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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

BETWEEN

A HEALTH AND SOCIAL CARE TRUST

and

A MOTHER and A FATHER

IN THE MATTER OF TOM (A CHILD: ARTICLE 15 BRUSSELS IIa TRANSFER TO THE REPUBLIC OF IRELAND)

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Ms Melanie Rice (instructed by McKeown Solicitors) for the Applicant Mother
Ms Martina Connolly QC (instructed by DLS Solicitors) for the Respondent Trust
Ms Louise Murphy (instructed by McIvor Farrell, Solicitors) for the Child

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KEEGAN J

Nothing must be published which would identify the child or the family. The name I have given to the child is not the real name.

Introduction

[1] This case relates to one child who is now 11 years of age. The child has three younger siblings. This child is the eldest child and is the only child subject to proceedings in the jurisdiction of Northern Ireland. The siblings are now aged 8, 6 and 4 and they remain in the care of their mother in the Republic of Ireland. The father of these children has never engaged in proceedings.

Background

[2] The parents are from Lebanon however all the children were born in the United Kingdom. There is a history of the family living in the United Kingdom in Birmingham until 25 October 2018 when the mother acquired leave to remain in the United Kingdom and she and the children then fled from the father due to alleged domestic violence. At this stage it is reported that the family moved to hostel accommodation in Belfast. It is also stated that the father remains in the United Kingdom and has no contact with the children.

[3] It is clear that during the time that the family lived in Birmingham there was some social services involvement and at one stage a child in need plan was put in place by Birmingham Social Services however there were no proceedings in England.

[4] There was intervention after the family came to Northern Ireland. On 17 May 2019 all of the children were placed on the Child Protection Register under the categories of Confirmed Emotional Abuse and Confirmed Physical Abuse. The situation in Northern Ireland became problematic in May 2019 when Tom made an allegation that he had been hit and bitten by his mother. At the same time the mother also made an allegation that the child had been physically abusive towards her.

[5] At this stage the family were living in homeless hostel accommodation. On 21 May 2019 Tom was interviewed by the social worker and the Police Service of Northern Ireland and placed in the care of a family friend in the Republic of Ireland. Proceedings were initiated in Northern Ireland and this led to some assessment work. On 28 January 2020 the mother underwent an assessment with Dr Denise McCartan, Consultant Psychologist, who reported by report dated 30 January 2020 with further advices on 18 November 2020. Dr McCartan's report highlighted some concerns with the mother's care and recommended a number of steps of work for the mother.

[6] In any event the situation on the ground changed because from 22 May 2019, when Tom went to live in the Republic of Ireland until the interim care order was made on 22 May 2020, the child was outside of the jurisdiction. When the interim care order was made the child returned to Northern Ireland and was placed in foster care.

[7] Since 22 May 2020 the child has been placed in foster care but clearly has had a number of placement moves. During the course of this hearing a chronology of these moves was presented to the court. This chronology highlights a number of things. First, it is clear that this child has behavioural issues. Second, this child's placement in the Republic of Ireland with relatives was not very stable and his behaviour caused problems. Third, this child has had difficulty settling in placements in Northern Ireland and was suspended from school on a number of

occasions making it difficult to find a placement for him. Finally, I note that Tom's presentation has been brought to the attention of therapeutic support services within the Trust and as of 19 February 2021 a fee paid foster placement with high levels of support has been provided.

[8] After the interim care order hearing on 22 May 2020 the Trust also highlighted concerns about the mother's care for the younger children. It then appears that on 3 June 2020 the mother and these younger siblings moved to the Republic of Ireland where they all currently remain. It is reported that on 10 June 2020 the mother indicated her intention to remain in the Republic of Ireland and to claim asylum. It is also my understanding that Tom has leave to remain in the United Kingdom (UK) until April 2021. It is reported that Tom has now acquired a British passport however it remains unclear if his absence from the UK for a period of more than one year when he was in the care of his aunt and uncle in the Republic of Ireland now impacts on his application for UK citizenship. I was informed during the course of this hearing that Tom's previous kinship carers have come forward again and asked to be assessed for adoption purposes.

[9] It is apparent from the above that the substantive care order proceedings in relation to this child have been ongoing since July 2019. The child has been the subject of an interim care order following a contested hearing before the Family Care Centre on 19 May 2020 and the child has not been in his mother's care since May 2019.

The current application

[10] On 6 August 2020 the mother made an application to the Family Care Centre to transfer these proceedings to the Republic of Ireland under Article 15 of Brussels 11a. An application to transfer the case to the High Court was lodged alongside this application and the matter was transferred to the High Court in September 2020. Upon receipt of the papers I timetabled the case for a hearing of the Article 15 application on 18 December 2020. On that date the case was ready to proceed on submissions by agreement of all parties. However, I was not satisfied that the mother fully understood proceedings which were to be interpreted. Therefore, I directed that skeleton arguments be translated to avoid any misunderstanding. At the resumed hearing which took place on 1 March 2021 I was informed by counsel that the arguments had been translated and that the mother was content to proceed on submissions.

The Law

[11] The law in relation to this case emanates from Article 15 of Brussels IIa. Following from the Withdrawal Agreement and pursuant to The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 this regulation is revoked. However, given that the application precedes the withdrawal date this is a transitional case in which the regulation continues to apply.

[12] Article 15 provides as follows:

> "Transfer to a court better placed to hear the case:
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> (i) By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that the court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:
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> (a) Stay the case or the part thereof in question and invite the parties to introduce a request before the court of that Member State in accordance with paragraph 4;
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> (b) Request a court of another Member State to assume jurisdiction in accordance with paragraph 5.
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> (ii) Paragraph 1 shall apply:
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> (a) Upon application from a party; or
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> (b) Of the court's own motion; or
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> (c) Upon application from a court of another Member State with which the child has a connection, in accordance paragraph 3, a transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.
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> (iii) The child should be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:
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> (a) Has become the habitual residence of the child after the court referred to in paragraph 1(c); or
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> (b) Is the former habitual residence of the child; or

(c) Is the place of the child's nationality; or

(d) Is the habitual residence of a holder of parental responsibility; or

(e) Is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

(iv) The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1. If the courts are not seised by that time the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

(v) The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within 6 weeks of their seizure in accordance with paragraph 1(a) or 1(b).

In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

(vi) The court shall co-operate for the purposes of this Article either directly or through the Central Authorities designated pursuant to Article 53."

[13] I examined these provisions in a case of *Ian and Jack (Minors)* [2020] NI Fam 29. In that case I referred to the case of *Child and Family Agency (CAFA) v JD CJEU Case C-428 15* [2017] 2 WLR 949 which confirms that the Public Law Child Protection Proceedings fall within the Article 15 rubric. In that case the CJEU also held as follows:

> "(a) Article 15(1) is a "special rule of jurisdiction" which must be interpreted strictly [48]. It is a derogation from the general rule of jurisdiction under Article 8(1) of Brussels IIa, which provides that jurisdiction will lie in the first instance in the Member State of the child's habitual

residence. The "criterion of proximity" (Recital Brussels IIa is a way of ensuring that the best interests of the child are considered when determining issues of jurisdiction.

(b) If a court is going to seek an Article 15 transfer of jurisdiction, it has to be able to rebut the "strong presumption in favour of jurisdiction in the State of the child's habitual residence [49].

(c) Article 15(3) contains an exhaustive list of factors which can indicate proximity with another Member State (or a "particular connection"- Article 15(1).

(d) The existence of one or more of the Article 15(3) factors does not of itself indicate that the courts of another Member State would be "better placed" to hear the case. The court with jurisdiction has to make an assessment of whether transferring the case would give a "genuine and specific added value with respect to the decision to be taken in relation to the child compared to the case remaining where it is." [57]

(e) In deciding whether the requested court is "better placed" to hear the case the court with jurisdiction should not take into consideration the substantive law of the requested state. Considering the law of the requested Member State would offend against the principles of mutual recognition of judgments and mutual trust between Member States which forms the basis of the Regulation.

(f) When considering whether transfer will be in the "best interests" of the child the court must be satisfied that transfer is "not liable to be detrimental to the situation of the child."[58] The court must "assess any negative effects that such a transfer might have on the familial, social and emotional attachments of the child concerned or on that child's material situation." [59]

[14] At paragraph 7 of *Re Ian and Jack* I also comment that "a transfer under Article 15 is by way of exception to the usual jurisdictional rules. It should only take place if the specific conditions applicable to Article 15 are met and the case is exceptional; it follows that a transfer under Article 15 is not available if the conditions are not met."

[15] Counsel agreed that there are essentially three elements to a transfer consideration, namely whether any of the requirements in Article 15(3) are met, then

whether the other Contacting State is better placed to hear the case, and then whether the best interests consideration which is explained in the case of *Re N (Adoption: Jurisdiction Children)* [2016] UKSC 15 is satisfied. In that case the Supreme Court emphasised that the assessment of whether a transfer would be in the best interests of the child "should be based on the principle of mutual trust and on the assumption that the courts of all Member States are in principle competent to deal with the case." It is not for the courts of this or any country to question the "competence, diligence, resources or efficacy of either the child protection services or the courts of another state." This issue of best interest has developed in the jurisprudence. It is not an assessment of ultimate outcome but the court can take into account the effect of transfer on the children as part of the analysis.

Consideration

[16] Ms Rice who appeared on behalf of the applicant argued that the Republic of Ireland was best placed to decide this case. Ms Connolly on behalf of the Trust opposed this application as did Ms Murphy on behalf of the child instructed by the Guardian ad Litem. Ms Murphy also pointed out that Tom's own wish is not for the proceedings to transfer but for the proceedings to come to a conclusion.

[17] Dealing with the three questions, the first is whether any of the conditions in Article 15(3) are met. Ms Connolly raised some concerns about this however giving the benefit of the doubt to the mother I consider it can be argued that Article 15(3)(b) or (d) applies, namely that the Republic of Ireland is the former habitual residence of the child or is the habitual residence of a holder of parental responsibility namely his mother.

[18] The second question is whether or not the Republic of Ireland is best placed to hear the case. In this regard Ms Rice placed considerable reliance on the fact that there have been many changes of placement in Northern Ireland. That is, of course, correct. Against that it is quite clear that TUSLA are not bringing proceedings before the court in the Republic of Ireland. There has been considerable social work in Northern Ireland in relation to this child. I am not convinced that the work suggested by Dr McCartan means that there should be an automatic transfer to the Republic of Ireland given the stages that are set out in her report.

[19] Ms Connolly reminds me that any transfer does not automatically mean transfer of the child to the Republic of Ireland. In any event, this court would be hard pressed to consider transfer of this child to the Republic of Ireland at this stage particularly when a specialist placement has just become available. This court can deal with whether any kinship options are viable in terms of the long term plan.

[20] There are clearly some vulnerabilities within this family dynamic however the mother has made a choice to move to the Republic of Ireland and I do consider it significant that this coincided with the Trust indicating an intention to look at her care of the other three children. It is therefore unfortunate that the mother has not

been able to have effective contact with Tom however much of this has come about due to her own choice and I would hope as Covid-19 restrictions ease that that situation will be rectified going forward. So, the presence of the mother and the other children in the Republic of Ireland is not determinative for me.

[21] The conclusion I reach is that the courts in Northern Ireland are best placed to deal with this case. Also, I consider that the answer to the third question which is the best interests' consideration is firmly in favour of Northern Ireland retaining this case. This child remains in placement in Northern Ireland and clearly he needs a high level of support. I note in the papers in opinion from Mr McTaggart BL who pointed out that having leave to remain in the UK was much more advantageous for this child. By virtue of what the Guardian ad Litem tells me the imperative should be timetabling of this case to a final conclusion. This is also a child who has his own voice given his age and I have listened to that through the Guardian ad Litem and will continue to do so and I note in particular his main concern is to have proceedings brought to an end and decisions made for him.

[22] The court in Northern Ireland is clearly seised of this matter given that this child has been habitually resident in this jurisdiction since May 2020. There has been delay in this case to date which should not continue. Incidentally, I agree with the Guardian that a transfer at this stage would potentially add to delay. It is entirely right to say that decisions need to be made about this child. I am therefore minded to timetable the case for final hearing before the end of June. There needs to be a clear focus on whether or not there are any viable kinship placements and an examination of whether or not there can be rehabilitation to the mother. I also consider that there needs to be a focus on the welfare of this child, and in particular, his immigration status.

Conclusion

[23] Accordingly, I refuse the application under Article 15 to transfer these proceedings to the Republic of Ireland by way of exception. I will list a final case management two weeks from today's judgment at which stage the parties should be able to address me on any directions needed for a hearing which will take place in the last two weeks of June on dates that are acceptable to the parties.