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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 21/033822
	Delivered: 17/10/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

Between:

MR N

Applicant

and

A HEALTH AND SOCIAL CARE TRUST

Respondent

Ms B Cleland BL (instructed by Fisher and Fisher Solicitors) for the Applicant
Ms C Hughes BL (instructed by The Directorate of Legal Services) for the Respondent

O'HARA J

The court orders that no one shall publish or reveal the names or addresses of the parties involved in these proceedings or publish or reveal any information which would be likely to lead to the identification of the children or any member of their families in connection with these proceedings.

Introduction

[1] This is an application by a father, Mr N, on behalf of his daughter T, who is four years old. Mr N wants T to have direct contact with her half-sister F who is five years old. F has been adopted outside the maternal and paternal families. Her adoptive parents, her parents, do not approve of F having direct contact with T at present but they are content to leave that possibility open for the future and to maintain indirect contact in the meantime.

Background

[2] F and T are half-sisters because they have the same mother, Ms U. Ms U's older children were raised by others or in the care system, not by her. She has a long record of being dishonest and unreliable in what she tells social workers and others including those closest to her. This case illustrates the point. When F was born Ms U said that Mr N was the father. That could have been significant because while Ms U comes from an unsettled chaotic traveller background, Mr N lives a settled life. Not only did she say that Mr N was F's father, she swore that Mr Q was not. Again, that was significant because Mr Q has a track record, according to Ms U, of being physically and emotionally abusive towards her.

[3] During court proceedings about F it was proved conclusively through DNA testing that Mr N was not F's father. Ms U still swore that Mr Q was not the father and those proceedings ended with Ms U refusing or being unable to identify who F's father actually was. In the context of the current dispute about F's contact with T, Ms U has asserted that Mr Q is in fact F's father. On 18 December 2020, during a phone call with the social worker, Ms U said that Mr Q would be in touch, that the social worker should expect a letter from him, that he is F's father and that he wants to see her. She also referred to him not being consulted with during the freeing application. It is, of course, correct that Mr Q was not notified about the freeing application but that is entirely due to Ms U's protestations that he was absolutely not F's father.

[4] I note in passing that during the same conversation on 18 December 2020 Ms U refused to give the social worker any photographs of F as a baby. This means that if F asks her parents to see photographs of herself when she was very young they will not be able to provide them. This is a further indication of Ms U's continued refusal to accept what has happened in F's case, to accept the clear need for the adoption and to allow F to lead the best life she can.

[5] F was in foster care until her move to her adoptive placement in 2020. That move proved to be traumatic for F, and I assume the adopters, because the foster carers refused to co-operate with the transition of F to their care. Accordingly, the steps which would normally be taken for a three year old girl such as introducing her to the prospective adopters gradually and easing her move from one home to another were made impossible. Despite that history, the placement has proved to be successful and F was adopted in May 2021.

[6] Even though Mr N must have been embarrassed by Ms U during the proceedings involving F, by being named falsely by her as F's father, he continued to have a relationship with her. This led to Ms U becoming pregnant with T who was born in July 2018, little more than a year after F. Given Ms U's history with children and uncertainty about Mr N's ability to raise a child safely, independently of Ms U who can be very dominating, care proceedings were initiated by the Trust. These resolved ultimately with an agreement that the court would make a supervision order under which Mr N would raise T with limited and supervised input from Ms U. To

Mr N's credit that plan appears to have worked. The supervision order made in September 2020 for one year expired without any attempt by the relevant Trust to extend it or otherwise intervene.

[7] This background explains, in summary form, how F and T, with the same mother, are living their lives as they are. I turn now to the question of contact which involves looking back at what was anticipated or planned previously and what has actually happened since. The starting point for this review is that the two girls have never lived together.

[8] F was freed for adoption in July 2019. She moved to her adoptive placement in June 2020. Between July 2019 and May 2020, she had contact every two months with T and an older half-brother. This was in accordance with the Trust's proposal as evidenced by a report dated April 2019 to the effect that F would have contact with her half siblings every two months until she was placed for adoption. After that point, contact with her siblings was only to be once each year.

[9] In January 2020 the Trust put forward a care plan in T's case, the plan on which the supervision order was based. In relation to contact with F it recorded that contact was currently taking place for one hour every two months. As to future contact it was stated:

"To be determined dependent on the assessed need of each individual child."

[10] It should be noted that in the same plan it was provided that T's existing contact with two half-brothers (for one hour, six times per year) should continue.

[11] It is absolutely clear from these records that there was concern about the extent of any future contact between F and T. While contact plans must always be open to change because children's needs and desires fluctuate as the years pass and their circumstances change as do those of the adults around them, what was envisaged in 2020 as the likely way forward was very limited contact indeed.

[12] In November 2020 Mr N's solicitors asked on his behalf why there was no direct contact between the two girls. The Trust's response was that since F had only recently moved to her adoptive placement direct contact was "not appropriate at this stage." It was confirmed that "indirect contact has taken place and will continue to be promoted."

[13] A meeting was then held in January 2021 by Adoption Services at which it was decided that only indirect contact should take place in the future. This appears to be a decision which was expected to have longer term effect than the "at this stage" position set out by the Trust in November 2020, see paragraph [12] above.

[14] The father challenged the Trust's decision-making process and, in particular, the reasoning in January 2021 especially since the record from that date includes lines that "T and F do not have a sibling relationship" and "they have never lived together." While the second point is undoubtedly correct, it would have been better for the record to have indicated that the girls have a very limited sibling relationship rather than none at all. (I bear in mind in this regard that at this point T was only 2½ years old.) However, the record also shows concerns about T, who sees Ms U regularly, sharing information about F with her mother which might lead to her mother tracking down F. This is a real concern because the mother still refuses to accept F's adoption and might use any information which she obtains or manipulates from T, as she has done in the past, with at least one older half-sibling to disrupt the placement and cause it to breakdown.

Submissions

[15] For the father acting on behalf of T, Ms Cleland submitted that at this leave stage the test is set out in Article 10(9) of the 1995 Order which provides:

"Where the person applying for leave to make an application for an Article 8 order is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to –

- (a) the nature of the proposed application for the Article 8 order;
- (b) the applicant's connection with the child;
- (c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; ..."

[16] It is clear from authorities such as *Re C* [2003] NI Fam 13 and *ZH v Mr and Mrs H and a Health and Social Care Trust* [2016] NI Fam 6 that at this stage the well-known welfare test is not in play. If leave is granted, it will become the relevant test but not at this stage.

[17] Applying the test set out in Article 10(9)(a), Ms Cleland suggested that the nature of the application is one for very limited direct contact as envisaged at the care and freeing stage for F and that what is engaged here for the purposes of Article 10(9)(b) is the right of T to have a relationship with her half-sister. Anticipating that there might be an argument over the Article 10(9)(c) provision, the risk of harmful disruption to F's life, Ms Cleland highlighted that there has been no meeting or discussion involving Mr N and the Trust and/or the adoptive parents as to the extent of the risk and how it might be managed or minimised, assuming it is real.

[18] Ms Cleland also laid emphasis on the importance of adhering to contact plans set out for the court in earlier proceedings unless it was clearly not feasible or proper to do so. She reminded me of the long-term importance and significance of post adoption contact as explained so clearly by Lady Hale in *Down Lisburn Health and Social Services Trust and another v H and another* [2006] UKHL 36.

[19] Ms Hughes represented the Trust who, in accordance with recent practice, made the case for F's parents. This practice has developed so that, at least at leave stage, the parents can be shielded from the costs of proceedings and from any exposure which might lead to their identity being revealed.

[20] Ms Hughes did not challenge the legal analysis of the statutory test provided by Ms Cleland. It is, therefore, common case that the three specific issues in Article 10(9)(a)-(c) are engaged as are any other relevant matters given the wording of the provision which is "have particular regard to ..."

[21] In her submissions Ms Hughes emphasised the risk of disruption as a result of the mother's historical and recent conduct which has been summarised in very short form above. She also queried the extent of any meaningful relationship between these two very young half-siblings who have never lived together. In addition, she referred to the purpose of contact in this context which is primarily to give each child a sense of identity rather than to build a relationship between them. Finally, she emphasised that the contact issue can and will be kept under review through the maintenance of indirect contact and through the expressed openness of the adoptive parents not to close their mind to contact in the future.

Conclusion

[22] I am grateful to both counsel for their very helpful submissions in this troubling area. Having considered those oral and written submissions and all of the papers before me, I have decided to refuse leave for the contact application to proceed for the reasons which follow.

[23] So far as Article 10(9)(a) is concerned the nature of the proposed application is for T to see her half-sister rather than merely have indirect contact with her. But it must be a very limited application to the extent that it refers back to the care plan for F which was just for one contact per year after F was placed for adoption. The equivalent care plan for T in the context of the supervision order was that any contact at all would depend on the assessed need of each child. When those plans are considered together it is clear that this case is far removed from the circumstances in *Re K and W* [2017] NI Fam 13 in which I granted leave for a contact application to proceed because contact had been reduced quickly and significantly for no obvious good reason.

[24] So far as Article 10(9)(b) is concerned, the connection between the two girls is extremely limited. To repeat what has already been stated above, they are two very

young half-siblings who have never lived together and who have seen each other infrequently, at most six times per annum. And that contact was when T was so young that it must have been of very limited meaning to her. While the Trust was wrong to suggest that the girls do not have any sibling relationship, the relationship they do have is obviously very limited indeed. And to the extent that Article 8 ECHR might be engaged in respect of T's family rights, it must follow that any interference with this limited relationship is easier to justify.

[25] So far as Article 10(9)(c) is concerned, Ms Cleland correctly apprehended that the risk of F being disrupted had to be addressed. That risk is present in this case, even if indirectly through the mother, rather than directly through Mr N or T. Ms Cleland is also correct to say that it might help if there was a meeting to discuss concerns or to reassure F's parents but the backdrop would inevitably be the unrelenting hostility of the mother as evidenced by her lies about paternity, her obstruction of F's development and her promises/threats never to give up her struggle for F. In that properly explained context I accept the bona fides and legitimacy of the fears of disruption held by F's parents. They and F have already had to endure a traumatic transition of F into their home because of the outrageous conduct and hostility of the foster carers. F is the last child who should be exposed to any risk of further disruption.

[26] I also take into account the purpose of contact between F and T. It is not so much to build a relationship between the girls as to give each of them, particularly F, who now lives outside the birth family, a sense of her identity beyond her legal parents. In my judgment that can be achieved without direct contact.

[27] For all these reasons I dismiss Mr N's application on behalf of T for leave to seek direct contact with F. Indirect contact will continue, I am assured, and may increase depending on F's response to it. I am entirely satisfied that for the present time that is sufficient.