

IN THE EAST LONDON FAMILY COURT

Case No. ZE22C00144

Neutral Citation Number: [2024] EWFC 13 (B)

Courtroom No. 9

6th and 7th Floor
11 Westferry Circus
London
E14 4HD

Monday, 13th November 2023

Before:
DISTRICT JUDGE COUPLAND

B E T W E E N:

F

and

A LOCAL AUTHORITY

and

M

and

THE CHILDREN
(through their Guardian)

MR D CLARK appeared on behalf of the Applicant
MR K ALI (Solicitor) appeared on behalf of the First Respondent
MS H ATHWAL (Solicitor) appeared on behalf of the Second Respondent
MS J LONNEN (Solicitor) appeared on behalf of the Children's Guardian

APPROVED JUDGMENT

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

DJ COUPLAND:

Introduction

1. I am concerned with proceedings relating to three children, X, Y, and Z.
2. The applicant in these proceedings is the children's father, represented by Mr Clark. The respondent mother is represented by Ms Athwal. The children are all subject to care orders in favour of the Local Authority, and so the Local Authority are also a respondent to these proceedings. They are represented by Mr Ali. The children are parties to the proceedings, and they are represented by Ms Lonnen, their solicitor, on the instructions of their Guardian.

Background

3. The substantive application in these proceedings was made by the father for contact with the children. There is already a section 34(4) order in place permitting the Local Authority to refuse all contact between the children and their father.
4. Following the results of recent hair strand drug testing, the father decided not to pursue his application and was given permission to withdraw that by me, earlier today. For the avoidance of doubt, all of the other parties were firmly opposed to the father's application for contact with the three children.
5. The outstanding issue for me to deal with today is the Local Authority's application for an order under section 91(14) to prevent the father making any further applications to the Court without first obtaining the leave of the Court to do so. The Local Authority seek for that order to remain in place until the youngest child reaches the age of 18.
6. The background to these proceedings is clearly very important in determining the Local Authority's application for an order under section 91(14).
7. In 2017, the children were all made subject to care orders, and Y and Z were made the subject of placement orders, with the Court approving a plan of adoption for them.
8. At the final hearing, in 2017, a number of findings were made:
9. Firstly, that there had been a significant incident of domestic abuse, involving violence and aggression perpetrated by the father towards the mother, which would have been terrifying for her.
10. Secondly, that the father slapped the mother when the children were present.
11. Thirdly, that X was kicked across the floor by his father and that X would have found this incident distressing.

12. Fourthly, the mother had physically been pushed out of her house by the father, that the children would have heard this, and this would have caused them emotional harm and fear.
13. Fifthly, the children were frightened of their father and were traumatised by witnessing violence and threats made by him.
14. Sixthly, that X remembered his father's actions and in X's mind, his father was a present threat to him.
15. Seventhly, the trauma suffered by all the children is a consequence of them witnessing frightening arguments between the parents, including physical violence and loud verbal arguments, including threats to kill.
16. The Recorder who dealt with that final hearing also went on to record that:

“Historically, there has been violence and aggression at such a level that the children have been seriously traumatised. The children's high level of fear is therefore linked to concerns about their father, and I find that the father has continued to exercise a regime of control over the mother and the children. I therefore find that the father presents a high risk of controlling, intimidating and aggressive behaviour to the mother, including violence and a high risk of controlling and aggressive behaviour in respect of the children. In light of my finding that the father assaulted X, I consider he presents a risk of physical risk of harm to the children”.

17. Finally, the Recorder concluded that:

“Those risks posed by the father was so high that no contact should take place between him and any of the children on either an indirect or direct basis”.

18. In 2018, the matter was restored to Court by the Local Authority seeking to revoke the placement orders in respect of Y and Z on the basis that the Local Authority had been unable to find adoptive placements for them and therefore the care plan for them was changed to one of long-term fostering.
19. Within those proceedings, the father made an application for contact and the Children's Guardian made an application for an order under section 91(14).
20. At the conclusion of those proceedings, the placement orders were revoked. The Court repeated the order under section 34(4) permitting the Local Authority to refuse contact between all of the children and the father on the basis that it would not be in the best interests of the children's welfare for any such contact to take place. In addition, an order was indeed made under section 91(14) for a period of three years.

21. I have seen the judgment from that hearing, and I have also seen the judgment from the proceedings that concluded in 2017. In the second set of proceedings, the Court recorded that:

“It was not in the children’s best interests to have direct contact now. The children’s reaction to the father’s application shows that it would be harmful to them to hear anything about or from the father now and in the foreseeable future. There must be no chance of the father learning anything that might expose the children and their placement. The father will need to change a lifetime’s behaviour when he is released from prison. The chances of that happening are unknown; it will be extremely difficult. I will not permit any exchange of any information which could put the children’s safety and security at risk. Their needs must come before those of the parents”.

22. The Court went on to say that:

“The children have been traumatised. A diagnosis of post-traumatic stress disorder in such a young child as Y, and indeed X, is very unusual, and it is a very serious diagnosis, and it is likely to affect Y’s mental health and may last throughout his life”.

23. As regards the application for the Court for the order under section 91(14), the Court concluded that:

“It is mostly used to stop repeated and unreasonable applications. I have already said that this was not the case here. The position in this case is that the children have continued to be harmed and their mental health affected by a mention of their father. Their carers are likely to be affected in the care of the children by any applications which are made and which they will need to be notified of by the Local Authority. The carers will in turn be affected by the children being affected. The children’s life story work has not yet fully started. They are described as very, very vulnerable. They have serious long-lasting diagnoses. Z’s long-term diagnosis is still unknown”.

24. In addition, the Court went on to say that:

“The father has significant work to do to change and address his difficulties and that change would need to be sustained and be demonstrated.... the children also need to get to a position where they want to know about their father, particularly given the harm that he has caused to them”.

25. The Court therefore concluded that an order under section 91(14) should be made for a period of three years.

The current proceedings and *Re W* application

26. The father made his application for contact indicating that he had made significant changes since the previous proceedings. The key issues in respect of the father are him being a perpetrator of domestic abuse, concerns about ongoing substance misuse difficulties, and concerns about his mental health.
27. In support of his application, the father produced an email from an organisation confirming that he was a service user there, that he had been taking medication for his mental health, that he continues to struggle with his emotions at times, and that makes it more complex for him to stop using cocaine and alcohol.
28. The father confirmed that after being released from prison, following his incarceration in respect of an allegation made by his former partner, that he had attended a substance misuse group, attended a domestic abuse course, and that he also had a diagnosis of having an emotionally unstable personality disorder.
29. The Local Authority's statements filed in these proceedings make it clear that the children's wishes and feelings are that they do not want to have contact with their father and that they remain in fear of him. It seems, essentially, that the children's wishes and feelings have not changed since the previous proceedings in 2018.
30. The father's position previously seemed to be that he was initially seeking indirect contact with the children and that he did not want to disrupt the children's placement. However, he also went on to say that he felt that X's "false narrative" in respect of him, needed to be corrected.
31. The Local Authority are of the view that the father still does not accept or understand the trauma caused to the children by his previous conduct and still does not really appreciate their wishes and feelings, and that is what led to the Local Authority making their application in these proceedings for an order under section 91(14).
32. The Local Authority said then, and continue to say now, that X has shown considerable distress during the course of these proceedings; he has become unregulated, refused to engage in tuition and therapy, and there have been several incidents where X has smashed property in his residential home.
33. The father has also requested contact for the children's half-sibling, D, and the Local Authority are concerned that that is another way that the father is trying to manipulate the outcome in the case, in case he was not allowed to have contact with children. I note that D has indeed issued that application and that is being dealt with separately. The Local

Authority go on to say that X has never said that he wanted to have contact with D in all the time that the current social worker has been working with him.

34. In addition, the Local Authority were concerned, and indeed remain concerned, that the father does not appear to have a good understanding of how his application to the Court, or D's application to the Court, may affect X. In addition, even the thought of having contact with the father was extremely distressing for X, and detrimental to his well-being and likely to be a cause of emotional harm to him.
35. During the course of these proceedings, the father also made an application for X to file a statement and/or give oral evidence. That was dealt with by way of a *Re W* application issued on 24 May this year. This appeared to be based on the father's belief that X's true wishes were not those being portrayed by the Local Authority and the Guardian, and that he should therefore be directed by the Court to file a statement and potentially give evidence in respect of it.
36. In support of the father's application, he said:

“I would like the Court and myself to hear directly from X as to why he is so afraid of me and for me to be given the opportunity to respond”.
37. The Guardian and the Local Authority opposed the *Re W* application. The Guardian prepared a *Re W* analysis where she raised concerns, firstly that the father shows no acknowledgement of his past actions, and secondly, it appears that he still does not accept the findings previously made against him, and that there were further reports of domestic abuse made by his former partner.
38. Thirdly, that the father has not moved on and has not developed any further insight at all into his past difficulties and that he shows a complete lack of insight as to the likely impact on X of having to give evidence, given that he is frightened of his father and does not want to see him. X had made his views clear to professionals about this and making X provide a statement and give evidence was, in the Guardian's view, likely to be harmful and upsetting to him.
39. Nevertheless, the father pursued his application for X to give evidence. I heard that application in July and for all of the reasons set out by the Guardian, and some others, I refused that application. My conclusion was that the Court had very clear evidence relating to X's wishes and feelings; they are reflected throughout the evidence in these proceedings. In addition, I concluded that directing X to give evidence, either by way of a statement or

giving oral evidence, would firstly not have assisted the Court in determining the father's application and secondly, would have been emotionally harmful to X.

40. It also became clear during the course of these proceedings that further police disclosure was required relating to those incidents that the Guardian referred to involving allegations made by the father's ex-partner against him. Those allegations were that he had behaved in a violent manner towards his ex-partner on multiple occasions.
41. While the details of those allegations are concerning, it is right to say that no findings have been made against the father (in respect of those allegations), that he has not been convicted in relation to any of those incidents and he makes no admissions in relation to any of those incidents.
42. The Court must, of course, base decisions on evidence and facts rather than speculation and allegations. Therefore, whilst it is concerning that the father has been subject to further police involvement and investigation, and has spent some time on remand in prison, it would be entirely wrong, in my judgment, to proceed on the basis that these incidents are anything other than allegations. I therefore do not attach any weight to them in respect of the father's risk of violence or aggression towards other people.
43. In relation to substance misuse, the results of the father's hair strand test dated September 2023 were positive for cocaine and codeine for the two months prior to giving samples. Last week, the father indicated that he was no longer pursuing his application for contact after accepting that he had suffered a relapse in respect of his substance misuse issues.

The positions of the parties

44. The basis for the Local Authority's section 91(14) application is those that I have already set out earlier in this judgment. They say that the father continues to show no understanding of the trauma suffered by the children, that his decision to pursue his application for X to give evidence is evidence of that and that he has relapsed into substance misuse. In addition, there have been ongoing concerns about him possibly being involved in domestically abusive incidents. They say that without the protection of a section 91(14) order, the father could make applications to the Court, as a right, without first having to seek leave and showing evidence of change. The Local Authority say that all the children require the protection of such an order until they reach the age of 18, because of the trauma that they have suffered, which was significant and is enduring. They say there is therefore a real and

obvious need for the children to have the protective filter of a section 91(14) order until they reach the age of 18.

45. That application is fully supported by the Guardian and by the children’s mother.
46. The father, however, firstly opposes the making of such an order at all. He says that that is not necessary and that the Court does not need to make such an order and furthermore, that it is not proportionate and certainly not proportionate for the Court to make an order until Z reaches the age of 18. He, therefore, invites me to dismiss the Local Authority’s application.

The Law

47. The starting point is section 91(14) itself, which sets out that:

“On disposing of any application for an order under this Act, the court may order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court”.

48. Section 91A sets out the circumstances in which the Court may make a section 91(14):

- “(2) The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put—
 - (a) the child concerned, or
 - (b) another individual (“the relevant individual”), at risk of harm.
- (3) In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to “harm” is to be read as a reference to ill-treatment or the impairment of physical or mental health”.

49. The case of *Re A (A Child) (Supervised Contact) (Section 91(14) Children Act 1989 orders)* [2021] EWCA Civ 1749 reaffirms the guiding principles set out by Butler-Sloss LJ in the case of *Re P (A Child)* [1999] EWCA Civ 1323 from 30 April 1999. The *Re P* principles, in summary are:

- “(1) Section 91(14) of the Act of 1989 should be read in conjunction with section 1(1), which makes the welfare of the child the paramount consideration.
- (2) The power to restrict applications to the court is discretionary and in the exercise of its discretion, the court must weigh in the balance all the relevant circumstances.
- (3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring

proceedings before the court and to be heard in matters affecting his/her child.

- (4) The power is therefore to be used with great care and sparingly, the exception and not the rule.
- (6) In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
- (7) In cases under paragraph 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.
- (8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice.
- (9) A restriction may be imposed with or without limitation of time.
- (10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore, the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order”.

50. In addition, in *Re A*, the Court provided some further updated guidance to those points. They can be summarised as:

- 1) The court’s jurisdiction to make such an order under section 91(14) is not limited to those cases where a party has made excessive applications. It may be that there is one substantive live application but that a person’s conduct overall is such that an order made under s91(14) is merited. The *Re P* guidelines do not say that a s91(14) order should only be made in exceptional circumstances, but rather the guideline is that such an order should be the exception and not the rule. In addition, it is anticipated in the wording of the judgment from *Re P*, that “in suitable circumstances, a Court may impose the leave restriction in cases where the welfare of the child requires it”, even if the proceedings were not dogged by numerous applications.
- 2) The making of a section 91(14) order is not only to protect a child from the effects of endless applications, but also from unmeritorious applications.
- 3) The Court also has to look at coercive control in circumstances where the Judge forms the view that the type of behaviour of one of the parents is the use of Court

proceedings as a weapon of conflict. The Court used the phrase “lawfare”. The Court may therefore feel that the making of an order under section 91(14) may provide protection for a parent from what is, in effect, a form of coercive control on the other parent’s part.

4) Finally, I must not make an order under section 91(14) to provide breathing space, while things settle down. In addition, I must not make future leave of the Court specifically conditional on a parent doing something such as engaging with therapeutic work.

51. It is therefore for me to undertake a balancing exercise in deciding whether to grant the Local Authority’s application, and if so, how long to make an order for.
52. An order under section 91(14) is a restriction on the father’s right to make applications to the Court in the future concerning his three children. It is not an order that the Court should ever make lightly. In addition, given that it is clear interference with the father’s Article 6 and Article 8 rights, any such order must be necessary and proportionate.
53. Having said that, it is also right to say that the making of an order under section 91(14) is not a complete barrier on the father being able to make an application to the Court while that order is in force. It is rather an extra step in the process whereby the father would first have to obtain the Court’s permission before proceeding with such an application.

Analysis and conclusion

54. I have considered the written evidence in the very comprehensive court bundle that has been provided to me today. I have had the benefit of position statements from all four parties, and I have had submissions on behalf of all four parties.
55. Having considered all of that and having considered the written evidence and indeed the judgments from the Recorder in the first proceedings and the judgment of District Judge Cooper from 2017, I have reached the conclusion that I should make a section 91(14) order in these proceedings for the following reasons.
56. Firstly, these children are all able to express their wishes and feelings. It is clear that they do not want any contact with their father, and they have not done so for many years now. X and Y are very clear in their views and always have been. At their ages and level of understanding, their wishes and feelings are extremely important. Z does not want contact either, although he has expressed some interest in knowing about his father. At the age of 10, Z’s views are important, and they must be considered. However, I do not consider them

to be determinative. I do, however, note what he has said about not wanting contact with his father.

57. Secondly, these children are all traumatised by the actions of their father and have complex additional needs as a result. Any further applications by the father do, as the Local Authority and the Guardian say, pose a real risk of causing further distress and trauma to these already vulnerable children.
58. X has exhibited multiple behaviour issues in the care of the Local Authority in the form of repeated incidents of violence and aggressive behaviour. He has had multiple placement breakdowns and has been in two different residential units. He currently remains in the second of those now. In addition, he has a diagnosis of post traumatic stress disorder and disordered attachment arising from what he was exposed to when he was in the care of his parents.
59. Y has significant behavioural and therapeutic needs too, and the evidence of the professionals is that the stress and even knowledge of an application by the father is likely to worsen those needs. Y's previous placement was unstable due to his verbal and physical aggression and outbursts, which were aimed at his foster carers and Z. During 2022, it was felt that Z's safety was being compromised due to Y's behaviour and the frustration and anger he was exhibiting. Y has a lot of complex emotional issues due to the trauma he faced as a child, and this presents with him displaying physical and verbally aggressive behaviour. He has been referred to CAMHS for support on two separate occasions and has undergone psychotherapy.
60. Z has also previously had support from CAMHS by way of play therapy as a result of his behavioural presentations and concerns too about his mental health and psychological needs.
61. Thirdly, I do regard the father's *Re W* application in these proceedings for X to give evidence, to be relevant. As I found at that *Re W* hearing, seeking for X to give evidence, either by way of a statement or orally, in circumstances where his wishes and feelings could not have been any clearer, would have been emotionally harmful to X and I am concerned that if the father was able to issue any further applications before this Court without first obtaining leave, then there is a very real risk of such further applications causing serious emotional harm and damage to X, who already has those additional needs that I have referred to as a result of his previous traumatic experiences.
62. Fourthly, I am not satisfied that the father has developed any understanding or insight into the Court's previous findings, and most importantly, the impact of his actions on his

children. He still, it seems to me, blames others for why the children might not want to see him, including blaming professionals within these proceedings for X holding, what the father calls, a “false narrative” about him. I am concerned that this lack of insight means that the father is increasingly likely to seek to issue further applications in the future, given that he continues to lack insight into the real reasons why the children are so traumatised and why they have the difficulties that they do.

63. Fifthly, the father has still not addressed his previous difficulties as evidenced by his recent relapse into further substance misuse. Although the father has engaged with St Luke’s to some extent, I have not seen evidence of any sustained changes being made, particularly around the issue of insight into his previously abusive behaviour towards the mother and the children. It seems to me that the father has a huge amount of work to do before any application for contact could realistically be deemed to have merit. In addition, even then, there would still be a significant question mark over whether the children’s wishes and feelings are likely to change. If the point is reached where the father can demonstrate that he has made sustained change then he can, of course, make an application to the Court for permission to pursue an application.
64. Next, given the likely trauma that the children would experience from further applications, I am concerned about the significant strain that will be placed on the children’s carers who are responsible for meeting these vulnerable children’s day to day needs. Such trauma is likely to be further exacerbated by any further applications and place yet further strain on those carers in meeting these children’s needs.
65. For all of those reasons, I am of the view that the father continues to pose a risk to the children. In addition, further applications either for contact with the children or to discharge the care orders that are currently in place, pose a very real and direct risk of causing the children emotional harm and further trauma. I am therefore satisfied that the children do require the protection of an order under section 91(14).
66. Turning to the duration of such an order, the Local Authority invite me to make this order the youngest child turns 18, just over seven years away. That is an unusually long period of time for an order of this nature to be made for. I remind myself, again, that any order I make must be necessary and proportionate to the issues and in this case, the risks that are involved.
67. I have considered this issue with great care. In my judgment, the history of this case and the findings of this Court, the incredibly strong views of the children, the harm that the children have suffered previously, and the likely further emotional harm and trauma that they will

suffer from any further applications made by their father, do necessitate an order that provides them with the protection required for the remainder of their minority.

68. I am concerned that these proceedings have been traumatic for the children. They are all of an age where they know and understand what these proceedings are about. They have been clear in their wishes and feelings. They all remain fearful of their father.
69. In addition, I am concerned that further applications, which will inevitably involve further discussions from professionals with the children about the issue of seeing their father, will cause significant further upset and distress to the children given their experiences to date. The children cannot, and should not, be expected to go through this again without some level of protection being in place for them by way of a section 91(14) order. It is my view that that order therefore needs to remain in place until the youngest child reaches 18.
70. I reiterate again that an order under section 91(14) does not prevent the father making an application to the Court. However, it does provide the safeguard of requiring him to first obtain permission to do so, given the trauma suffered by the children, their additional needs, and the risks involved. It is my view that it is therefore necessary and proportionate to make an order on those terms and that is what I shall do. The scope of the order will be in respect of any application for contact with the children and any application to discharge the care order, which is essentially the same terms that the order was made in previously.

End of Judgment.

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