

THE HIGH COURT

2009 8271 P

IN THE MATTER OF S.N. (A MINOR) AND

IN THE MATTER OF ARTICLES 43, 41 AND 42 OF THE CONSTITUTION, AND

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964, AS AMENDED, AND

IN THE MATTER OF THE CHILDCARE ACT 1991, AS AMENDED BY THE CHILDREN'S ACT 2001,

BETWEEN

HEALTH SERVICE EXECUTIVE

PLAINTIFF

AND

A.N.

DEFENDANT

AND

CARMEL MURPHY, GUARDIAN AND NEXT FRIEND OF THE SUBJECT MINOR S.N.

NOTICE PARTY

JUDGMENT of Mr. Justice Garrett Sheehan delivered on the 2nd day of November, 2009

1. When this case was first before me on the 5th October, 2009, the court was told by Peter Finlay S.C. for the HSE, that his client was seeking, *inter alia*, an order directing the placement of the minor S.N., a fourteen year old boy from County Mayo in a residential treatment centre in Nebraska, USA.
2. Ms. Carmel Stewart S.C., who appeared on behalf of the *guardian ad litem* told the court that she was supporting the application and would be arguing that the court had jurisdiction to make such an order, while Ms. Dearbhla Brown S.C., for the boy's mother told the court that she was opposing the application and would argue the court had no such jurisdiction. The court was also told that S.N. did not wish to go to Boystown in Nebraska.
3. Because of the urgency of the matter the case was listed for hearing on Wednesday, 7th October, 2009.
4. On the night of the 5th October, S.N. presented himself at Ballydowd and refused to return to his HSE placement in the Dublin suburb of Donnybrook.
5. Later that night MacMenamin J. granted an application by the HSE to detain S. N. at Ballydowd.
6. On Wednesday, 7th October, the court was told that the only application the HSE now wished to make was an application for an order detaining S.N. at Ballydowd for one month. This application was supported by S.N.'s mother and by the *guardian ad litem*. Accordingly, the issue of the courts jurisdiction to order the placement of S.N. in the USA did not arise.
7. In his opening remarks Mr. Finlay S.C. for the HSE, stated that S.N. the minor, who is the subject matter of these proceedings, had been in over 40 different placements since the age of two and that every conceivable form of fostering arrangement had broken down.
8. Notwithstanding a whole series of depressing reports which the court was referred to including a series of social work and *guardian ad litem* reports as well as psychiatric and psychological reports, two matters emerged as rays of hope,
9. The first of these was S.N.'s placement with a foster family in County Mayo for three years from May, 2004 to May, 2007.
10. It is clear that this period, although not without incidents represents the most stable period in S.N.'s life to date. According to a report of the *guardian ad litem* on this placement S.N. attended the local school and was well integrated socially though he continued to struggle with forming and maintaining peer relationships. His established bond with his foster carers appeared overall to be strongly nurturing and positive.
11. Unfortunately during the course of this fostering placement, his mother issued appeal proceedings in March, 2006 and the court then ordered a significant increase in mother son access. This placed considerable pressure on S.N. and while at a November, 2006 review by the court the contact was reduced to one visit per month, this increased access was undoubtedly one of the factors which contributed to the eventual breakdown of this fostering placement in May, 2007.
12. One of the problems faced by the HSE in this case is that plans previously put in place for S.N. have frequently been disrupted by S.N.'s mother. The evidence before me in this case raised grave doubts about the quality and relevance of the work S.N.'s mother had engaged in with a view to overcoming this problem. She does not appear to understand the source of her own troubles and how her behaviour impacts on her son. It is clear that this failure on her part may continue to adversely affect S.N.'s progress.

13. The second ray of hope relates to S.N.'s eight month stay in Ballydowd from April, 2008 to December, 2008. This placement appears to have been relatively successful. Ms. Hanafin, S.N.'s social worker and Ms. Fulham the director of Ballydowd, both gave evidence and both of them attributed S.N.'s success in Ballydowd to the fact that he was able to form good relationships with the staff and with his peers. They also commented that S.N.'s progress was helped by the important fact that he felt safe in Ballydowd.

14. The importance for S.N. of forming relationships with his peers in Ballydowd cannot be underestimated. This appears to have been the first occasion in his life when this occurred.

15. Notwithstanding S.N.'s progress in Ballydowd the reports indicate a serious and frightening deterioration in his behaviour within a relatively short period of his release. This suggests that the optimism of those involved in recommending his release from Ballydowd in December, 2008 was misplaced and raises a question about the long term effectiveness of the type of therapy that S.N. engaged in while in Ballydowd.

16. Mr. Anton Boyd a senior clinical psychologist with the HSE in Mayo, who has known S.N. since 2006, also gave evidence. Like Ms. Hanafin and the very experienced *guardian ad litem* Ms. Carmel Murphy, who also gave evidence, he was of the view that a long term placement in Nebraska – at least of eighteen months duration – was in S.N.'s best interest. He agreed that the most important thing of all was for S.N. to be able to form appropriate relationships with the adults in whose care he was placed and agreed that the formation of relationships was critical to S.N.'s growth.

17. In attributing the source of S.N.'s problems to his mother's frequent rejection of him, he was confirming the views of other experts involved with S.N..

18. For example, in her report of the 31st march, 2008, the consultant child and adolescent psychiatrist Dr. Antoinette Dalton had this to say:-

"S. is an out of control twelve year old boy from a single parent family. He has had no input from his father, a history of inadequate, inconsistent and rejecting parenting with associated bewilderment and confusion for the child. He has had multiple placements in care. He is now violent, disruptive, oppositional and on the threshold of drug abuse. He has a history of anti-social behaviour with legal proceedings pending. He does not attend school.

Rath na nÓg is in my view a wholly unsuitable placement for him, being an open unit with staff having very limited powers to contain S.'s violent behaviour.

A structured therapeutic placement for a medium to long term period with a variety of levels of security should be offered to S., starting with a very secure structured programme where his violent behaviour can be contained and graduating to a more open living environment with a fallback position of easy access to a highly structured environment, if and when relapses occur. S. will require psychiatric assessment (preferably from a forensic child psychiatrist) occupational therapy and speech and language therapy assessments to out rule developmental delay, access to an educational programme tailored to his needs and access to a variety of therapeutic modalities e.g. play therapy, art therapy, drama therapy.

My understanding is that the staff in Mayo have researched girls/boystown Nebraska as a suitable environment for S. (Ref Anton Boyd's report and Eimear Hanafin's reports) and this venue appears to be appropriate. It is essentially a therapeutic community.

There is a very small window of opportunity to attend to this child's needs. In the event that his needs are not met, S.'s prognosis in my opinion is very poor and it is highly likely that he will continue to represent a significant threat to the safety of adults and peers in his immediate environment, the general public and himself. "

19. While this case was opened to me on the basis that the HSE was simply applying for an order directing the detention of S.N. for a period of one month, as the evidence unfolded it became abundantly clear that not only was this a very urgent case, but also that it was undoubtedly one of those exceptional cases allowed for by MacMenamin J. in his judgment in *S.S. (a minor) v. Health Service Executive* [2008] I.R. 594, and which I referred to in my judgment of the 16th July, 2009, in *Health Service Executive v. H. (a minor) & Anor.*

20. It is clear that S.N. needs to be in secure detention for a lengthy period of time. While I appreciate that the evidence given in relation to S.N.'s possible placement in Nebraska for a period of eighteen months to two years does not seem to have envisaged secure detention for more than six months, nevertheless the detention aspect of S.N.'s placement in Ballydowd can at a later stage be ameliorated by the careful use of mobilities as the staff there see fit. It also seems to me that a lengthy detention order subject to frequent review does not preclude this Court from allowing S.N. to be detained in another institution in the event of it being established that such a transfer would be in S.N.'s best interests.

21. While I am mindful that the application in this case was for secure detention for one month, I cannot ignore the evidence that I have heard, not least the evidence from S.N. himself, who impressed me as an intelligent and able young man with huge potential. He has some insight into his problems and he was clear about why Ballydowd suited him. When asked why he thought he was comfortable in Ballydowd he replied:-

"I suppose because I got to know people around there and I was not being moved every few weeks like."

22. It is important not to underestimate the huge suffering, pain and loss experienced by S.N. as a result of his total abandonment by his father and his frequent rejection by his mother. This deprivation of his fundamental rights as a child has resulted in him now being a grave risk to himself and to others. The only possibility that this Court can see of ameliorating these wrongs is a reasonably lengthy placement in a safe and secure institution.

23. It is also clear from the evidence that being in a secure and safe place is in itself therapeutic for S.N..

24. I am also of the view on the basis of the evidence that S.N. needs certainty in relation to the duration of his detention. I am satisfied that at very least he needs a period of eighteen months detention. It is conceivable that in his very special circumstances that this may not be enough, however, one can only hope that it will be of sufficient duration to enable him to make real progress. I propose, therefore, to order his detention in Ballydowd for a period of eighteen months, with mobilities at the discretion of the director. I will review his detention on a monthly basis with liberty to apply to all parties.