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Case No: CV23P00038
CV23P00572
CV23C50165

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/04/2024

Before :

MRS JUSTICE LIEVEN

Between :

XX

Applicant

and

ZZ

First Respondent

and

AX

(a Child, through his Children’s Guardian)

Second Respondent

and

WARWICKSHIRE COUNTY COUNCIL

Third Respondent

The Applicant represented himself

The First Respondent represented herself

Ms Val Madine (instructed by **Wilson Browne**) for the **Second Respondent**

Ms Karen Sidhu (instructed by **Warwickshire County Council**) for the **Third Respondent**

Hearing dates: **11 March 2024**

Approved Judgment

This judgment was handed down remotely at 10.30am on 11 April 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 AX, born in November 2013, now aged 10. The parents have been in litigation concerning AX since 2017. The Mother and Father both appeared in person, the Father with the support of a Mackenzie friend. The Local Authority (“LA”) were represented by Ms Sidhu and the Guardian by Ms Madine.
2. These are the third set of proceedings concerning AX. Private law proceedings were commenced in 2017, there were public law proceedings in 2021-2022, and then further private law proceedings and a public law application by the LA for a 6 month extension to the Supervision Order on 3 November 2022. This hearing follows an application made by the Father on 8 August 2023. The Father seeks shared care of AX, on a 50/50 basis.
3. Much of the background to this matter is set out in a judgment of HHJ Jones sitting in Coventry dated 3 November 2022 and I do not intend to repeat the detail of that judgment. She ordered a Supervision Order for 12 months, a s.91(14) order for 2 years, made a Child Arrangements Order (live with Mother and contact with Father) and a Prohibited Steps Order.
4. AX has been known to the LA since he was four years old by reason of extensive parental conflict, and the impact on AX. There was contact between AX and the Father between 2017-January 2021. In early 2021 the relationship between the parents deteriorated further and the Father made allegations that the Mother had hit AX. The Father retained AX in his care and there was a prolonged dispute during that year about which parent AX should live with.
5. The LA commenced care proceedings on the basis of AX suffering significant harm from the longstanding hostility between the parents, and their inability to prioritise his emotional needs. The Judge found threshold proved at paragraph 52 of her judgment (J52).
6. The following paragraphs of HHJ Jones judgment are particularly relevant:

“20. On 21 September 2021, District Judge Moan ordered the return of [AX] to his Mother’s care by 24 September 2021. The Local Authority reviewed the circumstances in which [AX] had found himself in over the week prior to 21 September and recognised that the private law proceedings had become protracted and, to an extent, ignored. It assessed the emotional impact had been significant upon [AX] and the Father had not acted in [AX’s] best interests. It was in that context that public law proceedings were issued. The background is not intended to provide a day-to-day account of the history in this case but to give a flavour of the circumstances [AX] found himself in.

21. At the first hearing of the public law proceedings on 28 September 2021, the Father opposed the making of an interim care order on the basis that he did not consider the threshold criteria to have been crossed and also on the basis that he did not agree with the Local Authority’s interim care plan that [AX] should be removed to the care of a third party. The matter was adjourned to be considered before Recorder

Redmond on 11 and 12 October 2021. This was to allow for oral evidence to be heard from the Father, the Mother, the Social Worker and the Guardian. No public law order was made regarding [AX's] interim care. The private law order in place and unsuccessfully appealed required [AX] to be returned to his Mother's care on 4 October 2021. The Father confirmed he would comply with that order. The Local Authority confirmed that it would support supervised contact between each parent and [AX] until the next hearing.

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60. Ms Kim concludes that whilst the Mother is not perfect, she has not identified any gaps in the Mother's capacity to meet [AX's] needs. She goes on to conclude that the Father is currently unable to meet [AX's] emotional needs around supporting his relationship with his Mother. She opines that the Father has focused his efforts on "being proved right" rather than focusing on supporting [AX] emotionally. The Father is unable to consider how his actions have influenced and impacted upon [AX]. She relies on the assessments done of the Father which conclude that the Father does not respect the Mother as a parent and that he believes her to be a risk. She says that there is no evidence which supports the Mother is the risk the Father believes her to be. Her recommendations remained the same having heard evidence in court from Dr Williams and Dr Gwyer.

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68. The Mother was assessed not to have any psychological difficulties attributable to her mental health although it was recognised she would benefit from bereavement counselling.

...

83. The Guardian gave evidence and her report appears at E236. She draws her conclusions having considered the full court bundle, the expert reports, having completed interviews with each parent, and having done direct work with [AX]. She has spoken with the Social Worker and the independent reviewing officer and has observed [AX] in the presence of both parents. She has also spoken with the contact supervisors and [AX's] head teacher.

84. She concludes that [AX] is at continuing risk of significant emotional harm is he were to return to the care of the Father at this time or have unsupervised contact with him as this afford the Father further opportunity to reinforce his negative perception of the Mother. Her evidence was that even within a supervised setting, the Father continued to make subtle remarks which undermine the Mother which would cause [AX] emotional harm. The Father showed no insight as to the concerns of the Local Authority and did not consider [AX] to be at risk. The Guardian considered that the Father's capacity to change was low.

...

94. He [the Father] told me he did not think the Local Authority is in charge of his life. He told me that at the time proceedings were taken, he and the Mother were starting to build contact and it was going okay. I find that this perception is entirely consistent with the psychological assessment of the Father and that it is demonstrative of the Father's lack of insight.

95. Having listened very carefully to the Father, I re-read his written evidence filed within these proceedings. I have formed the view that the psychological assessment undertaken of the Father and the parenting assessments undertaken of him are accurate and reliable. Those assessments paint a picture of the Father being unable to reflect on lived experiences of [AX] and to prioritise [AX's] needs above those of his own need to be right. I do not accept the Father's assessment that [AX] has not been listened to and he does not have a voice. There is expert evidence and professional evidence before the court that have all concluded that [AX] is in the awful position of not wanting to lose either of his parents. He has not for some time indicated a wish to live with the Father although I do not doubt he would wish to move to a shared care arrangement but without the pressure of "trying to please". The court must take into account the child's wishes and feelings as far as they can be ascertained commensurate with their age. [AX] is choosing to remain silent. I accept the opinion of Dr Williams that this is [AX's] crude attempt to "manage the unmanageable".

96. Faced with overwhelming evidence of the Local Authority and of the Guardian, I conclude that [AX] would be at risk of significant emotional harm if he were to return to his Father's care or if he were to have unsupervised contact until such time as the Father has undertaken the therapeutic intervention that he has been recommended to effect change in his entrenched position of the Mother.

97. In all the circumstances, in my judgment, [AX] should remain living with his mother under the auspices of a child arrangements order and should have supervised contact with the Father as agreed between the parties on the advice of the Local Authority. I consider that it is necessary for the Local Authority to be obliged to advise, assist and befriend [AX] under a 12 month supervision order to ensure that the contact between the Father and [AX] and his half-sibling is maintained and it is my hope that the sibling contact can be arranged over and above the contact the Father has with [AX] so as to promote that relationship. How that will be achieved I do not know, particularly as I have heard that [BX], the half-sibling, is no longer having contact with his Mother and is in the full-time care of the Father.

98. There is no disagreement that I should impose a s.91(14) order on the parents preventing further applications and I do so for a period of two years as I consider the welfare of [AX] requires me to do so. If the Father seeks permission for that restriction to be lifted for the purposes

of varying the contact order, it would be the expectation of the court that such application for permission be supported with evidence of therapeutic intervention that the Father has undertaken.”

7. The Father sought to appeal the Judge’s order, but permission to appeal was refused by Baker LJ.
8. It is central to any understanding of this case that the Father says he is diagnosed with Aspergers (although there was no evidence put before the court to confirm this diagnosis) and he exhibits a number of behaviours very typical of that diagnosis. He is highly obsessive about certain matters (for example minor health issues concerning AX); he lacks insight into the impact of his conduct; and he lacks empathy and understanding of other people’s positions. The Father has made a long sequence of complaints against I think every professional who has been involved in the cases, including social workers, the psychologist Dr Bryn Williams, solicitors, the Guardian and judges. He is convinced that all these different professionals are acting unfairly and contrary to AX’s interests. He has shown no respect for the Court, being convinced that HHJ Jones, and indeed other judges at Coventry are biased against him. He is utterly certain that he is the person who understands AX (and his older son BX) and that only he knows the solutions to AX’s issues.
9. The Father has also made numerous complaints about AX’s school and is convinced that they are not properly handling AX’s education. The effect of the Father’s approach to the school has been to undermine AX’s trust in the school, and that appears to have led to or exacerbate behavioural issues at school.
10. In August 2023 AX went for overnight contact with the Father but was not returned to his Mother’s care. HHJ Jones made a further order requiring AX’s return on 30 August 2023 but the Father refused to obey the order. HHJ Jones then made a recovery order and the police attended and recovered AX in the middle of the night and returned him to Mother’s care. On any analysis this sequence of events must have been exceedingly traumatic for AX.
11. Since those events the Father has been having direct supervised contact with AX, at a contact centre until January and for the last few weeks in the community. The reports of contact have been positive, in the sense that AX very much enjoys seeing his father and has a very strong bond with him. There are however concerns from reading a number of the contact notes that the Father is clearly hostile to the school and is also very quick to encourage AX to worry about minor health issues and other matters the Father is obsessing about. The Father cannot stop himself from asking AX questions about the school, or the Mother, or social workers, that lead AX to not trust any of them, and see them as acting contrary to his interests. Even if the Father does not intend this to happen, it is undoubtedly the effect of his conduct.
12. AX has a close relationship with his half-brother, BX (aged 17), who lives with the Father. AX sees BX in contact sessions and also does internet gaming with him. The Mother is supportive of AX’s contact with BX. As I explain below, the role of BX in this tangled case is a complex one, but he is certainly a very important person in AX’s life.

13. In January 2024 there was an issue at contact between AX and BX at a go-karting track, whereby the Mother says the Father was angry and aggressive to her in AX's presence. The Father has a very different version of events. This is not a mini fact finding judgment and I am not going to try to discern exactly what happened. But what is clear is that the Father cannot regulate his own behaviour to de-escalate a situation when he is convinced that he is in the right.
14. I had a report from AX's school, which had been produced by the order of the Court. There have been significant concerns about AX's behaviour at school. The report states:

"3.1. Since writing my last report in October 2023, we have seen deteriorating behaviour from [AX]. He is displaying disruptive behaviour within the classroom. This can be in the form of work refusal, repeatedly calling out, refusal to listen to the class teacher or teaching assistant and mimicking others including staff. He has said unkind [things] towards other children in the class. He can engage in rough unsuitable play at lunchtimes and playtimes. This usually is a form of 'tag' which becomes too rough. There have been incidents of rough play in football and PE.

3.2. On 9th November 2023 a group of Year 6 pupils reported an incident outside of school at the local park where [AX] had been calling a group of year 6 pupils inappropriate names like 'retard', 'pussy', 'weak' and 'fat'. One of these pupils was a relative of [AX]. Following on from this incident, I alerted both parents so they were aware of the situation and what had been reported to school.

3.3. When [AX] refuses to complete some of the learning, the expectation is that he will complete up to ten minutes of learning in the classroom over his breaktime. On one occasion on 15th December 2023, [AX] was asked to stay in for a short while at lunchtime to complete the learning he had missed. Instead of completing the learning he went outside and hid in the forest school area. He reluctantly came into school but he refused to complete the learning.

3.4. We have seen his behaviour escalate for example when he wasn't chosen to set up the PE equipment he pushed all the items off his desk and slumped down with his hood over his head. He was then reluctant to take part in the PE lesson (18th January 2024).

3.5. On 23rd January 2024 [AX] was involved in an incident with the year 6 boys over a disagreement about whose football belonged to whom. One child reports that [AX] punched him in the face. From my investigations, [AX] says that he was rugby tackled to the ground during this incident. The child he punched was a bystander and not involved in the disagreement.

3.6. On 8th February 2024, [AX] represented the school for a netball match. [A teacher] accompanied [AX]. During the match, [AX] left the game and threw his bib on the floor out of frustration. He said that our

team was rubbish and it was embarrassing. [The teacher] decided that it would be best to take [AX] back to school.”

15. The conclusion of the report states:

“Due to the increasing number of behaviour incidents we are seeing and [AX’s] refusal to take part in school learning and extra school curriculum opportunities. We believe that [AX] requires some emotional support. We have had recent approval for this from both parents and this RISE refer has been submitted. [The Father] requests that [AX] sees [Ms Y] and has repeatedly asked school to agree to this. He has also requested that I speak to [Ms Y]. I have referred [the Father] back to children’s social care as I cannot consent to this as I have no evidence of [Ms Y’s] suitability to work with [AX] or her qualifications or to share details about [AX] without both parent’s permission.

I feel that a counsellor or play therapist ought to be a neutral person who has no previous involvement with the family. [AX] needs someone independent to share his voice with and his feelings without the worry of disappointing either parent. This person will need experience of trauma and adverse childhood experiences to enable [AX] to build trust with them.

[The Father’s] excessive communication and demands placed upon myself and school staff is unreasonable and we will continue to put in place the communication plan for the foreseeable future.”

16. The report records a complaint by the Father relating to an alleged incident on 21 December 2023 when he alleged that AX was “manhandled” by a member of staff. The headteacher investigated and found that there was no evidence to support the complaint. However, whatever the objective evidence, this again feeds into the Father’s narrative that the school do not help AX, and that then has fed into AX’s trust in the school.
17. AX has been diagnosed with dyslexia. He gets support form a teaching assistant and through a programme called Nessy. AX also takes part in weekly Thrive sessions. The Father is convinced that AX needs an Education, Health and Care Plan (“EHCP”) and is highly critical of the LA, and the school, for their failure to put this in place. The school, supported by the Mother, does not believe that an EHCP would either help or be justified here.
18. The report records that there have been a number of emails and other “demands” placed on the school by the Father, and they have put in place a communication strategy to deal with this.

The Father

19. It is in some ways not too difficult to see what has gone so wrong in this case. The Father has a long-standing diagnosis of neurodiversity, including dyslexia, ADHD and ASD. These very clearly manifest themselves in his behaviour to others, particularly professionals, and his approach to parenting AX.

20. The Father is absolutely certain of his own rightness. He is confident that he knows the solutions to AX's difficulties and has no insight into any impact his behaviour and his choices may have had on AX. Although he now accepts that he should have returned AX to his mother's care in August 2023, he plainly thinks he was justified in the actions he took.
21. The Father is very strongly of the view that AX is neurodiverse and needs specialist help and schooling. He seeks for AX to be assessed by Ms Y, a psychologist who has worked with BX.
22. He is intensely critical of the LA, the Guardian, the police and the school in respect of almost every decision they have made in relation to AX. It does not appear to have struck him that the common feature in all the agencies he complains about is his conduct.
23. There is a pattern of the Father raising persistent and totally disproportionate concerns about AX. The most obvious example is his frequent references to and insistence about AX having verrucae. He is similarly fixated on AX having earache, dental problems and not having clothes washed. There is no evidence to support any of these concerns. Verrucae are common in children at school. There is nothing to suggest that AX's occasional earache is any different from any other child. He has had the odd wobbly tooth, as is again entirely normal. All safeguarding checks in respect of the Mother have found no risks. But the Father simply cannot see these issues in a proportionate way.
24. It is not necessary in this judgment to investigate the Father's complaints. However, I do note that the Mother felt that the LA had assisted her with respect to AX and had no complaint about the professionals involved in the case.
25. The Father gave oral evidence, and I listened to a recording of part of his last meeting with the Guardian, a week before the hearing. He also submitted many long, and very detailed, documents to the court, often outside the terms of the court orders. The impact of his behaviour on the Guardian in the meeting is very clear. He is totally overwhelming in the force of his views, and certainly in the meeting with the Guardian he was intimidating, both in what he said and how he said it. I suspect the Father does not mean to have that effect, but it is easy to see why professionals find it so difficult to work with him.
26. He said in evidence that he thought the Mother was a good parent, and that she looked after AX well. However, in practice it is apparent that he has been both critical and undermining of the Mother's care, both to AX and to professionals. Many of his concerns and criticisms necessarily involve criticism of the Mother. Examples again are the suggestion that she does not appropriately deal with his verrucae, teeth, personal hygiene and so forth.

The Mother

27. The Mother has put in statements and gave brief oral evidence. She came across as a kind, caring and exhausted parent. She is torn between her wanting AX to have a relationship with his Father and to see the Father, and the exhaustion of having to deal with the Father's impact on AX and on her life.

28. She freely acknowledged that AX was very close to his Father and would be deeply upset if he could not see him. She said that most of the time she and AX got on well and had a loving relationship, but he could get angry and be rude to her.
29. She said that having been hopeful in the Autumn of 2023 that she could work with the Father and find a way to build up contact, she now felt that would not be possible. Her view was that the Father would not change, and would always push for more contact, and would undermine both her and the school.
30. Mother confirmed that she would be guided by professionals and the court regarding contact. She said she had reluctantly come to the conclusion that at least in the short-term the only way forward was to stop contact between AX and the Father. I put to her that this could create much greater problems for her and AX's relationship and she acknowledged that this might happen. But she felt that there was no realistic alternative.

The Guardian

31. The Guardian was appointed in October 2023. He had met AX six times, including observing contact with the Father twice and meeting AX at school twice. The Father was critical of this, and suggested that the Guardian had not spent sufficient time with AX. However, I note, as the Guardian said, that this is considerably more meetings than would normally be the case.
32. The Guardian said that this was a particularly difficult case. In his report of October 2023 he had recommended a gradual transition from supervised to unsupervised contact and a build up of contact. However, both the incident in January, and also the meeting he had with the Father in March, convinced him that it was in AX's best interests for contact to stop. He said that the Father had been intimidating and effectively threatening in that meeting and had said he had no faith in the Mother's ability to parent AX. The Guardian felt that he would continue to undermine the Mother and the school if contact continued.

The parties' positions

33. The Father seeks an order that he and the Mother share AX's care.
34. The Mother looked to the court and professionals to guide her. The Mother was asked to consider whether a pause in contact for a fairly prolonged would allow AX to become stabilised and her relationship not be undermined. She agreed it would assist.
35. The social worker did not give oral evidence but had put in a statement. The LA's position is that there should be further work with the Father, and a period of indirect contact but then quite rapidly moving back to direct contact. This seems to be in the hope and expectation that further work will improve the Father's understanding of the impact of his conduct on AX.
36. The LA recommend that the parents complete programmes designed to support separated parents work towards successful co-parenting; that AX remains in the care of his mother and that the Child Arrangements Order, Prohibited Steps Order and s.91(14) Order continue. They suggest that family time moves (in the short term) to

indirect contact via letters and photos alongside a virtual family time for a duration of one hour per week, supervised initially by Children's Services with a view to the Mother joining the sessions, and once she feels able to supervise, to continue this. The LA proposes that contact progresses to face to face when the parents have successfully engaged with and completed the recommended programmes. The LA recommends that sibling contact between BX and AX continues.

37. The Guardian seeks a cessation of contact for a significant period, although this was not defined.

The Law

38. The law in this case is not controversial. I apply the welfare checklist in s.1 of the Children Act 1989. When considering whether to make a s.91(14) order I must have close regard to the fact that this limits access to the court, by imposing a permission filter, and interferes with a parent's Article 6 and 8 rights.

Conclusion

39. This is a very difficult decision. I have no doubt that AX loves his father and very much wants to spend time with him. AX is recorded as saying that he wants to live with his father, and plainly his wishes and feelings carry considerable weight. The contact notes suggest contact is very positive for AX in the sense that he really enjoys it, and that the Father is largely appropriate in how he speaks to AX in those sessions.
40. I think it highly likely, as does the Guardian and the Mother, that AX will be very upset if contact stops and this will cause him emotional harm and distress. It may lead to AX being angry with his Mother and blaming her for the loss for a time of the Father.
41. I am also very conscious that AX will continue to have contact with BX. Even if it were appropriate to stop face to face contact with BX, he and AX have communication via the gaming app and the Xbox. So it would be wholly impractical to try to stop all contact. I fear, although I do not know for certain, that BX is likely to act as something of a mouthpiece for the Father.
42. However, I am equally confident that the Father is undermining both the Mother's care of AX and the role of the school. Ultimately it does not matter whether this is deliberate on the part of the Father, or inadvertent. The Father cannot deal with views that differ from his own. So if anyone disagrees with him, or does something he does not agree with, he will lodge a complaint and view them as acting contrary to AX's best interests. He cannot prevent himself from then seeking to encourage AX in sharing his view of the situation.
43. Equally he cannot see that his actions harm AX. So encouraging AX to believe that the school is not helping him and properly educating him, ultimately harms AX and his education. Leading him to believe that the Mother is not properly caring for him makes AX anxious and sometimes defiant with his Mother. There is absolutely no evidence that the Mother is anything other than a loving and caring parent, who looks after AX very well and always acts in his best interest. The constant undermining by

the Father, through ridiculous complaints, such as about AX's clothes not being washed, is bad for AX and wholly baseless.

44. From having watched the police video from August 2023 I am concerned that AX is being influenced by the Father to reject the Mother and say he wants to live with Father. The evidence seems to suggest that if AX is left alone with the Mother, he loves her very much and starts to become more settled.
45. Sadly, I have come to the conclusion that it is not sustainable and in AX's best interests for the current situation to continue. I effectively have three options. I could accede to the Father's view and order 50/50 care; continue the present situation of limited direct contact; cease contact with the Father for a period.
46. If I adopt options one or two, I have no doubt that the Father will continue to undermine the Mother and the school and seek more contact and for AX to live with him full time. That would very much not be in AX's long term best interests. AX loves his mother and she looks after him very well. He will continue to be placed in the midst of parental conflict, with having to choose sides, and being forced into a position of rejecting his mother.
47. I accept the Mother's evidence that the strain of the present situation upon her and AX is simply too great and contrary to AX's best interests.
48. I do not think the kind of short term break in contact with the Father doing further "work" has any realistic prospect of success. The Father's neurodiversity is not going to change, and I have no confidence that his behaviour towards the Mother and AX will change. The F's lack of insight is profound, and a few months of a separating parents course is unlikely to achieve significant change.
49. There are no good options in this case, and I wholly accept that stopping contact between the Father and AX will be very upsetting for AX and will cause him harm. However, in the balance of harm, it will give AX and his mother a break, which I hope will allow them to stabilise and strengthen their relationship, without the Father's undermining influence. It will also, I hope, allow AX to feel more confident in the school and for his behaviour to improve.
50. The Supervision Order shall be extended for another 12 months. I will continue the Prohibited Steps Order in its current form. I will make an order for no contact, save for limited letterbox contact between the Father and AX, and the Child Arrangements Order shall be varied to allow twice monthly letters from the Father to AX, to be sent to the LA for checking. The LA should also check any letters from AX to the Father, and AX may write to his Father as often as he wishes. I will make a s.91(14) order for two years. That will take AX through transfer to secondary school, and a period to settle in there. It would be appropriate at that point, assuming the Father so wishes, for the Court to consider any new application he wishes to make at that stage.