

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Case No: WR18P00256

The Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 1st August 2019

Before:

THE HONOURABLE MR JUSTICE KEEHAN

In the matter of C1 and C2 (Child Arrangements)

B E T W E E N:

FW

and

MT

and

QY

and

C1 and C2

THE APPLICANT appeared In Person

THE FIRST RESPONDENT appeared In Person

THE SECOND RESPONDENT appeared In Person

MR M MAYNARD appeared on behalf of the Children through the Guardian

JUDGMENT

(Approved)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

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.

MR JUSTICE KEEHAN:

1. In these proceedings I am concerned with two children C1 who was born in 2017 and is two years of age and C2 who was born in 2007 who is 12 years of age. C1's mother is MT ('the mother') and his father ('the father') is FW. C2's mother is also MT and his father is QY.
2. I have before me three applications, two by the father for a Child Arrangements order in respect of C1 and in respect of C2 and an application by the mother to make a order pursuant to s.91(14) Children Act 1989 against the father preventing him from making any further Children Act applications in respect of C1 or C2, without leave of the Court.
3. There are allied proceedings concerning the father's two other children, C3 aged eight and C4 aged six, their mother is WU.
4. At a previous directions hearing I ordered cross disclosure between the case concerning C1 and C2 and that concerning C3 and C4. The history of court proceedings in relation to both cases is relevant and I will set that out in short order in a moment.
5. In the case concerning C1 and C2, the mother and QY oppose the father's application for him to have direct contact with either C1 or C2, and the children's guardian supported their opposition to direct contact. The father would wish for regular direct contact which he had previously enjoyed with C1 to be resumed and in the course of closing submissions invited me to consider that at least it would assist if an independent third party was present for handovers and/or that any contact that he had with C1 and/or C2 was supervised by an independent third party. Both the mother, QY and the guardian oppose any such contact taking place.
6. The father has attended this hearing over the course of the last three days but he has not attended today. This morning my clerk received an email from his current partner asserting that for medical reasons the father could not attend. A reply was sent enquiring whether the father had a medical note in relation to his condition, and that I would proceed in his absence both to give judgment in this case and deal with that I will term the C3/C4 case today. In response, the father sent a lengthy email setting out that he was content for the judgment to proceed in his absence, and for him to make submissions in relation to the C3/C4 case as well as various observations about my conduct of this hearing.
7. **The court proceedings in the case of C3 and C4.**
On 14 August 2014 District Judge Khan made a finding-of-fact that the father had shaken C4, this finding is vigorously denied by the father. He sought to appeal that decision. On

11 November 2014 His Honour Judge Hooper QC dismissed the father's appeal. On 14 January 2015, District Judge Khan made a final Child Arrangements order in respect of C3 and C4 and made an order for no direct contact or indirect contact between the children and the father.

8. On 27 July 2016 District Judge Khan declined the father's application for permission to appeal to, he having no power to do so and he made a s.91(14) order against the father for a period of three years. It was noted that the father demonstrated threatening and abusive behaviour during the course of that hearing. As a result on 15 August 2016, His Honour Judge Plunkett heard contempt proceedings in respect of the father's conduct. On 29 December 2016 the father sought permission to appeal and permission to bring an application for a Child Arrangements order.
9. On 3 December 2017 the father's application to reopen the fact-finding hearing conducted by District Judge Khan was dismissed and the father was refused permission to apply for a Child Arrangements order. On 20 March 2018 the father once again sought permission to make an application for a Child Arrangements order. On 28 August 2018, His Honour Judge Plunkett heard an *ex-parte* without notice hearing and in the absence of the other parties granted permission. The mother appealed against that decision and on 21 February this year Cobb J allowed the appeal, set aside the order granting permission to apply and the case was reallocated to me. In light of that, the case concerning C1 and C2 was reallocated to me.
10. The history of the court proceedings and the background in relation to this case, is that the mother and father began a relationship in about 2015. In February 2018 the relationship ended with the mother, C1 and C2 moving out of FW's home. The mother returned two days later in the early morning, C1 was in the car outside and the mother, to her enormous great surprise and horror, found the father in bed with another woman, SL. Notwithstanding this event, both the mother and the father attempted to achieve a reconciliation which was ultimately unsuccessful.
11. As a result of an agreement between the parents on 1 July 2018, the father had contact with C1. There is a dispute between the parties as to how long he was to keep the care of C1 but as was noted by His Honour Judge Plunkett, in his judgment of 30 October 2018, as the father drove off with C1 he told the mother that if she wanted to have C1 back she would have to get a court order. Very sadly this is precisely what the mother had to do and on 13 July 2018 a recovery order was granted and C1 was returned to his mother's care. Disputes

about contact continued.

12. There was a hearing before His Honour Judge Plunkett on 6 September 2018 where the judge proposed that in order to restart contact, the father should have contact for two hours to C1 twice a week, the father had been seeking a shared care arrangement: he was so unhappy with what was proposed he walked out of court. Notwithstanding that, less than 24 hours later, on 7 September he issued a further application for a Child Arrangements order.
13. Later in September 2018 the father went to the mother's home, he knocked at the door and threw stones at the window. He again went again to the mother's home, the mother asked him no less than 31 times to leave, she was forced to call the police and press a panic button which had been installed in her home and eventually the father did leave before the police arrived.
14. Some days later the father once again attended the mother's home. In breach of a prohibitive steps order he removed C1 from the care of his mother, there was an altercation between them in the course of which the mother was assaulted by the father, he was arrested and charged. In recent times he has stood trial as a consequence of which he was acquitted of the charge of assault but was convicted of breach of a non-molestation order. As FW told me at a recent directions hearing, a trial judge has told him that he would receive an immediate custodial sentence for the offence but sentencing was adjourned to await the outcome of another criminal matter for which FW was to stand trial.
15. On 19 September the father attended upon his general practitioner. He was seeking help he told me. The GP reported her concerns about the father's wellbeing to the Local Authority. It was noted that she said he was using grandiose language and that anybody who came between him and his contact arrangements will 'leave in a box'.
16. On 3 June 2019 the guardian and the guardian's solicitor visited C2 to discuss this application with him. They tell me that very sadly this was a very distressing experience for C2. On 17 June the father filed a Scott Schedule seeking findings-of-fact against the mother. On 28 June the mother filed a response to that schedule which resulted in this hearing.
17. **The Law.**
I remind myself that in respect of C1 his welfare best interests are my paramount consideration in s.1(1) Children Act 1989 and I have had regard to the welfare checklist set out in s.1(3) of the 1989 Act insofar as they are relevant to this case. The father asserted

that he is entitled to apply for a Child Arrangements order in respect of C2 because of the time that C2 lived with him and the mother and then C1. By agreement, that period was less than three years and therefore he, FW is not entitled to make an application pursuant to s.10(5)(b) of the 1989 Act. He accordingly, pursuant to s.10(9) of the Act requires leave to make any application. When considering that, I have to have regard to the nature of the proposed application for a s.8 order, the applicant's connection with the child and any risk there might be that the proposed application would be disrupting to the child's life to an extent that he would be harmed by it.

18. The evidence is agreed and clear that when the mother and the father lived together, C2 enjoyed a good and close relationship with the father. It is not in dispute that the father loves C2, nor that C2 loves FW. Any harm that may come to C2 as a result of FW's application has sadly already been suffered as reported to me by the guardian. Given the close relationship that they had, I consider it appropriate to grant FW leave to make his application for a Child Arrangements order. Accordingly in considering whether or not to permit him to have contact with C2, I have regard to s.1(1) that C2's welfare is my paramount consideration, and I have regards to the welfare checklist set out in s.1(3).
19. Throughout this hearing I have had regard to the Article 6 and Article 8 rights of the children, the mother and the father and I remind myself that where there is a tension between the Article 8 rights of a child on the one hand, and the rights of a parent on the other, the rights of a child prevail: *Yousef v Netherlands* [2001] 2 FLR 210.
20. For the purposes of the fact-finding elements of this hearing, I remind myself that the burden of proof is upon the father and the standard of proof is the balance of probabilities.
21. For the Court to make an order to refuse direct contact between a child and a parent is a very serious step which should only be taken if it is plainly in the welfare best interests of the child. I have regards to the decisions of the Court of Appeal Re *W (Children) (Contact Dispute) (No. 2)* [2014] EWCA Civ 401 and Re *M (Children)* [2018] 2 FLR 800.
22. When considering whether it is appropriate to make a s.91(14) order requiring the father to apply for permission before making an application for a Child Arrangement order, I have well in mind the guidance given by the Court of Appeal in Re *P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573.
23. **The Evidence.**
I have heard oral evidence from a psychologist Julia Long who had prepared a very helpful report in the course of which she diagnosed the father as suffering from a narcissistic

personality disorder, that is a diagnosis which he adamantly denied. Miss Long gave helpful evidence, she was cross-examined at length by the father who, albeit a litigant in person, is a qualified member of the Bar.

24. The father took issue with a number of factual matters set out in Miss Long's report including his assertion that he had taken his A levels at a very early age and had joined the Royal Navy aged 16. Miss Long, nevertheless, even if those matters were right, asserted that the assessment of a narcissistic personality disorder is an assessment of general functioning over a long period of time. She told me that in the circumstances of this case, and because of the risk that she had said the father posed to the mother, it would be unethical for her or anyone else to seek to force the mother to work or cooperate with the father.
25. It was Miss Long's clear and firm view that the father was demonstrating a lack of empathy towards the mother, and she told me that contact at the moment, given the father's stance and behaviour, was not a viable proposition.
26. The father characterised his cross-examination of Miss Long as robust: it went far beyond being robust. As Miss Long observed in re-examination it was her view that the father had been attempting to intimate her in the course of his cross-examination and by the manner in which he conducted it. I agree. Furthermore, she said that the father's conduct at cross-examination only serves to re-enforce her conclusions as set out in her report. Once again, I agree.
27. I next heard from the father's current partner, unsurprisingly she believed everything that the father had told her. She had read the psychological report of Miss Long, she had also she said read other court documents relating to this case, but could not remember which documents she had seen. Father called as a witness a friend of his, DH, who gave evidence by telephone and there was the difficult confusion at the start of his evidence because there were apparently two statements from him, one dated 1 August 2018 and one dated 23 May 2019 or 2018, both dates appeared.
28. DH sought to explain that he had amended the statement to include matters he had omitted, he also said that he had read the psychological report when he had visited the father shortly after the father had received the report, he found it just lying on the kitchen table so when the father was having a shower decided to pick it up and read it. I found DH to be an unsatisfactory witness and I propose to say no more about him.
29. Giving evidence for the mother was plainly a difficult experience in which she struggled to

compose herself. Her demeanour during her evidence was much the same as it had been throughout the entire time she sat in court. It is claimed that she had been gravely affected by the father's conduct towards her. She was, I am entirely satisfied, a good and loving mother but, she is not perfect. She has made mistakes and has made serious errors of judgment from time to time. She has, as the guardian has confirmed, admitted the same. She has been violent towards the father, for example, on one occasion she struck him on the chest, and on another occasion she struck him on his legs as he was in bed and she was sitting on top of the bed.

30. She admitted that for a short period, on about six occasions, she used cocaine always, she asserted, with the father. She accepted that she had from time to time been verbally abusive towards the father and towards SL, which included on one occasion her driving to SL's house, then considering her position and driving away without taking adverse action although she did send emails to people in the locality about the fact that she had found FW and SL in bed together. She was plainly very hurt, to say the least, by that experience. It is to her, and in some respect FW's, credit that notwithstanding that episode they did attempt to reconcile but, as I have already indicated, it did not succeed.
31. I agree with the guardian's assessment of the mother that generally and overall, and certainly at the start of the separation between herself and the father, the mother wanted contact to take place. She recognised and recognises that (i) C1 loves his father, (ii) the father loves C1, and (iii) FW has many fine and positive qualities as a father and as a role model for C2. I am re-enforced in coming to this view, that the mother saw and recognised and wanted the benefits of C1 having a relationship with his father, by the fact that C2 has always enjoyed and enjoys a very close relationship with his father QY. She, the mother regularly takes C2 to have staying contact for the weekend with QY.
32. In a telling text exchange between the parents in July last year, at the point where the reconciliation had broken down and during the time that the father had wrongly retained C1, the mother sent a text to the father in which she said that all she wanted was to have the old FW back. It was clear that the mother was the victim of domestic abuse at the hands of the father. Therefore, it was agreed that I would undertake the cross-examination on behalf of the father of the mother. For that reason at an earlier directions hearing I required the father to set out the questions that he wished to be put to the mother and for a copy to be made available to her so that she would be able to give the best evidence that she could.
33. It was, therefore, with some surprise, that when I received the father's revised and final

questions document it contained no less than 738 questions. I did not put those questions to the mother, rather, I extracted what I considered to be the relevant matters and put those questions to her. At the conclusion of her cross-examination on behalf of the guardian, I asked the father whether there were any further matters that he wished me to put to the mother. He asked for time to reflect and I gave him a short adjournment to do so, and after the short adjournment I was provided with another set of questions, this time setting out 62 questions. I refused to put any of those matters to the mother because I considered to do so would be abusive and would have no forensic value.

34. The mother confirmed that she agreed with the recommendations of the guardian, that there should be no direct contact between C1 or C2 and the father, but contact could take place between C1 and his father by way of indirect contact by means of letters, cards, photos and presents and four times a year the mother should provide an update to the father on C1's progress.
35. The father started his evidence by asserting that he accepted full responsibility for his actions and behaviours, that he had never intended for his actions or behaviours to have a negative impact on the mother or C1 or C2 and he only ever sought to do what was in their best interest. He told me that it was only reluctantly that he sought findings-of-fact against the mother. He denied that he had a narcissistic personality disorder, he told me that he was ashamed of the events of 26 February 2018 relating to SL. He agreed that he and the mother had attempted to repair their relationship and they had sought to agree contact.
36. He denied and could not consider that 738 questions was in any way intimidating of or abusive towards the mother. Throughout his evidence the use of the word 'frustration' or 'frustrated' was a recurring theme and the father put it forward as an excuse for 'all and any of his poor behaviours'. In in the course of his cross-examination, he became increasingly animated and aggressive and his use of bad language increased throughout the course of the hearing. In relation to what he told his general practitioner on 19 September, and the perceived threat that he had made, he said those in terms were just words and were not intended to be taken seriously. He told me that he had taken every opportunity to be empathetic towards the mother, he described this court as a kangaroo court.
37. During his evidence he increasingly began banging the witness box to emphasise the point that he was making, and he told me that his poor behaviour was a reaction to the separation from the children. He told me that when his patience was gone, you can question my judgment. Sadly, I agree and that goes to the heart of this case.

38. During the course of his cross-examination with the guardian, I raised the question of why the findings that he sought against the mother were relevant to the issue that I had to determine namely his contact to C1 and to C2. He asserted that he sought residence of C1. This had never been raised before, either in correspondence or in conversation with the guardian or in statements or position statements. It must have been greatly upsetting, to say the least, for the mother to hear that for the first time in court, as it was, by the time of closing submissions, it was not pursued.
39. The father was increasingly impassioned during the course of submissions yesterday afternoon. He invited me not to abandon all hope and to take positive steps to resurrect the relationship between himself, C1 and C2 and to restore direct contact. He invited me, he pleaded with me, to consider involving a third person to effect handovers between the mother and himself and/or for the contact to be supervised. Both in his oral submissions yesterday and in his written submissions in the email this morning, the father asserted that (i) I had made up my mind, (ii) I had a closed mind, (iii) I was bored, (iv) I was short of time and wanted to hurry matters along, and/or (v) I was contentious towards him. None of those are true at all.
40. The guardian, in a commendable, if I may say so, report, set out her recommendations coming to the sad conclusion that it was not in the welfare best interests of either C1 or C2 to have direct contact with the father. She told me in evidence that the father's conduct during the course of this hearing had only sought to re-enforce her conclusions. She was saddened at the recommendations that she had to make because of the positive qualities the father has as a father, the love that exists between him and C1 and between him and C2 but, as she said both in her report and in her evidence, the father cannot help but shoot himself in the foot. He needs help she said, and she urged the father to seek the help that he requires. She was clear that C1 needs his father.
41. **Analysis.**
- I am satisfied as I have mentioned, that the mother is a good and loving mother who has made mistakes and errors, but the father's intimidating, coercive and aggressive behaviour towards her, not least that be assault, has taken a grave toll upon her emotional and psychological wellbeing. That was evident to all concerned from the presentation of the mother in court and when giving evidence. She told me that if I ordered direct contact between the father and C1 and/or C2, she would comply with any order made by the court but, an order for direct contact with one or both boys with the father, would have a

devastating impact upon her, which inevitably said the guardian, and I agree, would have a serious adverse impact indirectly on the emotional and psychological wellbeing of C1 and C2.

42. There is also, I have to take into account, the risk of a repetition of the events of September when C1 was present during the altercation between the parents and the father's assault of his mother.
43. I repeat that I find this a very sad case because the father does have very many fine qualities as a father and the evidence is agreed that when there was a relationship and/or contact between C1 and his father and between C2 and the father, things were overall very positive for the children. When the guardian spoke to C2 about his relationship with FW and the time that he spent with him, he was asked to grade that and graded it as eight out of 10. There is very clear mutual love and enjoyment of time spent together between C1 and his father and C2 and FW but, FW is concrete in his thinking to an extreme degree.
44. He is obsessed with facts, but those facts are his facts. He has no truck at all with any contrary view of the world, you either agree with him or you are wrong. If you are wrong or take a contrary view, you are subjected to his vented anger and fury, you are subject to his intimidation and his coercive behaviour. He said that he seeks the truth, that he does so without any account of the consequences for or the adverse impact on other people. This is and has been amply demonstrated in this case where for example, he sought findings against the mother which, on any objective view, were irrelevant to the issues in this case and he took no account and had no regard to the adverse impact that would have on the mother's emotional and psychological wellbeing.
45. His behaviour during the course of this hearing has been nothing short of appalling. He has been loud, animated, aggressive and intimidating in his behaviour and his manner. I make all due allowance for the fact that he is a litigant in person albeit that he is a qualified member of the Bar. I also take account of the emotionally charged nature of this case but his use of bad language and swearing increased as time went on. He was often rambling and incoherent either in giving evidence or cross-examining witnesses or when he made submissions.
46. Miss Long as I have indicated, told me that the father in her view, intended to intimidate her in her evidence. I agree. The guardian who is a hugely experienced guardian, during the course of her cross-examination, told me that she felt intimidated by the father and by the manner of his cross-examination. I can very well see why she would have thought so. At

one stage during the father's cross-examination of the guardian I could not tolerate his poor behaviour any longer and in forceful and strident terms, I told him to desist from that behaviour or he risked being found in contempt of court.

47. I have never witnessed such prolonged and appallingly bad behaviour in court before. I take account of this behaviour, not because of the behaviour in itself or the father's treatment of me, or his abuse of me - I put that to one side - but I do take account of that evidence because (a) it re-enforced the evidence of Miss Long regarding the mother and the intimidatory and coercive nature of the father's behaviour, and (b) because if, notwithstanding the emotionally charged nature of this case, the father felt it appropriate to behave like this in the High Court at a hearing in the Royal Courts of Justice, one only has to consider how he would behave outside the confines of this court in the community and in his dealings with the mother and others.
48. I have considered, as the father submitted, whether there was, even at this late stage, a positive way forward to restore contact between himself and C1 and/or C2, whether an independent third party could be utilised to effect handovers between the mother and the father and/or whether the risks presented by the father's behaviour could be contained if contact was supervised by an independent third party. I regret I have reached the very clear conclusion that the answer is no.
49. The father is his own worst enemy. He constantly sought to explain his bad and poor behaviour, his angry outbursts and his intimidation by explaining that he is frustrated with not seeing his children and C2. He is frustrated by these court proceedings and the stance take by the mother and the professionals, and that boils over and when it boils over, as I find, he cannot control his temper. Indeed, as I have mentioned, in his own evidence, he said 'when I lose patience you can question my judgement'. That inability to control was clearly demonstrated when he appeared and attended on his GP on 19 September last year and during the course of the unfortunate events of September 2018.
50. There is a real risk of serious harm to the mother from this father, both of physical harm but, in many ways worse still, emotional and psychological harm. It has had, as I have mentioned and find, a serious adverse impact upon her. If he were to continue to have a direct presence in the life of C1 and/or C2, that abuse and harm will continue and worsen. I am entirely satisfied and find that that harm to the mother has and will have an indirect adverse impact on C1 and C2. Worse still, they may, as happened in September, hear or witness that abuse. I am in no doubt that C1 and C2 will suffer some harm as a result of not

having or enjoying a relationship with and contact with the father, but I have to balance the harm that would result from them not having direct contact with him to the harm that undoubtedly would result if, at this time, direct contact would be restored.

51. I am entirely satisfied and find that it is not in the welfare best interests of either C1 or C2 to have direct contact with the father. Very sadly this is the only proportionate and safe outcome in light of the risks posed by the father's behaviour. I am entirely satisfied that the mother and the children require respite from the litigation that has lasted for so long in this case. I recognise and accept that the making of a s.91(14) order is a very serious order, it restricts a person's right to commence proceedings before the courts, it is only to be made where it is absolutely necessary and where the welfare of the child or children requires it.
52. For the reasons I have already set out in this judgment I am entirely satisfied that the welfare of C1 and C2 require me to impose a s.91(14) order upon the father for a period of two years. That is, in my judgment, the least period I can make the order and it will prevent the father making any s.8 application in respect of either child without the permission of the Court. In the first instance, any such application or applications are reserved to me.
53. I cannot, of course, and I do not make the s. 91(14) order conditional upon any event, but I do implore the father to seek effective help to control his temper and to control his frustration. Whether or not he has a narcissistic personality disorder, he has, in my judgement, serious problems with his functioning and with his ability to deal with people who take a contrary view to him. He did approach a therapist, sadly I refused to admit that statement because it was plain that (a) she was completely allied to the father's cause and she made observations and assertions which were wholly outside her area of competence and expertise: she was in no sense objective.
54. **Conclusion.**
I will order that the father has no direct contact with either C1 or C2.
55. I support the proposed indirect contact put forward by the children's guardian and supported by the mother.
56. I will make a s.91(14) order for a period two years against the father in relation to him making any s.8 application in respect of either C1 or C2. At one stage during in the course of the case, I had considered making High Court injunctive orders against FW not to contact the mother, C1 or C2 because I feared his reaction to any judgment contrary to his interests but as he submitted in closing submissions, he has in broad terms complied with court orders and so apart from a recent approach in the other case to the children's school, he has

not sought or attempted to contact WU or those children. Accordingly, I will not at this stage make any substantive order against the father but, he should be warned that were he to make any attempt to contact the mother, C1 or C2 it would inevitably follow that I would make injunctive orders against him.

57. I would urge the mother to maintain a positive image of the father to C1 and to C2 and to remind them so far as it is in their welfare and best interests, of his deep love for and interest in both them, I repeat my message to the father that I would very much hope that he seeks professional help and if he can demonstrate that he has managed to produce effective and lasting change in his demeanour and his presentation, it may be the time will come when it will be appropriate for him to have direct contact with C1 and/or with C2.
58. For the avoidance of any doubt I make it plain that my urging of the father to seek help is in no sense a condition of a s.91(14) order.

End of Judgment

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com