

<b>Neutral Citation No: [2023] NIFam 19</b>	<b>Ref: SIM12333</b>
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No: 23/028552 20/079047</b>
	<b>Delivered: 22/11/2023</b>

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

—————  
**FAMILY DIVISION**  
—————

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

**A MOTHER**

**Applicant**

**-and-**

**A FATHER**

**Respondent**

—————  
**Sarah Ramsey KC with Bláithín Cleland (instructed by Niamh Sheridan, Paul Campbell Solicitors) for the Applicant**

**Andrew Magee KC with Niamh Devlin (instructed by Sarah Herron, O Neill Solicitors) for the Respondent**

**Wendy Davidson (instructed by Rory Fitzpatrick, Directorate of Legal Services) for A Health and Social Care Trust**

**Timothy Ritchie (instructed by Claire Marshall) for the Official Solicitor**  
—————

**SIMPSON J**

*Introduction*

[1] I have anonymised the parties in this case to protect the children who are the subject of these proceedings. Nothing should be published which would, or would be likely to, identify the family or the children.

[2] The mother brings a number of applications – for a residence order, for a ‘no contact’ order, for a prohibited steps order and for a specific issue order. In addition, there is an application for an order under Article 13 of the Children (Northern Ireland) Order 1995 (the 1995 Order”) permitting the mother to change the surnames of the children to her maiden name. The mother also seeks an order pursuant to Article 179(14) of the 1995 Order that the father be prohibited from applying to the court, for the next two years, for an order for the children under the 1995 Order.

[3] Some measure of agreement was arrived at by the parties for which counsel are to be commended, and I am also grateful to all counsel for their helpful and focused submissions.

[4] The children, whom I anonymise with initials which are not their true initials, are AB, BB and CB. There is an older fourth child who is not the subject of these proceedings.

[5] The facts of this case are quite exceptional and, since I am asked to consider making what would be regarded as very significant orders in derogation of the father's rights, an understanding of the facts is important for an appreciation of the task faced by the court in this case.

### *Factual background*

[6] Following his plea of guilty, the father was sentenced to an extended custodial sentence of 16 years 8 months imprisonment for the attempted murder of the mother in late 2020. Thus, by his plea the father admitted that when he attacked the mother, he intended to kill her. He had a number of previous convictions including 3 assaults occasioning actual bodily harm, an aggravated assault, 2 common assaults, threats to kill and assaults on the police. There was also a history of domestic violence, including assaults on AB and BB, perpetrated by the father over a period of some two years prior to the attempted murder offence, which was committed while he was on bail for a previous assault on the mother and was, therefore, a breach of bail.

[7] I note that the length of the sentence imposed on the father means that the earliest release date will be long after AB's eighteenth birthday; a number of years after BB's eighteenth birthday; and around CB's eighteenth birthday.

[8] In his sentencing remarks the judge found to the criminal standard that the father presented a significant risk of serious harm to the public, remarking that to suggest that this man does not present a significant risk of serious harm to the public offends common sense."

[9] The father's attack on the mother, with the admitted intent to kill her, involved the infliction of 19 stab wounds which caused very significant, life-threatening and lasting injuries to the mother, requiring hospitalisation, including a period in the Intensive Care Unit. Among the extensive injuries was a deep penetrating stab wound on the left chest fracturing the eighth left rib and passing downwards into the diaphragm, into the abdominal cavity, penetrating the stomach, bowel and spleen. She required emergency treatment on the day of the attack and two further visits to the operating theatre, for bowel repair and for plastic surgery. There are physical and psychological sequelae, and she is left with significant surgical scarring.

[10] All the children were present in the home when the attempted murder took place. AB actually witnessed the attack and tried to intervene to save the mother, while BB could hear what was going on from the adjoining room. BB witnessed the immediate aftermath of the attack. Both children had to go to seek help from neighbours for their severely injured mother.

[11] It is also to be noted that the plea of guilty was not an early plea, but was only entered on the morning of the scheduled trial. The effect of this late plea was that the mother and the children had to be prepared for the ordeal of giving evidence in court, the latter against their father.

[12] The sentencing judge also imposed a lifelong restraining order on the father.

[13] At the commencement of the hearing of these applications I was informed by Mr Magee KC for the father that the father was not engaging in the proceedings and had returned to his cell in the prison.

[14] In addition to position papers submitted on behalf of the parties, I have also had the benefit of a position paper on behalf of the relevant Health and Social Care Trust (hereafter "the Trust") and from the Official Solicitor (hereafter "the OS"). I have also read all the papers contained in the hearing bundle, which included the sentencing remarks, the mother's victim impact report and a number of medical reports.

[15] I consider it worthwhile to record from the "Social Work Statement prepared for Court Proceedings" and dated June 2022 that the mother "is a remarkable young mother despite the trauma she has been exposed to and the challenges of single parenting 4 children, 2 of whom have a diagnosis of autism and 1 diagnosed with ADHD and currently being assessed for autism" and that the then current assessment "indicates no child protection concerns", with the mother "meeting the needs of her children to a high standard with the support of her [family] network." In its most recent position paper (7 November 2023) the Trust says there are no welfare issues and the mother "should be commended on the progress she has made."

### *Relevant statutory provisions*

[16] Article 3 of the 1995 Order sets out the so-called "welfare checklist". For the purposes of this matter the relevant provisions are:

- 3.—(1) Where a court determines any question with respect to—
- (a) the upbringing of a child; or
  - (b) ...

the child's welfare shall be the court's paramount consideration.

...

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to –

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
- (g) the range of powers available to the court under this Order in the proceedings in question.

...

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all."

[17] Under the rubric "Residence, contact and other orders with respect of children", article 8(1) provides:

8. – (1) In this Order –

"contact order" means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

prohibited steps order” means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;

residence order” means an order settling the arrangements to be made as to the person with whom a child is to live; and

specific issue order” means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.”

[18] Article 9(6) provides:

No court shall make any Article 8 order which is to have effect for a period which will end after the child has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.”

[19] Article 13, where material, provides:

**Change of child s name or removal from jurisdiction**

13. – (1) Where a residence order is in force with respect to a child, no person shall –

- (a) cause the child to be known by a new surname; or
- (b) ...;

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

...

(3) In making a residence order with respect to a child the court may grant the leave required by paragraph (1)(b), either generally or for specified purposes.”

[20] Finally, article 179(14) provides, under the heading “Effect and duration of orders etc.”:

(14) On disposing of any application for an order under this Order, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Order of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.”

### *The Father s submissions*

[21] The father notes that earlier orders permitted certain contact but that the Trust and the OS now do not propose that the father should be permitted to have any information shared with him regarding the children.”

[22] The father agrees that there be a residence order in favour of the mother, leaving it to the court to decide whether it should last until each child is 16 or 18, his preference being 16.

[23] It is made clear that the father does not seek direct contact. He previously gave an undertaking that he would not attempt to contact the children and he has not attempted so to do. He indicates that he will not attempt contact unless the mother agrees or the court permits it; therefore, he questions why there should be any no contact order, rather than an order of no order.’ (See article 3(5) of the 1995 Order above.)

[24] If there is to be any no contact order it should only be until each child is 16.

[25] As to issues of contact, Mr Magee KC drew my attention to the decision of the Court of Appeal in England & Wales in *Re C (A Child)* [2011] EWCA Civ 521. From that judgment, which itself cited a number of authorities, I note, in particular, the content of paragraph [47]:

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child s welfare.
- There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as

a last resort and only once it has become clear that the child will not benefit from continuing the attempt.

- The court should take a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- The key question, which requires stricter scrutiny, is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; the child's interest must have precedence over any other consideration."

[26] I take all of the above principles into consideration. However, it goes without saying that every case in which the above principles are to be seen as guidance depends on its own unique facts.

[27] The father does wish to have information about the children's education and health on an annual basis, together with a "general update on the children" and a photograph of each child once per year.

[28] He does not agree to any change of the children's surname, arguing that his surname is that by which the children have always been known, and the surname is an important link to him and to the paternal family. In a small community, such as the area in which the family live, people know who the children are, and a change of name will not remove any association with the father.

[29] He relies on the decision of the House of Lords in *Dawson v Wearmouth* [1999] 2 WLR 960 that an order should not be made "unless there is some evidence that this would lead to an improvement from the point of view of the welfare of the child" – see the speech of Lord Mackay of Clashfern (with which Lords Slynn, Clyde and Hobhouse of Woodborough agreed) at page 321A.

[30] The case of *Dawson* concerned the child of unmarried parents, who separated soon after his birth. The mother registered (under the Births and Deaths Registration Act 1953) the boy in the surname by which she was known (that of her former husband, and of her two other children by that former relationship). The father applied for an order that the child be known by his (the father's) surname. The judge made such an order. The Court of Appeal allowed the mother's appeal, and the House of Lords dismissed the father's subsequent appeal.

[31] I have read that decision and take it into account in my consideration of the issue under article 13, noting inter alia (1) that it is a matter of discretion for the court and (2) the welfare of the child is the paramount consideration. In none of the cases cited in the speeches of the Law Lords were the facts anything like as extreme as they are in this case.

## *The Trust*

[32] I have already referred to matters referred to by the Trust in the Social Work Statement of June 2022. That Statement records BB as “clearly advising that he does not want any contact with his father, and he does not want his father contacting him”. In a joint position paper dated March 2023 it is reported that BB’s father “knowing anything about his school work, or who he is friends with makes him fearful.” That same paper records that AB, who had recently commenced counselling, told her counsellor that “she doesn’t want [the father] to know anything about her.”

[33] The Trust met with the children (AB and BB) in September 2022 and recorded that they “did not wish any form of contact with their father.” CB proved to be difficult to engage with ... and therefore his views could not be obtained.”

[34] The Trust have not made further efforts to speak to the children as it is aware that to do so may cause further distress by re-traumatising them. In its most recent position paper, it is recorded that the Trust:

“... do not feel there is benefit or assistance of any further meetings with the children. The Trust are aware the mother has advised that the children have maintained the view previously advised and there is no suggestion that this is not correct or an accurate reflection of their wishes.”

[35] Ms Davidson supplemented the Trust’s written position with oral submissions. She submitted that what the father is seeking is in his interests, and not in the children’s best interests. Further, to make a “no contact” order, as opposed to an order of “no order” will reflect the children’s wishes and enhance the security provided to the children.

[36] The children AB and BB, do not want any contact, direct or indirect, and their wishes should be respected. No onus should be placed on the mother, in light of what she has been through, to provide information to the father.

[37] Ms Davidson further submitted that no onus should be placed on any school or GP to provide information. The father may in the future change his present attitude and may challenge the failure of any third party to provide information or may challenge the nature or extent of the information provided. The court should not expose third parties to such potential of challenge.

[38] The Trust supports the application under article 13.

[39] Ms Davidson submitted that this is to be regarded as a welfare issue. In response to the father’s suggestion about the impact in a small community, she



submitted that as time passes, memories fade and there is likely to be a diminution in the association with events of the past.

### *The Official Solicitor*

[40] The views of the OS are articulated in her position paper dated 1 November 2023. The OS participated in the discussions which led to the draft order to which I have referred. Oral submissions were also made on her behalf by Mr. Ritchie.

[41] She is clear that the father's actions and behaviour within the home, directed at the mother and the children, have had, and will continue to have a significantly harmful effect on each of these children". She specifically states that the children "all have a fear of their father, they do not want their father to contact them or receive any information about them."

[42] The OS supports the making of an order that the father have no direct or indirect contact with the children, rather than simply making no order at all. She says this:

The children do not want any contact and would be traumatised by their father making contact or knowing that he was receiving information about them. The impact on this family of the children having indirect contact from their father would also be highly likely to cause such emotional turmoil that it cannot be in any of the children's best interests at this time...

It is important for these children that court orders best reflect their welfare, now and into the future. They have been harmed by their father. Leaving them with no order means their father can still take steps to either contact them or to find out information about them, the effect of which, in the Official Solicitor's view, is highly likely to be harmful to the children individually and collectively as a sibship."

[43] In relation to the application for permission to change the surname of the children, the OS notes that the mother is now known by her maiden name. She says that "the children having the same surname as their mother represents a way to be a cohesive family unit..." She continues:

It is better that the children all share the same surname rather than to have different names, and this again flows from a welfare analysis rather than a punitive reason connected with the father.

The severity of impact arising from the behaviour of the father does have a bearing on the need to protect these children's emotional well-being into the future. If their name connects them to the trigger behaviours, freeing the children from harmful emotional/psychological ties is a welfare reason to act by changing their names."

[44] She concludes this issue by asserting that there is evidence in the papers for a court to be satisfied of the need for a change of name."

[45] Dealing with the application under article 179(14) the OS says:

The children have lived in a home where there has been unimaginable trauma. Since 2020 they have lived in a state of high alert, fear, and steeped in the facts and events. They have had to prepare for court appearances. Now is the time for the children to be given some security of knowing that there will be no court appearances needed for them; this will give them time to settle into their changed family life."

[46] Following a detailed analysis of the relevant case law, the OS concludes:

[she] is conscious [of AB's age] and very soon the court will not have jurisdiction for her. Nevertheless, the younger children are [both] capable of being the subject of other applications and imposing an article 179(14) [order] would guard against this occurring in the near future, unless there is a need to apply which, of course, the article 179(14) [order] would filter. The Official Solicitor recognises that recent cases here have imposed a 2-3 year prohibition, and this appears to her to be a reasonable time."

[47] These are important observations on the impact of the various matters on the welfare of the children, and I bear them in mind in my consideration of the orders sought. In his oral argument Mr Ritchie submitted, further, that the orders sought will provide clear and well-defined structures for the children who will know what the father cannot do and the orders will protect them in the core aspects of their lives, namely medical, educational, and social aspects. He invited the court to draw the inference from the father's refusal to engage in the proceedings that his motivation is not child-centric. He is not motivated by the welfare of the children. His attitude to the proceedings is all about himself. This chimes with the submission made by Ms Davidson and recorded at paragraph [35] above.

[48] Mr. Ritchie submitted that a change of their surname to that of their mother will allow disassociation from the trigger for trauma, against the background of the significant trauma which they have endured, which was far beyond the norm for children. He indicated that the OS supports an order that the court grants leave to the mother to cause the children to be known by a different surname, namely "X" [X being the mother's maiden name].

### *Consideration*

[49] The parties produced to the court a draft order, some of which was agreed between the parties (in black type) and some of which was not agreed (in red type). That is a helpful document, and I intend to adopt its numbered paragraphs in this section of the judgment.

### *Paragraph 1*

[50] First, I make a residence order in favour of the mother. That was agreed between the parties (paragraph 1 of the draft order).

[51] As noted above article 9(6) of the 1995 Order prohibits the court making a residence order which will extend beyond a child's sixteenth birthday unless it is satisfied that the circumstances of the case are exceptional."

[52] In my view it is beyond peradventure that the circumstances of this case are to be regarded as exceptional. Should any support for this view be required, I note that in *Fergus v Marvail* [2017] NICA 71 Gillen LJ cited Lord Bingham of Cornhill in *R v Kelly (Edward)* [2000] QB 198, 208, thus:

We must construe 'exceptional' as an ordinary, familiar English adjective and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be an exceptional circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered."

[53] The residence order will last until the three children, the subject of these proceedings, are 18. I consider that, because of the dreadful experience which these children have had to endure, their collective welfare and wellbeing will be enhanced by having that security and stability until they reach the age of 18. I also agree with the OS that this will be reinforced by their knowing that this is an order of the court.

### *Paragraphs 2, 3 and 4*

[54] In paragraph 2, the mother seeks an order that there shall be no contact, whether direct contact or indirect contact, between the father and the children, to include contact over social media or via any third party, until the children attain the age of 18 years. The father's position is that this is opposed, but that if the court makes any such order, it should only be until the children are 16. At paragraphs 3 and 4 the father asks to be permitted to request from the children's school a copy of one annual report in respect of each child and that he be provided with an annual photograph of, and annual update about, each child. The mother opposes the father's requests in paragraph 3 and 4.

[55] On behalf of the father it is said that he has no intention of seeking contact, so the court should make no order.

[56] I have already recorded the views of two of the children. Further, I bear in mind what was said in the decision in *Re C (A Child)* (op cit).

[57] I am satisfied that if I did not make an order such as sought by the mother, or if I was to make an order of no order, in the particular circumstances of this case it would be detrimental to the children constantly to be worried that the father might try to contact them. Children are regularly on various social media platforms and if they thought that their father might be able to access their information or contact them on such a platform, I consider that this would cause them concern. It is not in their best interests that they should live with such a concern.

[58] The father will spend many years in prison and will have plenty of time to ruminate about his family. I consider that the court should not permit a situation to arise where, if he changes his mind, he might try to contact the children in the future. I accept the submissions made on behalf of both the Trust and the OS that what is being sought by the father is for his own benefit, and that he does not have the best interests of the children clearly in mind.

[59] I am satisfied that it is eminently in the children's best interests that I make an order as sought by the mother, namely that the father make no contact, whether direct or indirect with AB, BB or CB, to include contact via any social media platform or via any third party."

[60] In light of the particular facts of this case I consider that the children should not have to face the possibility of contact with the father until they are mature enough to have a better chance of coping. Accordingly, I will add to the above order the words – until that child attains the age of 18 years".

### *Paragraph 5*

[61] In paragraph 5 of the draft order, in a number of sub-paragraphs, the mother seeks a prohibited steps order to prohibit the father from any form of contact with the children's GP or dentist or any other medical authority and to prohibit him from obtaining information in respect of the children's health; contacting any club at which the children might be involved, or obtain information about the children's social activities; or the same in relation to any religious institution or associated clubs or groups; or refusing to agree to any trip for the children outside the jurisdiction in excess of four weeks.

[62] For all the reasons already identified and against the background rehearsed above, I consider that it is likely to enhance the welfare of the children to make such an order. Any contact with such organisations by the father, for the purpose of seeking information about the children, will, in my view, be likely to cause psychological harm to the children.

[63] Accordingly, I make the orders sought by the mother in paragraph 5 of the draft order.

### *Paragraph 6*

[64] A number of specific issue orders are sought: viz. dispensing with any requirement for the father's signature on any application by the mother for a passport for any of the children; permitting the mother to change a child's school or to consent to any school decision without the consent of the father; that the mother shall not be required to provide the father with any information about the children.

[65] I note that the draft order provides that the mother will notify a member of the father's family in the event that any child suffers any life-threatening injury or illness.

[66] The Trust have no objections to any of these specific issue orders being made.

[67] In my view these orders are entirely appropriate in the particular circumstances of this case. It is not in the best interests of the children for there to be a risk in the future of the father frustrating or thwarting important decisions in the children's lives or that the children should know that such important decisions will depend on their father's consent.

### *Paragraph 7*

[68] This relates to the application under article 13 of the 1995 Order. I have dealt at some length above with the competing submissions including the father's reliance on *Dawson v Wearmouth*.

[69] In this case I am satisfied that there is strong (not just some – see paragraph [29] above) evidence that it would be in the interests of each child's welfare. The surname associates them in public, and in their own mind, with the "unimaginable trauma" (as the OS describes it) of the horrific experiences which they have endured. Further, it will add to their feeling of stability and security to have the same surname as their mother and will enhance their feeling of being in, and being part of, a family unit. I consider that to have a different surname from the mother would detract from any feeling of stability and security.

[70] Accordingly, I accede to the application under article 13 and will make the order in the terms articulated by Mr Ritchie, namely that the court grants leave to the mother to cause the children to be known by a different surname, namely "X" [X being the mother's maiden name].

### *Paragraph 8*

[71] This paragraph of the draft order deals with the application for an order pursuant to article 179(14) of the 1995 Order. It should be noted that such an order is not a bar to the bringing of an application, should one be necessary in some changed circumstances in the future, but since the leave of the court has to be sought, it permits the court to act as a filter. The power is discretionary and is to be used sparingly after weighing in the balance all relevant circumstances.

[72] I am conscious that this is not a case where there is a history of unreasonable applications having been brought. However, it is a case where I am satisfied that the children are greatly in need of a settled period during which they will not be, and know that they will not be, the subject of applications to the court. In my view it is clearly in their best interests that (borrowing from the OS) they now have the "time to settle into their changed family life."

[73] I consider, also, that a two-year period is proportionate in the particular circumstances of this case.

[74] Further, the parties are in agreement that the order should be made, namely that the father be prohibited from applying to the court for 2 years immediately following the granting of this order of the court, for any order for the children under the Children (Northern Ireland) Order 1995, without first seeking leave of this court.

### *Outstanding application*

[75] There remains the mother's application, described as being under the inherent jurisdiction of the court and/or pursuant to section 33 of the Judicature (Northern Ireland) Act 1978, formally to change the surname on the birth certificate of each child from the father's surname to that of the mother's maiden name.

[76] By consent of the parties, this matter is to be adjourned.

[77] The OS has indicated her consent to be joined into this applications and I grant leave to the mother to join the OS to the application. In addition, Ms Ramsey KC has observed that the Registrar General may wish to make submissions to the court in respect of the application. Therefore, the Registrar General should be made a notice party to the application to allow for any relevant submissions to be made, should they be thought necessary.

[78] The OS has also indicated that she is content to go to interview the children after Christmas and will file a report for the benefit of the court by 22 January 2024.

[79] The case will be listed for consideration of this application at a suitable date after receipt of the report from the OS.

*Disposition*

[80] I invite the parties to submit to the court the final draft of the proposed order taking into account the content of this judgment.