

NEUTRAL CITATION NUMBER: [2025] EWFC 38 (B)

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 7TH FEBRUARY 2025

HANDED DOWN ON 24TH FEBRUARY 2025

BEFORE HER HONOUR JUDGE OWENS

F

And

M

The parties and representation:

The Applicant, F, represented by: Mr Baylis, Counsel

The First Respondent, M, not present and not represented

**Also present as directed the allocated social worker and a legal representative for
Oxfordshire County Council, Ms Nulty, Litigation Executive**

This judgment is being handed down in private on 24th February 2025. It consists of 11 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the child and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties and the child will continue to

apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

Introduction

1. This is a final hearing in private law Children Act proceedings. The parties are the two parents, F and M. The proceedings concern their two children, A and B, who are aged 14 and 9 respectively. F is the applicant and M is the respondent.

Background

2. A and B currently live with F and spend time with M on an ad hoc basis, supervised and facilitated by F. Sometimes this has been daily for B but for A it has been less often.
3. There is a long history of professional involvement with this family, going back to the end of 2021 when the children's school made a referral to the Local Authority because they were worried about M's mental health.
4. There have been a number of concerns about this family. Concerns have included M's presentation and fluctuating mental health, issues between the parents about arrangements for the children, M removing B from school in May 2023, the children's school attendance, the children's presentation, emotional health and physical and social needs.
5. In December 2022 F rang social services to report that M had stopped A and B having direct contact with him. The Local Authority took no action at that point, but F applied on form C100 shortly afterwards and this was the beginning of these proceedings.
6. On 6th June 2023 Magistrates heard the First Hearing Dispute Resolution Appointment for this case. M did not attend that hearing. The court directed disclosure of evidence from the Local Authority, a letter from M's GP, and witness statements from F and M. There were then further hearings on 20th July 2023, 12th October 2023 and 24th November 2023. M did not attend any of these hearings. At the 12th October 2023 hearing, proceedings were reallocated to District Judge and an order for direct contact to

take place between A and B and F was made. Before the 24th November 2023 hearing the court received a letter from the maternal grandmother saying that M's mental health had deteriorated, and she was due to undergo an assessment.

7. On 19th December 2023 there was a further hearing at which M again did not attend. The Local Authority was directed to file a section 7 report addressing what arrangements for A and B were in their welfare interests. This was followed by another hearing on 27th March 2024 at which again M did not attend.
8. The first time that M did attend a hearing was on 15th May 2024. The court directed the Local Authority to complete a section 37 report, and the Court was told that both children were subject to child protection plans and the case was due to be referred to a legal panel to consider issuing public law proceedings. The Court ordered that A would live with F until further order, but that B would remain living with M until the next hearing. On 24th May 2024 there was an urgent hearing before a Circuit Judge, at which it was ordered that B would move to live with F.
9. On 28th May 2024 the Local Authority entered the pre-proceedings process under the Public Law Outline. F engaged fully with that process. M did not.
10. I heard the case on 1st August 2024. I ordered that the level of time the children would spend with M should reduce from four times to twice a week, the reduction being because of problems with the quality and frequency of contact. A and B had been reluctant to attend, A in particular. I also ordered the Local Authority to complete an addendum section 37 report to consider whether the threshold for bringing public law proceedings was now crossed in light of the lack of engagement by M, or to identify other support that may be given to the family. M was also directed to file and serve a letter from her GP, but this direction was not complied with.
11. Prior to the last hearing on 16th October 2024 the Local Authority filed and served their section 37 report. They did not conclude that any public law orders were necessary and considered that risks could be managed under a child protection plan.

12. The Local Authority also completed a parenting assessment of F (209-248) which concludes that he has met the needs of A and B and that they are happier in his care.
13. At the last hearing on 16th October 2024, HHJ Gibbons suspended arrangements for direct contact between M and the children. Direct contact had been extremely problematic for the children in the run up to this hearing, even with supervision M had struggled to focus on both children and to act appropriately towards the children (especially A) as well as contact supervisors and it was believed that M was suffering from a significant decline in her mental health causing problems with contact. A and B did not want to spend time with her at this point. It was known that M had not been engaging with her mental health worker, and she had also not attended Family Group Conference and Core Group Meetings.
14. HHJ Gibbons listed the case for a 3-day final hearing starting on 24th February 2025, with a pre-trial review on 7th February 2025. Dr Ratnam was instructed to prepare a psychiatric assessment of M. Significant efforts by both the Local Authority and F's solicitors were made to encourage M to engage with that assessment. Unfortunately she did not engage, and the assessment was not completed.
15. M did not attend the pre-trial review, but F and the Local Authority did. The Local Authority is not a party to the proceedings but has been permitted to file position statements and attend hearings with legal representation. At the pre-trial review the direction for Dr Ratnam to complete a psychiatric assessment of M was discharged and it was agreed to shorten the final hearing listing to 1 day to enable the court to produce a written judgment to help M understand the outcome. It would also potentially be of assistance to A and B in future to have a written judgment.

Parties' positions

16. F's position was set out in his position statement prepared by counsel dated 4th February 2025 (24-30) and in his last statement dated 3rd February 2025 (102-105). Despite the extremely concerning and lengthy history set out above, matters have unexpectedly

moved on in a very positive way since the last hearing. B is now seeing M almost daily after school and A occasionally joins in depending on her wishes and feelings (she has found spending time with M very difficult at times). F is very keen to ensure that contact arrangements are flexible and fluid in the best interests of the children. F would like the court to make an order for A and B to live with him and for there to be no specific order for the time that A and B spend with their M as this is not necessary in the circumstances.

17. M has not filed evidence as directed and has not participated in professional and expert assessments as noted above. She has been sent notices of hearings by the Court, and nothing has been returned undelivered, so it seems clear she is aware of hearing dates but has chosen not to attend them. This may be due to her vulnerabilities but no application to adjourn has been filed and she has not submitted any evidence to show that she is unable to attend Court. Despite her lack of engagement it seems as if the family, with the support of the Local Authority, have been able to find a way for A and B to spend time with M when A and B want and when it is safe for them to do so. M has not told the court what she wants but it seems clear that she wants to spend time with A and B.

18. The Local Authority is not a party but has produced three position statements permitted by the Court, two section 7 welfare reports directed by the Court, two section 37 reports (investigating whether to bring public law proceedings to protect A and B) directed by the Court, as well as a Children and Family Assessment in December 2023 and another in May 2024, a Parenting Assessment of F directed by the Court, and filed three MASH reports or letters as directed. The Local Authority also commends this family for having found a way to ensure that A and B spend time with M despite M's lack of engagement with the proceedings and supports F's case for a final order specifying that A and B spend time with him. The Local Authority also agrees that it is not necessary to make an order specifying when A and B should spend time with M.

Relevant legal considerations

19. A final hearing such as this is concerned with A and B's welfare and that is my paramount consideration. Although M has some vulnerabilities her welfare does not override that of A and B. In considering what is in A and B's welfare interests the Court must apply any relevant criteria from the welfare checklist contained in section 1(3) of the Children Act 1989. Section 1(5) of the Children Act also says that a Court must not make an order unless it considers that doing so would be better for A and B than making no order at all. This is referred to as the 'no order principle' and basically means that a Court starts from the perspective of no order unless the welfare of the children requires that an order or orders should be made.

Analysis

20. A and B's wishes and feelings is the first relevant welfare checklist heading. A has consistently wanted to spend more time with F, but initially B found it difficult to tell the social worker what he would want, and it was noted that both children needed M's permission to have a relationship with F (first section 7 report 20th March 2024 140). An addendum section 7 report was prepared on 15th May 2024 in which it was clear that A wanted her parents to work together and wanted to spend more time with F (147-148). It is clear from this evidence that A was very aware of the court proceedings and of M's lack of engagement with mental health support and medication, as well as other subjects such as child support. None of these were subjects that a child should be aware of, and it seems clear that M was unable to protect A from things which were not in A's welfare interest, and that A was being exposed to very concerning inconsistent behaviour from M. On 28th March 2024 A told the social worker that she wanted to live with F (148). A was also expressing reluctance to see M frequently, asking for a 1 month break from seeing her if A were to move to live with F (148). At this time B was still unwilling to

discuss his wishes and feelings (152). At the beginning of May 2024 A moved to live with F because she did not feel safe enough in the care of M having discussed her concerns with the social worker about M (152). A section 37 report was completed as directed by the Court on 29th June 2024. By this time both children were living with F because of an order made by HHJ Vincent on 23rd May 2024. B was more able to share his wishes and feelings, and it is noted that he was happy in the care of F and that he was back at school after being removed without explanation by M previously. The subsequent addendum section 37 report (185-208) and Parenting Assessment of F (249-257) clearly show that A and B are happy in the care of F and want to stay there, but that they also worry about M and want to see her though A felt rejected by M (192) and struggled with attending family time with M when M is unwell and not able to focus on A's needs as well as B's. B had also found M's presentation in some family time upsetting (196) and was worried about M (197). However, both children clearly want to spend some time with their M when she is well enough and when they feel able to, often with the support of their wider family.

21. A and B's physical, emotional and educational needs is the next welfare checklist heading. By the end of 2023 B's school attendance was 43%, however once he moved to live with F his school attendance improved significantly (198-199), and it seems clear on the Local Authority evidence that F has been able to ensure that B consistently attends school, but M has not been able to do this due to her difficulties. A's education was less of a concern prior to moving to live with F, probably due to her being older and thus less dependent on M ensuring that she attended school, but there had been a pattern of her attending school late which improved significantly in the care of F (201). Both A and B have an emotional and identity need to continue to have a relationship with M and their wider maternal family as well as F and their wider paternal family. The professional evidence in this case, coupled with F's own evidence, clearly demonstrates that F is committed to promoting this relationship and understands how this helps to meet A and B's needs. Because both A and B worry about M, especially when M is

unwell, it is also important that they can see her when she is well enough and when they want because this will help to reassure them, I find.

22. The likely effect on A and B of any change in circumstances is the next welfare checklist heading. I am not being asked to make an order that changes their current circumstances. They moved to live with F in May last year and this is in line with both their wishes and feelings but also the professional assessment of what is safe and in their welfare interests. They are spending time with M in a way that meets their needs but also protects them from any risk of future harm if M is unwell.

23. The next relevant welfare checklist heading is any harm which A and B have suffered or are at risk of suffering. The various Local Authority assessments and reports make it very clear that sadly both A and B suffered significant harm in the care of M because of her mental health difficulties. I have no doubt that M did not mean to cause them harm and that when she is unwell, she is unable to put the children's welfare first but that this is not her fault. If A and B were to return to live with M this would be risking them returning to the same circumstances that caused them significant harm in M's care previously because M has done nothing to address the concerns about her parenting. She has also not engaged with mental health support and her untreated mental health issues increase the likelihood of her again experiencing psychosis and being unable to objectively put the needs of her children first. It would be not only frightening and distressing for A and B to be exposed to this again but would risk them suffering further significant emotional and psychological harm. What is proposed in terms of flexibility about arrangements for A and B to spend time with M therefore allows F, A and B to consider M's presentation and to take that into account in deciding whether it is possible for A and B to spend time with M safely with support from another family member. This will therefore also help to protect A and B from further harm from M. Making a final Child Arrangements Order for A and B to live with F will also help to protect them from future disagreements between M and F about where they should live and, therefore, from any harm arising from parental conflict. The fact that both parents and the children have

been able to agree arrangements for A and B to spend time with M outside of any court order is also a very good indicator that this will help to protect them from future parental conflict about this too.

24. The capability of A and B's parents to meet their needs is the next relevant heading. M's parenting has not been the subject of assessment because of her lack of engagement with the proceedings and expert assessment. However, there is a wealth of professional evidence in the various documents in section D and section E of the bundle to show that even when she is well M is not capable of consistently parenting A and B in a way that ensures that they have a relationship with F, attend school regularly, and are protected from subjects that are not in their welfare interest. When she is unwell, she is also not able to ensure that their basic needs for a regular routine, adequate food, emotional warmth and healthcare are met. The Parenting Assessment of F is very clear that he can meet all the children's needs, including having a relationship with M despite M's difficulties. He is also able to protect the children from exposure to M's poor mental health and has ensured that they have received support to help them deal with the emotional and psychological consequences of living with M in the past. The children are noted to be thriving in his care. The Parenting Assessment of F concludes: "*F has met both A and B's needs consistently and support them in this difficult time as they transition to his care. Both A and B have continued to communicate to me that they are happier in their father's care. In my professional opinion F is an attuned caregiver and can provide the children with stability and consistency for the duration of their childhood*" (247). The Local Authority final evidence also noted "*It continues to be the view of the Local Authority that F is a father who wants the children to have a good relationship with their mother where it is safe to do so. F continues to demonstrate he is a father who wishes to promote the children's relationship with their mother and recognises the importance of this relationship. He has been able to facilitate some family time between the children and their mother, and the Local Authority have full confidence F is able to ensure this is safe and appropriate for the children, and he can intervene if it is not. The*

Local Authority remain of the view that F, as the children's father and primary caregiver, should be able to make best interest decisions about the children's contact with their mother" (99). From the evidence before me F is more than capable of meeting all of A and B's needs including having a relationship with M, and he can do this for the rest of their childhoods. Sadly, the evidence before me also makes it clear that M is not able to meet their needs and that includes not being able to ensure that A and B have a relationship with F.

25. The range of powers available to the Court under the Act in the proceedings in question is the final relevant heading in this case. As I noted earlier, the Court must consider whether an order is necessary to protect the children's welfare following section 1(5). I am satisfied that it is in A and B's welfare interests and necessary for there to be a Child Arrangements Order specifying that they are to live with F until they are 18. This order will prevent future disagreements between M and F about where A and B should live and give A and B certainty about this for the remainder of their childhoods too. F is clearly committed to ensuring that A and B maintain their relationship with M, and this includes A and B spending time with M when she is well enough. The professional evidence also recommends that arrangements for A and B to spend time with M need to be flexible to take account of M's fluctuating mental health and that a set order with prescriptive times would be very stressful for A and B, especially since they are at times understandably very reluctant to spend time with M (206). Very unusually the removal of a prescriptive court order about when A and B spend time with M, coupled with F's promotion of the relationship and support from the wider family, has enabled A and B to spend time with M. I am satisfied that no order specifying when A and B spend time with M is therefore required in the welfare interests of A and B and will therefore make no order but will record on the face of the Child Arrangements Order for A and B to live with F a recital F is committed to ensuring that A and B spend time with M flexibly, when A and B want to and when M is well enough for that time to be in A and B's welfare interests.

Conclusions

26. This is a very unusual case because, despite a profound lack of engagement in both the proceedings and in much of the professional involvement with this family by M, it has reached an outcome that is one the children want, and which enables them to continue to spend time with M when appropriate for them. It is greatly to the credit of all concerned, and that includes both M and F, that this is the outcome, and I hope that the ending of proceedings will enable A and B to move on and continue to thrive in the care of F. I hope that M will feel able to engage with mental health support in future too, because that would potentially mean that A and B might want to spend more time with her because she is less prone to having mental health crises. M is clearly a very vulnerable person, and I am also clear that she loves A and B, as does F, but very sadly she needs a lot of help and support if she is going to have fewer episodes of poor mental health. I am also very worried about her welfare having read the updating statement from the social worker which sets out that she had lost a lot of weight and is not sleeping or eating properly (93-94). I would urge her to reflect on this and to engage with that help and support if she feels able to because that is bound to help improve her relationship with A and B in future. I hope this written judgment helps to explain to M, as well as A and B when they are a bit older, the decisions that I have made but I also hope that M understands that it is clear that her untreated mental health is the main reason for concluding that A and B cannot live with her and why arrangements for the time that A and B spend with her needs to be as flexible as possible without being set out in a court order.



HHJ Owens

24th February 2024