



Neutral Citation Number: [2024] EWHC 2580 (Fam)

Case No: LE21P00537

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/05/2024

Before :

MRS JUSTICE LIEVEN

Between :

A MOTHER (“M”)

Applicant

and

A FATHER (“F”)

First Respondent

and

THE CHILDREN (“IB and SB”)
(Children, through their Children’s Guardian)

Second and Third Respondents

Ms Tracey Paskins (instructed by **Johnson Astills**) for the **Applicant**
Ms Kiran Dhillon (instructed by **Moore Family Law**) for the **First Respondent**
Ms Laura O’Malley (instructed by **Straw & Pearce Solicitors**) for the **Second and Third Respondents**

Hearing dates: **25 - 26 March 2024**

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LIEVEN

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.

Mrs Justice Lieven DBE :

1. This case concerns a longstanding and intractable contact dispute between the parents of IB a girl aged 11, and SB a boy aged 10. The case, which originated with an application by the Mother for a Child Arrangements Order, is now in Week 133. These are the third set of proceedings concerning these children.
2. The Mother (“M”) was represented by Tracey Paskins, the Father (“F”) was represented by Kiran Dhillon, and the Children’s Guardian was represented by Laura O’Malley.
3. At the outset of the hearing Ms Dhillon suggested that the case could be compromised on the basis of the current contact arrangements (indirect contact only) continuing for a short period and the M agreeing that she and the children would engage with an organisation the F put forward called Children and Family Solutions (“CFS”). Ms Paskins said that the M was not in principle averse to this. However, having considered the written evidence, the extreme delays in the case and the Guardian’s reports, I concluded that it would be better to proceed with the oral evidence and for the Court to then be able to reach its own conclusions. By the end of the hearing, as I set out below, the M’s position had changed.
4. The M is 48 years of age and the F is 47 years old. The parties started a relationship in 2011. The parties married in 2014 and separated on 4 October 2015, following the M making allegations of domestic abuse against the F. The parties were living in Lancashire during the relationship and marriage. The F was arrested as a result of these allegations, which resulted in a criminal trial on 17 November 2015 at which the Magistrates’ found the F not guilty. At the time of separation, and following the M making allegations, contact between the children and the F was ceased. After the parties separated, the M and the children moved to live in Leicestershire.
5. On 15 December 2015 the F made an urgent application seeking for the children to be returned to his care at his home in Lancashire. He requested a hearing be listed on 48 hours notice, but this request was refused, with the matter being listed for a FHDRA on 14 January 2016 following the filing of the Cafcass Safeguarding Letter. These proceedings concluded by consent on 16 June 2016 with a Child Arrangements Order being made for the children to live with the M and have contact with the F alternate weekends, with additional time during the holidays, and also indirect contact via telephone/Skype or Facetime, three times per week.
6. There was a second set of proceedings between the parties in 2018/2019 following the M making allegations against the F after discovering bruising on the children, which medical professionals subsequently concluded was most likely accidental. These proceedings concluded on 11 April 2019 with the Court making a Child Arrangements Order confirming the children live with both parents on a 50:50 basis, with the exception of term-time, when the children would live with the M on school days.
7. In July 2021 Children Act proceedings were commenced in respect of the F’s other, non-subject, child in the Family Court at Blackburn. Expert psychiatric reports were ordered within those proceedings. Those proceedings concluded on 24 August 2022 with a Final Child Arrangements Order being made for the non-subject child to live

with her mother and for the F to only have indirect contact with the child. A Prohibited Steps Order was also made for a period of three years, together with a Non-Molestation Order with a duration of three years to protect the non-subject child's mother. HHJ Booth sitting in Blackburn gave a detailed judgment with a number of findings which are important and relevant to the present proceedings which I refer to below.

8. These proceedings commenced on 2 September 2021 following an incident between the F and the Police on 20 August 2021, which resulted in the F being arrested, at which point he suffered significant injuries. What happened during this incident is strongly contested, save that the F was undoubtedly severely injured and the Police have accepted some wrongdoing because the officer in question has pleaded guilty to, at least, misfeasance in a public office. What actually happened is largely irrelevant to the issues that I have to decide save that it was plainly a frightening incident for the children, both of whom were in the house at the time.
9. On 2 September 2021 the M made without notice applications for a Non-Molestation Order, Prohibited Steps Order, Interim Child Arrangements Order to confirm the children live with her, and suspension of the previous Child Arrangements Order made on 11 April 2019. The Orders sought by the M were granted.
10. There followed a period of time during which the F was receiving psychiatric treatment, which included him being admitted to hospital under Section 2 of the Mental Health Act 1983. Thereafter the F was referred to the Early Intervention Service ("EIS") for an assessment in respect of his mental health.
11. Since September 2021 there has been no direct, face to face contact between the children and the F. The delays in the case have been caused by a combination of delays in the justice system, and applications by the F for further assessments and evidence. In September 2022 the F made an application for an expert psychological assessment, which was successful, with the Court making an Order for the assessment on 3 October 2022. The expert assessments in relation to this set of proceedings are within the Court Bundle.
12. This is the third time this case has been listed for a Final Hearing, the first occasion being from 15 to 17 May 2023. On that occasion, on day two of the Final Hearing (16 May 2023) the F, through his Counsel, made an application for the children to be joined as parties to the proceedings and be appointed a Children's Guardian pursuant to FPR r16.4, on the basis the evidence of the Family Court Adviser ("FCA"), both written and oral, was substantially deficient. The F's application was successful, with the children being joined as parties and the existing FCA was appointed as the Children's Guardian. On 16 May 2023 Directions were made in order to progress the case, including listing the matter for a Directions Hearing on 6 June 2023.
13. On 2 June 2023 the F made an application to substitute the Children's Guardian appointed by the Court at the previous hearing. At the hearing on 6 June 2023 it was recorded on the face of the Order that Cafcass had reallocated the case to an alternative FCA. Various other Directions were made in respect of the progression of the case, with the case being listed for a PTR/DRA on 4 October 2023 and Final Hearing from 1 to 3 November 2023, with a time estimate of three days.

14. Two reports have now been filed by the Children's Guardian, both of which recommend these proceedings should conclude, with a Final Order being made for the children to live with the M and for the F to have indirect contact fortnightly with the children via letters, cards and small gifts. The Guardian suggests there can be a progression of contact to be informed by the children. The Guardian's Addendum Report considered whether there should be a Family Assistance Order for a six month period, as suggested by the F in his Position Statement filed prior to the PTR/DRA. The Guardian did not recommend such an Order should be made by the Court.
15. The M agrees with the recommendations made by the Children's Guardian, whereas the F does not, seeking, amongst other things, for there to be "*3rd party independent input to help my children be able to have a healthy stable relationship with their father*". Also, contrary to the recommendations of the Children's Guardian, the F is seeking a six month Family Assistance Order, to include: "*(i) an initial video call with the children to apologise for the children being upset, supported by the Guardian, (ii) the support of a child psychological expert with expertise in parental alienation and (iii) any other works and steps, at the Guardian's discretion to assist and promote communications between myself and the children to rebuild the children's confidence and progress to direct contact, at an appropriate stage, without further delay*".
16. Unfortunately, due to Counsel instructed on behalf of the M being unwell on 1 November 2023, it was not possible for the Final Hearing to proceed. The Final Hearing was, therefore, adjourned until 18 to 20 March 2023, with Directions made for the filing of a limited amount of additional evidence, including an additional letter/report from the F's therapist, Mr Robert Fisher, to be filed no later than 28 days prior to the Final Hearing.
17. In January 2024 F made contact with the organisation CFS in relation to potential reunification work and passed on such information to the M.
18. In July 2022 in the earlier proceedings a psychiatric assessment of the F was given by Dr Bacon, who then provided an Addendum. In her conclusions she stated:

"In my first report I noted some diagnostic uncertainty in this case. F seemed to have episodes of psychotic and affective symptoms but also had an ongoing set of systematised persecutory beliefs which seemed to persist in the absence of more acute symptoms which may indicate paranoid personality disorder. I did not think a definitive diagnosis could be made at this point without further information and assessment. He has had some of that with the EIS assessment but unfortunately it appears his engagement with that was limited. They have a working diagnosis of paranoid personality disorder with possible transient psychotic symptoms.

My views are largely consistent with those of the treating in-patient team last year and with EIS. We all believe there is a probable underlying personality disorder with occasional episodes of psychosis. The information is increasingly suggestive of a paranoid personality disorder, transient psychosis, with overlying episodes at times of

increased stress based on F's engagement with and response to professionals since discharge from hospital last year.

Until F engages consistently with mental health services over a prolonged period of time it is unlikely that he will receive a definitive diagnosis of personality disorder. That will not be obtained by a one-off assessment with the treating Psychiatrist. It would require him to engage openly and honestly over a period of time.

Unfortunately, the nature of F's mental disorder is likely to prevent this. He is likely to continue to make complaints, disagree with professionals and not engage fully with them whilst attributing responsibility to them for that. This is an intrinsic part of his paranoid thinking and makes thorough assessment or treatment of individuals with this sort of pathology very difficult.

I remain of the view that a combination of anti-psychotic medication, psychological intervention, would be ideal to address F's mental disorder. Meaningful psychological intervention can be very difficult to deliver for people with paranoid personality traits/disorder. It is likely he will continue to have difficulties in interpersonal relationships and hold/develop paranoid beliefs about others as a way of coping with those for the foreseeable future. This is likely to impact on his ability to co-parent effectively with the mothers of his children.

At this point a psychological assessment of personality may be of more benefit than at the time of my first report because the more acute psychotic symptoms present in late 2021/early 2022 seem to have diminished based on the EIS conclusions. That would probably help with an understanding of his personality structure and could make treatment recommendations, but I am unsure if that would lead to a greater acceptance of his own responsibility and difficulties of or addressing those."

19. The F has also been subject to a psychological assessment by Dr Campbell. Key paragraphs include:

"7.1.1. In summary, it is evident that F has experienced a number of mental health difficulties over the past few years, particularly at times of stress. As highlighted, it is felt that his difficulties are linked to personality traits, namely in the form of Paranoid Personality Disorder traits and an Anti-social Personality Disorder style, which underly a comorbid mental illness, as described by Dr Bacon's report and the EIS.

7.2. F would therefore benefit from a course of Schema therapy to address his personality difficulties. As with all personality disorders, progress can be slow and some recommendations consider 12 months for treatment to be effective."

20. It is clear from the correspondence that followed this report, that the F rejects Dr Campbell's analysis.

21. The following paragraphs are particularly relevant from HHJ Booth's judgment:

"26. What did I make of F? The person I saw in the witness box was the person described by Dr Bacon. I asked him, when I read to him and went through Dr Bacon's paragraphs that I have read into this judgment, whether he recognised the person she was describing, and he said, "not really". It became clear towards the end of his evidence that he is in a very unhappy place now. It was rather sad listening to his description of how he is lonely, lacking interaction with others and missing all three of his children.

27. What I saw of him confirmed the accuracy of Dr Bacon's opinion. She has described in her first report the grandiose thinking, evidenced in F's early statements. She has described his paranoid thinking, blaming everything that happens to him on the fault of others.

28. I am not going to make specific findings about what happened in August 2021 when he was injured in an incident with a police officer who called at his home to do a welfare check on E (non-subject child). The evidence of that incident has not been properly tested as it did not need to be. However, I reject entirely the suggestion that this was an incident set up by Ms M (F's ex-partner and mother of E, non-subject child) using the agency of a police officer to cause him serious injury.

29. F clearly has difficulties dealing with those in authority, those who challenge his world view, and that has been evident since he was a teenager. The papers contain descriptions by his parents of his atrocious behaviour towards them, his difficulties with his A levels and then him having a significant mental health episode when he was at university. His description even now of his time at university flies in the face of the contemporaneous records. He still views himself as doing well at university when the contemporaneous records show a completely different picture of a man completely disengaged from his university course and making no effort whatsoever.

30. The episode where he was admitted in late 2021 again confirms the opinion of Dr Bacon. F refused to accept the views of those treating him in hospital that he had significant mental health problems and he again reiterated that there was some sort of conspiracy afoot to take him out of circulation and in circumstances that were entirely unjustified. Even now when he is significantly better, he cannot see that any of the things that have happened to him may be a result of the actions he has taken and the way he has behaved towards others.

31. Unless he takes the steps recommended by Dr Bacon, namely engaging with mental health services, drug treatment and a lengthy engagement with services to confirm the diagnosis so that a treatment plan can be devised and put into place so that progress can be made to assist him so that he does not have the acute episodes in the future and then, when stable, is not afflicted in the way that he plainly currently is, then the future for him, I fear, might be bleak."

22. I note that the Judge made a s.91(14) order for a period of three years. Save that the F was not perhaps in the same “unhappy place” as he was when before HHJ Booth, the assessment of HHJ Booth accords closely with my own.
23. The M gave oral evidence and had made written statements. She came across as a kind and loving woman, who in my view genuinely wanted to promote a relationship between the children and the F, but only at the children’s pace and taking into account their wishes. She explained that she had tried to include the children in the monthly updates that she sent to the F by discussing with them what they had been doing that the F might want to know about. She also spoke about encouraging the children to open the F’s presents and to write to him.
24. She was very clear that whatever the past difficulties in her relationship with the F, including her allegations of domestic abuse, she was focused on the children’s interests and she could move beyond her relationship with the F.
25. She said that the children were more open to having some form of relationship with the F. She was concerned that SB had high levels of anxiety and got stressed very quickly. I had no doubt about the honesty of what she said and that she was wholly focused on the best interests of the children, whatever animosity there had been about the F in the past.
26. When Ms Paskins opened the case, she said that the M was willing to engage with CFS. However, by the end of the hearing, having heard the F’s evidence, the M changed her position and said that she felt it was not in the children’s interests for them to be engaged with further professionals when the F’s position was so fixed, and he seemed unable to understand the children’s perspectives. She was also concerned that the F might commence with CFS, but then not maintain the payments and the children would again be left confused as to what was happening.
27. The F’s evidence was striking for its lack of insight, and notable failure to consider matters from a child focused viewpoint. There were two aspects of his evidence which I found particularly concerning. Firstly, he said that he had failed to maintain the indirect contact with the children because of the death of his partner. However, his relationship with his partner was of relatively short duration (about 6 months) and had commenced approximately 6 weeks prior to her being diagnosed with stage 4 terminal cancer. Of course grief affects people in different ways, but it is striking that the F was able to send the M some very forceful and in my view controlling electronic exchanges during this period, but not send the children any messages or tell the M why he was unable to maintain the indirect contact. His failure to maintain indirect contact was confusing for the children, and definitely not child focused.
28. The second striking element were the texts he sent the M, which I set out at paragraph 34 below.
29. The F, in my view, was in denial about his mental health issues. He claimed that the mental health episode when he was at university was in essence put on to provide an excuse for his lack of work. He said his mental health breakdown in late 2021 was caused by the police assault. He denied having paranoid personality disorder or antisocial personality style.

30. He largely disagreed with the expert opinions of Dr Bacon and Dr Campbell. He did accept that he found the Schema therapy useful. He said it had helped him to develop a “toolkit” for emotional resilience.
31. He thought the incident in August 2021 had been as a result of collusion between the mothers of his children to disrupt his contact with the children. He said that the children had enjoyed spending time with him before this incident and that the concerns they had raised with the Guardian about incidents before August 2021 were simply misunderstandings. He strongly implied that the M had imposed a narrative upon them that was false. In large part he denied the validity of the wishes and feelings that the children had expressed. In his view their concerns were simply caused by the incident in August 2021 and other than that were not valid.
32. It was clear that he did not really think he had anything to apologise to the children for, merely saying “if I have upset the children I apologise”, which is in effect a non-apology.
33. In relation to his failure to maintain indirect contact, when asked by Ms O’Malley about how he felt the children would have felt, he said that he had no feedback from them so he didn’t know. I thought it was interesting that he immediately put the burden on the children to explain themselves, rather than taking any responsibility as the parent for maintaining contact.
34. In early 2024 the F had been seeking faster progress on contact and he sent the M a series of messages, of which the below is but one short extract:

“1/29/2024

F on 1/29/2024 11:28PM texted (viewed by M on 1/31/2024 1:09PM):

Hi, how did your chat with your solicitor go, what came of it?

1/31/2024

M on 1/31/2024 1:10PM texted (viewed by F on 1/31/2024 1:10PM):

I'm waiting for them to get back to me.

F on 1/31/2024 1:12PM texted (viewed by M on 1/31/2024 3:27PM):

How long are you going to wait for? This is moving at a really slow pace M. SB and IB’s welfare is more important than this, please would you ensure you and your representatives give it due priority from now on

M on 1/31/2024 3:33PM texted (viewed by F on 1/31/2024 3:34PM):

I understand your frustration however, as you are proposing to deviate from what CAFCASS have recommended, and I am having to rely upon third parties in this matter, time scales are to some degree out of my hands.

F on 1/31/2024 3:38PM texted (viewed by M on 2/1/2024 11:04AM):

I (F) don't accept this M. SB and IB are our responsibility, not the Guardian's, and not your Solicitor's. This responsibility needs to be understood. I asked you 2 weeks ago for your availability and you still haven't offered any availability, and it's still not apparent there is any justification for the 2 week delay you have caused. I'm not frustrated, I'm simply highlighting the facts as they stand. I look forward now to you taking responsibility for this matter and driving it forward without further delay."

[emphasis added]

35. When he was asked about these messages he accepted that they were “quite pushy”, but felt that he was entirely justified because of the reports of SB self-harming. He said that he had “stood back” and that he was pushing for a good reason.
36. Mr H, the Cafcass Guardian, recorded in his reports the children’s concerns about past incidents with the F. IB described him as being “weird” and not doing things with them. Both children had said consistently that they were reluctant to move to direct contact at the present time, and they had a number of concerns about spending time with the F in the past. It was clear from this report that this went well beyond the frightening incident in August 2021.
37. Mr H, having heard the oral evidence, said that he was confident the M was willing to engage and to support the children in building contact going forward. However, he said he was less confident about the F moving forward in a child focused way. He was worried about the F’s inability to see matters from the children’s viewpoint.
38. He did not feel, having spoken to the children, that they had been coached in their responses. They had been consistent in their views and seemed comfortable speaking to him.
39. He had spoken to CFS and thought they would be focused on and sensitive to the needs of the children.
40. He had hoped that the indirect contact would allow for a period of consistent contact which would form the basis of moving forward. Unfortunately the F had not been able to maintain this. He had noted the F’s reluctance to accept that he had anything to apologise for and found this very concerning.
41. He thought that a s.91(14) order was justified to give the M a break from litigation and IB the time to make secondary transfer. When I pointed out that SB would be transferring the following year, he did accept that a longer order would be justified.

Conclusions

42. In principle the F accepts that indirect contact should continue for a short period, but it is clear that this is only on the basis that there is then a rapid transition to direct contact. In my view this is not in the children’s best interests.

43. The children are 10 and 11 and as such their wishes and feelings carry significant weight. They have been entirely clear that they do not at the present time wish to have direct contact and want to remain with indirect contact only. I do not think this view has been imposed upon them by the M. The Guardian's report explains that they expressed many concerns about time with the F, including before the August 2021 incident. It would take a good deal for me to override the clear and consistent views of children of this age.
44. Further, I am very concerned that the F's approach seems to be largely centred around his wishes, and his needs, and not those of the children. He rejects those parts of what they have said that he does not agree with and seems to have no insight into their concerns. Further when given the opportunity to gradually rebuild relationships through indirect contact he failed to maintain this.
45. The F appears to have very fixed views and shows little ability to change. He rejects the mental health diagnoses of the experts and imposes his own narrative on all past events. This does not bode well for him being able to be child focused in the future.
46. I am also very concerned about the WhatsApp messages that he was sending the M. In my view these show a clear pattern of coercive control by which he is trying to impose his wishes on the M, and then justifying this to himself by saying it is in SB's interests.
47. I am not willing to force the M and children to work with CFS within this very concerning context. In my view, the correct order is that indirect contact continues on the current model. If this leads to the children and the M feeling that it can progress to direct contact that is a matter for the M, but I am not going to make any comment about when this should occur. Equally, I am not going to place any requirement on the M to work with CFS.
48. In my view this is an appropriate case for a s.91(14) order. These children have been in litigation for most of their lives. They and the M need and deserve a break. It is very clear from the WhatsApp messages that the F will feel justified in pursuing his viewpoint both remorselessly but also with a total lack of thought or care as to the impact on the M or the children. The order should cover the period of both children transferring to secondary school and give SB time to settle there. I will therefore make it for 2.5 years.