



Neutral Citation Number: [2020] EWFC 3

Case No: MA16P00010

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/01/2020

Before :

THE HONOURABLE MR JUSTICE HAYDEN

Between :

JA	<u>Applicant</u>
- and -	
AM	<u>1ST Respondent</u>
- and -	
The children (acting by their Guardian)	<u>2nd Respondents</u>

Ms Alison Ball QC (instructed by **Dawson Cornwell**) for the **Applicant**
Mr Peter Buckley (instructed by **Steinbergs Solicitors**) for the **1st Respondent**
Ms Frances Heaton QC, Ms Jane Walker (instructed by **Alfred Newton & Co**) for the
Respondent children acting by their Guardian

Hearing dates: 20th January 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE HAYDEN

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 Hayden :

1. This case concerned private law proceedings between the father and the mother of 5 children, now aged between 5 and 15 years of age. Having struggled with his gender orientation for much of his life, the father left the home to live finally as a transgender person. It is difficult to imagine the extent of the personal torment that must have been involved in that decision. She (the father) now lives as a woman.
2. The family are Charedi Jews. This community can properly be described as ultra-Orthodox. Its ways of life, customs and observances are little understood by and alien to many, including many within the wider Jewish community. It is entirely inconsistent with Charedi beliefs to accommodate transgender people within their community. Their concern is to shield children from knowledge of or exposure to such matters. Their belief system requires them to restrict their children from coming into contact with children who have been ‘exposed’, as they would see it, to ‘such behaviours’.
3. Many would disagree with this approach. Indeed, it is offensive to those who believe in a tolerant, diverse, pluralistic society. In a mature society, however, accommodations have to be found, and this includes recognising and respecting religious and cultural beliefs that are outside what might loosely be called ‘mainstream opinion’.
4. In 2017, Mr Justice Jackson (as he then was) heard this case and made orders that contact between the father and the children should take place only indirectly four times per year [2017] EWFC 4. The Court of Appeal [2018] 3 All ER 316 permitted an appeal against that order. The Court considered that the Judge had not engaged sufficiently with the complex interplay of Article 9: the right to manifest one’s religion; Article 14: prohibition of discrimination; and the reach and scope of the Equality Act 2010. The matter was listed for rehearing before me in April 2018.
5. At that hearing, I heard wide ranging submissions and some evidence. It was clear that the father had not been able to devise a plan for the children which did not involve catastrophic impact on their lives. These are children who have little contact with the outside world and are, for example, not permitted to watch television or use the internet. Each of the children, but particularly the older ones, were traumatised by what had happened, and each was ill-equipped to understand their situation.
6. In the event, a measure of agreement emerged which closely reflected the orders of the first instance Judge, Mr Justice Jackson. However, importantly and having particular regard to the matters highlighted by the Court of Appeal, it was agreed firstly, that a careful narrative be constructed to help the children make some sense of their situation, and secondly, that pursuant to s. 91(14) Children Act 1989, new applications could not be made without permission until January 2020. The expressed objective of these orders was to seek to achieve a breathing space for the children to permit them to absorb the dramatic changes to their family. Inevitably it has not been easy. Some of the older children remain very angry. But it is fair to say that as a family, with extended family and community support, they are managing well.
7. None of the children is prepared to meet with the father. The attitudes of the community remain, as they were bound to, unchanged. The intervening period has not

been without incident, and the children's privacy has, unbeknown to all but the eldest children, been compromised on social media. This must now cease.

8. Today, the father has recognised that there is a chasm between her desire to be a part of her children's life and their ability, in their community, to allow her back. Though this has much to do with the cultural beliefs that I have summarised above, it is not exclusively so. It is plain that the father, before she left the home, was not sufficiently sensitive to the children's needs and the fact that they would need time to understand what had happened. As I said in the April 2018 hearing, she had had a lifetime to come to terms with her true orientation, they had not.
9. The father does not pursue her application now. She recognises that it would be not only counter-productive to pursue it, but emotionally harmful. The guardian considers this to be a shaft of insight into the children's needs and a very powerful contribution to their future wellbeing and stability.
10. This case presented important issues of public interest. Mr Farmer, on behalf of the press, argues that the public are entitled to know, in outline form at least, the outcome of the proceedings. The parallel analysis of the competing Article 8 and 10 rights, in the context of Article 9, all point to the correctness of that argument. All the advocates before me have agreed to such a course.
11. In delivering this short, ex tempore judgment, I am intending to bring closure to this difficult and challenging case, in the hope that this courageous family may move forward without the added burden of public comment. I have also made specific orders restricting the father's campaign on social media. It requires to be highlighted that she has submitted to these orders without any opposition.