

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

IN THE MATTER OF ROSE, A CHILD

O'HARA J

All of the parties in this judgment have been anonymised so as to protect the identity of the child to whom the proceedings relate. Nothing must be disclosed or published without the permission of the court which might lead to her identification or the identification of her adult relatives.

Introduction

[1] This case is about the future of a girl ("Rose") who is 13 years old. She has suffered from birth from an extreme genetic disorder characterised by increased bone fragility, low bone mass and susceptibility to bone fractures. It cannot be cured but is treated to prevent deformities and fractures to help Rose live as unrestricted and independent a life as possible.

[2] Rose's condition was diagnosed before birth. Her development in the womb was being monitored particularly closely because an elder sibling died of the same condition when only a few days old.

[3] The Trust plan is that Rose who is in foster care at present should stay there under a care order. This plan is accepted reluctantly by the mother whose circumstances will be summarised below. It is not however accepted by the father. He seeks Rose's return to his care and is fiercely critical of the Trust's actions and interventions.

The Mother

[4] Rose's mother is a limited, vulnerable and troubled lady who has not had meaningful organised direct contact with Rose for a long time. Rose has said she

wants to meet her but not yet and only in the company of her foster carer, Ms T. I hope that contact can be achieved for the sake of both mother and daughter.

[5] In the mother's case the threshold criteria which were eventually conceded by her and accepted by the Trust are as follows:

- “1. The parents' relationship is characterised by numerous separations and reconciliations, instability and incidents of domestic violence, some of which occurred in the presence of the child. This placed the child at risk of physical and emotional harm. The child has suffered emotional harm as a result of the parents' relationship difficulties.
2. The mother's failure to remove [Rose] from the father's care, in view of his aggressive and abusive behaviour towards the mother and towards others, placed the child at risk of emotional harm.
3. The mother's childhood and the domestic abuse suffered by her during the relationship with [the father] impacted negatively on the mother's confidence and self-esteem, her mood and her ability to protect herself and [Rose].”

I approved those criteria as a concise summary of the risks Rose was exposed to and the significant harm which she had suffered and was likely to suffer as a result.

[6] The mother supports the making of a care order and opposes any idea that Rose could safely be returned to her father.

The Father

[7] So far as the father is concerned the position is more complex. He has had the most difficult of lives. Many of the details of this are set out in the report of Dr Lynn Kennedy, consultant clinical psychologist, dated February 2016. These difficulties include a father who was “evil”, “horrible” and brutally violent to his wife and children, a brother who died of a drug overdose, a brother who died by suicide and another brother who is a chronic alcoholic. He also has two sisters who were sexually abused by their father. This resulted in the father being convicted and sentenced to 11 years in jail.

[8] All of this has left Rose's father inevitably and terribly damaged. He has in excess of 50 criminal convictions, mainly of a drunk and disorderly nature (although

most of those pre-date Rose's birth) and he had issues with drink which, he says, have faded since Rose's birth.

[9] Dr Kennedy reported that the father views the world in a concrete way, that he can behave unacceptably and aggressively, that he focusses on his own perspective and that he fails to recognise the effect his turbulent and volatile relationship with the mother had on Rose who witnessed some of their rows and confrontations. As Dr Kennedy put it, the father's insight "is likely impaired by processes such as his own template of parenting from childhood and what he views as normal as well as his thinking style."

[10] A constant theme with the father is his significant mistrust of others – not just his own family and the mother but medical staff caring for Rose and social workers. Given that his experiences in life have been largely traumatic and negative, Dr Kennedy was not surprised that "he views the world and others in a negative and mistrustful manner". An element of this is that he accepts violence as a normal part of relationships.

[11] The death of his first child with Rose's mother accentuated this negative view of the world around him. He blames medical staff for that death. An extreme illustration of his reaction and aggression came in Sheffield in 2012. As a result of her disability Rose was at a hospital there for specialist review. During that process the father behaved so badly that the hospital obtained an injunction to prevent him from entering that hospital for 10 years. The direct effect on Rose was that she was unable to be treated or assessed there any further.

[12] I heard significant and extensive evidence on behalf of the Trust and from the father about all of this background and its relevance to threshold criteria for the purposes of Article 50 of the Children (NI) Order 1995. It was clear to me that threshold criteria were established – the only issue was defining those criteria to capture the gist of the case.

[13] There was a twist in this process which came about as follows. I was advised that threshold criteria were being discussed between the parties with a view to focussing thereafter on the care plan. After I was informed the threshold had been agreed, I was further informed that the father challenged the proposition that he had authorised any such agreement. This led me to hear further evidence in which the father specified what he accepted, what he rejected and why.

[14] Having considered all the evidence, oral and written, I find the following nine criteria established against the father:

1. There have been numerous incidents of the parents separating and then reconciling. The parents' relationship is acrimonious and aggressive. Each parent alleges that he/she has

been the victim of an abusive incident by the other party. Some of the incidents have been witnessed by [Rose] causing her to suffer emotional harm.

2. There is a history of non-engagement and controversy between the father with personnel from social services and medical professionals that has had an adverse impact on the child's developmental needs.
3. On occasions [the father] behaves in an aggressive and threatening manner towards the professionals involved. This results in an inability to put in place appropriate persons and plans to ensure that the welfare, medical and safety needs of the child are met.
4. As a result of aggressive behaviour in Sheffield Hospital, [the father] was banned from entering Sheffield Hospital for a period of 10 years in 2012. This prevented [Rose] from availing of the services of this centre of clinical excellence.
5. The respondent father has anger management issues that require to be dealt with through therapeutic means.
6. [The father] self-reports that he uses cannabis for pain relief.
7. The potential risk of physical harm to [Rose] as a result of the history of domestic abuse within the parties' relationship. Given [Rose's] medical diagnosis she is more vulnerable than other children of a similar age in that she cannot physically remove herself from conflict situations.
8. [The father] is unable to provide appropriate parenting for [Rose] by reason of his own physical needs, his aggressive presentation and inability to work with professionals involved and the acrimonious relationship he has with the child's mother.

9. While in the care of her parents, [Rose] has not experienced a settled secure and stable lifestyle and home life.”

[15] For the record the father accepted only paragraphs 1, 4, 6 and 7 above. In my judgment his failure to accept the other five criteria is at least in part the result of the lasting effects on him of his negative and traumatic experiences of life. Mr Robinson, an impressive Trust witness, summarised the issue well when he said that he and the Trust do not blame the father for how he is but their duty is to focus on Rose’s best interests.

Care Plan

[16] The fact that threshold criteria are established does not mean that a care order follows. And even if there is a strong case for a care order, the care plan still has to be approved. In this case the Trust care plan is that Rose should stay in foster care with Ms T and her husband who have been caring for her for more than 18 months.

[17] Regrettably the role of Ms T added a controversial element to the case with which the father has a sense of grievance. On this occasion his grievance is entirely legitimate. It came about as follows.

[18] Since Rose was first taken into care the Trust has faced extreme difficulties in finding placements for her because of her special disabilities. Despite her being a bright engaging girl she has to be lifted, moved and handled with extreme care. Those who take on that responsibility have to be specially trained. At different points she was in a children’s ward in the local hospital because there was no suitable place for her. That was entirely unsuitable on anything other than an emergency basis. At another point she was in her father’s home but with support workers coming in overnight to ensure she was safe with her father. That was also unsuitable and unsustainable. She was accommodated for some time in a rather distant foster home which left her with a long drive to and from school every day. That too was unsuitable. Despite the Trust’s best efforts it was really struggling to find somewhere for Rose to be placed securely on a long-term basis.

[19] Ms T then put herself forward as a prospective long-term carer. She received interim approval in January 2018 and final approval in April 2018. She knew Rose and had come to develop feelings for her in the course of her employment in a social work capacity by the Trust. The complication, which was obvious and avoidable, was that she put herself forward as prospective carer while she was still working on Rose’s case and was recommending that Rose should stay in long-term foster care rather than return to her father.

[20] It is not in the least surprising that the father, a man already suspicious in the extreme of authority, erupted with fury at this revelation. He was entitled to do so. Ms T was then withdrawn from the case and a new report was written but it was to

the same effect. The father inevitably rejected that report as he now rejects the care plan.

[21] I accept that the father's sense of grievance is genuine and well-founded. Ms T should have withdrawn from the case in a professional context the moment she contemplated putting herself forward as a carer. Her senior manager/s should have insisted on that course of action. Not only did they fail by not doing so but they put Rose's welfare at risk by complicating and diverting the proper course of decision-making.

[22] It was not until Mr Robinson gave evidence for the Trust on the final day of hearing that anyone apologised for this monumental mistake. I was impressed by Mr Robinson, even more so when it emerged in his evidence that the apology that he gave from the witness box was his own idea, that he worked on the same level/grade as Ms T and that nobody in the Trust hierarchy had thought to apologise. It is an understatement to say that that is not remotely good enough on the Trust's part.

[23] Having said all of that, once I focus on Rose's welfare the decision on her future is not a difficult one. The father's strongest point is that when she is in his care Rose is physically secure. He is expert at lifting, moving and handling her. However the scars left by his own life experiences mean that he is volatile, confrontational and aggressive. When he lived with Rose's mother, even on his own best case, he could not protect Rose from emotional damage caused by her witnessing their acrimony. I do not believe he is ever likely to change. There is certainly no reason at all to think he will do so in the next few years. This is a critical issue because Rose's condition means that there will be constant interaction with support services, carers and medical professionals. The father just cannot manage that. On a personal level he is and will remain volatile and unstable.

[24] In my judgment, notwithstanding the serious flaws in the Trust's management of this case which I have set out in detail above, a care order is inevitable. That is so because of Rose's limitations and vulnerabilities and because of her father's historic problems, current problems and inability or unwillingness to accept help. This leaves as the outstanding issue the question of the extent of his contact with Rose.

[25] As matters stand Rose sees her father and wants to continue to see him but that contact can be upsetting for her. To put it colloquially, her contact with her father "comes with baggage". Rose misses him but does not want to see him more often. He has been seeing her once per week but wants to see her three times per week if she is not returned to his care. The Trust has proposed once per fortnight while the Guardian ad Litem is open to either once per week or once per fortnight.

[26] In my assessment the proper level of contact going forward is that the father should see Rose once per fortnight for approximately 1 hour though with flexibility

as to duration and frequency, especially in the context of special events. If the father's contact improves then there will inevitably be greater scope for more contact than I have indicated above. That is particularly relevant in a case where Rose will come out of care when she is 18 and decisions will have to be made at that point for a young woman who will still be vulnerable and entirely dependent on others for her protection.