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(subject to editorial corrections)*

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE: KATE AND WILLIAM – REDUCTION OF POST ADOPTION CONTACT

O'HARA J

Introduction

[1] This case involves an appeal by Mrs X from the Family Care Centre on the often difficult assessment of circumstances in which arrangements for post-freeing and post-adoption contact should be changed. The identities of the parties have been anonymised in order to protect the interests of the children. Nothing can be published or disclosed which may lead to the children being identified.

Background

[2] The two children whose interests are central are Kate who is now 11 years old and William who is 7 years old. They were removed from the care of Mr and Mrs X more than 4 years ago in 2013. Mrs X is the mother of both children. Mr X is the father of William but not Kate. In July 2015 care orders were made for both of them, followed immediately by orders freeing them for adoption without the consent of any of their three parents, that consent having been withheld unreasonably. Mr and Mrs X appealed to the High Court but withdrew their appeals in December 2015 after receiving reassurances about the contact which they would have with their children after the freeing orders and after any adoption orders.

[3] Kate and William were adopted in autumn 2016 by the couple whose care they have been in since spring 2015. They have flourished in that care after years of dreadful neglect by Mr and Mrs X. That neglect was so great that Mr and Mrs X were prosecuted in a District Judge's Court for child cruelty and neglect. They pleaded guilty in August 2015 but only after Kate had been required to attend court as a prosecution witness. (In the event she did not have to give evidence.)

[4] The care plan upon which the care orders and freeing orders were based provided for contact between Mr and Mrs X and Kate and William. Up to July 2015 Mr and Mrs X had supervised contact twice per week for 2 hours on each occasion. The plan was that after a freeing order was made that contact would be reduced to once per month for 1½ hours. Then, after adoption, the plan was as follows:

> "Post adoption, twice yearly direct contacts and two indirect contacts will be recommended. Direct contact is dependent on the parents' ability to accept the care plan – if this is undermined direct contact will be once per year …"

[5] As already stated, the appeals to the High Court in December 2015 against the care and freeing orders were withdrawn on the basis that this contact plan was still applicable. This suggests that the late guilty pleas in August 2015 in the District Judge's Court had not caused any significant reconsideration of the contact plan.

[6] It is therefore surprising that by 18 April 2016 the level of post freeing contact was reduced from once per month to once every 3 months. This must have been based primarily on events which occurred after the appeal was withdrawn. Only one specific event during this period has been noted and drawn to my attention. It occurred on 15 April 2016 and involved a level of inappropriate behaviour by Mr X during contact. The more generalised concern was about the negative emotional impact of contact on Kate and William whose behaviour was reported to be unsettled with high levels of distress following contact. That is undoubtedly an important factor which the Trust and prospective adopters were properly concerned about.

[7] In any event the ongoing contact was considered again before the adoption hearing in autumn 2016. According to the Trust's case, this assessment took place between April and July during which educative work was done with Mr and Mrs X who attended 4 out of the arranged 5 sessions. However they only had one contact with Kate and William between 18 April 2016 when contact had been reduced to once every 3 months and 21 June 2016 when they were informed that post adoption contact would be once per year direct (rather than twice) and once per year indirect (rather than twice). That single contact was on 17 May. During that session Mr and Mrs X called themselves "mummy" and "daddy", they referred to Kate by a name she no longer wished to be called and a picture of the birth family drawn by Mrs X was slipped into Kate's bag.

[8] During all of this time there was a running issue about William's passport. Mr and Mrs X prolonged in an entirely unnecessary and aggravating way the handing over of that passport to the Trust and prospective adopters. Their pretext for doing so was that there had not yet been an adoption hearing. Sadly this was not untypical of their hostile responses to reasonable requests from social workers over an extended period.

[9] There was a further direct contact in August 2016. In favour of Mr and Mrs X, they did not refer to themselves as mummy or daddy, they called Kate by her preferred name and no drawings were slipped into her bag. However on the understanding that this was to be the last direct contact for a year, they brought a large number of presents, including some in Christmas wrapping, and a birthday cake. This left the children understandably confused.

[10] Kate and William were adopted in autumn 2016. Since then the adopters have been and will remain their legal parents. This is the culmination of the legal process, part of which was the termination of Mr and Mrs X's parental rights when the freeing orders were made in July 2015.

[11] A consequence of this chain of legal orders is that when Mr and Mrs X seek to challenge the level of post adoption contact which they are allowed with Kate and William, they must seek the leave of the court to do so – see Article 10(1)(a)(ii) of the Children (NI) Order 1995. Their application for leave was refused in the Family Care Centre from which they have appealed to this court. It was agreed between the parties that if I granted leave I should also consider the merits of the application for increased contact ie a restoration of contact to the level set out and approved when the care and freeing orders were made in July 2015. Article 10(2)(b) of the 1995 Order allows me to make a contact order if I have granted leave.

Submissions

[12] For Mr and Mrs X, Ms C Hughes has submitted:

(i) The test for leave being granted is a limited one, namely whether there is any eventual real prospect of success – see *Hershman McFarlane at B611.*

(ii) The developing history of post adoption contact shows a recognition of the benefits it can bring by giving children a sense of their own history without undermining their permanency and security as the children of their adoptive parents – see generally the speech of Lady Hale in *Down Lisburn Health & Social Services Trust & Anor v H & Anor* [2006] UKHL 36.

(iii) The Northern Ireland practice in this area was scrutinised by Keegan J in *ZH v Mr and Mrs H and a Health & Social Care Trust* [2016] NIFam 6 in which she analysed and approved the usual approach in this jurisdiction. That approach is not to make a formal contact order (in favour of birth parents) but rather to have an agreement as to post adoption contact which will generally be adhered to provided that the birth parents do not undermine the new family unit, that contact is beneficial to the children and that it is kept under review.

(iv) In this case the contact agreement reached in July 2015 and affirmed in December 2016 had been changed twice by June 2015 with limited evidence of new issues emerging which were adverse to Mr and Mrs X.

[13] Ms J Lindsay represented the relevant Trust which had sought and obtained the care and freeing orders, supported the adoption application and proposed and endorsed the reduction in contact. While the adoptive parents were joined to proceedings as respondents, they were content to have their case advanced by Ms Lindsay. She submitted:

(i) The July 2015 proposals for post adoption contact were always dependent on Mr and Mrs X accepting the care plan and not undermining it.

(ii) Even after July 2015 Mr and Mrs X maintained their aggression towards social workers and failed to behave appropriately at contact for example taking photographs, withholding the passport, calling themselves mummy and daddy.

(iii) There was some evidence of an adverse reaction including frustration and distress on the part of the children.

(iv) Since contact is designed to protect and advance the interests of the children, the reduction from twice per annum to once per annum for both direct and indirect contact was well-reasoned, legitimate and proportionate.

Conclusion

[14] It is important to emphasise, as Keegan J has already done, that in this jurisdiction most care orders and freeing orders are made with agreements as to the way in which contact will be maintained in future rather than formal court orders. The value of this approach is that it allows and encourages flexibility to a greater degree and it avoids unnecessary applications to amend orders as circumstances change in the future. That way of dealing with the sometimes thorny issue of contact is well-known to social workers, lawyers and judges in family courts.

[15] It also needs to be recognised that many cases are resolved without taking up an undue amount of court time on the basis of these agreements. Thus a parent who might not formally consent to a care order or to a freeing order will not actively oppose it, or at least not oppose it strenuously, if there is an agreement which he/she can rely on as to contact. That agreement is deliberately not a guarantee – too many things can change over the years for it ever to have that status – but it represents a way of going forward with a degree of confidence.

[16] Against that background it is essential that these agreements about contact are realistic and achievable. Unduly generous promises or indications as to future contact should not be made in order to achieve a resolution of a case, however

tempting that may be. Agreements as to contact should not include provision for excessive contact which is not in the interests of the children. Nor should whatever agreement on contact is reached then be altered by an early reduction of that contact in the absence of any developments which are genuinely fresh or significant enough to warrant such alterations.

[17] I am concerned in this case that an agreement about contact which was made in July 2015 and affirmed in December 2015 was changed so quickly with the first reduction in April being followed by a second in June 2016. I am particularly concerned that the agreed level of post adoption contact was never even tried – it was halved before the children were even adopted. A further concern is that the indirect contact was halved whereas the care plan envisaged only that direct contact would be reduced. That point was recognised during the appeal hearing and I was informed by Ms Lindsay that the indirect contact would be restored to twice per annum.

[18] In view of the concerns expressed above I am satisfied that it is appropriate to grant leave to Mr and Mrs X to apply for a contact order. The main issue left to be resolved, now that indirect contact has been agreed, is whether I should order that direct contact be restored to twice per annum. I conclude in this case that it should not be so restored. On this issue I am concerned that the extent of post adoption contact provided for in the care plan was excessive. Its seems to me to be very difficult to understand how direct contact twice per annum could be in the interests of children who suffered treatment so bad that Mr and Mrs X pleaded guilty (eventually) to charges of child cruelty and neglect with Kate having to be brought to court as a prosecution witness. I am unimpressed by the manner and speed at which contact was reduced between December 2015 and June 2016. However that dissatisfaction is outweighed by my conclusion that the original intended level of contact was just too much in the specific circumstances of this case.

[19] For these reasons the final outcome of the appeal is as follows:

(i) Leave to apply for contact is granted to Mr and Mrs X.

(ii) Their indirect contact will be restored to twice per annum but with it being unnecessary to make any order to that effect.

(iii) I decline to order or require direct contact to be restored to twice per annum.

(iv) Both the direct and indirect contact will continue to be kept under review. They can be reduced if Mr and Mrs X again behave inappropriately or if the continuing contact is contrary to the interests of either or both children.