difference of perception exists between Guardian and Social Worker. The following passages may bring the point into sharper focus.

From the Guardian's Report:

[D] currently presents as being sad, anxious and unhappy. She is an articulate young person and, although capable, she is hesitant and reticent in voicing her opinions. I noted that when I met with [D] on 15.03.05, in the company of her older sister [N], that she appeared more comfortable and relaxed in expressing her views. It is evident that [D] has a very close relationship with [N] and that she relies heavily her for emotional support.

From the Social Worker's Addendum Report:

[D] attended an assessment with the Child and Adolescent Team on 9th March 2005. Dr Rachael Davis, Clinical Psychiatrist, confirmed that [D] did not present with any psychiatric illness and was not depressed... [D] returned to her father's care, as agreed, the weekend, 11th – 13th March 2005. [D] admitted that Mr [B] misused alcohol during the weekend...[D] has experienced instability in her life thus far owing to her parents' separation, her mother's mental health difficulties and her father's alcohol dependency. However, [D] presents as a very mature, articulate, sociable young person. Mr [B], and his two daughters, [N] and [D], seem to be a very close family unit despite the difficulties that arise as a result of Mr [B]'s alcohol dependency... [D] admitted that, on occasions, her father would have spent most of the household income on alcohol and therefore there would not have been sufficient food in the house.

35. With the litany of deficiencies in respect of basic care as experienced by D.B. over so much of her life, it is difficult to see quite how she might be a "...very mature, articulate, sociable young person." Indeed, if that were so it is hard to see how there might be a problem about her getting out of bed to go to school in the first place. The worry is that this profile is being presented in order to rationalize a decision not to intervene beyond those support services as had previously been offered and failed.
36. At the further directions hearing on 24th March, the Guardian's Report was considered, together with the Social Worker's Addendum Report. One would have liked to explore further these manifest discrepancies, quite apart from wishing to afford the Social Worker an opportunity to comment. Counsel who appeared for the Trust concerned that day, who had simply had papers passed to her and who had not consulted in the case, did make effort to make contact. It turned out that both Social Worker and Senior Social Worker were on leave and therefore unavailable. The hapless counsel could therefore only hold to position on behalf of the Trust that threshold had not been attained in this case.
37. It is a happy circumstance, due in very large measure to the efforts of the Guardian Ad Litem (to whose involvement there is no illusion throughout the Social Worker's Report, notwithstanding an admonition about all professionals working together) that D.B. is now in voluntary care through school-term weekdays.
38. Matters which remain of considerable concern to the panel include the fact that there is no adequate plan to secure D.B.'s basic needs whilst at home on the weekends, even if only on the basic level of ensuring that the cupboards are not bare. The panel can find no reassurance that, during school holidays, D.B.'s emotional and physical needs will be adequately met and no convincing plan is offered in that respect. In addition, there is no acknowledgement contained in the Social Worker's Reports that the departure of N.B., the elder sister, in September of this year could well be the cause of a significant deterioration in home life for D.B.
39. As things stand at present, R.B. has no intention of addressing his alcohol problem, notwithstanding the fact that it manifests in a fashion which prevents him addressing D.B.'s needs in an adequate manner. While it is said that he is prepared to work with Social Services in respect of arrangements for his daughter, he is clearly not working with Social Services in respect of the primary source of on-going difficulties –his own drinking pattern. As recently as the weekend of 11th March, he had failed to provide the basic necessities for his daughter. The Court is no longer privy to what may have been the position on subsequent weekends. ...

40. The long summer vacation is looming, while the domestic situation may destabilize further in September, coincident with the commencement of the next school year for D.B.
41. All that said, one might ask what the Family Proceedings Court should do in response. Art. 56 allows the Court to direct an investigation by Social Services. Under Art. 57(1), the Court may make an interim Care Order or Supervision where it directs an investigation under Art. 56. There is however no provision for the Court, should it find the ultimate Report from Social Services unsatisfactory, to make either such Order of its own motion. The fact that a Court can direct Social Services to investigate and report upon a child's circumstances with a view to considering whether a public law intervention be appropriate is not intended to compromise the ethos whereby it is for the appropriate authority to seek a public law remedy from the courts where it sees fit.
42. The Art. 56 Report has been received, the Guardian Ad Litem's comments considered. The Trust has determined that no public law intervention is needed. In those circumstances the Guardian has been discharged and the full Education Supervision Order made.
43. The Court can only mark its concerns in this matter by way of these written comments.

Dated this 2nd day of June, 2005

John I. Meehan, RM
Omagh Family Proceedings Court