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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**FAMILY DIVISION
OFFICE OF CARE AND PROTECTION**

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

Between:

SOUTHERN HEALTH AND SOCIAL CARE TRUST

Applicant

and

A FATHER

and

A MOTHER and GREAT AUNT

Respondents

**IN THE MATTER OF
STEFAN (A MINOR)**

Wendy Davidson BL (instructed by DLS Solicitors) for the Trust
Melanie Rice BL (instructed by McKeown Solicitors) for the Mother
Martina Connolly QC, Victoria Naughton BL (instructed by Rafferty & Co Solicitors) for
the Father
Katharine McAleavey BL (instructed by Breda Cunningham Solicitors) for the Great Aunt
Andrew Magee QC, Caroline Steele BL (instructed by Denis D Humphrey Solicitors) for
the GAL

ROONEY J

Anonymity

[1] As per the ruling of Keegan J nothing should be published which could identify the child or his family. The name given to the child is not his real name.

Background Facts

[2] The background facts giving rise to this case are as detailed in the judgment of Keegan J (unreported) dated 21 October 2020. The relevant decision will be considered in more detail below.

[3] Stefan (“the child”) was born prematurely in July 2020. He remained in the neo-natal unit for approximately a week. The Trust commenced an application for an Emergency Protection Order on 16 July 2020 which was dismissed. The judge directed further discussions which eventually led to an agreement that the child be placed with his mother residing at her maternal great aunt’s home and that the latter would undertake a supervisory role of the mother’s care and contact with the child.

[4] The mother absented herself from the care of the child overnight on a number of occasions without the knowledge of the Trust. The Trust only became informed that the mother had removed herself from the placement when they attended at the great aunt’s home for a visit on 10 August 2020 and found that the mother was not there.

[5] The great aunt expressed the view that she wished the placement terminated. However, following discussions, she agreed to maintain the placement so as to allow the Trust to identify an alternate placement. Contact arrangements were put in place for the mother, namely, twice per week at the great aunt’s home to be supervised by Trust staff. The mother subsequently breached the agreed contact agreements and the care safety plan.

[6] Within six weeks of the child being placed in the care of the mother with the great aunt acting in a supervisory role, there had been at least seven breaches of the placement. No insight was demonstrated by either the mother or the great aunt with regard to the breaches and the potential impact for the child. It was clear that there was an inability to adhere to the safety care plan and to ensure that the child was prioritised.

[7] On 13 August 2020, an application was issued for a care order pursuant to Articles 50 and 57 of the Children (NI) Order 1995.

[8] On 26 August 2020, the father arrived at the great aunt's home for contact with Stefan. He was accompanied by the father's mother and advised the great aunt of his intention to remove the child from the kinship placement to his care in the home of his mother. The child was then removed to the care of the father living with his parents.

[9] An immediate safety plan was agreed with the father and the father's mother (paternal grandmother). Specifically, this involved the paternal grandmother ensuring that her son refrained from any use of cannabis on the basis that he now had primary responsibility for the child. The paternal aunt and grandmother also gave assurances that they would be available to support the father in the care of the child.

[10] On 7 September 2020, the Trust convened a review case conference that week to support the child's living arrangements with his father and to undertake separate assessments of both grandparents. It was recommended that contact for Stefan's mother should be supervised twice weekly for one and a half hours on each occasion. Significantly, there was a note that the child was feeding and sleeping well and that there was no health or development concerns and his weight was recorded as rising.

[11] An interim care order hearing was convened before the Family Care Centre. It is noted that the interim threshold criteria were agreed pursuant to Article 50 of the Children (NI) Order 1995, so the case focused on the proposed care plan.

[12] Various care options were put before the court. The choice was between paternal care continuing or removal of the child into foster care. At the interim stage it was quite clear that care to Stefan's mother or great aunt was not feasible. A guardian ad litem ('GAL') was appointed at the beginning of September 2020. During her first visit, the GAL was of the view that the child was quite jumpy and that there were tensions within the home.

[13] The Court heard the interim care order application remotely over six days between 26 September to 7 October 2020. The learned judge rejected the Trust care plan that the child remained in the care of his father along with the paternal grandparents under an Interim Care Order. The father had agreed that an interim care order was appropriate and supported the Trust care plan. The Trust plan was opposed by the mother and also the GAL. Initially the GAL supported a care plan in which the child remained with the paternal grandparents and the father removed himself from the home. However, during the course of the hearing, the GAL changed her mind and supported a care plan of removal into stranger foster care.

[14] The decision of the Court was to substitute an alternative care plan of removal into foster care rather than the Trust care plan of paternal care pending assessment.

[15] The father appealed the decision of the learned judge alleging, *inter alia*, that she had erred in law in rejecting the Trust's plan and thereafter approving a substitute plan that was unnecessary and disproportionate. In essence, it was claimed that the test for immediate removal had not been met.

[16] The appeal was heard by Keegan J. Significantly, Keegan J stated that she had:

"...not been satisfied that there is sufficient evidence to meet the interim removal test required for immediate removal due to the immediate safety of the child being compromised." (paragraph [24]).

Keegan J acknowledged that there were ongoing and real issues of concern in the case and that further assessments were required. However, she believed the issues could be managed and that the removal was premature without further evidence and further consideration of a safe care planning.

[17] Keegan J concluded (*inter alia*) as follows:

"The child will be subject to an interim care order. This is in place to allow the Trust to share parenting responsibility and to manage the risks in this case. The key to this case at the interim stage is a robust safety plan and timely assessment of all the adults. ... It remains to be seen if this plan is attainable on a long term basis but certainly it seems to me that there is something that it can hold whilst assessments are undertaken." (paragraphs [25] and [26])

[18] Administrative directions were issued by Keegan J and I refer, in particular, to directions issued by the learned judge on 14 November 2020. Significantly, the Trust was directed to file a final report and care plan and updated discovery on or before 21 April 2021. The GAL was to file a final report in respect of the care order application on or before 19 May 2021 and each respondent/intervener was to file statements of evidence on or before 5 May 2021. The directions also provided that the Newry Family Resource Centre was to provide reports after completion of assessments of the father and the mother. The results of any hair follicle testing was to be provided to all parties and the Trust was to provide a report on the education work in relation to substance misuse undertaken by the mother. The learned judge also directed that Dr R Jordan, Consultant Clinical Psychologist, was to undertake a risk assessment of the mother and to provide a report.

[19] The final social work statement prepared for court proceedings dated 6 August 2021 referred to the following sources of information:

- (a) Child protection case conferences and minutes dated 10 July 2021 and 8 September 2021;

- (b) LAC review reports and minutes dated 28 October 2020, 19 January 2021, 25 May 2021 and 2 August 2021;
- (c) Substance misuse (initial assessment) (the Father) dated 2 October 2020;
- (d) Substance misuse (initial assessment) (the mother) dated 5 January 2021;
- (e) Barnardo's assessment of the mother dated 8 June 2021 and the father dated 11 June 2021;
- (f) Psychological risk assessment report dated from Dr Jordan dated 17 May 2021;
- (g) Safety plan dated 26 August 2021.

[20] In reaching my decision, I have carefully considered the final social work statement and recommendations together with the said sources of information.

[21] The Newry Family Resource Centre ('NFRC') carried out a parenting assessment on 11 June 2021 as directed by Keegan J. The report stated as follows:

"[The father] is demonstrating a capacity to meet Stefan's care protection needs. He has a good understanding of his responsibility to maintain a healthy lifestyle and to make safe choices in future relationships. The father has an understanding of the potential risks in both his communication with the mother and in relation to past worries regarding the mother's lifestyle and parenting. The father understands the necessary action he would need to take to ensure Stefan's safety and well-being. ... Considering the worries about the father's past decision making and protective thinking, it is our view that further monitoring is required to assess the father's ability to apply the learning that he is evidencing within the assessment. The Signs of Safety process needs to agree a robust safety plan which ensures the father's support network are aware of the potential risks and their responsibility to take action to safeguard Stefan and report any worries to social work staff."

[22] In respect of the NFRC's parenting assessment of the mother, the following is noted:

"[The mother] has made positive changes to her life which can only benefit [Stefan], she needs to continue to sustain this stability and continue to develop and maintain the positive changes."

[23] The NFRC report also noted the following:

“The mother’s inherent vulnerabilities continue to exist which impact on her ability to care for [Stefan] but it is positive that she reached out to Nexus and is beginning to process the early trauma she suffered with the hope that she emerges stronger and gains a better understanding of the impact upon her decision making.”

[24] Pursuant to the directions of Keegan J, Dr Robin Jordan, Psychologist, carried out a risk assessment of Stefan’s mother. The assessment was requested as the mother had prior offences of a sexual nature when she was 18 years old and was placed on a Sex Offenders’ Register for a period of 2 years. It is noted that Dr Jordan had access to reports from Dr McCartan, Consultant Clinical Psychologist, dated 10 June 2019 and Dr Curran, Consultant Psychiatrist, dated 29 July 2019. At paragraph 3:6 of the report, Dr Jordan concluded as follows:

“Importantly, however, I do not consider that there is any evidence that [the mother] holds attitudes or beliefs that support or condone sexual aggression or abuse of any kind. ... It is my opinion that [the mother] does not pose any increased risk of harmful sexual behaviour (‘HSB’) currently. While the current Comprehensive Parenting Assessment is ongoing, safeguarding measures already in place should continue with respect of [[the mother’s] contact with [Stefan].”

[25] With regard to recommendations, Dr Jordan stated that the mother should continue to engage in therapeutic work in respect of the abuse that she had experienced and that trauma informed individual therapy as provided by Nexus is essential for the mother. Overall, the mother will continue to require a significant level of professional support.

[26] Turning to the substance misuse initial assessment dated 2 October 2020, it is noted that the father had no physical/mental health problems which would support a view that he has significant addiction issues and was dependent on cannabis as alleged by the mother. Although the father reported a low level of recreational use of cannabis, it was considered that this would likely minimise to some degree. Even accounting for this, it was clear that the father did not meet the threshold for intervention from Tier 3 Addiction Services. It is also noted that Ms Fiona Hughes, Counsellor, completed eight sessions of work with the father in relation to relapse prevention and maintaining abstinence. It is reported that the father engaged well and was not using cannabis.

[27] The substance misuse initial assessment on the mother, dated 5 February 2021 noted that she had a significant history of poly-substance misuse from the age of 17. Current assessment of the mother’s presentation, attendance at meetings and contact indicated that she is largely abstinent, perhaps with some relapses. It is stated that

the mother would benefit from support from Addiction Services to support long term abstinence.

[28] Between December 2020 and January 2021, the father engaged in four sessions of family support work. During these sessions, the father asked relevant questions and was receptive to any advice given.

Decision

[29] Article 3 of the Children (NI) Order 1995 ('the 1995 Order') requires the court, when considering any application relating to the upbringing of a child, to treat the child's welfare as the paramount consideration. Article 3 contains the relevant welfare tests, namely, the circumstances to which a court should have regard when considering an application, inter alia, under Article 8 of the 1995 Order. So, for example, *In the Matter of S (Discharge of Care Order etc)* [2002] NI Fam 26, it was stated that the court should consider the possibility of making a supervision order, including the possibility of at least the effect of a supervision order or a residence order, before adopting the more draconian care order approach.

[30] I have considered the Trust's detailed final care plan and the final social work statement prepared for the court proceedings. The Trust recommends that the Court gives consideration to granting a supervision order and that the order will remain for a period of 12 months. The father does not object to a supervision order. The mother and maternal great aunt remain neutral. The GAL agrees that a supervision order is appropriate and requests that the Trust ensures that the father and the mother continue to have a good level of support in arranging contact as this will be crucial in determining the best outcomes for the child.

[31] The father seeks a residence order. The Trust do not object. It is clear that a supervision order can be made with a residence order. The mother does not agree to a residence order in respect of the father. Rather, the mother requests a joint residence order. The GAL believes that it is too soon to make a residence order since the child is too young and vulnerable to be left in the full time care of the father with support from the Trust.

[32] The issue that has prompted most disagreement is the nature and extent of the mother's contact with the child. The Trust have proposed that the mother should have supervised contact twice per week for a period of three hours. It is also proposed that the contact arrangements will be kept under review after six to eight weeks. The mother has requested a contact order which should be unsupervised.

Threshold

[33] Pursuant to Article 50 of the 1995 Order, a court may only make a care or supervision order if the following criteria are satisfied:

- (a) that the child concerned is suffering or is likely to suffer significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to:
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child's being beyond parental control.

[34] Prior to oral submissions, the parties agreed a statement of threshold criteria which was handed into court. The statement provided that, at the date of intervention on 16 July 2020 when an emergency protection order was sought by the Trust and thereafter when an interim care order was sought dated 13 August 2020, the child was likely to suffer significant and emotional harm, such likelihood of harm being attributable to the care likely to be given to him, not being what it would be reasonable to expect from a parent. It was agreed that the threshold criteria were met on the basis of the following facts:

- (i) The mother accepted an adult caution when she was 18 years of age and placed on the Sex Offenders Register for a period of two years for the following offences:
 - (a) one count meeting a child aged between 13 and 16 following grooming;
 - (b) one count of sexual activity with a child aged between 13 and 16;
 - (c) one count of sexual activity including penetration with a child aged between 13 and 17.
- (ii) The mother's two older children were subject to care and freeing proceedings and ultimately freed for adoption on 12 March 2020 before the Family Care Centre sitting in Belfast. There continued to be concerns regarding the mother's ability to provide safe protective parenting and ensure all the children's needs were met.
- (iii) The parents' relationship, when together, was acrimonious and dysfunctional. There had been break-ups and reconciliations. Both parents sought non-molestation orders against each other.
- (iv) Both parents have a history of substance abuse. The father admitted cannabis misuse during summer 2020 but states that this was prior to him removing the child into his care.

- (iv) In the early phase of this case, the parents had at times struggled individually and jointly to work well with the Social Work team to adhere fully with the child's safety plan and to engage with the Trust's concerns about insight.

[35] Having considered the above, I agree that the threshold criteria have been met and I approve the threshold document.

Supervision Order

[36] At present the child is subject to an interim care order. Having considered the reports, statements and submissions, I do not accept that "*no order*" is applicable in this case. Rather, I am persuaded that a supervision order is appropriate. The father has demonstrated that he has the capacity to meet the child's needs and it is my view that a supervision order would be a proportionate interference with the family's Article 8 rights. The supervision order will remain for 12 months thus ensuring that the Trust plays a monitoring and supportive role to the father in his care of the child. The existing interim care order will be discharged. I also draw the parties' attention to Article 54 of, and Schedule 3 to, the 1995 Order.

[37] The conditions of the supervision order will be as follows:

- (i) The father and mother shall adhere to and remain committed to continuing to work with the Trust and any other professionals involved with the family in accordance with the 'Safety' plan via the Signs of Safety Model along with members of the extended family identified as part of that Safety plan.
- (ii) If appropriate, the parties shall engage with any reasonable services/work that are identified to assist them and with regard to Stefan. This shall include the mother engaging and attending individual work with the Family Centre and thereafter, for joint work with each of the parents.
- (iii) Both parents to abstain from any substance misuse.
- (iv) The Trust shall continue to facilitate handovers and transport the child for contact, save that through the signs of safety process, family members will then facilitate this. In addition, when the mother provides confirmation of her licence, motor insurance and details of her vehicle and age appropriate car seat that she may be able to transport the child to contact. The Trust will undertake to review those arrangements and ensure appropriate arrangements are in place.
- (v) In advance of any contact taking place in the mother's home, checks will be undertaken as soon as possible by the Trust to ensure it is suitability. The mother to provide details of her accommodation either directly to the Trust or via her legal representatives, within 14 days.

Contact arrangements shall be kept under review through network meetings and LAC reviews.

Residence Order

[38] Having considered the reports, statements and submissions, I herewith make a residence order in favour of the father pursuant to Article 8 of the 1995 Order. On the basis of the above documentation and, in particular, the documents considered in the final social work statement dated 9 April 2021, I am not prepared to make a joint residence order in favour of the mother. More work needs to be done in respect of the mother. This matter should be kept under review to reflect the concerns of the GAL.

Contact Order

[39] With regard to the contact order requested by the mother, I have listened carefully to the submissions made by the parties. I am prepared to make a contact order in the following terms:

- (i) The mother shall have contact with the child for a period of four hours twice per week subject to the following:
 - (a) Such contact be within the community or at Trust premises until such time as the mother's accommodation is approved as suitable by the Trust with no other person present during such contact. The Trust shall undertake to make relevant checks as to the suitability of the said accommodation within 14 days.
 - (b) The mother shall notify the Trust a week in advance of the days and times when contact is to occur and any proposed venue. If contact is proposed within Trust premises it shall be within Trust's working hours.
 - (c) The Trust shall continue to transport the child to contact until either family members can facilitate same and/or the mother has provided a valid driving licence (written and photographic), insurance documentation and if a provisional licence is held, then the identity of the person who will accompany the mother and to enable any checks to be completed in respect of such person and further confirmation as to her driving offences, penalties received and any outstanding penalty charges.
- (ii) Such contact as can be agreed between the parties with the assistance of social services.

[40] With regard to the maternal great aunt, I order that contact be permitted twice per year, namely, in or about the time of the child's birthday and at Christmas.

[41] Any outstanding non-molestation applications and orders will be dismissed.

[42] Finally, the GAL is hereby discharged.

[43] I make no order as to costs between the parties save that the costs of the first, second and third named respondents and the GAL as assisted persons to be taxed forthwith in accordance with the provisions of Schedule 2 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. I certify for senior counsel.