Neutral Citation: [2013] IEHC 516

THE HIGH COURT

[2008 No. 5784 P.]

BETWEEN

HEALTH SERVICE EXECUTIVE

PLAINTIFF

AND

S.C. (A MINOR REPRESENTED BY HER GUARDIAN AND NEXT FRIEND PAULINE UNDERWOOD) AND A.C.

DEFENDANTS

JUDGMENT of M. Justice Birmingham delivered the 14th day of November 2013

1. The matter before the court concerns a request by the Health Service Executive (HSE) for an order lifting the *in camera* rule for the purpose of permitting the HSE to convey any necessary information and/or reports and/or assessments pertaining to any child care proceedings concerning S.C. to the relevant authorities in the United Kingdom and for an order dispensing with the consent of S.C. for the purpose of permitting the HSE to convey any necessary information and/or reports and/or assessments pertaining to child care proceedings to the relevant authorities in the U.K.

2. By way of factual background it should be explained that S.C. was in the care of the HSE from 2000 on foot of an order of the District Court. As a result of an application to the High Court, she was, at one stage ordered to be detained in Gleann Alainn, Glanmire, County Cork. In a situation where the view was formed that Gleann Alainn was not meeting her needs, an order was made by the High Court providing for her transfer to a secure care unit in Peterborough, England.

3. She was discharged from secure care in June 2012, and continued to reside in England. Her situation was reviewed regularly by the Court following her discharge and indeed for a period after she turned eighteen years in February of this year.

4. S.C. is now pregnant and is due to give birth early in the New Year. The HSE received a letter from the social work team of the hospital which S.C. is attending in relation to her pregnancy seeking to obtain "relevant background information" in respect of S.C. The grounding affidavit for this application refers to the fact that the social services department of London Borough of Bartnet are concerned about the safety and well being of the unborn baby and that a named professional is responsible for trying to engage with S.C. to assess her parenting capacity and to consider any safeguarding issues prior to the birth of her baby.

5. When the matter was mentioned in court at a vacation sitting, I indicated that I felt that the application by the HSE gave rise to serious issues and in particular I had concerns that releasing reports might have implications for the efficacy of the High Court minors list. In a situation where, as I was aware, Ms. Pauline Underwood had a long involvement with the case through her role as guardian *ad litem*, I asked whether it would be possible for her to fill the role of *legitimus contradictor*. I am very grateful to her for taking on this role and for agreeing to instruct a solicitor and counsel. I am also very grateful to the HSE for facilitating this. Ms. Underwood has been in contact with S.C. and in addition to performing the role of *legitimus contradictor* has also been in a position to convey S.C.'s views to the court. Ms. S.C. is firmly opposed to any proposal that records relating to her should be released.

6. In addition to having submissions from the HSE and the guardian *ad litem* I have also had the benefit of submissions by counsel on behalf of the second named defendant, S.C.'s mother, who is also opposed to the release of records, contending that this would infringe her personal and family rights.

7. The question arises whether the court has a jurisdiction to relax the *in camera* rule. As I pointed out in *HSE v. McAnaspie* [2012] I.R. 548, the Irish authorities in this area diverge. However, all sides have approached the case on the basis of at least a tacit acceptance that such a discretion does exist and that the real issue in this case is how the discretion should be exercised.

8. The submissions of all parties in a careful and erudite manner have addressed data protection issues and issues relating to privacy rights and family rights. I hope I will not be thought discourteous if I indicate that I have not found it necessary to address all of these issues in detail.

9. Certain facts weigh heavily with me at this stage. First of all, there are no child care proceedings in being as of now. I am also struck by the fact that the request for release of documents is couched in broad and non specific terms referring to any necessary information and/or reports and/or assessments. It is true, that the HSE made clear that they would not be opposed to efforts to define or delimit the material in question. While acknowledging that, it does seem to me that the open- ended nature of the proposal does present real difficulty. Clearly, privacy rights and family rights are engaged and if any interference is to be contemplated, then the interference cannot be wider than strictly necessary.

10. The issues that arise in the Minors List, where the Court is called on to exercise its inherent jurisdiction, are frequently issues of great importance and considerable sensitivity. In those circumstances it is essential that those who prepare reports for the courts feel free to express their view in a free and uninhibited fashion. It seems to me, that if social workers and other professionals and in particular guardians *ad litem*, feel that their reports are likely to be disseminated to statutory bodies having dealings with the former minor after he or she has attained his or her majority, whether those agencies be within or outside this jurisdiction, that this is likely to have an inhibiting impact on their willingness to report freely and frankly. At the very least those called on to report should be confident that there will be no question of releasing documents unless this is absolutely necessary.

11. On this aspect of necessity it seems to me significant that S.C.'s last placement in care was in the UK and that she has resided there since her discharge from that placement in June 2012. The authorities in the UK will have information on her lifestyle up to her eighteenth birthday and indeed beyond it. That information being closer in time is likely to be of greater assistance to the authorities if decisions have to be made in January 2014 or thereafter, than historical information.

12. In the nature of things the great majority of children who feature in the minors list will be experiencing major difficulties in their lives. The intervention by the court exercising its inherent jurisdiction is designed to bring stability to the life of the young person and to allow an opportunity for an effective response to the difficulties that the child is experiencing. Releasing information retrospectively may undermine the effectiveness of the intervention.

13. My involvement over a number of years now with the Minors List has brought home to me the importance of cooperation between social services agencies on a cross-border basis and indeed between courts from different States. I would be anxious to facilitate and to support that cooperation in every way. However, I am not convinced that the release of the documentation is necessary *at this stage* and I do not propose to accede to the application.

14. I should make clear, that my decision is simply not to make the order sought by the HSE at this time. It is possible that in the future, possibly in the context of child care proceedings, it will emerge that a particular defined category of documents will acquire a particular significance. If that happens then a further application can be made and the question of the release of a particular document or class of documents can be considered in the context of the importance of the material in question for the proper disposal of the proceedings. However, given the importance of confidentiality for the Minors List and the importance of the rights engaged, clearly no disclosure would ever be ordered lightly.

15. However for the moment I will simply confine myself to declineing to make the orders sought by the HSE.