

Neutral Citation No: [2022] NIFam 19

Ref: MOR11843

ICOS: 21/098911 and
20/004121/02

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

Delivered: 18/05/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

Between:

A HEALTH AND SOCIAL CARE TRUST

Applicant

v

A MOTHER and A FATHER

Respondents

IN THE MATTER OF CW (A FEMALE CHILD AGED 5 YEARS) AND IN THE
MATTER OF OS (A FEMALE CHILD AGED 2 YEARS) (FREEING FOR
ADOPTION)

Mr T Ritchie (instructed by the Directorate of Legal Services) for the Trust
Ms S Simpson QC with Ms K Downey BL (instructed by Emma Lyons Solicitor) for the
Mother

Ms V Ross BL (instructed by Donnelly & Wall Solicitors) for the Father
Ms L Brown BL (instructed by Flynn & McGettrick Solicitors) for the Guardian ad Litem
on behalf of CW and OS

SIR DECLAN MORGAN

[1] This is an application by the Trust for an order pursuant to Article 18(1) of the Adoption (Northern Ireland) Order 1987 freeing 2 children for adoption on the basis that the court is satisfied that the agreement of each parent to the making of an adoption order should be dispensed with. The children were the subject of care proceedings heard by McFarland J in respect of which his judgment is cited at [2021] NIFam 37. This judgment has been anonymised to protect the identity of the children. Nothing can be published that will identify CW or OS. I have continued the use of the ciphers CW and OS for the names of the children as used in the care judgment.

Introduction

[2] The Mother has had a difficult relationship with her birth family. In her mid-teenage years she became pregnant and gave birth to a son, C. Social services were not involved but there was an incident in which the child fell out of an open window. Eventually the Mother's mother persuaded the Mother that it would be in everyone's interests if the child was brought up by his grandmother. It is clear that the Mother now regrets that decision.

[3] Another important factor is that the Mother asserts that she was abused by a family member as a child. She believes that her mother took the side of the other family member. The family relationships deteriorated and the Mother was the subject of a non molestation order which effectively ended any meaningful engagement with her family. She had limited supervised contact with C and clearly does not play an active role in his life. The grandmother has had a residence order in respect of C since 2015.

[4] Thereafter, the Mother engaged in a chaotic lifestyle. She has a lengthy history of substance abuse with some evidence that this continues in some form. She also suffers from mental health difficulties including a significant history of depression, overdosing and attempting suicide. She has required the assistance of the Official Solicitor throughout these proceedings.

[5] She has been involved in a number of abusive relationships with men. The threshold criteria in the care proceedings covering the period to May 2018 listed six separate relationships of this type. Unfortunately, this pattern has continued.

[6] CW was born in 2017. The father of the child was a heavy drug user. He was not named on the birth certificate and died in December 2018. The Mother makes the point that she is the only birth parent left for CW. A pre-birth case conference agreed that CW's name would be placed on the child protection register under the categories of potential physical and emotional abuse and potential neglect because of concerns about the Mother's parenting of her first child and her history of drug abuse, domestic violence and criminality.

[7] The Trust obtained an interim care order in respect of CW in May 2018. There was substantial evidence of extensive substance abuse by the Mother at that time and evidence that she had sustained injuries consistent with domestic violence. There was evidence of bruising to CW's head and the bridge of her nose and the child was unkempt, dirty and had vomit on her clothes.

[8] In August 2018 the Mother was examined by Dr Curran, consultant psychiatrist, who concluded that she was incompetent in respect of the court proceedings and diagnosed an unstable personality disorder. In 2019 he re-examined the Mother and concluded that her condition had resolved and that she was now competent but vulnerable. She embarked on a new relationship with the Father in January 2019 and they married in April 2019.

[9] OS was born in January 2000. In a report prepared in November 2019 Dr Galbraith, consultant psychologist, raised serious concerns about the insight and capacity for change of the Mother. There were concerns about the reliability of the Mother in her accounts to social services and medical professionals. The Father had been convicted in December 2018 of domestic violence on a previous partner. In light of the absence of any supportive network the Trust obtained an emergency protection order and subsequently an interim care order in respect of OS shortly after birth. Both children were then placed together with foster carers and then moved to their current foster carers.

[10] The Mother and Father continued to engage in a violent and chaotic lifestyle after the birth of OS. The Father was admitted to hospital following an overdose in May 2020 after smashing up the home. There was a further serious argument on the weekend of 12/13 July 2020. The Father had taken a cocktail of drugs and had become violent on his return to the home. Police had to disarm him and arrange for his transportation to hospital before charge. Despite this the Mother had resumed her relationship with him by September 2020.

[11] On 4 January 2021 the Mother and Father had been brought to hospital by police following a deliberate drug overdose by each of them. Neither regretted their actions and both were considered to be actively suicidal. The Father indicated that the Mother had shortly beforehand attempted to hang herself from a bathroom light flex. All of this formed the basis of the Trust application, granted by McFarland J, for a care order in respect of both children with a care plan for adoption.

Subsequent events

[12] Immediately after the communication of the care order decision the Mother left court and threw herself into the river. She was rescued by a harbour safety patrol. Her reaction was typical of the impulsive behaviour anticipated by the psychiatric and psychological evidence and a failure to think through the consequences of her actions on others. If anything had happened to her the sufferers would have been her children, particularly the older child, CW.

[13] At the same time the reason for such a dramatic response is rooted in her deep conviction that the children should be placed back with her and that they need to be with her to fulfil their lives. Despite the enormous difficulties in her background to which I have referred it is also important to recognise the strenuous efforts she has made to maintain contact with the children. There are undoubtedly aspects of this contact which demonstrate her ability to relate to the children and provide them with love and support.

[14] She has, however, continued to suffer the consequences of unfortunate relationships. The Father was imprisoned in the latter part of 2021 and the Mother formed a new relationship with another partner. It was reported in November 2021 that she had been assaulted by this partner and had suffered injuries to her hand and damage to her home. That partner had been under the influence of drugs. The Mother has admitted in October 2021 that she was misusing cannabis and the impact

was noted by a mental health professional. Since the start of this year the Mother has commenced a further relationship which she says has led to a period of stability.

The Children

[15] Fortunately the children have been placed together in foster care and clearly have an excellent relationship with their present fosterers. CW is now at school and OS is ready for nursery. The reports indicate that CW is ready for a move to her forever home and enthusiastic to get there as quickly as possible. OS had shown a reluctance in recent times to attend contact and has required the support of the foster carer to persuade her to attend. Both children have been involved in care proceedings for a number of years and in the case of CW we have now reached the four year mark. That is an extraordinarily long time in the course of a young child's life.

The Law

[16] The relevant law is to be found in Articles 9, 16 and 18 of the Adoption (Northern Ireland) Order 1987 ("the 1987 Order).

"Welfare of children

Duty to promote welfare of child

9. In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall-

- (a) have regard to all the circumstances, full consideration being given to-
 - (i) the need to be satisfied that adoption, or adoption by a particular person or persons, will be in the best interests of the child; and
 - (ii) the need to safeguard and promote the welfare of the child throughout his childhood; and
 - (iii) the importance of providing the child with a stable and harmonious home; and
- (b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

Parental agreement

16. - (1) An adoption order shall not be made unless-

- (a) the child is free for adoption by virtue of an order made in Northern Ireland under Article 17(1) or 18(1)...or
- (b) in the case of each parent or guardian of the child the court is satisfied that-
 - (i) he freely, and with full understanding of what is involved, agrees to the making of an adoption order; or
 - (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in paragraph (2).
- (2) The grounds mentioned in paragraph (1)(b)(ii) are that the parent or guardian-
 - (a) cannot be found or is incapable of giving agreement;
 - (b) is withholding his agreement unreasonably;
 - (c) has persistently failed without reasonable cause to discharge his parental responsibility for the child;
 - (d) has abandoned or neglected the child;
 - (e) has persistently ill-treated the child;
 - (f) has seriously ill-treated the child (subject to paragraph (4)).

Freeing child for adoption without parental agreement

18.—(1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of a child that his agreement to the making of an adoption order should be dispensed with on a ground specified in Article 16(2) the court shall make an order declaring the child free for adoption.

- (2) No application shall be made under paragraph (1) unless—
 - (a) the child is in the care of the adoption agency; and
 - (b) the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.

(2A) For the purposes of paragraph (2) a child is in the care of an adoption agency if the adoption agency is a Board or HSS trust and he is in its care.”

[17] The Trust ask me to find that the parents are unreasonably withholding their agreement to the adoption of children or alternatively that the Mother is incapable of giving consent. The leading authorities on the test that the court should apply on withholding unreasonably are *Re W (An Infant)* [1971] 2 AER 49, *Re C (a minor) (Adoption: Parental Agreement, Contact)* [1993] 2 FLR 260 and *Down and Lisburn Trust v H and R* [2006] UKHL 36 which expressly approved the test proposed by Lords Steyn and Hoffmann in *Re C*.

“...making the freeing order, the judge had to decide that the mother was 'withholding her agreement unreasonably.' This question had to be answered according to an objective standard. In other words, it required the judge to assume that the mother was not, as she in fact was, a person of limited intelligence and inadequate grasp of the emotional and other needs of a lively little girl of 4. Instead she had to be assumed to be a woman with a full perception of her own deficiencies and an ability to evaluate dispassionately the evidence and opinions of the experts. She was also to be endowed with the intelligence and altruism needed to appreciate, if such were the case, that her child's welfare would be so much better served by adoption that her own maternal feelings should take second place.

Such a paragon does not of course exist: she shares with the 'reasonable man' the quality of being, as Lord Radcliffe once said, an 'anthropomorphic conception of justice.' The law conjures the imaginary parent into existence to give expression to what it considers that justice requires as between the welfare of the child as perceived by the judge on the one hand and the legitimate views and interests of the natural parents on the other. The characteristics of the notional reasonable parent have been expounded on many occasions: see for example Lord Wilberforce in *In re D (Adoption: Parent's Consent)* [1977] AC 602, 625 ('endowed with a mind and temperament capable of making reasonable decisions'). The views of such a parent will not necessarily coincide with the judge's views as to what the child's welfare requires. As Lord Hailsham of St Marylebone LC said in *In re W (An Infant)* [1971] AC 682, 700:

'Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.'

Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some embarrassment at having to consult the views of so improbable a legal fiction, we venture to observe that precisely the same question may be raised in a demythologised form by the judge asking himself whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invented to provide the answer to this question."

[18] As appears from Article 16(2) of the 1987 Order some of the grounds are fault based whereas others are essentially concerned with the welfare of the children. In light of the authorities I consider that the grounds based on withholding consent unreasonably and absence of capacity raise the same welfare issue for the court. I consider this approach is essentially the same as that adopted by O'Hara J in *Re J (freeing order: incapacity-unreasonable withholding agreement)* [2016] NILR 19.

Consideration

[19] The Father accepts that he cannot provide a home for the children. He has a history of drug abuse and has had periods of imprisonment. He supports the option of long term fostering. That is also the option advanced by the Mother on the basis that it retains her parental responsibility and holds out the prospect of the children being reunited with her.

[20] The relationship between the birth parents and their children generally provides stability and context for the children and is therefore important to their welfare. Lady Hale identified the test that must be satisfied before children can be freed for adoption in *Re B (a child)* [2013] UKSC 33:

"It is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do."

That is the test that I will adopt.

[21] There are positive features to long term fostering that should be recognised. Parental responsibility is retained by the birth parents. The level of contact between the children and the birth parents is greater and it follows that the opportunity for the maintenance of a harmonious relationship is enhanced. The physical and educational needs of the children will be monitored and supervised to an appropriate standard. The foster parents will do their best to stabilise the children's position but inevitably there is a high degree of uncertainty about the future which undermines the stability of the lives of the children.

[22] It is apparent from the Guardian's latest report that both children are now ready for the stability of an adoptive placement and in the case of CW she is plainly anxious to achieve this as soon as possible. Prospective adoptive parents have been identified and have met the children and it is very likely that adoption could be completed within a period of 12 months.

[23] These children have been in the care system for a number of years. In the case of CW it is four years since she was made the subject of an emergency protection order. There is some urgency in providing for the children the opportunity to develop the stable loving home environment that will allow them to flourish.

[24] Despite the evident commitment of the Mother to her children which she expressed so impressively in her evidence in court the material available indicates that there are still issues around her mental health, her impulsivity, her insight, her capacity to avoid drugs and her relationship choices which would have to be addressed before rehabilitation of the children could be considered.

Conclusion

[25] In my view the welfare of these children requires a stable emotional and physical home life in the near future. The Mother is not in a position to offer that. I am making a freeing order because nothing else will do. This will be a particular blow to the Mother but she should recognise that the children may at various stages of their lives want to understand their background and be assured that their mother loved them.

[26] The placement with the proposed adopters should be handled sensitively and I agree that a break in contact for a period of six weeks is sensible. The Mother and Father should also be offered counselling to assist them in this difficult period.