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THE STATE (M C)

.v.

THE EASTERN HEALTH BOARD AND
B C

Judgment of Mr. Justice Barron delivered the 29th day of
July 1986.

The Prosecutrix and the second named Respondent were married in 1971 and there are two children of that marriage, Barry born on the 26th July, 1974 and Mark born on the 15th September, 1976. The family home is in Tallaght and has been such at all material times. The husband was employed as a Quality Controller in the machine shop of a local factory from 1970 until he was made redundant in May, 1983. The wife did work up to about the time of the birth of her elder son but has not worked since. From 1972 the wife was complaining of severe headaches and sought relief in tablets. These made her slur her speech and become forgetful. Her condition became worse after her elder son was born. She became nervous and excitable and seemed perpetually drunk. Ultimately in the summer of 1975 she became an in-patient in St. Loman's for approximately three weeks. On her discharge she had regained her normal health and retained it for over five years.

Early in 1981 she again became slurred in her speech and her condition reverted to her condition prior to her stay in St. Loman's in 1975. She had violent changes of mood, was unable to look after the children properly and was constantly

complaining about those with whom she came in contact. She sought treatment from the drugs clinic in Jervis Street Hospital from late 1982 but with no success. Various efforts were made to help her but were of no avail. Ultimately in November, 1983 she was committed to St. Loman's because she was addicted to various types of tablets such as pain killers, sleeping tablets, slimming tablets and sedatives as well as addicted to alcohol. On this occasion her treatment did not effect a cure even temporarily. Dr. Nolan the Consultant Psychiatrist at St. Loman's found her to be disruptive and a person having a severe personality disorder who was unable to face reality. His opinion was to the effect that she was aware of her own problems but that she wished to throw the blame on others. His view was that she would become paranoid seeing all hands against her. He said that he could get her off all substances to which she was addicted and treat her but that this would require her co-operation and he would not expect to get this. This opinion was shared by Dr. Jordan, her General Practitioner whose partner signed the committal form in November, 1983. In his opinion she was suffering from a personality disorder and was the worst case that he had ever seen. He said that her house was in disarray and that her behaviour was bizarre. He said that she wasn't ill but that she needed treatment but unfortunately could not follow that treatment. He said that she needed an end to litigation and a stable environment.

Conditions had been bad at home before the wife's committal but after her return home they became worse. She seemed actively to take steps to harm her husband, she effectively drove him from the family home by referring complaints to the Guards and the obtaining of Protection Orders from the District Court. This

behaviour had commenced in November, 1983. Between then and April, 1984 she had caused him to be prosecuted on four different occasions and each time offered no evidence as a result of which the charges were struck out. Evidence was given by four members of Tallaght Garda Station in relation to calls to the family home including the early hours of the morning. On some of these occasions the husband was arrested for alleged breach of a Protection Order. None of the Guards gave any evidence to suggest that they saw any blameworthy conduct on the husband's part. The Superintendent also gave evidence in the course of which he indicated that he had given instructions that no Garda action was to be taken without prior consultation with him.

During this period the wife continued her attendance at Jervis St. without any success. She had also in late 1982 sought assistance from the Eastern Health Board. A Social Worker was assigned to her case. At the beginning of 1983 the Social Worker was changed and from then to the hearing in July, 1984 the family were supervised by Aidan Waterstone. He saw her from time to time and dealt with telephone calls from her approximately once a week.

During 1983 conditions in the family home were strained. The wife complained that her husband assaulted her, stayed out at night and came home drunk. The husband complained that his wife was high on tablets, was unable to look after herself or her family and was in need of treatment. Matters became worse when the husband was made redundant in May of that year.

The evidence at the hearing in July, 1984 did not support either party completely. Nevertheless the probabilities lay in favour of the husband's version of events. In July, 1984 a

neighbour complained to Aidan Waterstone that Barry was being abused by his mother. Following this complaint Aidan Waterstone visited the family home and found that Barry had a mark on his nose which suggested that he had been struck by his mother. He decided that it was necessary in the interests of the two children for them to be taken from the family home. With the agreement of their mother he arranged for them to stay with their maternal grandparents.

Following on this action the wife brought the present proceedings seeking to regain custody of the two children. The form of these proceedings was by way of seeking an Order of Habeas Corpus directed to Aidan Waterstone. Since it was clear that the real issue related to the custody of the two children the Eastern Health Board was substituted as a party for Aidan Waterstone and the father was also joined as a Respondent. The proceedings were heard over a period of six days at the end of July and on the 31st July, 1984 they were adjourned to the 29th August, 1984 when after hearing further evidence a final Order was made.

In the course of the proceedings evidence was given as to the several matters to which I have already referred. It was quite clear that the mother had a problem of addiction to various medications, as well as to alcohol on occasion. It was also clear from the evidence that the children could not remain with their maternal grandparents on a permanent basis. Relations between the mother and her parents and her brothers and sisters was at a particularly low ebb and evidence as to visits by the mother to the children while they were living at her parent's home showed that these resulted in strains and stresses which could only be harmful to the children. The father was still unemployed

and was living with his own parents. He was not in a position to make a home for the two children. The evidence indicated that the children wanted to return to their mother. Accordingly the matter was adjourned in order to obtain psychiatric evidence as to whether or not such a course was to be recommended. On the 29th August, 1984 I heard evidence from Dr. Kathleen Ganter. She expressed the opinion that it would be best for the children to return to their mother. She felt that it would be distressing for them to live with their father and that it might damage their relationship with their mother if this was done since it would entrench their view that everyone was against her. Having heard this evidence and the submissions from the parties I made an Order giving custody of the two children to their mother. The Order further provided that the Eastern Health Board should be at liberty to supervise the home circumstances of the mother and her two sons; that the children should continue to attend Dr. Ganter so that she could give such assistance to the family as she considered appropriate; that the mother should arrange to attend Dr. Ryan at the Out-Patients Department of Jervis St. hospital to receive whatever advice and treatment he considered proper. Arrangements were also made for access for the father on each Sunday and on one weekend every month.

The scheme of the Order appeared to work reasonably well for the following year. The matter was mentioned from time to time and none of the parties sought any change in its terms. The first indication that there might be problems occurred in August, 1985 when the mother attended Dr. Ganter in what was clearly a drunken condition. She was advised to seek assistance and later in the same month was admitted as an in-patient for two weeks to St. Loman's Hospital. A message was sent to the

father to inform him that his wife had gone into hospital and he obtained the keys of the home from his wife and moved back into the family home to look after his children. During this fortnight period he brought the children each day save for one day to see their mother in hospital. He found the family home in a distressing condition, untidy, dirty and littered with empty spirit bottles. There is a considerable conflict of evidence as to what he did while he was in the house which it is not necessary for me to decide. I am satisfied however to accept the husband's evidence that the house was in a bad condition and that he improved it. The wife suggested that he threw out certain trivial items for which she claimed to have a sentimental attachment. I doubt that this was true and in my view these issues were raised by the wife merely for the sake of causing trouble. I cannot accept her evidence in the matter. When she left hospital she returned to the family home. After about a week the husband left the home because his wife threatened to seek a Protection Order. She then sought a Barring Order in this Court. It was originally listed for the first motion day in October but was adjourned by consent to the 5th November, 1985. On that date there was no appearance by the wife. Since the other parties had both appeared I decided to hear evidence in case there was a matter which required urgent attention. Having heard evidence both from the witnesses on behalf of the Eastern Health Board and the husband I was satisfied that there was no ground for making the Order and dismissed the application. The following day the wife sought a Barring Order in the District Court. However, when it came on for hearing in January, 1986 the District Justice on being informed that the matter was before the High Court refused to hear the matter. Accordingly no Barring Order

was made.

The present application which is one to take the two infants into care was decided upon in January, 1986. The Notice of Motion was issued on the 5th February and the hearing which was spread over nine days commenced on the 11th February. The essence of the Eastern Health Board case is that its efforts to assist the family have essentially failed because (1) the mother is actively refusing to co-operate; and (2) Dr. Ganter and the Social Worker no longer have the trust of the two children. They say that the mother and the two children live in a relationship which is bad for the children. Since November at least the mother appears to have reverted to her dependence on medication. Her attitude to Dr. Ganter has become hostile and suspicious and she pretends that she doesn't know her. She is unable to focus on her children's needs, she is always wasting time and yet appears to complain that she has no time and in particular no time to spend with her children. Her essential problem is that she thrives on crises and the greater the stress the less she can co-operate, the greater the need for help she has the less she is capable of taking it. As a result the children are becoming more isolated and the mother is unable to use the help which is being offered to her. In these circumstances the emotional development of the children is being harmed and they no longer confide in Dr. Ganter. The older boy, Barry, has taken on the role as a parent and he talks for Mark. Mark himself is regressing and is tending to the status of an elective mute. He needs trust and authority from his parent which he is not really getting. It is essential to get them out of their present situation. They will get over the move but will need to have contact with both parents. It would obviously be better if they could go to their present school. Clearly, the position of Dr. Ganter has been

undermined, as has that of Anne McWilliam and the E.H.B.

Since this time also the provisions as to access have been largely ignored by the mother. Over the October Bank Holiday weekend it had been arranged that the two boys would stay with their father overnight and then be brought by him the following day to see the Dublin City Marathon. When he called for them around 1.00 p.m. on the Saturday the two boys did not go out to him, even though they were aware he was there. He did not knock on the door, but stayed in the car, because the mother had complained many times about his coming beyond the gate. He waited about 20 minutes and then went off satisfied that as on other occasions his wife was refusing to let the boys go with him. Later that day the mother having changed her mind made various telephone calls which resulted in tracing her husband. Then despite his telling her not to she sent the boys with a friend to their paternal grandparents home in Inchicore. When their father returned to that home and found them he returned them to their mother.

Another example of change of mind occurred over Christmas. The Social Worker had made many efforts to arrange for the father to see his children either on Christmas Day or on Boxing Day but the mother had refused all suggestions. Ultimately when it was realised that access could not be obtained on either of those days the mother then complained that the father had refused to see them over that period. The mother has made various excuses for refusing to allow the children to go with their father to his parents' home. She has suggested variously that the children found the house spooky and that their father beats Mark. I am satisfied from the evidence that there is nothing in either of these suggestions.

There is nothing to be gained by going into detail about the allegations and counter allegations of the parties. I am satisfied on the evidence that both the father and Miss McWilliam are telling the truth and that the mother is not. She has set out to deprive her husband of the access ordered by the Court with the results which have been seen by Dr. Ganter and the Social Workers.

The attendances at Dr. Ganter's clinic were fairly regular and were originally contributing to the welfare of the family as a whole. All trust broke down early in January. The decision had been made to apply to the Court to have the children taken into care. However, because Dr. Ganter felt that she could not rely on the mother not to discuss the matter with the children or, if she did, not to mistake the position she told Barry directly with his mother what had been decided. He immediately ran from the room and his mother had to be persuaded to go after him to console him. Since then I am satisfied from the evidence of Dr. Ganter that no useful purpose can be served by a continuation of visits by the children or parents to Dr. Ganter.

Unfortunately the mother never appears to have returned to Jervis St. Hospital for assistance in accordance with the Order made in September, 1984. She gave various reasons for her failure to do so none of which was convincing. Regrettably, like all addicts, she seems fated to reach the gutter before she will make any effort to save herself. Luckily for her she is far from there, but only because of the help and support she has received from the Eastern Health Board.

The present position is best described by a statement of portions of the evidence relating to the week commencing on the 3rd February of this year. At 9.45 p.m. on that day, Sergeant

John O'Sullivan, the Station Sergeant at Tallaght Garda Station, received a telephone call from the mother at 9.45 p.m. She asked him to go to the house to take a statement from her son. He reached the house at around midnight with Sergeant Kelleher. He spoke to her son whom he found to be an alert normal young boy who was well cared for. He was unable to make any sense out of the mother's conversation and concluded that she was not well. He didn't take a statement but agreed to contact Miss McWilliam the Social Worker. He was aware from what the mother was saying that she was upset about something that Miss McWilliam had done. While Barry was there he felt that he was aware that his mother was unwell but that he wished that he was somewhere else. Sergeant O'Sullivan said that he wasn't listening to the mother all the time because not all of what she was saying was sensible. He left her house round about 1.30 a.m. without taking any statement.

On the 6th February, 1986 at 4.50 a.m. a telephone call was received at their ^{of Mrs Lunney} house by her husband. He told her that it was someone who appeared to be drugged and was telling her of the death of ~~Mary Cummins~~. Mrs. Lunney was worried and rang Sergeant O'Sullivan asking him to check to see that the mother was alright. She received a further call at 6.15 a.m. and again her husband told her to ring the Guards. They both listened to the call, put the 'phone down, took it up later and the person was still talking. They heard her say I am going to keep it up until I get a response. She was quite satisfied that that call came from the mother. There were three further calls after 8 a.m. and before 9 a.m. and two further calls after 9.10 a.m.

On the same day she went to visit the mother with

Miss McWilliam at noon. When they arrived she was on the 'phone but she wouldn't answer the door. When they did eventually get in she said she was too busy to see them. They insisted that they had to speak to her about her children and insisted that she should put the 'phone down. She was in a bad condition, her eyes were rolling, her hair was standing out, she had on very brown make-up, her movements were very strange, she was jumpy and uneasy, her conversation was disjointed, she neither finished sentences nor kept on to any one theme while she was talking. They told her that they felt she was unwell and questioned her ability to care for her children. In all they were there for about 40 minutes and although she did calm down nothing constructive was obtained as a result of their visit. They drew her attention to the untidy state of her house. She made no reaction to what they said but just talked about something else. They found it difficult to have a rational discussion about the children, she only talked about her own troubles and interests. Miss McWilliam had a similar visit to the mother on the 3rd February, 1986 in which again the mother was agitated, didn't want to talk and complained about the neighbours. She found the house filthy, food walked into the floor whereas before it had been merely untidy. She said that the Christmas snow there was untouched for over a year. Her present attitude to Dr. Gante is similar as it is also to Mrs. Lunney.

Following the call from Mrs. Lunney at 5.00 a.m. on the 6th February Sergeant O'Sullivan sent a squad car to the house and found that the Plaintiff was alright. Subsequently he received messages that the mother had been on the 'phone to him two to three times looking for him. At 2.00 a.m. on that day she again rang him and there was a one sided conversation in

which the mother spoke all the time. Again he felt that she was unwell and that she was very lonely. He understood that she had been on to the Station since then also.

This evidence indicates over a short period what has been happening over a much longer period. The mother is clearly suffering from the ill-effect of the medication which she is abusing. She is irrational, talks incessantly and incoherently with excessive eye and body movements and facial grimaces. She makes telephone calls at all hours of the day and night and at excessive length. She seeks to involve authority in her problems quite unnecessarily. Yet through it all, the children appear to be well looked after. There has been evidence from their school master that they are punctual, arrive clean and well dressed and with adequate lunches. The evidence from him also supports that Barry and Mark are bright children and are in the upper quarter of their classes which are the correct classes for their age.

Evidence was also given on behalf of the mother by Patricia Geaney, a Primary Teacher and President of St. Vincent de Paul in the area. She gave evidence that she had visited the home and helped her in the kitchen from time to time. She said that it was untidy but no more untidy than other homes that she knew. She said that she found Barry was worried about being taken from his mother and that she had plenty of experience of children at risk and that these children were not in her opinion at risk. She said that she was aware of the mother's history but that to her knowledge she did not have an addictive problem. She admitted that she wasn't really aware of the husband's side or of the nature of the evidence which had been given by Dr. Ganter and the Social Workers. She was fully aware of the mother's

history and that she had been in St. Loman's and why, she did not accept that she had an addictive problem.

I am satisfied that this witness was concerned solely with the physical condition of the children and the fact that they were obviously well turned out and were doing well at school. That this is so was also confirmed by Monica Carpenter. Nevertheless I feel that Patricia Geaney did not wish to see the significance of the Plaintiff's addiction and for this reason I am not prepared to accept her evidence other than in relation to the physical well being of the two children.

The Plaintiff's addiction affects her relationship with all those with whom she comes into contact. She is deliberately destroying her children's relationship with their father so that as she says herself she and her two children can be left to live their lives in peace. This in turn is creating an unhealthy and harmful environment for her children. They now show distrust of their father which is caused mainly by the indoctrination by their mother and also by pity for their mother. It is this latter aspect which worries the Eastern Health Board and has led to the present application. In her evidence in relation to her husband the mother has continually given evidence which deliberately denigrates her husband and his relationship to their children. She was quite prepared to say black was white when it suited her. For example when asked why she had gone into St. Loman's in August, 1985 she denied that it had anything to do with a drink problem until of course she had to admit that that was the reason that she had gone in, but when first asked about the matter in cross-examination by her husband she pretended not to know what he was talking about. A similar attitude has been adopted by her in relation to

assistance given to her by Miss McWilliam for example. On one occasion Miss McWilliam assisted her by going out with the mother's money and buying a pair of runners for one of the children, on another occasion she assisted her in arranging for the Eastern Health Board to provide her with a chest of drawers, dressing-table and wardrobe for the house and when she maintained that she was unable to transport it she ultimately arranged for transportation of the furniture to her home again at the cost of the Eastern Health Board. Of course when it subsequently suited her the mother was in a position to revile Miss McWilliam in saying that she was the one that was causing problems in her household and damaging her relationship with her children.

The Plaintiff's addiction also makes her irresponsible with money. The evidence in relation to her E.S.B. bill shows that she was fully prepared to leave on heaters during the winter when she was equally fully aware that she would be unable to meet the cost.

Evidence was given to suggest that the Plaintiff has been seeking a supply of pain killers from various registered medical practitioners. Prescription dockets were adduced in evidence showing prescriptions in the name of the Plaintiff and using her code number. Of two doctors called to give evidence, only one identified her as the patient to whom he had given the prescription. Although the Plaintiff denied ever having been to his surgery, I am satisfied that his recollection is accurate and I accept his evidence.

I accept the evidence of Dr. Ganter, Miss McWilliam and Mrs. Lunney. I am satisfied that they can no longer do anything useful in the context of the mother being effectively the sole guardian of and having the sole care and control of the two

children. So long as the mistrust exists, there is no basis upon which they can assist her. I am also satisfied from their evidence that she is affected by the taking of medication in excess. I accept the evidence of the husband and Miss McWilliam as to the failure of the provisions for access. I am satisfied that the mother does not wish these to work nor her children to have any real relationship with their father. I regret that I do not accept the mother's evidence. She is under the influence of medication and says what she wishes were the true position but which she knows is not because if what she says were true it would justify her behaviour. So far as she and her husband are concerned I am satisfied that all their disputes and conflicts arise from her drug addiction and her refusal to do anything about it. No doubt he expressed himself forcibly from time to time but I am satisfied that there is no history either of drunkenness or cruelty on his part. He is and has always been willing to care for and look after his children but has effectively been prevented from so doing by his wife's many applications for Protection Orders and Barring Orders and consequential protection arising from the existence of such Orders as were obtained. The Plaintiff's present condition is in effect confirmation of the views of Dr. Nolan the consultant psychiatrist at St. Loman's expressed by him during the course of the 1984 hearing.

There are a number of matters which emerge clearly from the evidence. The mother is addicted to certain prescription drugs. She is aware of her addiction and has the intelligence to do something about it. She refuses to do so. Notwithstanding her addiction, her two children are well looked after and are sent to school clean and with adequate lunches. The family problems

do not appear to have affected either child seriously though there is evidence that Barry's behaviour at school is affected. The Eastern Health Board can no longer assist the family by direct involvement with its problems. The influence of the father is seriously eroded by being deprived of access to his own home.

I am satisfied on the evidence that the father is perfectly well able to look after his two children and accept the evidence of Dr. Ganter that during the period he had them while his wife was in hospital that they were if anything better cared for than when with their mother. Certainly the evidence of that two to three week period shows that the children were perfectly happy with their father and that he himself showed remarkable concern for the welfare of his wife and equally concern for the welfare of his children.

The basis of the Order of September, 1984 has been totally undermined. The mother never sought help for her drug addiction; she had now ceased to co-operate with the Eastern Health Board; and she denies her husband adequate access to his children. It is accordingly essential to alter the terms of this Order.

The father sees the solution to the family's problems in his return to the family home to look after the children and in his wife leaving the family home and hopefully seeking help for her condition. I also see the solution for the family in this situation. Nevertheless, unless the mother will seek assistance voluntarily there is a serious danger that the effect of such an Order would be seriously detrimental to the welfare of the children. I accept the opinion of Dr. Ganter and the Social Workers that it is best to have the children taken into care. And that they will get over the move from their home.

However, the evidence in support of this form of relief indicates that the children must thereafter have full and free access to their parents. Also it was indicated by Dr. Ganter that it would be better if they could continue to attend their present school. In my view if the children were taken into care they would in reality be unable to have the sort of access to both their parent which would be necessary for them and of course they would be unable to continue at their present school. For this reason I am not prepared at present to impose this solution.

The main reason for the present situation is the break-up of the marriage caused by the wife's addiction. The father has effectively been excluded as an effective influence because every time he seeks to become such his wife either takes legal action or denies him access. Although help has been offered, this has failed because the mother at the same time both uses and abuses the system.

What I believe must be the aim of any Order is to restore the father to a position where he can be a much greater influence in his children's life. At the same time, I do not regard it as advisable to cut them off from their mother to any material extent. It is also essential that this should be done in the context of the children living at home and going to their present school. It would obviously benefit the family if he could continue to have the benefit of the help and support of the Eastern Health Board. However, this cannot be obtained in the way in which it has been offered. Admittedly a different Social Worker could be assigned to the case but it would only be a matter of time before he or she refused to see the situation as the mother pretends to see it. When that occurred any trust built up would again be destroyed. The same can be said about the appointment

of an alternative psychiatrist. The reality is that so long as the mother remains in her present frame of mind she cannot avail of help. If she could be cured she would not need it.

I propose to make an Order giving joint custody to both parents. They are not to be taken from the family home without the consent of the Court nor to be taken from their present school without like consent. The mother will be restrained until further Order from bringing any proceedings whatsoever against her husband without the prior consent of this Court. The father will be free to consult Miss McWilliam or Dr. Ganter at any time if he so wishes and for that purpose to bring the children to visit either of these persons. I do not propose to make any Order ^{to} impelling the mother to seek help. If she cannot do this voluntarily then no useful purpose will be achieved. I hope that following this Order the father will return to the family home where I hope that his influence and presence will more than outweigh what I appreciate will be a heightened and strained atmosphere in the home. However, the mother must appreciate that the husband is as much entitled to remain in the family home as she.

Henry Barron
29/7/86.