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Case No: DE21P07020 / DE21P07046 / SE21P71590

IN THE FAMILY COURT
SITTING AT DERBY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2022

Before :

MRS JUSTICE LIEVEN

Between :

Case No: DE21P07020

JAMES MACDOUGALL

Applicant

and

SW

First Respondent

and

THE CHILDREN
(by their Children's Guardian)

Second and Third Respondents

Case No: DE21P07046

JAMES MACDOUGALL

Applicant

and

EG

First Respondent

and

THE CHILD
(by their Children's Guardian)

Second Respondent

Case No: SE21P71590

KE

Applicant

and

JAMES MACDOUGALL

First Respondent

and

THE CHILD

(by their Children's Guardian)

Second Respondent

Ms Lorna Robertson (instructed by **Family Law Group**) for **James MacDougall**
Ms Bethany Armitage (instructed by **Bhatia Best**) for **SW and EG**
Ms Jasmine Harrison (instructed by **Howells LLP**) for **KE**
Ms Carolyn Jones (instructed by **Cartwright King Solicitors**) for **the Children**

Hearing dates: **12 April 2022**

Approved Judgment

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MRS JUSTICE LIEVEN

This judgment is being handed down on 24 May 2022. It consists of 98 paragraphs.

The judge hereby gives leave for it to be reported.

Mrs Justice Lieven DBE :

1. I have before me three linked cases, all concerning children whose biological father is James MacDougall ('JM') who acted as sperm donor in the conception of the children. In the first two cases ('SW' and 'EG') JM has applied for parental responsibility orders and child arrangements orders ('CAO') for him to spend time with the children concerned. In the third case, the mother ('KE') has applied to vary an existing CAO and for a non-molestation order, and JM has applied for enforcement of the existing CAO. I decided to adjourn the latter case, although varying the existing CAO. KE's case has a number of features quite distinct from that of SW and EG, in particular that the child ('B') has had contact with JM over a period, recognises him as his father, and that there are court orders in place granting JM contact. Most importantly, B has recently presented with unexplained bruises on three occasions, and I have ordered a s.37 report to be drawn up by Sheffield CC. For those reasons I adjourned proceedings concerning B.
2. JM was represented by Ms Lorna Robertson, SW and EG were represented by Ms Bethany Armitage, KE was represented by Ms Jasmine Harrison and the Guardian was represented by Ms Carolyn Jones. I am very grateful to all of them for their assistance in the case.

Issues

3. In this judgment I deal with SW's two children, R aged 3 and P aged 2, and EG's child, N, aged 1.
4. The following applications arise pursuant to section 4 and 8 Children Act 1989:
 - a. JM's applications for a Parental Responsibility Order ('PRO') in respect of each child;
 - b. JM's application for a CAO order and to spend time with each child;
 - c. The Guardian's application that the Court should make an order under s.91(14) Children Act 1989 to prevent JM making further applications for a period of three years without the permission of the Court;
 - d. Whether the Court should publish JM's name in the judgment.

The Facts

5. In the last four years JM has acted as a sperm donor through private arrangements in a large number of cases. He told the court that he was the father of 15 children, all aged between nearly four and a few months old. Four of those children are concerned in the proceedings before me. At the end of the hearing Ms Robertson produced for the Court and for the Guardian a list of the children of whom JM was the biological father. The most recent was born in February 2022.
6. JM is 37 years old. He suffers from Fragile X syndrome, a genetic condition that causes a range of developmental problems including learning difficulties and cognitive impairment. Fragile X is an inheritable condition. JM placed an advert as a potential sperm donor on a social media page for lesbian women seeking sperm donors, which is

how he made contact with the mothers in this case. He says that he first acted as a sperm donor to help a friend.

7. EG (the mother of N) is 26, SW (the mother of R and P) is 25 and KE (the mother of B) is 24. They were all therefore in their early 20s when they first came into contact with JM. All the mothers are, or have been, in lesbian relationships.
8. SW and her then partner EG were keen to have a baby and made contact with JM via the social media page. When JM and SW agreed for him to act as a sperm donor, SW, EG and JM signed a written agreement given to them by JM. This agreement was provided to JM by a friend, who he says is a lawyer. The agreement is a closely spaced three page document in highly legalistic language which is difficult to read even for a lawyer. It does state clearly on page one that JM will have no rights over the child and no right to contact with the child.
9. On page 3 of the agreement it is recorded that JM has Fragile X syndrome, however there is no explanation of what this means. SW said that she has difficulty reading, which was clear from her oral evidence. She said that she did not read that far into the agreement and therefore did not read the part about Fragile X. EG said that she did read more of the agreement but either did not see or did not appreciate the significance of the reference to Fragile X Syndrome.
10. R was born in October 2018. About two weeks after the birth, SW contacted JM and asked if he would like to see the baby, which he then did. By about February 2019 SW and EG's relationship was in difficulty and SW again contacted JM to ask if he wanted to see R. There is a dispute over how often JM saw R over the next 16 months and the terms of that contact.
11. SW said she suggested contact to JM because she wanted him to agree that EG would have full parental rights and she thought if JM had contact he was more likely to agree to that. It appeared from both her and EG's evidence that they had an extremely confused understanding about the law on parental rights over a child in this situation and believed that somehow JM could "give" EG his rights.
12. Whatever the confused legal understanding, in my view, although this might have been part of the motivation for initiating contact, the dates of that contact, which continue past the date SW and EG had unequivocally split up, indicate that SW was also suggesting contact for her own reasons. I will return to this issue below.
13. JM says he saw R regularly, initially about once a month and then by summer 2019 about once a week. He says that he would either see her with SW or EG, or he would take her round to his parents' house where he lived. His mother, Mrs M, who gave evidence, said that R came round regularly through this period. By October, R was staying overnight with JM at his parents' house. I have seen a series of text messages which show that R stayed overnight with JM on at least seven occasions, for a total of about 10 nights.
14. There are a number of texts which indicate that SW was asking JM for money, which he was giving her. JM says that in total he gave SW about £7000 which he expected to be repaid. SW accepted in cross examination that JM had given her some money but denied it was anything like £7000 and said she had repaid some of the money.

15. In early 2020 SW and her new partner JC decided that they wanted to have another child and asked JM to be the sperm donor. He says that he agreed, but this time on the basis that he would have contact with the child. SW denies this, however there is no written agreement in respect of this pregnancy.
16. SW became pregnant in early 2020. According to JM he was regularly going round to SW's house and during the first lockdown he lived there for some of the time between March and June 2020. During this period he necessarily had considerable contact with R. He says that SW told him that she had aborted the baby. She denies this and said that JM knew she continued to be pregnant.
17. At a date in June, but it is not clear precisely when, SW asked JM to leave. She says that this was because she became concerned about his behaviour. She referred to JM making sexual comments to her, suggesting she leave JC for him, and rubbing his erection against her. JM denies all these allegations. SW also says she found JM showering with R on at least two occasions, which she considered to be totally inappropriate. Whatever the precise detail of what happened during this period it is clear that any friendship between SW and JM completely broke down. She says that his behaviour was very weird, and she became very uncomfortable with him being around.
18. JM did agree to leave the property, however there was a serious incident on 25 June 2020 at SW's house. According to SW this was the same day that JM had left the property and he returned later the same day. JM's version of events is that he went round to SW's house to retrieve some of his possessions including two mobile phones which he had given to SW. He says that SW had been exploiting him for money and he had lent or given her about £7000, which she was refusing to pay back.
19. When he went round to the house, he says that SW came out and swore at him. She then grabbed him and pushed him into the house. SW, JC and a male friend assaulted JM, and he denies assaulting or harming any of them. He says that he suspects that the injuries on SW were as a result of "playfighting" between SW and JC.
20. SW's version of this incident is very different. She says that JM came round to the house and banged on the door and the windows. She was inside with JC and two friends and a number of young children. She went out to speak to him and he then forced his way into the house. He attacked SW and left her with bruises on her throat and back. A friend of SW who was in the house with his wife and children then physically restrained JM. SW called the police and JM was arrested. On both versions there were a number of young children in the house, including R. There are police photos that show bruising on SW's neck and back and a bruise on JC's leg and hands.
21. JM has had no contact with R since that date. He has never met P, who was born in December 2020. R is now 3 years old. There are significant concerns about her development as she is still not verbal and is behaviourally challenging. R has been referred to the Speech and Language Service but is awaiting an appointment.
22. EG was SW's partner when L was born. When she and SW split up, she formed a new relationship and they decided to have a baby and asked JM to be the sperm donor. EG has a medical condition which makes it difficult for her to become pregnant. She had previously tried to conceive with a different donor.

23. There was no written agreement. EG said that she asked JM for a written agreement that would confirm that he would have no contact with the child. She said that when they discussed him being a sperm donor for her, she was absolutely clear that he would have no contact with the baby, which he accepted. However, when she asked him for a written agreement, he kept making excuses such as the printer had run out of ink. She said that she was so desperate to have a baby that she went ahead with JM as the donor even though there was no written agreement.
24. There was an issue during the pregnancy when EG's midwife said she needed to give the blood group of the father. EG said JM initially refused to co-operate, but JM strenuously denied this. It is not necessary that I make any finding on this matter.
25. N was born in January 2021. JM has had no contact with N.
26. On 29 March 2021 JM applied for a CAO and PRO in respect of R and P. On 2 June 2021 he made the same applications in respect of N.
27. The position in respect of KE is rather different. I will not set this out in any detail given that I cannot reach any conclusions on the facts of her case or make final orders at this stage of the proceedings. However, the undisputed evidence is of some relevance to the determination in the other two cases. KE contacted JM as a sperm donor via the social media page. There was no written agreement between KE and JM. B was born in July 2018. In September 2018 JM and KE commenced a relationship. JM had contact with B throughout 2019.
28. On 27 February 2019 KE applied for a non-molestation order against JM. On 22 March DJ Daniel at Sheffield Family Court made the order, forbidding JM to contact KE directly or indirectly save for the purposes of arranging for him spending time with B. JM did not contest the making of the order on the basis of the allegations not being accepted. The District Judge made no findings in respect of the allegations.
29. On 30 October 2019 JM applied for a CAO for him to have contact with B and a PRO. On 12 March 2021 DJ Heppel made a CAO giving JM contact once per week, and overnight contact every second weekend, half the holidays and alternate Christmas. The order also granted JM parental responsibility.
30. KE alleges that since March 2021 JM has been harassing, controlling and pestering her, and has made the application to vary the CAO. KE's position has changed in respect of contact at various points. In January 2022 KE suspended contact between JM and B. JM alleges that KE has breached the order and has applied for the enforcement of the CAO.
31. On 6 December 2021 KE made a fresh application for a non-molestation order. An order was made without notice on 7 December, and a return date is set for a two day hearing. However, the matter was then listed together with the other two cases before me.
32. It is relevant that JM's contact with B has been observed by Mr Donuhue, who was the Guardian in that case. He found the contact was positive and had no concerns about JM's behaviour. The current Guardian, Ms Vine, has not observed JM with any of the children.

33. On 24 January 2022 B's case was reopened to Sheffield Social Care as KE informed the social worker that B had unexplained bruises when he returned from contact with JM. Neither KE or JM could not explain the bruises. B had a medical examination and one of the bruises, to the inner ear, was thought to be non-accidental. Sheffield commenced a s.47 investigation, which so far has held that the risks were substantiated but B was not deemed at risk of significant harm. On 4 April KE contacted Sheffield again to tell them B had returned from contact with two small bruises on the small of his back. Again, the child protection medical concluded these were not accidental.
34. Given that Sheffield Children's Services are currently considering the matter, I decided to adjourn KE's case until the relevant report had been drawn up.

The Law

35. The basic principles set out in the Children Act 1989 are extremely well known. In any decision about the upbringing of the child, the paramount consideration for the Court is the child's welfare (s1(1)).
36. There is a presumption that unless the contrary is shown, the involvement of a parent in the life of a child will further the child's welfare (s.1(2A)).
37. In considering the child's welfare, the Court will have regard to the welfare checklist in s.1(3).

Parental Responsibility Orders and contact issues

38. By s.4(1) the Court can grant a PRO. I summarised the law on making such orders in FC v MC [2021] EWHC 154 (Fam) at [19] – [26]:

“19. There are a very large number of cases where the courts have addressed the question of in what circumstances an applicant should be granted parental responsibility for a child when they do not have that status automatically. Many of these are referred to in the very helpful judgment of Black LJ (as she then was) in Re G (Children) [2014] EWCA Civ 336 .

20. The starting point is as set out in Re H (Minors) (Local Authority: Parental Rights (No 3) [1991] Fam 151 where the Court of Appeal highlighted three particular features from amongst the factors the court should take into account when considering an application by a father for parental responsibility. These were the degree of commitment the father had shown to the child; the degree of attachment between them; and the motivation behind the father's application. In my view, these are the three touchstone issues that the court has to address when deciding parental responsibility, and there is no difference in this regard between a father and a woman who argues she stands in the position of a second female parent.

21. A number of judges have emphasised the status that parental responsibility confers, see as but one example, Ryder LJ in Re M (Parental Responsibility Order) [2013] EWCA Civ 969 :

"27. I return now to the question of status. The status conferred by parental responsibility is an important legal recognition of the delicate balance between rights, duties, powers, responsibilities and authority that are the components of family and private life. It is integral to the concept of parental responsibility. It is not, however, a separate 'stand alone' factor, let alone a presumptive factor to be weighed alongside other *Re S* factors in the welfare consideration of whether a parental responsibility order should be made. The status of parental responsibility underlies the authorities and the guidance that was applied by the judge in this case. It would no doubt have been helpful to articulate the importance of parental responsibility as a status question i.e. the reason why the *Re S* factors have been identified as being relevant to the welfare question, but that would not have altered the evidence the judge accepted nor the evaluative judgment on the *Re S* factors to which he came. For my part, I have come to the clear conclusion that the judge did not err in law nor was there any error in his approach or his evaluation."

22. In *A v B and C (Lesbian Co-Parents: Role of Father)* [2012] EWCA Civ 285 Thorpe LJ made clear that there was no general rule about whether parental responsibility should be ordered and said: "In the end the only principle is the paramountcy of child welfare" at [23]. He went on to say that he was cautious about the proposition that great weight should be given to "the plans that adults make for future relationships between the child and the relevant adults. Human emotions are powerful and inconstant. What the adults look forward to before undertaking the hazards of conception, birth and the first experience of parenting may prove to be illusion or fantasy".

23. In my view, it follows that whatever agreement or understanding the parties may have had at the time of conception and birth will not be determinative in deciding whether parental responsibility should be granted. That is not to say that such an agreement is wholly irrelevant, as it may provide evidence as to the commitment of the applicant to the child and be informative as to the nature of the relationship that they have with the child. However, evidence as to the applicant's current commitment and attachment to the child is likely to be of greater interest to the court than the parties' earlier intentions.

24. It is clear from the caselaw that a potential reason for not granting parental responsibility is how the applicant may use the parental responsibility if given it. If the court considers that the applicant may misuse the parental responsibility, then that would be a ground to refuse it. In *Re M (Parental Responsibility Order)*, the Court of Appeal upheld a refusal of parental responsibility to a father who the judge believed would use the order to undermine the mother and the child. This issue of possible misuse of the order goes in my view to the "motivation" factor referred to above.

25. By section 12(2) an applicant will automatically gain parental responsibility if there is a shared care/lives with order in favour of the applicant. This means that where the court is considering whether to make

such an order, with the consequence of parental responsibility, it will need to have in mind the issues of commitment, attachment and motivation before making the order. In the vast majority of cases I would assume that the issues about the nature of the order and parental responsibility would effectively be the same.

26. In Re G (Children) (Residence: Same Sex Partner) [2006] UKHL 43, Baroness Hale considered the weight to be attached to the fact that one party is both the natural and legal parent of the child, as is the case here for MC. She also considered the number of different ways that a person may be a parent to a child including being a social and psychological parent. I note at this point that FC was clear that she entirely respected MC's position as D's biological and legal parent and said that she had no intention of competing with or undermining this position."

39. In A v B and C [2012] EWCA Civ 285 the Court of Appeal considered the particular issues that arise concerning sperm donors and parental responsibility. The Court emphasised that every decision is fact sensitive, but the following factors may be particularly relevant: participation in the child's very early life and plans for their future, ability to care for the child physically, desire to care for the child, and support for the mother.
40. In D v E (Termination of Parental Responsibility) [2021] EWFC 37 MacDonald J was considering the termination of parental responsibility and an order for no contact with the child in respect of an eight year old child and a father with convictions for sexual abuse. In respect of the issue of parental responsibility, he dealt with this at [31] onwards and I take those passages into account.
41. On whether to make an order for no contact with the father, Macdonald J summarised the factors to take into account at [26] and [27]:

"26. These principles must be read in light of FPR 2010 PD12J, entitled Child Arrangements and Contact Orders: Domestic Abuse and Harm, which provides as follows at paragraph [7]:

"In proceedings relating to a child arrangements order, the court presumes that the involvement of a parent in a child's life will further the child's welfare, unless there is evidence to the contrary. The Court must in every case consider carefully whether the statutory presumption applies, having particular regard to any allegation or admission of harm by domestic abuse to the child or parent or any evidence indicating such harm or risk of harm."

27. The foregoing principles set out in PD12J are expressed by reference to domestic abuse. However, it is plain that this approach will apply, in proceedings relating to a child arrangements order, to all allegations or admissions of harm to the child or parent relevant to the question of contact or evidence indicating such harm or risk of harm. Within this context, I note that paragraphs 35 to 37 of PD12J enjoin the court, inter alia, to take the following factors into account when considering child

arrangements in cases where the court is satisfied that such harm has occurred:

i) The court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

ii) The court should apply the individual matters in the welfare checklist set out in s.1(3) of the Children Act 1989 with reference to the harm that has occurred and any expert risk assessment obtained.

iii) In particular, the court should consider any harm which the child, and the parent with whom the child is living, is at risk of suffering if a child arrangements order is made.

iv) The court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact.

v) The court should consider, inter alia , whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of abuse against the other parent and the capacity of the parents to appreciate the effect of past abuse and the potential for future abuse.”

42. Ms Robertson referred the Court to two decisions of Hedley J concerning children’s contact with their father, who had been a sperm donor: *TJ v CV* [2007] EWHC 1952 and *P and L (Minors)* [2011] EWHC 3431. In *TJ* at [24] and [25] he said:

“24. In my judgment it is essential at this point to put aside the fears, aspirations and feelings of the adults and to try to look at the case through the eyes of a growing boy, as BA is. He will grow up in the family of CV and S and to him that will be unremarkable. However, he will go to school and it will not surely be long before he has questions about a father. The present proposal (reasonable in itself) is that he will be told of the kind man who enabled mummy to have him. He will hopefully grow up knowing his extended family on both sides. He will accordingly know TJ as one of his uncles. The rest of the family (on both sides) knows of course that TJ is more than that as BA will inevitably discover. To avoid this information coming out in an unplanned way, Dr.S wisely advises that BA learns early of the facts of life and of the means by which he came to be. Will it help him, I ask myself, to know also that this uncle is more to him than that? I am sure that it will. The experience of adoption, which surely we must not neglect in other less conventional forms of parenting, is that children often develop a real interest in their natural parents. This is hardly surprising since that person, however small their involvement in the life of the child, has contributed 50% of his genetic make-up. The other powerful lesson from adoption is the need for truth and the avoidance of deceit from the earliest days. Young children rarely have trouble with the truth, however strange it may seem, although the adults around them may do so.

However, the discovery in adolescence that they have been duped or misled (as they may choose to see it) may have serious ramifications for family relationships.

25. It is for these reasons that I think that, if it is possible to do, it is strongly in BA's interests to maintain some kind of relationship with TJ. As a bald statement that is not really controversial. Moreover both Dr. S and, more cautiously, the guardian saw such a role particularly where the court has concluded that TJ is genuine in motivation even if clumsily heavy-handed in style.”

Section 91(14)

43. The approach that the Court should take to making an order under s.91(14) was considered by the Court of Appeal in *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573 where Butler Sloss LJ set out clear guidelines for the making of such orders. Although there are numerous subsequent cases, those guidelines continue to hold good and are a clear statement of the correct approach:

“Guidelines

(1) Section 91(14) of the Act of 1989 should be read in conjunction with section 1(1), which makes the welfare of the child the paramount consideration.

(2) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.

(3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.

(4) The power is therefore to be used with great care and sparingly, the exception and not the rule.

(5) It is generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable applications.

(6) In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.

(7) In cases under paragraph 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.

(8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.

(9) A restriction may be imposed with or without limitation of time.

(10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.

(11) It would be undesirable in other than the most exceptional cases to make the order ex parte."

Naming JM

44. Section 12 of the Administration of Justice Act 1960 and s.97(2) Children Act 1989 impose restrictions on reporting and publications in family cases involving children. Courts may publish judgements anonymised to protect the identity of the children.
45. Section 97(2) Children Act 1989 provides that "no person shall publish to the public at large or any section of the public any material which is intended, or likely to identify (a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act may be exercised by the court with respect to that or any other child; or (b) an address or school as being that of a child involved in such proceedings". Section 97(4) relaxes the prohibition where the welfare of the child requires it.
46. When the court is asked to permit reporting of such cases the court must strike a balance between Article 8 and 10 of the ECHR.
47. Sir James Munby P in *Re J (A Child)* [2013] EWHC 2694 at [22] stated:

"The court has power both to relax and to add to the "automatic restraints." In exercising this jurisdiction the court must conduct the "balancing exercise" described in Re S (Identification: Restrictions on Publication) [2004] UKHL 47, [2005] 1 AC 593. [2005] 1 FLR 591 and A Local Authority v W, L, W, T and R (by the Children's Guardian) [2005] EWHC 1564 (Fam), [2006] 1 FLR 1. This necessitates what Lord Steyn in Re S, para [17], called "an intense focus on the comparative importance of the specific rights being claimed in the individual case". There are, typically, a number of competing interests engaged, protected by Articles 6, 8 and 10 of the Convention. I incorporate in this judgment, without further elaboration or quotation, the analyses which I set out in Re B (A Child) (Disclosure) [2004] EWHC 411 (Fam), [2004] 2 FLR 142, at para [93], and in Re Webster; Norfolk County Council v Webster and Others [2006] EWHC 2733 (Fam), [2007] 1 FLR 1146, at para [80]. As Lord Steyn pointed out in Re S, para [25], it is "necessary to measure the nature of the impact ... on the child" of what is in prospect. Indeed, the interests

of the child, although not paramount, must be a primary consideration, that is, they must be considered first though they can, of course, be outweighed by the cumulative effect of other considerations: ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, [2011] 2 AC 166, para [33].”

48. Lord Steyn at [17] in *Re S, A Child* [2004] UKHL 47 states:

“The interplay between articles 8 and 10 has been illuminated by the opinions in the House of Lords in Campbell v MGN Ltd [2004] 2 WLR 1232. For present purposes the decision of the House on the facts of Campbell and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case.”

49. In *Griffiths v Tickle* [2021] EWCA Civ 1882 the Court of Appeal was considering the issue of naming the parents in proceedings, notwithstanding the risk of identification of the child. The facts of the case were wholly different but it is an example of a case where the public interest in naming the parents was a significant factor despite the likely identification of the child.

The evidence

50. I heard oral evidence from JM, his mother Mrs M, SW, EG and the Guardian Ms Vine.

51. JM gave his evidence from a separate room in the court building via a video link. I had considered at an earlier hearing an application for an intermediary and I ruled in that hearing that an intermediary was not justified on the basis of the intermediary report. Although JM did not make eye contact through his evidence, and was sometimes reluctant to answer, I had no doubt he understood all the questions and was capable of answering fully. He was properly engaged in the proceedings and appeared to have no difficulty understanding what was happening and being able to give instructions to Ms Robertson. The Court had breaks each morning and afternoon and I am confident that he could give the evidence he wished. Ms Robertson did not suggest otherwise.

52. JM is plainly a complex person. He has been diagnosed as having learning difficulties and being on the autistic spectrum. This diagnosis accorded with his presentation as having a very fixed view, a tendency towards concrete thinking and a profound lack of insight.

53. JM found it very difficult articulate why he wanted to have contact with the children. He said he wanted parental responsibility because he wanted to be involved in the decisions in their lives “like the mothers”. This was despite the fact that he accepted that the written agreement in respect of R had made it clear he would have no rights.

He suggested he wanted contact with P and N because if he was going to have contact with R then it would be unfair on the others if they did not have contact with him. In respect of the other children for whom he was the sperm donor, he appeared to be content to be led by the position of the mothers. He did not appear to have any understanding of the impact on the mothers of his behaviour.

54. He said on a number of occasions that he thought it was only fair for P and N to know him if R was having contact. He wanted them all to know he was their father and for them to have some form of relationship with him.
55. JM had a very concrete way of seeing things and had very little (if any) insight into the impact of his behaviour, and equally little empathy as to how it affected others. He quickly becomes agitated, aggressive and loses control when not getting his way. I thought Ms Vine's assessment was very accurate. I suspect that JM can provide appropriate care for one child when he is calm and all is going well. However, I can also fully accept that when he becomes agitated he cannot control his emotions. He became upset when I gave my interim ruling and became angry and found it very difficult to control himself. There is copious evidence of him ringing or contacting people on multiple occasions if they do not do what he wants, and he simply will not take no for an answer. He had no insight into the impact this behaviour has on other people, particularly someone as vulnerable and emotional as SW. He had accepted that he did at times become frustrated and aggressive, but he said he never did this in front of children. However, I do not consider that JM has any self-control over his feelings of anger and frustration.
56. I do not think JM was deliberately untruthful on most points of dispute, but he saw everything from his own perspective. However, where his evidence differed from that of EG, I prefer the evidence of EG as I will explain below.
57. Mrs M is JM's mother. She, and presumably JM's father, have been placed in a highly invidious position by JM's actions and his relationship with the mothers in these cases. It was apparent from her evidence that JM has not been truthful to her about the number of children of whom he is the biological father. She only found out he was acting as a sperm donor after B was born. She said JM had told her there were five children but suspected it might be more, however, she had no idea it was as high as 15. She appeared to have supported him in his efforts to have contact with the children, including ringing up EG and EG's mother to try to get contact with R.
58. Mrs M seemed to have an oddly disengaged attitude to JM advertising himself as a sperm donor even though she knew he had Fragile X syndrome. I suspect, though cannot be confident, that her attitude to JM is to support him in whatever he chooses to do and not to challenge or question him. This is one of the reasons why I did not feel that she was a protective factor for the children, and did not feel confident in allowing her to be the supervisor for contact with B.
59. I do find that Mrs M was truthful about how often she and JM had contact with R. Her account tallies with the texts and photographs.
60. SW also has learning difficulties and came across as being extremely vulnerable. Special measures had been put in place before the hearing by way of a screen and a separate waiting room. It was also permitted that her partner, JC, could be next to her

whilst giving evidence albeit not involved but providing support. SW was highly stressed giving evidence and frequently became very agitated, and the Court had to take breaks. It was plain that she passionately loves her children and is highly protective of them. She is adamantly opposed to JM having contact with R or P and became extremely upset when considering this. SW found giving evidence when JM was in the courtroom very stressful.

61. However, she was also, in my judgement, a very unreliable witness. It was plain that she had sought in her written evidence to minimise the contact that JM had had with R before June 2020 and had simply lied in her statement. Equally, I do not think she was being honest with the court about the money that JM had given her. SW is a witness for whom the *Lucas* direction (*R v Lucas* [1981] QB 720) is particularly relevant. The fact that she told lies about some issues does not mean that she was lying about all the matters in dispute. She was desperate to suggest that JM's contact with R was minimal even though that was not true. I note the comments of Lady Hale in *Re B* [2008] UKHL 35 at [39] about the need in private law applications to be careful about the evidence of one parent who is seeking to gain an advantage "*in the battle against the other parent. This does not mean that they are false but it does increase the risk of misinterpretation, exaggeration or downright fabrication.*"
62. EG was a clear witness who thought about her answers and was in my view telling the truth. She was honest about not having read the agreement about R properly. She was undoubtedly irresponsible, as was SW, in using JM as a sperm donor without making proper inquiries about his health record, but I accept that she was desperate for a child.

The Guardian's position

63. The Guardian opposes the making of a PRO or JM having contact with any of the children. She also proposes the making of a s.91(14) order and the naming of JM in the judgment.
64. She says that JM's main commitment appears to be to making the applications rather than to the children. The children have no attachment to him, and their attachment is entirely to their mothers. She considers that if JM did have PR for the children, he would be unlikely to be able to exercise it meaningfully in their best interests. She suggests that JM's anger and feeling of betrayal towards SW lies at the heart of the applications.
65. In her report the Guardian refers to JM's compulsive behaviour, frequently phoning her when she did not immediately respond to him. The papers suggest that between 25 and 27 December 2020 JM made 77 calls to SW's partner which has led to a prosecution for harassment.
66. The Guardian also considers that making the orders would have a very negative effect on the mothers. She said that they would become engulfed in conflict with JM, as has been the case for B for some time. She also points to how upsetting for the children must have been the incident on 25 June 2020.
67. She has considered whether JM could have letterbox contact. However, in her view this might result in JM seeking to impose himself on the children's lives and cause further disruption. JM told the Guardian that he would continue to make applications until he got the outcome he wants.

68. In her written submissions the Guardian states that JM should be named in the judgment. She is concerned about the number of informal sperm donations that are occurring and the lack of any regulation. She considers that naming JM will alert women of the risks and perhaps encourage them to think carefully before using such donations.

Conclusions and Findings

69. There are a number of disputed factual issues upon which I need to make findings, including the extent of contact between JM and R in the period from Summer 2019 to June 2020 and the incident on 25 June 2020.
70. I accept that JM did have regular contact with R from about October 2019 through to March 2020 when lockdown commenced. There was then a period up to June 2020 when JM was staying with SW for about three days per week. I accept that SW deliberately sought to minimise the amount of time R spent with JM and was deliberately untruthful in her statement. She said in the statement that he had only spent about 20 minutes with R on one occasion and this was plainly untrue. The texts and photos were clear that there had been something like seven occasions when JM had overnight contact with R, and one of those was for three nights. All of these stays were at the house where JM lives with his parents.
71. However, as I set out above, SW's lies in respect of the frequency of contact were motivated by her desire to stop JM gaining any role in R's life and do not suggest that she is invariably not telling the truth.
72. On the 25 June 2020 incident I prefer SW's version of events to JM's. Firstly, it seems inherently unlikely that SW would have dragged JM into the house. She is much smaller than JM and would just physically have found it difficult to pull him in. Also, one must ask why she would have done that given that she undoubtedly wanted him to go away, not least because there were young children in the house. The account that she went out to tell him to leave because he was upsetting the children is much more likely. Secondly, there is photographic evidence of bruising to SW's neck which accords with her version of events. Thirdly, the other adults in the house all gave statements to the police which generally supported SW's version. Fourthly, JM's general demeanour as someone who gets very frustrated and loses control when he does not get what he wants accords with SW's version of at least the start of the incident. Fifthly, it seems from JM's own account that he could have left when SW came out of the house, but he chose not to do so because he "wanted to get his stuff". That suggests to me that he was at least to some degree the protagonist.
73. I am not sure SW told me a fully accurate version of events inside the house, but I accept that JM forced his way in and there was then a scuffle in front of the children. I fully accept that that must have been extremely frightening for the children.
74. There are effectively three issues in respect of each of the children – whether JM should have contact with the children, whether I should make a PRO, and whether I should make a s.91(14) order.
75. In respect of R there was a written agreement between JM, SW and EG, which states in clear terms that JM will not have any right to have contact with the baby. That was

the understanding of all three parties at the time. However, it was SW who then contacted JM and asked him if he wanted to come and see the baby when she was two weeks old.

76. SW then contacted JM later to ask him if he wanted further contact. SW said she did that because she wanted JM to pass his rights in respect of R to EG. It was not easy to follow the logic of what SW was saying in this regard. She referred to having gone to a lawyer for advice, but neither she nor EG were at all clear about what the advice was. It is possible that SW was trying to persuade JM to give assistance to EG gaining a PRO, but there is no evidence she actually suggested this to JM. It seems more likely in my view that at least part of her motivation for proposing contact was that she wanted to get money from JM, both for R and herself. There are texts from SW asking to borrow money. I note that JM seems to have been generous in giving SW money, although it is not possible or necessary to try to establish how much money he actually gave her or the terms of whether or not it would be repaid. JM does not work but appears to have had plentiful funds given to him by his parents.
77. Applying the three criteria in *Re H (Minors)*, the initial agreement was that JM would have no role in R's life, but he did then show some commitment to her. However, the position now is that SW is very strongly opposed to him having such a role. I accept that there was some attachment between JM and R, and there is no reason to believe that the contact he was having with her before March 2020 was not positive for her. However, that contact was relatively limited and ended almost two years ago. As is clear from the presumption in s.1 (2A), it will generally be positive for a child to know both their parents and have a relationship with them.
78. I do however have considerable reservations over JM's motivations for seeking parental responsibility and contact with R and am concerned about what he would do if he did have the benefit of these orders. I think he does have affection for her, but also enjoys the idea of being her father. However, he appears to have no insight into the impact of these applications on SW, or the other mothers, and the knock-on impacts on the children. In my view, a large part of his motivation for making these applications is to control SW and EG and have control over their lives. It may be that he is particularly fixated on SW and is merely using the application against EG as a means of "getting at" or punishing SW. If he has parental responsibility then I think he will use that as a mechanism against SW to gain information and control. The fact that JM has so little insight into the impact of his behaviour, and appears to lack self-control, makes my concerns about his motivations particularly worrying.
79. I also take into account the fundamental irresponsibility of JM acting as a sperm donor whilst knowing that he had Fragile X Syndrome, an inheritable condition, without at the very least making it entirely clear to the mothers concerned the implications of Fragile X. JM knew that he could not be a sperm donor through a clinic because of his condition. He told the Guardian that he thought Fragile X was not serious and it was for the mothers to do the research. Even if JM does not understand the true implications of Fragile X, he does know it prevents him acting through a donor clinic.
80. Although the agreement does refer to Fragile X, JM took no steps to explain the condition to SW or EG and no steps to ensure they understood. JM took advantage of these young women's vulnerability and their strong desire to have children. This failure to take responsibility for his own condition, and to have any apparent concern for the

long-term impact both on the mothers and potentially the children, is a factor in concluding that JM should not be given parental responsibility for the children.

81. I am also very concerned about the impact of JM having parental responsibility or contact on SW. She is herself a vulnerable and fragile person who will find sharing PR with JM immensely difficult and upsetting. The consequential impact on R, given that she herself has development difficulties, is likely to be even more severe than with many children. I conclude that if JM had parental responsibility or contact with R, then the impact on SW would be extremely detrimental and that would then lead to a very negative effect on R's welfare. I do take into consideration the relatively positive relationship JM had with R whilst he was having contact, and the fact that Mr Donohue considered contact with B was positive. I also take into account the overall presumption in s.1(2A), but these factors do not outweigh the level of harm that would be caused.
82. I therefore refuse both a PRO and contact in respect of R.
83. The position in respect of P is more straightforward. There was no written agreement, but given that SW was opposed to contact, I accept SW's evidence that she told JM she did not agree to him having contact. However, when SW became pregnant he was having contact with R so it may be there was no real clarity and JM chose to assume that he would have contact with both children. EG (in respect of N) says she asked JM to provide a written agreement and he found various reasons not to do so. I am not sure that SW understood the benefits of a written agreement and in practice was probably little concerned about whether she had one or not. Therefore, on balance I conclude that the original agreement was that JM would not have contact with P, but the position is sufficiently unclear that I put little weight on that original position.
84. However, JM has never had any contact with P and has never seen her. From June 2020 SW has been entirely clear that she does not want JM to have any role in P's life.
85. For all the reasons set out above, I think it would be highly detrimental to P's welfare for JM to either have parental responsibility or contact. I therefore refuse to make both orders.
86. EG was desperate to have a baby, having a condition which she believed made it very difficult for her to become pregnant. She had tried to become pregnant with another donor and failed. She said, and I accept, that she asked JM repeatedly to provide an agreement, but she was so keen to have a baby that she was prepared to proceed without an agreement.
87. EG is not as vulnerable as SW and probably is more capable of dealing with JM. However, she has been clear throughout that she does not wish him to have any role in N's life, and I accept that she made that clear to him at the outset. I thought EG was a truthful and accurate witness, and I accept that she told JM before conception that she would not agree to any contact. Given that JM does not seek contact or parental responsibility in most of the other cases where he is the father, he says because the mothers do not wish it, I do not understand his motivation for seeking it with N, save as a means of exercising control over EG. JM appears to have a sense of grievance against SW and through her EG, and this may be part of the motivation for pursuing parental responsibility and contact with N.

88. Given the very fraught emotions between EG and JM, and her strong desire for him not be involved, I think it would be highly detrimental to N's interests for him to have contact with JM. It could only lead to EG being stressed and potentially traumatised, and many future difficulties.
89. In all the cases I have considered whether letterbox contact would be appropriate. However, I agree with the Guardian that this is likely to be used by JM as a method of gaining information and indirect influence and control over the mothers. I therefore consider the benefits do not outweigh the disbenefits.

Section 91(14)

90. A section 91(14) order is a draconian one which should only be used in extreme cases. It is unusual to make such an order where there have not been repeated applications, however, it is quite acceptable for the Court to do so in an appropriate case. In my view this is such an appropriate case. This is in part because of JM's lack of any role, other than biological parenthood, in P and N's lives. However, most importantly it is because of JM's apparent inability to control his frustration at not getting what he wants. There is clear evidence of his making frequent phone calls and messages to try to achieve his goal, and his complete lack of insight into the effect of such conduct. He said to the Guardian that he would continue to apply until he got what he wanted. It is plain that JM does not understand, or accept, boundaries.
91. I am confident that if I do not make a s.91(14) order JM will simply reapply at the first possible opportunity. This would be traumatising for both mothers, and ultimately highly detrimental to the interests of the children. Therefore I will make an order pursuant to s91(14) Children Act 1989 for three years.

Naming JM in the judgment

92. It would be an unusual step in a judgment such as this to name one of the parents. The usual approach is to anonymise the parents so as to protect the identity of the children. However, it is clear from *Tickle v Griffiths* that there are cases where the public interest in the naming of the parents is sufficiently great as to outweigh the risk of identification of the children and their Article 8 right to privacy.
93. There are strong grounds for naming JM. All three mothers and the Guardian support naming. Although JM told the Court that he had ceased to act as a sperm donor, a social media message from February 2022 suggested that he was still offering his services at that date. In the light of JM's lack of honesty to his own mother, Mrs M, and his belief that he has done nothing wrong, he said he would be a sperm donor for any of the existing mothers so the children would have a "sibling connection", I have no confidence that he will not act as a sperm donor in the future. I equally have no confidence in him fully explaining to any woman the true implications of his Fragile X Syndrome. There is therefore a very specific benefit in him being named in the hope that women will look him up on the internet and see this judgment.
94. As the Guardian suggests, there is a wider public benefit in the risks of private sperm donors being more widely known and considered. Publishing this judgment without anonymising JM raises the prospects of wider dissemination of the huge impact using JM as a sperm donor has had on these mothers.

95. If JM is named there is some risk that the children will be identified. However, R, P and N do not bear his surname, although B does. In any event, they are too young to be conscious of any internet comment. It is possible that they may become aware in the future of the facts set out, but it would be a sensible course for the mothers to explain the position to the children in an age appropriate way at some future date in any event.
96. Ms Robertson raises the negative impacts upon JM of his being named and identified as a sperm donor. I accept that there may be some negative impacts. However, JM chose to be a sperm donor despite knowing that he would not be permitted to go through a clinic. He also chose to make these applications despite the strong opposition of the mothers. There is no suggestion that JM does not have capacity in respect of these decisions. In those circumstances, the fact that JM will be identified is a consequence of the decisions he has made.
97. There is a wider point about transparency in this regard. The usual approach of anonymity in the Family Courts should not be used as a way for parents to behave in an unacceptable manner and then hide behind the cloak of anonymity. The provisions and practice in respect of anonymity in family law are there to protect the children and not the parents.
98. For all these reasons I consider this to be a case where it is appropriate to name JM.