Neutral Citation: [2015] IEHC 775

THE HIGH COURT

[Record No. 060/14 F.L.]

SOUTH EASTERN CIRCUIT COUNTY OF WATERFORD

BETWEEN

O.G.

APPLICANT

AND

C.G.

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered on the 4th day of December, 2015

1. In the summer of 2013, the respondent (the wife) told the applicant (the husband) that she wanted a separation from him. This was the start of what was referred to in the course of the hearing before me as *"the summer from hell".* It is not necessary to rehearse all the allegations and counter allegations that were made by the parties concerning this period. Suffice it to say that Tusla, the Child and Family Agency, became concerned for the welfare of the children in the family, who are D. (14), F. (13) and E. (11). In particular, an allegation was made that the applicant was having inappropriate conversations with the children concerning the breakdown of the marriage. It was the opinion of the CFA that he was using the children as an emotional crutch and there was an allegation that he was trying to turn the children against their mother. These allegations are strenuously denied by the applicant.

2. In September 2013, the children were taken into care, with the consent of the applicant and the respondent. They remained in care until November 2013, by which time the applicant had moved out of the family home.

3. Subsequent to November 2013, the applicant was permitted supervised access for two hours per week. The supervision was carried out by Mr. A. M., a social care leader with the CFA. Over time, the applicant's mother was also involved with the supervision of her son's access to his children. Matters improved in the following months and the children were de-listed by the CFA on 15th April, 2014.

4. On 2nd May, 2014, the parties reached agreement before the District Court on what access the applicant should have with the children. On 24th June, 2014, there was a slight amendment made by consent to the earlier order concerning access.

5. On 18th December, 2014, Her Honour Judge Doyle made a wide-ranging order governing the relations between the parties. On the question of access, she directed that the following provisions would apply:-

> *"3. The children shall reside with the respondent at their home at [address redacted] with the respondent and the court grants access to the applicant on the following terms:*
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> *(i) On the first and second weekend of every month, the children shall be collected by the applicant from their home at 11am on Saturday morning and shall remain with the applicant overnight and shall be returned to their home at 8.30pm on Sunday except during school holidays when they shall be returned at 9.30pm.*
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> *(ii) On the third weekend of the month, the children shall remain with the respondent.*
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> *(iii) On the fourth weekend of the month, the children shall be collected by the applicant from their home at 11am on Saturday morning and returned to their home at 2pm on Sunday.*
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> *(iv) The applicant shall have access every Wednesday. The applicant shall collect the children and the children will remain with the applicant between 3.00pm and 9.30pm and shall be returned to the respondent at 9.30pm on Wednesday night.*
>
> *4. The court makes an Order in the terms of the access arrangements over the Christmas period for 2014, as agreed between the parties on today's date and a copy of the agreed schedule will be handed into court."*

6. Orders were made on 26th March, 2015, and 5th May, 2015, dealing with the attachment of earnings and Pension Adjustment Orders. The court adjourned the proceedings to 30th June, 2015, insofar as the proceedings concerned the welfare of the children. The court directed that Mr. M. should provide a report in relation to the welfare of the children.

7. In a report dated 29th June, 2015, Mr. M. stated that the children's voices should be heard and they wanted the access arrangements to remain as they were. He did recommend some slight amendments to the level of access available to the applicant. By order dated 30th June, 2015, the court made the following adjustments to the access provisions:-

> *"2. The court directs that current access is to continue save for Wednesday during school holidays when access is to be provided to the applicant from 10am to 10pm.*
>
> *3. The court directs that access is to be provided to the applicant on Father's Day and if this falls outside of the applicant's prescribed weekend, the hours of access are from 10am in the morning until 8.30pm at night unless Father's Day falls during the school holidays when the children shall be returned at 9.30pm.*
>
> *4. The court directs that access is to be provided to the applicant on his birthday and if this falls outside of the*

applicant's prescribed day/weekend, the hours of access are from 10am in the morning until 8.30pm at night unless the applicant's birthday falls during school holidays when the children shall be returned at 9.30pm.

4 (sic) The court directs that in respect of the children and their education, in the event that the children require a grind, the cost of same should be shared 50/50 by the parties. If the applicant agrees to give a grind to any of the children, however, he will not be paid for same.

5. The court directs that no requests are to be made for any alterations to the access arrangements save and except court approved such as in the event of an emergency or in the event of a delay in relation to pending access."

8. The applicant was unhappy with the level of access provided to him. When asked during the course of the hearing what access he was seeking, the applicant stated that he would like the following access to the children:-

(i) He wanted the weekends to run from 6pm on Friday to Sunday at 8.30 or 9.30pm.

(ii) In the summer holidays, he could collect the children on Tuesday at 6pm and return them on Wednesday at the usual time.

(iii) At Christmas, Easter and at midterm holidays, access should be on a 50/50 basis with two or three overnights per week.

(iv) That if a parent could not avail of their access period, that the other parent would have first refusal in respect of such period.

(v) On children's birthdays and on Christmas Day, access should be shared 50/50. The children must be picked up at home.

(vi) He suggested that in week 1, the applicant would get the children on Friday evening and drop them back to their mother at 10am on Saturday.

(vii) During the summer holidays, the applicant should have two weeks with the children taken as two blocks of one week in duration.

9. Both the respondent and Mr. M. were opposed to any increase in the access given to the applicant. Mr. M. stated that it was the opinion of Tusla that if the level of access was increased, the children would be at risk of being emotionally abused by the applicant. If more access were given to the applicant, Tusla would re-list the children and would make an application to have them taken into care. He stated that he had spoken to the children separately for 45 minutes each. D. was happy with the level of access currently provided. F. was very loyal to his Dad and wished that he could see his cousins more often. E. stated that she did not like it when her Dad and the boys watched horror movies as she was too scared and had to go up to her bedroom and play on the laptop. Mr. M. was of the opinion that the applicant had considerable influence over the children and they would say whatever their Dad wanted to hear. He stated that Tusla was of the view that the applicant had more than adequate access to the children. They considered that the children would be at risk if they had extended contact with their father.

10. Mr. M. stated that he had seen an improvement in the children's welfare up to June 2015. He had not seen them since that time.

11. The respondent stated that she thinks that the applicant manipulates the children. She said that they are very cagey and closed when they come back from visits with him. They do not say what they have done with their Dad during the visits. She said that the children are careful not to upset their Dad. In cross examination, the respondent accepted that the applicant is a gifted teacher and that many parents had praised his ability in teaching their children. The respondent also accepted that the Wednesday visits and the weekend access was working out satisfactorily.

12. Evidence was also given by Mrs. G. Senior, the applicant's mother. She stated that she saw the children on an almost weekly basis, when they would call to her house with the applicant. She stated that the children got on very well with the applicant. She also stated that the applicant himself had changed considerably from the condition that he had been in, in 2013. She stated that she had never seen the applicant subject the children to emotional abuse. While the court has regard to Mrs. G. Senior's evidence, it must do so with caution as the applicant's family of origin is itself fractured, with two of the applicant's siblings not being on speaking terms with either the applicant or his mother.

13. Finally, the applicant gave evidence that he was seeking access on Friday evenings and on the Saturday mornings when the respondent was out working. He stated that the children have a great time with him. He stated that they do not refer to the respondent. He denied that he was abusing the children or using them as an emotional crutch. He felt that the report prepared by Mr. M. was somewhat one sided, as he had had contact with the applicant's brother and sister and with the respondent's brother, but made no reference to the views of Mrs. G. Senior, who was strongly supportive of the applicant. The applicant did not accept that the questions put to his children had been put in a fair manner. He alleged that D. had been asked the question: *"you are happy with the access arrangements, aren't you?".* Mr. M. had denied any impropriety on his part in the compilation of the report.

14. In her closing submissions, counsel for the respondent, Ms. Cleary, B.L., stated that Mr. M.'s report was an expert's report which constituted the voice of the children. She urged that the court should adopt the recommendations of that report and refuse to extend the access provisions already given to the applicant. She further stated that Mr. M. had sent an email to her solicitor indicating that if access is extended by the court, the case would be reopened by the HSE.

15. In his closing submission, the applicant pointed out that he was allowed to see the children on Wednesdays and for a number of weekends each month. It was accepted that it was safe for the children to have access to the applicant for these periods. It was illogical to then suggest that if the access was extended slightly, that the children would suddenly become at risk of being emotionally abused.

16. In considering the question of access, the court must look at the historical background of this issue. The order which was made in December 2014 was based, in large part, on the consent order which had been made in the District Court on 2nd May, 2014. The access provisions contained in the order of December 2014 seem to have operated fairly satisfactorily, because they were extended slightly in favour of the applicant in the order of 30th June, 2015. The access provisions under that order also appear to have operated satisfactorily down to the present time. The children have been de-listed by Tusla since April 2014. Mr. M. has not seen the

children since June 2015. The respondent accepted that the Wednesday and weekend access periods were operating in a satisfactory manner.

17. It is against this background, that I must assess the objections to the extension of the access arrangements as put forward by Mr. M. and the respondent. It seems to me to be illogical to argue that, while it is all right to allow the applicant to have access on a Saturday during the day, and on Saturday evening and on Sunday but to say that if that is extended to include Friday evenings that the children would suddenly be exposed to the risk of emotional abuse. That simply does not follow.

18. It seems to me that as the access arrangement which was put in place in December 2014, which had been modelled on the consent access provisions of 2nd May, 2014, have operated satisfactorily for one year, that it is appropriate that they should be extended in favour of the applicant so that the parenting arrangement will be moving towards a 50/50 split. However, I am conscious that the overriding prerequisite in relation to the question of access must be the best interests of the children. Those interests were best served by the orders which were put in place in December 2014, and June 2015. I am satisfied that it is in the best interests of the children that they be given some further access to their father. In the circumstances, I make the following amendments to the access provisions laid down by Her Honour Judge Doyle in her orders dated 18th December, 2014, and 30th June, 2015:-

(i) On the first weekend of the month, the children shall be collected by the applicant at 6pm on the Friday and shall remain with the applicant until 8.30pm on the Sunday when they shall be returned home, except during school holidays when they shall be returned home at 9.30pm.

(ii) During the summer holidays, except during the holiday periods outlined below, the children can be collected by the applicant at 6pm on the Tuesday and remain with him until 9.30pm on the Wednesday.

(iii) During the summer holidays, the parties are to have the following holiday periods with the children:-

(a) from the first Saturday in July at 11am until the second Saturday in July at 6pm, the children will be with the applicant;

(b) from the third Saturday in July at 11am until the fourth Saturday in July at 6pm, the children will be with the respondent;

(c) on the first Saturday in August at 11am until the second Saturday in August at 6pm, the children will be with the applicant;

(d) on the third Saturday in August at 11am until the fourth Saturday in August at 6pm, the children will be with the respondent.

(iv) The arrangements for access during the Christmas holidays of 2015 are to be determined by the learned Circuit Court Judge when dealing with the pension adjustment order in the coming weeks. It can be modelled on the consent arrangements that were put in place for Christmas 2014.

(v) During the Easter holidays, the following arrangements shall apply:-

(a) from the Monday of Holy Week at 11am until Holy Saturday at 6pm, the children shall be with the applicant;

(b) from Holy Saturday at 6pm until the Sunday after Easter at 6pm, the children shall be with the respondent.

(vi) There is to be no change to the access provisions unless ordered by the court.

(vii) The access arrangements are to be reviewed annually in the Circuit Court.

(viii) Liberty to the parties to apply to the Circuit Court if any clarification is needed in relation to the order herein.

19. Finally, I would like to make two comments. Firstly, it is clear to the court that each of the parties love their children very much. There has been an irretrievable breakdown of the marriage. However, things have moved on since 2013. The applicant has asked that there be flexibility in the access provisions. This would be very desirable and would be in the best interests of the children. However, the parties have not yet reached the stage where they are capable of managing their relations with each other. It is for this reason that the court has had to be prescriptive in relation to the access arrangements. I would urge the parties to enter into some form of dialogue, so that in time they will be capable of organising between themselves what is best for their children.

20. Secondly, the clear inference from the evidence of Mr. M. was that if the court made even a minor alteration to the existing access provisions, Tusla would immediately seek to have the children taken back into care. This Court did not appreciate being threatened in such a manner.

Application for a Stay on the Judgment

21. When the judgment herein was delivered on 4th December, 2015, Mr. Burke on behalf of the respondent applied for a stay on the operation of the judgment until January 2016. He said that such a stay would enable the parties to address the issues contained in the judgment and would allow for contact to be made with Tusla.

22. In response, the applicant urged the court not to put a stay on the operation of its judgment. The applicant stated that to put a stay on the judgment, would only prolong the agony of the last two years.

23. Having considered the submissions of the parties, I am of the view that it is appropriate to put a stay on the operation of the judgment, so as to allow the parties to take stock of the new access arrangements which were outlined in the judgment. I put a stay on the operation of the judgment until the end of the Christmas school holidays in January 2016.