

THE HIGH COURT

FAMILY LAW

[2023] IEHC 772

RECORD NO. 2020 94 M

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996 AS AMENDED

BY THE FAMILY LAW ACT 2019

BETWEEN/

K.P.

APPLICANT

AND

L.P.

RESPONDENT

JUDGMENT of Mr. Justice Jordan delivered on the 26th day of June 2023.

1. This is a redacted and anonymised version of the judgment and it may therefore lack some context and detail which is present in the full judgment provided to the parties.
2. This application comes before the Court by way of a notice of motion issued by the applicant (the father) on 24 October 2022. The substance of this application relates to the breakdown of access between the applicant and his eldest child. The father blames the mother for this breakdown. The mother denies that she is in any way to blame for the acknowledged breakdown in access between the father and eldest child.
3. The relief sought at paragraph 1 of the motion was administrative and has been dealt with. The reliefs sought at paragraphs 2 to 6 inclusive are as follows; -

‘2. An order providing for compensatory access for the times that the children were not in the care of the applicant when scheduled whereby (a) A. to be in the care of the applicant for an additional 8 nights and 9 days to reflect the time lost from September 15-18 2022, October 13-16 2022 and October 21-23 2022; and (b) B. to be in the care of the applicant for an additional 2 nights and 3 days to reflect the time lost from September 16-18 2022. Accepting the unfortunate reality that achieving agreement with the respondent for any dates regarding such compensatory access dates, if granted by this Honourable Court, will simply not be facilitated by the respondent, an order is sought for compensatory access as set out below:

- i. A. to be in the care of the applicant from after school on Tuesday the 10th of January to school on Tuesday 17th of January 2023, allowing for 4 of the compensatory nights to be added as a block of 3 nights and 1 night either side of ordinary Week 2 access;
 - ii. A. to be in the care of the applicant from after school on Tuesday the 24th of January to school on Tuesday 31st of January 2023, allowing for the remaining 4 compensatory nights to be added as a block of 2 nights on either side of ordinary Week 4 access;
 - iii. B. to be in the care of the applicant from after school on Friday the 13th of January 2023 to school on Tuesday the 17th of January 2023, allowing for the 2 compensatory nights to be added as 2 nights on to ordinary Week 2 access.
3. An order requiring the respondent to facilitate, encourage and support the children having therapeutic support and further requiring that the respondent in no way hinders or obstructs the applicant bringing the children to such therapeutic support appointments when in his care and specifically prohibiting the respondent from writing to such professionals in order to prevent them providing support for the children.

4. An order directing the respondent to enrol in and attend a recognised and accredited “Parenting when Separated” course, without delay, and to abide by its recommendations.

5. Further, and only in the event that the respondent continues to frustrate contact between the applicant and the children, an order for the attachment of the respondent so that she may be brought before the Court to explain her breaches of the order of the Court of 27th July 2022; that the Court enquires as to whether she is in contempt of that order; that she be required to purge the contempt as may be found, and that she be committed to prison until she agrees to purges such contempt.

6. An order directing that the planning of summer holiday dates occur such that: The respondent has priority of dates in even years and the applicant has priority in odd years. Whichever party has priority in given year shall let the other party know their final dates by 28th February and the other party shall then respond with their dates by 28th March. In the event that the party with priority in a given year does not inform the other party of their dates by the 28th February, that party will forgo their priority that year and the other party’s dates will assume priority, whereby that party must provide their own chosen dates to the forgoing party.’ On 11 May 2023 at the close of the oral submissions the parties advised that the Court could make an order in the terms of paragraph 6 on consent and the Court did so.

4. The substantive hearing between the father and mother took place over 21 days in 2019 and 2020 and judgment was delivered by Faherty J on 15 December 2020.

5. The perfection of the Court order took some time. The father expresses the view that the delay in the perfection of the order was due to the non-cooperation of the mother. In response the mother says that the delay is not attributable especially to either side but arose due to a different interpretation. Ultimately it was determined by the trial judge that a further

hearing was required in relation to the issues arising concerning the Court order. This further hearing took place on 1 July 2022 and the order was then perfected on 27 July 2022.

6. There are four children of the marriage. The children are teenagers and younger [A, B, C and D].

7. The mother made an application for a decree of judicial separation in May 2018 and the father made a separate application in 2020 for a decree of divorce. The Court order was granted in the divorce proceedings.

8. The father says that the proceedings were extraordinarily extensive, expensive, stressful, and exhaustive. That much seems clear. The litigation was high conflict litigation between both sides. It is an unfortunate fact that time has not abated the conflict between both sides.

9. After the father issued the motion which is before the Court the mother brought an application pursuant to a motion issued on 18 November 2022. In that motion the mother sought; -

‘(a) An order seeking a report under s.32 of the Guardianship of Infants Act 1964.

(b) In the alternative, an order pursuant to s.47 of the Family Law Act, 1995 directing that Dr. ABL carry out a review and update her s.47 reports dated 7 November 2018 and 30 June 2019.

(c) And such further and other orders as this honourable Court shall seem just.

(d) An order providing for the costs of this application.’

10. The father opposed the mother’s application and expressed the view that there was an absence of any actual *bona fides* and/or rationale behind the mother’s request for such assessments to be done again. He submitted that the proper and only course of action in relation to these matters was that the Court order be enforced and followed and if there were issues then an assessment could be applied for on its own merits. In opposing the application for the

assessments, the father said that he was not against assessments but was against assessments being used as a strategic tool to deflect from breaches and to reduce the time of the children with their other parent. He said that he had an issue with assessments that were not necessary given how tough they can be on the children who have already been through separation/divorce *etc.*

11. It was necessary to hear the application in relation to an up-to-date Court ordered assessment and report in advance of hearing the father's application - as such report would be part of the evidence in respect of the father's application if it was directed by the Court.

12. The issue concerning the obtaining of an up-to-date report for the Court required a hearing on that issue and a further hearing in relation to the person to be appointed. The Court ultimately appointed LH to carry out an assessment in respect of the two oldest children and to prepare a s.32(1)(b) report for the Court. That order was made on 24 January 2023 and the report of LH was prepared and provided for the Court on or about 13 February 2023 following which a further hearing took place on 17 February 2023.

13. A further short hearing took place in relation to family therapy which both parties agreed to attend with MR and certain orders were made in that regard on 8 March 2023. The parties have since attended - and the Court understands are presently attending - family therapy sessions. Amongst other matters the Court then ordered that the parameters of the family therapy were a matter for the family therapist following a discussion with both parents and it was a matter for the family therapist to consider the nature of engagement and extent of engagement with the children.

14. Final written submissions were submitted by both parties on 19 April 2023.

15. Oral submissions were made by the parties to the Court on 11 May 2023.

16. Although represented by a full legal team at the original hearing the father represented himself in respect of both of the recent motions. The Court understands that he also represented

himself when the matter was re-entered before the trial judge for clarification of the Court order.

17. However, a new firm of solicitors did come on record for the father on 2 May 2023 and the father was represented by solicitor and counsel when the matter came back before the Court for oral submissions. The oral submissions were made by Senior Counsel for the father and by Senior Counsel for the mother.

18. The affidavits on both sides are long and heated with a considerable amount of emails and texts between the parties as exhibits.

19. In the course of the hearing the father was anxious to point out to the Court that the text messages and email messages should be carefully considered – and the Court has taken time to read and consider them. In truth, email and text communications in an application of this nature are usually of limited use. Paper does not refuse ink - in cyberspace or not - and the Court must be wary of email communications and texts generated between the parties and particularly so whilst a Court application is pending. The Court will return to this issue later.

20. The precipitating event for the father's application is A's failure to go to him for scheduled contact since mid-September of 2022. It appears that on Friday 17 September of 2022 A returned on the school bus to her mother's house from school. The mother says that she encouraged A. to go back to her father's house but she was unable to force her to go back as A. was then a teenager.

21. The father is in a new relationship. Whilst the children were with him for access on Saturday 27 August 2022 it appears that the father told the children that he was getting married to his new partner. It seems that his children and the children of his partner - along with his partner - were present at the time this news was relayed to all children. According to the mother the children of the marriage and indeed the children of the father's current partner - who are younger - did not react well or did not react as the father had expected or wanted. The father

denies that this is so. On this, the Court is satisfied that the news did not go down well with the children.

22. The mother says that the first she knew of the news was on Sunday 28 August 2022 when she received a text message from the father to say that he was getting married. The mother says that the children were upset when they returned home to her house on Sunday evening 28 August 2022. She says that some of the children were outwardly upset and one was totally silent. The mother says that she comforted and reassured the children. However, she says that the information regarding the father's intention to remarry has had a huge emotional impact on the children and on their perception of how their lives will be. She says that the father completely ignores or at best is casual regarding the emotional impact this significant event has and will have on the children. She says the children are anxious as they have no information in relation to the planned marriage. She says that she raised this issue with the father and asked him to address the issue with the children and to provide them with information in an age-appropriate manner. She says that his response was that she (the mother) was evidently upset about the news and he indicated that he hoped her upset would ease in time. The relevant correspondence in this regard is exhibited and it supports the mother's assertions.

23. Insofar as B. is concerned, the position is apparently that she left her father's care and arrived back to her mother's house on Friday 17 September 2022 and she too refused to go back to her father's house. The evidence is that contact with B. and her father is going okay since but A. refuses contact.

24. An incident involving the parents and A. occurred on 15 September 2022. According to the father the mother did not drop A's belongings and withheld A. on that date and texted him to say that A. was very upset. He says that this is of particular note in circumstances where texts throughout the days preceding between himself and A. were entirely normal chitchat and making arrangements for A's weekends in an entirely normal manner – thus making it obvious

that A. did intend coming to his house as normal and without the slightest reticence. These text messages are exhibited by the father and they do support what he has to say in this regard. He decided to call over to the mother's house and collect A. What happened when he called over to the house is a significant source of dispute between both sides. According to the mother he behaved in an angry way telling A. to come out here and shouting at the mother to go back inside. Meanwhile, according to the mother A. was saying '...you are not listening Daddy, I am a teenager and nobody has asked me and I don't want to go to your house'. According to the mother, the father while shouting at her and ordering her back inside started pointing at her and began shouting that she had 'started this, you initiated legal proceedings against me, there is a Court order that says...'. The mother says that she cut off the father and told A. that she could go back inside which she did. She says that the father then put his thumb to his ear and his little finger to his mouth with his other hand and shouted 'you know what's going to happen now, you know the phone call I am going to make...'. The mother says that she closed and locked the door. She says that A. was hysterical for hours afterwards asking what the father was going to do and who is he going to call. She says that A. was afraid that her mother was going to be in trouble. She says that A's anxiety and upset was huge. She says that she never told A. that she did not have to go. The mother says that the father then sent a text message wanting A. and the mother to meet in his front garden with a table and chairs ready to discuss why the two eldest children were refusing to go. The mother says she did not do this based on the father's angry reaction to A. and to her in the front garden.

25. The father vehemently disputes the mother's version of events in relation to the incident. He says that upon arrival he found that the mother had strategically parked her car such that it was across the entranceway to the house in such a way that one could not easily exit the front yard of the house, resulting in A. having no real way of leaving with him, save for climbing over the front garden wall. He says that A. was in the front garden and was visibly

upset by the situation that had been created by the mother. He says that the mother stood behind A. monitoring what she was saying and when he tried to explain to A, over the garden wall, that an arrangement was in place and that she was due to be with him and her siblings that weekend, the mother interjected, and was saying over him 'A, you don't have to go' and 'A, come back inside' or words to that effect. He says that he asked her to leave himself and A. to have a chat and the mother abjectly refused, instead continuing to monitor what A. was saying to him and repeating again to A. that she did not have to go and telling her to come back into the house.

26. Having considered the evidence, including text messages exhibited, the Court is satisfied that the mother's version of events is more accurate than that presented by the father. The Court is satisfied that he was angry and that his behaviour was wholly inappropriate on the occasion in question – and in particular when he simply refused to listen to and pay heed to what A. was saying to him at a time when the child was in obvious distress.

27. The Court cannot help but observe a curious feature of the mindset of the father insofar as his dealings with the mother are concerned. It is clear that the matrimonial proceedings resulting in the decree of divorce were highly acrimonious proceedings. Pursuant to the Court order the children were to be in the custody of both parents in a shared parenting style Court ordered arrangement. This does require a degree of co-operation between both parents. However, both sides must respect the existence of the decree of divorce and the right of the other to independence, space, and autonomy. It does appear to the Court that the father has some difficulty comprehending this consequence of the decree of divorce and some difficulty in accepting the mother's desire to have only the minimum necessary involvement with him.

28. The invitation to his front garden referred to above is not the only example of a lack of comprehension and consideration for the mother's position. Amongst a long list of criticisms

of the mother contained in his affidavit sworn on 23 November 2022 at para. 17, there are included the following complaints about the mother; -

- That she refuses to meet me to discuss the children.
- That she has refused invitations to attend children's parties in his home when they are in his care.
- That she ignored his suggestion that they sit with the children at their communion and confirmation (at different sides of the children).
- That she has refused many invitations to meet with his partner.
- That she refuses to even acknowledge my partner by name and has never done so in any forum despite the reality that our children have a close, loving, fun relationship with her and her children.

29. However, the mother has her right to independence and autonomy and choice on these issues and the fact that the father considers it appropriate to criticise her for making her own independent choices on these issues suggests a belief on his part that he is in some way entitled to dictate or control or dominate her life if he can connect his dictates in some way to the co-parenting regime of the four children. The fact of the matter is that the father is divorced from the mother and the above criticisms by him of her are unfair.

30. In his affidavits the father has made a significant issue of the failure of the mother to drop A's stuff – and in particular her hockey gear – to his house when contact is scheduled. School books also feature. There are two points in this regard. The first is that it makes things difficult for A. in attending contact because she does not have what she needs. The second, according to the father, is that it is sending a message to A. that the mother really does not want her to go to the father's house.

31. The mother has fairly said in evidence that she lets her teenage child pack her own stuff. Insofar as the hockey gear is concerned the position appears to be that the mother

concedes that it might not always be dropped at the father's house – although it does appear that sometimes at least some of the stuff is left in the school. In any event, the mother makes the point that if the hockey gear is such a big problem then it could easily be resolved by having a second set of gear at the father's house – at no great expense. No adequate answer has been given by the father as to why this could not be done. As for the school books the mother in effect says that A. has everything that she needs on her iPad and just has to bring it.

32. When this matter originally came before the Court during the Michaelmas Term of 2022 the Court admonished the mother and explained to her in forthright terms the consequences of any finding by this Court that she had failed to comply with the Court order. Doing so in some instances succeeds in improving the situation surrounding contact when it is alleged that the primary carer is obstructing the contact regime or not doing as much as can be done to give it effect. The Court is satisfied that the mother did take the direction from the Court seriously. The Court is also satisfied that the mother was under very significant pressure at that time – and has been since – by reason of the situation that exists concerning A's failure to attend at her father's house in accordance with the Court Order.

33. What is apparent to the Court, having regard to all of the evidence and submissions, is that the father's assertion that the mother is responsible for the current state of affairs is wrong. This is not a case of parental alienation. In seeking to advance such a case and in seeking to portray the mother as the person who has persuaded A. to stop going to her father's house and to refuse to have contact with him the father seeks to ignore the fact that contact worked reasonably well – with many bumps in the road granted – until the children were told that he was going to remarry in August of last year. Notwithstanding the fact that the problems manifested themselves after that date the father has studiously avoided this elephant in the room in terms of it being an explanation for his eldest child's behaviour. His studious avoidance of the impact of that news on his children is telling as;

(a) It signals the fact that he is alert to the significant impact that news has had on his relationship with his eldest child (and leaving to one side the impact on the other children for the moment).

(b) It serves also to explain his objection to the Court appointing an assessor to prepare a voice of the child report.

34. Easter Monday 2022. The mother was to drop the children to the father at 11am on Easter Monday although they were apparently with her for the preceding ten days. The father had wanted Easter Sunday to be shared but the mother would not agree to this. Despite the agreement that the children would be dropped at 11am on Easter Monday, the mother did not drop them and did not respond to communications from the father inquiring about where they were. She dropped the children at the gate of his house at 6pm although he had made plans with family and friends for earlier in the day. The mother's failure in this regard has not been explained or justified by her. It does appear that there was an issue at Easter time in 2021. The mother says that the father is disingenuous in stating that he offered to share Easter Sunday of 2021 and she says that he offered this arrangement only if the first weekend of the holidays was not included in the holiday. The mother says that she did not see the children on Easter Sunday of 2021 and that the father totally disregarded her and the children's feelings in relation to this – and kept the children for a nine night block excluding the sleeping hours of one night at her house.

35. While the Court order was not perfected until 27 July 2022 it is nonetheless the position that the mother did not behave properly or reasonably in failing to drop the children to the father at 11 am on Easter Monday as agreed. It appears to the Court that this failure is part of an ongoing inter personal conflict between both parents.

36. The father has stressed the importance of respect for the Court order by the mother - and the importance of the Court enforcing the Court order. He says that the mother needs to

accept that the Court has made a ruling on the matter of access and that she has to abide by it and cannot ignore the Court order as and when she chooses. He says that she does not have sole sovereignty over the children's wellbeing and care. He points out that each of the children has two equal parents and if a child is upset this cannot be a justifiable reason for breaching the Court order and confusing that child – and the other children – as to access arrangements. He points out that if that was to be the case there would be chaos at every turn and he would also have to keep the children in his care on each and every occasion that they do not want to go to the mother's home.

37. The father must however satisfy the Court that it is the mother who is responsible for the problem which exists in relation to contact. The core problem is the refusal of A. to have contact with her father – save through text messages. The father is not prepared to accept that this situation may have come about by reason of matters entirely outside the control of the mother. Having heard all of the evidence this Court is not persuaded that the mother is responsible for this situation. As a matter of probability there are a whole host of contributing factors – such as ; -

(a) A. is deeply upset about her father remarrying and about the life change which this means for her.

(b) A. was a teenager at the time when she first refused to go to her father's house. A. is at a developmental age where she is in a position to assert her own views and preferences – and she has decided to do so.

(c) The separation and the divorce and the contact arrangements involving moving from one parent's home to another has impacted on the children – including A. This is something that hopefully will be addressed in family therapy.

(d) There is deep rooted anger, bitterness and animosity between both parents and this is a hindrance to relations between them both and is an obstacle to the smooth running

of the Court ordered contact regime. The poor relations between the father and mother are manifestly obvious from dealing with this application and from reading the tit-for-tat criticisms, allegations and denials set out in vivid detail in their respective affidavits. It is clear that much healing is needed on both sides if the children's best interests are to be promoted by the father and mother. The Court believes that they should each succeed in doing more to support contact if they both engage wholeheartedly with family therapy.

38. No Court order can force two individuals to like one another but a business-like approach at the very least is necessary if contact arrangements are to have a chance of working.

39. Neither parent can be absolved from responsibility in terms of the current breakdown of the contact arrangements in circumstances where the animosity between them both is a contributing factor. However, the primary cause of the current impasse is not any conduct of the mother.

40. At paras. 21, 22 and 23 of the affidavit which he swore on 23 November 2022 the father returns to the core issue at hand and makes the point that the issue is about respect for the Court order and enforcement of the Court order. At para. 22 he states; -

‘There are ... children who all want and need the consistency and certainty in their lives that was intended by the High Court order of July 2022. If it is the case that such orders can be varied by a parent at that parent's whim, on her own authority, then what is the value of a Court order at all? If a parent breaching a Court order considers that there is no consequence for doing so or ends up being advantaged by doing so, then what incentive does any parent have to follow any Court order? I have been respectful of the Court order even when it is difficult to do so in the face of my children sobbing and begging to stay with me and not wanting to go to their mother's home. Such is the unfortunate difficulty of life for children of divorced parents. And such is a key role of

a separated/divorced parent – to help children go to their other parent’s home, even if the child doesn’t want to go on a particular day. I do not believe that A. does not want to come to my home but, even if that was the case, such can be expected to occur with any child on occasion, either entirely of their own accord as they grow up and experience different feelings and attitudes or in the event they are being influenced, consciously or subconsciously, by the other parent. I absolutely believe that A. is being influenced in such a way. At best, her mother is offering the option (if not outright telling and pressuring A.) of staying in her house on the days when A. should be with me. Any good person knows that to do this – to give a child such a difficult decision to make in this way – is inherently damaging and cruel to the child. The reality is that, on occasion, a child will not want to go to their other parent’s home. If a parent lets or indeed encourages the child to stay, then the child will be constantly confused, living with conflicting and compromised allegiances, guilt and worry about what they should do every other transition day. That is exactly what I believe is now happening to A. The reality is that children need their parents’ help and guidance through the reality of their particular life circumstances (i.e., Court orders in this instance), not pressure and conflict, even if the children protests in the moment because in the short, medium and long run, it is better for the children and better for everyone’.

41. The strength and persuasiveness of this well-articulated argument depends upon this Court being satisfied that primary responsibility for A. not going to her father’s home rests with the mother. The Court does not accept this to be so. There are other good and rational reasons why the change has come about. The Court has dealt with these above. Furthermore, the situation is that the other children are having contact – with some difficulties in relation to B. granted. The situation is also that contact was working before the father announced to the

children that he was getting remarried – although it is true that there were some difficulties with contact.

42. After the Court hearing of 14 December 2022 the Court does accept that the mother did try to persuade A. to go to her father’s house but to no avail. The Court accepts also that she encouraged calls, voice messages and messaging from the father but was met with refusal. If the father was prepared to make sincere efforts to restore contact with A. why did he not send her texts of encouragement as the mother suggested - and why his failures in relation to school pick-ups particularly at the early stages after contact broke down. Later, it is true that A. did have a preference for making her own way as happened on 16 December 2022 – and the Court will return to this.

43. The mother has described the distress of A. and has sworn in her affidavit of 13 January 2023 that A. is anxious and stressed all of the time and is becoming increasingly so and that this is having an adverse impact on all of the children. A’s distress was worryingly apparent when the mother was dropping the children to the father’s house on one occasion at Christmas. The Court accepts the mother’s evidence in this regard. It is also apparent that the mother understandably played down the high level of distress rather than making a big thing of it. Unfortunately, the father has sought to build the mother’s handling of the situation into his narrative about the mother failing to deal with welfare issues appropriately and failing to keep him informed.

44. The mother says that she is extremely worried that B. will refuse to go to the father’s home in the near future.

45. The father chooses to recast the concerns which the mother has expressed in respect of B. - and use it in his narrative. The Court accepts that the mother has a genuine concern. It is an obvious concern. The father’s response is to the effect; – ‘ There you are. That proves what

I am saying. The mother having got A. to stop attending contact with me is now working on B. to do likewise’.

46. The Court is not persuaded that this latter narrative is correct. It is also a convenient narrative for the father. It will allow him to argue at some future date, if need be ; - ‘I told you so’. And it allows him to ignore the other rational and reasonable explanations for the behaviour of A. when those very same reasons could impact upon his contact with B. when she is a little older and in a position to assert herself – especially if family therapy is caused or allowed to fail.

47. The mother describes some recent incidents involving access in December of 2022 in the affidavit which she swore on 13 January 2023.

48. The mother says that on Friday 16 December 2022 the father arrived unexpectedly at the school to collect A. and bring her back to his house. In or around 3.47pm on 16 December 2022 A. called the mother after school P.E. A. was extremely upset and crying. She said ‘he’s here’ – ‘he’s following me’ and she did not know what to do. The mother says A. became hysterical. The mother initially thought A. was in trouble and that a stranger was following her. She says that A. repeatedly called her mother as her WhatsApp call kept cutting off. A. asked her mother to promise to collect her. At 4.02 pm, A. called her mother from the school office and asked her mother to collect her. A. had told the school secretary her phone had died – which it had not. The mother has exhibited a log of the mobile phone communications between herself and A. on the occasion in question and they support her averments.

49. The mother says that she spoke to the school secretary and explained what had just happened and that A. wanted to be collected by her. She asked A. why she was so upset to which A. replied that she did not want to go to her father’s home. The mother says that the father had arrived at the school and saw A. coming out of P.E. with her friend. He waved at A. and when she did not wave back he proceeded to follow her and continued to drive behind her

as she walked away. The mother says that he followed A. up to the top carpark and saw her run into the school reception.

50. The Court accepts as accurate the substance of the mother's assertions in relation to the description and chronology of the incidents which occurred at the school on Friday 16 December 2022.

51. While he was present at the school the father sent a text message at 16.11 pm on 16 December 2022 to the mother which was, as the mother says, deliberately misleading. The text read '....., I am at the school to collect A. and cannot see her. Do you know where she is?' The mother replied 'The school contacted me to collect A, she did not want to leave with you. I will contact you further on this'.

52. The father sent a second text message at 16.11 pm immediately after the first one (and just before the mother's reply) (or perhaps overlapping) – in which he said '....., I have (been) made aware that you collected A. from school today.'

53. The Court is satisfied that the text messages sent by the father at 16.11 pm on 16/12/2022 were an exercise in evidence building to support his narrative. They are a good example of why text messages and indeed emails can, depending on the context, be unreliable evidence of what they recite - but yet prove useful evidence of credibility or lack of credibility (the latter being the case in point here).

54. According to the mother, A. was actually coming around in terms of going to her father's house at the time the incident occurred on 16 December 2022. A. had packed a bag for the first time in weeks and was ready to go to her father's home but when he started to follow her at the school in his car she became anxious and upset. The mother says and the Court accepts that A. wanted to travel to her father's home independently and without pressure – she is a teenager and wanted to travel on the bus with her friends.

55. On Christmas Eve and on St Stephen's Day A. got into her mother's car with her siblings, kissed her mother goodbye on the footpath outside her father's house and then, according to her mother, froze beside her mother's car crying hysterically and saying she could not go in. She says that the other children were very upset and that B. did not want to go into her father's house - but that she forced the children but could not force the eldest to go in. She says that A. was completely distraught on Christmas Eve.

56. Having reviewed the mother's communications with the father the Court can find no criticisms of substance with them. On the other hand, the father's communications bear at times the hallmarks of 'evidence building' and elsewhere appear wordy and domineering.

57. At para. 14 of her affidavit sworn on 13 January 2023 the mother states; -

'I say and believe that unfortunately the applicant is incapable of self-reflection and refuses to take any responsibility or acceptance that his behaviour is a significant contributor to why A. refuses to go to his home. I say that the father is so focussed on undermining your deponent, blaming your deponent, he does not see the impacts his behaviour is having on the children and in particular on the eldest.'

58. This averment in the mother's affidavit is a fair characterization of the father's mindset and behaviour. Regrettably, a picture emerges from the evidence which is before the Court - and from the submissions written and oral - and bearing in mind that the Court has had the benefit of hearing the father present his case and give evidence - of a person who has convinced himself that he is absolutely right and in the right in relation to the core issues in dispute - although he is not.

59. Of note is para. 9 of the father's 'position paper' dated 22 February 2023 where he states; -

'For the entirety of the four plus years from the separation of the parties in 2018 to September 2022, there was no mention of any issue with regard to the children going

between their two homes. As recently as June 2022, the mother was reluctantly before the Court regarding the perfection of the order and nothing was mentioned by her then or indeed in her 227 page affidavit. The fact is that there was no issue in relation to the eldest child, or any of the children, moving between their homes before the mother precipitated same in September 2022.'

60. The mother of course says that she precipitated nothing and that she was not reluctantly before the Court in relation to the perfection of the Court order. What is notable however about the statement of the father is his agreement that there was no issue in relation to A. or any of the children moving between their homes before September of 2022. Of note also is that the father at para. 10 and 11 of the same position paper endeavours to argue that it was the perfection of the Court order in late July 2022 and the fact of the mother being informed that he had become engaged to his partner that were the catalyst for the profound change in the mother's behaviour that has resulted in her successfully engendering a breakdown of the access regime. The Court is satisfied that this argument is an effort by the father to spin the events to suit his narrative. His argument is not persuasive.

61. Section 25 of the Guardianship of Infants Act, 1964 as inserted by s.11 of the Children Act 1997 provides as follows:

'Wishes of child.

25. - In any proceedings to which section 3 applies, the court shall, as it thinks appropriate and practicable having regard to the age and understanding of the child, take into account the child's wishes in the matter.'

62. Article 12 of the UN Convention on the Rights of the Child 1989 provides as follows -
'(1) State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'

63. The statutory obligation obliging the Court to take into account the wishes of the child has been elevated to a constitutional duty as a result of the referendum which took place on the 10th of November 2012. Article 42A.4.1 and Article 42A.4.2 provide: -

'1. Provision shall be made by law that in the resolution of all proceedings –

(i) Brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or

(ii) concerning the adoption, guardianship or custody of, or access to, any child, the best interest of the child shall be the paramount consideration.

2. Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.'

64. The Court did consider it appropriate to obtain a s.32(1)(b) report in relation to the two eldest children. The Court appointed an independent person to interview the parents and children and to prepare a report. The assessor is a qualified expert under Statutory Instrument No. 587 of 2018. The assessor was appointed to prepare what is commonly referred to as a voice of the child report.

65. The assessor was selected and appointed by the Court in circumstances where there was great difficulty in finding an assessor to prepare a report in a timely fashion, in circumstances where the father impressed on the Court throughout the urgency of the matter and in

circumstances where an assessor could not be agreed between the parties. In the course of cross-examination the assessor acknowledged that she had not prepared a s.32(1)(b) report for the High Court previously although she had prepared one such report in Circuit Court proceedings involving a separation. It appears she had also prepared a s.32 report for the District Court and several s.20 reports.

66. Section 20 reports are carried out in the context of the Child Care Act of 1991 (as amended) being welfare reports in the context of children involved in the area of public law childcare. In her report at para. 1 the assessor sets out her qualifications and experience and detailed her work as a guardian *ad litem*. The Court is entirely satisfied that the assessor had the experience, qualifications, competence and independence to prepare the voice of the child report. It is also fully satisfied that she carried out the task and prepared the report in a competent, expeditious and independent fashion.

67. The s.32(1)(b) assessment report dated 13 February 2023 speaks for itself and will not be repeated verbatim in this judgment.

68. The conclusion of the assessor's report insofar as it is relevant is as follows ; -

‘That A. aged demonstrated a level of maturity in keeping with a child of her development stage. The assessor met A. on her own, on two occasions in a private meeting room in a hotel. The assessor elicited information...by talking directly ... about the eldest child's family circumstances and her understanding of her parents' separation, divorce and the custody agreement in place. There were also three pieces of direct work done with A. to elicit her views....The views expressed in A's direct work are consistent with what she told the assessor. The assessor observed how A. was a worried, fearful, and tearful young lady, but she was articulate when she needed to be and came across as clear and well capable of expressing her views. The assessor is satisfied that A. presents as a teenager who has her own perspective on how her parents'

divorce has affected her and she is now using her age to protect herself and feel secure. The assessor has no reason to doubt that these are not views of A. and she has based her views on her experience of her life since her parents divorced in 2020. A stated she does not want any face-to-face contact with her father at this current time – she remained consistent in this view throughout the assessment. She has stated she will maintain contact with her father *via* text message.

That B. aged demonstrated a level of maturity in keeping with a child of her development stage. The assessor met B. on her own on two occasions in a private meeting room in a hotel. The assessor elicited information...by talking directly to B ... about her family circumstances and her understanding of her parents' separation, divorce and the custody agreement in place. There were also three pieces of direct work done with B. to elicit her views...the views expressed in B's direct work are consistent with what she told the assessor. The assessor observed how B. is a bright intelligent young child who is well capable of expressing her views. B. came across as nervous initially but she managed to engage well with the assessor and was clear and consistent throughout the assessment. The assessor is satisfied that B has her own perspective on how her parents' divorce has affected her and she is now using her age to protect herself and feel secure. The assessor has no reason to doubt that these are not the views of B. and she based her views on her experience of her life since her parents divorced in 2020. B. has stated she wants reduced contact with her father – and she stated she would like to spend one night per week with her dad but only if this means in his house and she is not willing to accompany him to his partner's house.

.... In light of the wishes and feelings expressed by A. and B, if it is any assistance to the Court the assessor would suggest the following;

It is accepted that when parents divorce it can be harmful for children. When parents do not work together, there is an increased risk of harm to children. Parents can also get stuck in their own perspective. Both A. and B. have demonstrated that they have their own perspective, and it would be in their best interest if the Court took on board their views on their family circumstances. If A. and B. felt listened to, they are more likely to be able to come back from their current position in the future. The assessor would have a professional view that family therapy may assist the parents to work better together in the interests of the wellbeing of all of their children.’

69. This Court is satisfied that the views of both children as expressed in the assessor’s report are their authentic views. The father has sought to persuade the Court that the views so expressed are as a result of the mother’s influence and he has sought to argue that a more experienced assessor – and one with experience of parental alienation in particular – would have been in a position to conclude that the mother was influencing what the children were saying and that the views expressed by them both were not their independent authentic views.

70. The father has not persuaded the Court that there has been any influence by the mother on the views of the children. The Court is satisfied that the mother is trying in difficult circumstances to see to it that the Court ordered regime concerning contact operates. If the mother did not bear such animosity towards the father and if that animosity was not reciprocated in full by the father, then it is likely if not inevitable that many of the problems which have occurred and continue in relation to contact might not occur or would be easier to deal with. This sorry state of affairs is part of the lives of the children and cannot but be a hindrance to contact and a contributory factor to the current difficulties. But what is certain as far as the Court is concerned is that the main precipitant for A’s current mindset is what is obviously another lifechanging event for A. – that her father is getting married and she will

now have a stepmother and stepsiblings. And as the eldest probably perceives it - all of this just happened and she was given no voice or choice in the matter – and she was not listened to.

71. It would be wrong of the Court to ignore the views of the children – and particularly to ignore the views of A. in circumstances where the Court is satisfied that she has made a decision and wants her decision respected.

72. B. has also expressed her view in clear terms. It might be that family therapy will bring about an amelioration of the difficulties which exist in that regard. This remains to be seen.

73. The concept of parental alienation and the use of that phrase in high conflict family law litigation is a vexed issue. In the mother’s written submissions reference is made to a paper authored by two of many respected international experts in the area. The paper is entitled ‘Parental Alienation: In search of common ground for a more differentiated theory’ and the authors are Janet R. Johnston and Matthew J. Sullivan – (2020) Family Court Review Volume 58 No. 2 270-292.

74. The following extracts from the paper are worth quoting; -

The concept of parental alienation (PA) has expanded in popular usage at the same time that it remains mired in controversy about its scientific integrity and its use as a legal strategy in response to an increasing range of issues in family courts. In this paper we describe how competing advocacy movements (for mothers, fathers and children) in the family justice field have, over time, helped shape the shifting definitions and widening focal concerns of PA- from children who make false allegations of abuse, to those who resist or refuse contact with a parent, to parent relocation, and to the emotional abuse wrecked upon children who are victims of a manipulative parent. In search of common ground for a sound approach to using PA concepts, we argue that the Single Factor model of PA (asserting that an alienating preferred parent is primarily the source of the problem) is inadequate, overly simplistic and misleading. A

Single Factor model rests on the fallacy that abuse or poor parenting on the part of either parent have been, or are able to be, ruled out as sufficient reason for the child's rejecting stance. By contrast, multi-factor models of PA make more useful, valid, differentiated clinical predictions of children's rejection of a parent, informed by basic and applied research on children and families. However, multi-factor models are complex and difficult to argue in court and to use in assessment and interventions. Suggestions are made for developing intervention-focused prediction models that reduce the number of factors involved and are applicable across different types of interventions.'

Addressing this multi-factor approach, the authors (at p. 279) state:

'Predisposing, precipitating and perpetuating factors to children's negative stance toward one parent derive from normal developmental attachment issues, adjustment difficulties during divorce transition and step-family formation, prolonged absence of the rejected parents, deficit parenting by either or both parents, untenable loyalty conflict in response to co-parental conflict, and sibling or third party influences such as grandparents or even therapists. More peripheral though potent factors that exert indirect effects or have interactive effects include professional mismanagement, protracted litigation, history of marital conflict, a humiliating separation, and parent personality disorders.'

Reference is also made to the comprehensive "Review of research and case law on parental alienation", by Dr. Doughty J., Maxwell N. and Slater T., (2018) Cardiff University (commissioned by Cafcass Cymru). In the context of the present case where a section 32(1)(b) report was directed by the Court, reference is made to p. 10 of this Review; -

'Fortin, Hunt and Scanlan's England and Wales retrospective study of grown-up children's views of contact (2012) concludes that there was no evidence of children resisting contact entirely based on pressure from their mothers, but rather for the child's own reasoning often attributing blame to the non-resident parent. Such attributions included a lack of parental interest, rejection by a new partner as well as practical factors such as distance and the non-resident parent's work commitments. Hence, where resident parent manipulation was reported, Fortin et al assert that this was only in rare cases and primarily from young children. These findings suggest that before a court takes the draconian step of overriding a child's wishes, the underlying cause of resistance should be very carefully explored to ensure that important information about the child's relationship with the non-resident parent was not overlooked.'

75. In the paper by Janet R. Johnston and Matthew J. Sullivan, the authors point out that some critical reviewers have urged professionals to avoid the use of parental alienation terms altogether and to instead employ behavioural descriptions of the problem by referring to 'parent-child contact problems', 'strained parental-child relationships' and to children who 'reject a parent' or 'resist/refuse visitation'. The authors say that this advice appears to have been heeded only in part and make the point that changing nomenclature does not solve the basic problem. The authors say that advocates in Court tend to ignore more carefully crafted, differentiated use of PA concepts in order to build their case.

76. The authors say that; -

'...It is particularly disconcerting and discouraging to encounter the extent of 'scholar advocacy bias', comingling with valid reports of the research in what are supposedly critical reviews of PA studies and clinical theorising from both sides of the polarised divide. Meanwhile popular conceptions of PA are widely disseminated by way of

infomercials and personal narratives in the public domain through books, magazines and social media. Together, they have spawned an unregulated cottage industry of programmes and services by persons with varying credentials and potential conflicts of interest (Warshak, 2020).'

77. The authors do also caution overreliance on the voice of the child and make the point that *'carried to the extreme, however, this empowerment of children is a hallmark of over permissiveness. Entitling children to wield authority and power beyond their years, regardless of the legitimate needs of others, further weakens co-parental executive functioning, and undermines integrity of the hierarchy in parent child relationships, affording a less safe and secure foundation for the child's psychological development'* (Minuchin, 1974).

78. The authors go on to state; -

'In particular, co-parenting conflict can create a power vacuum that the child's voice can prematurely fill. In custody – disputing cases, this can precipitate sibling alliances and exacerbate children's alliance with one parent against the other. In preparation for court hearings and similar threatening contexts, preferred parents and children tend to gang up on their adversary by making similar or identical declarations about the target parent, while protesting that the children are 'independent thinkers'. In these situations, intense debate ensues between advocates for each of the family members – fathers, mothers and children – as to whose voice is speaking and whose preferences are being expressed – the preferred parent's, or the child's?'

79. In another of the many cautionary observations in the paper the authors state;

'The impact of scholar advocacy, and the ease and impact of group affiliation among like-thinking others, has inevitably reinforced collective cognitive biases and empowered professional advocacy groups, regardless of the merits of their goals and ideas. The proliferation of advocacy groups, some voicing more extreme views and

engaging in uncivil professional interactions about PA (on both sides of the polarised divide) has helped to create a more difficult, adversarial context for co-parents and for professionals in this already challenging area of practice.

Adding to the problem is democratization of information on the internet (easy access to unvetted information from unknown, often biased and irresponsible sources) and the structure of search algorithms (which operate to provide selective, biased information based on one's search history). These changes have made it difficult for parents to gain access to evidence-informed or evidence-based social science information about the highly complex family dynamics that contribute to PA. This has contributed to the polarisation evident in co-parents and the professional context that surrounds them. Frustrated and angry, parents turn to the internet when they feel the law has failed them. Basically, using an internet search, anyone can find (or have sent to them unsolicited by virtue of their search history) validation for any view they already hold by an internet search. Once that search is done, the internet floodgates to information from and ways to affiliate across the globe with scholars, individuals and advocacy groups that promote and reinforce that view.'

80. In the comprehensive and informative paper the authors deal with the two general theories or models that have evolved over time and which attempt to explain how or why parental alienation occurs. Firstly there is the dominant single factor model and secondly there are the multi-factor models. In the paper the authors deal with the features, strengths and problems with each formulation and deal also with the negative consequences of unresolved controversies in the area. These include the credibility of the family justice system itself - which they point out is at stake when professionals cannot maintain the semblance of fair and rational discourse. Unresolved disagreements between justice system practitioners are an invitation to exploitation by litigious advocates (or perhaps put more simply - by the litigious) and 'most

tragically the impact of the dysfunctional dynamics at the professional level hurts family and children.’ The authors point out that the worry is that PA seems to be becoming an increasingly influential all purpose or generic legal strategy in family litigation.

81. The paper and the views expressed in it must be viewed against a backdrop that this Court was not presented with evidence from expert practitioners in the field of parental alienation.

82. The Court has however touched on the concept of parental alienation because it does lie, or did lie, at the heart of the arguments presented by the father. Put another way, perhaps oversimplified, the father says the current situation is all the mother’s fault because of her malign influence on the eldest child (and perhaps on both of the two eldest children).

83. All things considered the father has failed to prove that the current situation is the fault of the mother. The evidence does not prove or suggest Parental Alienation - and the evidence in fact shows other good reasons for the contact difficulties. Furthermore, the Court is satisfied that the mother is trying to see to it that the children have a good relationship - and have good contact in accordance with the Court order - with their father.

84. The Court has considered the cases referred to in the legal submissions and the Court has also considered the booklet of authorities and additional sources provided.

85. There is much in the authorities in relation to high conflict access disputes with a frequent theme being that the issues involve arguments concerning human relations and are only marginally to do with the law. Within many of the Court decisions is the challenge of preventing unresolved areas of personal conflict continuing indefinitely and thereby impacting adversely on the welfare of the children – with a parallel common theme being the difficulty for Courts faced with implacable contact disputes. The cases, and the English cases in particular, deal with varied implacable hostility situations with one possible takeaway being the view that the process of family therapy is in many situations more desirable than endless

litigation and/or that a therapeutic process generally has a greater prospect of success than the adversarial process.

86. In the final analysis, all of these difficult cases involving high conflict contact disputes are fact specific. No two cases are alike.

87. The Court must, in each case, determine the factual situation as a matter of probability in order to address its mind to the application before it.

88. The Court is referred to s.31 of the Guardianship of Infants Act of 1964 (as amended) which sets out in s.31(2) non-exhaustive factors and circumstances which the Court must take into account in determining for the purposes of the Act what is in the best interests of a child – and s.31(1) points out that the Court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family.

89. The Court has considered all of the relevant circumstances. There is no doubt but that it is important that the children of the applicant and the respondent should have the benefit of having a meaningful relationship with each of their parents and with the other relatives and persons involved in their lives on both sides. In this instance however the contact between the applicant and A. - though desirable and to be nurtured – should not be forced in light of her views. In light of her views – given the circumstances which exist and which the Court has identified as lying at the root of her current reluctance/refusal - both parents do need to engage wholeheartedly in family therapy with a view to establishing better lines of communication and tolerance and in order to avail of the therapeutic process available in such therapy to advance a healing or improvement of the relationship between A. and B. and their father.

90. It is true that family therapy has probably been seen as an intervention better suited to the prevention of the escalation of problems within intact families than an intervention with families where the process of separation and divorce have taken place. Persistent conflict is

often considered a contraindicator for family therapy - but it does seem to be that the form of intervention has developed and now has more to offer in cases such as this.

91. The process of Family Therapy is already underway in this case. Where the Court orders or recommends family therapy it is desirable that the goal of intervention is identified by the Court. Family therapy in order to have a prospect of success requires a degree of collaboration towards the achievement of the goal as opposed to attending for a box ticking exercise or merely sitting out the process.

92. In terms of the goals which this judgment seeks to identify concerning family therapy the following goals are important – although non-exhaustive as the family therapist is better placed to identify the areas requiring attention – and likely has already. Amongst the goals or objectives should be: -

- (a) Work to improve and to achieve concise and respectful communication between the father and the mother concerning the children.
- (b) Work to facilitate improved contact between A. and her father.
- (c) Work to address any difficulties concerning contact between B, C, and D. with their father.

Conclusion

93. The applicant has not proved that the fault for the breakdown of contact between himself and A. (and the contact difficulties with B.) have been caused by the respondent.

94. The applicant has failed to prove that parental alienation exists. In fact, the evidence does not even suggest parental alienation.

95. The Court is satisfied that the probable explanation for the behaviour of A. (and B.) is to be found elsewhere. In particular, the applicant's engagement and marriage intentions have likely had a very significant impact on his children – and in particular on A.

96. The personal and interpersonal problems and difficulties between the applicant and the respondent are a contributing factor to the difficulties with contact. Both the applicant and the respondent need to engage in family therapy with a view to resolving or coping better with the personal and interpersonal problems and difficulties which exist between them both following the breakdown of their marriage and the subsequent divorce.

97. This Court refuses to grant any of the orders sought by the applicant at paras. (2), (3),(4),and (5) of his motion. The order sought at paragraph (6) is already made or is now made on consent of the parties.

98. The Court will direct that the family therapy continue. The Court expects the applicant and the respondent to engage constructively with the family therapist. The Court has already indicated that the family therapy is to be separate and apart from these Court proceedings save that the Court is entitled to know that the parties are attending family therapy and is entitled to know whether or not progress is being made. If there is non-attendance or a lack of progress then the Court may give further directions.

99. The Court will not make a decision in relation to the costs of either motion while Family Therapy is underway. The Court expects progress to be made.

100. The Court will list this matter for mention on Wednesday 28 June 2023 at 10.30 am or on such proximate date as is agreed by the parties and the Court Registrar. The Court intends to adjourn the matter further to allow Family Therapy proceed.