

IN THE FAMILY COURT

60 Canal Street
Nottingham
NG1 7EJ

Monday, 11 April 2022

BEFORE:

MR JUSTICE MOSTYN

BETWEEN:

NOTTINGHAM COUNTY COUNCIL

Applicant

- and -

FARMER & ORS

Respondents

MS S DUXBURY appeared on behalf of the Applicant Local Authority
MS S GILBOURNE appeared on behalf of the First Respondent Father
MS A BEWLEY appeared on behalf of the Second and Third Respondent Children via their Children's Guardian.

JUDGMENT
(Approved)

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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 in any report of, or commentary on, the judgment the children shall not be named or photographs of them displayed. This prohibition applies notwithstanding that their father and their late mother are named in the judgment. It mirrors the convention used at the sentencing hearing referred to in the judgment. 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 pursuant to sec 12 Administration of Justice Act 1960.

1. MR JUSTICE MOSTYN: I am concerned with two children: T, a boy, born on 27 March 2007, aged 15; and M, a girl, born on 22 June 2008, aged 13.
2. The children are represented by their children’s guardian, Katie Abley. She has instructed Ms Bewley of counsel. The children’s father, Matthew Farmer, is represented by Ms Gilbourne of counsel. The local authority is represented by Ms Duxbury of counsel. I am grateful to all counsel for their helpful and well-considered submissions.
3. There are three issues before me:
 - i. First, whether at this hearing final orders can be made in respect of the children on the local authority’s application for care orders made on 16 August 2021;
 - ii. Second, whether I should grant the application made on 15 February 2022 by the children’s guardian for a change of the children’s surname from “Farmer”, (being the father’s surname) to “Clay” (being the mother’s surname); and
 - iii. Third, whether I should grant the application made, again, on 15 February 2022 by the children’s guardian for the termination of the father’s parental responsibility.

There is no dispute concerning the first application. It is not disputed that the children should be raised by their maternal grandmother, Carol York, under the auspices of a care order. I am satisfied that the statutory threshold is amply surmounted and that it is in the interests of the children to make care orders in respect of them.

4. The second and third applications are strongly supported by the local authority and are equally strongly opposed by the father.

5. **Background**

The mother, Stacey Clay, and the father were a couple for approximately 15½ years, before the mother ended the relationship on 24 April 2021. The children have described their objective experience of the father as being highly abusive and controlling of the mother while they were a family.

6. Following the separation, it is clear that the father neither accepted its permanence nor the end of his perceived right to control the mother's actions. He embarked on what was later described as a campaign of stalking, harassment and intimidation. When sentencing the father on 21 January 2022, HHJ Dickinson QC referred to a background of threat and intimidation; of damage to the garden; of sending intimate pictures of the mother to her own mother; of incessant phone calls and other communications; and of going to the property in the middle of the night. For example, on 18 May 2021 at 1.53 am he was in the back garden with his head hooded, peering into the security camera, presenting a most menacing image, as was his intention.
7. This unpleasant and disturbing campaign by the father led the mother to complain to the police, leading to the father's arrest on 15 May 2021 for harassment, criminal damage and sending of revenge pornography to Carol York. The father was bailed by the police early on 16 May 2021, the conditions of bail being he should not contact the mother or go to her home. The father paid no attention to these conditions and persisted in his campaign of intimidation, causing the mother to experience great fear and leading her to change the locks and to install security cameras.
8. Still the father was not deterred. On 18 May 2021 the father purchased a knife, and CCTV recorded him practising with it, stabbing empty boxes. That night he went to the home. He was again wearing a hood. He was equipped with food and drink. He arrived at 3:20 in the morning, prepared for a long wait. The mother must have sensed that something was amiss, because she made a 999 call, but the father evaded the police by hiding behind the barbecue in the garden. In a sinister act, he went and breathed on the window behind which was positioned the security camera.
9. At 06:00 in the morning, the mother, who the children described as being beside herself with anxiety at that time, entered the garden to smoke a cigarette or two.
10. The father thereupon attacked her brutally, stabbing her in the neck, back and flank 21 times. The mother fought back bravely. The knife broke, and so the father strangled her

and punched her. He was still strangling her when the police arrived. They were only able to stop the father, who seemed to be in the grips of bloodlust, by tasing him.

11. If this were not disturbing enough, this appalling conduct was witnessed by the children. Their mother's screams awoke them. From an upstairs window, they clearly saw the father lying on the mother, stabbing her, causing copious amounts of blood to emit. In witnessing this dreadful scene, I have no doubt that these children must have suffered very profound trauma.
12. The mother was taken to hospital but ultimately died from her injuries on 2 June 2021. She was aged only 39 at the time of her death.
13. The father pleaded not guilty to murder on the grounds of diminished responsibility but was duly convicted on 20 January 2021. The following day, HHJ Dickinson QC sentenced the father to life imprisonment with a minimum term of 29 years. The starting point, given that a knife was used, was 25 years, but there were seriously aggravating factors which raised the term to 29 years.
14. The parties are agreed that these children are *Gillick* competent.

Disposal

15. The two live applications are determined by the criterion of best interests, although for the former there is no statutory obligation to consider the matters set out in the checklist in section 1(4) of the Children Act 1989.
16. The case law in respect of an application to remove or discharge parental responsibility emphasises the individuality of the application before the court. However, it behoves the court to consider particularly the hypothetical situation where the respondent (normally in the cases the father) is positively applying for parental responsibility at this point rather than resisting an application to remove it. In that hypothetical situation, it is of course inconceivable that parental responsibility would be awarded, and so the merits of the father's resistance to its discharge should be assessed in that light. In my judgment

the analogy is good as far as it goes, but, like all hypothetical questions, they are not rooted in actual reality. This father has had parental responsibility for all of these children's lives, and the application has to be assessed in the light of the actual facts, not non-existent facts.

17. A key factor in determining the applications is the *Gillick*-competency of both children. In *An NHS Trust v X*, otherwise known as *In the Matter of X (A Child) No 2* [2021] EWHC 65 (Fam), at paragraph 30 Sir James Munby stated,

“in some non-medical contexts the decision of a *Gillick*-competent child which is not objectively foolish or irrational will be determinative”.

Sir James cited *Re Roddy (A Child) (Identification: Restriction on Publication)* [2003] EWHC 2927 (Fam) and *AS v CPW* [2020] EWHC 1238 (Fam). In the former decision, he stated at paragraph 57:

“57. In my judgment (and I wish to emphasise this) it is the responsibility -- it is the duty -- of the court not merely to recognise but, as Nolan LJ said, to defend what, if I may respectfully say so, he correctly described as the right of the child who has sufficient understanding to make an informed decision, to make his or her own choice.”

In the *latter* decision I stated at paragraph 22:

“... it is not merely a question of giving ‘due regard’ to the wishes of a *Gillick*-competent child on a particular issue. In my judgment, if the decision of the House of Lords in *Gillick* is not to be hollowed out, the wishes of a *Gillick*-competent child on a particular issue, where they are not objectively foolish or unreasonable, should normally be given effect.”

18. Here, the children have been unambiguously clear that
 - i. they do not wish their father to retain any form of parental responsibility in respect of them; and

- ii. they wish to change their surname to that of their mother. Indeed, they have already informally started using their mother's surname.
19. In my judgment the choices made by these children are informed decisions and cannot be characterised as foolish or unreasonable, and I can see no good reason why they should not be given effect.
20. I accept that the choices made by a *Gillick*-competent child are not absolutely determinative and that the court retains, indeed, is obliged by the terms of the statute to apply a best-interests analysis. However, I believe that Ms Bewley put it well when she said that the court has to recognise that the children's choices will be nearly determinative.
21. Quite apart from the question of the *Gillick*-competent choice made by these children, there is a formidable imbalance on the welfare balance sheet in favour of these orders being granted. These factors include prominently the depth of evil to which this father descended.
22. That depth of evil is reflected by the calculated planning that went into the lethal assault coupled with his complete disregard for the welfare of his children, who he must have realised would be likely to have witnessed at least some aspects of this prolonged assault.
23. It is compounded by the father's complete lack of remorse for, indeed, any kind of considered comprehension of the grotesque moral obloquy perpetrated by him. During the hearing before me on video, when the matter was being opened by Ms Bewley objectively and reasonably, the father stood up in the video suite at the prison, harangued the court with delusional rage at what he perceived to be a pack of lies and stormed out of the hearing.
24. The depth of evil to which I have referred is also evidenced by his calculated attempt to disrupt the placement of the children with Stacey's own mother following Stacey's death.

25. This factor strongly militates in favour of granting the application. The plea made eloquently on the father's behalf by Ms Gilbourne was that his motive in opposing the applications was to maintain a tenuous link to his children in the hope that in the future that link can be reinforced and rebuilt and that at the end of the day, he is asking for no more than to be kept informed about significant events in his children's lives. In my judgment that plea is belied by the grotesque moral void into which he descended and which even now I am satisfied he continues to occupy. It would not be in my interests in my judgment for this man to exercise any form of parental responsibility over them. He does not have beyond mere biological parenthood anything to offer them for the remainder of their childhood.
26. Similarly, the conduct of the father leads me to conclude that he must forfeit the symbol of parenthood which is the sharing by him and the children of his surname. For precisely the same reasons, I conclude that the scale of the infamy practiced by the father is so extreme that all links between him and the children should in the children's interests be severed. It is also a practical recognition of what is already happening informally.
27. There are sound practical reasons why these orders should be made. In the absence of the first order, the local authority would have had to have kept the father abreast of any care planning, and this would in my judgment not be in the interests of the children at all. Once the orders have been made, the children will also be enabled, as I have already indicated, to make formal as regards their surname what is already happening informally.
28. In his sentencing remarks, HHJ Dickinson QC stated:
- “The attack was at Stacey's own home in the garden. Her home is the one place above all where she should be safe, and the children, her children, your children, present in the house and Michaela Edgar found them outside in their pyjamas. They have lost their mum. They have effectively lost their dad.”
29. I agree that by his conduct the father has ensured that these three children have not only lost their mum but in addition they have effectively lost their dad. By his conduct he has

effectively orphaned these children. It is now necessary for the court to set in place the necessary formal measures that recognise that loss.

30. The final word in my judgment goes to T, who in his interview with the police was asked when he started calling the father Matthew. He replied, “When the incident happened, I started calling him Matthew then, because by doing that, he doesn’t deserve the title of dad”.
31. For these reasons both applications are granted.

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This transcript has been approved by the Judge