THE HIGH COURT 1988 No.421Sp

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964 AND
IN THE MATTER OF M H AND J H , INFANTS

BETWEEN

THE OXFORDSHIRE COUNTY COUNCIL

Plaintiffs

AND

J H AND V H

Defendants

J U D G M E N T

DELIVERED BY THE HONOURABLE MR JUSTICE DECLAN COSTELLO

ON 19TH MAY 1988

APPEARANCES

For the Plaintiffs:	Patrick McEntee, SC Catherine McGuinness, BL
Instructed by	Eugene Davy 16/18 Harcourt Road Dublin 2
For the Defendants:	John Rogers, SC
For the Eastern Health Board:	Mr Greene, Solicitor

Mr and Mrs H were married in 1974 and have two children, M now aged 12, and J now aged 8. The evidence in this case satisfies me that both of these children have been disturbed, and at times very seriously disturbed. M , apparently, had considerable reluctance in attending school, and there were serious episodes deposed to which indicate a high degree of disturbed behaviour. J , the younger boy, also exhibited very disturbed behaviour patterns but I need not go into the details of these because it is sufficient if I just indicate the general conclusions which I have reached.

As a result of the problems with which Mr and Mrs H were faced they obtained medical advice and the two boys attended the Park Hospital for Children in Oxfordshire in the latter part of last year. They were attending there on a regular basis and on 10th December Mr H intimated to the authorities in the hospital that he was proposing to move away and go to Gloucester. The hospital authorities had a case conference which resulted in the decision that legal proceedings should be taken by the Oxfordshire County Council. These proceedings resulted in an order being made on 11th December last called a 'Place of Safety Order', which is a temporary order directing that the children be kept for a limited period under the care of the Oxfordshire County Council. Then on 23rd December care proceedings were instituted in England in relation to the children in which Mr and Mrs H were represented by a solicitor. On 7th January this year the matter came before the Magistrates Court when an interim care order was made and thereafter the interim care orders were adjourned from time to time on a 28-day basis.

It is, I think, significant in this case that the proceedings in the English Court allow a guardian ad litem to be appointed on the infants' behalf because that means that a person who is independent of the parents and of the local authority acts to advise the Court on the infants' behalf of what is to happen.

The 7th of April of this year was the day in which the final order was to be made in the English proceedings but these proceedings were adjourned and on 10th April Mr and Mrs H decided to take the children away. They took the children, first of all, to the Channel Islands, then to St Malo, then to Paris and then to Switzerland. Mr H very candidly indicated in evidence that he knew he was acting contrary to the Court order but felt he was entitled to in the interests of his children.

I am quite satisfied that that has been the attitude of Mr and Mrs H throughout these unfortunate proceedings and throughout the very disturbing time they have had over the years. The local authority, however, felt that it was not in the interests of the children that they should be taken away, that the children needed care and attention, and instituted wardship proceedings. On 3rd May this year the children were made wards and an interim care order was made, and on 10th May a care and custody order was made by the English High Court giving custody to the Council subject to later review. On 8th May Mr and Mrs H came to Ireland with the children and, that having been learned, these proceedings were instituted under the Guardianship of Infants Act 1964.

The matter has been very fairly met by Mr Rogers on behalf of Mr and Mrs H . Mr Rogers asked for an adjournment and indicated that if an adjournment was granted medical evidence would be given to the Court by which the Court could decide what was in the best interests of the children. That application having been refused, Mr Rogers said he was entitled to make legal submissions about the Court's jurisdiction, and I think that that is a proper approach to make to this difficult and sad case.

The first legal point that was raised is that proceedings under the Guardianship of Infants Act do not apply because the Council is not a guardian within the meaning of section 11. I do not think that that is a valid point and I must reject the submission in that connection. It seems to me that I must read that Act as giving the Court jurisdiction where in the present case it is clear from the domicile of the children that the guardian is the applicant, and under the law of the domicile of the children in this case the Oxfordshire County Council is clearly the guardian of the infants. I do not think the Court can construe the 1964 Act by deciding that it will take jurisdiction over infants that come into this country from abroad but then ignore the status of the children under the law of their domicile. It seems to me that it is proper that I should have regard to the law of the children's domicile and hold that the Oxfordshire County Council have jurisdiction to make the application under the Act.

The second point that was raised by Mr Rogers on behalf of Mr and Mrs H arises from the rights which the children have under the Irish Constitution. Although it may seem somewhat strange so to hold,

the situation is that people who come into this jurisdiction, even for a short while, are entitled to claim the benefits that the Constitution confers on citizens as well as on non-citizens. Whereas I think reliance can be placed on the constitutional guarantees, I do not think this right which the children would have and which is advanced by their parents affects the situation, again because it seems to me that, firstly, I am entitled to have regard to the law of domicile of the parents of the children and hold that under the law of domicile Mr and Mrs H are not any longer their guardians even though that can be resumed in the course of time. Secondly, it seems to me that I can for compelling reasons not give custody to the parents who would otherwise be entitled to custody by virtue of the Constitution; that if there are, in the words of the judgment of the Chief Justice in J.H. an Infant (1985) I.L.R.M. 302, "compelling reasons" the Court can decide not to give custody to the parents. I think there are compelling reasons in this case to which I will now turn.

In exercising jurisdiction under the 1965 Act I am concerned primarily with the welfare of these two little boys, which is the first and paramount consideration. To reach a conclusion on this point I think I am entitled to act on the evidence which has been adduced before me. This evidence includes an affidavit of Mr Davy, which is a formal one in many ways and which includes an affidavit of the Social Worker of the Oxfordshire County Council, Miss P , and a medical report dated March of this year from Dr G but which relates to his knowledge of the boys and their parents in 1986, and also the evidence of Mr and Mrs H

I also approach this case bearing in mind that the English Court has made an order taking these children into wardship and giving custody to the local authority. The fact that such an order has been made does not necessarily determine the matter, but the comity of courts is a powerful doctrine in all cases, including cases such as this. It is not just because the courts of Ireland should have respect for the courts of England, which, of course, they do, but because in a situation such as this the courts in Ireland cannot ignore the fact that responsible courts in England have taken a certain course. I cannot conclude that the course taken by the Magistrates Court and later by the High Court was taken without due care and consideration for the interests of the children and I am sure that the view the courts have come to in England is that the care and welfare of the children is achieved by means of the orders made in this case.

I wish to say that I have the utmost sympathy for Mr and Mrs H .. I also wish to say that on the evidence before me I think they are mistaken. I am not giving a concluded view on this nor is it necessary for the purpose of the order I am going to make today to give a concluded view. However, I do think that Mr and Mrs H are loving parents but that they are mistaken about their children's condition. It is by no means unusual that parents do not accept the views which medical people may give them, particularly about psychological and emotional disturbance. I cannot accept on the evidence before me that J 's behaviour can be put down to 'antics' and that M does not need psychiatric or medical help. It seems to me that Mr and Mrs H would be well advised to face up to the

medical views that are very powerfully there, that the boys need help and expert help. I think they will get that help in England. This is where they have been and this is where the doctors are who have been treating them. There are facilities there, and I do not see that adjourning this case for a medical report would do the children any good because I think the result would be the same.

So I conclude that I have jurisdiction to make an order. I think there are compelling reasons why I should make an order notwithstanding the provisions of the Irish Constitution. I think that the welfare of the children is best served by the acceptance by the Court of the orders made in England and so I propose to hear Counsel in relation to the manner in which the Eastern Health Board, acting on behalf of the Oxfordshire County Council, should return these children to the Oxfordshire County Council.

Ann Kenny
Official Stenographer
Sixth May 1988

Agreed
JC
5-7-88