

Neutral Citation No: [2021] NIFam 31

Ref: OHA11581

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

ICOS No: 14/077343/05

Delivered: 03/08/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

B

Applicant

and

K

and

L

and

THE OFFICIAL SOLICITOR

Respondents

and

REGISTRAR GENERAL FOR NORTHERN IRELAND

Notice Party

O'HARA J

Introduction

[1] This is my third judgment in this case. In the first in June 2016 I set out what were essentially findings of fact on the circumstances in which a girl, Y, was conceived and had her birth registered. In the second judgment, in October 2020, I rejected the claim that B's name should remain on the birth certificate. I also rejected B's claim for parental responsibility and for a joint residence order. I did however confirm that I would make an order for defined contact between B and Y, who is now 9 years old, and that I would make a specific issue order so that B is kept informed of certain issues around Y including her health and education.

[2] Having given that ruling I allowed the parties time to discuss the terms of the final orders necessary to give effect to the judgment. In the event there has been little or no agreement, making it necessary to give this judgment on a number of outstanding issues. I have considered the submissions of the parties together with their position papers. I also heard oral evidence from Ms G Connolly, social worker, who was not previously familiar with the case but who read the history of reports and then gave helpful evidence from a social work perspective on what appropriate steps might be taken for Y's benefit.

Position of the Registrar General

[3] A draft order was circulated for comment on foot of the judgment of October 2020. The Registrar General's interest in this relates to the precise form which the court order should take when correcting the wholly irregular registration of Y's birth. It will be remembered that the name of the birth mother, K, appears on the birth certificate but so also does B's while the name of the father, L, does not.

[4] In response to that draft the Registrar General made a helpful written submission through Mr P McAteer of counsel dated 30 November 2020. No party raised any objection to the improvement suggested by Mr McAteer. Accordingly, paragraphs 1 and 2 of the draft order will be amended in the terms set out at paragraph 7 and 8 of his paper. Any consequential amendments can also be made to the order.

Y's Forename and Surname

[5] Y's real forename is an unusual one but she is 9 years old and is accustomed to it as is everyone who knows her. K has suggested that the spelling of her forename should be corrected as the current registered spelling is a mistake. I do not accept that suggestion. The evidence on this issue was not compelling and I am not persuaded that the spelling should change after all these years.

[6] I am however satisfied that the surname should change. Y currently carries the surname of B who is neither her father nor her birth mother but is the ex-partner of her mother. She should not have been registered under that name as my earlier judgments set out in detail. Moreover, Y only understands B to be a special friend of some sort, not a parent. The question therefore is whether her surname should change to that of her birth mother or natural father. The father would prefer Y to carry his surname while the mother would accept that but would equally accept Y having her surname.

[7] Although Mr L has regular contact with Y, he is not in a relationship with K and is highly unlikely to be in the future. This does not stop him from being registered as her father, as he will be, but it is relevant to the decision as to her surname. I was impressed by the evidence that when Y herself was asked by Ms Liddy, the Official Solicitor, her preference was to have her mother's surname.

This is an option which Y doesn't appear to have been aware of previously. While I acknowledge that this does not determine the issue, it seems to me to tie in with Y's likely primary attachment and identity as Ms K's daughter.

[8] In these circumstances I order that all necessary steps be taken to register Y's surname as that of her birth mother, Ms K. In conjunction with that step it is very important for narrative work to be done with her as soon as possible to explain in age appropriate terms why this is happening. Ms Connolly testified that there are welfare issues in changing Y's name but that social workers have the necessary experience and training to explain that once the decision has been taken by the court.

Contact with Ms B

[9] Y has had regular contact through the years with B. In my October 2020 judgment I stated that this should continue. Regrettably, there is no consensus on the extent of what that contact should be. B has proposed that she should see Y every Sunday for 5 hours and have an overnight on the last weekend of each month whereas the parents propose only four contacts a year, each for 3 hours.

[10] The way forward on contact may of course be affected by the major question of what the outcome of the narrative work to be carried out by the social workers might be. Y is now of an age where she might possibly react against B once she learns more about the history of events. For the present however Y's contact with B as a special friend is enjoyed by Y and should continue. In the circumstances I order that her contact should be for 4 hours every second Sunday. It is to be in B's home or out and about in the community but it is not to involve others and will not include overnights. I am making an order of this frequency because notwithstanding the unsatisfactory way in which the relationship between B and Y came about and has continued, there is a relationship. I would be surprised if the relationship continued on a long term basis but for now at least it is of value to Y.

[11] B seeks a penal order to be attached to the contact order. I refuse that request. Given Y's age she will have a growing input into what contact she wants. The extra factor of the narrative work she is about to undertake adds even greater unpredictability. In these circumstances a penal order would be quite inappropriate.

Specific Issue Order

[12] In my October 2020 judgment I stated at paragraph 30 that there should be a specific issue order requiring K to keep B informed about Y's health and education. Notwithstanding the way it came about, B has an interest in Y's wellbeing which K created with her. The parties disagree about the extent of the terms of that order. Having considered their representations and heard Ms Connolly's evidence I order as follows:

- (i) In terms of health, B is to be notified of any illness which affects Y attending contact together with any significant illness Y has or any significant medical treatment she is receiving.
- (ii) In terms of education, given Y's age, Y herself can keep B informed of her progress in terms of school reports, change of school etc. On reflection therefore, contrary to the terms of my 2020 judgment, I do not require K to provide a copy of school reports to B. Y herself might happily show them to B but I impose no obligation in this regard.
- (iii) In terms of home address, K does not have to inform B of any change of address within the greater Belfast area but does have to inform her of any change to her address further away.
- (iv) None of this is to be interpreted as giving to B any decision-making role or any consultative role over what happens in Y's life.

Orders Revoked

[13] At earlier stages in this case orders were made which can now be revoked, if they have not already lapsed:

- (i) The interim non-molestation order made against B in August 2014.
- (ii) The prohibited steps order which was made against K to prevent her leaving Northern Ireland with Y at the point when she contemplated a move to Wales.

Miscellaneous

[14] The parties can refer any outstanding issues or matters arising to the court within 14 days but are encouraged, for once, to reach agreement by way of compromise.