Neutral Citation No: [2023] NICA 27	*Ref:* **McC12157**
	ICOS Nos:
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **10/05/2023**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND (FAMILY DIVISION)

Between:

F

Appellant:

-and-

M

Respondent:

_____

Before: McCloskey LJ, Scoffield J and Fowler J

_____

The Appellant appeared as a Litigant in Person
Susanne Simpson KC and Maeve Mullan (instructed by John J McNally and Company Solicitors) for the Respondent

_____

McCLOSKEY LJ (*delivering the judgment of the court*)

Preamble

[1] Following a single *inter-partes* listing, which dealt with case management issues and at which the appellant articulated certain aspects of his case, the court notified the parties that it was considering whether to determine this purported appeal on the basis of all materials received, without a further listing. Representations were invited. Neither party opposed this course.

The Litigation Saga

[2] The parties are, respectively, the father and mother of a child aged 12. There shall be no publication of the child's identity or of anything which could serve to give rise to identification.

[3] The parties have been involved in litigation relating to the child since 2012, just after their birth. This has entailed applications to and orders of both first instance and appellate courts in this jurisdiction and that of England and Wales. The following are the landmark dates and events:

(a) In September 2013 at an English County Court a residence order in favour of the mother, together with a contact order, was made relating to the child.

(b) In June 2016 a first instance court in Northern Ireland made the following series of orders: a residence order in favour of the mother; a contact order; a prohibited steps order preventing the mother from changing the child's surname; and an order pursuant to Article 179(4) of the Children (NI) Order 1995 (the "1995 Order") prohibiting any further application to a court of this jurisdiction in respect of the child without first obtaining the leave of the court, to endure for a period of three years.

(c) In May 2018 the father's appeal against an interim contact order was dismissed by this court, differently constituted.

(d) In December 2019 the High Court made the same orders as noted in (b) above, amending the extant contact order and renewing the Article 179(14) order for a further period of three years beginning on 17 December 2019.

(e) In September 2020 this court, again differently constituted, dismissed the father's appeals.

(f) In November 2020 a first instance court of this jurisdiction refused the father's application for leave to commence residence order proceedings.

(g) The father's appeal against the latter order was dismissed one month later.

(h) In March 2021 the High Court in this jurisdiction granted leave to both parties to commence Children Order proceedings.

(i) In July 2021 the High Court made an interim contact order and the father's appeal against this order was dismissed by this court the following month.

(j) In November 2021 the father's appeal to this court against directions made by the High Court in September was dismissed.

(k) By its judgment promulgated on 25 January 2022 and ensuing order the High Court dismissed the father's application for leave to commence contact order proceedings.

(l) By its further judgment promulgated on 9 March 2022 and ensuing order the High Court (*inter alia*) made a further Article 179(14) Order specifying a further period of three years.

(m) By its further judgment promulgated on 12 August 2022 and ensuing order the High Court dismissed the father's application for leave to issue a residence order application.

The latter judgment and order are the subject of challenge by the father before this court.

[4] There are two appeal documents before this court. The first is signed by the father and dated 19 August 2022, comprising 45 pages and 179 paragraphs in relatively small font. It is clearly designed to be a formal notice appealing against the last mentioned order of the High Court. The second is a completed pro-forma "Notice of Appeal to the High Court", dated 6 June 2022. Under the rubric "The Grounds for my Appeal are" it is stated:

> "Judge McFarland has got basic facts incorrect in his judgments."

This statement is telling, as shall become apparent.

[5] The second appeal document, under the rubric of "Incidents of abuse, violence or harm" is completed thus:

> - "5.12.2012 – Respondent made false allegations to secure MMO at ex-parte hearing.
>
> - 1.2.2013 – Respondent violently attended my home.
>
> - 14.2.2013 – Respondent made false allegation of rape and sustained such.
>
> - 19.3.2013 – Respondent's mother attacked me, whilst I held my son … Respondent persisted with various false allegations …"

[6] While the first page of the second appeal document is dated 8 September 2022 the fourth is dated 6 June 2022. As this precedes the date of the most recent judgment and order of the High Court it raises the question of what precisely the father is attempting to lay before this court. It may be that this document formed part of the most recent application/s determined by McFarland J.

[7] As noted, the first of the two judgments of McFarland J was delivered on 9 March 2022. It is described in para [1] as "a final ruling in respect of contact arrangements between the father and his son." Notably, the judge records in para [8] that at a case management review listing on 7 September 2021 the father made certain applications, including:

> "…. that the court should conduct in advance of any hearing of the case a fact finding hearing in respect of some historic allegations made by the mother against the father …."

All of which were refused. This chimes with the passages from the second appeal document reproduced in para [5] above. At para [19] McFarland J stated:

> "The parents have a deep and abiding mistrust of each other, which probably borders on hatred. The courts have attempted to steer a steady and determined passage through these very treacherous waters. While the court has earnestly set its sights on the welfare of [the child], both parents have not been so focused in their resolve."

McFarland J made a comprehensive contact order, the details whereof are not germane in the present context. The other orders made by the judge are rehearsed in para [3] above.

[8] Turning to the most recent judgment of McFarland J, at para [1] the judge recorded that the application to be determined was for leave to issue a residence order application seeking, in substance, residence arrangements for the child substantially more favourable to the father than those prevailing. Having referred to two of the leading cases the judge formulated the following self-direction at para [9]:

> "The principal matters for consideration in any leave application are the history of the case, the risk of potential harm to the child and whether there has been a material change of circumstances since the last time the case was before the court that would warrant making the order sought."

The hurdle to be overcome by the father was described in the following terms:

> "[The father] will also have to show that he … has an arguable case that would have a realistic prospect of success."

[9] The judge's dismissal of the father's application has the following main elements: whereas the father had in February 2021 brought a comparable leave

application he withdrew it in November 2021; no material change of circumstances post-dating the residence order which the father was seeking to challenge had been demonstrated; rather the focus of the application was on "issues that have been raised persistently by him"; no material new evidence of any kind had been presented by the father; and such evidence as might warrant said description fell manifestly short of establishing an arguable case with a reasonable prospect of success.

[10] In his second judgment McFarland J took the opportunity to reproduce what he had said in paras [31] and [32] of his first judgment:

> "Each of the problems that the Mother raises flows from the Father's inability to prioritise his son's welfare over his own obsession about the Mother and to this case. He has become blinded to his son's well-being because of his focus on the feud with the Mother. He appears to be unable to step back and see the damage that he is doing to his relationship with his son and does not seem able to seek advice from others about how to develop that relationship and the relationship with the Mother, who is after all the person who has full-time caring responsibilities for his son.
> …
> The current situation is a disaster for the child. Everyone has recognised that contact would be beneficial for the child and the court has been striving to facilitate this. The court has put in place an extensive programme of contact, which because of its intensity is quite a logistical burden for all concerned. But that burden has been regarded as necessary because of the need to promote contact."

This court endorses these passages unreservedly.

Conclusions

[11] Our first conclusion is that there is nothing in the extensive materials which the father has placed before this court giving rise to the slightest concern about the sustainability of the judgment of McFarland J delivered on 12 August 2022 and ensuing order. Our second conclusion is that if and insofar as this appeal involves an indirect, or collateral, attack by the father against the contact order of McFarland J pursuant to his judgment in March 2022, this is impermissible as that order is not under appeal. Furthermore, and in any event, it is in no way undermined by the issues raised by the father. Our third conclusion is that by (a) his most recent application to the High Court giving rise to the impugned judgment and order and (b) his ensuing appeal to this court the father is manifestly attempting to relitigate factual issues which have been the subject of judicial finding and determination in

now distant proceedings belonging to the litigation history rehearsed in para [3] above.

[12] This assessment is confirmed unequivocally by the father's written response to the order of this court inviting the parties' representations on the mode of disposal of this appeal:

> "Any scheduled hearing needs to make a finding on two irrefutable facts – Ms Mullan [the mother's junior counsel] was verbally abusive and her legal team have failed to acknowledge this truth and [the mother] invented a claim of rape, proven to have nothing to substantiate this most vile of lies …
>
> Rape remains a heinous crime, however inventing claims of rape however is an act of DOMESTIC VIOLENCE ….
>
> We need a full hearing to address where [the child] lives, with evidence, witnesses to address the facts [the mother] LIED to secure a non-molestation order … again an act of domestic violence against myself."

It is unnecessary to reproduce the remainder of this communication. In addition to confirming the preceding assessment of this court, this communication indicates that the most recent proceedings initiated by the father and continued before this court have the improper purposes of (a) collaterally challenging judicial decisions and orders belonging to the distant past and (b) seeking to secure an outcome of which he, rather than the child, will be the main beneficiary, in manifest contravention of the welfare principle.

[13] This appeal, while technically and procedurally valid and brought in time, is utterly devoid of merit for the reasons given. It is dismissed accordingly. The court will consider the parties' representations regarding costs.