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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

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Between:

A MOTHER AND A FATHER

Applicants

-v-

A HEALTH AND SOCIAL CARE TRUST

Respondents

IN THE MATTER OF TY (No 2) (A MALE CHILD AGED 4 YEARS)

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The mother and father appeared as litigants in person
Mr T Ritchie (instructed by the Directorate of Legal Services) for the Trust
Ms G Brady (instructed by McCollum Solicitors) for the Children's Court Guardian on behalf of TY

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McFARLAND J

Introduction

[1] The parents have made an application to discharge a care order made on 19 April 2021 in respect of their child. The reasons for making that order are set out in a written judgment *Re TY* [2021] NIFam 11. I have anonymised this judgment to protect the identity of the child. I have used the same cipher for the name of the child. Nothing can be published that will identify TY.

[2] TY was born in late September 2018 and was made the subject of an emergency protection order on 1 October 2018, followed by an interim care order on 8 October 2018, with the proceedings concluding in April 2021 with the final care order. The care plan was, and remains, that TY would reside with his maternal grandparents with supervised contact with the parents.

[3] At para [52] of the earlier judgment I set out the conclusions as to my evaluation of the future risk of significant harm at the date of intervention which was the date of TY's birth:

> "I am therefore satisfied that on carrying out the evaluation exercise of the likelihood of harm at the time of TY's birth that there was a real possibility that he would suffer significant harm in the care of his father, and further that the mother would not have been willing to acknowledge that risk and put in place sufficient safeguards within the home environment to reduce or eliminate the risk of harm."

The risk of significant harm in relation to the father was evidenced by the serious injuries that he caused to his older child, and half-sibling to TY, and by lifestyle issues. These injuries were a fracture to the skull and a spiral fracture to the arm when the older child was five weeks old.

[4] The findings are set out in the earlier judgment at para [33] in the following terms:

> "(a) When [the older child] was 5 weeks old he was in the care of the father. The child suffered a fractured skull and a spiral fracture to the left humerus. The father has pleaded guilty to wilfully causing those injuries. It is probable that the father was under the influence of drugs at the time. The most likely cause of the injuries was that [the child] fell out of the father's arms striking his head on the floor or other object which caused the fracture to the skull. The father then grabbed the child's left arm and pulled the child with force off the ground causing the spiral fracture to the humerus;
>
> (b) The father had never given what could be regarded as a truthful explanation for these injuries but had conceded responsibility by his plea of guilty and acceptance of the Crown case [against him]. The father had given dishonest explanations both before and since his plea of guilty and had sought to mislead medical practitioners, social workers and the mother as to what actually happened;
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> (c) The father had a chronic problem with regard to the consumption of illegal drugs. He persistently maintained his addiction from his late teens. He had been

dishonest to professionals about the extent of his drug taking;

(d) He cultivated cannabis for his own use and for supply to others. His drug use included leaving drugs in readily accessible areas in the home;

(e) The father had an aggressive and confrontational attitude and had significant issues with regard to anger management. This permeated many of his personal relationships and his relationships with social workers and other professionals;

(f) Neither the father nor the mother regarded the injuries sustained by [the older child] and the father's failure to accept responsibility for the injuries as a problem. They did not regard the father's drug misuse and production and supply of drugs as a problem. They did not regard his inability to manage his anger as a problem;

(g) The mother by adopting this attitude considered that it would be appropriate for the child to be left in the sole care of the father without the need for supervision."

[5] It is not necessary the quote in any further detail from that earlier judgment although I will refer to it below.

The application

[6] The application to discharge the care order is a joint application. Neither parent has availed of the opportunity of seeking legal advice or representation. The application and the statements supporting it are not particularly focussed and it is difficult to discern coherent grounds for the application. In fairness to the parents, I have attempted to extract from their application, their written statements, their line of questioning of a social worker and the guardian, and their final submission to the court, the following grounds:

(a) TY has suffered emotional harm when cared for by his maternal grandparents and by the Trust;

(b) The parents have provided a high level of care during contact sessions;

(c) A discharge of the care order would be in TY's best interests as the care provided by the parents would be superior to the care provided by the maternal grandparents;

(d) The parents would, on discharge of the care order and placement of TY in their care, consent to a six month supervision order to allow the Trust to continue its involvement with TY and monitor him in his new home.

The law relating to the discharge of a care order

[7] Recently Jackson LJ carried out a thorough review of the law in the case of *Re TT* [2021] EWCA Civ 742, and I consider that it is not necessary to go beyond that judgment. The legislative framework is summarised at para [21]:

> "The combined effect of these provisions is that on the application of an entitled applicant the court may discharge a care order. Or it may replace it with a supervision order, in which case there is no requirement for the [Article 50(2) Children (NI) Order 1995] threshold to be crossed. As the decision concerns a question of upbringing, the child's welfare shall be the court's paramount consideration. As the court is considering whether to vary or discharge an order under Part [V of the 1995 Order], the court shall have particular regard to the factors in the welfare checklist. As the court is considering whether to make an order under the [1995 Order], it shall not make the order unless to do so would be better for the child than making no order at all."

The law concerning how a court should approach an application to discharge a care order is summarised at para [31]:

> "In summary, when a court is considering an application to discharge a care order the legal principles are clear:
>
> (1) The decision must be made in accordance with [Article 3 of the Children (NI) Order], by which the child's welfare is the court's paramount consideration. The welfare evaluation is at large and the relevant factors in the welfare checklist must be considered and given appropriate weight.
>
> (2) Once the welfare evaluation has been carried out, the court will cross-check the outcome to ensure that it will be exercising its powers in such a way that any interference with Convention rights is necessary and proportionate.
>
> (3) The applicant must make out a case for the

> discharge of the care order by bringing forward evidence to show that this would be in the interests of the child. The findings of fact that underpinned the making of the care order will be relevant to the court's assessment but the weight to be given to them will vary from case to case.
>
> (4) The welfare evaluation is made at the time of the decision. The [Article 50(2) Children (NI) Order] threshold, applicable to the making of a care order, is of no relevance to an application for its discharge. The [Trust] does not have to re-prove the threshold and the applicant does not have to prove that it no longer applies. Any questions of harm and risk of harm form part of the overall welfare evaluation."

The applicants' failure to give evidence

[8] Jackson LJ in *Re TT* at para [31](3) referred to the burden placed on the applicants in the following terms:

> "The applicant must make out a case for the discharge of the care order by bringing forward evidence to show that this would be in the interests of the child."

When the court invited the parents to give their evidence, both declined. This replicated the father's approach in the earlier hearing in 2021 when he refused to give evidence.

[9] In *Re TY* I made reference to the implications of his failure to give evidence at para [14]. These implications are all the more engaged in this case as the applicants have brought the application and it is for them to prove that discharge would be in the interests of TY.

The evidence

[10] Although there may be some areas of conflict between the parents and the Trust, the core evidence as to what has happened since April 2021 is not really in dispute. Since the making of the care order TY has remained in the care of his maternal grandparents. There is a significant dispute between the Trust and the applicants as to the quality of that care.

[11] The evidence of the Trust is that TY is meeting and is exceeding, all his developmental milestones. He is physically cared for to a high standard. His medical and dental needs are catered for, save for his second MMR vaccination (which the applicants refuse to permit). He is making good social and educational progress, and presents with a positive sense of himself and his abilities. He has

secure attachments to his maternal grandparents, and the grandparents are encouraging contact with the applicants and with TY's wider family, both maternal and paternal.

[12] The applicants assert that TY is suffering harm in the care of the grandparents, but bring forward little evidence to prove this, save for some broad assertions that the Trust have not provided a consistent social worker, and that the grandparents are preventing TY from using the front garden of their house. Further complaints are made about the application for a nursery school place, and about a break in contact for periods in 2022 (1 April–21 June and 23 August–20 September).

[13] The evidence in relation to these issues is as follows. The Trust accepts that because of pressures within the social work team, it has been impossible to provide a consistent social worker, but that the senior social worker has stepped in to make appropriate provision and provide consistency.

[14] One of the serious difficulties that has continued since the making of the care order has been the antagonistic and aggressive approach adopted by the parents, and particularly the father towards social workers. At a LAC meeting convened on 21 April 2021 (two days after the care order) the minutes record that quite soon after the meeting commenced, the father interrupted the then senior social worker and began to use abusive and profane language, including telling the chairman of the meeting to "shut up, f*** off you wee rat" at which point, having previously been warned about his use of language the father was excluded from the meeting.

[15] Similar events occurred during the LAC meeting convened on 28 October 2021, when again the father was excluded after using abusive and threatening language. He issued a direct threat to the chairman of the meeting – "You are a f****** rat bag, I'm going to have you" and then referenced the children of the social worker dealing with the case.

[16] Two letters were sent by the applicants to this social worker in March and April 2022. A letter dated 29 March 2022 runs to three pages. At the top of each page there is a reference to a biblical text – Matthew 10 verse 13 ("If the home is deserving, let your peace rest on it; if it is not, let your peace return to you") and at the bottom of each page is a reference to Luke 23 verse 24 ("So Pilate decided to grant their demand"). The letter is headed "Expressed in plain English language and simple counting system." The letter is written without proper punctuation, so it is difficult to follow. There is no use of capital letters or full stops to denote the commencement of and conclusion to a sentence. There are paragraph breaks from time to time.

[17] The letter asserts that TY is the "genetic property" of the applicants. There is a claim that their rights with respect to "acting in the capacity of my Creator's administrator while travelling on earth" have been infringed and a demand for "(1000) Troy ounces of twenty-four carat gold for each instance of crime and

invasion or trespass or infringe my enjoyment." (An approximate value of this claim would be £1½ million.) There then follows a statement that the recipient "agree and accept death penalty without trail (*sic*) or may accept and attend trial by jury of our Piers (*sic*) all words and terms and phrases and symbols and numbers heron (*sic*) hold common definitions are not to be interpreted under corporate rules of interpretation." There then is a reference to "seven Nolan Principals (*sic*)" (which I would interpret as the Nolan principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership).

[18] The letter has a Republic of Ireland postage stamp on its first page, with what appears to be a red fingerprint mark and the father's signature, and the letter is concluded with "All rights reserved by …. [father's Christian name] of [town] private citizen, [mother's Christian name] of [town] private citizen" and again signed by both over a red fingerprint. The father told the Trust that the letters had been signed "in their own blood." The mother did initially acknowledge that it was her signature, but later told the Trust that blood had not been used. The letter, and the demand and threat contained within it, have never been retracted by either applicant.

[19] Following receipt of this letter the social worker was reallocated given the implied threats to her well-being. At that stage the case remained without an allocated social worker because of staff shortages. It was managed by duty social workers and senior social work staff.

[20] A further letter running to two pages was dated 22 April 2022. It was a similar style to the first, with a page header of the biblical text in Matthew's gospel but no reference to Luke's gospel this time. A postage stamp is again used on the first page, and that stamp and the letter are again signed by what purports to be fingerprints in blood and the applicants' signatures. This again contains a demand for 1000 troy ounces of 24 carat gold, but this time without any threat save that there was an expressed intention to "pursue a remedy."

[21] At the LAC meeting on 25 May 2022, the father raised the subject of this correspondence complaining that he had not received a response and that his claims remained un-rebutted. The minutes note that during discussion the father said that he was not a person and that he was speaking as a "living man" and further that he was not a parent but the child's "genetic father" and that the child was his property "by flesh and blood." He then said to the senior social worker "I haven't dealt with you … you've taken [the social worker] away, she was getting her comeuppance. I am coming after yous to get my son away from this abuse ridden system."

[22] The Trust sought to put in place a contract to regulate acceptable behaviour during contact and particularly to prevent physical and verbal abuse of staff, but the applicants declined to agree this as they asserted that no contract could be agreed between a "living man and woman" and a corporation.

[23] At or about this time contact between the applicants and TY did not occur. The minutes of the LAC meeting of 25 May 2022 do reflect discussion relating to this. The father had walked out of the meeting and the mother was stating that she would not accept TY being transported to contact by social workers. The stated reason for this was her concern that the child would be abused by the social workers, and her concerns were not assuaged by assurances that social work staff were all AccessNI vetted.

[24] This issue arose because the previous arrangement whereby TY was brought to contact by his maternal grandmother had stopped because the grandmother no longer felt comfortable making the journey because of the content of the letters sent by her daughter and son-in-law and by the father's conduct towards her when she delivered TY to contact. The father, during the hearing before me, complained that the Trust had no right showing the grandmother the correspondence because it was confidential. The correspondence was not marked as confidential, and although addressed to the social worker it was sent to her in her official capacity. The letter also contained the instruction – "we demand you inform [the maternal grandparents] of this information immediately."

[25] With the parents refusing to attend contact unless the child was brought by the maternal grandmother, and the maternal grandmother unwilling to bring the child for fear of a confrontation with the parents, contact was paused for a period. This pause was finally lifted when the Trust were able to encourage the grandmother to resume the transporting duties.

[26] The father has been unable to attend some of the contact sessions. He has stated that his work commitments prevent him from attending during normal daytime hours for contact. To facilitate this, contact has been arranged for him one evening in the month.

[27] The father was also unable to attend contact after he was imprisoned for six months on his conviction for a drugs offence and for two counts of assaulting a police officer and two counts of resisting a police officer. These offences relate back to 11 September 2020 when the parents removed TY from the care of his maternal grandparents. Police attended the home and on searching the premises discovered eight cannabis plants in a garden shed. (This is mentioned in more detail at para [71] of the earlier judgment.) The father was convicted by a jury on 17 June 2022 and received his sentence. He was released on 21 August 2022. As appears from para [12] above the removal of the father did facilitate the resumption of contact with the mother as the maternal grandmother was able to resume transport duties.

[28] In relation to TY's attendance at nursery school, there was a dispute between the parents and the maternal grandparents as to which school he should attend. It would appear that applications were made to both schools and eventually the choice was that TY attend his parents' choice. He commenced nursery school in September 2022 and as previously stated is well settled. It is planned that he moves on to a

primary school in September 2023.

Consideration

[29] The court's focus has been the welfare of TY. Article 3(3) of the Children (Northern Ireland) Order 1995 ("the 1995 Order") sets out factors to be taken into account, although the list does not restrict wider consideration of the background.

[30] TY is too young to express informed wishes and feelings. The clear evidence is that he is very comfortable and satisfied with his life within his grandparents' home. He is encouraged to have contact with his parents, and when this has been possible, the contact is very positive with him enjoying and benefitting from contact with both of his parents, either together or separately. At times he has expressed a desire to go with his parents after contact and at times he has been content to return with his grandparents. I do not consider that those brief moments could be regarded as significant expressions of his wishes and feelings.

[31] In recent times he has also expressed a wish to see a bedroom in his parents' home. I consider that this has come about because of what would have been potentially inappropriate and confusing comments made by his parents to him such as "coming home" or "seeing your bedroom." Naturally as an intelligent inquisitive 4½ year old he would be interested in such a topic. It is also clear that the mother has shown TY a photograph of a lamp which is currently in the bedroom, and he has expressed a wish to see the lamp.

[32] At present all of TY's physical and educational needs are being met in his current placement. His emotional needs are also being met, but the current situation is far from perfect. He is living with his grandparents and knows that they are his grandparents. He is seeing his parents and knows that they are his parents. The two homes are adjacent to each other, and there will be many occasions when he will see his parents. To date a narrative has not been developed for TY, and I consider that this is an important next step. As an inquisitive boy it will not be long before he is asking pertinent questions about his living arrangements. The Trust advise that the narrative has not been progressed because the parents have been unable to participate in the work because of their continued denial of what has happened to date.

[33] The change in his circumstances by the discharge of the care order would be that he would return to his parents' care. The parents suggest a supervision order can cope with the initial period of six months. TY has lived in his grandparents' home since birth. The mother left that home after about two years, so they have had full-time care since that date. I consider that the current primary attachment of TY is with his grandparents. That does not ignore what was a primary attachment with his mother for his first two years, and the attachment he has maintained with his mother and with his father through contact. He also has contact with his wider maternal family (an aunt and his cousins), and his paternal grandparents and a

half-sister (although he has not been told about the exact detail of the familial relationship he has with his half-sister).

[34] The change of circumstances by allowing the parents to assume full, unrestricted parental responsibility, is likely to lead him losing contact with these important figures in his life. Both parents, particularly the father, have expressed deep animosity towards both sets of grandparents, and have opposed contact with the wider family. There is nothing that they have said or done in recent times that would give the court confidence that these contacts will remain after discharge of the care order.

[35] This will create an immediate emotional burden for TY. I will deal with the parenting ability of the parents below, but there is no evidence that as a couple they could cope with the outworking of TY's frustration. The father is a man with a proven history of violence (two convictions for assault), belligerence (at LAC meetings), an inability to cope with his anger (again at LAC Meetings and on 11 September 2020) and with a significant history of drug abuse (multiple convictions). The mother may have the capability of dealing with this if she were acting on her own. They present as a married couple, and the depth and security of that relationship is to their credit, but to date the mother has shown a blind acceptance of what the father says and does. I do not consider that she is capable of independent thought and action, and certainly would not adopt a stance which would be to confront the father. To date much of his conduct has taken place with her knowledge and in her presence. She has taken no steps to either correct him, to stop him, or to disown his words and actions. In some instances, such as the letters of March and April 2022, she has associated herself directly with his actions.

[36] Another factor which both parents have deliberately ignored is the harm that TY is at risk of suffering. He is not currently at risk of suffering harm. He is well protected by his grandparents. The court in the earlier judgment made an evaluation that at birth there was a likelihood of significant harm had TY remained in the care of both parents. That finding was based on a number of factors – the injuries caused by the father to the older child, the father's drug abuse, the father's anger management, the father's confrontational attitude, and the mother's failure to recognise the risk and provide safe parenting.

[37] The sad reality is that very little appears to have changed since April 2021. There is a 'road-map' available to both parents, and this has been set out in the reports of Dr Dowd and Dr Pollock. Neither parent has been able to even contemplate setting out on the journey. All the issues identified in April 2021 that existed in September 2018 are still present. The only real change is the growing maturity of TY which may make it less likely that he was suffer the harm at the hands of his father as was suffered by the older brother. But there are other issues to be considered. The father's belligerence and lack of anger management may give rise to confrontations between the father and TY if TY does not comply with demands placed on him by the father. It is noted that recommended anger

management work with Mr Cromey arising out of earlier proceedings relating to two older children was never completed. The reality of the situation is that the father attempted to mislead earlier courts by altering Mr Cromey's report to suggest that he had completed the work (see para [30] of *Re TY* and para [42] below).

[38] Dr Dowd had spoken of a 12 month drug-free period. This has not been evidenced to date, and we have not even reached a stage of the father offering to carry out hair follicle or other drug testing (save for one instance in or about 2018). The drugs offending is dealt with at length at paras [24] – [29] and [79] of the earlier judgment and does not require repetition. There have been two spells in prison in recent times. His 2018 offending (when his wife was eight months into her pregnancy with TY) resulted in a combination order of probation and community service. The probation was to focus on drug abuse and other matters. He failed to comply with it and it was revoked and replaced by a ten month sentence in custody. The 2020 offending resulted in a six month custodial sentence. None of this recent engagement with the criminal justice system has had any impact on his approach.

[39] The mother is still not accepting of what happened to the father's older child, despite this being spelt out to her in clear terms in the earlier judgment. As recently as 22 February 2023 the mother told the guardian that "the judge had said it was an accident." Both parents still cling to the delusion that what happened to that child was an 'accident.' This is notwithstanding the fact that the father was convicted, on his admission by his plea in open court, of the wilful assault and ill-treatment of the older child. On any reading of the earlier judgment, it could not be said that "the judge had said it was an accident" as the mother asserts.

[40] The key assessment relates to the capability of each of the parents (individually or as a couple) in meeting TY's needs. Because of his upbringing to date there are no particularly identifiable needs that will need to be catered for. He is a typical, intelligent, well-rounded young child, aged 4½ years and about to start main-stream primary school in September. In acknowledging that set of facts and circumstances I am rejecting the assertions made by the parents that TY has suffered at the hands of his grandparents. Words such as, 'physical abuse', 'emotional abuse', 'coercive control', 'neglect', 'damage', 'prisoner', and 'distress' litter the statements submitted by the parents, but when asked to give formal sworn or affirmed evidence when they would be subject to cross-examination, both declined. The clear inference is that both parents know that beyond their own fixated approach to this case, there is no independent evidence that could in any way corroborate any of these claims.

[41] This approach is also evidenced by an analysis of some of the statements made by the parents. The father, on 28 October 2022, in his application to the court stated – "I have had no contact with my son now for seven months no reasons no response." This completely ignores the issues relating to contact that the father was clearly aware of, not least his incarceration for drugs and violent offences which prevented any form of contact. The records of the Trust are replete with contact between the father, the mother and the social workers giving explanations and

responding to issues raised by the parents.

[42] It is also a significant factual inaccuracy as the father had contact with his son on 25 October 2022, three days before this claim. The record reflects that it was a contact which included sharing a meal together and dodgem car rides. It is inconceivable that the father had forgotten about this. It is further evidence of the father's capacity to mislead and exaggerate. In this context it must be borne in mind that the father has already been found to have been in contempt of court. This was referred to in *Re TY* at para [30]. The facts are set out in the judgment *WX v YZ* [2021] NIQB 8. It was a contempt action brought by the mother of the father's second child and related to the father's presentation of evidence at earlier hearings. The court found that the father had furnished a falsified report relating to his anger management and had given perjured evidence when he knew that the course of justice would be interfered with. The court imposed a sentence of two months in prison suspended for 12 months for this contempt.

[43] Similarly in her application of 31 October 2022, the mother stated – "Contact has been stopped multiple times for longer than 7 days without a court order being sought." Contact had never been stopped by the Trust. The Trust were prepared to facilitate contact on reasonable terms. The maternal grandmother was not prepared to transport TY to contact because of a well-founded fear that it would involve a confrontation with the father. The reason for this related to both the father's conduct and the joint letters submitted by the parents which made reference to a death penalty being imposed. The Trust made a very reasonable adjustment so that two social workers would attend and bring TY to contact. The parents then refused to commit to attend stating, what could only be regarded as a spurious excuse, that the child was at risk of some sort of harm. Contact did stop for longer than seven days, but the reason was entirely the fault of the parents, and not the Trust (or the grandparents).

[44] A further complaint in her application was that there was no social worker from April 2022 until the start of October 2022. This is a little disingenuous on the part of the mother as she knows the reason why there was no dedicated social worker was because in the words of her husband "she was getting her comeuppance" not through any fault of the social worker but because of the pressure placed on her by both parents given the tone of their correspondence.

[45] The stopping of contact by the parents is particularly worrying as it does suggest that neither parent is fully attuned to the needs of their son, and despite knowing that he achieved an immense amount of pleasure in seeing them, they were prepared to sacrifice this on baseless grounds by placing nonsensical conditions on the requirements to transport him to contact.

[46] The mother despite being described by Dr Pollock in his report as "self-assured, combative, irritable, flippant, dismissive, rigid" would, on balance, have the capacity, as an individual, to cater for TY's needs provided she was willing

to embrace the assistance of the Trust and her parents. However, she has displayed little insight into the risks posed by her husband, and it could not be said that she would not be able to manage the household to the extent that would be necessary to protect TY from the risk that may be posed by the father. The reality is that she does not accept that there is a risk, so in her mind there is nothing to be safeguarded against.

[47] The parents in their line of cross-examination and final submissions asserted that the ability that they display during contact is reflective of their overall parenting ability and as such they would be capable of meeting all of TY's needs. It is important to note that contact, when it occurs, is very positive and the parents are very capable of coping with TY's needs. However, the needs of TY during these time-limited events which by definition are focussed on fun, handing over of gifts, and intimate signs of affection, are completely different from the day to day 24 hour routine of ordinary family life. Positive contact sessions can be of some assistance in assessing overall parenting capacity, but they do not provide the complete picture. The unfortunate reality in this case is that the positives of these contact sessions are grossly outweighed by the negative aspects which include all the issues that have been already mentioned.

[48] Article 3(3)(g) of the 1995 Order refers to the range of powers available to the court. Such a power would be the making of a supervision order without the need for a re-finding of threshold. I have considered this, and the main obstacle is the issue of parental responsibility. This would fall exclusively to the parents, and although the Trust would, in the words of the legislation "advise, assist and befriend" TY, his needs would not be adequately catered for should the Trust be unable to exercise that responsibility. The evidence to date is that the parents, given their history of belligerence, agitation, and obstructiveness, are unlikely to co-operate with social workers or to approach parental responsibility in a child-focussed way. Their attitude over their own contact with TY is a prime example of this.

[49] The issue for me to consider is whether discharging the care order is in TY's best interests and my conclusion after weighing up all the factors is that it is not, and that his welfare requires the continued use of the care order.

[50] Having made that decision, the next step suggested by Jackson LJ in *Re TT*, is to consider whether the continuation of the care order is both proportionate and necessary. This involves the weighing up of all relevant factors to ensure that the interference in the family life of the parents and of TY is proportionate. Safety is a key concern when weighing up interference of this type.

[51] The parents in their final submission referred to certain quotations from the case-law concerning separation of a child from his or her parents. In particular, there was reference to Lord Templeman's speech in *Re KD* [1988] 1 AC 806 at para 812:

> "The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate."

and Hedley J's familiar words in *Re L* [2007] 1 FLR 2050 at para [50]:

> "[S]ociety must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent … it is not the provenance of the state to spare children all the consequences of defective parenting."

[52] These quotations are clearly highly pertinent and relevant in the proper context, but it should be noted that they relate to determination of threshold as opposed to care-planning, and as McFarlane LJ stated in *Re H* [2016] 2 FLR 1171 at para [93] they are:

> "out of place, as a matter of law, in a case where the issue did not relate to the [Article 50] threshold, but solely to an evaluation of welfare"

[53] All of this case-law quoted by the parents (whether in the context of threshold or care-planning) is subject to the overriding obligation to safeguard the child and the paramountcy of the child's welfare. The United Nations Convention on the Rights of the Child deals with this succinctly at article 9:

> "[1] States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence."

[54] Lady Hale in *Re B* [2013] UKSC 33 at para [195] summarised the position in the following terms:

> "It is well-established in the case law of the European Court of Human Rights that "the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an

> interference with the right protected by article 8 of the Convention" (Johansen v Norway (1996) 23 EHRR 33, among many others). However, such measures may be justified if aimed at protecting the 'health or morals' and 'the rights and freedoms' of children. But they must also be 'necessary in a democratic society.'"

[55] The paramountcy of a child's welfare has permeated the judicial approach long before both article 8 of the ECHR and Article 3 of the Children (NI) Order 1995. FitzGibbon LJ in *Re O'Hara* [1900] 2 IR 232 at para 240, stated that:

> "In exercising the jurisdiction to control or to ignore the parental right the court must act cautiously, not as if it were a private person acting with regard to his own child, and acting in opposition to the parent only when judicially satisfied that the welfare of the child requires that the parental right should be suspended or superseded."

[56] Both parents have spoken of their rights as a "genetic" mother and father. They refer to TY as their property. The father has gone as far as to reject the title 'parent' preferring the use of 'genetic father.' The court will recognise the particular parent/child relationship as being a very important factor, but it can never be the decisive factor. There is not even a presumption in favour of a parent. McFarlane LJ dealt with this point in the most strident of terms in *Re W* [2016] EWCA Civ 793 at para [71]:

> "The repeated reference to a 'right' for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare …"

[57] The lack of any presumption, means that the balancing exercise does not start with the placing of the fulcrum of that exercise towards the interests of the parents. That would result in an inappropriate analysis.

[58] The exercise must also look at the situation as it applies now, rather than at the time when either TY came to live with his maternal grandparents (then in the care of his mother) when he was born, or when he continued in the sole care of his maternal grandparents when his mother left their home approximately 30 months ago.

[59] This is not a case of a complete severance of the parent/child relationship.

The child is placed with his maternal grandparents. He has regular contact with his parents. Although that contact is restricted by virtue of the requirement for supervision, that requirement is in place to protect the physical and emotional well-being of the child. Within the current placement, TY is also afforded contact with his wider maternal and paternal families.

[60] When carrying out the proportionality analysis the separation from the immediate care of the parents is counter-balanced by the elimination of the risk of TY coming to harm, by his now long-standing placement with his maternal grandparents with whom he has established what appears to be a settled and secure attachment, and through their promotion of contact not only with the parents but with TY's wider family.

[61] In all the circumstances I consider that the continuing immediate separation of TY from his natural parents is both necessary and proportionate.

Conclusion

[62] For the reasons set out above, I consider that the application by the parents that the care order in respect of TY be discharged must fail, and accordingly, I dismiss it.

[63] The Children's Court Guardian is discharged. There will be no order as to costs between parties, but there will be a taxation order in respect of the guardian's legal costs.