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Judgment: approved by the Court for handing down (subject to editorial corrections)*	*Delivered:*	**24/11/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

Between:

A FATHER

Appellant

-v-

A GRANDMOTHER

Respondent

IN THE MATTER OF MP and CQ
(FEMALE CHILDREN AGED 16 YEARS AND 15 YEARS)

The Father appeared as a Litigant in Person
Ms K Murray BL (instructed by Wilson Nesbitt solicitors) for the Grandmother
Ms M Rice (instructed by the Official Solicitor) represented the children

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McFARLAND J

Introduction

[1] This is an appeal by the Father against a series of orders made by Her Honour Judge Crawford ("Judge Crawford") on 16 July 2021 at Belfast Family Care Centre. The orders were a residence order in favour of the Grandmother, an indirect contact order in favour of the Father, and an Article 179(14) order prohibiting further applications without leave for a period of 12 months.

[2] This ruling has been anonymised to protect the identity of the children. I have used the ciphers MP and CQ for the names of the children. These are not their initials and the ciphers were chosen randomly. Nothing can be published that would identify MP and CQ, without leave of the court. There is an older sister, now aged 18 years.

Background

[3] The Father and the mother of the children had been married but were involved in what had turned out to be a very lengthy and acrimonious dispute. As the ICOS reference suggests this is the twelfth application relating to these children, the first being in 2012, the parents having separated in 2011. These unfortunate children have suffered for a substantial part of their lives, and in particular for their formative years. This is an appalling indictment of the parenting abilities of both parents. Both became absorbed by a feud they generated against each other with little thought as to the impact on their children. Proceedings concluded, albeit prematurely, in 2016 with orders backed up by penal notices against both parents. The Father re-commenced proceedings in May 2017 which terminated in February 2019 by a further agreement and consent order. The Father then commenced further proceedings later in 2019. At this time, the mother was suffering from an illness which would eventually lead to her death in December 2019.

[4] Immediately after the mother's death, the Grandmother issued proceedings on 16 December 2019 seeking a residence order for the children with whom she was living during the latter part of 2019, and the orders made by Judge Crawford were made in those proceedings.

Appeal

[5] The Father has lodged a lengthy Notice of Appeal running to 21 grounds. I have distilled these grounds into the following eight principle grounds:

Ground	Paragraph in Notice of Appeal
Failure to instruct or grant leave to instruct a suitable expert to examine the children's refusal to have contact with the Father and/or order therapeutic intervention	1, 2, 8 and 9
Undue delay in progressing the proceedings	4, 5 and 6
Failure to make findings on parental alienation	7 and 11
Attaching too much weight to the expressed views of the children	10
Unjust decision-making relying on irrelevant material and ignoring relevant material	12, 13, 19, 20 and 21
Making incorrect findings in relation to the evidence of the court children's officer	14
By a pre-trial ruling refusing to permit the Official Solicitor to give evidence and be cross-examined, in mid-trial ruling that evidence could be given thus giving the Father insufficient time to prepare to cross-examine the Official Solicitor	15 and 16
Displaying bias and prejudice	17 and 18

Hearing 18 November 2021

[6] The hearing was convened as a live-link video hearing under the provisions of the Coronavirus Act 2020. The Father, the Grandmother and her solicitor and counsel, and the Official Solicitor and her counsel all attended remotely. There were numerous technical issues with regard to the Father's internet connection and on five occasions he lost connection, two during his submissions to the court, and three during the submissions of Ms Murray and Ms Rice. The Father was able to re-connect on each occasion. The Father confirmed that despite the interruptions he had been able to make his submissions, hear the submissions in response, and then in turn respond. I am satisfied that the hearing had been convened and conducted in a manner which permitted each party to participate fully. After the conclusion of the hearing judgment was reserved. The Father then submitted a skeleton argument dated 22 November 2021. This was done without the leave or permission of the court and without any indication to the court or the other representatives that it was his intention to do so. I have considered the content of the document, which added little to the Notice of Appeal and the oral submissions made by the Father on 18 November 2021.

The Law

[7] The law in respect of appeals from the Family Care Centre to the High Court is very well established. The appeal is not a re-hearing and the appellate court will not interfere with a decision of the lower court unless the decision was plainly wrong or the lower court erred in law or in principle.

[8] Maguire J in *SMcC* [2013] NI Fam 2 at [64] set out six propositions in relation to the conduct of an appeal:

> *"(i) The High Court will not interfere with the lower court's decision unless the decision was plainly wrong or the court erred in law or principle.*
>
> *(ii) In appeals the High Court will be reluctant to take oral evidence or receive additional evidence but can do so in exceptional circumstances. Decisions to take oral evidence or to receive additional evidence will be likely to be case sensitive.*
>
> *(iii) Accordingly, a High Court appeal will usually not be conducted by way of full re-hearing.*
>
> *(iv) The High Court on an appeal will consider any transcript of what occurred in the court below, if available, and in particular will consider the reasons given by the lower court in support of its decision.*
>
> *(v) In hearing the appeal the High Court will pay due*

regard to the fact that judges work under enormous time and other pressures. Accordingly, it would be quite wrong for the High Court to interfere simply because an ex tempore judgment given at the end of a long day is not as polished or thorough as it might otherwise be.

(vi) In considering an appeal the High Court will bear in mind that in family cases there is often no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong and the best that can be done is to find an answer that is reasonably satisfactory."

Consideration

[9] I propose to deal with each of the points of appeal set out in paragraph [5] above.

Expert report/therapeutic intervention

[10] In the course of the proceedings the Father applied for the instruction of an expert, or experts, his focus being on an independent social worker who would identify the parental alienation the Father says is evident in this case, and then provide a therapeutic route for the children to essentially change their attitude towards their father and become rehabilitated into his care. The Father submitted that this application was refused by Judge Crawford in a dismissive fashion as 'expert shopping', giving rise to his perception of bias (which I will deal with below at [45]).

[11] The general rule is that expert evidence will be permitted to be adduced if it is reasonably required to resolve the issues in the proceedings. The onus is on the party seeking to adduce the evidence to show that it is reasonably required. The Father's case is this assessment and/or therapy was required. It is unclear as to who the Father expected to commission and pay for any assessment and/or therapy, although when asked he did confirm that he would pay. It is this court's observation that he may not have fully appreciated how much money may have been involved.

[12] What is clear is that the children had a very firm view that they did not wish to see the Father. It is also clear that whatever conduct the mother may have engaged in, the Grandmother was not engaging in alienating behaviour and was positively encouraging the children to have contact with the Father.

[13] The decision of Judge Crawford was therefore perfectly rational and appropriate in the circumstances. At the time when it was made the mother was deceased. The only people who could speak to an expert about their mother's conduct would have been the children. These children had expressed a strong view that they did not wish to see the Father. Engagement with any expert would have

likely to have been non-existent. Engagement with any therapist would have likely to have been non-existent. Any involvement with an expert or experts would have added to the expense of the proceedings and would have added to the delay. The content of any expert's report would have been limited in the circumstances and would have been of modest relevance to the principle issues before the judge – where will the children live in July 2021? - and, if it is with the Grandmother, what contact they should have with the Father?

[14] I consider that Judge Crawford's decision not to grant leave to retain an expert and/or therapist was correct, and under no circumstances could be considered as plainly wrong.

Delay

[15] The assertions made by the Father about delay are not correct. He focuses on a much wider picture and ignores the simple fact that Judge Crawford was dealing with the Grandmother's application for a residence order. Whatever may have happened in the past is irrelevant to this issue. The proceedings between the parents were concluded (albeit for a brief period) in January 2019. They re-emerged later that year but ceased on the death of the mother in December. The proceedings Judge Crawford was dealing with were commenced in December 2019. She was hindered by the intervention of the Covid-19 pandemic from March 2020. There was further delay when she acceded to the Father's application to transfer the case to this court only for it to be returned by direction of Keegan J. With the case back into the Family Care Centre, Judge Crawford dealt with the matter expeditiously and brought it on for hearing at the end of term, sat into the vacation, agreed to speak to the children, reconvened for submissions and then delivered a full and comprehensive written judgment on 16 July 2021.

[16] The Father has not demonstrated delay in this case and this point of appeal is devoid of merit.

Failure to make findings of parental alienation

[17] It is the Father's contention that the attitude displayed by the children is the result of parental alienation arising out of the conduct of his late wife.

[18] 'Parental alienation' is a phrase that has entered into the lexicon of the family courts although it appears to lack formal definition. CAFCASS (the English equivalent of NIGALA) have carried out some work in relation to the issue and it has come up with a working definition:

> *"when a child's resistance or hostility towards one parent is not justified and is the result of psychological manipulation by the other parent."*

[19] Recent government guidance in the context of defining conduct which

amounts to domestic abuse in the criminal sphere has added some clarity.

[20] The Department of Justice published guidance (May 2021) under the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 and at paragraph 3.29 under a section – 'What constitutes abusive behaviour for the purposes of the offence', it states:

> *"A parent repeatedly using a child to intentionally or recklessly cause the other parent harm (fear, alarm or distress) is also abusive behaviour and could be captured by the domestic abuse offence, depending on the particular circumstances of the case. An example of this would be where the abuser undermines the relationship between a child and the abused parent by psychologically manipulating the child in order to abuse the other person. They may do this by being openly hostile towards the abused parent or encouraging the child to form negative opinions about them. This can result in the child developing complex and conflicted feelings towards the abused parent and can result in them mirroring the abusive behaviour and resisting or refusing to spend time with the abused parent."*

The operative provisions of this Act have not yet been commenced.

[21] The guidance also includes a caveat at paragraph 3.30 which reflects the difficulty that can be created when approaching this topic by relying solely on definitions:

> *"It must be recognised that some parents discourage engagement with the other parent because of genuine fears for the child or the child themselves refuses engagement, whether or not they have witnessed abuse. The offence does not seek to criminalise these types of cases and safeguards …"*

[22] This guidance is providing some assistance in the context of criminal proceedings, however it should be noted that there has been no actual finding of parental alienation in this case. In fact, the court children's officer, who had extensive involvement with all three children was of the view that alienation was not present despite the assertions made by the Father.

[23] The Father criticises Judge Crawford for not making such a finding and then failing to assess the breakdown in the relationship with the Father.

[24] The breakdown in the relationship was a stark undisputed fact in this case when Judge Crawford came to the hearing in late June 2021. The cause of that breakdown had been a matter of dispute between the mother and the Father with allegation and counter-allegation. Even a brief assessment of the history of the case indicates that neither parent acted in a fully child-centred way. The Grandmother was not a party to any alleged alienation, she had just inherited the problem. There

is no evidence that the Grandmother has acted on what the Father asserts is the mother's legacy – described by him as the legacy of a "venal and embittered mother" with a dying wish that her mother (the Grandmother) should "build on a legacy of anger and hate ... to deny her own children the prospect of proper happiness."

[25] Any exercise by Judge Crawford to analyse and apportion blame for the breakdown, in the absence of an input from the mother, would have been difficult. Any decision she made about the cause of the breakdown again would have limited relevance. A finding as to whether the breakdown was due to the behaviour of the mother, the behaviour of the Father or a product of the behaviour of both parents would not advance the case, and in particular would not have assisted Judge Crawford in answering the core questions which I mentioned at [13] above. Above all, it would not have assisted Judge Crawford in making a decision concerning the welfare of the children in July 2021 and in the years up to their respective 18th birthdays.

[26] Judge Crawford was entirely correct in steering clear of making any finding concerning the cause of the breakdown in the relationship between the children and the Father.

Views of the children

[27] The Father asserts that Judge Crawford gave undue weight to the views expressed by his children. He accepts that the recorded views were the expressed views of his children but contends that the views have been distorted by the role of the children's mother.

[28] Article 3(3) of the Children (NI) Order 1995 requires the court to consider the ascertainable wishes and feelings of any child, but taking into account their age and understanding.

[29] The views of the children are critical in this case. They were 14 and 15 years of age at the time. Whatever the cause of their views, they were clearly stated and articulated. They have expressed a consistent view to different people, the court children's officer, the Official Solicitor, the judge, their Grandmother and even their Father. These views were easily ascertainable.

[30] They cannot simply be ignored and particualrly given their age any attempt to ignore then is likely to result in a negative reaction which would both be harmful to the children and any relationship with the Father.

[31] The fact that Judge Crawford actually made an order which was contrary to the expressed wishes of the children reflects a correct approach taken by her. She took the views into account, weighed up the overall emotional needs of the children and directed that indirect contact should be facilitated.

[32] This point about giving undue weight to the views of the children is without

merit.

Unjust decision making relying on irrelevant material and ignoring relevant material

[33] This point is rather generalised and lacks specific detail. When asked during his submissions, the Father was not able to add much clarity.

[34] Judge Crawford in a judgment running to 88 paragraphs carries out an exhaustive analysis of the evidence, observing at paragraph [61] that she had not rehearsed all of the evidence that she considered. On my reading of the judgment, none of the evidence could be regarded as irrelevant. In fact it was a painstaking analysis reviewing and analysing the evidence in the case. The question of relevance is a matter for the judge and can often be the subject of discussion and disagreement. A judge in a family matter will be focussing on the welfare of the children as that will be the paramount concern. Parties to proceedings sometimes can be side-tracked into other areas focusing on what they perceive to be their rights and their individual concerns. It is understandable why this may skewer what that party may consider to be relevant and irrelevant evidence.

[35] Any objective assessor of Judge Crawford's approach as recorded in her written judgment could not accuse her of focussing on the irrelevant and ignoring the relevant.

Making incorrect findings in relation to the evidence of the court children's officer

[36] This point arises because the Father simply disagrees with the assessment made by Judge Crawford concerning the evidence of the court children's officer. This officer submitted a written report, she gave oral evidence and was subject to cross-examination. There is nothing to suggest that Judge Crawford failed to analyse her evidence. In fact, careful perusal of the judgment indicates that Judge Crawford did not actually make any findings. The Father objects to the officer's rejection of parental alienation. Judge Crawford observes this to be the view of the officer, adding that whatever the cause, the parents came to an agreement in February 2019, such agreement only breaking down as a result of the Father's conduct on 25 May 2019.

[37] The only other reference made by Judge Crawford to the officer was her record of the children's wishes and feelings, a fact that was not in dispute.

[38] This point of appeal is without merit.

The Official Solicitor's evidence

[39] This relates to a pre-hearing decision that the Official Solicitor would not be required to give oral evidence, and would therefore not be subject to

cross-examination. After making that decision, during the course of the hearing on the 29 June 2021, Judge Crawford, indicated that she would permit the Official Solicitor to be called as a witness for the purpose of giving evidence about a discrete matter mentioned by the Father in his evidence. The next day, the Official Solicitor gave brief evidence on this point and the Father was permitted to cross-examine her. The Father claims that he had insufficient notice about this, had no time to prepare, requested a short adjournment (which was refused) and was therefore 'ambushed' by being placed at a significant disadvantage.

[40] When conducting any hearing a judge in the family court is entitled to determine what evidence should be given and it what form. When parties have submitted a written document, in the form of a statement of evidence, an opinion or a report, it is not necessary in every case for them to attend to give formal evidence. Much will depend on the content of the document or documents and the relevance of its content. The underlying principle is fairness to all parties. Fairness does not necessarily mean acceding to every request that a party would make. It means adopting a balanced and proportionate approach taking into account the purpose of the hearing, the decisions required to be made, the relevance and importance of any of the proposed evidence and the interests of the parties, including the children.

[41] The Official Solicitor had spoken to the children and had reported what they had said. There is no real issue as to the fact that the children did utter the words attributed to them as recorded by the Official Solicitor. There was a difference in recollection between the Father and the Official Solicitor as to what had occurred at an earlier stage in the proceedings, but that had marginal relevance to the situation in July 2021.

[42] It could not be argued that Judge Crawford was plainly wrong or erred in law when she decided initially not to call the Official Solicitor, rather than rely on the written reports submitted to the court. That was a decision which fell within the acceptable range open to her.

[43] The second point raised by the Father is more discrete. Given developments during the hearing, Judge Crawford decided that the Official Solicitor should give evidence after all, but only to deal with a short point. This was announced on the evening of the 29 June 2021. The Father knew that the Official Solicitor was going to give evidence the next day. The Father is an experienced litigant and he had the assistance of a 'McKenzie Friend' at the time. The Father submits that he was 'ambushed' the next day when he was called upon to cross-examine the Official Solicitor and that he lacked time to prepare. I do not accept that proposition as he must have known that when Judge Crawford ruled that the Official Solicitor was going to give evidence he would have the opportunity to cross-examine her. In any event, the only permitted cross-examination would have been in relation to the evidence that was given on 30 June 2021, and not on wider issues. That evidence related to what the Father had said in his evidence on day before, and it is difficult to understand what difficulties the Father felt himself under. The cross-examination would have been brief, the issue would have been fresh in his mind and the issue

was very straightforward.

[44] Judge Crawford's approach to the matter concerning the Official Solicitor's evidence did not create any unfairness to the Father. He was not 'ambushed' as he asserts and he was still able to put his case before the court.

Bias

[45] The final ground is that Judge Crawford displayed bias and prejudice. There is a paucity of detail but the Father refers to what he describes as pejorative, prejudicial, and gratuitously disparaging comments. When pressed, the Father referred to the use of expressions such as 'expert shopping' and 'forum shopping'. The former in respect of the application for leave to instruct an expert and the latter in respect of the application to transfer the case to the High Court. The Father asserts that an informed and fair-minded observer would consider the judge to be prejudiced.

[46] Part of any judge's function is to make decisions. When those decisions arise from what is a binary choice, the mere fact that the decision is made does not display prejudice or bias. Judges are also required in certain circumstances to use robust language. Again the use of robust language does not in itself display prejudice or bias. That said, I would not consider that expressions such as 'forum shopping' or 'expert shopping' are in anyway inappropriate. Both expressions are common currency within legal circles, and are not in themselves pejorative but merely a description of a practice whereby parties to legal proceedings attempt to obtain evidence or have the case heard in a court which they perceive may be more favourable to their case (see for example the comments of Newey J in *Re Codere Finance (UK) Ltd* [2015] EWHC 3778 at [18]). In themselves, and in the absence of any other evidence, they could not give rise to any perception of prejudice or bias.

[47] The Father also fails to acknowledge that Judge Crawford actually made an order, on his application, to transfer the case to the High Court, thus acceding to his desire to have the case heard in this court. The informed and fair-minded observer on whom the Father relies could not have failed to observe this decision and reflect that it was made by an open minded judge, devoid of prejudice or bias.

[48] There is no evidence which indicates bias or prejudice in this case. An informed and fair-minded observer of the proceedings could not have perceived any bias or prejudice. I therefore reject this point of appeal.

Conclusion

[49] Having considered all the 21 stated points of appeal, both individually and cumulatively I am of the view that there is absolutely no merit in this appeal. No error of law has been established and the decisions made in the conduct of the hearing and in the final order by Judge Crawford fell well within the range of decision making open to her. It could not be argued that it was wrong, never mind,

plainly wrong.

[50] The appeal is therefore dismissed.