

THE HIGH COURT

FAMILY LAW

[2011 No. 5 M]

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964 AND IN THE MATTER OF E.F. AND G.H., MINORS

BETWEEN

A.B.

APPLICANT

AND

C.D.

RESPONDENT

JUDGMENT OF MR. JUSTICE MICHAEL WHITE DELIVERED THE 21ST OF JUNE 2013

1. This is an application pursuant to s. 11 of the Guardianship of Infants Act 1964, concerning the ongoing welfare of the two daughters of the parties. The duty of the court is to regard the welfare of the children as the first and paramount consideration.
2. The applicant is seeking a sole custody order and an order regulating access by the respondent.
3. The respondent seeks a sole custody order in respect of the children and also to have the applicant's access to the children regulated.
4. The application was heard on the 14th, 15th, 16th, 17th and 21st January and continued on the 12th and 13th March when judgment was reserved. The Court has set out the list of witnesses in the schedule.
5. The applicant is Irish and works the family farm in partnership with his mother and is in employment working as an oil company driver. The respondent is English and has resided in Ireland for a number of years. She does not work outside the home at present. The parties married on the 12th November, 2005. There are two children of the marriage E.F. born in 2006, now just short of her 7th birthday and G.H. born in 2008, now aged 5.
6. The parties met in May 2005, the applicant moved into the respondent's residence very shortly thereafter. They subsequently built a new family home on lands on the applicant's family farm, and moved there in 2008.
7. Initially the parties had a good relationship. Unfortunately over a period of time difficulties arose in their marriage, the details of which are in dispute, and to which the court will return.
8. The irretrievable breakdown of the marriage occurred as a result of an incident in the family home on the evening of the 11th September 2010 and early the following morning the 12th September, 2010. On the 20th September, 2010 the respondent left the family home with the children and went to reside with her parents in the United Kingdom. The children of the marriage were removed from the Republic of Ireland without the consent of the applicant. In the United Kingdom a complaint was made by the respondent to the authorities, alleging sexual abuse by the applicant of his eldest daughter E.F. Certain investigations were carried out in the United Kingdom, evidence of which was heard by the court.
9. The applicant commenced Hague Convention proceedings in the United Kingdom. On the 1st February, 2011, the respondent undertook to return to Ireland with the children subject to certain conditions. She returned to Ireland on the 19th February, 2011. The applicant vacated the family home and the respondent has been living there with the children since that date.
10. The applicant did not have any access to the children from September 2010 to March 2011. The access was supervised from March 2011 to March 2012 when it became unsupervised. At present the applicant has access to the children on three periods a week but does not exercise overnight access.

Difficulties in the Marriage

11. Both parties agree their relationship started well but difficulties emerged. The applicant accepted in evidence that prior to his marriage he had used sex chat lines as a form of escapism. He accepted he had recommenced this activity during the marriage. The respondent had discovered this and was very upset leading to a lot of arguments.
12. The applicant accepted he watched adult pornography on occasion but did not have any addiction to it. He stated that both himself and the respondent watched it together on occasion. The respondent gave evidence that the applicant watched pornography frequently and she watched on only one occasion and did not approve of it.
13. Both parties accepted there were difficulties during the pregnancies. The respondent was not well at times and this led to tensions between them. Subsequent to the birth of the children the respondent required medical treatment which impinged on her ability to have further children.
14. The applicant denied he had been physically abusive to the respondent or that he had threatened her. The respondent alleged that he had been verbally abusive to her on a number of occasions. In her direct evidence she did not refer to physical abuse, but has referred to it in some of the reports, and in cross examination.

15. Difficulties emerged as a result of the respondent's business. She ran a fashion boutique business which expanded to a second premises. Considerable debt arose which was of concern to the applicant. There were numerous arguments about the business which closed down with substantial debts. The applicant alleged the respondent would not face up to the financial difficulties. The respondent alleges the applicant forced her to close down the business prematurely.

16. There were personality clashes which ultimately led to the serious argument on the evening of the 11th September, 2010. The applicant considered the respondent to be outspoken and prone to discuss matters in public which he considered private. The respondent considered his criticism of her as controlling behaviour.

17. The respondent has alleged when the applicant drank to excess he was verbally abusive to her. In the parenting assessment of the applicant prepared by the HSE, he denied a drink problem but accepted on occasions he accidentally urinated on the couch as a result of intoxication.

18. There were escalating difficulties in their marriage. This court does not believe the applicant was physically violent to the respondent. The court accepts the respondent was not tolerant of the applicant watching adult pornography.

19. The respondent did not properly address the difficulties in her business which caused frustration on the part of the applicant.

20. The court readily understands the respondent's shock and dismay on discovering the applicant's use of sex chat lines. The applicant, while mainly social, was difficult on those occasions when he drank alcohol to excess.

The September 11th, 2010 Incident

21. The parties went out for a meal and to a licensed premises on the evening of the 11th September 2010. A disagreement developed about the respondent informing a friend, she did not want to have any more children. The applicant claims the respondent had never discussed this with him. There was a heated argument between them. The respondent has described the incident in much more serious terms.

22. This court is satisfied the applicant has minimised the nature of his behaviour in the family home on that night and the following morning. The court regards the respondent's mother as a credible witness. The applicant was loud, threatening and abusive to such an extent that the respondent was in fear and appropriately called An Garda Síochána. The court is satisfied he had taken alcohol to excess. The respondent and her parents were quite traumatised by this incident. His behaviour was unacceptable and the court does not accept the respondent or her father contributed to this behaviour.

The September 12th, 2010 incident

23. The respondent's mother awoke at 7 a.m. on the 12th September, 2010. She was in a downstairs bedroom. Her husband was not present in the room. He subsequently came into the room and sought a camera. He said certain things to the respondent's mother and left the room again. He came back into the bedroom with the camera, put it down and went into the toilet and she heard him getting sick. He then left the room again and, although she did not see him turn off the television, she heard E.F. say "I was watching that". He then returned to the bedroom and asked the respondent's mother to switch on the television again for cartoons for E.F.. At that time the applicant was in the lounge with E.F. The court is satisfied from the respondent's mother's evidence and the evidence of the respondent, that when the respondent came downstairs at approximately 8 am, the applicant was still present in the lounge and as soon as he saw the respondent he left the lounge and went upstairs. The court does not accept the applicant's evidence that he went upstairs to bed before the children came down. The respondent's father has not given evidence to this court nor has any photograph been produced. An incident occurred arising out of which the respondent's mother became concerned that E.F. was watching inappropriate pornographic images on the television, and the applicant was present in the room when this was happening.

The respondent's decision to leave the family home and leave the jurisdiction

24. The court accepts the evidence of the respondent that she was not told of this incident by her parents at that time but was subsequently telephoned a number of days later. From the date of receipt of the information and encouraged by her father, the respondent decided to plan to leave the family home and to go to the United Kingdom, with the children, to the home of her parents. This was done without the knowledge or consent of the applicant. This court believes it was a rash and inappropriate decision on the part of the respondent despite her concerns.

25. On arrival in the UK on the following day, the 21st September, 2010, the respondent made a complaint to the Police Service in the local area about the alleged incident in Ireland on the 12th September, 2010. The Police and Social Services were involved.

26. Two introductory meetings were organised where E.F. was asked some general questions to assess her ability to conduct an interview.

27. Both the respondent and her mother described an incident in the respondent's family home in the UK, on the 28th September, 2010. The respondent's mother told the court she was with the respondent in her living room when a video was played for E.F. She was pulling at her trousers and had a toy bunch of grapes. The respondent took her to the toilet and when she came back she called her mother. E.F. had her trousers off and she wanted to take off her underwear and the respondent was very upset.

28. The respondent stated she took E.F. to the toilet. She wanted to put a plastic bunch of grapes "up her bum and in her fanny", which she tried to do but the respondent told her she could not do it. She wanted to take off her jeans and put the grapes down the front of her underwear, and to take her underwear off. Back in the living room she got the bunch of grapes and was using them in an "in and out motion" and said she was "servicing or bettering her fanny" and that "Daddy had done that to her up the hill". She had put back on her underwear and jeans and then asked for water. She dipped the bunch of grapes in the water. She then pulled her underwear back down and dipped the grapes in the water and bent over and placed the grapes between her leg and her vagina. The respondent said she asked her what she was doing and she stated she was trying to service her fanny.

29. The first orientation meeting at the Police Station took place on Thursday, the 23rd September, 2010. The second meeting seems to have taken place after the alleged incident of the 28th September, 2010.

30. The Police and Social Services decided to conduct an interview with E.F. on the 6th October, 2010 and this interview was recorded. The introductory meetings were not recorded.

31. In the course of that interview after the grape toy was introduced E.F. did state that "Daddy said I'd have to better my fanny". Later in this interview the respondent was permitted to come into the interview room and to ask E.F. some questions and to encourage her. A Social Service Social Worker and a Garda Detective Sergeant both gave evidence by video link in the course of

these proceedings. The interview in the main was conducted by another Police Officer J.B. In the course of his direct examination and cross examination, the Detective Sergeant stated there was no indication of coaching and he had no concern at the time the child had been coached. At the date of the interview on the 6th October, 2010 E.F. was aged 4 years and 3 months.

32. The respondent also stated subsequently G.H. had disclosed certain matters to her which indicated she had been sexually assaulted also. The court does not regard that evidence as credible.

33. On her return from the UK with the children, and during the course of the period of supervised access, an issue has arisen as to the respondent's alleged attempt to alienate the children from the applicant. The respondent has denied this in cross examination, blaming inaccuracies in the reports and her father. The court does not want to get into detail about the various incidents but from reports from Springboard staff and the various expert reports, the court has no doubt the respondent was engaged in alienating the children from the applicant.

34. The respondent also formed strong views about the applicant's alleged involvement in a paedophile ring. Those views have no basis in fact.

35. The court has serious concerns about the reliability of the evidence of the respondent about a number of matters subsequent to her return to Ireland on the 19th February, 2011.

36. The challenge for this court is to weigh, the evidence of the respondent some of which was corroborated by the respondent's mother about the alleged disclosure of E.F. on the 28th September, 2010. I am satisfied the respondent witnessed unusual behaviour by E.F. on the 28th September 2010, which would give any parent cause for concern. In the interview of the 6th October, 2010 E.F. did make unusual disclosures which this court would not expect from a child of that age.

37. The entrance of the respondent to the interview on the 6th October, 2010, and her participation in it, compromised the interview process.

38. Subsequent to her return to Ireland, while E.F. was not interviewed again or reassessed again about the disclosures, the court notes she and G.H. bonded well with the applicant again.

39. Because of the evidence of the respondent's mother, the evidence of the Detective Sergeant and aspects of the interview of the 6th October 2010, this court is satisfied this was not a conspiracy as alleged by the applicant of the respondent and her father to deprive him of custody of the children by removal to England and the use of false allegations of sexual abuse to further that aim.

40. There were objective grounds for concern in this case, however the evidence falls way short of what the court would consider an appropriate standard of Proof. This court does not consider it in the interests of the children to leave any uncertainty on the issue.

41. In view of the detailed assessments carried out since the return of the children to Ireland including the Parental Assessment Reports by the HSE, the Psychiatric Assessments and the s. 47 Report, the court is of the view there should be an attempt at a fresh start.

42. The respondent is a very attentive parent to the children and has their best interests at heart. She has engaged in destructive behaviour in undermining the applicant to the children and that has to cease.

43. The applicant should acknowledge the destructive role he played in the breakdown of his relationship with the respondent. His use of sex chat lines, watching pornography and on occasion anti social drinking are matters which he is personally responsible for and which undermined their relationship. His behaviour on the night of the 11th and morning of the 12th September, 2010 was unacceptable. This court does not consider it appropriate to vest sole custody in him.

44. The appropriate order is joint custody with access developed in accordance with a parenting programme. This court has no objection to overnight access by the applicant, but it should be phased in over a period of time with the assistance of expert help.

45. The court suggests the parties move as soon as practical to a custody and access arrangement where the applicant has custody every alternative weekend from Saturday morning to Sunday night together with regular visitation during the week, and on the other weekend visitation on either a Saturday or Sunday with the option to the applicant to have a number of weekends in the year where he has exclusive custody.