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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION



No. FA-2023-000237

[2023] EWHC 3400 (Fam)

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 18 December 2023

Before:

SIR JONATHAN COHEN

(Sitting as a Judge of the High Court)

(In Open Court)

B E T W E E N :

PJ

Appellant

- and -

HB

Respondent

MR MUGHAL appeared on behalf of the Appellant.

MS HARRIS appeared on behalf of the Respondent.

J U D G M E N T

(Transcript produced without the aid of documentation.)

SIR JONATHAN COHEN:

- 1 This is an appeal from an order of HHJ Davis, sitting in the Family Court at Yeovil, on 7 September 2023. The transcript is wrongly dated 7 August. To describe what happened, it is necessary to set out something of the background of this matter.
- 2 The case concerns M, who was four just two days ago. He is the much-loved son of the parents in private law proceedings. They separated when he was very little in spring 2020 and soon after that proceedings commenced which have continued almost throughout his life.
- 3 On 7 January 2021 a child arrangements order was made which provided for M to spend alternate weekends with his father, from Saturday morning until Monday afternoon, and with extended periods at Easter and in the summer holidays and, for reasons that no-one before me now knows, no proper provision for contact over Christmas, save it was to be a minimum of 24 – 26 December, which is an unusual provision, bearing in mind that those days encompass not only the holiday, but also the mother’s birthday. In any event, that was the order which effectively remained in place until the hearing which is the subject of this appeal.
- 4 On 10 February 2022, a child arrangements order was made in the same terms as in the previous year.
- 5 In late May of 2022, the mother made an application in respect of M’s surname and a CAFCASS report was ordered. In the course of the inquiries made by the CAFCASS reporter she became aware of an incident that took place on 30 April 2022. She appears to have advised in July 2022 that contact should be suspended and there was then a period of six months, between July 2022 and January 2023, when there was no contact. On 11 and 12 January 2023, there was a two-day fact-finding hearing to investigate what had happened on 30 April of the previous year. I summarise it briefly.
- 6 At the start of a contact visit the father went to collect M from the mother’s car at the venue where they met for contact handovers. M was reluctant to get out of the mother’s car (as apparently sometimes he was but no-one reads anything into that) and as the father went to remove him and, as the judge found, unintentionally but recklessly, the father either struck the mother’s nose directly or in trying to get M out of the car he struck her arm, which ricocheted into her nose to give her a nose bleed. Understandably, this left her very upset. This simple incident gave rise to a two-day hearing.
- 7 The father’s case at that stage was that the mother had inflicted the injury on herself and that when he and she parted in the car park there was no sign of any blood at all and therefore it was all a manipulation.
- 8 What makes this case so sad is that this was an incident which should have blown over very quickly. The judge found that the father had no intent to cause the mother injury. He made a mistake in what he was doing; it was entirely avoidable, but it was unintended. All the father needed to do was to say, “I am sorry, I really did not mean to cause you any harm. It

was a complete accident.” But he could not bring himself to do that and, instead, this two-day hearing had to take place. In fairness to him, I accept that the judge did not find, as the mother had alleged, that this was an intended event that she suffered and so, to that extent, it may be that the hearing was necessary in any event.

- 9 What, though, is important is that after the hearing the judge reinstated the contact which had been in existence then for almost two years, excluding the period of suspension and the contact did, indeed, continue from January 2023 until the hearing in September of that year.
- 10 It is important to understand that the contact has throughout been described as being of high quality and enjoyed by M. The mother, to her credit, makes no complaint at all about the father’s ability to look after M during that contact period or any suggestion that M has not enjoyed himself. The difficulty arose because the father was simply not willing to accept the judge’s findings of fact. They were, of course, hardly the most critical findings that could have been made, but they were not findings that he was prepared to accept.
- 11 Following the hearing in January 2023, the matter came before the judge on a review hearing on 24 March 2023. The judge had before him two matters of particular concern. The first was that the father still did not accept the findings made by the judge and he was accusing the mother of a pattern of deceitful behaviour. The second matter of concern was that the mother, without the father’s agreement, had M being known by a double-barrelled surname at his nursery and the judge was anxious that M’s surname was being, to quote the words of the order, “tampered with” by the mother without the authority of the court. The judge directed a further hearing in September before himself to deal with those two issues.
- 12 He had at that hearing a CAFCASS report which he had commissioned at the hearing in March. I shall only refer to that report insofar as it relates to the fact-find and contact, I shall not mention what it says in respect of surname.
- 13 At para.25 of the report the CAFCASS reporter says this:

“M has been seen both at home and with his father during contact as part of this assessment. I was reassured that M’s presentation with both parents raised no concerns. He was active, full of laughter and giggles and showing confidence and independence in both environments.”

At para.26 the report says this:

“A key concern in relation to M’s experience has been how handover is managed between the parents and the impact this has on his emotional wellbeing. This has been discussed with both parents, who report that contact handovers have improved.”

Each of them confirmed that that, indeed, was the case. However, it remained the father’s view that he had been the subject of false allegations on 30 April and that the mother was doing this in order to stop contact with M.

- 14 The CAFCASS officer was concerned about the father’s lack of insight in relation to the fact-find and how that lack of insight impacted on the mother. She recommended that the

risk that the father presented by such an attitude should be the subject of intervention to address those concerns and that the timetable should be amended so that contact took place every third weekend rather than every fortnight.

15 The judge obviously had his concerns about the recommendation. Indeed, he said this at para.26 of his judgment:

“I have to say that prior to hearing from the father I would have not accepted the overall determination with regard to contact being proffered by CAFCASS because I am satisfied that contact between M and his father is of high quality and would not necessarily consider that it needed to be reduced in the way that has been identified by CAFCASS if Father was prepared to attend on the course as recommended, but he is not. Had I been told at court today that the father was going to take on board what CAFCASS have said, I would probably have maintained the current contact and I would probably have said that if he did not attend at the course I would revisit the issue.”

16 The father’s attitude at court was that he needed no assistance at all; that what the mother had been saying at the fact-find was a “put-up job” and that attitude was evidenced by a letter that he, the father, had written to the Department of Work and Pensions in reply to her assertion that she had been deliberately injured by him, accusing her of making a malicious allegation and causing her own injuries.

17 I need to look at this appeal from both ends. The first is the order of the judge at the time that it was made and the second is the situation as it now exists. It is a very difficult situation that any court finds itself in when a party will not accept a judicial finding and a court will be slow to interfere with a judge’s treatment of a case in those circumstances. However, I granted permission because I was anxious that the father’s loss of contact, amounting not just to one-third of his weekend contact, but also all the holiday contact, did not seem to me to reflect the risk which was said to exist. Indeed, the judge appeared satisfied in his judgment in January 2023 at the fact-find that the father did not offer any risk to M and, of course, having made his finding, he reinstated the then suspended contact arrangements.

18 At the hearings that took place in 2023, the mother herself had not sought a reduction in contact and the only incident, upsetting though it was, was that of April 2022. It was not obvious to me that reducing the contact would make contact better or safer for M and quite what he would make of its reduction appears not to have been considered.

19 Having heard argument from counsel, I remain of the view that there does not seem to me to have been a satisfactory reason for reducing contact. A non-acceptance of a finding does not necessarily lead to a situation where the frequency of contact should be adjusted. It does not seem to me, in this case, that there is any benefit offered to M by the reduction which the judge imposed.

20 The father has, perhaps belatedly, gone on a course. He said he did extensive research of courses and discovered that one of the courses which CAFCASS recommended was not actually available, and so he put himself on a 10-hour Positive Parenting Programme online course which he satisfactorily completed earlier this month. It was not the course that

CAFCASS intended, and the courses which were suggested by CAFCASS, or at least some of them, predicate acceptance of a judicial finding before the candidate will be accepted.

- 21 The father said not only did he learn a lot about parenting on the course, but he also learned about the fundamental importance of co-parenting. I asked him what it is that he says now about the incident of 30 April 2022. He said that he was sorry that it had ever happened and that he had been unaware that he had caused the mother injury. He said rather equivocally, I thought, “In order to move on, I accept my share of responsibility. That was why I did the course.” Equivocal though that might be, it is more than he has offered before. He said that he did not see the mother’s nose bleeding, but he accepts that it happened as a result – to use my words, which I hope accurately paraphrase those of the judge – “as the result of an accidental, unintended but avoidable action of mine” and he says that he was extremely sorry that she was distressed. He said that he did not know at the time that he had caused her nose to bleed.
- 22 I also asked during the course of the hearing what he had to say about his letter to the DWP. He said that he was sorry, and that he was upset when he wrote it and that he should not have done it. He said that he does not any longer contend that the mother caused the injury to herself. He did not know at the time what had happened to her. He accepts that the letter should not have been written. That is progress, of a sort, and perhaps significant progress, but that will be for others to judge, particularly because I have only heard what the father has said from the well of the court and he has not been subjected to any questioning about it.
- 23 It seems to me that this appeal has to be allowed and that the order that has been in existence since January 2021 providing for fortnightly staying contact should be reinstated. I do not think there was a good reason in M’s interest for it to be reduced and that applies all the more in the circumstances which now pertain where the father accepts the thrust of the judge’s findings.
- 24 The parents have had helpful discussions while I have been out of court about the way forward. As to the Christmas break about to come up, the mother has helpfully offered to extend contact, which was due to take place between 24 and 26 December, to run from 23 to 26 December, and the next period of contact to run from 13 to 16 January. Henceforward until the matter next goes before the court, the contact will take place on a fortnightly basis.
- 25 The father is to file a statement by 26 January which must address his attitude towards the court’s findings of fact, the course that he has been on and the learning that he has gained from it, and his attitude towards the mother and his behaviour to her. I am not limiting it to that, and he can extend the statement if he wishes. He may well wish to report on the contact which he will have had in December and January.
- 26 The CAFCASS report, therefore, will need to be put back in its timing so that the reporter has the benefit of being able to speak to the Father after he has filed his statement and the hearing that is currently listed for 31 January is to be relisted for half a day before HHJ Davis in March 2024 in accordance with availability in the court diary and counsel’s commitments.