



Case No. LS21P01690
LS22P00468

Neutral Citation Number: [2025] EWFC 39

IN THE FAMILY COURT HIGH COURT OF JUSTICE
FAMILY DIVISION

Date: 25/02/2025

Before :

MR JUSTICE POOLE

Between :

CP

Applicant

- and -

(1) M

(2) – (6) The Children by their Children’s
Guardian

Respondents

Marisa Allman (instructed by Stowe Family Law LLP) for **the Applicant**
Nadia Campbell-Brunton (instructed by Kingsley Napley LLP) for **the First Respondent**
Nikki Rhodes of Ramsdens Solicitors LLP for **the Second to Sixth Respondents**

Hearing dates: 10 February 2025

APPROVED JUDGMENT

Mr Justice Poole:

1. CP and M, both women, were civil partners from November 2006 to June 2016 although their relationship broke down some time before their formal partnership ended. The five children, all boys, are aged between 11 and 16. They were all born in England during the currency of CP and M’s civil partnership, and they are all British citizens. The eldest was conceived with intrauterine insemination and the other children by invitro fertilisation, all sharing the same genetic father, a sperm donor. CP and M entered into a parental responsibility agreement regarding the eldest child. CP has parental responsibility by reason of the civil partnership and mode of conception in relation to the younger four. All the children are now habitually resident in a Gulf State where they live with M and her new partner. They moved there over the period 2014-15. The eldest child previously attended a boarding school in England. The eldest child has CP and M’s surnames as his surnames. All the other children share CP’s surname as a middle name and M’s surname as their own surname. M was born in the USA but is now resident in England and is a British citizen.
2. On 22 February 2022 CP made an application for a child arrangements order (“CAO”) in the Family Court and on 30 March 2022 she made an application for the High Court to exercise its *parens patriae* jurisdiction in respect of the children.
3. On 2 December 2022 Christopher Hames KC sitting as a Deputy High Court Judge determined that whilst the court had jurisdiction in relation to the eldest child on the basis of his presence in England and Wales, it had no jurisdiction in relation to the other four children. He also determined that CP was not the legal parent of the children.
4. CP appealed those decisions and on 27 July 2023 the Court of Appeal handed down judgment allowing the appeals and declared that CP is the legal parent of the four younger children and that the courts of England and Wales have jurisdiction to consider CP’s applications and to make Children Act 1989 (“CA 1989”) s8 orders in respect of those four children – *S(Children: Parentage and Jurisdiction)* [2023] EWCA Civ 897.
5. The applications were remitted to me. The lawyers acting for M have acted pro bono. I am very grateful for their considerable assistance and for supporting the parties through this difficult litigation.
6. Very regrettably, the case was not brought to my attention and I was unaware of it for some time. Meanwhile, CP had for some months had no legal representation, having been represented pro bono in the appeal proceedings. She had then secured representation by her current solicitors. They contacted the court to enquire about the remitted proceedings. It was not until 8 October 2024 that I gave directions for the future conduct of the case. During the intervening period between the Court of Appeal’s decision and my first directions the General Register Office had refused to re-register the children’s birth certificates notwithstanding the declarations by the Court of Appeal. That matter was resolved by enquiries of the Court of Appeal and my making further declarations relying on its judgment.

7. CP and M disagree as to the nature and duration of their relationship. CP characterises it as a romantic partnership, M as it being more of a platonic relationship which effectively ended several years before the civil partnership was formally terminated. On any view, when M moved with the boys to the Gulf State in 2014-15, the boys' relationship with CP became more difficult to sustain.
8. The Court of Appeal's judgment included a brief summary of events since 2014:

“10. At the end of 2014, M moved to a Gulf State with the elder children, while the younger children remained for five months in England with CP and a nanny. CP brought the younger children to M in 2015, returning to England shortly afterwards. M and CP made an amicable arrangement for the children to stay with CP in England for six or seven weeks each summer, and in the Gulf for one or two weeks over every Christmas and New Year period when M was abroad. This arrangement continued until 2019.

11. In 2016, the parties' civil partnership was dissolved by proceedings in England. In 2017, a final financial remedy consent order was made by the Family Court. The order recorded that the parties wanted to give effect to an agreement on child support pursuant to the Child Support Act 1991, directing CP to pay child periodical payments to M for 'the children of the family'.

12. In 2018, M married her partner, and in 2019 they entered into and registered parental responsibility agreements for all the children. In 2021, CP married her own partner.

13. From 2019 onwards, CP's time with the children reduced. She last saw A in December 2020 and she last saw the younger children briefly in the Gulf in December 2021. Since 2021, A has been at boarding school in England, spending some holiday time with M in the Gulf and some with M's family in England. The younger children live with M and her wife in the Gulf, where they go to school.”

9. CP has not had contact with the children since 2021 save for some disputed interaction with the eldest child when he was at school in England. On CP's case, M has prevented her from having contact with them. M's evidence is that the boys simply refuse to have contact with CP and do not wish to spend any time with her.
10. In relation to the ongoing, and now very long-standing application for a child arrangements order, I joined the children as parties and appointed a Children's Guardian. The Guardian conducted video interviews with the children and had meetings with CP and M. The boys variously described CP to the Guardian as “manipulative”, they remembered her “shouting” and said that she attempted to buy the children's affections. They said that she was like a “family friend” or “aunty”

rather than a parent. None of them wanted to spend any time with her or have any form of contact with her.

11. In November 2024 I held a further case management hearing. CP's central concern was that the children had been given a false narrative of her earlier role in their lives. She maintained that she had been an active parent to them, caring for them for long periods, and supporting M through their conceptions, births, and early lives including during their transition to life in the Gulf State. I directed that an agreed narrative should be prepared, giving an objective account of CP's role in the children's lives as recorded in court judgments and as additionally conceded by each party. The Guardian then discussed that narrative with the children.
12. On 10 February 2025, at a further hearing, the Guardian provided a Position Statement reporting to the Court on her discussions with the children about the agreed narrative. The boys understood that CP was their legal parent but said that that decision did not "change anything". The eldest child said that he had a clear memory that CP would refer to herself as a family friend. He "expressed a real concern and deep distress at [CP's] inclusion of her name on his brother's birth certificates." The four younger boys all considered that the Court of Appeal had been wrong to class CP as their parent. Their relationship with her had deteriorated and then, as they perceive it, ceased in 2019. They said that in earlier times, M had "actively encouraged them to attend contact at times when they did not want to" but that from 2019 the boys themselves had become firm that they did not want to spend any time with CP. They said that M had encouraged them to call CP but that CP berated them saying that their mother was preventing them from calling her when this was actually the opposite. They said that CP and her partner seemed to press a narrative that they were the boys' parents and two of the boys said they had overheard CP refer to M as a "bitch".
13. The Guardian's position was then stated to be as follows:

"The Guardian has spoken to the boys on a couple of occasions. The strength of their wishes and feelings has not diminished; in fact the Guardian is of the view that the longer these Proceedings go on and the more that [CP] presses and pushes for a role or a recognition of her rights and responsibilities towards the boys, this is likely to entrench the boys' views further about not wanting a relationship with her. This is to the point where the Guardian believes that this is causing all five boys deep distress.

...

At this stage (and unless their wishes and feelings change), given the strength of the boys' wishes and feelings, the Guardian believes that the application to spend time with the boys should be dismissed or withdrawn. She does not believe unfortunately that it is in the boys' welfare interests to continue with these lengthy, protracted proceedings and feels that emotional harm is being caused to the boys.

...

Whilst the Guardian understands that this is not what [CP] wants to hear, but sadly, in the Guardian's view the ongoing proceedings are only driving a further wedge between her and the boys and potentially resulting in the relationships between them becoming irreparable in the future.

Subject to the boys' views changing in the week of the 3rd February, it is the Guardian's clear view that these Proceedings need to conclude as a matter of urgency. If [CP] does not accept the Guardian's recommendations then the Guardian would ask that the matter is listed for a final contested Hearing as soon as possible."

14. There was no subsequent change of views reported to the Court.
15. CP does not pursue her CAO application in respect of the eldest child nor does she seek a lives with order in her favour in relation to the four younger children. She accepts that the children will remain living with M in the Gulf State, worried though she is for their safety in that country. She does however wish to continue with her application for an order that the four younger children spend time with her. Ms Allman, for CP, invited the court to determine not only CP's involvement in the children's lives but also whether there had been alienating behaviour. She also invited the court to direct a family psychological assessment with a view to family therapy then taking place if recommended. She pointed to the fact that the Guardian had accepted, wrongly, the eldest child's account that CP had *attended* his school in England when in fact she had only written to the school, and to him whilst at the school. She pointed to the Guardian's concerns about the four younger boys having two women named as mothers on their birth certificates whilst they were in the Gulf State. Ms Allman said that these were not justifiable fears because a short form birth certificate could be produced which did not identify either parent. It was concerning to CP that the children were not being reassured to that effect. She submitted that it would be very unusual to abandon efforts to reinstitute contact between a parent and child in the absence of any allegations of abuse and that were CP the children's biological father, that would be unthinkable. She proposed that the Court should timetable the application to a two day hearing in order to determine the facts of CP's involvement in the children's lives with a view to then directing family psychological therapy which might bring about change and open the door to the re-starting of contact between CP and the four younger boys. These children, she submitted, needed something akin to life-story work because they may have "false memories" affecting their approach to spending time with CP.
16. M and the Guardian submitted that the Court should conclude the application without a finding of fact hearing or any directions for family therapy or psychological evidence. It was contrary to the children's best interests to prolong proceedings which, as the Guardian advised the Court, are distressing to them and positively harmful to any prospect of a relationship developing between CP and the boys in the future.

17. M is happy to facilitate memory boxes for each child so that CP can send letters, cards, and photographs to them, for them to access in their boxes as and when they wish to do so. I have previously ordered M to provide CP with updates as to each child's health, welfare and education. An order could be made for M to provide similar updates at suitable intervals in the future. I was also asked to consider writing to each child if I decide to bring these proceedings to a conclusion now.

Conclusions

18. At the hearing I announced my decision and said that I would provide full reasons in writing. This case has been remitted from the Court of Appeal and it seemed to me to be right to publish a written judgment, albeit a short one.
19. Each child's welfare is my paramount consideration – s1(1) Children Act 1989 (“CA 1989”). I must have regard to the general principle that any delay in determining a question in respect to the upbringing of a child is likely to prejudice the welfare of the child – CA 1989 s1(2). Unless there is some evidence before the court to suggest that the involvement of a parent in the child's life would put the child at risk of suffering harm, I must presume, unless the contrary is shown, that involvement of each parent in the life of the child concerned will further the child's welfare – CA 1989 s1(2A) and (6). I shall have regard in particular to the matters set out in the welfare checklist at CA 1989 s1(3). I should not make an order unless I consider that doing so would be better for the child than making no order at all – CA 1989 s1(5).
20. In managing these proceedings I must further the overriding objective having regard to the welfare issues involved, ensuring so far as is practicable that the case is dealt with expeditiously and fairly, in ways that are proportionate, ensuring that the parties are on an equal footing, saving expense, and allotting to it an appropriate share of the court's resources – FPR r1.1. Active case management includes deciding promptly which issues need full investigation and hearing and which do not, and considering whether the likely benefits of taking a particular step justify the cost of taking it – FPR r1.4.
21. In relation to finding of fact hearings, I bear in mind the guidance, *Finding Hearings and Domestic Abuse in Private Law Children Proceedings Guidance for Judges and Magistrates*, May 2022 and the Court of Appeal's guidance in *Re H-N* [2021] EWCA Civ 448 and *K and K* [2022] EWCA Civ 468.
22. Here, the boys clearly form a close sibling group. Whilst CP no longer pursues her application for a CAO in respect of the eldest boy, he may have influence over his younger brothers. The issue that is outstanding is that of the younger boys spending time with CP. The boys have steadfastly expressed strong wishes not to have contact with CP. Those wishes have, if anything, strengthened the more effort has been made to ensure that they have a proper understanding of the history of their relationship with CP and the reasons behind her applications. It is clear to me that attempts to change their minds or to encourage them to adopt a different understanding of their life stories, will be resented by them and will be very likely to fail.

23. Ms Allman reminded me of the Family Justice Council *Guidance on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour* December 2024. The boys are certainly firm in their resistance to spending time with CP but (i) they give reasons for that which stem from their perception of CP's own conduct and (ii) they deny that M has influenced them to adopt a negative attitude towards spending time or having any contact with CP, but instead say that M has encouraged them to have contact with her. CP is extremely sceptical about M's role but there is no clear evidence that the boys' resistance is rooted in manipulation by M as opposed to their own experiences. The fact is that for the past decade they have lived far away from CP. Her own evidence suggests that any indirect contact over the past five years or so has been at a low level – mostly concerned with general group messaging - and that there has been very little face to face contact. The boys have been living with M and her wife. The younger boys in particular have few memories of their early lives when CP was more involved.
24. The issue in this case is one of contact between CP and the four younger boys. Declarations of parentage have been made. CP and M were in a civil partnership when each boy was born. CP's surname is one of their middle names. CP is more than a "family friend". However, it does not follow that the court is bound either to compel the children to have contact with CP or to take extensive measures to encourage them to do so. Over a sustained period of time the boys have refused to engage with CP. Whether this is due to manipulation by M, by reason of CP's past behaviour, or just because of circumstances and their experiences, it is clear that at this point in their lives further attempts to change their minds are likely to cause them distress, anxiety, and to make them even less likely to soften in their attitude to CP in the future.
25. In my judgement there is no purpose to be served in holding a finding of fact hearing. Whether or not the Court found that M has engaged in alienating behaviour, the boys' positions in relation to spending time with CP would be very unlikely to change. They appear to have a good relationship with M and to be living fulfilling and happy lives in the Gulf State. In my judgement, the process of exploring and determining allegations of alienation would be likely to cause emotional harm to the children involved. Likewise, I cannot foresee circumstances in which the Court would compel the children to participate in family therapy or psychological interventions and the element of compulsion would, again, be damaging to their emotional health and wellbeing.
26. The continuation of these proceedings will be likely to cause distress and harm to the children – that is the evidence of the Guardian. It is important to listen to the voice of the child and each child in this case is saying loudly and clearly that they want these proceedings to end. Concluding the proceedings will therefore protect their welfare and is also more likely to lead to the boys being willing to have contact with CP in the future.
27. The situation in which CP finds herself is a very sad one. These proceedings have resulted in public and formal recognition of her parentage of these children but the children do not want to spend time with her, they have not spent time with her for a number of years, and they live far away. For the reasons given, the continuation of

these proceedings will be highly unlikely to achieve any useful purpose, will be counter-productive to the prospects of a positive relationship between CP and the boys in the future, and will be detrimental to the children's welfare. Exercising my case management powers to further the overriding objective, and in the children's best interests, I conclude these proceedings now by making no order on CP's applications save for allowing for memory boxes and the provision of updates about the children by M to CP at suitable intervals. I shall write to each child.