

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved

IN THE FAMILY COURT
(Sitting at Milton Keynes)

Neutral citation: [2023]
EWFC 302 (B)
No. MK21P00387
Milton Keynes County Court
and Family Court
351 Silbury Boulevard
Witan Gate East
Milton Keynes
MK9 2DT

13th and 14th February 2023

Full Judgment delivered 26th July 2023

Formally handed down with minor corrections highlighted by parties 19th October 2023

Before:

RECORDER HELLENS

(In Private)

B E T W E E N :

Mr W

Applicant

- and -

Ms N-F

Respondent

MS RHONE-ADRIEN, counsel, appeared on behalf of the Applicant.

MR ARKSEY appeared on behalf of the Respondent.

J U D G M E N T

RECORDER HELLENS:

1. I am concerned with the two children J, a girl of 10 years old, and B, a boy of 9 years old
2. The children's parents are Mr W, their father, and Ms N-F, their mother. The Father appears through Counsel Ms Rhone-Adrien, and the Mother through Mr Arksey of Counsel. I say immediately that Counsel have conducted themselves in an exemplarily manner through this case. Each of them could have had much more to say, none of which would have assisted me. By way of example, in closing submissions Mr Arksey made it clear that he was not wanting to mud-sling, although had of course to respond to submissions made on behalf of the Father. It is an example of what both Counsel have demonstrated throughout the hearing. Very often advocates feel they have to 'point score' – Counsel did not engage with such in this case. Instead they focussed on those issues which were likely to, and did, assist me. I could not have been assisted any further by counsel: I am most grateful to them.
3. I heard the matter on 13th and 14th February 2023 when I gave shorter reasons before this written judgment. As this case is one that I will consider publishing on the National Archive, I have anonymised the parties and children and give general ages for the children rather than their dates of birth to minimise the prospect of 'jigsaw identification'. I have read all of the papers in the case and have had the benefit of hearing from the parents.
4. This judgment is not a surprise to the parties – the reasons I made the decisions I did on 14th February 2023 were set out in some detail then and this fuller judgment is typed from the summary kindly prepared by Counsel.
5. The application before the Court is the Father's application for a number of orders which I summarise as follows:
 - a. A prohibited steps order preventing the Mother removing the children from the jurisdiction;
 - b. A specific issue order requiring the Mother to return to where the Children were previously at school in Redhill (not being pursued given the time that has passed)
 - c. A variation to an existing Child Arrangements Order

6. The existing Child Arrangements order was made on 23rd May 2019 by District Judge Hammond sitting at the Family Court in Guildford who made a Child Arrangements 'spends time' with Order such that the holidays would be shared and the Children see their Father on alternate weekends from after school on Friday to School on Monday. A Child Arrangements 'live with' order was made such that the Children were to live with their mother.
7. In November 2019 a final order was made in section 15 schedule 1 Children Act 1989 for financial provision as a result of which the Father was to have a housing fund for the Mother in the sum of £410,000. At paragraph 8 of the order it was recorded that the intention was that "any property chosen must be in the jurisdiction and within a reasonable distance of the children's school".
8. On 19th May 2021, an application to vary was made and an order of Deputy District Judge Wooton on 19th July 2021 again reinforcing the need for any property to be bought within a reasonable distance of the children's school.
9. On 2nd September 2021, the parents attended an injunction hearing remotely. The next day Father attended at school to be told that the children were not there. The Father was told that the Mother had left with the children and the school considered that the Mother had consent from the Father to allow that. The Mother removed the Children from the school on 1st September 2021, the day before the injunction hearing. She said nothing about her move at that hearing. Father's counsel emailed the representative of the Mother to indicate that the Father would collect the children from the school on 3rd September 2021. That email was, I am told, acknowledged.
10. It transpires that the Mother had entered into a tenancy agreement for a property in Buckinghamshire on 15th August 2022 something unknown to the Father. The Father should have been told what had happened, but even had he been it would have been too late. He should have been involved. The Mother's unilateral decision to move away, and remove the Children from the school should not have happened.
11. When in evidence the Mother was asked why she didn't let the Father know, she said that she did not think the Father would agree. He would not have agreed. Had the Court been asked, it is not entirely clear that the Court would have allowed the move: it is difficult to see how a move to Buckinghamshire would have been in the welfare interests of the children.

12. The Mother says her move was to enable her to be closer to her partner. She has moved to a rural location where any cab fare to a station would be £20. She moved without apparent consideration of the impact on the Children of their move from school or to contact. She planned the move during school holiday and with no proper planning and, on her case, signed a tenancy agreement very shortly after considering the move.
13. The Mother did not give her address to the Father. She blames her barrister at the hearing on 2nd September 2021 for that. So the Father was left, on 3rd September 2021, without the children not knowing where they were and having no idea where to start looking for them. It would have been a terrifying time for him. Her solicitors, who the Mother says she told, should have passed on that the Mother had moved if they had been told. Likewise, Counsel has a duty not to mislead the Court. If Counsel had been told about the move, they would have had a duty to the Court not to mislead the Court in the administration of justice. I find it very unlikely that both her solicitors and Counsel overlooked telling the Father or his representatives of the move. I am satisfied, on the balance of probabilities, that the Mother acted in a way that meant the Father would not know of her move.
14. So on 1st September 2021, the Mother removed the Children from the school which was so important the financial provision order referred to it, from their home and their Father. The Children had no chance to say goodbye to their friends, their teachers or their Father. The Mother failed to prioritise the Children and put herself first.
15. The Father issued proceedings on 7th September 2021. The matter came before the Court for a contested hearing before Recorder Stott on 15th October 2021. At that hearing contact was agreed. Where previously the handover was at Redhill Station, it moved to Watford Junction Train Station. By that time, of course, the Father was in difficulty in relation to the relocation as the Children were in a new school in Buckinghamshire, a school the Mother denied him the opportunity of visiting before she unilaterally enrolled the Children.
16. Notwithstanding the agreed arrangements for contact, the Mother emailed the Father's solicitors on 7th December 2021 explaining that the travel and cost of attending at Watford Junction Station was too demanding and finishes with the following sentence:

I will not be travelling to Watford Station after the Christmas holidays.

17. The matter was next listed for a First Hearing Dispute Resolution Hearing on 16th December 2021 – that hearing was not productive as the safeguarding letter was outstanding. The next hearing was before District Lynch and the arrangements for collection and handover were

changed such that the Mother would take the Children to East Croydon, and the Father would return them at the end of contact.

18. On 16th May 2022, before Deputy District Judge Hayes, the Mother sought to reduce contact to indirect contact only. In his judgment he said:

I get the strong impression that she has sought to deprive a relationship between father and children .

And

There is a history of mother's reluctance for contact, exacerbated or made worse by the distance been the parties.

19. In October 2022, the Mother lost the use of the car and said she was no longer able to facilitate contact. Instead, she told Father that he could pick them up at any time. The Father works in Surrey. To collect the Children driving from work the drive to the Mother's home would take between two and a half hour to three hours. The Mother said she simply did not have the funds so could not afford to take the children to East Croydon
20. The Mother says she has not denied the Father contact: he was free to pick them up from her home. But that is not what the orders say. They require the Mother to ensure contact happens. She 'must make sure that the children spend time with their Father' and sets out the arrangements. The Mother has an obligation to ensure the contact occurs in accordance with the Order. She acted unilaterally when moving the Children and their schools, in December 2021 she told the Father's solicitors she would not be complying with the October 2021 order and in May 2022 she sought to reduce Father's contact to indirect only and then in October 2022 told the Father she will not comply with the then existing order.
21. The Mother has failed to understand the obligations that are required of her. It is not for the Father to have to bring the matter to court for enforcement, which he could have done. It was for the Mother to make applications to vary.
22. This is a Father who, like the Mother, loves the children. There was no sense in his evidence that he wasn't wholly committed to his children. There was a real frustration in his evidence which is entirely understandable. He must wonder how orders have been ignored after the Mother pulled the Children from their school, society and friends.

23. The Mother has done much that undermined the role of the Father beginning with the move on 1st September 2021. She cannot be allowed to dictate the arrangements for the Children as she has sought to do in the past. The Order I make is an Order.
24. The Father cannot travel up on Friday evening to pick up the children. It was suggested that he could perhaps travel up on the Saturday and return on the Sunday. That would mean he would be travelling up to three hours each way 4 times at the weekend.
25. The Mother says she cannot afford the cost of travel. It was the Mother who made the unilateral decision to move. She chose to move, without discussion with the Father, to an isolated village in Buckinghamshire. She did not ask the Father. She did not ask the Court. Being such a distance from the Father had inevitable consequences which the Mother should have foreseen. She cannot now come to the Court and say 'because of the decisions I made without asking the Court or the Father, I am not able to facilitate the contact and the Father must come here'. The Mother has already made unilateral decisions about arrangements for the Children. The Mother failed to prioritise the Children when she moved: I have to prioritise them.
26. In passing I note that each Child has a phone from each parent. Having two phones daily reminds the Children of the fractious relationship of their parents. Ultimately, it is the Children that are having to pay the price of the decisions made in the last 2 years.
27. When making a decision relating to the welfare of a child I have to have their welfare as my paramount consideration. The Children are front and centre of my thinking.
28. I have also to consider the welfare checklist in section 1(3) of the Children Act 1989.
29. The ascertainable wishes and feelings of the children are first in the list but that does not mean they are first in importance.
30. J doesn't mind the train travel but gets anxious on the tube, B doesn't enjoy the travel. Given the walk between Euston Station and St Pancras International, the two stations serving the parents' homes, is only 10 minutes I am unclear as to why the tube needs to be taken at all. I do not accept the Mother's evidence when she told me that she doesn't know how to walk from Euston to St Pancras: the children have 4 mobile phones between them. It would have been straightforward to use Google Maps, for instance.
31. In relation to B not enjoying the journey, whichever route, it's going to be a couple of hours at least. It was put to the Father that even time driving with the Children could be valuable

time. It is so much more valuable on a train as the Mother does not have to concentrate on driving and can give the Children her full attention.

32. In relation to their physical, emotional and educational needs, the Mother did not appear to consider the Children's educational needs when she moved them out of their school. She did not appear to consider the emotional needs of the Children in relation to contact. But each of the parents is able to meet the other needs of their children.
33. Effect on change in circumstances. The difficulty in this case is that the Father cannot travel to Buckinghamshire after work on a Friday for him to be able to start contact on a Friday. Mother says she cannot travel with the Children. Whatever I do will involve compromise in very difficult circumstances. But the Children have to see their Father.
34. The capability of the parents. The Mother has not been able to show an entrenched commitment to contact. If I continue anything like the status quo, the experience of these children is that it won't work. It is not working now, the Father hasn't seen the children since 5th January 2023. The evidence appears to demonstrate that when arrangements change, the Mother seeks to change them shortly after. It happened in December 2021, it happened when the Mother sought to reduce contact to indirect only in May 2022. In her August 2022 statement she tells the Court she will commence working so will not be able to transport the children to their Father from October 2022. There was no application to vary, there is just the statement that she will not be able to transport the Children. It is an example of the Mother believing she is able to dictate what can happen. Matters need to be agreed and, if not agreed, the Court will decide. It is not open to any party to say "I'm not doing/can't do it". The Mother has to understand that parenting the Children is not her role alone. She needs to work with the Father and he with her.
35. The existing arrangements where the Children live with their Mother and spend time with their Father is plainly not working. The Father has not seen the Children for over a month.
36. The only way I can get close to guaranteeing that the Children spend time with their Father is by them living with their Father and him ensuring they spend time with their Mother. I'm not being asked to make that order, nor indeed would I have made it in all likelihood because I cannot work on 'guarantees'. I have to look at the welfare of the Children.
37. The parents have an equal responsibility for their Children. The history of the Mother making decisions about contact has to cease. There should be no imbalance between the parents, they both have parental responsibility and their voices are equally loud and should

be equally heard. But the Father having parental responsibility is not enough for this Mother: she has not recognised that his involvement in significant decisions is as important as hers. The Mother appears to consider she has the ability to make decisions of some import for the Children without the need for his involvement.

38. I am satisfied that this is an appropriate case of a shared lives with order. It will send a message to the parents that they share the arrangements of the Children. Whilst there will be disparity in the time the Children spend with the parents, that is not a bar to making a shared lives with order. It will reflect on the ground that the Children's homes are with their Mother during the weeks and they will not just spend time with, but live with, their Father on alternate weekends. It defines that the parents are equally important in their Children's lives and that the other parent's role is equally important to the other.
39. To maintain the status quo would be to fail the Children. They are spending no time with the Father and less time than they were before they moved to Buckinghamshire. They should not be paying the price of decisions made by either of the parents.
40. The Children need to see their father at least every other Friday to Sunday and it will involve, as I have said, compromise. It will be shared travel – that will send a message to the Children that both parents are active in their roles in contact. The Mother will ensure that the children are brought to Redhill station every other Friday at 6.30pm and father will be responsible for returning. The change in London is a short walk from Euston to St Pancras so no tube will be required and they will be able to take a direct train from St Pancras to Redhill.
41. I add this, I had considered making a conditional lives with Order to the father. Such an Order would have meant that in the event of any breaches by the Mother in relation to the time the Children live with their Father, they would live with their Father and arrangements for the time the Children spend with their parents reversed. It is something that I have considered but I hadn't raised it with the advocates in a formal way as I considered that it would not be appropriate, at this time, to make such an order. If this matter comes back before me under this new regime, if children do not live with father as stipulated (on alternate weekends), I may have no choice but to consider that the only way the Children will see both parents is by the arrangements being swapped with them living with their Father in the week and alternate Sundays, and they live with their Mother on alternate weekends.

42. In relation to the passports, I am asked to consider where they should be held. The parents are unable to trust each other. Shortly before the Mother signed her tenancy agreement in August 2021, she sent the Children to France without notifying the Father. On 3rd September 2021 the Father discovered the Mother had moved and removed the Children from their school.
43. The simplest way of managing the passports is for one parent to have one child's passports and the other to have the others. The Mother will hold B's, the Father will hold J's.
44. As to costs, the application is adjourned for 3 months from the date this full judgment is handed down.

Recorder Hellens