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15/116002

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

and

IN THE MATTER OF AL (A CHILD)

_____

Between

WESTERN HEALTH AND SOCIAL CARE TRUST

Applicant

and

FL

First-named respondent

and

FA

Second-named respondent

_____

SIR REGINALD WEIR

Confidentiality

[1] The names of those concerned in this judgment have been anonymised in order to protect the identity of the child whom I shall call "AL". Nothing may be reported in relation to these proceedings or this judgment which would lead directly or indirectly to the identification of the child or his family.

The Nature of the Proceedings

[2] The applicant seeks a care order in respect of AL arising from fractures, at least 10 in number, that were caused to AL on a number of different but unascertained occasions while he was in the shared care of his parents whom I shall call "FL", the mother, and "FA", the father. During part of that shared care period a partner of FL whom I shall call "B" and a partner of FA whom I shall call "C" also had contact with AL. There are therefore four potential perpetrators in the pool.

The course of the matter to date

[3] FL and FA began their relationship in 2011 from which AL was born in the summer of 2013. The relationship was not a happy one and was characterised by arguments which sometimes became physical. The couple would probably have separated sooner but for the birth of AL but ultimately they did separate in early November 2014. The disagreements and bad feeling between them continued but by then were focussed on the care arrangements for AL which had to be settled by private law proceedings at the Family Proceedings court. That court made an order for joint custody with AL being looked after by FL during the week and by FA at weekends. FA commenced his relationship with C in February 2015 while FL commenced her relationship with B in October 2015. That latter relationship continues and a son was born to the couple in December 2016. The relationship between FA and his second partner, C, later ceased and she has not since been involved in the care of or in contact with AL.

[4] The applicant Trust became concerned about AL's care following his presentation at hospital in December 2015 complaining of soreness to his left arm. He was found to have sustained a spiral fracture of the arm likely to have been caused some days previously and a skeletal survey found further healing fractures of varying ages. The child was removed from his parents' care under an Interim Care Order and the police were informed.

[5] Most fortunately for AL a short-term foster placement was found for him with his paternal grandparents who had not had contact with AL during the timeframe identified as that during which the injuries had been caused. It was intended that AL would remain in their care during the period needed to assess his injuries and make a determination as to threshold.

[6] The assessment of the injuries and their causes took much longer than expected and meanwhile AL continued to remain in the excellent care of his grandparents with whom he has thrived, completely overcoming some features of developmental delay with which he was presenting when he was first moved to live with them.

The Decision on Threshold

[7] The time required to assess the injuries and confirm that they were non-accidental had an unavoidable "knock-on" effect upon the scheduling of the threshold hearing. Following the outcome of the medical investigations the parents each subscribed to a document dated 13 February 2017 in the following terms:

> "1. AL was presented to the hospital on 8 December 2015 aged 2 years and 5 months. There were examinations and x-rays. The child sustained the following non-accidental injuries:
>
> (a) Left arm – spiral fracture of left humorous.
>
> (b) Right arm – fracture right ulna.
>
> (c) Right hand
>
> (i) fracture of the second metacarpal base;
>
> (ii) fracture of the proximal phalange of the middle finger;
>
> (iii) fracture of the base of the proximal and middle phalange of ring finger.
>
> (d) Left hand
>
> (i) fracture of the base of the second metacarpal;
>
> (ii) fracture of the base of the third metacarpal;
>
> (iii) fracture through the base of the third proximal phalange (middle finger);
>
> (iv) fracture through the base of the fourth proximal phalange (ring finger).
>
> (e) Right foot – fracture of the first metatarsal (big toe).
>
> 2. The child had unexplained bruising to his left inner ear and shoulder.

3. The parents were unable to provide explanations for the child's injuries.

4. There is no medical explanation for the child's physical findings. There were between 12 and 14 fractures which are noted to be at different stages of healing. The fractures involving the hand are thought to have occurred from twisting or bending forces as can occur with hyperextension injury. In relation to the right forearm, an indirect bending force applied to the distal forearm may be the cause. The fractures were due to non-accidental injury occurring on at least two or three separate occasions (possibly more).

5. The respondent parents had separated in November 2014 but had entered into a shared care arrangement in respect of the child by Order of the Family Proceedings Court. The respondent mother and father were the primary carers of the child when the injuries occurred. The shared care arrangement did not meet the child's needs.

6. The respondent mother and father are in the pool of potential perpetrators (together with intervenors – see separate document) and each parent failed to protect the child.

7. The respondent parents, on occasions, each failed to seek appropriate medical intervention for the child in a timely fashion in respect of his injuries.

8. The respondent parents have neglected their child in failing to appropriately supervise him which resulted in his sustaining physical injuries on a number of occasions and subsequent attendance at hospital.

9. There is a history of incidents of domestic disharmony and acrimony within the parents' relationship which, on two occasions, has necessitated the involvement of the police. This acrimony between the parents persisted after they separated.

10. At the date of intervention, neither parent was able to provide the child with appropriate parenting by reason of the above."

[8] The mother's present partner B who had some limited contact with AL during the short period between commencing his relationship with her and the injuries being discovered provided a signed statement in which he acknowledged the non-accidental nature of the fractures but stated that he was unable to provide explanations for them.

[9] On 29 June 2017 the agreed threshold statements were presented at a hearing before Keegan J who accepted them and fixed the matter for the present final hearing.

[10] It will immediately be seen that this method of dealing with threshold has left an unfortunate if inevitable degree of uncertainty as to which one or more of the four persons within the pool of potential perpetrators actually caused one or more of the non-accidental injuries suffered by AL. That outcome was probably the best that could be achieved given the unavailability of information as to when any injury was suffered and in whose care as part of the shared care arrangement AL was at the time of that injury. It does however present a problem for the future care planning process, the subject of the present hearing, because the mother wishes to have AL returned to her care and that of her present partner in circumstances in which, as Ms O'Neill, the Guardian ad Litem ("GAL") points out in the last of her three excellent reports, both individuals remain in the pool of the four possible individuals responsible for AL's injuries. Moreover, as she further points out, even if neither caused any of the injuries there would remain a question around their ability to protect AL in future given that they would then qualify as having been in the pool of potential rescuers.

The course of the present hearing

[11] The hearing took place on 17, 18 and 19 October 2017. The mother's present partner B and the paternal grandparents had been given leave to intervene by O'Hara J so that represented were the Trust by Ms Sholdis, the mother by Mr McGuigan QC and Ms Austin, the father by Ms McGrenera QC and Ms Collins, the grandparents by Mr Toner QC and Ms Gilkinson and the GAL by Ms Smyth QC and Mr Devlin. I wish to pay tribute at the outset to the skilful and restrained fashion in which each approached the problems presented by the case, conducted their examinations and cross-examinations and made their submissions. They together provided an object lesson in how such cases should be conducted so as to generate helpful light without unhelpful heat.

[12] It was also helpful that all parties agreed that the making of a Care Order was a necessary and proportionate response to the injuries sustained by AL and the absence of any clarity as to when and by whom each had been caused. I entirely support that agreed position and would on the facts have in any event taken the view that a Care Order in respect of AL is required.

With whom should AL live?

[13] The case therefore resolved into a single issue – should AL return to live with his mother, her present partner and their child, or should he remain in the care of his paternal grandparents, in either case subject to the Care Order? The Trust advocated the first course supported, unsurprisingly, by the mother and her partner while the GAL favoured the second supported by the paternal grandparents and their son, the father, who is not, certainly at present or for the foreseeable future, seeking the return of AL to his own care.

[14] I have earlier referred to the exemplary care provided to AL by his paternal grandparents during the two year period from placement to date. In providing that care they have had help from another son and his partner. The grandparents have at times in the past been uncertain as to whether the primary carers would not better be that other son and his partner with they in return assuming a support role. That feeling on their part was prompted by the fact that the grandfather does not enjoy very good health and the feeling that, while they are not old now, looking 14 years forward to AL's 18th birthday seems to them a long and rather uncertain prospect. Those are natural reservations for responsible people wishing to ensure AL's future. However, of more concern was their indication to social workers that, were AL to be returned to his mother, his paternal family would not co-operate with the move and some were ambivalent as to whether they would maintain contact with AL thereafter. This attitude, prompted though it was by disappointment at the thought of "losing" AL from their care, concerned me greatly especially as the grandmother is an educated lady employed in a childcare setting and should have known better than to in effect threaten the Trust with depriving AL of very significant people in his life and impacting adversely upon his continued emotional development and security. It seemed to me that this unacceptable attitude probably did not reflect the grandparents' true feelings but was rather a "knee-jerk" reaction to the Trust's plan to return AL to his mother. It was accepted by the Trust during the hearing that the developing thinking in this direction was not adequately communicated to or discussed with the grandparents before the Trust reached its settled view so that when the intention was made known to them it came as a considerable and unexpected shock.

[15] In order to ascertain whether the grandparents' attitude had changed by the time of the hearing I requested them to reflect overnight and to meet social workers on the following morning to discuss their current position and this they readily agreed to do. They helpfully prepared a detailed written document in advance of the meeting which formed the basis for the discussion. That discussion was promptly minuted by the social workers so that by lunchtime on the second day of the hearing the grandparents' settled position was helpfully available to all parties. The salient points may be summarised thus:

(i) The grandmother acknowledged that she had grown very attached to AL and could not readily face the prospect of losing him.

(ii) This position had developed because AL had been with them for two years while investigations and decision-making had been continuing.

(iii) The grandparents were firmly committed to the long-term care of AL with help from their other son and his partner. Only some life-changing event such as a death or serious illness could alter their commitment.

(iv) They acknowledged that there had been a deterioration in relations between the mother and the paternal family since the Trust's plan had been made known and that this had adversely impacted upon AL.

(v) The importance of contact between AL and his mother and with his father were appreciated and would be facilitated by them.

(vi) They recognised that the father, albeit that he was their son, was in the pool of perpetrators and they were adamant that AL's needs would be placed above those of their son whose contact should take place outside the family home, supervised if necessary.

(vii) Importantly, while their preferred option and the one which they thought would be best for AL was long-term fostering by them they were open to ongoing significant contact with AL including weekends and holiday times, effectively the resumption of an active grandparenting role if AL were returned to live with his mother and her partner.

(viii) Furthermore, and promisingly, they felt that once a decision had been made by this court everyone involved with AL could begin to repair damaged relationships and mend bridges, especially between them and their son, the father, with the mother, and they would welcome the Trust's support in achieving this.

This was a most helpful exercise and I warmly commend the grandparents and the Trust for engaging positively in it and thereby giving everyone concerned a clear insight into the grandparents' up-to-date thinking.

The mother's ability to parent

[16] It is not disputed that the care provided by the mother to AL when he lived with both his parents up to November 2014 and thereafter during the shared care period over the following 12 months was not satisfactory. When AL was born the relationship between his parents was already faltering with arguments and recriminations and some low level violence between them the unhappy order of the day. They would probably have parted sooner than they did had AL not been born which caused them to stay together "for the sake of the child". Since the formation of her new relationship and, most particularly, the birth of her second child

significant improvement has been noted in the mother's parenting and attitude. A thorough parenting capacity assessment was carried out by the Trust in June 2016 from which recommendations emerged that she consult her GP for help with outstanding health issues, access clinical psychology services for help with outstanding issues centred around her own childhood and familial relationships and that she undertook work with Womens' Aid to address relationships and communication and problem solving within them.

[17] The mother was also assessed by Dr Paul, Consultant Psychiatrist, in May 2017 and by Dr Lynn Kennedy, Consultant Clinical Psychologist, who prepared an impressively detailed and comprehensive report in June 2017. Dr Paul found the mother to be suffering from a depressive adjustment disorder in relation to these court proceedings which had been treated with a low dose medication with beneficial effect. He advised that she would benefit from psychological therapy such as cognitive behavioural therapy to improve her coping strategies and reduce stress. Dr Paul considered it reasonable to surmise that, where AL returned to her care, her symptoms would improve and that in turn would have an ongoing beneficial effect upon her ability to parent as her depressive symptoms abated. For her part, Dr Kennedy reported that the mother seems to have responded well to the help that she has had from the professional sources recommended by the parenting capacity assessment. Despite her own poor early life experiences she seemed resilient and balanced in her current presentation and "with an expressed motivation to do things differently to her own mother". In Dr Kennedy's view she presented as someone who was maturing and learning from her experiences. She felt unable at present to engage in further work to address her early life experiences and Dr Kennedy considered that this was a reasonable attitude for her to adopt. In her view she needed first to process the decision of this court in relation to AL's future care in order to be able to progress psychologically and that the links between her past experiences and her own adult behaviour could be returned to therapeutically in the future. The mother had reported to Dr Kennedy that her parenting experiences with her second child had been much more positive than with AL in the past, that she was happy with her present partner and is better settled and organised now than in the past.

The Oral Evidence

[18] I heard evidence from Mr Robinson of the Trust, the grandmother, the mother and her current partner and the GAL. Earlier I commented upon the positive and measured approach of counsel and I wish to record the same recognition to all the witnesses who gave evidence before me. Each was unfailingly positive and constructive, both about seeking to help solve the problem before the court and about each other. The professional witnesses recognised that this decision is not an easy one and each respected the views of the other, acknowledging that their different conclusions were due to the weight that each attributed to the various relevant factors, as to the identification of which there was really little or no dispute.

[19] Dealing firstly with the family witnesses, the grandmother said that she was 49 years old and her husband 54. He had had to retire due to ill-health but he was well able to help her with AL. She had been very shocked to be suddenly told that AL would be returning to his mother and agreed that she had reacted badly to the news. She had felt overwhelmed and extremely stressed – "if I could undo it I would". She volunteered that a meeting with the mother might help and indeed, happily, they did meet for coffee during the course of the hearing as a positive first step in healing the rift that had occurred between them. She acknowledged her belief that her son might have caused injuries to AL and that her son might from time to time have told her things that were not correct. He would not be returning to the family home. She confirmed that she would want to be involved with AL even if she were not the primary carer and would provide respite care for him to help the mother. She emphasised the significance to AL of a granddaughter who stays with the grandmother three times per week. She said that she had not met the mother's present partner and that she should do so. As to having seemed to change her mind in the past as to who should care for AL, the grandparents or her other son and his partner, she said she had wanted to do the best for AL but in February 2017 she had told the GAL and the GAL had reported that the grandparents would themselves like to care for AL in the long term.

[20] The mother gave evidence in which she paid handsome tribute to the care afforded to AL by his paternal grandparents, effectively repeating what she had said in her written statement to the court. She said:

> "I think my statement shows that AL has had brilliant care from his grandparents. I couldn't possibly be more grateful for the role that [grandmother] has played in AL's life. She made a brilliant effort to keep me involved. Barring the last 4 months our relationship has been brilliant."

She acknowledged that the parenting capacity assessment had shown part of her parenting to be lacking and she had done the work set out for her in it, taken psychiatric help and gone to Womens' Aid and the Family Centre. She said that she had learned the importance of using the supports around her. There had been a lack of structure within her life when she had been working with AL but now her contact had improved a lot and her care of her second son had not been criticised. If, as she hoped, AL was returned to her she would need [grandmother's] help in understanding his routines and making him part of the whole family. When asked how she saw the future role of the grandparents if AL were again in her care she said:

> "They have played a major role and I am very grateful. We will be able to put our differences aside and their role would most definitely include overnight contact. The

> [niece] stays over because of AL and I would want that to continue."

Concerning the father she said that regardless of how she and he felt about each other it was important for them to have an ongoing relationship in relation to AL. She said that she had no question that she would be able to care for AL in the long term saying:

> "[My second son] is a well-cared for happy little boy so why should that not be the same?"

She added that if AL were not returned to her primary care but remained with his grandparents she should be able to work with them. In cross-examination she accepted that a move for AL would be a disruption to his life but not one that he could not manage and adjust to. She acknowledged that her presence in the pool of perpetrators meant that there was a risk in returning AL to her but said that any risk could be managed by the Trust.

[21] The final lay witness was B, the present partner of the mother and the father of her second son. He acknowledged his presence in the pool of perpetrators although his relationship with the mother had begun only weeks before the injuries were discovered and he had little contact with AL during that period and denied having caused any of the child's injuries. He described his present relationship with AL during contact in very positive terms:

> "He wants me there and I want him there. We do outdoor things."

[22] B described how his parents who live close at hand had involved themselves in the care of the new baby and had had the couple to live in their home to provide supervision for 6 months following the birth. He said that he would do all he could to help AL adapt and he felt that contact with AL's father and his family should continue and mentioned AL's relationship with the paternal niece as an important one.

The Professional Assessments

[23] I have already pointed out that, somewhat unusually in my experience, the Trust's social workers and the GAL have reached different conclusions in this matter. They have each weighed the salient factors, none of which is in dispute, and have concluded that the balance falls, in the case of the GAL in favour of continuing long-term care by the grandparents and, in the case of the Trust, in returning AL to his mother. Both agreed that the identified factors did not point inevitably to the conclusions they had reached but rather it was a matter of professional judgment as to the importance to be attributed to each. This exercise had led them to reach opposite conclusions. Those principle common salient factors are:

(i) AL has received significant injuries and been traumatised by the serious violence involved in causing them by one or more than one of those in the pool of perpetrators, leading to developmental delay.

(ii) The mother and her present partner are both in the pool of four possible perpetrators.

(iii) The grandparents have provided an excellent protective home for AL in which the delays in development have been entirely overcome. They have worked co-operatively with the Trust and ensured that their son's contact with AL has been safe.

(iv) The grandparents have the support of another son and his partner in caring for AL and in particular providing respite and participation in AL's more strenuous activities. They have now confirmed their willingness to care for him as long-term foster carers.

(v) There is a grandchild of similar age to AL who is close to him and a significant and positive figure in his life.

(vi) There has been mistrust and some animosity between the mother and grandparents since the Trust indicated its preference for rehabilitation and this behaviour, centred around exchanges for contact, has not been positive for AL who has been "stuck in the middle".

(vii) The mother and her partner B have engaged positively with the Trust and professional assessments and undertaken all the work required of them.

(viii) Their closely supervised care of the second son has been without fault.

(ix) B's parents who live nearby have evidenced their willingness to assist the couple with parenting providing a reliable local support network.

(x) There are advantages in being brought up by a biological parent alongside a half-sibling.

(xi) The Trust will retain its parental responsibility under the Care Order which it is agreed should be made and specialist support will be available as required.

(xii) None of the predictors associated with reunification breakdowns is present in this case.

[24] As I have noted, it is the attribution of differing weights to these factors that has led the Trust and the GAL to conclude respectively that the scales fall on differing sides.

Consideration

[25] This is, as others have acknowledged, an unusually difficult matter to decide and there is no "right" and no "wrong" answer. Not one word of criticism has or could be levelled at the grandparents' care for AL which has rescued him from a situation of cruelty and emotional deprivation and restored him to parity with his peers. Furthermore, theirs is unquestionably a "safe house" for AL; so long as he remains there no harm will befall him. It is those factors which have led the GAL, adopting a "precautionary" approach, to recommend that he remain where he is. For her the risk of returning AL to a home where he will be cared for by occupants of the pool of perpetrators and a mother with some mental health difficulties is just not worth the risk despite all the progress that the mother has made.

[26] On the other side the Trust points to the progress made by the mother, to her irreproachable care of her second son, to the support provided by her partner with whom, unlike her time with AL's father, she is in a mutually caring relationship, to the considerable help and assistance provided and available to be provided by B's nearby parents and the desirability, all else being equal, of a child being brought up by a parent in the company of any siblings in preference firstly to other relations and secondly, strangers.

[27] I have given anxious consideration to the competing factors identified. I was impressed by those who gave evidence before me, all of whom seemed plainly to have AL's best interests at heart. The "safe" course would be, as the GAL has said, to leave matters as they stand because in that direction lies no risk to AL's safety and welfare. However, I accept that to be brought up where possible by a caring and nurturing parent with one's siblings is the paradigm and that there are here in place sufficient assurances and safeguards for me to take while I agree with the GLA is a risk. Having carried out my own balancing exercise I have determined that the scales tilt in favour of rehabilitation of AL to his mother.

[28] However, I add some further points. Firstly, the paternal grandparents have given much to AL and have much yet to give with the support of immediate family. That contribution must be fostered and will I hope be given willingly. If it were not the loser would be AL. I am satisfied that the grandparents want only what is best for him. There should be generous overnight, weekend and holiday contact so that AL feels that he has two homes in which he is equally prized and welcome. Secondly, now that this matter has been decided the mother should turn her mind to obtaining the psychological help needed to help her make sense of her unsatisfactory upbringing. That box needs to be opened and the contents examined and put into order. I have no doubt that with skilled professional assistance which the Trust should arrange she will emerge a happier and less vulnerable individual which outcome can only endure to the benefit of her family. To now further put off or ignore the problem would in my view be most unwise for her and for those in a relationship with or who depend upon her. Thirdly, it is important to foster and encourage AL's relationship with his father. He has taken an admirably pragmatic

approach to the present proceedings but that does not mean that he and his son do not love each other. I am satisfied that FA wishes to play a significant part in his son's life and that AL wishes that too. The proposed reduction in contact to once per month is in my view excessive. AL will have a fully diary if all his important adults step up to the plate and compromises will be necessary. Nevertheless, I should like to think that a more frequent level of contact between AL and his father can be arranged. One small point, the father is interested in "improving" AL by library visits and other educational methods but AL is still just four and some fun in the mix might not go astray.

[29] Finally, I have been highly impressed by what I judge to be the sincere wish of all those concerned with AL to ensure that, despite the cruel events of the past, he receives the greatest love and care that together they can contribute. That can only happen if they work in willing collaboration and there were encouraging signs during the hearing that this can be accomplished. In childhood, as indeed in later life, one can never have too many people who genuinely care for you. AL deserves all the care and affection he can get from every available source.

[30] Accordingly, I make a Care Order as agreed and approve the Trust's care plan of rehabilitation to FL with generous staying contact to the grandparents and contact, supervised at least for the present, to FA.