

IN THE FAMILY COURT AT YORK

Case No:

Piccadilly House
55 Piccadilly
York
YO1 9WL

30 June 2017

BEFORE HER HONOUR JUDGE FINNERTY

**THE MOTHER
THE FATHER
A LOCAL AUTHORITY
CHILD A, B and C**

JUDGMENT NUMBER THREE

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(Official Shorthand Writers to the Court)

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

1. JUDGE FINNERTY: This judgment is given at 5.25 pm on a Friday afternoon. It is the third substantive hearing in respect of these children in the last 15 months. The children are Child A, born in 2003, now 13, Child B, born in 2005, now 12, and Child C, born in 2007, now 9.
2. Their parents, who appear as litigants in person are the mother and the father. The other parties before the court are the Local Authority represented by Mr Wilkinson of counsel, and the children through their Guardian Lucy Monk, represented by Ms Mason of counsel.
3. In March 2016, following a ten day hearing, I made final care orders in respect of the three children, approving care plans for long-term foster care and supervised direct contact with the parents. During that hearing, both parents were represented by experienced counsel. The father chose to sack his first counsel half way through the hearing, but had the benefit of having a second experienced junior to represent him throughout the latter half of the hearing.
4. The transcript of that judgment titled, 'JUDGEMENT NUMBER ONE' is essential reading to understand the context of this judgment. In November 2016, the father made an application for discharge of those care orders. That application was dismissed following a hearing in January 2017. The transcript of that judgement, titled, JUDGEMENT NUMBER TWO, is also essential reading.
5. Less than two months later, in March 2017, the mother issued an application to discharge the care orders or alternatively for an increase in her contact. Following those applications being issued, the local authority issued its own application pursuant to section 34(4) Children Act 1989 for permission to refuse contact between the father and the children. The catalyst for that application was the father allowing Child B to read court documents during a contact session causing her distress, and him then giving written notice to the Local Authority of his intention to terminate the contract agreement which had underpinned his contact.

6. Having reflected upon his actions, the father has now signed a new contract agreement and the local authority has withdrawn the application pursuant to section 34(4) of the Act.
7. The guardian has also issued an application. This is pursuant to section 91(14) Children Act 1989 for there to be no further applications pursuant to the Children Act 1989 by either parent for a period of 12 months without leave of the court.
8. I turn now to the respective positions of the parties in relation to the applications.
9. The mother's application for discharge of the care orders is supported by the father but opposed by the other parties. The guardian's application is opposed by the parents but supported by the local authority. The application by the mother for an increase in her contact is now agreed by all respondents as having merit. The care plans will be amended to one of direct contact, supervised by the local authority twice a month with active consideration being given to that moving from contact in a contact centre to contact in the community. The care plans will also be amended to provide for telephone and text contact between the children and their mother, to be initiated by the children and to be supervised by the foster carers.
10. I turn now to the essential background. In March 2016, I found that the father presented a risk of harm to the mother and to the children. That finding was based upon information which the mother herself had given to third parties about the father's abusive behaviour. I also found that the mother could not protect the children from this risk due to her fear of the father which compromised her ability to prioritise the children. Finally, I found that the risk could not be managed by the mother having the support of protective agencies or injunctive orders because the father had no respect for authority or court orders, the mother denied that he presented a risk and she had not been honest about the parental relationship. Those findings have never been appealed.
11. During this hearing, the father was most insistent that there was evidence to prove that this court had been misled into making the findings in March 2016. However, he was unable to produce any evidence to corroborate that assertion. He also asserted that he

was no longer subject to a MAPPA and insisted on playing recordings of telephone calls which he submitted supported that assertion. They did not.

12. Checks by the local authority of its computer records corroborated the evidence of the key social worker, Hannah George, which I accept. She attended the last MAPPA meeting convened in respect of the father on 21 May 2017.
13. The MAPPA is still in force in respect of the father. His level of risk is assessed as high. There will be another MAPPA meeting in respect of him in July 2017. It may be that at some future point, the father will file evidence which impacts upon my findings and at some future point he may be removed from the MAPPA. But this court has to proceed on the basis of the evidence which is available today.
14. At the issue resolution hearing, the father made an oral application for the children to be brought to court to give evidence about their wishes and feelings. Upon my direction, the children were visited by the guardian and her solicitor to explore their views about that suggestion. The children were clear, they did not want to give evidence, nor did they wish to meet with the judge until a decision had been made in respect of the applications before the court.
15. I turn now to the evidence. I heard evidence from the key social worker, Hannah George, the contact supervisor, Sam Hyde, from both parents and from the guardian.
16. It is often very difficult for parents to represent themselves. Most parents find it a very daunting experience. The clear impression I gleaned from the father's presentation is that he revelled in the experience. I will return to him shortly.
17. In previous proceedings, the mother had requested the assistance of an interpreter. However, during this hearing, although an interpreter was made available, the mother made it clear that she did not require his services. In my judgment, she was correct. She presented her case articulately and clearly, concentrating on the relevant issues. The father's conduct was very different. Throughout, he was very difficult to control. He monopolised the proceedings, talking over everyone. He focused primarily on his

grievances against a whole raft of professionals and his conviction that he is the victim of a conspiracy of lies woven by those professionals. It appears that he records everything. He insisted on playing recordings to the court from contact sessions, from telephone calls, from LAC reviews. Much of what he recorded was completely irrelevant to the issues that this court had to determine and was nothing more than a waste of this court's time. At times the father was threatening. For example, when the guardian was giving her evidence, Ms Mason had to make an application that he be warned against prodding the air with his pencil at the guardian. He has previously, and within these proceedings continued, to threaten legal action against professionals. When I adjourned to consider my judgement he sent through to me via my clerk a lengthy document, giving me formal notice of his intention to make a claim against me. His unreasonable behaviour was very distracting and ultimately wholly undermining of the mother's case.

18. It appeared from the papers that the mother's application for discharge of the care orders to might be a finely balanced decision, particularly as the mother asserted in her statement that she now accepted all the findings made by this court in judgement number one. The issues appeared to be whether her acceptance could form the foundation for protective measures to be put in place to enable the children to be safely rehabilitated to her care, and whether the father would now accept restrictions or controls over his behaviour in a way that would allow the mother and her children to live in peace.
19. I turn now to the law which I must apply. The welfare of these children is my paramount consideration and in assessing their welfare I must have regard to the criteria set out in section 1(3) Children Act 1989 and to focus upon whether there has been a change of circumstance of sufficient solidity to cause me to discharge the care orders.
20. As I set out in my first judgment, on a human level no sensible person could have anything other than the greatest sympathy for this mother. She entered an arranged marriage with the father in 2000 at a time when she was still living in Pakistan. She

entered the United Kingdom in 2002. She was only 18. She found herself married to a man with convictions for violence and supply of class A drugs who, after the marriage, and before she entered the United Kingdom, had been unfaithful with and violent towards another woman with whom he had a child. On the information which the mother has imparted herself, her marriage was extremely unhappy. She was subjected to violence; she was controlled; she was consistently humiliated by her husband who was a serial adulterer and, when she tried to escape with the assistance of the police, the father found her and she returned to him, even though she knew that a return would result in the removal of her children.

21. On a human level, one cannot but admire the steps which the mother has taken since March 2016, to make a better life for herself, perhaps it is not surprising that the journey has been a slow one. It must have been very scary for her. The first thing which she had to do was to physically separate from the father. The court takes judicial notice of how difficult that is, particularly for a Muslim woman. Immediately before the father's application for discharge of the care orders in November 2016, the parents were still living in the same property. By the date of the hearing in January 2017, the mother's case was that she was living with a friend at an address which was not disclosed to the court.
22. In January 2017, the mother must have known that it was not in the interests of her children on any level to be placed in the sole care of their father. She knew from reading the guardian's report that none of her children wanted to live with him. She supported his application. The inferences which might be drawn from that litigation position were that either the parents were still a couple, or the mother was still too frightened to oppose the father even when she knew that this was contrary to the welfare interests of her children and to their wishes and feelings. The court cannot ignore that those proceedings were concluded but months ago.
23. After the refusal of that application, the mother disclosed to the Local Authority that she had moved into independent living, into a flat in Town 3 which is closer to where the children reside in foster care. Since 2016 she has been employed full-time. I have

read a reference from her employer. It is absolutely glowing. However, the company is based in Town 2, which is less than two miles from where the father resides. It is obvious from the mother's demeanour before the court that she is now more confident than she was in March 2016 and she has commenced divorce proceedings, so the journey has begun.

24. To satisfy the Court that she has fully separated from the father's influence, the mother needs to evidence that she is able to withstand his control. She was not able to do that in January of this year because she supported his application for the children to reside in his sole care. She is still not able to do so.
25. In her written evidence filed within these proceedings, the mother asserted that she accepted the findings made by the Court in March 2016. This was a significant change of circumstance in that up to that point she had not accepted the findings of physical abuse. If the mother had accepted the findings, that might have been viewed as evidence of her detachment from the father's influence. However, in her oral evidence she retreated to a position of not accepting those findings. The only reasonable inference to be drawn is that she is still controlled by the father and cannot say anything critical of him when she is in his presence.
- 26 Since she has been in foster care, Child B has disclosed memories of her unpleasant experiences whilst living with the parents. Some of those were referred to by me in judgment Number Two.

27 Sadly, many children in our society exhibit an emotional reaction to distressful experiences, but only a minority of those children are referred to Children and Adolescent Mental Health Services for assistance. CAMHS is a very sparse resource and is only used for the most damaged and distressed young people. Child B has been so distressed that she has been referred to CAMHS, Her first session was on 14 February 2017. It was the guardian's evidence, which I accept, that Child B had discussed with her some of her traumatic experiences at the hands of her father and expressed her dilemma

as to whether or not she should report those experiences to the police. Eventually she decided that it would be better to share them within the therapeutic environment of the Child and Adolescent Mental Health Services

- 27 I turn now to the placement options available by reference to the welfare checklist, section 1(3) of the Children Act 1989.
- 28 The ascertainable wishes and feelings of the children. Their wishes and feelings are very important. I infer from the refusal of the children to attend court to give evidence or to meet with me prior to a decision being reached that they do not wish to be involved in the decision-making process. I must assess their wishes and feelings from the evidence of others. In the previous proceedings the clear and consistent evidence was that the children had always said that they wanted to return to the care of their mother. That is my starting point, and it was the starting point of the guardian. It was her evidence, which I accept, that this was what she expected to hear from the children when she went to visit them for the purposes of preparing her report for these proceedings.
- 29 The chronology of that visit appears to be as follows. The father's application had caused the children extreme anxiety. For example, as recorded in the guardian's report Child C was worried and distressed by the application, waking up several times in the night crying and chewing his jumper sleeves at school. The professionals' decision was that it would be more consistent with the welfare of the children that they should not be troubled about their mother's application until it was almost time for the hearing to take place. It was thus agreed that the social worker would visit the children earlier this month, simply to tell them that their mother had made the application. After that, the Guardian visited with her solicitor.
- 30 For the benefit of the parents, the process is as follows. Sometimes Guardians find themselves in conflict with children, in the sense that the Guardian feels that one option is more consistent with their welfare, whilst the children disagree. When that situation arises, the Guardian parts company with the children and they become represented by the Guardian's solicitor. The Guardian took her solicitor with her when she visited the

children, fully expecting that she would be parting company with them, fully expecting them to tell her that they wanted to return to the care of their mother when she had formed the professional judgment that would not be in their best interests.

- 31 I know the hour is late, but I think it is important for the mother that I read out the guardian's account of that visit.

"I visited all three children in placement in June 2017 with the children's solicitor,. This meeting was planned in discussion with the key social worker to ensure that the children were made aware of the application prior to my visit but were not left worrying about this for weeks before a hearing was scheduled to take place. Unfortunately this was the case previously as the mother told the children of the father's application, causing them a significant level of distress and unsettling them for a prolonged period.

Initially we saw the three children together with their foster carer to discuss what they understood the key social worker had told them. They were all clear that their mother had made an application and that they wanted to go home one day, but felt now was not the time. I then said we wanted to see them all separately and Child C said no, as he wanted to see what Child A said. For this reason I said we would see Child C first, as I did not want him influenced by Child A. Child C said his mother had made an application and wants us back. I explained she had, as there is currently an order that they stay in foster care until they are a lot older. Child C said he would like to see his mother more as then he will get more things. I asked what about living with her. Child C said he did not know as he has school and friends here and they can come and play or he goes there or they play at school. At his mother's he has no friends. Child C said he enjoys many things in placement such as rugby, cricket, table tennis, football, watching TV, riding his bike and swimming.

I asked about the good things about living with mother. He said he did not know and was worried it may be a rough place. Child C was not sure how often he saw his father, but then concluded every second month. When I asked if he liked seeing him or would like less or more contact, he said he didn't know.

Child B was able to understand we needed to talk about two things which were part of her mother's application, whether they would return to live with her or, if not, then about levels of contact. I reiterated why the judge was worried in the past and decided they could not go home to either parent. Then more recently, following her father's application, the court again decided that it was not safe for them to live with their father. Child B said that in her opinion, she did not think her mother wanted to make an application and she thinks her father is behind it. I asked why she thought this and she said, 'It is just how he is.' Child B then said that she would like to go back in future but not now as she would worry her father would move back in. If things went wrong and then could not come back to their current placement, it would be hard as Child B likes her school and was worried things would change.

I explained that I needed to understand why her views had changed as she had always wanted to go and live with her mother in our previous discussions. Child B said it has not been long and nothing has changed. Child B does not want either of her parents to keep making applications and she suggested a period of two to three years would give her and her brothers time to settle, get on with school and not always be worrying about what will happen or when an application will come.

Child B said her contact with her mother is good in how it works compared with her father and her aunt. Before her mother talked about

courts, but now Child B thinks her mother accepts the situation more. Child B said she was shocked by this application as her mother acts like the current order is final. Child B said she would like more frequent contact, but still the same amount of time. This seemed to be related to her being disappointed when they plan things to do such as arts and crafts and then her mother forgets. On further discussion, this also seemed to be related to the number of presents they would get.

We discussed the contact with her father and Child B said it was awful. I asked why, and she said they had tried to make it nice and got in a cake. Child B voluntarily said that her father showed her the court papers on purpose and feels he set it up. Child B said that her father then played music from home. 'I couldn't say anything. He knows what he's doing.' Child B said this made her angry but not scared. She wanted contact to be every three months, but was not saying she wanted to stop seeing her father and she also said she likes getting presents from him.

Child A presented as thoughtful and having thought about his views he understands that his mother has applied for them to live with her and the court has worries about them living with either parent. Child A said he did not know what to think as it was a shock she had made this application. He feels that there have been two court cases in a short space and he needs a break from worrying about courts. Child A said he wanted to go back but when things are ready. I asked how he would know this, and he said the judge would say yes. Child A thinks an order to stop other applications until they are ready would be good. Child A thinks an order for three years would be a long time, but a year would be better as he then could get on with his education. Child A knows the long-term plan is to remain in his current placement and said the good things about there was the garden, friends coming, going out, some clubs and the freedom he has as he is trusted. Child A said if

he lived with his mother, then he would be allowed out, not be allowed to have friends back as they usually had just family round all the time.

When we talked about contact with his mother Child A said, 'We should have more.' He would like to be allowed to go out in the community. Child A said he did not want contact loads of times per week like it was, but maybe once a week would be okay."

- 32 I have read the Guardian's account of her visit with the children on several occasions during the course of this hearing. The clear impression I gain is that the two older children had thought very carefully about what they wanted to communicate to the court via their Guardian. Put shortly, they wish to return to the care of their mother at some stage, but they do not have confidence that they would be safe and they wanted to wait for a while.
- 33 In his very lengthy cross-examination of the Guardian, the father suggested that she was telling lies in her account of her meeting with the children. He threatened her with legal proceedings. I am satisfied and find that the Guardian gave an accurate account of her meeting with the children.
- 34 Another relevant area of the welfare checklist is section 1(3)(e), any harm which the children have suffered or are at risk of suffering. The identified harm is that which is contained in my judgment from March 2016. I have re-visited the questions that I asked myself at that time, namely whether the children could be protected from that harm by their mother and/or whether they could be protected from that harm by their mother supported by agencies and court orders. In relation to the first, I have reached the same conclusion as I did in March 2016. Notwithstanding the personal progress that she has made since then, the mother is still controlled by her fear of the father. That is evidenced most dramatically by her expressing clearly in her written evidence that she accepted all the findings made by the court but in the presence of the father she retracted.

- 35 Could the mother be supported by outside agencies or injunctive orders. Having observed the father with care during the course of these proceedings, I have formed the same view as I did in March, that he has no respect for anybody, for any professional, for the mother, for the court. I would have no confidence that he would adhere to any protective plan.
- 36 The final paragraph of the section 1 criteria which is relevant when looking at placement with the mother, is section 1(3)(f), her ability to meet the needs of the children. I have been clear in all my previous judgments that this mother is an impressive mother, loving, capable, able to meet the basic day to day needs of her children. However, what has emerged over time is that Child B is a troubled young lady who attributes her distress to her experiences whilst living with her parents.
- 37 The mother does not accept that Child B is being truthful in her account of those experiences. In this respect she aligns herself with the father who asserts that Child B is a liar. No party has sought any findings as to the veracity or otherwise of Child B's account. However, I accept the evidence of the Guardian that Child B will only begin to heal emotionally if she is in an environment where she feels supported. I accept the evidence of the Guardian that the mother would not be able to meet Child B's emotional needs in that respect.
- 38 So, although there are advantages for the children to return to the care of their mother, there are also disadvantages.
- 39 Looking at foster care, the disadvantages are obvious. Foster care can never provide a child with family life in the sense of a placement with a loving birth family. The current foster placement is neither culturally nor religiously appropriate. The mother spoke eloquently about her concerns about that, both in the January hearing and in these proceedings. I have great sympathy for all the concerns which she has raised, however, I remind myself that within the proceedings which concluded with Judgement Number One, the mother had described the family as Westernised Asians. In any event, to address the mother's concerns, the guardian has recommended that a Muslim mentor is identified to work with the children. The local authority accept that recommendation.

- 40 In Judgement Number Two, I dealt at length with the catalogue harm which the father alleged the children were suffering in care. The father repeated the same allegations within these proceedings. I do not intend to repeat my findings. He has raised one new incident. The father alleges that Child B had been 'beaten up' The relevant evidence is that Child B and another young person were involved in an altercation which led to a physical scuffle between them. That is not an incident which justifies a description of the child having been 'beaten up.' Nor is it an incident which would cause justified criticism of the Local Authority. It is another example of the father exaggerating.
- 41 The advantage of foster care is that it accords with the wishes and feelings of the children and they will continue to be protected.
- 42 When I look at the advantages and disadvantages of the options before the court, I am driven to the conclusion that foster care remains the option most consistent with the welfare needs of the children at this time. Accordingly, I dismiss the mother's application for discharge of the care orders on that basis.
- 43 Turning to the application pursuant to section 91(14) of the Children Act 1989, the law which has to be applied is set out in the guidance given by Butler-Sloss LJ in the case of *Re P* [1990] 2 FLR 573. I have had that criteria very firmly in mind. Because of the lateness of the hour, I do not intend to go through it in detail, but I remind myself that an order pursuant to section 91(14) is a very exceptional order and should generally only be used where there is a history of repeated and unreasonable applications being made to the court. There is no such history here. Each parent has made one application.
- 44 However, Butler-Sloss LJ also stated that in suitable circumstances and on clear evidence, the court may impose the leave restriction in cases where the welfare of the child requires it, even where there was no history of unreasonable applications. In this case, I have the clear evidence from the Guardian that the children wish to have space and peace from litigation in their lives and that their anxiety around litigation impacts adversely on their welfare. By way of example, the Guardian told me that when he

heard about this application, Child A become unwell and had to have some time off school.

- 45 I balance that evidence against the submissions of the parents that they feel unable to negotiate positively with the local authority and that they have no avenue to challenge the local authority save through the courts.
- 46 Having balanced those two considerations, I have reached the conclusion that I will make an order pursuant to section 91(14) of the Children Act 1989, limited to any further applications for discharge of the care orders, for the next 12 months. That does not shut the parents out from coming to the court in relation to other issues, for example, contact.
- 47 I refuse the application for discharge of the care order; I make an order pursuant to section 91(14) limited to applications to discharge the care orders for a period of 12 months. I make an order for public funding in respect of the costs of the children.

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