

IN THE FAMILY COURT AT NEWCASTLE-UPON-TYNE

The Quayside Newcastle-upon-Tyne

Before DISTRICT JUDGE DITCHFIELD

IN THE MATTER OF

A

-v-

(1) B

(2) C

MR B MANSFIELD appeared on behalf of the Applicant and Second Respondent, instructed by David Gray Solicitors LLP

MR J WHITE appeared on behalf of the First Respondent, instructed by Caris Robson LLP

JUDGMENT

24th OCTOBER 2023 (AS APPROVED)

WARNING: 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.

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JUDGE DITCHFIELD:

Pre-amble

1. I intend in this case to deliver an *ex tempore* judgment. With respect to the lay parties, but principally for their benefit, this means that there is no real merit, nor is it appropriate to defer my decision to another day. Such a step simply increases any anxiety. It increases costs, particularly where the issue before me is one capable of resolution in the time frame we have available to us.

2. That does not mean that I have not been able to re-read and study the documents with which I have been provided and consider the submissions made by counsel. I have had that opportunity and it is an opportunity I have taken.

The Application

3. The applicant in this case is A and B, the respondent. As they share the same surname, it is probably necessary to state that, in the context of this family dynamic, A is stepmother by marriage to the children, X, born 2008, rising 15, and Y born 2012. He is 11.

4. B is their biological mother and, was previously married to C. He is also a respondent in the case. His position aligns with that of A, the stepmother.

5. The application I am asked to determine, brought as long ago as 22nd May of this year, is whether A be granted parental responsibility, as defined by section 4, (specifically 4A) of the Children Act 1989, in respect of X and Y.

Summary Background

6. To outline the background to the matter only briefly; there were previously private law proceedings which concluded in or around June of 2017. They took place some time after the parties, B and C, had separated and their marriage had broken down irretrievably.

7. As a consequence of those proceedings, what one might describe as a true shared care arrangement was agreed upon. That arrangement looked as follows: that on Mondays and Tuesdays, X and Y would spend time with their mother. On Wednesdays and Thursdays, with their father and then on alternating weekends they would spend time with one parent Friday through to Sunday with that arrangement switching around in the following week.

8. Accordingly, this is a situation where one can see at the outset both children have spent and are used to spending significant time in the homes of each parent.

9. 'Home' is a particularly key term in the context of this case. I understand from Mr Mansfield, who represented the applicant, that 'home' was a word emphasised and accepted to be important by both parties in the private law proceedings and the order made as long ago as June of 2017. The parties recognised shared care to be in the interests of the children and the value and security provided by their having a 'home' with each parent.

10. The children have always been actively encouraged, it is my understanding, to recognise that they have a home in both locations with each of their natural parents. They do not simply flit from one 'point of residence' to another. They enjoy a 'home-life' in each location as best and as natural as each parent can achieve.

11. Subsequent to the breakdown of B and C's marriage, B married A. They have been married and have lived together under the same roof for a considerable period of time. They have a son, who is therefore half-brother to X and Y. His name is Z and of course he lives with his mother A and father, B.

12. This application was made because A felt that the time had come for her status within the family to be properly recognised and, more importantly, her position in the boys' lives to be noted for their understanding and benefit.

13. Her clear and simple position is that she has been looking after these two boys since at least 2014 and has, in her words, "a significant bond with the boys". That is the first point she makes in favour of her application. It would, she impliedly contends, be in their welfare interests to know formally that she is a permanent and respected figure in their lives, accepted as part of the wider family framework which exists. She is integral to the home in which they live whilst with their father and thus integral to their homelife.

14. The second point is that, as A states, a 'practical issues arises': if an emergency were to develop, she needs to be able to deal with that in an efficient and effective way if she is the person who, coincidentally, is on the spot.

15. Those are the principal grounds upon which she brings her application. There are other matters, which are ancillary.

Procedural Background

16. The application proceeded through to case management on 4 September of 2023. The first respondent, B, sought to have this application summarily decided and indeed, summarily dismissed with an award of costs in her favour. She then contended and still maintains this is an unreasonable application and is in law, as well as in fact, entirely unnecessary.

17. The Deputy District Judge on that occasion, I think with the encouragement of CAF/CASS, refused to accede to that request and mooted the idea that the parties should attempt mediation. He was, however, persuaded that that would probably be a further waste of time and money where a decision was needed which it was likely only the court was going to be able to make. The Deputy Judge gave directions which bring us to today.

Evidence and the Approach to the Case

18. The principal evidence I have received is contained within the parties' witness statements. The applicant relies upon a statement dated 2 October of 2023 which is of even date to that produced by the respondent.

19. At the outset of proceedings, during discussion with counsel, it was agreed that no specific findings of fact were required. Thus, the need to hear oral evidence was obviated and

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avoided. The parties were equally and sensibly spared the distress which can be implied in that oppositional process.

20. The parties were also agreed as to the legal principles applicable and were able to state them straightforwardly for me.

21. In addition submissions, (which, with my apologies, had me interjecting where points of concern or interest arose), were supplemented by detailed skeleton arguments for which I am grateful. Again I have read and indeed, reread those. That is the material upon which then I decide the case.

Statement of the Respective Arguments:

22. What are the parties' positions and contentions? As I have said already the applicant states that there is an important and significant emotional connection with these boys which puts her in the position of '*psychological parent*': that being a phrase which resonates and sounds within the relevant case law.

23. It is a recognised status. It is not a term of art or fancy that Mr Mansfield has himself happened upon. It is put before me to conjure and impress the strong bond which it is said A has with X and Y.

24. She says that she should be granted parental responsibility because she is very much hands on as a 'parent' in the same way as B and her husband. She looks after the boys on her own when their natural parents are at work or, on occasion, where C's works takes him overseas. She says it is wholly likely in the future, as has happened in the past, where that sort of involvement, (supplementing the roles of the natural parents as she willingly does), will continue to increase. In fact, it is already significantly more than *ad hoc* care she provides. Her routine is enmeshed with that of the boys as would be typical for any parent.

25. She also says that the boys, (and I am quoting directly from her statement), see her "as second mother" and refer to her as such. For her, that is an important factor, no doubt one in which she takes considerable pride and is a something she firmly relies upon in support of her position.

26. That position is strongly resisted by B. She says that the application is motivated by the history of conflict between the parties, which is played out at length in the witness statements that I have before me. She says it is further evident from the history of the case as a whole.

27. She says, (and I am quoting from her statement), that this application is motivated by 'malice, one-upmanship and control as well as by a deliberate design on the part of C to undermine her.' Those are her words.

28. She is concerned that, if parental responsibility is granted to A, she will be marginalised and there will be some detriment to her role and status as mother. By marginalised, (albeit my word), she means to convey outvoted or finding herself against the immovable objects in unison, of A and C. They are, she fears, bound to sing from the same hymn sheet to her inevitable detriment and not necessarily for the benefit of the

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children. For that position she relies upon her past experience of matters as she sees them and as she interprets them.

29. The First Respondent doubts that this is an order which the court needs to make at all, saying that if the reality is that A is *qua* mother, or in the position of mother when the boys are in her house and under her roof, then really, why does she need a piece of paper or words on a piece of paper to further reflect what is the true situation: either from an emotional position or from a practical standpoint?

30. So, she considers, there is more harm to be done by the granting of an order. Furthermore, what she terms X's 'aggressive, confrontational and belligerent behaviour' in defence of his father's position will only become further entrenched, leading to inevitable future dispute between the parties. In any such dispute she fears she will be a bit part player thus further inevitably marginalised. The respondent contends that worryingly these sorts of outcomes will lead to litigation as an inevitability whereas, at the moment, albeit not entirely satisfactory, something of a lid is kept on proceedings. So why, she says, throw the grenade or light the touch paper?

Summary of the Principles of Parental Responsibility

31. The law I apply is set out ably and amply in the skeleton arguments that counsel have provided.

32. There is no dispute as to the meaning of parental responsibility. For the sake of the record and so the parties understand, it is to be seen as an important and fundamental right and responsibility to bestow on an individual. It connotes at its simplest level the obligation to exercise a charge over the day to day running of a child's life, such as having a child at school on time, washed, fed, appropriately dressed and other such matters.

33. Yet, at the same time, it involves something far more significant. Associated with those aspects of utility is the emotional importance and value brought to a child in being firmly anchored to a family and tied to those privileged individuals who hold that responsibility.

34. It makes plain those individuals holding that responsibility have a central importance in the child's life. It is a recognition those individuals play a real and meaningful part and are making a real and meaningful contribution to the development of a child into adulthood, providing the child with the template for life, which hopefully is the right template.

35. These two elements cannot be separated. As I said to Mr White, in the course of the hearing, the responsibility is not limited in time to when children are most dependent in their

tenderest years. The idea is for the connected adult to travel with parental responsibility through the lifetime of the child and indeed beyond that because, parents always remain parents. Thus, it marks the figure as fundamental. It is a privilege in as much as it is a right and responsibility.

36. I am mindful of what was said by the former president of the Family Division in the case of *HB that*, along with the rights, powers and authority of a parent come duties and responsibilities which must be discharged in a manner which respects similarly held rights, powers, duties and responsibilities of the other parent. So, a vesting or granting of PR is a sharing – particularly when one adds to the number who hold that privileged position.

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37. Importantly is to be treated [and therefore seen] strictly as a sharing, rather than a divesting of that responsibility. Where its duties are to be exercised, they are to be exercised respectfully, cautiously and appropriately, taking into account the concerns and views of everyone who is in a similar position. It is thus important that persons holding responsibility recognise this and are capable of so acting in the best welfare interests of the child rather than through or by their own selfish or ulterior design.

38. But it is, as paragraph 72 of that same judgment makes plain, much more than a mere lawyer's concept or a principle of law. It is a fundamentally important reflection of the realities of the human condition, of the very essence of the relationship of parent and child. It exists outside and anterior to the law and involves duties owed by the parent, not just the court.

General Principles

39. I must first ask, as Mr Mansfield reminds me, whether '*no order*' should be made as opposed to *an order*.

40. I must look, he reminds me, at what is best for the welfare of the children. I must not look to determine whether intervention by the Court is necessary, desirable or simply a good idea. Paramountcy of the child's interests is the test and, he makes the point plain, not some lesser or even higher stricture.

41. I am conscious of the exhortations on the part of courts senior to this and, set out in those previously decided cases to which I am referred, that I must be cautious and careful and to reflect a party's status by grant of responsibility only if that party shows itself capable of acquitting that role appropriately and understanding the principles which I have adumbrated above.

42. Those relevant authorities, as indeed does the Children Act 1989 itself, make clear and plain that the granting of parental responsibility to one individual is not to divest another of it. A person intending as much acts in a manner inimical to the grant.

43. I am conscious and appreciate the value of the argument which has been made before me that this may be an atypical situation. The application brought by A, it is contended, is not to

be seen necessarily as the equivalent of an application brought by, for example, a father where there is no step-parent on the scene. Nonetheless, there is nothing within the legislation or the authorities which prevent me from considering her as being in an equal position as the hypothetical father in that alternative and more typical example.

44. It is worth also repeating that, whilst not directly on point, I have regard at all times to the welfare of these children and the principles set out at section 1 and particularly subsection (3) of the Children Act of 1989.

Applying Fact to Principle

44. Turning then to my analysis of the facts with the additional benefit of the submissions I have heard: Mr Mansfield began by telling me that, when looking at the children's interests in the round and thus whether to grant the order sought, the court has to consider the degree of commitment shown by the relevant applicant towards the children, the degree of attachment and the reasons why the application is being made. This approach forms a good and useful framework as far as I am concerned.

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45. He continued that, in effect, A and her commitment to these children is the beating heart that lies at the centre of all that she is about and all that she does, including being the driving force for this application itself. She is, in its truest sense, a psychological parent: invested and engaged.

46. In those circumstances, it is fundamental to A's position in the household and family unit and the position of the children themselves, that her status be properly reflected. She has at all times sought to promote the parental relationship that father and mother have with their children. She has at times, if she has not always succeeded, sought to offer a refuge for the children when matters between their parents have flared or when there have been troubled waters around them.

47. She has never shown, I understand Mr. Mansfield to be saying, inclination to divest B of her position and status. She has not focused on the dispute between the adults and her statement bears that out.

48. It seems to me that there is, on the evidence I have seen and read, considerable merit in these submissions. There is nothing from any objective source such as CAFCASS, which says that she is in any respect a risk to these children, that they are not safeguarded by her or her intentions. When with her and at all material times they are cared for appropriately by her both physically and, crucially, emotionally. There would be every prospect that these children could be caught in the crossfire of the adult disputes. As I have said, she has acted as refuge in such circumstances rather than antagonist.

49. Moreover, she gives assurance to the court, (resonant with what the 'authorities' remind the parties parental responsibility is all about), that she will continue to act in the children's best interests, even where that might temporarily drive a wedge between herself and her partner, C.

50. Mr Mansfield reminds me that, in this particular case, there should be some but not undue focus upon the utility of her holding parental responsibility. We discussed that, whilst it is important she have the ability to act decisively in times of extremes or emergency, (as well as at other times where fundamental decisions are concerned), the case does not revolve entirely around that principle.

51. She is a woman, he tells me, who has no ambiguity or ambivalence about how she feels and behaves towards the boys. Nor then should her position in the household itself be ambiguous or ambivalent from anyone's perspective, particularly that of the children concerned. She should be invested with the correct recognition of her status, which is then for her benefit but more importantly that of X and Y.

52. Mr Mansfield advances that her role should be recognised, whilst being careful to stress that this is not an issue A sees as being 'all about herself'. It is a legitimate role she fulfils and ought to be given a legitimacy by the granting of this order. There is no reason, he tells me, why any of the difficulties which exist between the natural parents should be amplified by her involvement. Rather, it is hoped that the contrary will be true.

53. I pause there to say that it seems to me that I should not speculate as to whether further litigation will, in the future, trouble these parties and these boys. Whilst one cannot legislate entirely for the future, I see no evidence to say that anything that A has done thus

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far, (or suggests she intends to do), ought to alter that situation and lead to a flurry of disputes and litigation.

54. In fact, insofar as X is concerned, she appears to have been both a calming influence and a beneficial person for him to have on his side at this difficult stage of his teenage years. What she intends to do, Mr Mansfield told me, was, if possible, facilitate a way through parental differences, synthesise or mediate them and make sure all voices are heard. She brings to the party, in my judgment and assessment, something of an objectivity which has perhaps at times found itself wanting, indeed lacking in the other two adults concerned. A by my analysis adds rather than takes away from the dynamic.

55. Mr White advanced an argument which it seemed to me focused too heavily upon the potential negatives in this case. As I have said, I do not discount entirely the prospect of future rough waters but I regard it improper to take excessively into account anxieties about as yet undeveloped issues, which are themselves speculative.

56. The court and the children particularly are entitled to expect that those holding parental responsibility will deal with emergent matters sensibly, proportionately and appropriately if the time and need arises.

57. It seems to me that whilst balance and caution is always required, the correct emphasis is achieved by asking not what the granting of parental responsibility might take away from the situation but what it might add positively to the situation. In other words, to treat the glass as half full rather than half empty by acceding to the application which is made.

58. Mr Mansfield makes the point that A's role in the family is a legitimate one. Accordingly, the decisions she makes or the influence she has or the role she plays, whatever it may be, needs to be legitimate and her decisions need to be legitimated. In other words, to have some resonance and to be understood to have some authority. There is more scope for mischief and hazard it appears to me if by some measure her status is unacknowledged, undermined and eroded.

59. This point, I accept on analysis, he makes in a context which is real. To repeat and emphasise, this is a woman who has lived with and shared in raising these boys to the brink of their manhood. They look to her regularly for guidance and support. She is involved in all aspects of her life to a far greater extent than, as I have termed it, 'the weekend father, the weekend mother or the occasional participant.'

60. I am not blind to the other side of the case B says that in reality, if one steps back from this dispute, putting aside the emotions or the excitability between the adults then, really, A has all the status and all the legitimacy and all the recognition that she could possibly need. From an emotional or psychological parenting perspective, she is holding as many cards as she needs to or would ever need to. It is therefore nonsensical to talk about concepts such as parental responsibility and to become lost in the arcane.

61. It makes no difference to them, she argues. It is not a concept they are likely to investigate or interrogate and the lack of it has neither caused a problem thus far nor should it do so. It is not likely to feature in any discussions whatsoever within the household. She makes a good and strong point in that regard.

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62. She says from a practical perspective, that section 3(5) of the Children Act confers upon an individual, who exercises care on behalf of a parent an ability to intervene *in extremis* and at other times in any event. Thus there is no incidental divesting of A's relevance in such circumstances and occasions must be few and far between in reality that such interventions are required or need to be exercised without engagement of a natural parent. Thus the matters advanced by Mr Mansfield it is said are more likely theoretical constructs more in the mind of A and C than they are realities on the ground. The practicalities equally will begin to diminish as the boys grow.

63. I pause there to say that that is a submission I did not accept from Mr White at the time or now on reflection regarding his points.

64. As I have said, it seems to me that the two key aspects of parental responsibility, the emotional investment and the practical engagement, travel collectively and in a combined way with the child and with the parent throughout the lifetime of the child. Very often, once the child attains the age of 18 they may even endure albeit not on the same formal level.

65. A child will be always be the parent's child. That emotional bond, that emotional connection and that legitimacy of position and principle uttered by that legitimate individual still carries resonance well into adulthood. Whilst it may be that the child grows to a position where it does not need assistance with the day-to-day management of its life, there are other practicalities which move in to supplant them. The two primary obligations of PR may at certain times wax and wane but never does one diminish to the point it disappears so that one

may focus on and then similarly begin to erode and eradicate the other principle. They travel together, as I have said, and the relationship endures. It is of value for the child in my judgment to have a continuity in its 'life story'.

66. Mr White's other and equally fundamental point was that the court ought to be worried about the prospects of future conflict arising. I have dealt with this to some extent earlier in my judgment. I pause nonetheless to say, with respect to his client, (because I understand the difficulty of her position and how she feels) it is disappointing that B's statement takes what I estimated to be a 12 page 'run up' before getting to why, in law and in practice, parental responsibility is inappropriate in this case.

67. The playing out of the grievances which exist in this relationship, obviously very raw though they still are, is something which is of little benefit to me and the decision I must make. As I have encouraged the parties throughout this hearing, focus really is long overdue in its being turned away from the past and towards the future for the benefit of the children. It is their benefit to which I must have regard in the hope and expectation that the adults must parent together.

68. So, whilst I understand that there are positions, that there are anxieties and there are concerns, I am not impelled or in the least bit enticed into making a decision where I allow obsessions with the motivation for the application to overwhelm or subordinate the considerations of welfare.

69. I say that with the full knowledge that both parties, both sides as it were, are listening to me. It ought not be for a court to lecture parents on parenting but, all too often, parents devolve that responsibility to the court. The implications of that election as well as the potential outcomes cannot if often repeated be in the interests of the children in the longer

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term. Delegating responsibility and decision making to the court is sometimes inevitable, I accept, but certainly should never be the starting point.

70. It is self-evident that parents must parent. That of itself is one of the principal reasons why parental responsibility exists as a notable concept and exists as a necessary fact, to emphasise and ensure parents recognise the privilege and responsibilities that they have in bringing up their children or children in their charge. It should thus encourage them to do so and hopefully ensure that they do so.

71. There is no hint whatsoever A has not acquitted this charge. There is every indication she has, to the best of her ability, 'parented' these boys.

72. So, whilst I acknowledge carefully some of the concerns Mr. White expresses, I am not with him in considering there is a very real, if not inevitable, prospect for future conflict which will be unresolved unless the court resolves it.

73. That is something which is within the gift of the parties. I do not see that the granting of parental responsibility is going to make that position any more difficult or the road more treacherous.

74. Insofar as B feels marginalised then my view is plainly that if the position ever came that C came to court and argued, "I am the managing director here. I'm chairman of the board. What I say goes," then he would find himself, as would any father or any person, given short shrift. The court does not operate on that basis. PR does not operate on that basis but I emphasise I have seen nothing to suggest that C operates on such a basis either.

75. Future disputes, if they arise, are for future courts on future days. As I have now repeatedly said, I note nothing from what I have seen to think that the granting of parental responsibility will be interpreted as conferring those greater voting rights.

76. It is, I consider, a fundamental misconception to see the matter in that way. I do not accept that it is an inevitability, as Mr White seems almost to argue, that if A is granted parental responsibility that will, by definition, make the matter of resolving even the simplest of disputes all the harder. It rather flies in the face, in effect, of what is being said by Mr White on the other hand. Namely, that A already has all of the aces that she needs and is exercising them. I therefore ask myself what really is there to worry about?

77. Accordingly I answer the question which was raised in the case of *HB*: "is this a case where it is necessary to reflect the very essence of the relationship of parent and child through the granting of parental responsibility?". I find that everything I have heard of A reflects the very essence of the relationship of parent and child between herself and these two boys.

78. That is a very long way round of saying that in all of the circumstances, taking into account all of the arguments which are made: those made pursuant to Statute as well as those made under Article 8 of the Human Rights Act, s, it is my clear view that the balance falls very squarely and firmly in favour of A granted the parental responsibility which she seeks.

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79. I do encourage the parties, from here on in, to regard this decision as reflection of their equal value and position in the lives of these boys to whom the boys no doubt look in equal measure. Their relationship with each and every one of you will, of course, be different and have different complexions and different aspects which you can all exploit and benefit from in different ways to your own advantage and for the boys' advantage. The boys will then benefit and grow as a consequence of having exposure to a diversity of views and vigorous debate between adults. That provides a framework for children going forward to understand and learn how to resolve matters for themselves.

80. A is not a transient individual in the lives of these children. She has been there for many years and remains invested for the long haul. She has 'stuck with' the boys despite everything that is going on in the wider relationship between former husband and former wife.

81. So, for all of those reasons, equally recognising that it is important within the household, there should be no real distinction between Z and his half-siblings, I will grant the parental responsibility. The parties I am sure will, or I at least hope will, come to recognise that, of course, there will always be difficult times, differences and divergences of view as to how things are run in their respective households but there is nothing unusual or untoward about that.

82. So, without saying any more, what I do do is encourage the parties to see this as a step down the road to a more cohesive and collusive manner of parenting in a cooperative way in what is a difficult time, particularly for X but as will be for all children as they grow and pass through the difficult teenage years.

This transcript has been approved by the Judge