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[2022] EWFC 196

IN THE COUNTY COURT AT CARLISLE

1 Earl Street
Carlisle
CA1 1DP

Date: 14th December 2022

Before:

HIS HONOUR JUDGE C BAKER

Between:

CUMBRIA COUNTY COUNCIL

- and -

A MOTHER (AMY)

A FATHER (JAMES)

A CHILD (BEN)

(Through his Children's Guardian)

Applicant

Respondent

s

MR S COX appeared on behalf of the Applicant

MR P ROTHERY appeared on behalf of James

MR M GRAHAM appear on behalf of the Child

JUDGMENT

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HIS HONOUR JUDGE BAKER

1. This case involves consideration of the removal of an infant child from the care of his mother into the care of the father in circumstances where the child's mother has refused to engage with or cooperate with proceedings concerning the child's welfare. It concerns issues of some public concern and debate. Accordingly, I indicated that an anonymised version of the judgment may be published at a later date. This is that anonymised version which I have decided to publish after the conclusion of the public law proceedings. To aid with readability and anonymisation I have changed the names of the participants and made less specific any identifying features of the factual background.
2. This case concerns a boy by the name of Ben (not his real name) who was born in 2021. He is a little over one year old. An application was issued by the Local Authority (Cumbria County Council) for public law (a care or supervision) orders on 1st November 2022.
3. Ben's mother is Amy (not her real name). His father is James (not his real name). Ben has a children's guardian by the name of Deborah Turner. The key social worker for Ben and the author of the Section 37 report undertaken prior to this application, is Ms Johnstone. Today, I have before me the complete bundle in relation to non-molestation proceedings that were issued against James by Amy back in March of 2022. I have the private law proceedings bundle in the proceedings relating to Ben issued by James for a child arrangements order in respect of Ben. I have a bundle in the proceedings prepared for me by the Local Authority in respect of their application. In addition, there are other items of evidence that are not in those bundles that I will refer to in a moment.
4. At the hearing today the Local Authority has been represented by Mr Cox. James has been represented by Mr Rothery. Mr Graham appears on behalf of Ben, instructed, of course, by his guardian, Ms Turner. The person that is absent is Amy, Ben's mother.

It seems to me that it is important that I set out in this judgment the steps that the court, not just myself, but courts previously have taken to try to engage Amy in the proceedings. I have given this judgement orally at the conclusion of the hearing as the effect of my decision will need to be implemented speedily.

5. The first person to come to court in respect of Ben was his father James. He made an application dated 18th February 2022 for a child arrangements order in respect of Ben. At that time he was not having any contact with his young son.
6. On 11th March 2022, Amy made an application for a non-molestation order pursuant to the Family Law Act 1996, in respect of James. That is an order seeking to keep him away from her. In pursuit of that non-molestation order application, she made allegations about James's behaviour, including primarily an allegation of an incident of rape following an evening of drinking in which she accused James of spiking her drinks and thereafter having non-consensual sex with her. That was a matter that she complained to police about. The police took no further action, having seen various text messages and communications between Amy and James and apparently concluding that they appear to undermine Amy's allegation because there were text messages that indicated that the event was consensual. It was that incident and other less significant allegations that Amy made about the father both in pursuit of both her application for an injunction and also her assertion that Ben should not have any contact with his father.
7. The injunction application came before the Lay Justices on 1st April 2022. Both parties were represented and a non-molestation order was made on a 'without prejudice' and interim basis. In other words, without any findings having been made. Provision was made for the parties to file a schedule and statements in support of their allegations or response to allegations, with a view to the factual disputes being determined at a later hearing.

8. Both the child arrangements order and the injunction applications came before District Judge Stone on 5th May 2022. James attended. He was represented but unlike the hearing that had taken place on 1st April, Amy did not attend, remotely or in person. She was not represented. The injunction was an unresolved situation and therefore the matter of contact was adjourned to be listed before District Judge Todd on 15th June, together with further consideration of the non-molestation application.
9. The order of 5th May in the injunction proceedings order records that the mother had sent e-mails to the court which were recorded in the following terms: the Applicant (Amy) e-mailed the court on 3rd May 2022 and sent a further e-mail on 5th May 2022. The e-mails questioned the court's jurisdiction and indicated that the Applicant would not be attending today's hearing.
10. It then recorded:

Should the Applicant fail to attend next time, the Court shall consider that as an indication that the Applicant no longer pursues the non-molestation order application, and it is likely the application will be dismissed at that hearing.
11. On 15th June, James again attended and was again represented. Amy did not attend. The order from that hearing records that the court received an e-mail from mother dated 13th June 2022 saying that she did not intend to attend the hearing.
12. It is recorded on the 15th June order that the Court had warned the mother on 5th May 2022 that, should she fail to attend, that the matter could proceed in her absence and legally binding orders could be made. It records that it is satisfied it has jurisdiction to deal with the dispute relating to Ben, included, but not limited to, making orders regarding his living and contact arrangements. The Court recorded that it was satisfied that the mother had notice of that 15th June hearing and has chosen not to attend. It notes that there is a live application in respect of the issue of Ben's relationship with his father and sets out that the Court works on the basis that unless

there is good reason not to, there is a presumption that both parents should be involved in Ben's life *if it is safe*. There is a recording that Ben has not seen his father, and vice versa, since Ben was six weeks old. The Court reminded the mother that all communications with the court must be transparent and the father's solicitor must be copied into any e-mails that are sent to the court and made it clear that the court will not enter into e-mail correspondence with the parties. It is recorded:

If the parties wish challenge the other or the court, it is incumbent on them to attend court in person and make their case.

13. The final recording says:

The Court requires the mother to engage in the proceedings to ensure all relevant information is presented and considered so that the Court makes informed decisions about Ben's welfare. The Court does not wish to compel mother to attend by making orders against her or attaching penal notice to provisions. However, the mother is warned that the Court will not be prohibited or inhibited from making orders as are deemed necessary for Ben's welfare regardless of her attendance.

14. That order, made by District Judge Todd, is then supported by a series of directions, including the making of an order joining Ben as a party and appointing a children's guardian - who, of course, turned out to be Ms Turner.
15. The matter came back before District Judge Todd on 2nd August 2022. Again, James attended and again had the assistance of a lawyer. Amy did not attend. The child at this stage was represented - Ms Turner and Mr Graham, on Ben's behalf, attended.
16. The order records that Amy e-mailed the court on 29th July. The e-mail again challenged the court's jurisdiction and indicated the mother would not be attending that day's hearing. Despite the contents of the last order, the mother did not copy the solicitors and father into the e-mail. The 2nd August 2022 order again remind the mother of the need to send any emails she sends to the court to all the parties.
17. The guardian at that stage had recommended a Section 37 report and the learned District Judge, in essence, made recordings agreeing that that was the appropriate

course. The matter was listed on 10th August and directions were given again making it clear that there will be a hearing and that orders will be made in the absence of a party who fails to attend. On the face of the order the Court asked the Local Authority to consider whether it needed to apply for a supervision or a care order in relation to Ben.

18. The non-molestation application was adjourned also to 10th August to be heard at the same time as the proceedings in relation to Ben, with a repeat warning about the consequences of failing to attend court to pursue the allegations.
19. On 10th August, the matter came back before District Judge Todd. Again, James attended. Again, he was represented. Again, the mother did not attend and, of course, again, Mr Graham and the guardian attended. At that hearing, in relation to the application concerning Ben, the Local Authority, in the form of Ms Harding, who is a social work senior practitioner, attended in order to make herself aware of the issues in the case. She reported, via a case note, that the social worker visited the mother's home within the last two weeks and Ben was present and was observed to be receiving good physical care. It was confirmed that the Local Authority would be undertaking a Section 37 report, as ordered, and the Section 37 report would be filed such that there will be a further hearing on 7th October before District Judge Todd.
20. In relation to the non-molestation application, it was on this date that that application was discharged. The order formulated by District Judge Todd recorded that a non-molestation order had been made on 1st April by the Lay Justices on Amy's application; James had denied the allegations but did not oppose the making of the interim order pending both parties being given the opportunity to file evidence; Amy did not attend the hearing on 5th May, having sent an e-mail to the court questioning the court's jurisdiction. She failed to attend further hearings, again having sent similar e-mails, and that she had failed, in essence, to progress her allegations in relation to

James. Accordingly, District Judge Todd discharged the non-molestation order that had been in place against James up until that point.

21. On 30th September, the Local Authority having filed a Section 37 report dated 26th September, District Judge Todd transferred the matter to me as the Designated Family Judge for Cumbria. She ordered the guardian to file analysis by 7th October. The first time I dealt with this case was 10th October, and on that occasion, as has been the case at every hearing as described above and every hearing since, James attended. He was represented. The mother did not attend. The guardian attended, as did Mr Graham, as did a solicitor for the Local Authority, and Ms Johnstone, the allocated social worker and author of the Section 37 report.
22. The Court was again satisfied that Amy had notice of the hearing and that a number of recordings were made in that order by me in relation to the situation. I recorded that whilst mother made serious allegations against the father, the police have considered the allegations and have pursued no further action and that the mother has not sought to prosecute the issues within the Children Act proceedings or, indeed, the injunction proceedings. I warned the mother that if she fails to attend the hearing which I was then going to list on 24th October, details of which were set out, the Court will proceed on the basis that she is not making any allegations against the Applicant father regarding his behaviour that would have any potential negative effect upon the time he spends with his son. It is recorded that the mother has made it clear to the court and the parties in a number of communications that her view was that there should be no relationship between Ben and his father. I was of the view that the section 37 report did not engage fully with the issues in the case. I was satisfied that the interim threshold criteria were established pursuant to section 38 of the Children Act 1989. I made Ben subject to an interim care order, thereby, of course, granting the Local Authority shared parental responsibility for Ben. I recorded my expression of concern that there was an urgent need to establish direct supervised contact between

Ben and his father and, in doing so, made orders that Ben would be made the subject of an interim care order pursuant to the Section 37 direction that I was again making. I made a Section 34 order providing for contact to take place between Ben and his father, and I indicated that on 24th October, if that order had not been complied with, the Court would consider what further steps could be taken in relation to the situation.

23. I ordered the mother to attend court on 24th October and I made it clear that she could ask for special measures, such as screens and separate waiting areas, in respect of her attendance, and I provided for the mother to be personally served by a process server in respect of that hearing.
24. On 24th October the father again attended and was represented. The mother did not attend. The guardian attended, as did Mr Graham, and, indeed, the Local Authority were represented by counsel. Ms Johnstone also attended.
25. It was recorded that the mother had been personally served with a copy of the order on 10th October and she had indicated to both Ms Johnstone, the social worker, and the process server that she did not intend to attend court. Further recordings were made in a similar vein from the previous orders in relation to the allegation that mother made. I recorded as follows on that order:

The Court made it clear that one of the available options to the Court was a transfer of Ben from the care of his mother to the care of his father. As such, the Court indicated that if the mother continues to fail to engage with the proceedings that the Court may dismiss the allegation of rape made by the mother. This would mean the Court would proceed on the basis that the father did not pose any risk of harm to Ben and would likely direct the Local Authority to complete an expedited assessment of the father as a carer of Ben. The Court acknowledges the serious nature of the allegations made by the mother and the importance of determining the allegations by some means. The Court made it clear if the mother engages in the proceedings, that provision can be made for special measures, i.e. screens to be in place, and separate waiting rooms so she does not have to see the father.

26. I recorded that the Local Authority have agreed to issue public law proceedings within seven days, and I set out that on the issue of public law proceedings, both

parents will be entitled to non-means/non-merits public funding i.e. free legal representation. I record that mother was urged to instruct a solicitor. The Local Authority will provide details of local solicitors who would be qualified to represent the mother. I made clear that if the mother instructs solicitors, then provision can be made for her to attend remotely from her solicitor's offices. The Court noted that the Local Authority had an interim care order and expected the Local Authority to attempt to arrange contact between the child and the father. I related that Court has actively considered practice direction 12J and determined that supervised contact is appropriate to mitigate any alleged risk posed by the father.

27. The matter was duly listed again on 2nd November 2022. At that hearing I discharged the application for a further Section 37 direction because by that time the Local Authority had issued public law proceedings and Ben was made, pursuant to that application, the subject of a further interim care order.

28. I listed the matter on 7th December. On that date James attended. Amy did not attend. The guardian attended, the social worker attended and, of course, the Local Authority were represented. That order contains yet further recordings making it clear the situation that existed from the point of view of the Local Authority and the guardian and, indeed, the Court. The order records that:

The child, Ben, is subject to an interim care order and the Court has jurisdiction.

29. The order records the mother's failure to attend court and records the fact that:

The father made it clear to the Court he would prefer for Ben to live with his mother and for him to have contact with a view to stepping up to shared care arrangements in the future, but the fact that mother is unwilling to even attend court or speak to the social worker is making that impossible.

30. The order lists the previous non-attendances at court by the mother and lists the matter for today's hearing, that is to say 14th December 2022. The order reminds the mother

that she is entitled to legal representation at no cost to her and urges her to engage with solicitors to get the benefit of legal advice and listed the matter today with further evidence to be provided by the Local Authority and the guardian.

31. I made an order for the mother to be personally served. Somewhat unusually, I subsequently received an e-mail from Mr Pender, solicitor at the Local Authority, indicating that the process server who had previously served the mother had indicated an unwillingness to repeat the process of service because of the reception that he had received at the mother's home at the time of the previous service. At my request the Local Authority found somebody else who attempted personal service. That attempt at personal service took place on 12th December at five-to-five and the process server makes it clear that the mother was not present but someone else was present. She identified herself as the mother of Amy i.e. the maternal grandmother. She indicated that she was the only person present at the house and that she was, indeed, Ben's grandmother.

32. On asking to speak to Amy, the grandmother indicated that Amy was out. She would not give the process server any contact number, and the process server records as follows:

I did inform her that it was important I contacted her and that there was a further court hearing on Wednesday, 14th December, that she needed to attend. The [grand]mother declined to accept any papers on her behalf.

During our conversation on the doorstep, the grandmother stated that if I came back to try and serve her with the papers, they would not answer the door and that her daughter, [Amy], would not accept any papers as 'the Court and social services are all corrupt.' She also stated to me that they were being assisted and given advice by a 'family friend', and that Ben had no birth certificate, because if he had one, he's then 'owned by the government', and that this case is 'using an act and it is not law'. Clearly, whilst her mother was not shouting at me, she clearly had some 'irrational views' which 'may' have influenced her daughter in apparently not being willing to accept any orders.

33. That last observation, of course, is only the opinion of the process server.

In view of what she said to me and the constraints regarding service, I told her I will post the papers through the letterbox, to which she said two other men 'from the court' had left them on the doorstep previously and stated putting the other papers left for [Amy] 'on the fire'. That I appreciate personal service was requested by the Court, however, due to what [grand]mother said, and I no other option than posting them through the letterbox contained in a sealed addressed envelope marked 'private and confidential' with my name and mobile number endorsed. I should make it clear that I have no doubt whatsoever that the mother was aware of the hearing today and that, in effect, was service was effected.

34. I know that to be true because the mother sent an e-mail to the court at 10 am on 14th December 2022.

35. The mother appended a short video posted on social media by a friend of the father which shows the father doing press-ups. I understand from the social worker, who had seen the video before, that this has been sent in by the mother to show that the father is drunk and therefore is an unsuitable father. The video does not show, in my opinion, any particularly relevant or disturbing behaviour. The e-mail itself reads as follows:

Dear Judge Baker,

We will not be attending your hearing today. This is because again the court has failed to provide us with evidence of the authority that grants them power to make demands of any man or woman. The threats we have received from yourselves and social services have been relentless, so we decided to visit the police station with all paperwork we have received, the paperwork that clearly states numerous times that there are no concerns regarding Ben.

I must remind you that the police are public servants and are not lawfully permitted to get involved in civil matters, which they confirmed.

The police take an oath to uphold common law and protect the public, which they again confirmed. They do not take an oath to uphold Roman civil Law, otherwise known as Maritime Law. Acts Statutes and Legislation are not laws, they are corporate/government rules that apply to the legal fiction only, NOT a living man or woman.

The people created Government and courts and neither have the power to create laws or rules that supersede one's inalienable rights. Your 'laws' will forever sit below the law of the land, because we have free will, we are not slaves.

The court is attempting to enforce foreign and treasonous Admiralty rules rubber stamped by parliament EU directives, onto the Land whilst denying Constitutional Law within their practice.

There is a very specific reason we put our hand on the Bible when taking an oath in a court of law and that is because the ONLY LAW in effect today is Natural Law, this is an irrefutable fact.

Another irrefutable fact is that the family court is a registered business, not an actual court of law and proof of this has been shown on more than one occasion, DUNS number also provided, therefore ANY AND ALL orders a judge makes are null and void. The police have also been shown proof of this.

The court and social services seem to believe that they, along with judges who are just civilians in black robes, have some type of special power that enables them to interfere in peoples lives and remove their property without their consent, you lawfully cannot. You are not above the law.

You are not Gods.

You are not lawful authority and you have no right to make demands of anyone. Both the family court and social services are corporate businesses deceiving unaware people and enforcing unlawful rules on anyone who foolishly enters the courts criminal domain.

“The Laws of England, having been approved by those who use them and having been confirmed by the Oaths of Kings cannot be changed or disposed of without the common consent of those by who’s council and consent they were promulgated”

Chief Justice Henry De Bracton.

Chief Justice Beresford: “You should not only look at the letter of the Law, but also the spirit of the Law. There is no such thing as bad Law for if it it bad, it is not Law”

ECHR under article 3 prohibits torture, inhumane or degrading treatment and punishment.

This is the potential father who social services and the judges believe is fit to take care of any child as you can see this man is clearly under the influence of drugs or alcohol.

Thank you for your offer of assistance is resolving this matter but it is not needed or wanted at this current time.

Regards

[Amy].

36. The emailed had appended to it, as well as the video clip mentioned, extracts concerning the Constitution of the United States of America and Acts of Parliament from 1392 and 1559, none of which have any relevance to the issues in this matter.
37. Those present in court will forgive, I hope, the lengthy recitation of the history of this case. I felt it important to set out the considerable repeated attempts made by other judges and myself to engage Amy in this process. To spell out for her the potential consequences of her non-engagement. To make it clear that she can avail herself of services that would see her separated from the father whilst in court and protected by screens and separate waiting areas, and, indeed, when the consequent proceedings came into the public law domain, she was entitled to free legal representation to give

her both advice and representation in proceedings. I am frankly at a loss to know how else the Court, with its sometimes relatively blunt powers, could have sought to engage the mother in these proceedings, proceedings that she engaged in early on when she made an application for a non-molestation order, when she appeared to be willing to accept the court's jurisdiction.

38. I directed that both the local authority and the guardian should file evidence dealing with the options available to the court and the welfare risk and benefits of those options. I have heard live evidence from Ms Johnstone, the social worker, and the guardian and James. One of the questions I have asked myself during my involvement in these proceedings has been – what else can the court do? It seems to me that the situation the Court faces at the moment is frankly a difficult one, and one that I have thought about at some considerable length both prior to and since the hearing on 7th December.
39. The Court is faced with the following situation: James has in the past stood accused of the most serious of domestic abuse in the form of an allegation of rape as well as other assertions about his behaviour. That is an allegation which is not in any way prosecuted by any party in front of the Court today or, indeed, for months. The mother failed to engage with the court to provide substantive written or oral evidence in relation to those allegations and, indeed, has simply failed to engage with the process which would enable the Court to come to a determination as to the truth of those allegations.
40. The Local Authority, in performing its duties in respect of assessment of the short, medium and long-term welfare of Ben have looked at the material that is available in relation to those allegations, including the text message communications between the parties and the surrounding circumstances and have not sought to seek a finding in respect of those allegations. The police, as I have said, have not sought to prosecute

in relation to those allegations and have indicated that they will be taking no further action. They have released James from any bail conditions. The non-molestation application has been dismissed, Amy having been warned of that possibility in advance.

41. Of course, it is not only the Court that has tried to engage Amy. The Court, as observed above, is somewhat of a blunt instrument in that all I and other judges can do is make orders and send them to the mother. That is not all that has happened in this case. The guardian has attempted in vain, I am afraid to say, to see Ben and to have conversations with Amy. Her attempts have been robust but rebuffed. At the beginning of this process, Ms Johnstone was more successful and, indeed, her reports and oral evidence relate how she tried to persuade Amy of the sense of engaging in proceedings and the appropriateness of both accepting the jurisdiction of the Court and take an active part in determining what is best for the future of Ben. She also made it clear, not in a threatening sense but in the sense of giving appropriate advice, what the potential consequences could be if Amy failed to engage with court orders. Amy allowed Ms Johnstone three visits to complete the initial section 37 report but since then has not permitted further visits.
42. As related above I have previously made a contact order for contact to take place between Ben and his father, supervised by the local authority. Despite a court order and the local authority having an interim care order, Amy would not cooperate with any such arrangements, as Ms Johnstone sets out in her evidence.
43. Ms Johnstone is the only person who has seen Ben in the mother's care, during the three visits mentioned above. She reports that on a physical level Ben is well cared for by his mother with the support of the maternal grandmother, to whom I have already referred. Ms Johnstone provides evidence that on a minute by minute, hour by hour, day by day basis, Ben's physical needs are being met. Given his age, it is also fair to

say that no doubt his immediate emotional needs, for nurturing love and care are, in all likelihood, met as well. Ben's short-term immediate needs appear to be satisfied.

44. When one draws back and looks at the situation with respect to Ben's medium and long-term welfare, in my view, the situation is different. Ben is steeped in the environment where certainly there is evidence that there is a very real risk that the family have some frankly ridiculous views, and views that put them directly in conflict with both the court, society in general and child protective services. Ms Johnstone's perception was not that Amy had mental health problems but that she had extremely fixed and immovable views, and they are views that are simply wrong.
45. They lead to a situation where Amy has made it very clear that her view is that James will not, cannot and should not have any relationship with his son. I do not need to recite the immediate and long-term potential effects of a son being deprived of contact with a father. I also do not need in this judgment to relate the consequent effects of a child being raised in an atmosphere of having an entirely negative view of one half of his genetic make-up, and I am very satisfied on what I have read that an entirely negative view of Ben's paternity is what is being portrayed to him, if not now, certainly in the near future. Additionally, the Court finds itself being unable to effectively ensure that its orders are complied with.
46. James was happy for any contact to be supervised by the Local Authority to reassure Amy that Ben would be safe. However, none of the provisions previously made, none of the considerable effort expended by the social worker has been to persuade Amy of a more reasonable approach or, indeed, to comply with court orders, have been successful.
47. In those circumstances, Ben is currently in a situation where his medium and long-term positive welfare is at considerable risk. That a difficult balancing exercise and finely balanced. The Court appreciates that if Amy were present and represented,

she would doubtless say loudly and forcefully that: "My child is well cared for on a day-to-day basis" and therefore should not move to live with his father.

48. In my view the situation can be analysed in two ways.
49. The first and in my view legally correct way to analyse the situation is to carry out welfare balancing exercise comparing the advantages and disadvantages of the options. As this is consideration of a choice of the child moving to live with a parent, my primary view is that the law in respect of 'removal' is not engaged in the same way as would be relevant were the plan for the child to be placed in local authority care (i.e. foster care).
50. By reminding myself of the provisions of the Children Act I am able to reach a conclusion, and I do so applying the following logic set out below.
51. The Children Act 1989 states:

Where the Court determines any question with respect of upbringing of a child ... the child's welfare shall be the Court's paramount consideration.
52. Section 1(3) sets out the factors that the court should consider when evaluating welfare, often known as the welfare checklist.
53. Section 1 (2) reminds the Court that the general principle is that delay in determining that question is likely to prejudice the welfare of a child, and, of course the Act goes on to tell the Court that, in terms of welfare, it is the period of the child's minority that the Court must consider. In other words, I do not just look at this through the prism of immediate welfare or, indeed, harm but consider welfare in a short, medium and long-term context.
54. James has been assessed as a suitable carer for Ben and there is no substantive evidence to dislodge that assessment. The choice between the parents engages the Court's consideration of Ben's short, medium and long-term welfare, and certainly his

welfare throughout his minority. What does the future hold for Ben in the current circumstances? Well, if the Court does nothing, all the evidence suggests that Ben will continue to be exposed to an entirely negative view of his father; he will have no relationship, and no prospect of a relationship, with his father or paternal family. On the other hand, if Ben were to go and live with his father, then in the medium to long-term, I have no doubt whatsoever that James is willing and, indeed, certainly at the moment, with the support of the Local Authority, able to provide a positive view of Ben's mother and to cooperate with arrangements for contact between Ben and his mother.

55. The analyses of the Local Authority and the guardian set out the potential for short-term harm to Ben if Ben is moved to live with his father. Not least, of course, Ben has known no other care other than that provided by his mother and probably his grandmother and other maternal relatives, and he would find himself in the situation of being with his father at the age of one year and one month whom, there is no other way of putting it, he simply does not know. The father would have help from his mother, who Ben also does not currently know. I take into account how inherently potentially harmful that is, certainly in the short-term. I have read with care the assessment that has been undertaken of James. I have heard his evidence and I have seen him over a number of hearings, and I have little doubt about his ability, certainly on a day-to-day basis, to provide appropriate care for Ben.
56. Accordingly, the essence of the welfare balance becomes one of short-term harm versus long-term harm.
57. Some of the harm will be ameliorated by their being contact between Ben and his mother, as proposed by the local authority, although I acknowledge fully the very limited nature of that amelioration.

58. I have considered whether there is any other ameliorative service that could be put in place to prevent this action. I have considered whether the threat of making an order for enforcement followed by orders for unpaid work, et cetera, are like likely to be effective. I think it is clear from the mother's communications that when Ms Johnstone advises me in her evidence that she thinks such steps are very likely to be ineffective, her conclusion is entirely correct.
59. The ultimate sanction that the Court has on an enforcement application would be to send a parent to prison, which would then in all probability involve Ben being looked after by his father (being the only parent available to do so) in any event, so would be frankly circular and pointless. It would also delay matters further. In my judgment this case has gone on for many months without any real-world progress being made.
60. I would have much rather find a better solution and one that saw the mother cooperating in some form with the professionals who have been sent out specifically with the aim of trying to obtain her cooperation and engagement. Balancing all the factors I have outlined above I have come to the conclusion that the balance in this case lies in favour of the analyses that have been submitted by the Local Authority and the Guardian, and one where the only option for Ben's medium to long-term welfare is to sanction the Local Authority using its interim care order to facilitate the transfer of Ben's care from his mother to his father.
61. However, what if I am wrong as a matter of law, and this case does not in fact represent a welfare balancing exercise between two parents but, because it is being implemented by way of an interim care order, in fact the correct test is that for interim removal.
62. Lord Justice Peter Jackson has previously summarised the test as follows:

- i) An interim order is inevitably made at a stage when the evidence is incomplete. It should therefore only be made in order to regulate matters that cannot await the final hearing and it is not intended to place any party to the proceedings at an advantage or a disadvantage.
 - ii) The removal of a child from a parent is an interference with their right to respect for family life under Art. 8. Removal at an interim stage is a particularly sharp interference, which is compounded in the case of a baby when removal will affect the formation and development of the parent-child bond.
 - iii) Accordingly, in all cases an order for separation under an interim care order will only be justified where it is both necessary and proportionate. The lower ('reasonable grounds') threshold for an interim care order is not an invitation to make an order that does not satisfy these exacting criteria.
 - iv) A plan for immediate separation is therefore only to be sanctioned by the court where the child's physical safety or psychological or emotional welfare demands it and where the length and likely consequences of the separation are a proportionate response to the risks that would arise if it did not occur.
 - v) The high standard of justification that must be shown by a local authority seeking an order for separation requires it to inform the court of all available resources that might remove the need for separation.
63. Of course, much of what I have said above concerning the welfare analysis can easily be reframed in terms of the above considerations, and I do not intend to repeat myself. However, it is appropriate to set some further considerations.
64. In this case the essence of the test revolves around consideration of whether “the child's physical safety or psychological or emotional welfare *demands* [removal]” and

the proportionality of that step.

65. It is notable that whilst reference is often made anecdotally to the test involving an assessment of the child being exposed to an *immediate* risk of harm, neither the Children Act 1989 nor the case law in fact speak in such terms.
66. Ben's physical safety is being, on the evidence, well catered for by the parent currently caring for him, subject to the caveat highlighted by the guardian, below.
67. However, his medium and long term psychological and emotional welfare needs require careful consideration. The Guardian expresses it thus:

“The short-term emotional harm has to be balanced against the long-term effects of Ben remaining in the care of Amy, and being deprived of a relationship with his father and paternal family. In my opinion the status quo remaining whereby Ben lives with Amy in relative isolation without having the opportunity to grow up with a clear and accurate understanding of his identity, could have wide ranging and long-term negative consequences, and this therefore outweighs the short-term distress that a move may cause.

Amy's extreme views about the authority and the Jurisdiction of the court, and refusal to co-operate with the local authority or Cafcass is a further deeply concerning aspect to the care and parenting that Ben may receive as he grows and develops if he remains in Amy's care, and she maintains her position to date. Professionals being denied access to Ben in the current circumstances is of serious concern and could be an indication of an environment that is highly rigid and controlling, which means that there are potentially extensive long-term consequences on Ben, and his development if he is not permitted to explore other values and attitudes and could potentially inhibit his own ability to think independently. Ben has been seen by a limited number of professionals, when he has been seen there have been no apparent concerns but little to nothing is known about his experiences and care.”

68. Of course, consideration of where that harm *demand*s removal interacts both with the concept of proportionality and with consideration of whether there are any other steps or resources that could be employed to avoid removal.
69. The latter point is another way of saying – can anything else be done? The Court (and indeed the local authority) only has at its disposal the following resources/steps:

- i) Making an order that the mother attends court;
 - ii) Explaining the consequences of not attending court;
 - iii) Explaining what steps can be taken when the mother attends court (screens, separate entrances, video link);
 - iv) Making the child subject to a public law order;
 - v) Advising the mother to obtain legal advice herself (which, after step (iv) above, would be free);
 - vi) Making an order for contact to be implemented by the local authority;
 - vii) 'Sending' the Guardian to explain all the above;
 - viii) A social worker explaining all the above; and
 - ix) Ensuring the mother is aware of all of the above and allowing 'time' for the mother to consider all of the above.
70. It is difficult to envisage any other steps that could have been taken. There has been more than sufficient time for the mother absorb the process and the consequences.
71. The final question therefore is one of proportionality. Is it proportionate to remove a child from the care of a mother and place that child in the care of his father in circumstances such as these?
72. My view is yes, for the following reasons:
- i) The child is not being removed into foster care;
 - ii) The child is being placed with (a) a parent and (b) someone with whom he is very likely to have a long-term and enduring connection both in the abstract (James will always be his biological father) and in reality – there currently

exists no substantive impediment actively advanced by any party to that relationship being a 'real' and day to day relationship;

- iii) That placement will admit of and promote (on the evidence I currently have) an ongoing relationship with the mother both in the short and medium-term;
- iv) The situation will be neither final nor irreversible;
- v) There is no other step the court (or the local authority and the children's guardian) can reasonably employ to prevent the identified harm; and
- vi) It is both legitimate and in the medium to long-term welfare interests of the child to seek to prevent or ameliorate the identified harm.

73. Accordingly, analysing the situation through the above prism, I likewise come to the same conclusion as that set out previously. In my view the child's welfare does demand removal.

74. Noting the mother's very vociferous and clear repudiation of the authority of the Court I am satisfied that, in order to protect Ben's welfare, it is appropriate for me to make two further orders at the same time as today's decision. The first is a recovery order authorising a police officer to find and gain access to the child. I anticipate that may well be a fraught and difficult situation but will have to be handled with considerable care and the police should be fully informed. Secondly, given the unorthodox (a mild characterisation) views expressed by Amy, I believe James requires the protection of an exclusion order.

Postscript

- a. Subsequently Ben was removed from the care of his mother and placed with his father pursuant to the interim care order.

- b. The mother attended all subsequent hearings and was legally represented. Amy did not pursue allegations against James, having been given a further opportunity by the court to have those allegations litigated in the event that they were pursued.
- c. Amy indicated that she had been badly advised (not legal advice) in respect of her approach to the court. A psychological assessment of Amy concluded that she was vulnerable to adverse influence by others.
- d. The public law proceedings ended on 19th June 2023. At the final hearing the court made a child arrangements order and a supervision order for 12 months.
- e. The child arrangements order stipulated that the child would live with his father and spend time with the mother. The Supervision Order Support Plan involves Ben spending increasingly lengthy periods of time with his mother with the aim of achieving a situation whereby both parents play an active and full role in his care for the rest of his minority.
- f. At the final hearing the parties agreed the threshold facts and the child arrangements order. The local authority (represented by Ms G Whiteley), the guardian on behalf of the child (represented by Ms C Booth) and the father (represented by Ms C Snape) supported the making of a supervision order. The mother (represented by Ms H Wheeler) was neutral on the issue of whether a supervision order was necessary and proportionate. I determined that it was the appropriate order in particular in light of the history of the matter and the risks that I determined remained extant concerning Ben's future welfare.

HHJ C Baker

Original Judgment given orally on 14th December 2022

Postscript added on 19th June 2023

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