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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

AND IN THE MATTER OF THE ADOPTION (NI) ORDER 1987

RE: C (A CHILD)

All of the parties in this judgment have been anonymised so as to protect the identity of the child to whom the proceedings relate. Nothing must be disclosed or published without the permission of the court which might lead to her identification or the identification of her adult relatives.

O'HARA J

Introduction

[1] In this case a Health and Social Care Trust ("the Trust") seeks a care order and a freeing order for a girl (C) who is just over 2 years old. The identity of C's father is uncertain, an issue which will be explained below. C's mother resists both applications and seeks the return of C to her care as soon as possible. If I decide that C cannot be returned to her now or in the foreseeable future, the mother wants C to remain with foster carers who have looked after her for almost two years. The mother contends that their long term care of C is an available and appropriate alternative to freeing C for adoption.

[2] The foster carers are not parties to these proceedings but without objection I heard from them at the start of the hearing so that I understood their position. They want to continue to care for C and are very attached to her as are their other three foster children. The Trust has ruled them out as long term carers primarily due to

their age – the husband is just over 60 years old and the wife is just under 60. There are also other issues which will unfold below.

[3] The Trust was represented by Ms Martina Connolly BL. The mother’s counsel was Mr Niall Hunt QC with Ms Paula McKernan while the Guardian ad Litem, who fully supported the Trust case, was represented by Ms Grainne Murphy.

Background

[4] The mother has six children of whom C is the fifth. The eldest two were raised in England by their father with limited involvement of the mother. The third and fourth children, both boys are subject to care orders and are in separate long term foster care in Northern Ireland. The mother has regular but problematic contact with them. While the quality of contact can be very good a recurring problem has been her telling them that she’s “fighting” to get them home. This unsettles them. She has never accepted the care orders or the fostering plans. When the third boy went into care she became pregnant again, deliberately, in order to prove she could care for her next baby and thus get back her sons. She repeated that after her fourth child was taken into care.

[5] This plan by the mother has failed. The fourth child had to be taken off her under an emergency protection order when he was only 8 months old. There were then protracted proceedings in the Family Care Centre before Her Honour Judge Smyth and on appeal before me in the High Court. The issues which emerged at that time are very similar to those in C’s case:

- Sustained dishonesty with all professionals.
- Recurring problems with alcohol.
- Bizarre behaviour and efforts to explain away what reliable witnesses had reported.
- A refusal to accept her child should not be at home with her.

[6] When C was born in spring 2017 the mother was in a new relationship with a man, Mr K, who unlike her and the fathers of her older children, was not a member of the travelling community. This was advanced by the mother as a positive sign because, according to her, there were people in that community who did not want to see her change for the better or become independent of them. In particular, she insisted that she had broken away entirely from a Mr T, a traveller with a violent streak, who was the father of her fourth child. The impression she created was that she was settling into a different and better life with Mr K which would allow her to keep C.

[7] Unfortunately, much of this was a lie which unravelled by September 2017. In the early hours of 20 September C was removed from her mother's care by police officers. They had been called to a house in a town approximately 30 miles away from Belfast where they lived. On arrival the police found the mother with C who was just 4-5 months old. The mother was drunk, injured as a result of some sort of confrontation with other travellers and wholly unable to care for C.

[8] Since September 2017 the mother has given multiple accounts of this episode. They have included her tea being spiked with alcohol and her alcohol being spiked with drugs. It is unnecessary to explore the series of lies that she told to different people at different times because as she conceded to Ms Connolly in cross-examination there is no version of the events of that night which reads well for her.

[9] By September 2017 it was becoming clear that the old problems which had troubled the mother had not disappeared. She was becoming increasingly difficult for social workers to contact, typically a sign that her life was unravelling. On 19 September she had spent the morning at a session which was part of the assessment of her progress to see if she could continue to care for C yet by lunchtime she had started the drinking which led to police intervention in the early hours of the following morning. Also by this time DNA testing had proved that Mr K was not C's father. Later the mother claimed it was Mr T (despite all that she had said about him and her insistence that she had broken away from him) but subsequent tests showed that her fourth child and C have different fathers. This is despite the fact that she had claimed that Mr T was the father of her fourth child.

Threshold Criteria

[10] At the start of the current hearing the various concerns about the mother were condensed into a threshold criteria document which the mother conceded and signed. In short form, and anonymised, those criteria are as follows:

- (i) C was removed from her mother's care by the police in the early hours of 20 September 2017, having been called to a house following reports of a fight and a suspected stabbing. The mother was located in bed with C, highly intoxicated, injured and unable to offer any care whatsoever to C. C was taken into police protective custody. The mother returned voluntarily to, and was later arrested at, the same address following her discharge from hospital that morning rather than attend with the Trust who had taken her daughter into emergency care. The mother has given various and inconsistent accounts of that evening and minimised her culpability from the outset.
- (ii) The mother has lost the care of her older four children under both private and public law orders. She has had social services involvement in relation to all of her children since 2007 - all relating to her chronic issues with alcohol and drug misuse, lifestyle choices, involvement in violent personal relationships

and dishonesty. C was her third child to be removed in emergency chaotic circumstances where serious alcohol misuse and violence were trigger factors. These matters remained unaddressed and of serious concern as at the date of intervention on 21 September 2017. The mother has been unable to manage sustained sobriety over any consistent period of time for many years despite numerous support being made available to her.

- (iii) The mother deliberately lied to the Trust and Guardian and to the High Court about C's paternity for significant periods of time. The mother has named Mr T as C's father, a man whom she claims to be a serious risk of violence to herself and her children for many years. The mother lied on oath throughout lengthy High Court proceedings in 2016/17 about her last contact with Mr T and C's paternity.
- (iv) The mother lacks insight into the emotional needs and wellbeing of her children. She has asserted that she deliberately became pregnant with C solely to increase her chances of having her older boys returned to her care. She previously has admitted to getting pregnant with her fourth child in order to have her third child returned to her care. The mother puts her own needs before those of her children.
- (v) The mother has never accepted protective measures for her children regardless of court findings and focussing solely on her own pursuit of rehabilitation. The courts have made specific findings against the mother in relation to her deliberate undermining and disruption of her children's long term care plans - see the judgments of Her Honour Judge Smyth in April 2015 and Mr Justice O'Hara in May 2017.
- (vi) The mother is unable to work honestly and openly with professionals. Where evident, her engagement and co-operation with professionals is at best superficial and is used to further her own objectives. During and following her pregnancy with C the mother:
 - Lied to the Trust about a purported pre-birth registration with a hospital in Dublin.
 - Undertook four sessions of parenting assessment at Whiterock without disclosing fundamental information about her contact with Mr T.
- (vii) Despite years of Trust involvement through the child protection measures and court proceedings the mother continued to lack insight into the serious risks she poses to her children.

Care Order?

[11] The fact that threshold criteria are approved or conceded does not necessarily lead to a care order being made. In some cases parents improve and turn their lives around by virtue of their own efforts or, more often, with the support of family or social services or both. The mother has shown intermittent signs of doing this since September 2017. She has referred herself on a number of occasions to an addiction centre to address her problem with alcohol. Sadly, her efforts have been unsuccessful. For instance in February 2018 she was admitted for a 6 week assessment but was asked to leave after two weeks because she had given a diluted urine sample. That was something which she had done before. At that time she was pregnant with her sixth child who was born in July 2018 and who is the subject of separate care proceedings.

[12] In March and April 2019 the mother was found again to be under the influence of alcohol though as usual she either denied having been drinking or provided an explanation about events in her life which had caused her to drink.

[13] I do not doubt that the mother wants to stop drinking and has tried at times with some limited success to do so. The mother's failure to stop drinking has been one of her central and critical problems during the last 5-10 years and continues to be so. There is no realistic prospect of her achieving and maintaining sobriety in the near future. C's future care has to be planned – it is unreasonable to put it on hold any longer. On the basis of alcohol alone the mother cannot have C returned to her care, either now or in the foreseeable future.

[14] But as the preceding paragraphs show there are more problems than just alcohol. There are glimpses of the mother facing reality but far more often she tries to deceive professionals, even those at the addiction centre who she cannot possibly claim are hostile to her. Her third child's life is in crisis because his foster placement has broken down. He has repeatedly run away from it, sometimes to his mother who contributed to that breakdown. Her fourth child said to his foster carers in May 2019 that he would allege that they punched him every day – he is only 6 years old! His contact with his mother and older brother is problematic and leaves him troubled and upset for days afterwards. An application to free him for adoption was lodged some time ago but then withdrawn. In retrospect the Trust sees that as a mistake, one which it is anxious not to repeat.

Long term foster care versus freeing

[15] What then of the less draconian measure of leaving C in long term foster care rather than freeing her for adoption? This is the mother's fall-back position and an outcome which is desired by the current carers. It is a way forward which has to be seriously considered, not least because the carers stepped in and rescued C at very short notice nearly two years ago after the events of 20 September 2017. Their care

for C has been wonderful and has provided her with the stability which her mother could not.

[16] There are two problems about this way forward which have to be considered. The first is that on the Trust's case the foster carers are simply too old to provide long term care for a girl who is only two. The second stems from the experiences of the third and fourth children – will the mother disrupt C's placement and cause her yet more damage?

[17] On the issue of age the Trust's position was set out to the foster carers in writing in January 2019. In that letter the Senior Social Worker indicated that the foster carers had been made aware of the eligibility criteria in respect of adoptive applicants which states that legally there is no upper age limit. The letter continued:

“However, in all circumstances the overriding consideration will be the best interests of the child. The Agency therefore will not expect there to be more than 45 years gap between a child and one of his (her) adoptive parents. We acknowledge that flexibility can be exercised in the case of applicants who offer a valuable resource to children e.g. enabling siblings to grow up together or offering a placement for a child with disability. Unfortunately, your circumstances do not allow us to be flexible in this situation.”

On this issue I cannot reject the Trust's position as other than entirely rational. In this case the gap in age between the child and the current carers is not just 45 years it is more than 55 years. The foster carers have been and are excellent people; their care of C has been wonderful but she is only two years old - the age gap is simply too great.

[18] Even if I am wrong about this, however, there is a more fundamental problem. On the evidence, including events right up to spring 2019, the mother rejects entirely the idea that any of her children should be outside her care. Her endorsement of C staying with the foster carers if C is not returned to her is entirely tactical and insincere. The truth is that she will not rest until C is returned to her. That will be the message C gets at contact with her mother as her brothers have done. It will damage C as it has damaged her brothers and it cannot be tolerated.

[19] In their recent frustration and disappointment at not being accepted as long term carers whether on the basis of foster care or adoption, the current carers have acted unwisely in their engagement with the Trust. This is not at all typical of them. They have indicated that they will not facilitate any transition of C from their care to an adoptive placement if that is the court's decision. The Trust has therefore had to take the position that if a freeing order is made C may have to be moved to other short term carers who will co-operate. I hope that on reflection the current carers

reconsider and realise that such a step is not in C's interests. Separation will undoubtedly be a wrench for the carers but it will also be a wrench for C. The easier the process is made for C the better.

Likelihood of placement

[20] Article 18(2)(b) of the Adoption (NI) Order 1987 provides that no application shall be made to free a child for adoption without parental agreement unless "the court is satisfied that it is likely that the child would be placed for adoption". In this case an issue has been raised by the current carers that there is some doubt for medical reasons about the likelihood that C will be placed for adoption. The suggestion made is that there have been some seizures in 2019 which suggest epilepsy and that there are "daily vacancies" which might suggest a greater but as yet unconfirmed problem e.g. autism.

[21] Quite properly these issues were reported to the Trust which has taken medical advice. In this context it is noteworthy that C is regarded by everyone as being developmentally advanced for her age. The relevant consultant who has provided information is not persuaded that autistic traits are evident and the question of seizures will be kept under review but as matters stand there is no confirmation of epilepsy.

[22] In most freeing cases the child involved is damaged in some way - emotionally or physically. I do not consider that the evidence available to me raises any significant concern that for any medical reason C is unlikely to be placed for adoption.

Ethnicity

[23] The mother has contended that since C comes from a traveller background (at least on her mother's side) her ethnicity should be protected by not being adopted outside the traveller community. (There are no available kinship carers within the travelling community and there are no prospective adopters from the travelling community.) She argues that freeing C for adoption would separate her from her siblings and detach her from her travelling birth family. In the current case that is a somewhat curious proposition because nobody has denounced members of the travelling community more than the mother has. She has described how they have assaulted her and tried to undermine her. This has been a theme not just in C's case but also in the case involving the fourth child. C will be told through life story work about her family background and about the traditions of the travelling community. But in this case her ethnicity as a traveller is not a significant issue when weighed against the overwhelming advantages to her of the security and stability which will be provided by her being freed for adoption.

Conclusion

[24] Making a care order on the basis of a care plan for freeing and then making a freeing order is on any view the most severe separation of a mother from her child. As the Supreme Court has made clear, reflecting both domestic law and the European Convention on Human Rights, that course should only be taken where it is the necessary way forward. It is not enough that freeing is an option which is marginally better or preferable to long term foster care much more is required.

[25] In this case the mother has shown with C's older siblings that she just cannot care for her children. Despite that history, when C was born she was not removed from her mother but stayed with her for four months until the mother's life and her care of C fell apart. C's situation is every bit as bad as that of her siblings. The same mistakes have been made - no lessons have been learned. There is a need to prevent what has happened and is happening with the older siblings to happen to C. In my judgment that can only be achieved by making a care order and then freeing C for adoption on the basis that the mother is unreasonably withholding her consent to adoption. Any reasonable parent in the mother's position would recognise that C requires the protection, stability and security which adoption is far more likely to give her than either rehabilitation to her mother or long term foster care.

[26] In all the circumstances I make a care order based on the care plan that C be freed for adoption. Further, I make an order under Article 18 of the 1987 Order that C be freed for adoption without her mother's agreement because her mother is unreasonably withholding her agreement.