[2024] IEHC 475
Record No. 2023 108 M

THE HIGH COURT
FAMILY LAW

IN THE MATTER OF THE GUARDIANSHIP OF CHILDREN ACT 1964-1997, AS AMENDED

K. R.

APPLICANT

-AND-

N. P.

RESPONDENT

EX-TEMPORE JUDGMENT by Ms. Justice Nuala Jackson delivered on the 30th of May 2024

1. The application before me concerns one single issue – whether and, if so, what interim access order should be made as regards contact between the Applicant and the parties' daughter, Emma. Emma is approximately 2.5 years old, having been born in October 2021. The Applicant, her father, is a guardian, so appointed by statutory declaration dated the 18th October 2021. It is clear that the Applicant had an involvement in Emma's life from the time of her birth until early January 2022. Contact would appear to have ceased due to a disagreement arising in relation to Christmas arrangements. There is no evidence before me that the Applicant's relationship with and conduct in relation to Emma was ever anything other than appropriate.

2. It is, however, clear that there has been a fractious relationship between the parties – while their emotional/romantic relationship was ongoing, it is clear that there was turbulence. However, the parties proceeded to have a child together and the

contemporaneous emails at the time of the birth indicate that the Respondent was anxious that the Applicant would have a role in Emma's life and are most positive in inviting him to do so. As stated above, she voluntarily appointed him a guardian. This, it would appear, was supported by her family as the Commissioner on the Statutory Declaration is [redacted: a person well known to the Respondent]. It seems unlikely that this person would have facilitated the appointment of the Applicant as a guardian if not positively disposed towards such appointment. It is clear that there was contact between the child and both parents and both families of origin during the early months of her life and there is no evidence of anything negative in this regard. I appreciate that photographs are but a snapshot in time but the photographs exhibited demonstrate normality but, more importantly, contact with a wide range of people from her paternal family of origin. At the end of the hearing before me, it emerged that the appointment of the Applicant as a guardian was done in ease of visa applications in the context of the parties' plans to move abroad as a family, something which was not mentioned in the Affidavits filed. Indeed, there was little to nothing in these Affidavits pertaining to the Applicant's relationship with Emma during the period when he was a presence in her life.

3. There is no doubt that the relationship broke down in January 2022. This was, it would appear, at the instigation of the Applicant. Since that time, Emma has had no contact with her father. Timescales in the life of a child must always be viewed in the context of the brevity of childhood and the rapid flow of the developmental stages for a child. Of her 30 months of life, Emma has not seen her father for 9/10ths of that period. I have made it clear that, consistent with the provisions of the Guardianship of Infants Act 1964, I do not take the view that access arrangements may be allowed to drift while

professional assessment is awaited. Interim arrangements must be addressed by the Court and, with appropriate analysis of the evidence and an abundance of caution, I must strive to focus on the best interests of the child pending full assessment. I have done so in this case.

4. At the end of the hearing, I indicated that I was concerned about the lack of focus on Emma by both parties. I do not need to repeat these concerns. However, I do need to reiterate that this application is about Emma and her welfare and best interests and not about the relationship difficulties between the parties.

5. I am mindful that there are many reliefs sought by both parties and that a section 32(1)(a) report is being prepared by Dr. Anne Byrne Lynch and that a hearing date has been fixed for September. However, there is another 1/10th of Emma's life between now and that time and, indeed, I have been endeavouring to have this aspect of the reliefs sought heard over a number of months. I do not intend to rehearse the procedural history of the proceedings before me.

6. The Applicant seeks access with Emma. He referenced access between Emma and his broader family on a number of occasions. This is not for today. My concern in this matter and the reason why I was anxious to have this aspect of the matter heard expeditiously is due to the complete fracturing of the relationship between Emma and her father for in excess of two years.

7. I have considered all of the evidence herein. 15 Affidavits were filed. Some of these are, in truth, little more than Affidavits of Service and there is much repetition. I have

considered them all. I heard evidence from [a psychologist]. The parties gave evidence and there was opportunity for cross-examination. I have considered the medical report from Dr. M of [REDACTED], exhibited by the Respondent. I am somewhat concerned about conflicts in this regard. The medical report from the GP states that there are "no mental health concerns", yet [the psychologist] gave evidence of PTSD and that access would "exacerbate symptoms to a serious degree". However, as of the 4th March 2024, the Respondent's GP would appear to have known nothing of any mental health concerns. [The psychologist] in her evidence indicated that she "doesn't take referrals from arbitrary sources" and that the only way to contact her is through "a referring doctor or whatever". However, she then confirmed that the Respondent had not been referred by her GP but by "word of mouth". The identity of the referrer or circumstances of the referral were not disclosed, although there was an indication that perhaps there was some linkage with therapy. This has resulted in an unsatisfactory situation of having conflicting medical evidence. I do not doubt that the Respondent has been caused distress by the Applicant's conduct and this conclusion is supported by the fact that a five-year safety order has been granted to her by the District Court.

8. I must express my concern about the multitude of litigation between the parties, in Ireland and abroad, undoubtedly mainly at the instigation of the Applicant. The Applicant must realise that litigation is not an end in itself but a means to an end. One of the greatest concerns which I have had to address in the context of this application is why the Applicant, if seeking to restore his relationship with the parties' daughter, did not simply progress an application before the District Court. Of particular concern is why the section 47 report ordered by the District Court was not progressed. I remain unclear in this regard. The failure to progress these applications raises concerns that

the purpose of the litigation is to cause distress, disruption and uncertainty to the Respondent rather than to address the substantive issues concerned. This is one of the factors which I must take into account in this application. I was concerned about the application made to me concerning flight risk which demonstrated such seriousness that I made an order consequent upon. Thereafter, the Applicant requested the order be vacated. This *volte face* surprised me but the Applicant informed me that this was to promote trust between the parties and I very much hope that his explanation in this regard is the true one.

9. Section 3 of the 1964 Act says the best interests of child is the paramount consideration. Best interests is defined in section 31 in general and specific terms.

SECTION 31(2) FACTORS

'31. (1) In determining for the purposes of this Act what is in the best interests of a child, the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family.

(2) The factors and circumstances referred to in subsection (1) include:

(a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;

10. This is clearly engaged. The child in these proceedings was born in context of ongoing relationship and contemporaneous notes indicate involvement and family life. There

are texts. The Applicant was appointed as a guardian. I was told this occurred due to intention to set up home together in US and visas required to that end. No suggestion of anything other than appropriate behaviour towards Emma was before me. Both parties were involved up to and at Christmas. There were happy family outings it would appear. The parties were clearly together as a couple. There is evidence of knee jerk reactions and immature behaviour but it appears it was the Applicant who ended the relationship due to some perceived slight to his mother. My concern is Emma and her entitlement to a relationship with both parents, absent evidence that this contrary.

(b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);

11. Given her age, this is paragraph is not engaged in relation to her views.

(c) the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;

12. I do not believe that there is any deficit in the care of Emma at present. She is in the custody of her mother and her mother is supported by her own mother in the context of her care as is entirely appropriate in the context of her work commitments. The Applicant makes negative comment about the grandmother. These are denied. It seems to me that if the Applicant truly had these concerns, it is unlikely that he would have not progressed with previous District Court applications with vigour. However, children have an entitlement to a relationship with both parents save where contra-

indicated. There is no evidence before me of any threat to Emma's physical, psychological or emotional needs by the Applicant (the evidence of [the psychologist] could be generic only where she has not met Emma or the Applicant). I believe that given her age and the long absence of her father, appropriate resumption of contact in early course is most desirable.

(d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;

13. I have considered this previously in this judgment. There is no evidence of a parenting deficit during this time when the Applicant was in Emma's life.

(e) the child's religious, spiritual, cultural and linguistic upbringing and needs;

14. These are an amalgam of both parents and both families of origin. I believe they form part of the overall picture in this interim application.

(f) the child's social, intellectual and educational upbringing and needs;

15. In relation to this, I have received little evidence in relation to the child's social, intellectual and educational needs.

(g) the child's age and any special characteristics;

16. In relation to the child's age and special characteristics, I have dealt with this previously.

(h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;

17. I have considered this in detail and I have formed the view that this does not preclude access but requires appropriate, indeed stringent, safeguards. I have had regard to a handwritten document by the Respondent, I believe prepared in the context of the safety order application in the District Court and this makes no reference to any inappropriate behaviour towards Emma, indeed, most misconduct therein referenced precedes her birth.

(i) where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;

18. There are no proposals made and, in consequence, I do not see these as applicable.

(j) the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;

19. Clearly this is not currently occurring and it is my view, albeit in very much baby steps, I am of the view that this must start.

(k) the capacity of each person in respect of whom an application is made under this Act—

(i) to care for and meet the needs of the child,

(ii) to communicate and co-operate on issues relating to the child, and

(i) to exercise the relevant powers, responsibilities and entitlements to which the application relates.

20. I have also had regard to (k), that is the capacity of each person in respect of whom an application is made to care for and meet the needs of the child, to communicate and co-operate on issues relating to the child, and to exercise the relevant powers, responsibilities and it is having regard to those capacities, as I am required to do by sub-paragraph (k), that my order in this is of a very curtailed and stringent nature.

(3) For the purposes of subsection (2)(h), the court shall have regard to household violence that has occurred or is likely to occur in the household of the child, or a household in which the child has been or is likely to be present, including the impact or likely impact of such violence on:

(a) the safety of the child and other members of the household concerned;

(b) the child's personal well-being, including the child's psychological and emotional well-being;

(c) the victim of such violence;

(d) the capacity of the perpetrator of the violence to properly care for the child and the risk, or likely risk, that the perpetrator poses to the child.

(4) For the purposes of this section, a parent's conduct may be considered to the extent that it is relevant to the child's welfare and best interests only.

(5) In any proceedings to which section 3(1)(a) applies, the court shall have regard to the general principle that unreasonable delay in determining the proceedings may be contrary to the best interests of the child.

(6) In obtaining the ascertainable views of a child for the purposes of subsection (2)(b), the court—

(a) shall facilitate the free expression by the child of those views and, in particular, shall endeavour to ensure that any views so expressed by the child are not expressed as a result of undue influence, and

(b) may make an order under section 32.

(7) In this section 'household violence' includes behaviour by a parent or guardian or a household member causing or attempting to cause physical harm to the child or another child, parent or household member, and includes sexual abuse or causing a child or a parent or other household member to fear for his or her safety or that of another household member.

ORDER

21. In making this order, I have had regard to Paragraph 49 of the Respondent's Affidavit of the 29th February 2024, in which she envisages access with "strict supervision" (I acknowledge that this is followed by "if at all"). I have also had regard to her Affidavit Paragraph 50 of her Affidavit of the 5th April 2024 where she says:

> *"I say that I have always wanted our daughter to have a relationship with her father. However, the Applicant's willing desertion of and lack of communication with your Deponent and the child both during pregnancy and after [Emma's] arrival do not demonstrate any real or significant interest in the child, her welfare and wellbeing …"*

22. However, my concern is Emma's best interests and her right to know her father consistent with her welfare which is not currently the case.

23. I am therefore directing that access take place for one hour per week, supervised by Supervised Access Ireland. This is to be on the same day and at the same time each week. The Applicant may nominate the day and the hour but may require contact with Supervised Access Ireland to know their availability and obviously, the nominated day and time will have to dovetail with what is available for them. The supervisor to collect the child from her home and bring to and from access so that there is no obligation on the Respondent to engage with or be involved with the Applicant at this time.

24. Access should be at appropriate location in [REDACTED] - playground; park; hotel; restaurant. If that cannot be agreed in consultation with Supervised Access Ireland, who may have proposals or recommendations in this regard, I will give liberty to apply.

25. Supervised Access Ireland (including supervision notes and any other charges arising in relation to such supervision) to be paid by the Applicant.

26. This arrangement shall start in two weeks, starts week of 17th June, so the Respondent can do some preparation with Emma.

27. The Applicant may be accompanied by one of his parents, if he wishes, but such accompaniment must be by the same parent on each occasion so Emma is not burdened with too many new people entering her life. If he does not wish, the Applicant can attend on his own.

28. Dr. Anne Byrne-Lynch to be informed of this order. She may wish to attend as part of assessment or not - that a matter for her. I do not intend to interfere with her process.

29. Supervision notes to be available to all parties as soon as they are available and, in any event, for the hearing in September.

30. Supervisor, from Supervised Access Ireland, may redirect or terminate access if considered appropriate. I lift the in-camera rule so that Supervised Access Ireland may be made aware of this order (the order only, not this ex tempore judgment) in its entirety

31. There are to be no substitutions of any aspect of this order. There are too many moving parts and consistency and predictability for Emma are the priority.

32. Liberty to apply on 48 hours' notice.

CONCLUSIONS

33. I do wish in conclusion to make the following additional comments which are *obiter* in relation to the issues arising. I am mindful that there are ongoing proceedings before me. I am mindful that one of the reliefs being sought is that there be an Issac Wunder Order, which relief is being sought by the Respondent. It was not before me at this time but I do not wish to understate my concern in relation to the manner in which litigation is being conducted by the Applicant. Litigation is a means to an end, not an end in its own right. In relation to the payment of maintenance, I note there is a District Court Order of November 2022, providing for a very modest payment providing for a very modest maintenance of 20 euro per week. There was evidence from the Applicant (by way of exhibit) that he is in receipt of Jobseekers Allowance. I heard a lot of evidence in relation to convoluted schemes in related to proposals for foreign Pension Adjustment Orders where sometimes the obvious is the most common sense. I fail to understand why the Applicant cannot put [the relevant sum of money] euro by way of note/draft/postal order in an envelope to satisfy whatever payment method or process which has been provided for in the District Court order. I fail to understand why that District Court Order is not being obeyed but that is a matter I will address further at the September hearing. I am very mindful that there is a safety order in place and that safety order will continue in place, and careful regard should be had to any such order.

34. I will reserve the costs of this motion.