

Neutral Citation Number: [2022] EWHC 2501 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Case No: WV18P00841/WV19F00188/
WV19P00188

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 26th May 2022

Before:
THE HONOURABLE MR JUSTICE KEEHAN

B E T W E E N:

A
- and -
B
- and -
C

(A Child, by his Children's Guardian)

Re C (A Child) (Parental Order & Child Arrangements Order No. 4)

MR T WILSON (instructed by Harrison Clark Rickerbys) appeared on behalf of the Applicant
MR S UDDIN (instructed by Duncan Lewis) appeared on behalf of the First Respondent
MR T BOWE (instructed by Glaisyers) appeared on behalf of the Child through their 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:

Introduction

1. This judgment should be read with my three previous judgments in this matter of 17 April 2020, 3 August 2020 and 15 November 2021. I am concerned with one child, C, who is four years of age. His father is the applicant, A, and his mother is the respondent, B.
2. C has two half-siblings, twins, P and Q. They were born in 2019, and they live with the mother.
3. This is the final welfare hearing of these proceedings in which I have a number of issues to decide:
 - (1) The circumstances in which and the pace at which C should be told about and introduced to his two half-siblings.
 - (2) Whether the mother's contact should remain hereafter supervised.
 - (3) If it is to be supervised, by whom should it be supervised, either as currently by the father's nanny or by a professional organisation.
 - (4) What should be the frequency of the mother's contact.
 - (5) Whether I should, on the application of the mother, make a prohibited steps order against the father preventing him from taking C out of the jurisdiction of England and Wales.
4. The position of the father is that C should, like the twins, learn more about one another and should eventually meet. However, it is the father's firm position that must not be subject to a strict timetable but should be taken at C's pace. The father contended that the mother's contact must be supervised and that it should be supervised by, as currently, C's nanny and not a professional organisation, and that the mother's contact should be restricted to four times a year only. In addition, he opposed the making of the prohibited steps orders sought on behalf of the mother.
5. In broad terms, the Guardian supported the position of the father, although she recommends that contact should take place between the mother and C six times per year. She recommended, although does not invite the Court to make any order about it, that the supervision of the mother's contact is undertaken by Ward Andrews, a professional agency well known to this Court.
6. There is also an issue about the level of indirect video contact that the mother should have with C. The mother's case is that it should be maintained at its current level of twice a week. It is the father's case that it should reduce down to once per two weeks. The Guardian supported the position of the father. All parties are agreed that these proceedings should come to an end at the conclusion of this hearing.

The Law

7. My paramount consideration is the welfare best interests of C: s.1(1) of the Children Act

1989. I have taken account of the factors set out in the Welfare Checklist of s.1(3) of the 1989 Act, insofar as they are relevant to the circumstances of this case.

8. I have had regard to the Article 6 and Article 8 rights of the father, of the mother and of C. Where, however, there is a tension between the Article 8 rights of a parent on the one hand and the Article 8 rights of the child, on the other, the rights of the child prevail: *Yousef v Netherlands* [2003] 1 FLR 210.

Background

9. I have set out the complex background history to this matter comprehensively in my judgment of October 2021. What has happened since the last hearing in August 2021? In broad terms, the mother has continued with her regular communication with the West Midlands Police and has sought to drive the West Midlands Police into investigating the complaints that she made to them about the father, and to seek his prosecution for what she says were the criminal offences that he had inflicted upon her.
10. On 22 October 2021, she emailed to the officer in the case, PC X, a very, very lengthy witness statement, which was far longer and far more detailed than the version of that statement which had been produced to the Court at the hearing in August 2021. Earlier this year, the mother's frustration with the West Midlands Police was vented on the officer in the case with complaints of incompetence on the part of their investigation.
11. On 8 March 2022, PC X emailed the mother to notify her of the outcome of the CPS charging decision, namely the decision that there would be no further action taken on her complaints. He set out in that email the victim's right to seek a review of the decision of the Crown Prosecution Service. On the same day, the mother notified PC X that she did seek a review of the CPS's decision. This review is ongoing at the date of this hearing.
12. The mother had direct contact with C supervised by his nanny on 13 May 2022: the first direct contact for 14 months. I have seen video recordings of part of that contact and, as I had expected, it was a contact session in which C plainly enjoyed spending time with his mother.

Evidence

13. I first heard evidence from the father. As on each occasion when he has given evidence in these proceedings, he commenced his evidence by talking about C, his activities and his relationship with him. As always, the father had a beaming smile on his face as he spoke lovingly and movingly of C, of his progress, of his activities and how C has enabled the father to overcome his fear of dogs and has persuaded the father to learn to swim for the first time in his life.
14. It is plain that the father and C enjoy a very, very close and mutually warm relationship with one another. It is also plain from everything that I have read, seen and heard that C has been, as I would have expected, thriving in his father's care.
15. The father explained that he has simply lost trust in the mother because of the campaign that she has maintained against him and because of the wholly negative views that she expresses about him. He is concerned that were the mother to have unsupervised contact, she would express those negative views to C which would cause emotional and psychological harm to him.

16. Accordingly, he asserted that the mother's contact must be supervised and that it should be very limited in the number of times that it takes place per year to limit the risk of C being given negative harmful information by his mother. For like reasons, he asserted and told me that the remote contact should be reduced to once every two weeks.
17. He set out in some detail the steps he has taken to produce a narrative to explain to C that he has two half-siblings, to explain the role that the mother and he have in their lives, with the ultimate aim, at a time when C is ready, that he and the twins should meet and begin to build a relationship.
18. The father showed me a number of materials that he has used to compile the narrative for C, and it is included in the adventures book. In a particularly moving part of his evidence, the father told me that he had changed his view about his relationship with the twins. It has obviously pained the father very greatly, as I have found, that the mother commissioned the second surrogacy arrangement in X Country without his knowledge or consent.
19. From very early in these proceedings, the father has understandably and plainly struggled with coming to terms with his relationship and parenthood of the twins. However, he told me in evidence that, after long reflection and having regard to the welfare best interests of C, he would acknowledge that he was the father and have a paternal role in the lives of the twins and that they would be told that he is their father.
20. I have expressed the observation before that although I well understood the father's conflict of feelings, that I always held a hope that over the course of time he would revise his view and so he has. The sincerity of that change of heart is hugely and movingly demonstrated by the very last page of the adventures book, and I propose to read it into the judgment:

“Wow, TTT, you three are amazing. I can't overlook how incredibly proud I am of the journey we took. Your courage to go on adventures means you're always winning, and the best thing is this is just the beginning. C, my eldest, I love the way you're growing as a leader every single day and P, wow, the steps you've taken shows you can take on the world, and I'm not mistaken. Finally, little Q, although you don't get everything right, seeing you try, try again gives me surges of delight. The thing is I could stand on a mountain and shout it out loud, hello world, I have the best three kids ever and I'm so proud and I know that over the years, whenever I'm with you three, there is no place in the universe that I would rather be. You'll always be in my heart. When we're apart I won't be sad. I'm always more than Baba to you. You are my kids, and I am your dad”.

21. This is, in my judgment, a huge testament to this father and to the qualities that he has as a father not only to C but in the future to P and Q. I have complete confidence in the father that he will progress the narrative with C and that he will, when the time is right, arrange for them to meet. He tells me, and I accept, that he knows C so well that when the time is right for C, when he asks the question about seeing his half-siblings, he will make the necessary arrangements. Of that, I have no doubt at all.

22. The mother then gave evidence. I am grateful to her for coming to Court to give it in person, notwithstanding the personal difficulties this caused for her. As I have said before, I have no doubt that she loves C and that C loves her, but once more her evidence emphasised that she wanted to clear her name and that was why she had pursued the matter with the West Midlands Police; that she wanted the children to know the truth and to know the facts.
23. She repeated on numerous occasions that she had not told lies and that she had never lied. That is completely inconsistent with the findings of fact that I have made in each of my three previous judgments. The mother maintained in her own mind that these family proceedings and the criminal proceedings are quite separate matters, and one level, as a matter of law, they are. However, they are both based on the same factual matrix. The mother has not accepted any of my findings of fact and I am quite plain that after all this time she never will.
24. She asserted that she has C's best interests at heart. Sadly, I have to disagree. She sought at this hearing for the residence of C to be transferred over the course of time from the father to her. She pursued this application well knowing that I had, in my judgment of October 2021, already decided that C would reside with his father. However, she pursued that application up until partway through her evidence without understanding and without having any regard to the fact that it would be wholly contrary to C's welfare best interests..
25. She maintained, as her primary case, that her contact did not need to be supervised and that it should be regular contact. She asserted that visiting, overnight and holiday contact should be reinstated. If the Court was against her, and there had to be supervision, she maintained that direct contact should take place with C far more regularly than that suggested by the father or recommended by the Children's Guardian. In large measure, the mother in her evidence was wholly negative about the father. In terms when asked if he was a good father, the reply was "partly".
26. The Guardian next gave evidence. She explained clearly, indeed eloquently, why, in light the events since August 2021, she had changed her view and her recommendation. She told me, and I accept, that she had come to realise that the proposals in her previous report were unrealistic. She concluded that in light of the campaign that the mother continued to pursue against the father, the mother could, in terms, not be trusted and her contact would have to be supervised.
27. She explained that she was recommending to the Court and to the parties that the supervision of the contact, given the complexities of this case, was a very heavy burden to place on the shoulders of C's nanny, and that it would be far better for there to be independent supervisors of C's contact. These professional supervisors could feed back to both parents on the progress of the mother's contact with C, and who would be able to deal professionally and deftly with any inappropriate comments that might be made by the mother.
28. The mother's ability and want to criticise and manipulate professionals was evidenced in the cross-examination of the Guardian by the mother when it was suggested that rather than exercising her professional judgment and expressing the views that she had, she had in some way been pressured by this Court to come to her conclusions. This is a suggestion that the Guardian utterly rejected and so do I.

Analysis

29. In my judgment of October 2021, I made the following observations:

“Although C would be physically well cared for by his mother, I have come to the same conclusion that I did in my August 2020 judgment, namely that if C were to live with his mother the prospects of him enjoying a meaningful relationship with his father are poor at best and non-existent at worst. Unless there is a sea change in the attitude of the mother and of members of the maternal family towards the father, C would be exposed to false and negative views about his father which undoubtedly would be harmful to his emotional and psychological wellbeing. I fear the prospects of any such sea change in the mother are poor.

However, I cannot ignore the fact that C loves his mother very much indeed and enjoys having contact with her. I can only make an informed decision about the degree and nature of Mother’s future contact post the conclusion of her chemotherapy once I know; (1) the decision of the CPS in respect of the police investigation and (2) the mother’s reaction to the same. If there is no change in the stance of the mother, it is most likely, given the risk of harm to C, that her contact would have to be limited to infrequent visiting contact and be supervised. I know that C enjoys seeing his mother and, therefore, his welfare best interests require me to have the best evidence available to me to determine where the balance of harm falls between frequent and unrestricted contact with his mother or sadly very infrequent and supervised visiting contact”.

30. I also said in relation to the level of risk this:

“The real and substantive issue in respect of the mother is the level of risk that she poses to C’s emotion and psychological wellbeing as a result of her views about and attitudes towards the father. For the last three years or so, she has conducted a relentless campaign to vilify and denigrate the father. Her visceral hatred of the father is all-consuming and in truth she will not willingly concede that there are any positives about him as a person or as a father. She has repeatedly lied about the father with alacrity, and I regret to find she has continued to do so”.

31. I regret to conclude that everything that the mother has done since August 2020 has reinforced each and every one of those conclusions. As the Guardian said, the mother has not and, in my judgment, will not, draw a line underneath what she perceives to be the abusive injustice she suffered at the hands of the father. In my judgment, she demonstrates no inkling whatsoever of even starting to be prepared to accept all of the adverse findings that I have made against her.

32. Over time and as her frustration grows in not, as she puts it, being able to clear her name and at the same time wanting her children to know the truth, there is not just a real risk, there is, in my judgment, a high likelihood that as C gets older and as the twins get older, she will

convey to them her distorted view of her life with the father. This, if it were to happen, would, as I previously found, cause very serious emotional and psychological harm to C and also to the twins. In C's welfare best interests, I am not prepared to take a risk of this happening.

33. In coming to a view about the long-term supervision of contact, I have regard to the decisions of the Court of Appeal in *Re S (A Child): (Child Arrangements Order: Effect of Long-Term Supervised Contact on Welfare)* [2016] 2 FLR 217 and in *Re A (A Child) (supervised contact) (s91(14) Children Act 1989 orders)* [2021] 1 FLR 1019.
34. On the basis of the totality of the evidence before me and all of my findings of fact I am in no doubt whatsoever that the mother's contact to C must be supervised and sadly, as I have said before, unless there is a dramatic change in her and her approach to the father, which I very much doubt will happen, her contact will need to remain supervised.
35. Contact will need to be restricted in its frequency to minimise the risk of any adverse comments being made by the mother to C and of him consequently being harmed by them. I am quite satisfied that 12 times a year, that is once a month, is far too frequent. At this stage, in my judgment, I need to choose between the father's contention of four times a year or the Guardian's of six times a year.
36. I agree, as the Guardian said, there is no easy answer between which is in C's welfare best interests. I entirely accept that the father is being entirely child-focused when he comes to his view it should be four times a year. However, having regard to the fact that C does love his mother and does enjoy his contact with her, in my judgment, the correct frequency is six times a year, which should take place in the various school holidays.
37. It will take place in the father's home area because my view remains, as I previously expressed, that C should not have to travel. This is in relation to contact with his mother. In the course of time it may be that different considerations apply when the time comes for C and the twins to meet.
38. I accept the father's evidence that there needs to be the gap in contact to enable C to settle if any adverse comments are made. I note that even after a gap of 14 months C, because of the ongoing video contact, was readily able to welcome his mother and enjoy his time with his mother. With ongoing indirect video contact, which has been supervised by C's nanny and has been of a high quality, it will maintain the relationship between C and his mother so that, in my judgment, he would well cope with seeing his mother on six occasions a year. As the Guardian has advised, as C grows and circumstances change, it may well be that the arrangement for contact between C and his mother will also need to change.
39. In relation to who should supervise contact, I well understand the benefits described by the Guardian of an independent professional supervising the mother's contact, and I can see very great merit in that proposal. I well understand, on the other hand, the father's reluctance to engage yet another professional in this matter and his concern about enabling the mother to manipulate yet another professional. The Guardian does not press me to make an order about the identity of the supervisor of contact.
40. Such is the trust that I repose on the father, as I have just described, I am not minded to impose upon him, against his wishes, that the contact should be supervised by Ward Andrews or any

other professional organisation. To date the nanny has done an excellent job in supervising the contact. It is a testament to her role and to the quality of the indirect contact that C, as I have said, was so readily able to re-engage with this mother on 13 May. I will leave it to the father's good judgment to decide whether contact should be supervised by C's nanny or whether there comes a time when it would be for the benefit of all concerned, but most importantly of C himself, that there was professional supervision of the mother's contact.

41. As I have already indicated, I have complete confidence in the father's ability, his desire and his sincerity to pursue the narrative about the twins with C in a child-centred and child-focused way leading to the goal that C will want to meet his half-siblings. I do not propose to place any time limit on when a meeting should take place, but I shall leave it to the good offices and good judgment of the father as to when that is the right time for C.
42. It had been the hope of Dr Y that there could be cooperation and collaboration between the parents in the development of a narrative for C and for the twins. In light of the mother's actions over the whole history of this case, but more particularly since August, in my judgment, it is wholly unrealistic to expect there to be meaningful cooperation in the production of the narrative.
43. As has happened already, the mother has moved faster with the twins in informing them of their relationships with C and the father, than the father has with C. She has told them about C. She has told them that the father is their father without any notice to him at all.
44. It is said by the mother that she merely did it because the children, P and Q, asked her questions and she just answered them honestly. Having regard to the alacrity with which the mother has lied to this Court in the past, I am not prepared to accept this account. I think it far more likely that the mother gave that information to the twins because it suited her agenda to do so without any regards to the welfare best interests of the twins or of C.
45. The mother presses me to make a prohibited steps order, as I have indicated, against the father preventing him from removing C from the jurisdiction of England and Wales. This application, on the basis of my findings and my assessment of the father and the mother, has absolutely no merit whatsoever, and it is dismissed. I refuse to make any such limitation on the father's ability to take C on holiday out of this country at times which he chooses.

Conclusion

46. For the reasons that I have given, the mother's contact will take place in person six times a year and remotely by video call once every two weeks. This contact will, for the foreseeable future, be supervised. I leave it to the father to identify who should be the supervisor of the contact.
47. Preceding each contact, the father will no doubt provide the mother with an update on C's health, his education, his activities and the progress that has been made on the narrative. The application for a prohibited steps order against the father is dismissed. If there are any further applications made in respect of C, they are reserved to me in the first instance.

End of judgment

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

Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
or part thereof

This transcript has been approved by the judge.