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**CASE NUMBER: CT19P90542**

**IN THE FAMILY COURT SITTING AT MEDWAY**

**Anchorage House  
46-67 High Street  
Chatham  
Kent  
ME4 4DW**

**Monday, 20<sup>th</sup> April 2020**

**Before:**

**HER HONOUR JUDGE COVE**

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**Re A, B and C (Children) (Appeal: Practice Direction 12J)**  
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**BETWEEN:**

**Mrs X**

**Appellant**

**-and-**

**Mr Y**

**Respondent**

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Mr Chris Barnes (instructed by ITN Solicitors) appeared on behalf of the Appellant Mother  
Ms Kitty Geddes (instructed by Sills & Betteridge) appeared on behalf of the Respondent  
Father

Hearing date: 27<sup>th</sup> March 2020  
Appeal judgment: 20<sup>th</sup> April 2020

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**JUDGMENT**  
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## **HER HONOUR JUDGE COVE:**

### **Introduction**

1. This is an application to appeal a decision made by Magistrates sitting in Children Act 1989 proceedings in the Family Court at Canterbury on 27 November 2019.
2. There are three children with whom the proceedings are concerned: A, B, and C ('the children').
3. The appeal is brought by the children's mother, Mrs X ('the mother').
4. The respondent is the children's father, Mr Y ('the father').
5. The order of 27 November 2019 was made at the first directions hearing, the FHDRA, and appears to be made following discussions between the parties outside court with the assistance of the social worker who prepared a report for the court.
6. Unusually the order of 27 November 2019 being appealed was made by consent. The order made provision for the children to live with the mother and spend time with the father.

### **Documents and the hearing on 27 March 2020**

7. For the purposes of this appeal I read an appeal bundle and position statements and heard submissions from both parents' counsel.
8. The hearing on 27 March 2020 took place by telephone because of the restrictions in place due to the Covid 19 pandemic. Both parents joined the hearing.

### **Background**

9. The parents were in a relationship until 2018. Their divorce proceedings have now concluded.
10. The mother brought Family Law Act 1996 proceedings in 2019. In those proceedings she provided a statement dated 9 July 2019 setting out her allegations of the father's abusive conduct during and after their relationship.
11. The Family Law Act proceedings concluded on 2 August 2019 with the court accepting undertakings from the father.
12. The father applied for an urgent child arrangements order on 8 October 2019 seeking an immediate order for the children to spend time with him and long-term for them to live with him. The father provided a C1A setting out his allegations of domestic abuse by the mother.

13. Upon issue the case was referred for gatekeeping and the application listed for first hearing on 27 November 2019. One of the directions on allocation was for the local authority, who had been involved with the family from January 2019, to provide a letter setting out the history of it's involvement with the family to include results of safeguarding checks of the police. This was not a direction for a report under section 7 of the Children Act 1989.
14. The local authority first became involved with the family in early 2019 when the mother and the children moved to their area from the former family home. In June 2019 the children were made the subject of Child In Need plans.
15. The social worker provided what is referred to as a section 7 report for the hearing on 27 November. That report is dated 20 November 2019. The report refers to allegations of domestic abuse made by the mother and by the father. One such reference is to a domestic abuse notification received in relation to an incident between the parents on 19 June 2019. The section 7 report notes the local authority's concerns regarding the reports of domestic abuse within the relationship and the fact that the children are likely to have been exposed to the incidents. Domestic abuse is therefore raised as a key issue. This report was available to the Magistrates at the hearing on the 27 November 2019.

### **The hearing on 27 November 2019**

16. The mother was represented by her previous solicitor at the hearing on 27 November but her legal aid had only been granted the day before. The father was in person.
17. The hearing on 27 November was a short hearing and the court heard limited submissions focused on the contested issue of arrangements for contact handovers.
18. The order records that the Magistrates had sight of the report from social worker and that the social worker was present in court and reflects the agreement reached at court as to the arrangements for the children
19. There is no reference to allegations of domestic abuse, safeguarding checks or Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm, Family Procedure Rules 2010 (Practice Direction 12J).
20. No reasons were given by the Magistrates.
21. There is a short transcript of the decision made by the Magistrates which only relates to a decision as to where handovers should take place.

### **Events since 27 November 2019**

22. The mother lodged her appeal application on 18 December 2019.
23. The appeal came before me on 13 January 2020 at which point the transcript of the Magistrates decision was not available which led to adjournment of the appeal to 27 March 2020.
24. After the hearing on 13 January 2020 the mother decided to change solicitors raising concerns about her previous solicitor's conduct at the hearing on 27 November, which are not relevant to my decision.
25. In relation to the children's arrangements, since the hearing on 13 January 2020 events have overtaken and following the mother experiencing mental health difficulties in February 2020 the children moved to the father's care.
26. On 3 March 2020 the father made an application for variation of the order of 27 November to his local court. An order was made suspending the child arrangements order of 27 November 2019 and made an interim child arrangements order that the children live with the father. A child arrangements order was also made in relation to contact.
27. Notwithstanding that events have overtaken I have allowed this appeal to proceed because of the important principles involved in the court's approach to cases where domestic abuse is alleged.

### **The law**

28. The relevant parts of Practice Direction 12J provide as follows:

1. This Practice Direction applies to any family proceedings in the Family Court under the relevant parts of the Children Act 1989 in which an application is made for a child arrangements order, or in which any question arises about where a child should live, or about contact between a child and a parent or other family member, where the court considers that an order should be made.
2. The purpose of this Practice Direction is to set out what the Family Court is required to do in any case in which it is alleged or admitted, or there is other reason to believe, that the child or a party has experienced domestic abuse perpetrated by another party or that there is a risk of such abuse.

[...]

5. The court must, at all stages of the proceedings, and specifically at the First Hearing Dispute Resolution Appointment ('FHDRA'), consider whether domestic abuse is raised as an issue, either by the parties or by Cafcass or otherwise, and if so must –

- identify at the earliest opportunity (usually at the FHDRA) the factual and welfare issues involved;
- consider the nature of any allegation, admission or evidence of domestic abuse, and the extent to which it would be likely to be relevant in deciding whether to make a child arrangements order and, if so, in what terms;
- give directions to enable contested relevant factual and welfare issues to be tried as soon as possible and fairly;
- ensure that where domestic abuse is admitted or proven, any child arrangements order in place protects the safety and wellbeing of the child and the parent with whom the child is living, and does not expose either of them to the risk of further harm; and
- ensure that any interim child arrangements order (i.e. considered by the court before determination of the facts, and in the absence of admission) is only made having followed the guidance in paragraphs 25–27 below.

In particular, the court must be satisfied that any contact ordered with a parent who has perpetrated domestic abuse does not expose the child and/or other parent to the risk of harm and is in the best interests of the child.

6. In all cases it is for the court to decide whether a child arrangements order accords with Section 1(1) of the Children Act 1989; any proposed child arrangements order, whether to be made by agreement between the parties or otherwise must be carefully scrutinised by the court accordingly. The court must not make a child arrangements order by consent or give permission for an application for a child arrangements order to be withdrawn, unless the parties are present in court, all initial safeguarding checks have been obtained by the court, and an officer of Cafcass has spoken to the parties separately, except where it is satisfied that there is no risk of harm to the child and/or the other parent in so doing.

### **The mother's grounds for appeal**

29. The grounds for the appeal dated 18 December 2019 are:

- a. The Court did not give any, or any adequate, consideration to the provisions of PD 12J FPR 2010 in circumstances where the court was aware that allegations of

domestic violence had been raised and did not comply with the requirements of the Practice Direction;

- b. The court did not have completed safeguarding checks; and
- c. The recommendation of the report which supported the making of the order in the terms agreed was made without the father having been observed with any of the children and without the author having given any proper consideration to the allegations of domestic violence.

30. In the position statement for this appeal hearing (dated 26 March 2020) the mother submits the following reasons for continuing with the appeal, notwithstanding that the significance of the appeal is impacted by subsequent events and the fact that the children have moved into the care of the father:

- a. The decision made by the court on 27 November was clearly wrong, particularly having regard to the provisions of PD 12J;
- b. There is a strong public interest in that the appeal exposes extremely poor practice, which (occurring at Tier 1) may not frequently come to the attention of the senior judiciary and/or the public; and
- c. The mother asserts that the erroneous decision led to un-safe, and unreasonable arrangements been put in place which caused her additional stress and anxiety and contributed to events in February 2020.

### **Safeguarding checks**

31. Ordinarily these are undertaken by Cafcass but on this occasion at gatekeeping the Court requested that the local authority provide the checks. Cafcass safeguarding checks involve checks on the police national computer database as well as checks with all the local authorities involved with the family.

32. The report provided by the social worker is referred to as a section 7 report but no direction had been made under section 7 of the Children Act 1989 for a section 7 report. Although clearly the social worker was doing his utmost to assist the court the report does not provide a full analysis of the risks nor does it provide the necessary safeguarding checks from the police or other local authorities involved with the family.

### **Decision**

33. At the conclusion of the hearing on 27 March 2020 I gave a short *ex tempore* decision allowing the appeal with fuller reasons to follow in this written judgment.

34. I have concluded that the decision made by the Magistrates on 27 November 2019 was plainly wrong.
35. No reasons for the decision were given by the Magistrates. The court did not have regard to practice direction 12J even though allegations of domestic abuse were raised by the father in his application and the mother through reports to the local authority, when making an application for non-molestation order earlier in 2019, and in the position statement prepared on her behalf for the hearing on 27 November 2019.
36. The safeguarding checks were incomplete, the so-called section 7 report not being sufficient in its own right. There were no police checks and there was no information from other local authorities.
37. I acknowledge that the court was presented with an agreed way forward and would have been dealing with this hearing in a very busy list but plainly the court did not have regard to PD12J and specifically did not consider PD12J paragraph 6 when making the consent order. There was no analysis of whether the consent order should be made and no analysis of risk of harm to the children.
38. The order of the 27 November 2019 has already been suspended but in allowing this appeal I set aside the order of 27 November 2019. The new Children Act proceedings are continuing and therefore I do not need to return the matter for re-hearing. I dealt with the new proceedings at the hearing on 27 March and transferred them to the court local to the father with whom they are residing.

**HHJ Sarah Cove**

**20 April 2020**