

Neutral Citation No: [2019] NIQB 56	Ref: McC10979
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	Delivered: ex tempore 20/03/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION BY SD
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

McCLOSKEY J

Introduction

[1] I shall deal firstly with the issue of anonymity. This protective measure was not sought at the outset of these proceedings which were commenced on 15 October 2018. However, in a recent draft amended Order 53 Statement anonymity has been requested in paragraph 4.1(e). In light of the involvement of a child directly and, possibly and indirectly, other children I accede to that application and accordingly the applicant will be identified only by the cypher 'SD'. There shall be no publication of the applicant's name or address or of anything which could lead to identification of the applicant or any child.

[2] I turn to the substance of the matter. The applicant commenced these proceedings on 21 September 2018. She challenged the action taken by the Belfast Health and Social Care Trust which was acting on behalf of the South Eastern Health and Social Care Trust on 22 June 2018. That entailed making an application *ex parte* for an emergency protection order in respect of the applicant's child. That action was not taken on notice to any interested party. On the same date the Lisburn Family Proceedings Court acceded to the application and accordingly an emergency protection order was made.

[3] The applicant is not challenging the order *per se*. That of itself is a most striking fact. The Applicant is, rather, challenging the application for the order which, it seems to this court, is of itself quite incongruous. Fast forwarding momentarily, the family proceedings continued and an interim care order was made in respect of the child on 4 July 2018. Later, on 12 December 2018, a full care order

was made and the Craigavon Family Care Centre approved a care plan for the adoption of the child.

[4] Accordingly, all of the underlying proceedings had been concluded at the stage when these proceedings were initiated: the emergency protection order had been substituted by an interim care order made just under two weeks later. In this court's initial order dated 25 September 2018 it was stated this leave application had the appearance of a satellite, wrongly focussed and possibly academic challenge; and the evidence was considered to be manifestly incomplete as it failed to address at all the events which ensued, including court orders, consequential upon the sole impugned decision, namely the lodging of the emergency protection application by the two Trusts.

[5] One can view the aforementioned failures through different though inter-related prisms. These include in particular the applicant's duty of candour to both the court and the proposed respondents. There has also been a considerable delay in bringing these proceedings and the principle of practical and effective, as opposed to theoretical and illusory, remedies in judicial review proceedings arises.

This court's initial order continued:

"Further and independent of the above the bundle is manifestly non-compliant with the Judicial Review Practice Direction. The court is minded to list this application on an early date with a view to dismissing it."

[6] There was a subsequent listing of the case before the court and a still further listing today and in compliance with the directions of the court the parties have provided written submissions. The central issue which has materialised is whether the court should refuse leave to apply for judicial review on the ground that these proceedings are academic. There is no dispute – and there cannot be any dispute – that the proceedings are entirely academic in the following sense. As the court observed in its initial order no practical and effective remedy can be granted to the applicant at this stage. This is acknowledged indirectly on behalf of the applicant in the application for declaratory relief only. The juridical reality is that if the proceedings were permitted to proceed the court would be considering the grant of declaratory relief only and nothing else.

7. Where proceedings in the Judicial Review Court have been rendered academic the principle which falls to be considered is known as the **Salem** Principle that is the case of *R v Secretary of State for the Home Department ex parte Salem* [1999] 1 AC 450. The court, fundamentally, applies a public interest prism and asks itself whether there is any reason in the public interest why the proceedings should be permitted to continue.

[8] The main matters to which the court's attention had been drawn by counsel for the applicant are the distress to the mother, the emergency context, the fact of a new born child, the involvement of a social worker accompanied by police officers at hospital and asserted errors by public officials. The contention which was developed is that the application brought before the Family Proceedings Court should properly have been one for an interim care order on notice and not for an emergency protection order ex parte. This is one of the issues which has been addressed in a recent judgment of the Court of Appeal promulgated (this court was informed) on 11 March 2019. Accordingly, from this court's perspective no further guidance which would be appropriate for other future cases is necessary. Furthermore, the submissions advanced on behalf of the applicant make clear that the factors which are highlighted are of an intensely fact sensitive nature.

[8] The court concludes without hesitation that the application of the **Salem** Principle at this stage impels to an order refusing to grant leave to apply for judicial review. Accordingly, the order of the court is:

- (i) Leave to apply for judicial review is refused.
- (ii) There shall be legal aid taxation of the applicant's costs.
- (iii) Given that the case has not proceeded beyond the leave stage the court will with some reluctance adhere to the general, though not inflexible, practice of making no order as to costs inter-partes.