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

Delivered: 08/10/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

BETWEEN:

A FATHER

Plaintiff

-v-

A HEALTH AND SOCIAL CARE TRUST

-and-

A MOTHER

Defendants

**IN THE MATTER OF THE DISCHARGE OF CARE ORDERS AND REDUCTION
OF CONTACT**

IN THE MATTER OF FOUR CHILDREN AGED 10, 8 AND TWINS AGED 6

**The Father appeared as a Litigant in Person
Ms S Simpson QC with Ms J Lindsay BL (instructed by the Directorate of Legal Services)
for the Trust
Ms A O'Grady QC with Ms J Gilkeson BL (instructed by Barr & Co solicitors) for the
Mother
Mr H Toner QC with Ms C McCloskey BL (instructed by Babington solicitors) for the
Guardian ad Litem**

McFARLAND J

Background

[1] This judgment has been anonymised to protect the identity of the children. Nothing can be published that will identify any of the children.

[2] The court is dealing with two applications. The first is the Father's application to discharge care orders that have been made in respect of the four children and the second is a Trust application to reduce contact between the children and both parents.

[3] The hearing took place on 27 September 2021. In June 2021 the Father dismissed his legal team and decided that he wished to represent himself at the hearing. In July 2021 the Father received a prison sentence for the offence of burglary and is at present incarcerated in HMP Magheraberry. His expected release date is in March 2022.

[4] On the 10 September 2021 I carried out a review of the case. During this review the Father applied for an adjournment of the hearing on the principle ground that as a serving prisoner he did not have access to his full file of papers and could not get a fair hearing. His application was opposed by the other parties in the case, the Trust, the Mother and the guardian ad litem (on behalf of the child).

[5] The representative of the Trust indicated that the papers for the hearing had been left directly with the Father, and this was confirmed by the Father who also stated that he had not brought the papers with him into prison.

[6] I refused the application.

[7] On the 23 September 2021 the Father advised the Trust (but not the court) that he wished to attend the hearing personally. On receipt of this information from the Trust, the court office issued a production order. On 24 September 2021 the Prison Service responded by email in the following terms:

"We would ask that this proceed via video link if at all possible as we would not be able to safely facilitate this in person production due to staffing constraints as a result of large numbers of self-isolation and staff deployment to ongoing trials in Belfast crown courts."

[8] In light of this response I directed that the hearing could proceed with the Father attending by remote live-link under the provisions of the Coronavirus Act 2020.

[9] The hearing on 28 September 2021 proceeded remotely with all parties and witnesses at remote locations and only the court clerk and judge in the courtroom at the Royal Courts of Justice.

[10] I am satisfied that all parties, including the Father, were able to participate in the hearing. Evidence was received from three witnesses. All were subject to cross-examination. All parties were able to make submissions. In particular, the

Father was able to give evidence and speak on his own behalf. I do not underestimate the difficulties that he was under not only being remote, but also without legal representation and without the trial bundle of papers. In coming to a decision to proceed with the hearing I took the following into account:

- a) The Father had been afforded legal representation at public expense including a solicitor, senior counsel and junior counsel;
- b) The Father dispensed with the services of his legal representatives and decided to proceed on his own;
- c) The Father had been provided with a set of papers by the Trust's representatives but he declined to bring them with him into custody, or to arrange to have them delivered to him in custody;
- d) The Father did not indicate any desire to attend the hearing in person directly with the court, but only raised the matter with another party to the proceeding two working days before the hearing.

[11] The Father has been afforded the opportunity to have both legal representation and access to the papers, but had made a decision not to continue with legal representation or to access the papers. He did have some paperwork with him in prison, and the court, at his request, afforded him a period after the hearing to post this paperwork to the court.

[12] He therefore created a significant handicap for himself. The court has ensured that he has been afforded the opportunity to participate in the hearing despite the decisions made by the Father.

[13] Adjourning the hearing because of the method by which the Father has approached the case would have been wrong. The primary reason for declining to adjourn was the delay and the impact that this would have on the children. The secondary reason is that any delay was opposed by the other parties who were ready for the case to be dealt with.

[14] During the conduct of the hearing I was alert to the possibility of potential difficulties arising from the Father, and others, being remote from the court, but my analysis of the running of the hearing was that everyone had an equal access to participate and were able to participate in the hearing.

The Father's application to discharge the care order

[15] At the commencement of the hearing, the Father indicated that he sought leave to withdraw his application to discharge the care orders. This was not opposed by the other parties. The court retains a residual discretion not to grant leave to withdraw any application should the withdrawal not be in the best interests of the children, but in this case the Father's application was a proper course of

action. All four children are in foster care. The Mother was opposing the Father's application and did not feel able to care for the children, the Father was in prison and there were no other family or friends capable of, and willing to, caring for any of the children, without the support of the Trust. I therefore granted leave to the Father to withdraw his application.

Contact

[16] Evidence was received by two social workers and then from the Father.

[17] The current situation is that the older pair of children are living with their maternal aunt and her husband and the twins are in a 'stranger' foster placement. The older children's position is relatively stable and there are no immediate concerns. The journey undertaken by the twins whilst in care has been more difficult. They have had many disruptions with many placements. They live in separate placements, the boy since May 2018 and the girl since April 2020. (There is an older child who has achieved her majority.)

[18] The Father has asked the court to watch CCTV footage of events which occurred in a provincial town several years ago. It is understood that this records a confrontation relating to a contact visit. I do not consider that this evidence has much relevance to the question that I am being asked to determine which is - what should be the contact arrangements between the parents and the children in September 2021 and beyond? I therefore decline the Father's request.

[19] The Trust had initially applied for permission to reduce the contact and for defined periods. However, given the Father's imprisonment and intended release next year, the situation remains fluid and will require review and possible revision. The Trust has therefore now sought judicial approval for the contact arrangements in its current care plans for each of the children.

[20] The current approach to the Trust's contact arrangements has been driven by an experts meeting convened on 7 May 2021 and attended by Dr Connor, Dr Lavery and Dr Moore. All agreed that care orders in respect of the children were still required. They also agreed that the placement arrangements for the twins were particularly challenging and as a consequence there was a necessity to reduce direct contact between the twins and each parent to three or four times a year.

[21] The Trust's proposed way forward is that the Mother have direct contact with the two older children every three weeks, the contact being supervised by the maternal aunt. The Mother will have contact with the twins together three times a year for two and a half hours. In addition she will have a fourth contact with the female twin which will build up to two and a half hours, with the potential that the male twin would be able to join. This will be kept under review.

[22] The Father will continue to have contact every three weeks with the older

children, and this will be remote whilst he remains in prison. He will receive monthly updates in respect of each twin. At or about the time of his release from prison a review will be undertaken with a view to commencing direct supervised contact with the older children every three weeks. The plan is that he has contact with both the twins together three to four times a year

[23] The Mother is in agreement with these arrangements both in relation to her own contact and with the contact with the Father.

[24] The Father still opposes the arrangements and seeks more contact. There is no doubt that the Father is fully committed to all of his children, and it is a matter about which he is passionate. Unfortunately, this passion can be unrestrained on occasions creating problems for those with immediate responsibility for the children's care, the Trust and the foster carers. This in turn can have a detrimental emotional impact on the children.

[25] The Father's current situation is not conducive to contact of a sufficient quality. Physical contact within prison is achievable but constraints on the interaction between adult and child mean that it is not of good quality. Current pandemic restrictions also create significant problems. Remote contact is of course feasible but is no real substitute for physical contact. In addition children can have difficulty in maintaining attention and general interaction by remote link can often be poor.

[26] The current proposals for contact between the Father and the children, whilst he remains in prison, are entirely appropriate. The Father must realise that prison sentences not only affect his liberty, they also impact on his children, who are now all of an age to appreciate wider issues, in a variety of ways. The Father cannot achieve the status of a good role model for his children and because he cannot guarantee his liberty for a consistent period, it leads to the children being physically separated from him with the onset of disillusion with him and detachment. Whether he maintains a law-abiding status is entirely a matter for him.

[27] It is impossible to make any accurate prediction about the situation on the Father's release from custody. Much will depend on the Father's desire to achieve a law-abiding status. He will be on licensed release subject to recall to prison. Licence conditions may impose obstacles on the scope of contact, although it is not anticipated that conditions will in themselves prevent contact with his children.

[28] The Trust have therefore adopted a plan which will involve a review at or about the time of the Father's release, and that will be kept under further review. The Father will have an input into those reviews, as will the Mother, the foster carers and the social workers. This plan is therefore entirely appropriate taking into account the circumstances in which the Father now finds himself.

[29] The Father asked me to consider a number of documents and he was afforded

an opportunity to send them to the court office. The court received the following documents:

- a) Ascertain - Certificate of attendance at Substance Misuse Awareness 12 April 2019
- b) Certificate of completion - Child protection risk assessment 18 March 2019
- c) Certificate of completion - Public protection (Adult and Child) 16 January 2019
- d) Certificate of completion - Cultural issues in child protection 18 March 2019
- e) Certificate of completion - Child protection - Child sexual exploitation 18 March 2019
- f) Global Horizon Skills - Certificate of completion - Child protection and safeguarding 8 October 2013

(a-f were received from the Father's former solicitors)

- g) Ascertain - Certificate of attendance - Foundation Module - Children, Young People and Families 11, 18 and 25 February 2020
- h) Ascertain - Certificate of attendance - Working with young people and substance misuse 20 and 21 June 2019
- i) Alison - Completion certificate - Social work skills and practices 17 July 2019
- j) SDF - Completion certificate - Bacterial infections and drug use (undated)
- k) SDF - Completion certificate - New drugs new trends? A worker's toolkit for NPS (undated)
- l) SDF - Completion certificate - Drug awareness - an introductory course (undated)
- m) SDF - Completion certificate - Overdose prevention, intervention and naloxone (undated)
- n) Nexus - Certificate of participation - Co.nex project October 2018
- o) OCN NI level 2 certificate in essential skills - Communication 11 June 2020

Included in the bundle were a number of letters which were largely of an historical nature.

[30] I have considered all the documents that the Father has sent from prison. They relate to various courses that he has attended and speak to his motivation to improve himself and what steps he has taken along that road. Most are of some vintage, but there has been more recent engagement. All these achievements are highly commendable, but have yet to manifest themselves with regard to the Father's conduct. Once the Father starts to display in his relationships with others what he has been taught and observed on these various courses, the Trust will, no doubt, start to take notice, as will his children.

[31] Ultimately, the issue is whether the well-being of the children is improved by their contact with their Father. There is a degree of stability in relation to the older children, and the Trust does not propose any changes as to the regularity of that

contact. The type of contact is, by necessity, remote. That is entirely the Father's fault as he, by his own conduct, has removed himself from direct physical contact with his children.

[32] I am satisfied that the Trust's plans for contact with each of the four children is satisfactory and will operate in the best interests of each child. It also takes into account the respective family lives of the Mother and the Father.

[33] To conclude I dismiss the father's application to discharge the care orders and make no order in respect of the Trust's application.

[34] There will be no order as to costs between parties, but any legally assisted party will have an order for the taxation of their costs.