

IMPORTANT NOTICE

This judgment was delivered in private. The anonymity of the child and members of his 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.

Neutral citation: [2023] EWFC 228 (B)
Case No: SE21P00517

IN THE FAMILY COURT AT WOLVERHAMPTON

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF W

Before :

District Judge Moan

Between :

L

and

S

The Applicant Father did not attend
The Respondent Mother appeared in person
Family Court Adviser Ms M.

Hearing date: 28th September 2023
Judgment given: 29th September 2023

APPROVED JUDGMENT

1. This is father's application for a child arrangements order dated 5th October 2021. The application concerns his son W who was seven at the time of the application but is now nine years' of age. The respondent is W's mother. The application stated that father initially wanted contact but he considered that his son may be at extreme risk and he sought an order to decide with whom the child lived. He applied for an order without notice to the mother on the basis

of his safety concerns. In the C1A supplemental form, the father alleged that the child had been assaulted by the mother since birth, that mother had made a series of allegations against the father and had assaulted him. He referred to social services knowing about those issues but choosing to believe the lies put forward by mother.

2. The application was initially made to the Family Court sitting in Sheffield and was transferred to this area in October 2021 noting that the mother and child lived in the West Midlands area. During the course of these proceedings, the Court has had the benefit of safeguarding reports from Cafcass, a section 7 report from Family Court Adviser Ms M dated 18th August 2022 and an addendum report from Ms M dated 31st March 2023. Despite directions to file a statement, father had not done so. The mother had filed a short email statement in which confirmed that she agreed with the recommendations of the Cafcass officer.
3. These proceedings are just short of two years in duration. The proceedings were previously listed for a final hearing in April 2023 but were adjourned because parties had not provided final evidence and the Court was aware of information relating to father in public law proceedings that concerned a non-subject child.
4. The case has been previously managed by another District Judge. In his order dated 12th April 2023, that Judge directed father to send his final evidence to the Court within 14 days of that hearing including details of the order that he sought the Court to make and his comments on a barring order. On the 27th July 2023, which was my first dealing with the proceedings, I further directed father to file his final evidence by 15th August 2023 and unless he did so, the Court would deem that he did not actively seek any order. Father was aware of this final hearing date in the order dated 12th April 2023 and in my order dated 27th July 2023.
5. The applicant father did not attend the hearing today. He has not submitted any final evidence to the Court. Whilst it is recognisable that the journey from Sheffield would take around two hours in a car or on the train, this Courthouse is easily accessible from the train station and at no point has the applicant

father indicated difficulties with attending Court. His failure to attend today must be considered alongside his failure to file evidence and other failures that I will refer to in this judgment. I conclude that father has effectively abandoned his application, perhaps in the light of very significant safeguarding concerns in relation to him. I have no optimism that father would comply with directions to file evidence or to attend Court even if I were to adjourn proceedings and make such further directions. No other party has asked me to adjourn the case today, and I remind myself of the lengthy proceedings in this application and the totality of litigation involving this child.

6. Father has been put on notice about all issues that the Court will consider, including the Court's contemplation of a further barring order and father has consciously decided not to respond. He is well aware of the implications of a barring order having been made subject to such an order in 2017. The section 7 reports both commend a barring order be made.
7. Cafcass produced a safeguarding letter dated 3rd December 2021. Mother said that father had not complied with the existing Court order that provided for father to have indirect contact with W and that W did not know his father or have any form of relationship with him. She said that father continued to make false allegations against her with no insight as to the impact upon W. She believed that he had no genuine interest in W or his welfare. Father was not interviewed as part of this safeguarding letter.
8. Father was subsequently interviewed this was reflected in the updating safeguarding letter dated 24th December 2021. Father said:

“Mother has contacted a social media group who is waging a ‘hate campaign’ against him. He advised that he has been kidnapped and assaulted by members of this group and has been threatened that ‘if they cannot get to him then they will get to W’. Mother’s actions have put W at risk of harm. He advised that one of the group members has been arrested for assaulting him. Mother is clearly associating with ‘risky adults’ and he believes that she is degenerating him to W. Mother has totally alienated him from W’s life.”

These were the contemporaneous concerns of the father.

9. The first section 7 report was completed in August 2022. The school highlighted difficulties with the child's presentation and their concerns about autism. They considered that father's focus was not the child but an intention to present mother as a bad parent. Father was not allowed on school premises due to his aggressive presentation. Father had not shown an interest in W's progress and had not attended virtual parents' evening. The local authority were aware of father's referral including concerns about the child not being cared for properly but took no further action in the summer of 2022 because his concerns were historical.

10. The Family Court Adviser fully identified the concerns of each parent and under paragraph 9 of that report outlined the enquiries she made during the preparation of her report. It was not disputed that father had not complied with an order made in 2017 allowing him to have indirect contact with W. W had very little recollection of his father and had no relationship with him. Father had not asserted or indeed demonstrated any changes since the previous proceedings and had continued to make allegations about mother's care of the child. I was satisfied that mother's safeguarding concerns about father were substantiated.

11. Father suggested that he had been subject to a hate campaign by mother. Mother accepted that she had made unpleasant comments on social media. The Family Court Adviser considered that this fell short of a hate campaign but discussed the issue with mother who conceded that it was unacceptable to post comments about her issues with the father online.

12. Father also held mother responsible for threats made to the child and to father being kidnapped and assaulted. He was unable to substantiate why he considered that mother was responsible and had subsequently provided no evidence to the Family Court Adviser or to the Court that mother had engaged in such activity. Father also said that mother was allowing a risky cousin to be around W but she identified that this concern had already been raised previously and explored. Finally, father suggested that mother was alienating the child from his life. He gave no detail as to why this was the case and

indeed, he had failed to comply with the orders as to both direct and indirect contact, as noted in the documents from the previous proceedings.

13. The recommendation from Ms M in the first report was that indirect contact could continue on special occasions and that father adhere to the recommendations made within a previous local authority section 37 report. Ms M also recommended a barring order to prohibit father from exposing mother and W to further litigation.
14. In her second report dated March 2023, Ms M was able to update the Court in regard to the ongoing public law proceedings involving father and a non-subject child. At the time when that report was completed, father was placed in a residential parenting assessment unit. She did not consider that a further section 37 report would be helpful in these proceedings and reminded the Court of the lengthy litigation that had taken place. She reiterated her recommendations for indirect contact on special occasions and commended a barring order for the rest the child's minority.
15. On the day of the final hearing, the Court had a further written update from Ms M which was dated 21st September. The salient points are as follows: -

“Assessments undertaken in respect of father conclude negatively. Owing to him being “manipulative”, not being able to prioritise the needs of his children above his own and having “worrying lack of insight” into his own behaviours in respect of all of his children. Father does not seek to make changes as he does not in his view have anything to change.

I have received information from South Yorkshire Police that Father was arrested in June 2023. An allegation of sexual assault has been made by a family member of Father's. The young person is now 17 years old and alleges that Father sexually assaulted her when she was younger. The police investigation remains on-going and there are bail conditions in place.

I would also like to update the Court in respect of my recommendations. I had previously recommended indirect contact by way of a letter from Father to W providing information about himself and that Father send cards on special

occasions such as birthday's, Christmas, Easter and any other events celebrated.

However, my concerns in respect of Father have increased and I view any communication whether direct or indirect will on serve to fuel Father's obsessive behaviours in respect of Mother. I have liaised closely with the Guardian in the public law proceedings with the view of ensuring relevant information is shared. Sadly, Father has not even begun to show any insight into his own behaviours and therefore his unlikely to makes changes.

Whilst I understand W has questions about his father that neither I nor his mother can provide him with. It will in my view be far more detrimental to W if he has any form of contact with Father."

16. Ms M attended the final hearing and gave brief evidence. She agreed that the real issue was whether father should continue to have the opportunity to have indirect contact with the child or whether there should be no contact at all. She told me of her concerns that father would not utilise indirect contact. Not only had he not taken up indirect contact following the order dated 2017, she had offered to support him with indirect contact after the section 7 report. She had a lengthy meeting with father after the report was prepared; she described father as being entirely focused on the inaccuracies in the report and criticising mother. He had not taken up the offer to get indirect contact started. Ms M had seen the psychological report that had been prepared in the public law proceedings which had described father as highly manipulative, obsessive and narcissistic. She said that any communication she had with father was not focused on the child. Father had absolutely no insight into what he needed to change preferring to complain about agencies and individuals. She concluded that indirect contact would not be beneficial for W with father likely to be inconsistent with indirect contact at best and his focus upon criticising mother. The child had added vulnerabilities in terms of his suspected autism and needed to be protected from father's presentation. She did not recommend that mother provide monthly updates to father about the child because she considered that this would fuel the conflict and increase the risk to the mother and the child.

17. Mother told me that she had four sons between the ages of seven and fifteen. Her eldest child had autism and learning difficulties; and W had borderline autism. She said that there had been a lot of litigation concerning W which she found exhausting and had fuelled her anxiety and depression. She simply wanted the proceedings to end. She was more comfortable with Ms M's updated recommendation because she considered that father was not motivated to form a relationship with W.
18. The chronology of previous litigation is nothing short of eye-watering. Applications have been made in 2014, 2016, 2017, 2018, 2020 and this case started in 2021 despite a two-year barring order being made by Her Honour Judge Dowding in August 2017. W has been the subject of litigation for almost all of his young life. I have read the comprehensive judgment of Judge Dowding in 2017. It sadly reflects father as a person intent on discrediting and undermining the mother. The judgment demonstrates that father has failed to comply with Court orders or prioritise his relationship with the child. He has used whatever platform he has had at his disposal (i.e. the Court proceedings, social services referrals) to continue his own agenda and in the process has consistently abused mother.
19. I was not provided with a copy of the section 37 report that was prepared during those proceedings but the judgment of Judge Dowding records details of that report between paragraphs 33 and 35 and examination of the social worker Miss G as a witness thereafter. I was advised by Ms M that this report recommended that father attended therapy. I was advised by Ms M that the psychological report on father in the public law proceedings also recommended therapy.
20. In coming to a decision about child arrangements, the focus must be on what is best for the child. W is my paramount consideration. In reality, the child has no ongoing relationship with his father and recalls very little about him. I entirely accept that he would want to know about his father, and have a relationship with him if it were safe and beneficial to do so. Children do better when they have a good relationship with each parent when parents are separated. W would not want a relationship with his father if that relationship

were unhealthy, abusive, unsafe or undermining of his residence with mother. This child has a need for routine and support having regard to his additional needs.

21. The Court has already determined that the child should live with his mother. This is all he has known throughout his life, despite short periods when he stayed with his father in the very distant past. She is able to meet all of his needs, including his emotional and developmental needs. She understands his additional vulnerabilities and works closely with the school and other agencies to ensure that W has the best opportunities and provision. There is nothing from what I have read to indicate that W would be better off living with his father, or that he would not be looked after and protected in the care of his mother.
22. Whilst the safeguarding concerns about mother are not substantiated, there remain significant concerns about father. There are persistent and objective concerns from a number of sources to indicate that father's motivation is focused on his relationship with mother and not his desire to cultivate a good relationship with his son. He has never been in the position of being the long-term primary carer of this child or demonstrated that he can meet his needs. Indeed, he has been negatively assessed as regards a non-subject child in other proceedings. There remains very real concern about father's presentation.
23. The Court in 2017 made an order that allowed for indirect contact between W and father and father has not adhered to that order. Without any commitment to indirect contact, father can have no reasonable expectation that the Court would make any order of direct contact or that the child stay/live with him. The father is a stranger to W. Judge Dowding found no evidence of mother alienating the child from father and neither do I. The child is curious about his father. The scuppering of father's relationship with his son is his own doing.
24. Direct and indirect contact have already broken down. Five years after Judge Dowding's judgment, father presents at least the same level of risk to the child and mother, if not more. The only commitment he has demonstrated is to his campaign to abuse the mother without insight into the impact on the child. There has been no positive change and the risk to the mother and child in my

view are heightened by father's failure to acknowledge concerns about his presentation, his inability to reflect and address his presentation, his lack of commitment to the child, the child's advancing age which means that he will be more aware of father's actions now than before, the known vulnerabilities of this child and the ongoing police investigation regarding father.

25. I have had to consider the ongoing benefits of an order for indirect contact. No indirect contact is happening and because it has not happened, it difficult to evaluate the risk of any previous indirect contact. There is a risk of emotional damage to the child in starting a relationship with father through correspondence for it to subside suddenly or not be maintained. This child needs consistency. Even when agencies such as the school and the Cafcass officer have tried to engage father about the child, he was unable to contain his derogatory views of mother. I place significant weight on the observations of independent and objective agencies about father's presentation, motivation and aggression. I have little to conclude that father would be able to engage in contact in a beneficial way for W. He has not demonstrated that he can so engage or mitigate his focus on mother for the benefit of the child. Indirect contact gives this father a potential platform for further abuse. Both mother and W must be protected from that. Father was warned in 2017 that an abuse of his parental responsibility may lead to the termination of his PR. Whilst that is not an application before me, that may be something that will be considered in the future, if required, as well as any restrictions that the school or agencies may place upon father in how they will engage with him.

26. I remind myself that an order prohibiting father to have any contact with the child is a draconian and exceptional order; an order of last resort. On balance, I have concluded that the child's welfare lies with an order that there is no contact. In reality, this does not change the status quo as no indirect contact is taking place. If father shows a commitment to change, he may apply to vary this order. Until such time, the risk to the child and mother must outweigh the remote possibility that this father will beneficially and healthily engage in indirect contact.

27. The law regarding section 91(14) orders has changed since 2017 and arguably it is now easier for the Court to conclude that such orders are necessary in the

welfare interests of the child. Even applying the same criteria as Judge Dowding did in 2017, there is ample evidence that father seeks to use litigation as a mechanism to further abuse the mother and this impacts on her mental health, and therefore on the child. The litigation has been relentless, and father has disengaged with this application after almost two years of Court proceedings. I am satisfied that it is necessary for me to make a further barring order to prevent father from making applications under section 8 of the Children Act 1989 in relation to W until the child is 16 years of age. This does not prevent father from applying for permission to make an application but the Court will pre-screen that application to prevent proceedings starting without a real triable issue being identified and some substantive change on father's part. The Court expects father to demonstrate that he had addressed his obsession/fixation on mother and that he understands the impact of his previous behaviour on her and W. In practical terms, this is likely to be a report from a practitioner showing father's engagement with a programme of therapy, attendance at a domestic abuse programme and pre-prepared communications that he intends to send to the child demonstrating his commitment to healthy indirect contact.

28. Ultimately the right of this child to have a respected family life with his primary carer take precedence over father's right to have a relationship with his son.
29. I permit this judgment to be disclosed to parties engaged in the ongoing public law proceedings where father is a party. I also allow the Order to be disclosed to the child's school.