

IN THE LIVERPOOL FAMILY COURT
Neutral Citation Number [2022] EWFC 189

Case No. LV21P00249

Courtroom No. 25

35 Vernon Street
Liverpool
L2 2BX

Wednesday, 14th December 2022

Before:
HIS HONOUR JUDGE STEVEN PARKER

B E T W E E N:

B

and

C

THE APPLICANT appeared In Person
MS A VAN-DER-HAER appeared on behalf of the Respondent
MS HOWE appeared on behalf of the Child through the Guardian

JUDGMENT

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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.

HHJ PARKER:

1. This is an oral judgment delivered from notes. I am concerned with a child called A. A was born on (redacted) and is presently aged almost five. His father is B. He is a litigant in person. The mother is C. She is represented by Ms Van-Der-Haer of counsel. The child appears through the Children's Guardian, D. She gives her instructions through Ms Howe of counsel.

The applications before the Court

2. The father has made three applications:

- a) for contact with his son,
- b) for an order for parental responsibility for his son,
- c) for a non-molestation injunction against the mother.

The mother has made an application for a section 91(14) order in respect of any future applications to be made by the father.

The background to the applications

The father's previous convictions

3. In 2004, the father received 10 sentences of life imprisonment in respect of seven offences of rape, one offence of kidnapping, one offence of attempted kidnapping, one offence of false imprisonment. All offences were committed on a previous partner who was 17 at the time. He was required to serve a minimum of 11 years. He was released in 2015 on licence. Within a few months, he had formed a relationship with the mother and also a second woman who will be referred to as E. He met the mother on a dating site and E at a nightclub. Initially, the mother moved into the father's flat in (redacted). She then moved to (redacted), and the father appears to have split his time between (redacted) and (redacted). He began his relationship with E a few months after the relationship with the mother. The father moved in with her. Both the mother and E complained of significant systematic sexual violence and multiple rapes during their relationship with the father, and eventually made complaints to the police. The mother was interviewed by police on 23 January 2018. The police charged the father with 31 separate offences for which the father was convicted after trial. In 2019, the father received 24 life sentences in respect of 24 counts of rape and separate concurrent sentences of imprisonment for two counts of engaging in controlling, coercive

behaviour, 30 months each, two counts of false imprisonment, three years each and two counts of threats to kill, four years each.

4. In his sentencing remarks, HHJ 'Z' said this:

“Nobody should think that after the lapse of this remission, you are going to be, in any way, eligible for parole because the Parole Board will have to look very carefully at my remarks and the seriousness of these offences. All it means is that you can, after the requisite period, apply for parole. The sentence that I have decided on the minimum term will, therefore, be 14 years on each count, concurrent, so on all the counts of rape, there will be life sentences, with a minimum period to serve 14 years before you can apply for parole”.

At his sentencing hearing, the mother addressed the father directly, and said this:

“From the moment we met, you had intentions of abusing and degrading me anywhere you could. I suffered countless monstrous acts at your hands. You’ve pushed me to the depths of despair I’d never imagined, to the point of no longer valuing my life. You went out of your way to break me for no other reason than your own gratification, never showing remorse or mercy for the terror you inflicted and causing more suffering by forcing us through the trauma of a trial rather than taking responsibility for your actions. My life will never be the same; relationships with friends and family lost and tarnished, forced to bring my son out of hospital into a refuge with only a handful of belongings, suffering anxiety and depression. I am unable to build relationships as I no longer trust my own judgment. You are not just my abuser, you are my child’s father, and for our son, I am thankful. He gave me the strength, courage and purpose I lacked. He saved my life. This will never be over for me, not just because of the scars you’ve left me with but because of your actions. I am left to someday, somehow, explain things to our son. I remain hopeful that you do have the humanity to understand what you’ve done and how this has impacted on many people. It hasn’t been easy, but I forgive you for all that you have done for mine and my son’s sake. I hope you get the help you need”.

The effect of the father’s criminal convictions for rape and other offences

5. The relevant parts of section 11 of the Civil Evidence Act 1968 provide as follows:

“In any civil proceedings, the fact that a person has been convicted of an offence by or before any Court in the United Kingdom, shall be admissible, in evidence, for the purpose of proving where to so is relevant to any issue in those proceedings that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise, and whether or not he is a party to the civil proceedings, but no conviction other than a subsisting one will be admissible in evidence by virtue of this section. In any civil proceedings in which, by virtue of this section, a person is proved of being convicted of an

offence by or before any Court in the United Kingdom, he shall be taken to have committed that offence unless the contrary is proved”.

This provision was considered by the House of Lords in the case of *Hunter v Chief Constable West Midlands Police* [1982] AC 529. At page 544, Lord Diplock said this:

“This wide variety of circumstances in which section 11 may be applicable includes some in which justice would require that no fetter should be imposed upon the means by which a defendant may rebut the statutory presumption that a person committed the offence of which he is being convicted by a court of competent jurisdiction. In particular, I respectfully find myself unable to agree with Lord Denning, Master of the Rolls that the only way in which a defendant can do so is by showing that the conviction was obtained by fraud or collusion or by using fresh evidence which he could not have obtained by reasonable diligence before, which is conclusive of his innocence. The burden of proof of ‘the contrary’ that lies upon a defendant under section 11 is the ordinary burden in a civil action: proof on a balance of probabilities; although in the face of a conviction after a full hearing, this is likely to be an uphill task”.

6. As Sir Andrew McFarlane, President of the Family Division stated in *Re H-N and Others (Children) (Domestic Abuse: Finding-of-Fact Hearings)* [2021] EWCA Civ 448, paragraph 73:

“It follows, therefore, that a family judge making a finding on the balance of probabilities is not required to decide and does not decide whether a criminal offence is being proved to the criminal standard. Any use of familiar terms should not give the impression that the abusive parent has been convicted by a criminal court. Equally, where an abusive parent has, in fact, been convicted of a relevant offence, e.g., a sexual or violent offence against the other parent, the conviction is proof of the fact that he or she committed the offence unless the contrary is proved”.

7. Through this hearing, the father has made it clear that he does not accept that he has committed any offences in respect of the mother or E for that matter. His case is that a criminal case was brought against him in respect of the complaints made by the mother and E, and that the complaints were based on a complete fabrication by the mother and that the mother has coerced E to join with her in falsely accusing the father of multiple serious violent sexual offences. It was clear from his evidence that he does not and will not accept or acknowledge guilt in respect of a single matter for which he was convicted, and as a result, refuses point blank to undergo any work in respect of sexual violence against women. There is no insight, contrition or desire to change. As he said when giving evidence he will not undergo any such course and admit guilt until his last breath.

8. Since the father has been sentenced, he has been serving his sentence in the following prisons: (redacted). Since the father has been incarcerated, it is clear that there have been communications between the mother and the father, either direct or indirect, which continued up until January 2021. The father has produced documentation to show that the mother was sending him romantic cards and love notes. These can be seen from G23 to G29, on one occasion, a sexualised letter at G30, books at G33, 11 emails at G62 to G73, six emails, G110 to 115 and three text messages, G116. It is clear from the documentation that the mother was using different names to avoid the prison authorities discovering their communication. She changed her name by deed poll. She also appears to have used postal systems like Snapfish to avoid detection.
9. The mother and father are diametrically opposed as to why this communication took place. The father's case is simple. He says that he has been falsely accused and convicted of each and every offence in respect of the mother and E, that the mother's conduct after his conviction has been part of a concerted course of controlling and coercive behaviour over him which, in turn, has caused him emotional harm. He argues that it is clear from the fact that the mother was communicating with him as much as she did and in the manner that she did, that it was to control him and cause him emotional harm. In other words, he is the victim in all of this. So much so that he now needs the Court's protection of a non-molestation injunction. He asserts that the mother has lied to Social Services, the police, the Courts, the prison authorities and now this Court, and is manipulating the system. This was, undoubtedly, one of those cases where one has to have the opportunity to see and hear the parties giving evidence to fully understand the import and impact of their credibility on the case.
10. I found the father's account inherently improbable. He sought to suggest that it was the mother's sophistication that devised the system for communication between the two of them to avoid detection by the prison authorities and was nothing to do with him. I simply do not believe that, despite the father producing evidence of one Google search by the mother on how to visit someone in prison. She readily accepted that it was the sort of thing that she would have done at that time as she was still, clearly, dependent upon him notwithstanding the sexual violence that she reported he had perpetrated upon her. The father was the one with, already, extensive prison experience. The mother had none. He well knew what was required. He said that the communication from the mother was causing him emotional harm. I do not believe that evidence. I found him to be a deeply unimpressive witness and I

reject his account as fanciful. Indeed, four of his own comments exposed him for the type of person that he is.

11. At one stage in his evidence, he said rather menacingly that he could have had the mother followed if he wanted to know where she lives. On another occasion, he said that he could not say too much as he had employed a private investigator to look into how the mother was living her life. He then rode back from that to say that he had suggested that to his barrister, (implying a barrister instructed in connection with a proposed criminal appeal). At another stage in the hearing, he described the mother as having been “a bit on the side” of his relationship with E. Finally, he said, at different points during his closing submissions, that he would tell his son not to be violent with women, not to make the same mistakes he did, and not to be like him. I also found him to be a person who would misconstrue or misrepresent matters. At one point, he suggested that I had said that his previous convictions could not be used against him, that they were not relevant. He went on to suggest that I put that in one of my orders. None of that was true. In terms of discharging the burden of proof on him on a balance of probabilities by reason of section 11 of the Civil Evidence Act to show that he was convicted in error in 2019, he did not even begin to do so in my judgment.
12. The mother’s case is quite different. I found her to be a singularly impressive witness who was prepared to acknowledge where she was to blame for what happened. I accept her evidence and greatly prefer it to that of the father, whom I find to be dishonest. I found the mother to be utterly compelling, speaking with a disarming honesty. I found her to be entirely candid in the way that she dealt with falling back into a relationship, as she perceived it to be, with the father after his convictions, and how she was duped. She readily admitted her role in deceiving the prison authorities and lies told to Social Services. As she said, she had not been ready to leave him at that stage. She clearly still loved him, and it was only over time and with the benefit of professional help that she was able to see the father’s motives for what they really were. Like so many survivors of domestic abuse and sexual violence, she developed a toxic, mutually dependant relationship with her abuser. She simply could not do without him, irrespective of the emotional and physical cost.
13. The father sought to attach great weight to the mother getting the end date of her letters incorrect, suggesting that he was able to prove that they continued longer into 2020. He suggested that she committed perjury giving an earlier date. However, the mother was clear in her evidence that she was not good on the dates, and I attach no real significance to this

point. In my judgment, she was not being dishonest; she was doing the best she could to remember and was mistaken. The father did, as he did more than once in the case, latch onto a point that was less than significant to try to create a smokescreen for the real truth. He also wanted the Court to attach great weight to a report from a cognitive behavioural psychotherapist, F, at G24. That document does not advance the father's case, in my judgment. The mother gave clear evidence that she had not made false allegations about her stepfather.

My Findings

14. My findings are set out below as I set out her evidence which I accept and find on the balance of probability.
15. Their relationship began when he moved her into a flat in (redacted). He went down to (redacted) and said that he was staying with his son which she said turned out to be his nephew. He said that he had bumped into a woman who, unbeknown to him, had given birth to his child and he wanted to maintain contact with that child. When the father had gone to (redacted), he would come back every other week or month but would be in constant telephone communication. He then moved the mother to (redacted), down the road from E. She had been in (redacted) initially. She went to a refuge. He found her. Indeed, he found the mother in her refuge as well. When the father was arrested, she had given a letter to E explaining what had happened. At that time, she was unaware that E was a second victim.
16. The father contacted her on the telephone from prison on the day of his sentence saying that he wished to have contact with A. At that stage, she was unable, emotionally, to cope with that request and said no. He called back later. She had then calmed down. They started discussing him having contact with his son. She had no experience of dealing with prisons whereas the father had extensive experience. He advised on steps that she would need to take to enable this to happen. He advised her to change her name by deed poll, which she did, to (redacted). Once she had done that, he sent a visiting order in that name, which appears at G57. Initially, he said he wanted to see the mother on her own and she agreed to do that as she thought it might enable her to get things off her chest and achieve some closure. In discussing contact, she suggested that social workers should take A in, but the father had said it would upset him because when he was young and in care, social workers had taken him to see his father in prison which he did not like. He said that he was more comfortable if A came in with the mother.

17. She found the first visit was not comfortable but thereafter, when she attended, she brought A in. It then became more comfortable. Over the visits A, though initially clingy, became more familiar with the father and became more comfortable in his presence. Overall, there were about nine or 10 visits she agreed with B. The father advised her that if she contacted the prison, she could not do it in her own name because that would flag up with the prison. That was why he told her to change her name by deed poll. She changed it to (redacted) because (redacted) was her middle name and (redacted) was the family name. She chose the name, but he told her how to do it. He also gave her his prison number so that she could use it on correspondence. When writing to him, she had to put the prison number on it. Had he not given her the prison number, she would not have known it. When they met, he would hug her. Indeed, he began to pass comment that it was always him hugging her and why was she not hugging him.
18. Over time, she became comfortable speaking to him. He asked her to have different aliases for different letters and phone call PINs. Written materials tended to be by email. She also sent him three books. At one stage, a person called G became involved as a third-party conduit. She had said that her husband was in prison with the father and that they were friends so she would help with communication. In terms of telephone communications, the father had a PIN phone in his cell. He could have a number added to that as an authorised number. The prison holds a list of approved people that he can call. She said that she would get PIN calls on a daily basis, multiple times a day. Calls were predominantly by mobile phone. She was unable to telephone him. He was not meant to have a mobile. He would message on different numbers.
19. As time went on, communications became more and more. He would ask for her address on visits. She was visiting twice a month. She thought that the relationship had resumed. On the telephone, he would tell her that he loved her. He told her once to get an engagement ring and that he wanted a family with her. She felt safe at that point as he could not do the things, he used to do to her, but she was not totally comfortable because she refused to give her address. The mother had set up a third-party post box. At one stage, the father asked for pictures of the inside of her house. She had sent him a fake address of where she lived. He said he did a Google Maps search and could see that the windows were different, and therefore, she was not telling him the truth. The father started trying to steer her down the road that if she retracted her evidence given to the police and the Court in the criminal proceedings, then he would be able to come out and they could live together happily ever

after. He had denied carrying out any of the offences in respect of E. The mother said she did not accept what the father said as, by then, she had spoken to E.

20. He said to the mother that if she said something, then the case would collapse. In addition, he was saying that he did not feel like a proper dad. She should ask him for money, in writing. She was not comfortable with this. At one point, he got aggressive when she would not disclose her home address. Eventually, she realised that this was part of the father trying to engineer a basis for a successful appeal. This, I find to be a particularly sinister aspect of the case. I find that the main motives of the father all along were to beguile the mother into retracting her account given to the police and to the Crown Court, or at the very least, to use the mother to create evidence and cast doubt on her account and/or her motives. Indeed, I find that this father will do whatever it takes to try to undermine his convictions. Whilst I accept that the father does love his son and would like to be involved in his life, his major objective at the moment is to have his convictions overturned.
21. The mother began to understand that she could not trust herself as well as she thought and had not been thinking as well as she should have been. She decided to contact Social Services and the police. Her counselling had begun in September 2020, and she had carried out a domestic abuse course in April 2021 and a second in May 2021. She had been diagnosed with post-traumatic stress disorder in 2021 and is on medication. This evidence arose during her oral evidence. Whilst no medical evidence was adduced to support this oral evidence, in my judgment, she was telling me the truth. In my judgment, this father remains a highly dangerous individual for this mother who is determined to try and overturn his convictions by whatever means he can employ. In his sentencing remarks, HHJ 'Z' said this:

“You are a plausible, sophisticated individual who quickly insinuated yourself into the affections of these two young women. Certainly, one of them, C, fell in love with you. E did not but she plainly had some compulsion towards you. Turning, first of all, to C, you met her in early 2016, and, quickly, you were living together in your flat, and then you subjected her to both psychological and physical coercion over a period right to the end of 2017, which involved frequent beatings and humiliation, on occasions, forcibly inflicting intercourse upon her when she did not want it, both anal, vaginal and oral. She did not have the strength to resist you and became subjugated. It is right to say that on many occasions, she agreed to consensual sex as she said she loved you, but you had another side of your personality which saw its outlet in controlling her, battering her and raping her repeatedly. On one occasion, you threatened to kill her and her unborn child, which is completely, as are all the offences,

unforgivable. This was in relation to her, alone, a campaign of forced sex, in my judgment”.

Nothing has changed as far as the father is concerned. There is no insight into the impact of his actions upon the mother that form the basis of his convictions, nor indeed, the fact that post-conviction he continued to control and manipulate her emotionally. Unless prevented, it is likely that that would continue by whatever means the father could find.

Welfare

22. In dealing with the applications for contact and parental responsibility, I have regard to the provisions of section 1 of the Children Act 1989. I remind myself that my paramount consideration is the welfare of A. Any delay in making a decision is likely to prejudice his welfare. In terms of the Welfare Checklist, clearly, he is too young to express any wishes and feelings with any degree of understanding, in light of his age. I recognise that he was beginning to bond with his father during the periods of direct contact, but he has not seen his father since December 2019, so, three years ago. A last saw his father when he was almost two years of age. I agree with the Children’s Guardian’s assessment that A is unlikely to have any meaningful recollection or memory of his father.
23. I have noted two documents filed by the father which purport to be statements from two prison officers, at G97 and G98, who saw the father have contact with A and speak favourably of it. I have no doubt that the father was able to ensure that what was witnessed was nothing other than positive, accepting those documents at face value. However, the father is a sophisticated man, quite capable of acting in a cunning and subtle way as well as exhibiting sexual violence, described as “sadistic” by his trial judge. In addition, he is also well capable of speaking to a medical officer to give self-serving evidence to go into his records at G39 and so on, which I find that he did.
24. In terms of his physical, emotional and educational needs, I accept that children who have a good, wholesome relationship with both parents generally do best. However, sometimes one parent presents too great a risk to have ongoing contact. Further, any ongoing involvement through the prism of parental responsibility would give rise to risks that outweigh any benefits that this would give. This, in my judgment, is one of those cases. The prison offender manager report at D9 refers to a safeguarding children panel at HMP (redacted) on 20 October 2020 which reviewed the father’s safeguarding children status at the prison.

Following consultation with the Local Authority the committee probation officer, H concluded that it should remain at level one. On 27 January 2021, a section 47 report by the Local Authority concluded that the threshold for risk of significant harm for A was met, despite the father's incarceration and the risk would continue if the mother continued to promote contact. The recommendation was that A be subject to a child in need plan. The father suggested that there would be continuous supervision of any form of contact, to include video contact. The Children's Guardian has been informed by the prison authorities that constant supervision at contact, of course, is not possible. I accept her evidence. I also prefer her evidence on the issue of what the father said about having to visit his own father in prison and not liking it. He sought to distance himself from what I find he did say to the Children's Guardian in seeking to suggest that he only disliked one occasion when he had been playing football and did not want to leave.

25. In terms of the likely effect on A of any change in his circumstances, the evidence from the Children's Guardian is that A is currently thriving in his mother's care. She has had no contact with the father since January 2021 and even then, it was simply to send in a book as a present for the father from A. She has been diagnosed with post-traumatic stress disorder and has undergone counselling and domestic violence courses. A has had, essentially, three years without any involvement with his father.
26. In terms of his age, sex, background and any characteristics of his which the Court considers relevant, A is a young, vulnerable male who, undoubtedly, was exposed to domestic and sexual violence *in utero*. He suffers from selective mutism and requires good quality, nurturing care to ameliorate the heightened anxieties that safeguarding professionals say that he suffers from. He cannot and must not be exposed to any further domestic abuse perpetrated by his father towards his mother. Even if by reason of the father's incarceration, it is no longer possible for him to perpetrate sexual violence towards the mother, the father is, in my judgment, liable to perpetrate sophisticated emotional abuse, however. I am afraid that any form of contact for the father will expose the mother, and, more importantly, A, to a risk of emotional harm.
27. I recognise that not having any involvement with one's father is negative and presents a gap in his life which may impact his sense of identity, and he may wonder why his father is not in his life as he grows up. He may feel a sense of rejection, or, alternatively, that it was, in some way, his fault. Good quality life story work can help to ameliorate that situation. That will be particularly important in this case in light of his cultural heritage through his father.

The Children's Guardian should inform the Local Authority so that they can provide necessary services to the mother. In my judgment, these are crucially important. On the other hand, the involvement of the father in A's life and that of the mother would, in my judgment, expose A to an unacceptable risk of emotional harm and would expose his mother to a risk of ongoing emotional abuse which would be likely to impact on her ability to recover from the ordeal that she was exposed to at the hands of the father. That may, in turn, impact on her ability to provide care for A moving forwards and particularly as he grows older. She will need to be emotionally available for him. He is not without his own difficulties. He has exhibited selective mutism which safeguarding professionals believe is linked to trauma that he suffered *in utero* and anxiety. The father was only in his life for a very short time before he was incarcerated. The Children's Guardian properly recognised that there could be a number of different causes for selective mutism but the point is that he is not without his own difficulties, and he will require warm, loving, nurturing care from his mother as a carer, and she will need to be emotionally available to him and not at the mercy of the father's malevolent intentions.

28. I accept that the father has suggested that the contact could be staggered so that it began with video and telephone contact before there were direct visits to prison, noting that the father is presently in a high-security prison. However, the prison authorities have made it clear that they will not supervise and monitor all forms of contact at all times. At some stage, the contact would need to progress to direct contacts by visits. In my judgment, there are insufficient safeguards that could be put in place adequately to protect the child, and the mother, for that matter, and, as the Guardian observed, a re-establishment of any form of contact indirect or direct, would mean that the mother would need to prepare the child for that contact before it took place, and on each and every occasion, and, also, receive the child back after such contact. In so doing, she would be forced to relive her experiences at the hands of the father rather than being able to establish space and distance from him to enable her healing. That would then impact on her ability to be emotionally available for A, as she needs to be. Also, again, as the Children's Guardian said, children pick up and feed off anxieties of their parent/carer and that would impact on his emotional sense of wellbeing.
29. As the Guardian put it, "This is one of those cases where the benefits of any form of contact with the father are simply outweighed by the risks". I agree with her. I accept that the father does, in his own way, love his son and does want to play an active part in his son's life. Unfortunately, I am not satisfied that his involvement in the life of his son and the

mother can take place in a way that is safe. On the other hand, the evidence is that the mother is providing good-enough care for her son presently, and absent the father in her life, that is likely to continue.

30. In my judgment, it is inconsistent with A's welfare that his father should have parental responsibility for his son. Whilst he sought to downplay the extent to which he would want to be involved, in my judgment, he is the sort of personality who quickly would be looking to become more and more authoritative in terms of decision-making around his son. That would put an unacceptable burden on the mother to work together with this father to discharge the parental responsibility that each of them would have if I made an order for parental responsibility in favour of the father. In my judgment, it would be to put the mother in an emotional vortex where she was forced to communicate with the father regularly about important decisions in A's life. There would be no escape for her. She would also be at risk and vulnerable to malevolent intention upon his part. It would expose her and A to a risk of emotional harm.
31. I have considered the range of powers available to me under the Children Act. In this case, the prison authorities have assessed the father as a level one risk. That means that as far as the prison authorities are concerned, the father should not have any form of contact with any child. I am aware that the father has made a complaint against one or more of the probation officers that he has dealt with, and, certainly, one has been taken off his case, pending investigation. I have made it clear that following the judgment of MacDonald J in *Z v Z (Contact in Prison)* [2021] EWFC 47, a full welfare consideration is required from the Family Court so that either party can return to the prison authorities with a decision of the Family Court. If in favour of contact, then the father could potentially apply for judicial review of the decision-making of the prison authorities if they maintained their refusal to permit any form of contact. Nevertheless, it is indicative of the level of risk this father is assessed to pose by the prison authorities who are charged with the task of dealing with him on a daily basis. I do, however, make my own assessment, and do not feel bound by their assessment.

The application for a non-molestation injunction

32. It follows from what I have said previously in this judgment that I do not consider that the father requires any protection under section 42 of the Family Law Act 1996. I have considered section 42(5). I have considered all the circumstances, including the need to

secure the health, safety and wellbeing of the applicant. In my judgment, this application is a ruse by the applicant. It is dismissed.

The mother's application for a section 91(14) order

33. Section 91(14) of the Children Act 1989 provides as follows:

“On disclosing of any application for an order under this Act, the Court may, whether or not it makes any other order in response to the application, order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the Court”.

Section 67 of the Domestic Abuse Act 2021 made further provisions for Section 91(14) Children Act 1989 orders as follows:

“(2) The circumstances in which the Court may make a section 91(14) order include, among others, where the Court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is named in the section 91(14) order would put:

- a) the child concerned, or
- b) another individual (‘the relevant individual’) at risk of harm

(3) In the case of a child or another individual who has reached the age of 18, the reference in subsection (2) to ‘harm’ is to be read as reference to ill-treatment or the impairment of physical or mental health”.

34. I have regard to Practice Direction 12J, in particular, paragraph 37A.1:

“In every case where a finding or admission of domestic abuse is made or where domestic abuse is otherwise established, the Court should consider whether an order under section 91(14) of the Children Act 1989 would be appropriate even if an application for such an order has not been made. Section 91(14) orders are available to protect a victim of domestic abuse where a further application would constitute or continue domestic abuse. A further application could be part of a pattern of coercive or controlling behaviour or other domestic abuse toward the victim such that a section 91(14) order is merited due to the risk of harm to the child or other individual”.

I also note Practice Direction 12Q, in particular paragraph 2.2:

“The Court has a discretion to determine the circumstances in which an order would be appropriate. These circumstances may be many and varied. They include circumstances where an application to put the child concerned or another individual at risk of harm (as provided in section 91A), such as psychological or emotional harm. The welfare of the child is paramount”.

Paragraph 2.4:

“A future application could also be part of a pattern of coercive or controlling behaviour or other domestic abuse towards the victim such that a section 91(14) order is also merited due to the risk of harm to the child or other individual”.

Paragraph 2.6:

“In proceedings in which domestic abuse is alleged or proven or in which there are allegations or evidence of other harm to a child or other individual, the Court should give early and ongoing consideration to whether it would be appropriate to make a section 91(14) order on disposal of the application, even if an application for such an order has not been made (since the Court may make an order of its own motion; see section 91A(5))”.

Paragraph 2.7:

“Section 91(14) orders are a protective filter, not a bar on applications, and there is considerable scope for their use in appropriate cases. Proceedings under the 1989 Act should not be used as a means of harassment or coercive control, or further abuse against the victim of domestic abuse or other person, and the Court should therefore give due consideration to whether a future application would have such an impact”.

Duration

35. Sections 91(14) and 91A are silent on the duration of a section 91(14) order. The Court, therefore, has a discretion as to the appropriate duration of the order. Any time limit imposed should be proportionate to the harm it is seeking to avoid. If the Court decides to make a section 91(14) order, the Court should explain its reasons for the duration ordered. Sections 91(14) and 91A give a discretion to the Court as to the types of application under the 1989 Act that can be made subject to permission from the Court. If the Court decides to make a section 91(14) order, the Court should consider which types of application should be specified in the order and it should explain its reasons.
36. I have also had regard to *Re A (A Child) (Supervised Contact) (Children Act 1989 Section 91(14) orders)* [2021] EWCA Civ 1749. I consider this to be a compelling case for a section 91(14) order for the reasons appearing above. I intend to make a section 91(14) order to prevent the father making any application for a child arrangements order or an order for parental responsibility in respect of A for a period of 10 years. Whilst that is an exceptionally long period, in my view, this is an exceptional case because of the nature of the father’s offending, his failure to accept the convictions, his attempts to influence the

mother to retract her evidence and his sophisticated, controlling personality, as I find it to be. I am satisfied that the current applications of the father have been abusive and emotionally harmful for the mother. Further applications would be likely to impact on A to an increasing extent as his awareness and understanding grows. They would impact on the mother in a harmful way and that would cause her anxiety, which A would be likely to feed off. I am, therefore, satisfied that further applications by the father, without leave, would put the mother particularly but also A at risk of harm.

37. I am making that order time-limited despite the submissions made by the mother and the Children's Guardian that I should make it until further order because I do not consider this to be proportionate. I have decided on 10 years because, at that stage, A will be 15 years of age and will have a much greater awareness of the existence of his father. In addition, he will also begin to understand the issues in a way that means the Court would have to attach some weight to his views. At that stage, the father will need to have developed better insight into his offending and the consequences of it for his erstwhile partners and to have accepted it. That may be a forlorn hope, but it may be that the Court considers making an order for indirect contact at that stage. I have tried to hold a balance between the need to protect the mother and A whilst also factoring in the possibility that things can change sufficiently for the Court to revisit the issue of indirect contact.
38. I am not satisfied that there is no hope of any change in the future. In any event, to succeed in getting leave to make such applications during the currency of a section 91(14), section 91A(4) provides,

“Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the Court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made”.

I make it clear that there would have to be profound change in insight and approach to his offending behaviour demonstrated by the father to achieve this. I will, therefore, make the following orders:

- 1) The father shall not have any form of contact with A.
- 2) The father's application for an order for parental responsibility is dismissed.
- 3) The application for a non-molestation injunction is dismissed.

- 4) I will make a section 91(14) order that no application for a child arrangement order or parental responsibility order shall be made without leave of the Court for a period of 10 years.
39. Finally, the father has 21 days within which to appeal these decisions to a judge of the Family Division. That concludes this judgment.

End of Judgment.

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