

THE HIGH COURT

FAMILY LAW

[Record No.: 2016/14 M.]

IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT, 1989

AND

IN THE MATTER OF THE FAMILY LAW ACT, 1995 (AS AMENDED)

AND

IN THE MATTER OF THE DOMESTIC VIOLENCE ACT, 1996

BETWEEN

U. U.

APPLICANT

AND

D. Q. E.

RESPONDENT

JUDGMENT of Mr. Justice Henry Abbott delivered on the 22nd day of November, 2017

1. This judgment relates to an application by the respondent for orders relating to interim custody of the children of the parties U. aged eight and Q. aged three. The parties are married and the hearing of the substantive judicial separation proceedings is pending imminently in the High Court before another judge.

History of the Interim Application

2. The interim application was necessitated by the enquiries of the court in relation to whether issues of custody regarding the children required the attention of the court prior to the hearing of the substantive proceedings by reason of the considerable degree of disclosure in case management pending in the case.

3. The affidavit of welfare of the applicant wife (who is the respondent in relation to the husband's application for custody), sworn on the 16th of May, 2016, shows that she claimed to be primary carer saying that she would look after the children during the school holidays and that she did not anticipate there would be any change in these arrangements. She described the contact of the children with the husband on the basis that "the respondent sees the children two to three evenings per week plus Saturday mornings and Sunday afternoons" and "the children did not stay overnight or have holiday visits". In answer to whether these arrangements would be changed she stated "not presently". While the affidavit of welfare indicates that U. suffers chronic asthma and had issues with dyslexia and Q. had a need for speech therapy, this judgment proceeds on the basis that these aspects do not form the major part of the consideration of the case, on the basis that the court is satisfied that their health needs will be met by their parents in a conscientious way.

4. In the affidavits of welfare and in other affidavits the parties each assert their good health but the husband asserts that the relationship is marred by the obsessive compulsive disorder of the wife and the wife alleges that the respondent suffers from respiratory issues, depression and "behavioural issues".

5. The court invited the parties through their solicitors and counsel to agree terms of reference for a letter to a s. 47 expert and to agree a person with the appropriate expertise. Eventually, the parties agreed Ms. H on the suggestion of the wife and the letter of instruction was settled by the court with the agreement of the parties. This letter described the children as having been loyal to the wife and sought advice in relation to their welfare and access, and in addition invited examination of the parties' psychiatric issues. The s. 47 expert prepared a report in accordance with her terms of reference and presented it as a s. 32 report under the amended legislation of 2015.

Recommendations of the Report

6. It is instructive that the court would set out the details of the (by now) s. 32 expert as they not only speak for themselves but also set the scene for the issues which were very robustly fought before the court in several hearings lasting over sixteen days over several months. The recommendations read as follows:-

(1) Wife needs to be referred for psychiatric assessment and report with immediate effect. If required, a recommendation and referral can be made in this context. It is clear that she will require psychotherapeutic intervention in due course.

(2) Husband needs to attend cognitive behavioural therapy with the specific intention of managing reactive anger issues. This needs to be effective immediately. If required a recommendation can be made in this context.

(3) S. (daughter) and her father need to attend family therapy with the specific intention of managing any issues outstanding for U. in a secure and safe environment. If required, a recommendation can be made in this context. Wife needs to give an undertaking not to question U. about the content of these sessions.

(4) In due course, U. will need to attend art therapy with a view to allowing her own voice to be heard and in particular to dilute the impact of the sharing of inappropriate information and responsibility. However, a good outcome can only be achieved in the context of supportive and non-invasive parenting. It is unlikely that this can be achieved in the short term.

(5) Ms. O., speech and language therapist, needs to continue working with Q. (son), in liaison with the HSE as she needs to work with both parents and it is unlikely that they will work together, she will need to be facilitated on alternative weeks with either parent. As she is conducting home visits, she is well placed to provide a report in due course. During

the course of therapy Ms. O should be in a position to highlight any parenting issues as they arise and offer either intervention or referral in this context.

- (6) Given his issues with social development it is recommended that Q. attend playschool for five mornings per week.
- (7) S. needs encouragement to participate in group activities by way of learning social inclusion skills. A local sport or scouts club would be appropriate.
- (8) Both parents need to attend parenting skills programmes appropriate to the age and development of the children.
- (9) Both parents need to attend stress management courses either privately or as provided by local primary care centres.
- (10) Husband needs to provide documented evidence to the court that he has implemented his business re organisation plan as outlined in the body of this report by way of facilitating his need to be present for his children on a daily basis.

Until such time as recommendations (1), (2), (3), (5), (6), (7), (8), (9) and (10)

have been implemented and care arrangements may be reviewed.

7. The interim recommendation for the care of U. and Q. is as follows (I have added numbers in this judgment to correspond with the successive bullet points):-

- (1) In the interim, husband be appointed as the primary parent with custody of the children from end of school time for both children on Thursday afternoon to commencement of school time on Monday morning (Four nights).
- (2) Wife will have custody of the children from end of school time on Monday afternoon to commencement of school time on Thursday morning (three nights).
- (3) These arrangements will prevail throughout the school holidays with notable exceptions.

The Christmas Period:-

The children will spend Christmas Eve with their mother from 12 noon on Christmas Eve until 12 noon on Christmas day. They will spend Christmas day from 12 noon until St. Stephens day at 12 noon with their father when the arrangement will return to normal.

Birthdays:-

The children need to spend time with the non-resident parent on their birthday. Ideally both parents should attend the birthday celebration. Should this not be possible a mutual agreed arrangement needs to be put in place.

The children will spend time with the non-resident parent on his or her birthday a mutual agreed arrangement needs to be put in place, the same arrangement will apply to Father's day and Mother's day.

- (4) When the children are in the care of either parent, there cannot be inappropriate sharing of information. Both parents need to adopt a culture of mutual respect for one another and this needs to be modelled to the children.
- (5) Both parents need to attend all events pertaining to the children's welfare either together or separately (preferably together). This includes parent teacher meeting, medical and psychological assessments, sports and drama events etc.
- (6) Both parents need to share copies of reports pertaining to the welfare of the children.

8. The author of the recommendations adds the following overall comments:-

"It is hoped that these recommendations can be reviewed after a period of six months at which time all reports should be received and the relevant interventions well advanced or completed. At this point, recommendations for the long term care of the children can be reviewed as well as arrangements made for annual holidays etc."

The Hearings

9. The hearings herein commenced on the 13th of December, 2016 and progressed to November 2017 punctuated with long adjournments, necessitated by unavailability of various personnel participating in the proceedings including court availability and interim orders or consents were made on at least two occasions to cater for some means of providing access for father to the children pending the final decision of the court.

10. From the outset, wife's counsel objected to the admissibility of the report by reason of the bias of the reporter, lack of qualifications and incompetence. The first issue of bias and incompetence related to the apprehension of Ms. H. that her observations indicated that wife should have psychiatric intervention in relation to her alleged obsessive compulsive disorder outlined by her in para. (1) of the recommendations. This aspect was ultimately removed by the agreement of no less than two qualified psychiatric consultants who furnished a memorandum agreed between the professionals and Ms. H. that there were no such indications of a requirement that there would have to be a psychiatric intervention for OCD but nevertheless it was conceded that it was appropriate that the reporter Ms. H. would have registered her concerns.

The Husband's Evidence

11. The husband, (who was examined in chief by his Senior Counsel), dealt with the matters in the s. 32 report of Ms. H. His evidence also reflected allegations he had made in his replying affidavit and the substantive proceedings and generally repeated his assertion that relations between himself and his wife were made difficult by her alleged obsessive compulsive behaviour. Under cross-examination it was put to him that some of the difficulties he referred to arose from complications and tensions arising from the parties having recourse to fertility treatment to assist in the conception of at least one of the children.

12. Ms. H. (the s. 32 reporter) then gave evidence presenting the report and conclusions. On cross-examination on behalf of the wife highlighted the fact that Ms. H. was under the mistaken impression that she had texted/left a text notifying wife of her appointment

for first meeting with wife on the 5th of September, 2016 at 2:00pm. However, the text intended to be sent on the 1st of September, in relation to this meeting was (according to telephone records produced to the court, and accepted by Ms. H), to have been sent to a number which was not belonging to the wife.

13. A further appointment was made for Wednesday, the 14th of September at 10:00am. In evidence Ms. H. explained that this was a time where it would be expected that the household would be in a state reflecting the fact that the children had recently been dispatched to school and that the state of the house would reflect a certain disorder associated with children having free-rein in their preparations and play prior to departing for school.

14. The court finds that the recital by Ms. H. in the report of the prior text on the 1st of September coupled with the wife informing her that she would only accept appointments either in writing or in telephone conversation put the wife in a bad light with Ms. H. (and through her the court) from the very outset.

15. The further description by Ms. H. of the house being in a show house condition inside and out, with little evidence of child friendly activity set the scene for serious disputes in cross-examination in relation to the evidence of child friendly activity in the house on the morning of the visit or any subsequent visit.

16. Ms. H. was cross-examined in relation to the manner in which she had been delayed for a subsequent meeting to meet mother with children. While Ms. H. agreed that she had been delayed somewhat (due to other duties), her arrival was not as late as what wife had suggested through her counsel. It was put to her that there were, in fact, many items of art displayed in the house and that toys, school reports and items of art for school stored in cupboard and boxes to be taken out by the children when required. Particular focus was placed on allegations in cross-examination that Ms. H. had been briefed from the husband's side on allegations of obsessive compulsive behaviour before taking up her brief to prepare the report and this was denied by Ms. H. Issue was taken with the conclusion that while husband had behaved, (as the personality assessment inventory attended to show), as "passive aggressive" and when provoked over a period of time "can respond aggressively".

17. She was criticized for failing to make enquiries in relation to persons who had treated the wife for complaints not related to OCD and failure to check on the interaction of wife with friends in the context of a general finding that wife lead a stilted and limited social life. She was challenged on her conclusion that husband did not engage violently with wife and conceded that U. had been within earshot of violent exchanges of husband and wife in the next room in the home.

18. Issue was taken with Ms. H.'s disapproval of wife standing back at the door when handing over the children to the husband because she feared the violence/aggression of her husband and it was put to Ms. H. that wife had no other choice to make than to take this course in view of the history of violence, aggression temper-induced abusive behaviour of husband, on these occasions.

Evidence of Wife

19. Before the court deals with the evidence of the wife it should be stated that the evidence of the wife, (and indeed the cross-examination of Ms. H.) took up a considerable time, and straddled various adjournments, so that the hearing of the court, while concentrating on the issue of whether the report of Ms. H. should be found inadmissible for the reasons advanced on behalf of the wife, found it necessary to ensure that steps had to be taken not only for interim access to cater for the fact that the case had not drawn to a conclusion, but also in relation to certain steps to be taken by both parties in relation to counselling etc. for themselves and for S.

20. Photographs were introduced on behalf of the wife and further photographs introduced on behalf of the husband. In the wife's case they were intended to show the profusion of toys available in the kitchen/living area and in the children's bedrooms, especially that of U. The husband was criticised by the court for not giving urgent attention to the need for cognitive behavioural therapy and showing that he had adjusted his business in a manner such that he would be free to cater for any level of access envisaged in the report of Ms. H., or otherwise.

21. To facilitate U. to have a counselling space where she could (without inference from mother), work out any difficulties in a relationship with father on her own terms, Ms. D. was nominated by the husband and the court directed that U. would attend her.

22. The wife gave evidence that she had numerous friends and an active social life, many of whom called to the house. She indicated that in the course of the hearing she would call a number of these friends as witnesses to prove that. She also gave evidence of the extensive involvement of U. in sociable activities but said that U. herself tired of some of these sports/activities.

23. The wife gave extensive evidence in relation to poor attention of husband to the needs of the children prior to separation, stating that he very often led a bachelor type life and disappeared entirely from the home without trace on occasions. On one occasion he absented himself from the home and stayed in a hotel while he had pneumonia. She stated that his drinking was excessive and that he could engage in very upsetting mock playful behaviour by lying down on the ground in the house or outside ostensible to play with Q. but which could greatly upset the mother and children especially S.

24. She cited very acrimonious behaviour at the First Holy Communion and stated that the husband's relatives were present at this ceremony but she did not engage with them, - as she never does!!! She stated that both children had been exposed to violent and abusive behaviour by the husband and that he had very little parenting skills, and that his unpredictability, and inconsistency, left him entirely unsuited to having the children for any lengthy period, and she produced in evidence copies of text messages which showed the abusive nature of the husband's treatment of her. I quote one of such texts to show the tenor thereof. This example is dated Wednesday 30th of March at 14:16pm:-

"I never loved you everyone said I dropped my standards marrying into a lazy arse weirdo family.

#successful dad#"

She stated that when the husband ultimately had the opportunity for overnight access he brought the children to the North without ever given any indication as to where they would be staying, - or with whom, - and dropped the children back with Q. wet from "head to toe" from lack of attention to toilet details.

Cross-Examination of Wife

25. The wife was cross-examined by Senior Counsel putting it to her that she herself was capable of abusive texts, and unaccounted for disappearances with children. She was cross-examined about the destruction of photographs taken for the benefit of U. and in relation to behaviour attempting to alienate U. from father. She insisted that at all times she wanted U. to have a relationship with

her father but said that U. was not willing or agreeable to go with father on the many occasions when the father requested to go.

26. When it was suggested to the wife that she had, (after an adjournment of the hearing), forbidden an independent counsellor/therapist from seeing U. to assist her with issues between U. and her father, she stated that she was entitled to interview with Ms. D. the counsellor concerned and that she had come to the conclusion from speaking to Ms. D. that she was biased having been in contact with husband's side. It was suggested to her that this person was nevertheless independent.

27. Notwithstanding that the court expressed no opinion as to whether bias had been established or was relevant to this assessment the court invited mother to nominate another such expert to engage in counselling on the same basis with U. and the court ordered that Dr. C. the expert nominated by the wife, would have no communication or input from the wife save as to details in relation to timing and transport.

28. It was suggested to her quite simply that the photographs produced in relation to the bedrooms of U. and Q. showing the profusion of toys were not in fact their bedrooms. The court expressed some doubt in relation to U.'s bedroom as it did not seem to be consistent with the plan of the house available from the architect.

29. The wife insisted that the husband had not made arrangements in his business to deal with the children if he got longer access with them and cited instances where members of his staff had to take over from him in caring for them. She also stated that whereas she had complied with the recommendations of Ms. H., to have therapy he had not done so.

30. It was suggested to her that she had called to the gardaí in relation to the movements of her husband unnecessarily. She admitted that she had called the gardaí and caused them to initiate an investigation against her husband but cited her concerns in relation to the children and in relation to her too. She agreed that she had summoned the valuer who had been nominated by the husband's solicitors to come to the family home and advise her in relation to the sale of the family home and when it was put to her that this was entirely improper interference with the husband's rights she stated that she wished to help her husband in such a venture. It was suggested to her that she had encouraged/permitted U. to destroy photographs which showed U. and father in a good light.

31. It was put to her that the many photographs of the children enjoying themselves in theme parks type entertainment and visits to the North, and various festive occasions showed the children especially U. as being attached to the father contrary to her allegations in evidence. She stated that U. had discussed with her that one of the boys in the cousin's visit in the North had made derogatory comments to her in relation to keeping up with the group, and that father did not take her side, or correct the young boy from making such comments thereby making her feel very unhappy especially "as she was the only girl".

32. It was put to her that the husband had in fact made arrangements to delegate his business interests to other managers to free up time for the children if he is to have them for prolonged periods of time.

33. The case was adjourned to October last, whereupon evidence was given by an engineer on behalf of the husband of attending at the rooms of U. and Q. with a view to determining whether the photographs produced by the wife were in fact of the same location. A report was presented with photographs which had been taken in consultation with the wife's architect. The court concluded, (having heard this evidence that the photographs offered by the wife showing the profusion of toys in both rooms):-

(a) in the case of Q.'s room, on the basis of strong probability that the photographs were fabricated; and

(b) in the case of U.'s room, that the photographs were fabricated, beyond reasonable doubt.

By the stage that the court had given its finding in relation to the lack of authenticity of the photographs the wife should have resumed cross-examination but did not offer to give any further evidence nor was there any request that the cross-examination would continue. The court reserved its judgment as regards the balance of the case to a later date.

A Further Application

34. Before the court gave judgment, a further application was made to the court on behalf of the husband by notice of motion dated the 1st day of November, 2017 and returnable on the 7th day of November seeking *inter alia* an order pursuant to the provisions of s. 6(b) of the Family Law Act 1995 and s. 11 of the Guardianship of Infants Act 1964 (as amended) granting interim sole custody of the children U. and Q. to the respondent (husband) and fixing the terms of interim access in respect of the dependent children in favour of the applicant (wife) pending the determination of the within proceedings or in the alternative an order pursuant to the provisions of s. 10(1)(f) of the Family Law Act 1995 and s. 11 of the Guardianship of Infants Act 1964 (as amended) granting sole custody of the dependent children of the parties marriage namely U. and Q. to the respondent (husband) as a substantive ancillary relief and fixing the terms of access in respect of the dependent children in favour of the applicant herein and supplemental affidavit of the husband sworn on the 13th of November, 2017.

35. The necessity for the application was claimed by the husband arose out of the failure of the mother to allow U. to attend Dr. C. for her counselling (as agreed between the parties) at 2:00pm on the 31st of October, 2017 and her further refusal to hand over the children for access in accordance with the access schedule commencing at 4:00pm that evening. The replying affidavit of the wife says that while she had no objection to the appointments of U. with Dr. C. the particular appointment on the 31st of October, which gave rise to difficulty was an unscheduled appointment by reason of the fact that Dr. C. had an illness which required reorganisation of the date and that the order of the court directing that U. commence therapy with her father "with no input from the applicant except in relation to transport and time tabling" entitled her to negotiate when the appointment was to be made.

36. She also stated that she was bound by the order of the court, there was ambivalence about the detail of the plan, and it was not clear that the 4:00pm pick-up on Tuesday the 31st was envisaged by the plan.

37. A further issue arose from an allegation that wife was endeavouring to alienate U. against father as evidenced by a copy text which was sent on a dedicated section for mother and U. on the telephone of U. on the 10th of August (a date in which U. had an appointment with Dr. C.). The wife stated that the daughter U. had a playdate at 2:00pm on that date and she was not returned until 6:00pm. The text complained of her absence in a surprise tone and asked U. if she was "o.k".

38. The court gave leave to the husband's solicitor Ms. Helene Coffey to swear and file an affidavit rebutting the averments of the wife that she was taken by surprise by the delay in returning U. on the 10th of August. In that affidavit Helene Coffey exhibits correspondence from morning of the 10th of August whereby the mother's solicitors were alerted to the fact that due to the horseshow traffic, U. would be delayed, and that the playdate for 2:30 should be cancelled forthwith.

Conclusions

Bias and Related Issues

39. Notwithstanding that I find that the telephone notification of Ms. H. was egregiously wrong in using a number not relating to the wife in relation to her first appointment, and that she was late to a significant extent for her appointment to meet wife with children at a later date and that her notes and follow-up together with her ability to retrieve records made by her could be fairly subject to some criticism and that her initial impressions of the wife in terms of assessing her for a tendency towards OCD were possibly coloured by her first meeting with the wife, and being told by the wife that she only made appointments by telephone conversation or otherwise, that the report of Ms. H. was based on observations which she had actually recorded and to which she applied her undoubted professional training and experience.

40. I do not accept that it is at all helpful for Ms. H. to define the husband's anger as being reactive in the context of family relationships. To do so would be to ignore the necessity even in criminal law for a person attacked to first seek the benefit of a retreat before using self-defence. The obligation of each parent in charge of children is to ensure that they manage their own anger without using the crutch of provocation from their partner. Otherwise, I accept the ability of Ms. H. to faithfully record a wealth of data relating to the welfare and relationships of all the members of the family, which observations have been corroborated by lengthy examination and cross-examination of both parents and in particular the wife, who has shown through her anxiety to control all aspects of her husband's dealing with the children and running of his separation action an extraordinary capacity to interfere. She summoned his valuer to inspect and value her home using a ruse to suggest that there might be a possibility of having the sale of the property at a later date, fabricated photographs upon which she gave false evidence in relation to the profusion of toys to rebut the "show house" observations of Ms. H., shows that she can behave in a way which is unhelpful to the children, as was found by Ms. H.

41. Implicit approval by the wife of the report, insofar as she asserted that she had taken steps in relation to counselling envisaged by the recommendations and criticism of the husband for not so doing, means that she cannot now ask that it be declared inadmissible in its entirety.

42. In addition, I find that the refusal to hand over U. for her appointment with Dr. C. at 2:00pm on the 31st of October and both children later at 4:00pm is not justified by the attempts of the wife through her solicitors to confuse matters where it was clear that the court directed that she was to have no hand, act or part in relation to these appointments save as to transport and timetabling which I hold to mean that on the occasions when U. was in her custody she was to be told the times at which she was to be collected and returned, and the means of transport to be used.

43. The court will therefore take into consideration the report of Ms. H and accept same as expert evidence subject of course to the court considering the other evidence in the case having regard to the fact that the prolonged hearing provided a matrix of oral evidence and documentation which enable the court to form its own view of the temperament, disposition and intentions of both husband and wife, and also to see indirectly through evidence of parents, photographs and other records and reports the situation of the two children parental behaviour as affects their welfare. To that extent the court has been assisted by the prolonged hearing which might be criticised in other circumstances for its length and inefficiency.

44. The court is also assisted by the fact that it has had the opportunity to examine the practical operation of the limited access in the mother's parenting plan accepted by the court from July 2017 and in the earlier schedule of access which resulted in the trip to the North described above. I agree with the opinion set out on pp. 12 to 13 in the report of Ms. H. except to say that now that the psychiatric aspect of the allegation of OCD has been removed, I am more of the opinion that the mother's character is not such that she can with some insight into her tendency towards cleanliness, order and control, look after the children with good effect and that she may do this more effectively if there is a less strongly expressed reaction from the husband as was evident by the text quoted, (which by any standard), is the text of a bully and a troll which cannot be tolerated by the court and which if continued will bring out the worse tendency in his wife.

45. The parties herein should realise that notwithstanding the difficulties in the past, they have a responsibility to their children to become supportive and mediational to each other in the context of their now separated state, sharing responsibility for their children. This approach should, at least, relate to the development of cordial relations with each other, expressed in civil means of modern communication such as fax or text.

46. This approach should also be reflected in a cordial and tolerant (if not enthusiastic) approach to each spouse's relatives by the other, so that the social capital of the children will be preserved and nurtured for the future.

Voice of the Child

47. I am satisfied that the report of Ms. H. shows that both children had a full opportunity to voice their views about various aspects of their lives and in particular issues of access and custody. It may be accepted that Q. is of an age that the court is not bound by any requirement to hear his voice.

48. Suffice to say, that U. is just of an age where the Constitution and the law requires that her voice be heard, and I am satisfied that both her expressed opinion and the observations of her behaviour with both wife and husband indicate that she has a desire to have a relationship and contact with both parents; and that through Dr. C.'s continued involvement she will have a chance to express her concerns in relation to detailed aspects on a continuing basis, so that she may develop her relationship with the husband and not be so dependent on the wife to deal with matters which might have the effect of sundering the relationship between U. and husband or causing any alienation.

49. I am satisfied that (notwithstanding the sometimes grotesque behaviour of both parties), both have a strong underlying commitment to ensure that the children grow up with a relationship with both parents and this has been strengthened by the fact that the wife through her lawyer has given an undertaking that she will consent on a continuing basis to the children being brought North (that is to say, to the jurisdiction of Northern Ireland) to maintain contact with the many young cousins and friends they may have there.

The Law

50. Section 45 of the Children and Family Relationship Act 2015 provides that this Court in deciding the question of custody or upbringing of, or access to the children in the manner in which the court shall have regard to the best interest of the child as the paramount consideration and that in determining the best interest of the child that the court shall act in accordance with Part V of the Guardianship of Infants Act including s. 32(2) (as amended).

51. The court thus sets out below the manner in which it has regard to the factors and circumstances included by s. 32(2) as factors

and circumstances to which the court shall have regard.

(a)

52. The meaningful relationship envisaged in this case reflects the relationship with which the children have with both parents and their grandparents, aunts and cousins on both sides of the family.

53. Having regard to all the evidence and the report of Ms. H. such relationship is clearly of immense importance, and necessary to both children. Maintaining it and developing it is both practicable and feasible provided the orders of the court are adhered to in the custody and access arrangements ordered.

(b)

54. The views of the child U. being the relevant child under the criteria for hearing the voice of the child have been dealt with above and these views favour the continued contact with both parents.

(c)

55. The lack of freedom of U. in the presence of mother needs to be counterbalanced by a greater involvement by the father as envisaged by the recommendations of Ms. H. The criteria under this subpara. (c) have the greatest weight among the various criteria considered by the court, to move the custody more towards father than is envisaged in wife's parenting plan as ordered on an interim basis by the court.

56. The same considerations apply with less force to O., the younger child on the basis that I consider that both parents are equally likely to look after his speech development requirements and otherwise he seems to be an active child who is happy to tag along with U. and enjoy life.

(d)

57. In a manner related to subpara. (c) above this history of U.'s upbringing to date, as described by report of Ms. H., points to a rebalancing of that history, otherwise dangers lurk for the emotional and mental development of U. unless remedial measures are taken such as are envisaged in the order of this Court.

(e)

58. These aspects are happily catered for in any regime envisaged by the court.

(f)

59. These aspects are met by both parents input, but the challenge highlighted by the report of Ms. H. in the case of U. is best met by the order proposed to be made in this Court which has been influenced by the opinion expressed in that report.

(g)

60. S. is aged eight, and while Ms. H. does not advert to this as a critical factor, the court in its own experience regards this age as one at which alienation by one parent against the other may take root and becomes very difficult to eradicate. There are special characteristics in this case insofar as the children's freedom and personal development is being challenged by the current regime and extreme tendencies of the wife and has a better chance of development with the proposed court order.

(h)

61. While the evidence showed that U. was exposed to violence insofar as the husband probably put the wife in fear in a room next door to where U. was seated, it seems that U. would have been exposed to that from hearing the commotion, (as she recounted to Ms. H.)

62. The children have also been exposed to behaviour which is harmful to children and on a par with violence. That is the pretended apprehension of the wife of violence leading her to stand at the door when the hand over is taking place, allowing the children to run out to the car which is across the front lawn on the roadway.

63. I am satisfied that this behaviour on the part of the wife is a charade, which may no longer mar the case. This is because having seen her activity on the video produced by the husband (to attract criticism of her in other aspects) that she is much more relaxed about a handover, insofar as she was in a position to race across at Q. in a playful manner so as to capture him away from the husband, while he waited in the car.

(i)

64. The proposals made by the wife and ordered by the court have not totally assisted in the desirability of the parents of the children agreeing and co operating with such proposals. This is evidenced by wife through her solicitors adopting a nit-picking and misleading attitude towards the October 31st pick-up for U.'s appointment with Dr. C.

65. The wife will cooperate with nothing that is not in accordance with her overall plan to control and manipulate the situation nor will she agree to same. And this, places the onus on the court to direct a scheme of custody/access to which the wife may not be agreeable in the short term at least.

(j)

66. The balance of custody shifting towards the husband reflects the opposite of the desired characteristic set out in (j) on the part of the wife.

(k)

(i) The wife has been found to be fit to care for and meet the needs of the children only up to a point. The imposition of a regime of control and lack of freedom together with over rigorous order, represent a challenge to her fitness.

(ii) Both parents have an ability to communicate and cooperate relating to the child, but only on the direction of the court and subject to the much lacking cordiality as recommended in this judgment.

(iii) Both parents have this capacity subject to the direction of the court.

Household violence

67. The court does not regard household violence as being a major element of this case and the concerns of subs. (3) are met by the parties living apart and each behaving at handover at a standard dictated by this judgment.

Conduct

68. Subsection 4 requires that for the purpose of s. 31 and the determination of the best interests of the child a parents' conduct may be considered to the extent that it is relevant to the child's welfare and best interest only. It is clear that parents' conduct has been considered relevant to the welfare of both children and their best interest. However, it is important having regard to the fact that the court has found that there has been some reprehensible conduct on the part of both parents from time to time that in no circumstances should it be thought that the order of the court is being made so as to penalise either parent for that conduct.

Delay

69. Subsection (5) provides that the court shall have regard to the general principle that unreasonable delay in determining the proceedings may be contrary to the best interest of the child. This application, (although an interim application) has taken an extraordinary long time notwithstanding the efforts of the court to facilitate the parties in contested protracted proceedings. The worst effects of the unreasonable delay have been offset by the insistence of the court on the occasion of each proposed long adjournment to at least have a rule of thumb scheme of access for the children. This has been generally on the basis of mother's proposals so that the court would not have to resort to a purely arbitrary decision. However, these proposals have been found by the court to be inadequate for the purpose of avoiding the chief mischief or damage which the children (especially U.) might suffer, if it is to continue.

70. The court has endeavoured to provide for a scheme of custody and access which should be sustainable in the long term subject to reasonable review notwithstanding that the order, (by definition), is an interim one, and subject to the overall approval of the trial judge in the substantive proceedings.

71. The parties hereto have agreed that the order being made on foot of this judgment is to be regarded as reasonably long-term in that context but it should be noted that if the ultimate provision involves a change of residence outside the school catchment area this may create issues of welfare necessitating the order being made on foot of this judgment being reviewed at the substantive hearing.

Disposition

72. The court proposes to make the following orders. The court proposes to make an order in the terms of para. (1) of the notice of motion herein dated the 1st of November, 2017 in accordance with the custody and access recommendations of the report of Ms. H. on p. 15 thereof with both parents having joint custody but with the husband to have primary day-to-day care of the children in accordance with the time table indicated in the report of Ms. H. for custody of the husband and the wife to have access during the periods indicated in the said report in which she is to have custody.

73. In addition to the report recommendations of Ms. H. the court adds the following provisions:-

(1) The schedule of appointments for U. with Dr. C. to continue as arranged and for the purpose of avoiding any doubts, and out of the abundance of caution, the court confirms that the wife is to have no input in relation to the consultations of U. with Dr. C. save insofar as the same affect transport and timetabling, meaning that she shall be entitled to be notified as to the mode of transport and timetabling involved but shall not be permitted to determine either.

(2) Telephone calls between children and either parent should be afforded at reasonable times and to avoid excessive tensions building up about telephone calls both parents are ordered to set up a closed and encrypted system of WhatsApp communications for written and photographic material between the parents and U. to be shared by Q. and if possible by agreement, the parents should expand the closed circle of WhatsApp to include grandparents and not more than one aunt/uncle on either side and not more than two cousins. The purpose of the WhatsApp is merely to communicate photographs and short items of news affecting the children and not in any manner touching upon the proceedings or any other difficulties of the parties in relation to their proceedings or private lives. WhatsApp has the advantage that may be used "ad lib", without compulsion at having to respond or initiate at a preordained time. Q. should be permitted to share someone's device as the WhatsApp medium using photos/video suits small children as well. The court recognises that the parents possibly permit the children "smart" devices. As a result, the court expects the parents to be in a position to assist it in ensuring that they have proper working systems to protect the children from abuse of these helpful devices.

74. I invite the parties to assist the court in making the final order.