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This judgment has been edited/redacted for the purposes of anonymisation

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Neutral citation number: [2024] EWFC 101 (B)

IN THE FAMILY COURT SITTING AT OXFORD

**IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF [GG]
A GIRL, AND [BB], A BOY**

Date: 10 January 2024

Before: HHJ Vincent

Between:

AXX

Applicant mother

and

AXY

Respondent father

and

GG and BB

(acting through their Children's Guardian EM)

Second and Third Respondent children

Alex Hodge for the applicant mother, instructed by BH&O LLP
Elisabeth Hudson for the respondent father, instructed by Reeds solicitors
Richard Carroll for the second and third respondent children, instructed by Careys Law

Heard on 2 and 3 November 2023 and 10 January 2024

JUDGMENT

Short judgment

1. The parents separated in September 2019. The children have not seen their mother for four years. They do not want to see her. They are happy living with their father. They want the proceedings to end.
2. The children believe that their mother was a bad mother and was mean to them. They blame her for the accident that caused GG's injuries. They cannot forgive her.
3. In [country A] in 2014 the mother went out to the shops and left the children alone at home. She should have stayed with them, or made sure there was another adult to take care of them before she went out. She thought they would be safer at home than coming out with her. That was not the case. She is very sorry for the pain and hurt that GG then experienced as a result of the accident that happened while she was away.
4. After the accident, the mother looked after GG every minute of the day for many months. She slept on the floor in the hospital. She washed her, she comforted her and fed her, and sat with her when she could not sleep. She never left her side. The care that she gave to GG saved her life. She did this because she loved GG.
5. The father is still angry with the mother about the accident. He cannot forgive her, and he wants her to be punished. But in punishing her, he has also hurt the children, because he has made it seem as though there is no good in the mother at all. This is not true. There is lots that is good in her. She has been a loving and caring mum to the children, and they have shared many happy times together.
6. The father cannot see any good things about the mother. He told her she was not a good mother. Soon she came to believe what he said. She lost confidence. Over time the children started to think the same as their father, that their mother was no good. This is not true. The mother is human. Humans can make mistakes, but there is good in everyone.
7. When the mother took the children to the refuge in [place name redacted] she thought it would make things better. It was not what the children wanted and so she brought them home. She was not trying to kidnap them. She was trying to find space to be the mother she thought they needed her to be, without the father criticising her and making her lose her confidence.
8. Children are allowed to have their own thoughts and opinions. Lots of children have parents who are not able to look after them in the way they need, but those children still have love for their parents. The judge wanted to understand why the children's feelings about their mother are so strong.

9. The judge was worried that the children's understanding of what had happened in their lives was coming too much from stories told to them by their father, and was influenced too much by his own strong feelings about their mother.
10. If children's understanding of what has happened to them comes from what they have been told by someone else, it can be hard to make sense of their experiences. They might think that the part of them that comes from their mother's side is bad, because they think their mother is bad.
11. The judge thinks that if the children were to spend time with their mother, they would see that she is not a bad person, that she loves them, and that she deserves another chance.
12. The psychologist did a report. She thought it would be a good idea if the children had therapy.
13. The judge knows that the children do not want to talk about their mum and do not want to have any therapy that is about making them see their mum. But the judge still thinks therapy may help them. The children have been through a lot of changes. It would be good if they could have some help to understand what they have been through, to express their own feelings, and to recover from the difficult experiences they have had.
14. So the judge agrees that therapy might be good for the children. But we do not know who would give the therapy, who would pay for it, or whether the children or their father would go to therapy. If the case ended now, the children would likely not get any therapy and they would stay with the same feelings about their mum. The judge thinks there may still be a way to help these children.
15. The judge has decided to ask the local authority to see if it could help with the therapy, or else to see if it may have another idea about how to help the children and their parents.
16. The judge knows this is not what the children want. But while there is still a chance that the family could get some help, the judge thinks it is worth trying. The children will stay living with their father. They will not have to see their mother if they don't want to. So asking the local authority to help will not change anything for the children right now.
17. These are the reasons the case is going to carry on for a little bit longer. The local authority will be asked to prepare a section 37 report.

HHJ Joanna Vincent
10 January 2024

Longer judgment

Introduction

1. These private law proceedings were brought by the mother on 20 March 2020. She has not seen either of her children, GG or BB, since she separated from their father in September 2019. At that time GG was eleven, and BB was nine.
2. The proceedings have been beset by delays. It was two and a half years before a fact-finding hearing took place. Following that hearing, I sent out judgment on 3 January 2023.
3. This final hearing was listed before me in November 2023. GG is now fifteen and a half. At the time this judgment is handed down, BB will have just turned fourteen.
4. Throughout these proceedings, the children have expressed in the strongest terms that they do not want to see their mother, do not want her to know anything about them, or to have any possessions belonging to them. They want to stay living with their father, who BB has described as a ‘genius’. The children love him, are happy in his care, and say that he gives them a ‘perfect life’.
5. In the fact-finding judgment, I made findings that the children’s highly negative views of their mother had been instilled in them by their father, as a result of his behaviour directly towards the mother, and what he has said to the children about her.
6. Two significant events have shaped the family’s history and the current dynamics. The family is originally from [country A]. [*When the children were 6 and 4 the mother left the children alone in the apartment and an accident happened causing life changing injuries to GG*]. The mother is wracked by guilt and remorse for her decision to leave the children alone in the property. She will always bear the responsibility of that. However, I found that the father’s attitude towards her had been cruel and unforgiving. He has blamed the mother entirely, and has since encouraged the children to regard her as someone who did not love her children, and told them she locked them up in the apartment as a punishment, without caring what happened to them.

GG was in hospital in [country A] for many months, her mother sleeping at her bedside day and night. The family then went to live in [country B], again with the mother’s main focus being the care and treatment of GG. They moved to England in 2016, where GG’s treatment has continued.

7. The second event of significance was that in July 2017 the mother left the family home with the children and moved to a refuge. The children were very unhappy and after a few weeks asked to return to their father’s care. The mother returned to the

family home with the children. This event has been thereafter viewed by the father and children as an attempt by the mother to kidnap the children. Since then they have been fearful that the mother would try to take them away again.

8. The relationship broke down completely in September 2019 and the mother left the family home. Save for one brief meeting in a park, she has not seen her children since.
9. The fact-finding judgment gives more detail, but in summary I made the following findings:

Findings in respect of the mother's allegations

The father perpetrated emotional and psychological abuse and financial control towards the mother throughout the relationship including but not limited to:

- (i) *Throughout the relationship, the father would put the mother down, undermine her in front of the children, call her derogatory names, undermining her worth and confidence;*
- (ii) *Throughout the relationship, the father controlled the family finances;*
- (iii) *In late 2019 the father engaged in conduct that caused emotional abuse to the mother including sharing pictures of her wearing pyjamas with the maternal grandfather and unknown others.*

The father actively sought to alienate the children from the mother prior to, and after the parties' separation, including but not limited to:

- (i) *Following separation, the father failed to promote or facilitate any contact between the children and the mother;*
- (ii) *Following separation, the father allowed the school to understand that social services had advised that there should not be any contact between the children and their mother;*
- (iii) *During the relationship the father provided a wrong narrative of GG's accident to the children, blaming the mother for the accident, providing a narrative that the mother was uncaring, and denying that the mother had cared for GG since the accident, including in the UK.*
- (iv) *During the relationship and thereafter, the father would encourage the children not to listen to the mother, would undermine her authority, for example by telling the children their mother does not love them.*

- (v) *During the relationship and thereafter, making false allegations about the mother's treatment of the children, whether consciously or unconsciously he has encouraged the children to make and repeat allegations against their mother;*

The father perpetrated physical abuse against the mother prior to parties' relocation to the UK, including but not limited to:

- (i) *in 2014/2015 the father physically hit the mother, dragged her by her hair to the roof of the building and was punching her whilst she was on the floor. The mother sustained bruises.*

Findings on the father's allegations

10. The father made a number of allegations against the mother, but for the large part I did not find them proved. I found the mother to be a more reliable and convincing witness than the father. I rejected the father's account of the accident, and found that he had persistently blamed the mother for it in a way that was cruel and unkind to her. I accepted her description of the accident as reliable:

In 2014 the mother went out of the family home leaving the children alone. [An accident happened causing life changing injuries to GG]. Both parents worked together to support the family following the accident. The mother stayed with GG in hospital, supported her through her treatment in [country A], [country B] and England. The father continued to work to support the family, took care of BB and once the family was in [country B] and then in England, jointly with the mother, attended medical appointments for GG.

11. In response to a request for clarification I said as follows:

'When reaching my conclusions I was aware that there have been conflicting and inconsistent accounts about what happened on the day of the accident. I am satisfied, that having regard to all the evidence I read and heard, the accident happened when the children were in the home, the mother left them their unsupervised, and she is responsible for this. If she felt she had no option but to go out, she should have ensured there was another adult in the home to stay with the children.'

12. Following the fact-finding hearing I gave permission for a psychologist to carry out an assessment of the family. Unfortunately an appropriate expert could not be identified until April 2023. The expert, Dr Elinor Sason, reported on 24 May 2023. Time was needed for translation of this report and other key documents. The children's guardian RJ left Cafcass over the summer and a new guardian, EM, was

appointed in her place. She met with the children and spoke to the parents in early October 2023. Her final analysis document is dated 18 October 2023.

13. At the final hearing, I heard evidence from Dr Sason, the mother, the father and the guardian. I reserved judgment.

Parties' positions at final hearing

14. Mr Hodge has represented the mother since January 2022. He submits on her behalf that to conclude the case now where the children remain in a situation that is emotionally abusive to them would be contrary to their welfare needs, and would be unjust in all the circumstances.
15. He reminds me of my findings that the mother was in an abusive relationship, was excluded from the family home by the father and prevented from returning, thereafter the children – who previously had a close and loving bond with her – have been influenced by the father to reject their mother. Mr Hodge says the Court must strive to do everything in its power to right the wrong that has been done to her, and which has been compounded by the Family Court proceedings, which have so far not succeeded in reuniting the children with their mother, and have only resulted in their views becoming more entrenched.
16. Mr Hodge submits the Court should now involve the local authority, either by directing a section 37 report, or by listing a hearing at which the local authority would be invited to attend and the court would be invited to make an interim care order. He is not advocating for the children to be removed from their father's care at this time, but does suggest the local authority should share parental responsibility for the children. In this way, he submits, it could provide a package of support to the family, which would include intensive and meaningful work with both children and parents designed to help them process and understand their past experiences, and rebuild the children's relationship with their mother.
17. On behalf of the father, Ms Hudson submits that it is time to bring the proceedings to an end. She submits that the children's clearly expressed wishes and feelings should be respected. Continuation of the proceedings in any form, or any further professional involvement would be harmful to their welfare, and is unlikely to result in their relationship with their mother being re-established. She submits that a better way is for the father to support the children in work with CAMHS or another therapist, which work is more likely to progress if the proceedings have come to an end.
18. On behalf of the guardian, Mr Carroll advances the same position as the father, that it is time to bring the proceedings to an end. In the guardian's view the harm to the children in persisting with the mother's application against their clearly stated wishes

not to see her, is greater than any harm they might suffer as a result of not seeing her. To the extent that progress may be made at re-establishing the relationship between the children and their mother, she doubts the continuation of proceedings would achieve that and considers it would be better to pursue family therapy.

The law

19. In determining the mother's application, s.1(1) Children Act 1989 applies: the children's welfare must be the court's paramount consideration and the court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.1(3).
20. Further, s.1(2A) provides a presumption in favour of both parents being involved in a child's life unless that is proved to be contrary to the child's welfare. That involvement need not be equal, and may be direct or indirect (s.1(2B)).
21. Pursuant to Practice Direction 12J of the Family Procedure Rules 2010, the court must take into account a number of factors when considering whether to make a child arrangements order when domestic abuse has occurred. Paragraphs 35- 37 provide as follows:

35

When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

36

In the light of any findings of fact or admissions or where domestic abuse is otherwise established, the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.

37

In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –

(a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;

(b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;

- (c) *whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;*
- (d) *the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and*
- (e) *the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.*

22. In this case the findings of domestic abuse have been made against the father, with whom the children continue to live. The finding against the mother in respect of the accident was that she left the children unsupervised, which meant that she was not able to protect GG from the devastating accident that occurred. It was not part of any pattern of abuse, nor was it an isolated instance of abuse. In saying that I do not absolve the mother from all responsibility, nor do I minimise the impact of GG's experience, and of her life-changing injuries upon her. However, it is important to note that although it was alleged that the mother had abused her children, none of those allegations was proved. Practice direction 12J is relevant to the findings that have been in respect of the father.

23. Making an order which effectively prevents a mother from seeing her children is one of the greatest significance. It has serious and lifelong consequences for her and the children. In *Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521, para 47, the Court of Appeal summarised the approach to parental contact as follows:

- *Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.*
- *Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.*
- *There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.*

- *The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.*
- *The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.*
- *All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration.'*

24. I have been referred to **Re M** [2005] EWCA Civ 1090 (Ward and Scott Baker LJJ), in which the judge at first instance had declined to make an order for direct contact between the children and their mother, notwithstanding findings that she was a loving and concerned parent. The children's hostility to their mother was long-standing and entrenched, but their views were found to have been, '*corrupted by the malignancy of the views with which they had been force-fed over many years of their life by their father*'. At first instance, the judge acknowledged this, but considered that any further attempts at restoring the relationship would be unlikely to achieve anything, and would cause more harm than good. The Court of Appeal allowed the mother's appeal, and directed that there should have been a psychiatric or psychological assessment:

'Where, as in this case, the court had the picture that a parent was seeking, without good reason, to eliminate the other parent from the child's, or children's lives, the court should not stand by and take no positive action. Justice to the children and the deprived parent required the court to leave no stone unturned that might resolve the situation and prevent long-term harm to the children.'

25. Mr Hodge has referred me to **Re M (intractable contact dispute: interim care order)** [2003] EWHC 1024 (Fam) (Wall J as he then was). In that case the mother was found to have falsely persuaded her children that the father and paternal grandparents had physically and sexually abused them. Contact between the children and their father had stopped. The mother breached a number of orders requiring her to make the children available for contact, and made a further allegation of sexual abuse, which was again found to be untrue. An order was made for mother's committal in prison. The oldest child separately applied for permission to apply for a prohibited steps order against all contact.

26. The children were joined as parties, and the local authority was ordered to carry out an investigation under section 37 Children Act 1989. The children were removed from the care of their mother under interim care orders, so that the section 37 investigation could be carried out. The local authority subsequently issued care proceedings, at the end of which the children were placed with their father and supervision orders were made.

27. In his judgment, Wall J said that the use of section 37 in appropriate circumstances could resolve an intractable contact dispute. However, it was not to be regarded as a *'one-size-fits-all solution'*, and accordingly, the judgment came *'with a series of strong health warnings.'*
28. First, before ordering a section 37 report, the Court must be satisfied that 'it may be appropriate for a care or supervision order to be made'. The Court must be satisfied at the very least, that there are reasonable grounds for believing that the circumstances with respect to the children meet the threshold criteria under s 31(2) – that the children are suffering or are likely to suffer significant harm.
29. Secondly, the action contemplated (in that case removal for the children from the residential parent's care either for an assessment or with a view to a change of residence) must be in the children's best interests. The consequences of the removal must be thought through. There must be a coherent care plan of which temporary or permanent removal from the residential parents' care is an integral part.
30. Wall J then added the following to his list:
- the decision to order a section 37 report must be based on findings which have been made at a hearing;
 - the court must spell out reasons for making the section 37 order, so the local authority understands the context for its investigation;
 - the children should be separately represented;
 - The section 37 report should be supported by professional or expert advice, which has concluded that the children are suffering significant harm and that local authority intervention is necessary. This advice could come from a psychologist, psychiatrist or Cafcass reporting officer or guardian.
31. Mr Hodge is not advocating necessarily for the children to be removed from their father's care pursuant to an interim care order, but the point remains. I must consider whether the circumstances meet the test for ordering a section 37 report, and that there is a solid evidence basis to justify the decision. I should reflect on the result that ordering a section 37 report is designed to achieve, consider whether that is realistic, examine the risks and benefits to the children of embarking on that course of action, and be satisfied that it is in their welfare interests to make the order.

The evidence

Dr Sason

32. Dr Sason is a consultant counselling psychologist.

33. She diagnoses post-traumatic stress disorder in GG, *'in the context of having lived in war conditions, the accident, and its consequences for her. She also perceives her mother as rejecting, unloving and very much blames her for the injuries she sustained. GG's struggle with her body image whilst attributing the fault to her mum is serving to maintain the difficulty to consider any future contact with her mother.'*
34. While BB did not present as traumatised, Dr Sason considered he was likely to be suppressing his emotions, due *'to the experience of living in war conditions, the accident and the perception that his mother was abusive'*. BB was four at the time of the accident and it is unclear what his exposure was to it, or to the 'war conditions'. It is not entirely clear to me how he could be traumatised by a perception of being abused. Dr Sason recommends therapy to explore and uncover the trauma. Dr Sason said that BB was *'less clear about his memories of his mother in comparison to his sister GG'*. She believed this was also likely to be a result of him suppressing his emotions.
35. I understand that a psychologist must listen and focus on the history given. It could be possible that BB does not present as traumatised because he is suppressing memories of his mother. But it may also be that he is not able to recall with clarity many memories of her. He has not seen his mother for over four years, and was only eight when he last lived with her. I found that the mother did not inflict any form of abuse upon her son. Dr Sason did not appear to entertain as an alternative possibility that one reason for BB not presenting as traumatised in relation to his mother, was that he had not in fact been abused by her. This would be consistent with the findings I made, that his father has influenced his son's thoughts and feelings about his mother.
36. Dr Sason did note the findings of the Court that the father had encouraged the negative narrative the children hold in relation to their mother. She acknowledged that parental alienation could lead to significant long-term damage in relation to the children's self- image and ability to form attachments and adult relationships. However, notwithstanding the Court's findings, she said that she herself found it impossible to say that this had happened, *'considering [the children] are adamant that their narrative is based on their own memory'*.
37. Dr Sason suggests that the children would benefit from therapy, which could take place in three stages. Firstly, she suggests weekly individual psychological therapy to process their trauma and difficult past experiences. Once that has been completed, she suggests that the children have therapy with their father, with the aim of working towards repairing the relationship between the children and their mother. Thereafter, she suggests the mother may be invited to sessions. She is unable to put a timescale on this, but suggests all this therapy may be offered through CAMHS.

38. I note her recommendation, and I agree that the children should have some therapy to process their trauma and difficult past experiences, separate from therapy that may be designed to reunite them with their mother. I do have some reservations.
39. I have not seen any evidence that CAMHS would be able to offer the family therapy described.
40. I am not persuaded that the father or children would be willing to participate in such therapy.
41. It is not clear to me what narrative might be given to the therapist about the children's experiences. On the one hand the court has found that the mother has not abused the children. This is the narrative that they would need help to understand in order to take steps towards changing their understanding of their experiences and processing them. On the other hand, Dr Sason appears to suggest that the children should be believed, because they are adamant they have suffered trauma as a result of experiences at their mother's hands. The mother is not to be invited to participate at this stage, so would have no ability to share any alternative narrative with the therapist. The narrative from the children and their father would be one that paints the mother as an abuser, whose actions have left the children traumatised.
42. In those circumstances even the therapy that would be about processing past trauma and experiences, and not ostensibly about the children's relationship with their mother, would need some careful planning and professional input, because of the issues around the narrative.
43. If the father is the one relied upon to support and encourage the children in therapy, it is difficult to envisage how therapy might ever progress to re-establish the bond between the children and their mother.

The mother

44. The mother presented much the same as before. She continues desperately to miss her children, feels utterly powerless and frustrated with the Family Court process that has taken so long but achieved very little. She feels let down by the professionals who are now recommending that matters come to an end. The suggestion that she should continue to write letters to the children and that this would be the best means of repairing the relationship feels meaningless to her, where she has repeatedly been told that the children have ripped up letters received by her or put them in the bin, and they have stated in the strongest terms that they wish to receive nothing from her.
45. She is aware that her proposal of involving the local authority at this stage is not what the children want, and could well result in them resenting her even more. At the same time, she cannot countenance leaving the situation as it is, and accepting that the Court has placed the future of her relationship with her children in the control of the

very person who has acted to destroy it, and in whom she cannot have any confidence to bring about a change.

The father

46. The father also presented in Court just as he had done before. He came across as immature, petulant, and relentlessly negative about the mother. He continued to blame her for the breakdown of the marriage, and for the breakdown of her relationship with the children.
47. The father has not accepted the findings I made at the fact-finding. He has not taken responsibility for his own actions and their impact upon the mother and children.
48. He was unable to identify any single benefit to the children in having a relationship with their mother. He continued to belittle her, and could not see any loss to the children from not having her in their lives.
49. He has previously said that therapy is not regarded positively within his culture. He is not working and would not be able to afford therapy for himself or the children. I appreciate that he has said he would engage in therapy if he was directed to or if the children wanted to go, and he did not have to pay for it. However, he gives no sense at all of that being something he recognised as being in his children's interest, and given the vitriol with which he continues to speak of the mother, it is not sensible to think that he would be able to support the children with therapy aimed at improving their relationship with her.
50. Neither GG or BB have any wish to have therapy at this time. They see the mother as the source of the only difficulty in their lives. They have no desire to have therapy, or even conversations that challenge their understanding of their mother, let alone conversations aimed at rebuilding their relationship with her.

The Guardian

51. The guardian has been appointed late in the day to represent the children in a very difficult case. It is to her credit that she was able to read into the case in a relatively short time, meet with the children and prepare her final analysis document in time so that the final hearing dates could be met.
52. The guardian accepted in cross-examination that she had spoken only very briefly to the mother before preparing her report, and had said something along the lines of not being sure that there was anything to ask her. She said that most of the work had been done by the previous guardian, RJ, and that RJ, Dr Sason and the mother's legal team had done a good job of communicating the mother's perspective.

53. By contrast, in her report she describes having had a conversation with the father on the phone, and then later visited the children at his home, where she was also able to observe the children with their father. Her observations of those interactions were very positive.
54. Where the Court has made findings that the father has acted to exclude the mother from the children's lives, it was unfortunate that these interactions may have conveyed a sense to the mother that the guardian regarded her need to speak with the mother as less of a priority than the time she spent with the father.
55. At GG's request the guardian issued an application for GG to attend the final hearing. The guardian rang the father the night before the final hearing and asked him to bring GG to Court with him. GG, aged fifteen, then spent a couple of hours on her own in a room in the Court building while she waited for my decision. The application was refused. GG was disappointed and frustrated, and declined to meet with me. Further time was then lost while the father took GG back to school. The worst of this was that the mother and GG encountered one another in the public area just outside the Court building. They had not met for four years. The mother had no warning that GG was going to be there, and was extremely distressed and upset at seeing GG but not being able to speak with her. She was overwhelmed by the idea that during this most difficult hearing, GG might have been sitting next to her father, while she sat alone on the other side of a screen, trying to focus on the evidence and her case, but inevitably reliving the pain of the loss of her children and their rejection of her.
56. I appreciate that GG was absolutely determined in her wish to come to Court and participate in proceedings. The application was not issued in time for it to be considered in advance of the hearing. Nonetheless, in all the circumstances I regard the guardian's decision to invite GG to come to the Court building in this unplanned way as ill-judged.
57. It is likely to have compounded the impression formed by the mother that the guardian had not had time to consider things from her perspective, or having done so, had not attributed significance to that.
58. This was a difficult start to a two-day hearing, but the guardian was able to give her evidence with professionalism and confidence. She maintained the recommendations that she had expressed in her written analysis, save that on the issue of whether or not the father should be allowed to take the children abroad, having listened to the parents' evidence, she reflected, and modified her position.
59. The guardian established a good relationship with the children in a very short time and has been a powerful voice for them in a difficult case. I have considered her analysis and her recommendations carefully. Her conclusions are well within the range of what an experienced guardian might recommend, and there are good

arguments to be found in favour of bringing these long-running proceedings to an end, as she suggests. The arguments are finely balanced.

60. In exploring the guardian's analysis in more depth, I have some concerns about (i) her analysis of domestic abuse, and (ii) her analysis of the findings around what she terms the father's alienating behaviours.

61. The analysis document does not grapple with the issues raised by practice direction 12J, and in my judgement, the guardian's analysis of the nature of the domestic abuse in this case was limited. At paragraph 10 and 11 of her report, the guardian wrote:

'The findings against [the father] in relation to domestic abuse are very concerning. Living in a home where there was this kind of domestic abuse going on would have put both BB and GG at risk of emotional harm which could have impacted on their emotional health and development. I have considered the concerns in relation to domestic abuse using the Cafcass domestic abuse pathway. [The father] is able to verbalise the harm that experiencing domestic abuse could have on BB and GG. There is no suggestion that he has entered into another abusive relationship since the relationship broke down with [the mother]. The relationship between [the father] and [the mother] was clearly toxic and at times abusive. It is positive that the parents have now separated. [The mother] has not reported any concerns in relation to [the father] behaving in an abusive way towards the children (apart from the possibility of witnessing him behaving in an abusive way towards her in front of them). The information provided within these proceedings supports the view that [the father] is currently meeting the children's basic care, safety and emotional needs to a good enough standard.'

62. The guardian does not spell out what 'this kind of domestic abuse going on' is, but does not appear to take into account the emotional abuse that was found to have been perpetrated by the father to the mother, and by extension to the children, in the way that he undermined her relationship with them and denigrated her to the children over a period of years.

63. The guardian described the relationship as 'toxic', with some incidents of abuse. In framing the issue in this way, it appears that some blame is directed towards the mother, by being a part of the toxic relationship, and caught up in a mutual unhealthy dynamic. However, the findings were that the father had perpetrated physical, emotional, and financial abuse against the mother over a period of years. The guardian assumes that now the parties have separated there is no risk to the children from the issue of domestic abuse. That may ignore the risk that a person who has acted in an abusive way within a household to adults may well continue to act in that way towards children in the household. That the father appears to have needed the children to be aligned with his viewpoint so totally could be seen as a risk factor for this. That they are no longer living together may remove one element of risk from

domestic abuse, but perhaps minimises the risk of continuing emotional abuse, as a result of continued belittling and denigration of the mother to the children.

64. In respect of the alienating behaviours, at paragraph 11 of her analysis, the guardian wrote:

'Findings have been made against [the father] in relation to alienating behaviours against [the mother]. This is very concerning, and I am in no doubt that [the father] could have done more to promote a positive relationship between the children and their mother. It would be very helpful for GG and BB to be able to rebuild their relationship with their mother. I have considered the concerns in relation to alienating behaviours using the Cafcass alienating behaviours pathway. In my opinion the [injuries] that GG experienced in the care of her mother are important when considering this from the children's perspective. Both children view that their mother was responsible for GG's [injuries]. Whilst I accept the findings that have been made it is important to remember that the children's view of this is that their mother failed to protect them and is somewhat responsible for GG's injuries. In my opinion this is a justified reason for not wanting to spend time with their mother. If the incident had occurred in the UK, I would have expected [the mother] to have been investigated for child neglect or child cruelty. Dr Sason reported that GG has post-traumatic stress disorder (PTSD) and BB has also experienced trauma resulting from the accident. The situation is further complicated by the children's perception of their mother's view of their father. In my experience for a person to recover from trauma and PTSD they first need to feel safe. BB and GG report feeling safe with their father. Any suggestion by their mother and professionals that their father is in anyway unsafe would in my opinion be very hard for GG and BB to accept and could potentially hinder their recovery. BB and GG would need their mother to accept their position in relation to wanting to live with their father for them to be able to rebuild their relationship with her.'

65. I consider this minimises the extent of the findings that have been made against the father. It is not just some 'alienating behaviours', or a failure to promote a positive relationship between the children and their mother. The father has undermined her and denigrated her over a period of years so that the children's relationship with her has been completely destroyed.

66. The children, aligned with their father's views, view their mother as wholly at fault for the accident. On this basis the guardian says that the children are both justified in rejecting their mother, and she then weighs in with her own view, that this likely falls within the category of child neglect or child cruelty. I did hold the mother responsible for leaving her children unsupervised, and that could be categorised as an instance of neglect, but I did not make findings that justify the description of cruelty. The consequences have been horrific for GG and will last her whole life. But I am concerned that in the guardian's mind this of itself appears to justify the mother thereafter having her relationship with her children severed for ever. The idea that this

mother is wholly beyond redemption is a hard line for a professional to take, particularly when [the mother] was barely out of childhood herself, was the victim of domestic abuse at the time and was living in a warzone.

67. This is a mother who continued to spend time with her children every day for the next five years, nursed GG every day in hospital for months, attended every hospital appointment with her, administered her medication and took care of her. Until she left the family home when the husband called the police in September 2019, she had been the primary carer for the children, had cooked for them, maintained the house, supported them in their education, celebrated their birthdays and other special events with them, and shared in their lives fully.
68. I have made findings that the change in the children's perspective of their mother was as a result of the way their father behaved towards their mother in front of them and what he said to them about her. This has been the cause of the change. Their perspective of the events around the accident has developed because of the narrative that he has given to them about it. This is a narrative that I found to be false.
69. For these reasons, I am concerned that the guardian may have minimised the impact of the father's actions in undermining the mother's relationship with her children, and to have adopted his and the children's narrative that they were justified in rejecting her as a parent because of the accident that happened five years before the parents' eventual separation. In her evidence as a whole, the impression is of a tendency to criticise the mother and to overlook flaws in the father.
70. In her analysis of the potential options at this final hearing, the guardian does consider the possibility of directing a section 37 report. She does not give a view about whether the test for ordering a section 37 investigation is met, but the implication is that it must be, because that is not one of the reasons she gives for not proceeding with it. Her concerns, which are valid, is that it would cause the children stress and uncertainty which is not proportionate to their needs. Secondly, she says that prolonging the proceedings is likely to further impact negatively on the children's view of their mother and make it less likely to want to rebuild a relationship with her.
71. She concludes that the children should remain in their father's care and undertake therapy, describing this as the 'only workable situation'. I am not persuaded this option could safely be regarded as 'workable'. There seems no prospect at all of either GG or BB willingly undergoing any kind of therapy, and the idea that the father would be able to overcome this difficulty and support the children to engage in therapy seems naïve at best.
72. Where children are expressing views as strongly as these children, and the continuation of litigation is causing them distress, of course the question of whether or not to continue it against their wishes must weigh heavily in a guardian's mind.

73. The prospects of things changing now look more difficult than they have ever been, and there is no question that the children's positions are hardening, and their distress and frustration with the Court is continuing.
74. Implicit in the guardian's analysis is that the need to end proceedings now, and relieve the children from the ongoing pressures of the litigation, weighs more heavily in the balance than the need to try and repair their relationship with their mother.
75. My concern is that in reaching that conclusion, the guardian may have been influenced by a) a judgement she has formed that the children would be justified in choosing not to have a relationship with their mother at all because of the moral blame the guardian assigns to her for the accident, in line with the father and children's view; b) that the domestic abuse perpetrated by the father against the mother can safely be regarded as historic and no longer a risk factor; and c) that any harm arising from parental alienation is allayed when weighed against the positives observed from the bond between the children and their father, and because he has been seen to meet their basic needs.

Welfare checklist

76. I turn now to each of the factors on the welfare checklist.

(a) the ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding);

77. The children's wishes and feelings could not be clearer. They do not wish to have anything to do with their mother. They regard her with disdain and contempt. In this they are completely aligned with the views of their father. They want the proceedings to come to an end.

(b) their physical, emotional and educational needs;

78. GG does not have a formal diagnosis of PTSD from a psychiatrist, but Dr Sason has characterised her presentation as consistent with post-traumatic stress disorder. She has low self-esteem and issues around her body image, and because she blames her mother for the accident that caused her injuries, she also blames her mother for the difficult feelings she experiences around them.

79. BB was found by Dr Sason to suppress emotions he finds difficult to process, thereby negatively impacting his emotional development. I do accept this, although as noted above, I have some reservations about Dr Sason's analysis of the underlying issues.

80. Dr Sason recommends individual therapy and family therapy for both GG and BB. In closing submissions on behalf of the guardian it was said that having therapy will support GG and BB's emotional needs as the children deserve a relationship with both

parents. This is identified as the only way in which the children might be able to take steps towards rebuilding a relationship with their mother. It was submitted that the children engaging with family therapy will help them process the findings the mother wasn't abusive towards them, and could heal some of the harm caused by the father's alienating behaviour. For reasons given above, I question how the narrative that the mother was not abusive towards the children will find its way into the therapeutic process where the mother is excluded from participating in it until the third stage, and the children's beliefs about their experiences are to be treated as fact.

81. The children are enjoying school and their educational needs are being met.
82. The children need to be raised in an environment that is physical and emotionally safe. In their father's care their every day needs are being met, and their relationship with him has been seen to be loving and they are relaxed around him. However, he is someone who has been found to have perpetrated domestic abuse against their mother, and is the source of daily and continuing emotional harm, because their relationship with their mother has been and is continuing to be undermined, and they have been fed a false narrative about their past experiences.

(c) The likely effect of any change of circumstances

83. If the proceedings come to an end, the children will be relieved, and will continue as they are, living in the care of their father. The prospects of them re-establishing any relationship with their mother are vanishingly small, because it depends upon their father supporting them in that. He has not taken any meaningful step towards that end for many years, and there is no sign that he is likely to change now, particularly once there is no requirement to engage with Court proceedings.
84. If the proceedings continue, and the Court orders the local authority to investigate the children's circumstances and prepare a section 37 report, then the children and their father are likely to feel frustrated, angry and upset. These emotions are likely to be directed towards the mother. The continuation of proceedings and local authority involvement may well prove counter-productive, and reduce the children's motivation to re-establish a relationship with their mother even more.
85. The Court would be commissioning a section 37 report in circumstances where the guardian was not supportive of that course of action. This is contrary to the guidance of Wall J in *Re M*.
86. The mother is not suggesting that the children should be removed from their father's care in order for the section 37 report to be undertaken. However, it is arguable that any such investigation while the children remain in the care of their father may not achieve very much, because the children are so aligned with him. Conversely, it is acknowledged by all, that separating the children from their father would cause them

huge disruption and distress, particularly to GG who has her GCSEs in the summer, would be counter to their wishes and feelings, and again, is unlikely to further their mother's cause with them.

87. So the question posed by Wall J about what a section 37 report would achieve and what the consequences of directing it might be for the children, does not produce a straightforward answer. In the short term it may well be to their detriment, in the longer term, its impact is unknown.

(d) their age, sex, background and any characteristics which the court considers relevant;

88. GG is fifteen and a half and BB is just fourteen. They are of an age where they are well able to express their views and have an expectation that their voices will be heard.

(e) any harm which he has suffered or is at risk of suffering;

89. Both Dr Sason and the guardian have focused substantially on the children's narrative that their mother is the sole cause of the harm they have suffered, that they are being damaged by continual pressure to spend time with her, and would be distressed and damaged by continuing attempts to re-establish a relationship which is damaged beyond repair.

90. The Guardian considers the harm associated with direct contact being enforced upon the children against their wishes and feelings is greater than the harm from (i) the current lack of relationship with their mother; and (ii) the residual risks associated with remaining with a parent who has exhibited alienating behaviours.

91. For reasons already given, I have raised questions about the analysis that underpinned that conclusion.

92. I have had regard to paragraphs 35, 36 and 37 of Practice Direction 12J Family Procedure Rules 2010. In every case where domestic abuse has been found, the court must consider the conduct of both parents towards each other and towards the child, and the impact of the same.

93. Considering the effect of the domestic abuse on the child, on the arrangements for where the child is living, and on the child's relationship with the parents.

94. The impact of the domestic abuse on the children is not fully known, but they have been exposed to domestic abuse between the parents, which has included seeing the father denigrate the mother in front of them and directly to them. The children have been given a false narrative about the past. It has had the effect of distorting their

own past experiences, and interfering with their ability to process those experiences, recover from them, and look to the future. Ultimately these events have led to the mother leaving the household, and being rejected by her children, and the children aligning themselves with their father.

95. This amounts to significant harm.

96. Considering whether the parent is motivated by a desire to promote the best interests of the child, or is using the process to continue a form of domestic abuse against the other parent.

97. The father does not accept that it is in the children's interest to have a relationship with their mother. He came to this view only after his relationship with the mother had broken down in September 2019. Since that time he has not separated out his wish not to see the mother and for her not to be involved in the children's lives from their needs and interests, but has aligned their interests with his wishes. The proceedings have been brought by the mother, but the father has within the proceedings continued to criticise and blame the mother unfairly, and has not taken responsibility for his own behaviour.

98. Considering the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.

99. I consider the guardian's analysis somewhat glossed over an assessment of the father's capacity to appreciate the effect of past domestic abuse. The guardian says there is no risk of future domestic abuse because the parents have now separated. In my judgement that mischaracterises the nature of the abuse and the fact that it is continuing in the form of the way the father denigrates the mother to the children, to professionals and within the court proceedings.

100. The children suffered significant harm as a consequence of being left unsupervised by their mother in 2014 in [*country A*]. Thereafter there is no evidence that the children suffered harm or were at risk of harm as a consequence of the parenting they received from their mother.

(f) how capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs;

101. The father is capable of meeting the children's basic day to day needs, but emotionally there are concerns that while the children remain in his care they continue to be exposed to significant emotional harm.

102. Dr Sason concluded that the mother had good insight into the adverse psychological effects on the children as a consequence of the domestic abuse to which

they have been exposed. In the past when there have been investigations by social services there have been no concerns about the care given by the mother to the children, and the evidence of the children's tutor and support worker Ms I was that she was a loving and devoted mother to her children. Increasingly over time she found it harder to manage the children's behaviour, because she says their father undermined her authority, encouraged them to disobey her and treat her with no respect and with contempt.

103. However, at this moment her stock is so low with her children that there is no prospect of them being able to move to her care.

104. Further, the children are not in the headspace to process, at this stage, even the findings of the court. Contact is likely to be detrimental to the children's welfare given their entrenched views. If they refuse to go to contact, it is difficult to see what steps might be taken to encourage them.

105. The guardian considers the most appropriate way in which to meet the children's emotional needs currently and in future, in the hope a relationship can be re-established is to ensure there is regular indirect contact so the children are aware their mother is still thinking about them and dedicated to them. That is what has been ordered for the past four years, but it has achieved nothing. The mother has been told that her letters have been ripped up and thrown away. The children have made increasingly clear not only that they do not wish to receive a letter from her, but that they do not want her even to possess any photographs of them. In the circumstances, both the guardian's criticism of the mother for not maintaining her 'commitment' to writing letters, and her optimism that this would be the best way to begin the process of re-building the relationship, appears to me to be somewhat misplaced.

106. It was submitted on behalf of the guardian that the mother's application itself was a source of harm for the children. It was said that to, *'push direct contact and potentially a removal of the children from the care of their father, where they are settled and secure, shows an inability to internalise the professional recommendations on how best to meet the children's needs and to put their welfare before her own.'*

107. In fairness, in submissions the risks of harm to the children if they were to remain in their father's care, were also clearly stated on the guardian's behalf. She is in no way blind to the difficulties:

'The father is currently clearly meeting the basic needs of the children. However, his previous behaviour has destroyed their relationship with their mother and left them with significantly negative entrenched views. The father cannot fully meet the needs of either child unless he can try to promote contact with the mother and assist the children in their therapeutic journey to re-establishing a relationship.'

108. For reasons already given, I have no confidence that the father could at this time promote contact with the mother or assist the children on their therapeutic journey to re-establishing a relationship.

(g) The range of orders available to the Court

109. None of the potential options in this case is without difficulties.

110. Ultimately, the guardian submits that though heartbreaking for the mother, she must put the children's welfare first. Her analysis of the children's welfare needs is that they are best met by the proceedings coming to an end.

111. The father and the guardian suggest that the best way of re-building the relationship between the children and their mother would be to pursue the therapy recommended by Dr Sason.

112. I consider it unlikely that these children will be willing to engage in such therapy, even if there were evidence that it was available. I have no confidence that the father would be able to encourage and support them to pursue it.

113. While I found the guardian's optimism in this direction to be misplaced, I acknowledge that she has prepared her analysis on the basis that the therapy may not take place or may not succeed. Indeed, one reading of her conclusions is that she regards the mother's persistence in pursuing application as being emotionally harmful to the children, their rejection of her to be justified, and the mother's role now to be one in which she accepts that the children are best placed living with their father, and having no relationship with her.

114. This is the course urged upon me by the father and the guardian. It would bring proceedings to an end, and leave the children as they are.

115. In the alternative, I could direct that the local authority prepare a section 37 report.

116. That would cause delay to proceedings which are entering their fourth year.

117. I am conscious that in keeping these proceedings alive any longer, I will cause frustration, anger and distress to these children whose voices have been clear and consistent for many years now. That is not what they want.

118. I have in mind also the judgment of Wall J in *Re M*. It may well be that ordering a section 37 report from the local authority will achieve little more for this

family, given the entrenched nature of the children's views, their ages, and the time that has passed.

119. However, having considered all the evidence, the welfare checklist, and practice direction 12J, I have decided that this is the course I must pursue. I have found the decision finely balanced. My reasons are as follows.

120. If I do nothing, I will achieve nothing.

121. The children will remain in the care of their father. He is a person who I have found to be the cause of significant emotional harm because he has perpetrated domestic abuse against their mother, and continues to cause them significant emotional harm in the way he has undermined their relationship with her, and continues to denigrate her to them. This will have a life-long impact, not just because they will grow up without their mother in their life, but because they will grow up with a wrong and distorted view about her, and they will grow up with a distorted view of their own experiences, which will be difficult for them to process, understand and recover from. This is likely to impact them emotionally and psychologically for years to come.

122. The criteria for ordering a section 37 are met:

- There are reasonable grounds to believe that the circumstances with respect to the children meet the threshold criteria under section 31(2) Children Act 1989. At this time, the children both have suffered and are likely to suffer significant harm as a result of the care given to them by their father;
- In the past the children did suffer significant harm as a consequence of being left unsupervised in the apartment in [*country A*]. I do not consider that the mother's fault was such that she should be assessed as posing a continuing risk to her children, or that her fault was beyond forgiveness and should justify the end of her relationship with her children. However, evidently it continues to have significant impact on the family and that may require investigation;
- I have no confidence that change could be brought about by any order made within the private law proceedings (an order for direct or indirect contact at this time would achieve nothing, making no order and leaving the father to encourage the children to participate in therapy is not realistic). In the circumstances, it must be right that the possibility of a care or supervision order should be contemplated;

123. If I commission a section 37 report, there remains some prospect of a solution to this difficult and troubling case.

124. I am mindful of Wall J's words that such a referral must be supported by professional evidence. The guardian does not support the referral, but does not

suggest the evidence base is not there for making it. Dr Sason was not asked about a referral to the local authority and it would be outside her remit to consider that. Her report does support a conclusion that the children have suffered significant harm which requires some form of intervention.

125. The local authority may well decide that there is nothing they can usefully do to improve the situation for the children. Where the children are so aligned with their father and have rejected their mother so wholeheartedly, the prospect of a change of residence is not realistic to contemplate at this time. However, where I am satisfied that the criteria for commissioning an investigation under section 37 are met, it seems to me that I should be slow not to then call for that investigation. The local authority will be able to deploy specialists in domestic abuse and alienating behaviours to investigate, and may have access to in-house therapy, counselling or other interventions that may assist the family. A section 37 report asks the local authority to investigate and then to consider what actions it takes. It is not for me to shut down that option before the investigation has started.

126. A direction for a section 37 report will cause yet further delay, but in the context of the proceedings as a whole it is for a defined further period of time. The children's lives will not be significantly different than if a final order had been made, as they will remain living with their father and there will be no order requiring them to see their mother.

127. The children are likely to have to speak with a social worker, and no doubt may find this intrusive and unwanted, and may not wish to engage at all. However, it is not for me to prevent an investigation, merely because I anticipate it will present challenges for a social worker. The children's wishes and feelings of course must carry weight, but the way in which their views have been formed is also important to take into account. Their views are not determinative. Weighing the children's likely objections to the continuation of the case against the possibility that some progress might be made, I find the balance falls in favour of pursuing that possibility.

128. I have had regard to Re C:

There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.

129. The proceedings have gone on for a long time. GG is fifteen and a half and soon there will be beyond the scope of private law orders. There is a very small window of opportunity for the Court to intervene. Having regard to all the

circumstances, I am satisfied that while there remains an option to explore, it is my duty to facilitate that.

130. I will therefore direct that there is a further adjournment of the application for the local authority to investigate. There will need to be discussion about what documents should go to the local authority.

Travelling abroad

131. By the end of the hearing there was some consensus that the father should not travel abroad with the children, in particular to [*country names redacted*], at least until next summer. This agreement should be recorded within the order and can be revisited once the local authority has reported.
132. That is my judgment.

HHJ Joanna Vincent
Family Court, Oxford

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