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IN THE FAMILY COURT  
(Sitting at Milton Keynes)

No. MK20P00501

Milton Keynes Magistrates' Court and Family Court  
301 Silbury Boulevard  
Witan Gate East  
Central Milton Keynes  
MK9 2AJ

Tuesday 11 January 2022

Before:

MR RECORDER STOTT

**(In Private)**

B E T W E E N :

P

Applicant

- and -

D

Respondent

\_\_\_\_\_

MS V. RING (instructed by Woodfines Solicitors) appeared on behalf of the Applicant.

MISS E. LINCE (instructed by Family Law Group) appeared on behalf of the Respondent.

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**J U D G M E N T**

RECORDER STOTT:

- 1 This is an application for a child arrangements order brought by N born on [redacted] and it is his application in respect of an order to see his two children: F, born on [redacted]; and K, born on [redacted]. I hope I have the pronunciation of those names correct. F is, of course, now 8 rising 9, I think, on my maths and K will be 7 this year. The mother of both children is D born on [redacted]. The mother was born in India. Her first language is Hindi. Her second language, and she speaks with some fluency, is Punjabi. She is present in court today assisted by a Punjabi speaking interpreter. She also has the benefit of some screens and a separate waiting room following a ground rules hearing before HHJ Brown in November 2021.
- 2 I have not heard submissions about special measures but in light of what I have read, it is important that the court recognises the duty on the court to provide protective measures and I will come on to the legal framework about that in due course. This, of course, does not prejudice the father in any way. The court is used to having screens and special measures so that the court can have the best evidence available where necessary in respect of parties who have made allegations and complaints of domestic abuse.
- 3 This is a short *ex tempore* judgment setting out the reasons why there is not going to be a fact-finding hearing in these three days set aside to hear the allegations of the mother which are denied by the father.
- 4 The background briefly is that the parties married in October 2012 in a ceremony in India and that was registered a few days later October 2012. Shortly thereafter, on [redacted] N was born and the parents moved to the United Kingdom. N was unable to travel with them. A visa submission was made for him to come to the United Kingdom in May 2014. That application was refused, as I understand it, on the basis of there being insufficient income or a sponsor with income to be able to provide a visa for N. He therefore remained in India in the care of his maternal grandmother.
- 5 In August 2015, K was born in the United Kingdom.
- 6 In August 2018, perhaps somewhat earlier in maybe 2017, there is a suggestion of allegations of domestic abuse being made to professionals by the mother. It appears that there was some reconciliation or mediation with the parents and their relationship resumed, and on 27 August 2019, a trip was made to India to collect N and bring him to the United Kingdom. When he arrived in the United Kingdom, or shortly thereafter in September 2017, N was in hospital for either twelve or fifteen days, depending on which parent's account is correct, with serious liver and spleen infection. He was treated in hospital and was quite unwell. However, it appears that following that hospital stay the mother and the children left the family home. They did not return to even collect belongings and moved to a refuge. There has been no contact between the father and the children since this time.
- 7 It was not until September 2020 that the father applied for a child arrangements order, some twelve months after he had last seen the children. Within those proceedings, there was an order for the DWP to provide the mother's contact details to the court. There have been adjourned FHDRA appointments in February 2021. There was a hybrid hearing on 1 April 2021 where it was clear that the children were going to remain living with their mother and the matter was subsequently set up for a ground rules hearing and a fact-finding hearing in November 2021. Due to judicial unavailability, the fact-finding hearing is listed before me now.

- 8 I have read the bundle of documents in this case. I have read the mother's statement dated 1 April 2021. I note that there is no statement of an interpreter which should have been included as part of that statement in accordance with the rules and the practice direction about the preparation of statements where the English language is not the first language of the person preparing that statement. The allegations in that statement are that the father had difficulties with gambling addiction. She makes allegations that he shouted and swore at the mother and slapped her across the face, that there was verbal abuse, and there was controlling and coercive behaviour within the relationship as well as financial control. The allegations said that this continued throughout the pregnancy and that at times, in anger, the father would throw a dinner plate against the wall and the mother was forced to get a job whilst pregnant when she was not well enough to work. There is a record of the mother attending the GP surgery but I have not seen an entry in respect of that attendance and her suggestion that she informed the doctor about the situation at the family home.
- 9 The mother continues to make allegations within that statement about the way that she was treated in the relationship, what happened when N was in hospital, and who was staying overnight with him. She says she eventually she spoke to a professional in the hospital, the safeguarding midwife or safeguarding nurse, the social worker about her experiences and she then moved to a refuge.
- 10 The father's position statement in May and also his subsequent statement denies the allegations. He says that they are fabricated and that the relationship was quite different. He sets out in his statement what happened at a dinner, for example, when they were not collected and that he did transfer money to the mother when she was pregnant, that he sent it in the grandfather's name, and that he worked very hard in order to make sure there were sufficient funds to apply for a visa for N. He says that the mother was working at Burger King before she was pregnant and he would be able to provide bank statements to prove this. I have seen exhibits attached to the father's statement.
- 11 He also relies upon some other witnesses. They provide limited assistance to the court save that there is a suggestion in HS statement that the mother had thrown her daughter against the wall. This is repeated in the father's statement, although in my original bundle I was missing those pages, but that, of course, is not a finding which is pursued by him. There is limited evidence about that and I will not be making any finding about that allegation.
- 12 I have had over 800 pages of social work records from X Borough Council and I have read through those with some care. The matter therefore came before me yesterday. The mother was feeling unwell. She takes medication for her nausea and vomiting and as she had missed a dose of that medication, she was particularly unwell yesterday. She was not able to attend court but she was able to speak with her counsel through the interpreter. During the course of those discussions, she informed me, as has been set out in her position statement, that she did not want to pursue the allegations although she did not resile from those allegations but said things had moved on since she had separated from the father. The father, of course, set out to me that he was desperate to see his children. It has been reaffirmed to me this morning through counsel that he is not seeking any fact-finding hearing himself and wants to re-establish his relationship with the children.

### **The Law**

- 13 The law in respect of fact-finding will be familiar to counsel but I need to deal with that briefly in my judgment. The burden of proving an allegation rests on the person or the party who identifies the finding they invite the court to make. The standard of proof is the simple

balance of probabilities, i.e. what is more probable than not. I have to apply the test to establish that a fact has happened or it has not.

- 14 The law operates a binary system in which the only values returned are zero and one. If a fact is proved, it happened. If it is not proved, it did not happen and must be disregarded. This is the so-called binary consequence. A fact must be based on evidence, including inferences that can be properly drawn from the evidence but not on suspicion or speculation. Evidence cannot be evaluated in separate compartments. The court has to look at each piece of evidence against the other evidence and exercise an overview of the totality of the evidence. Of course, in cases such as this, the importance of oral evidence is not lost on the court and I have not had an opportunity of hearing oral evidence from either parent. I have considered whether or not it is proportionate and necessary to do so. I have decided it is not and I will come on to that in due course. There is also no obligation in this case on the father to prove the truth of an alternative case.
- 15 The other consideration that I have to give is to Practice Direction 12J of the Family Procedure Rules. That practice direction deals with, in particular, private law applications where there are allegations of domestic abuse. I have to consider under paragraph 5 the nature of any allegation and the extent which it would be likely to be relevant in deciding whether or not to make a child arrangements order.
- 16 Paragraph 28 of the practice direction tells me that I can be inquisitorial but I must protect the interests of all of those involved. I have also looked at paragraph 35 of that practice direction and the relatively recent authority of *Re M (A Child)* [2021] EWHC 3225 (Fam), a decision of Judd J, which sets out that section 63 of the Domestic Abuse Act 2021 provides that where a person is or at risk of being a victim of domestic abuse, the court must assume that their participation in evidence will be diminished by reason of vulnerability and that triggers arrangements for participation directions or special measures. This is formally adopted into the Family Procedure Rules 2010 as r.3A.2A.
- 17 I have also reminded myself of the Private Law Working Group and the Harm Panel's implementation to consider how the courts should be looking at issues of domestic abuse and that where one or both parents asserts that there is a pattern of coercive and/or controlling behaviour, whether or not a fact-finding hearing is necessary, and whether or not specific factual allegations should be selected at trial because of their potential probative relevance to the alleged pattern of behaviour or not, otherwise unless any particular allegation is so serious it justifies determination irrespective of a pattern or the positions of the parties.
- 18 I have all of that in mind when I have considered this case but I have also had regard to the Children Act 1989 in respect of welfare. Section 1(1) of the Children Act 1989 provides that where the court determines any question with respect to the upbringing of a child, that child's welfare or the children's welfare is the court's paramount consideration.
- 19 Under s.1(2)(a), there is a presumption, unless the contrary is shown, that the involvement of each parent in the life of a child concerned will further the child's welfare and involvement means, of course, involvement of some kind direct or indirect but not an equal division of the child's time.
- 20 Section 1(3) of the Children Act 1989, referred to as the welfare checklist, sets out the limbs that I need to consider when making a child arrangements order and, in particular, the need to consider and link any risks or perceived risks to parenting or time spent with children and the non-resident parent.

- 21 Under s.1(5), the court should not make any order with regard to a child unless it is satisfied that it is better for the child to make the order than to make no order at all. That is often referred to as the 'no order' principle.
- 22 The court must, under s.1(6), assess whether or not a parent concerned should be involved in the child's life but that does not put the child at risk of harm.

### **Analysis and Decision**

- 23 I have already set out the parties' positions briefly in this judgment and the mother, whilst not resiling from the allegations, the mother is not looking to pursue those today. The father is looking to have contact. He denies the allegations and has not had an opportunity to test the written evidence of the mother in respect of those allegations.
- 24 That therefore, to some extent, leaves the court in a difficult position because the court has to balance the welfare needs of the children in respect of the allegations. It is not simply the case where just because one party does not want to pursue allegations the court can simply ignore that position. In my judgment, once the court is seized of an application, careful scrutiny has to be made in respect of why, for example, allegations are not pursued. There may be, for example, family pressure or other reasons why allegations are not pursued.. There may be wider family members being involved putting pressure on one party not to pursue a finding of fact exercise. There may be things going on behind the scenes. In the alternative, there may be a pause in the relationship that has allowed some work to be undertaken, things to have moved on and risks reduced.
- 25 In balancing the right of the children to have a relationship with their father in this case, where it is safe to do so and for that to be promoted, I have to assess whether the allegations impacting on welfare which the mother has made during the relationship are now no longer the same risks to the children due to the passage of time and the ending of the relationship.
- 26 However, the court, of course, has to look at the impact of this on the welfare of the children and it is for that reason that I adjourned yesterday for the mother to attend court this morning, for her to attend with her counsel Ms Lince, and the interpreter to make sure that the legal position in respect of allegations is properly understood by her. I also heard from Ms Ring in respect of the father's response about that and I have heard orally in court today confirmation of the matters set out in the position statements on behalf of both parties.
- 27 I have considered the legal framework carefully and I have set out in short detail the approach of the court in respect of risks to these children and moving forward. On balance, I have decided that I am not going to compel the mother to come to the witness box and give evidence. I am concerned about what I have read in the papers but I am also concerned about where the mother is now emotionally, where the children are now, and the impact of potentially retraumatising the mother if I am going to go over things again, or if she were to be cross-examined on the basis that what she is saying is not correct especially when she has had the opportunity to pursue allegations but has declined to do so.
- 28 The question for me is how does the court therefore manage the risk moving forward based on allegations which are not pursued but not withdrawn? This is a case where the father has not seen the children for some considerable period. The mother is saying that there is an interest in the children in seeing him and that, certainly, that needs to be managed carefully, in part because of the time that he has not seen the children but also in the way in which he last saw the children and the stopping of the relationship between the children and the father in the circumstances I have already described briefly when N left hospital. The children will

need reassurance, the mother will need reassurance, and that contact will need to be safe for the children.

- 29 I have not looked at the specific details of how that should be introduced but, in my judgment, the right way forward is for there to be a slow, careful introduction of the children at a contact centre which is either supported or supervised so that there can be some independent observation of contact and management of that contact both to assist the father and reassuring the mother that contact is safe, and by safe, I mean for the children's welfare in respect of their emotional wellbeing.
- 30 I cannot make findings on suspicion or speculation and it is right that the court therefore now must proceed on the basis, legally, that the allegations of abuse that the mother complained of in the relationship have not happened in terms of the welfare determinations for these children. Whilst it does not mean moving forward that the court is not without concern around how the children will respond to contact, it does mean that there is no factual foundation or finding in relation to domestic abuse and the impact of this on the children.
- 31 I have not heard submissions on the proposed directions but it seems to me that both parents should undertake a separated parenting information programme. That will be a separate programme for them to be able to think about how the other parent will view the children and their relationship with them.
- 32 I have heard submissions about undertakings in respect of removal from the jurisdiction. An undertaking, in my judgment, is not the appropriate way forward in respect of removal from the jurisdiction. I have read in the papers that there was some suggestion of returning to India at one stage potentially by the father or possibly by the mother and I know early on N wanted to return to India. It seems to me that from what I have read, without hearing the evidence, a simple prohibited steps order should be agreed, I hope, that neither parent will move the children from this jurisdiction without the written consent of the other that will be considered as part of the s.7 report. In my judgment, whilst that is the evidence that I have referred to about that, an undertaking is not appropriate and the court should make sure that there is that safeguard for both parents knowing that the children will remain here.
- 33 I will hear submissions in respect of other undertakings as set out in the position statement of Ms Lince if they are agreed. It seems to me to be very clear that undertakings are a promise to the court moving forward and I want to make sure that contact be re-established with the father and moves at a pace which is child-centred and focused but also has the reassurances that there will be no undermining of that relationship, in part, by the father.
- 34 Whilst I am not saying that there has been, I want to make sure that once contact has restarted, it remains meaningful, and continues to progress in a way which is beneficial for the children. Subject to the wording of undertakings as proposed, the court will be prepared to accept undertakings similar to the basis as set out in the position statements.
- 35 I also agree that there should be a section 7 report in this case but, in my judgment, the safeguarding concerns, i.e. the matters which are complained of in respect of the relationship, have not been found by the court. I am not going to wait for the s.7 report prior to starting contact. It seems to me, from my own analysis of risk, that supported or supervised contact, and I will hear submissions about the best way forward about that, can take place independently of the mother and that that reports about contact will feed into the s.7 report.
- 36 Therefore, contact should be re-established bearing in mind the ages of the children and what I have heard about their wish and their inquisitive nature about their father. They will have

lots of questions. The father will want to see the children but that needs to be done in a managed environment for the benefit of all.

37 The s.7 report should address:

- a) how often and how long the children should see their father;
- b) their wishes and feelings so far as they can be ascertained;
- c) the home conditions and suitability of the accommodation of the father;
- d) looking at progression of contact in due course in light of any concerns raised by either parent bearing in mind that the domestic abuse allegations have not been pursued and therefore there have been no findings on that by the court there are, of course, the concerns about the father's gambling but that is a separate issue;
- e) whether or not the children's physical, emotional, and educational needs are being met;
- f) whether or not there is any harm that is suffered or risk of suffering bearing in mind the framework moving forward and;
- g) any recommendations in respect of arrangements for the children, including stepped arrangements with a view to a final order to be made at a DRA if possible.

38 The report should also look at any risks associated with travel to and from India, whether they are real, and whether there should be any order in respect of that in the longer term.

39 So, for all of those reasons, I am not going to be proceeding with the fact-finding hearing and that is the framework in respect of this application moving forward.

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**CERTIFICATE**

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This transcript has been approved by the Judge.