UT Neutral Citation Number: [2023] EWFC 333

IN THE FAMILY COURT

CARDIFF DISTRICT REGISTRY

Heard in the Family Court in Cardiff

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF D (aged 2)

Heard on 31st October 2023, 1st – 2nd November 2023

Judgment given on 10th November 2023

BEFORE:

His Honour Judge Jonathan Furness KC

sitting as a Deputy High Court Judge

BETWEEN:

A

Applicant

-and-

B

First Respondent

-and-

C

Second Respondent

-and-

D

(by a Children's Guardian)

Third Respondent

REPRESENTATION:

For A: A appeared in person
For B: B was represented by Owen Thomas KC and Rhys Davies of Counsel instructed by Rubin Lewis O'Brien
For C: C was represented by Kate Hughes KC and Michael Hammett of Counsel instructed by Watkins and Gunn
For D: D was represented by Katy Morgan, Counsel, instructed by JNP Legal

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JUDGMENT

This judgment was formally handed down on 10.11.23 at 11.30 am. It was sent out to the parties in advance of the hearing so that any typographical errors could be corrected and to ensure that D's gender was not identified. Publication was adjourned pending an appeal to the Court of Appeal by A, which was rejected on paper, and a prospective appeal to the European Court.

The parties

1. I am concerned with a child ('D'), who is now aged 2. The child is represented by a Guardian.

2. The Applicant Father, ('A) is aged 52. He is a Citizen of the United States but now lives in the North East of England. He is a sperm donor who advertises on social media and has appeared on television and in newspaper articles principally under his pseudonym 'Joe Donor'. In most articles he does not give his real name, preferring to be interviewed under his pseudonym, but in one in The Times he is named. In the most recent article in the Daily Mail from the 7th October 2023 he claimed that he had 170 children and indicated that he had no current intention of stopping.

3. The First Respondent is the birth mother ('B'), she is aged 30.

4. The Second Respondent, ('C'), is the wife of B. They are separated but not yet divorced. She is aged 28.

5. B and C met in 2018 and were married in 2021. At the time of the marriage B was pregnant with the child, D. They separated in the course of these proceedings, in late November 2022, and have no intention of recommencing their relationship.

6. Throughout D's life C has acted as a mother to D. Since their separation B and C have made arrangements for the child's time to be shared between them. Those arrangements now involve D spending Monday to Friday with B, and Friday to Monday with C. The evidence is that D shows appropriate attachment to both B and C. In all ways, other than biological, C is a 'mother' to D.

The applications

7. There are a number of applications before the Court:

   i. A child arrangements order application, dated 16th August 2021, made by A in which he seeks parental responsibility, changes to D's names, A's name placed on the birth certificate and contact to D [21-54];
   ii. An application for a declaration of parentage pursuant to section 55A of the Family Law Act 1986, dated 16th August 2021, made by A [55-66]. The Respondents urge me to determine that I should not hear this issue as it is not in the interests of the child to do so;
   iii. An application by C for parental responsibility in respect of D;
   iv. An application by C for an order under s.8 of the Children Act formalising the arrangements between B and C as to the care of D;
   v. An application raised by the Guardian for an order to be made pursuant to section 91(14) of the Children Act 1989 preventing A from making further

applications in respect of D without the permission of the Court until D achieves the age of 16;

vi. An application again raised by the Guardian that the judgment in this case should be reported and that A should be named. It is argued that it is important that the public should be aware of the dangers of unofficial sperm donation.

8. Through the course of the proceedings and prior to the fact finding hearing there were additional applications which I recorded in my judgment at the end of the fact finding hearing:

a. A applied for permission to discuss the case with the Home Office in respect of immigration issues [74-81]. On 7th April 2022 an order was made to obtain information from the Home Office which clearly alerted the Home Office to these proceedings [98-99] and on the 6th July 2022 Ms Justice Russell made orders seeking information from solicitors acting on behalf of A in respect of immigration matters [143-144];
b. A applied for the Guardian to be discharged on the basis of bias [120-127]. This was refused [129];
c. C, through B, applied to be joined as a party to the proceedings [154-161]. This was granted on the 15th November 2022 [184] despite firm opposition from A;
d. The Guardian has made a number of administrative applications about the filing of evidence and such like;
e. B applied for special measures [133-140]. I refused this in a written judgment dated 14th December 2022 [191-197];
f. B then reapplied for special measures after she suffered a series of small seizures on the day on which she was meant to give evidence (with the result that the trial had to be adjourned). This required a report from a Consultant Neurologist, Dr Durward, which was disappointingly late, and equally disappointing in its lack of detail, but did support special measures being provided as he confirmed that her medical history indicated a tendency to faint on adopting upright posture and also that she had been diagnosed as suffering from non-epileptic seizures brought about by emotional upset. The author of that report required disclosure of B's GP

records which then led to issues about the propriety of disclosing those records to A. The expert was not available for the adjourned hearing on the 13th April 2023, A sought to call him, I refused to do so and determined that as a result of the clear mental health issues that were facing the mother (anxiety, depression and suicidal ideation made worse by the current proceedings), evidenced not only by her GP records but also by her dealings with C evidenced in text messages contained in the Supplemental Bundle, she was clearly a vulnerable woman entitled to special measures and applying the overriding objective, and bearing in mind that delay was prejudicial to D, I determined that we should not lose more Court time. I refused to adjourn the case, refused to allow A to cross examine Dr Durward and directed that B should give her evidence remotely from her solicitor's office. She has done so both in respect of the fact finding hearing and for some of her evidence within this hearing;

g. There were applications about disclosure of B's medical records to A, she did not want to disclose any of them, A wanted them all, I ordered disclosure of those records which I considered to be relevant in particular those relating to her mental health.

9. Since the fact finding hearing there have been further applications by A which resulted in a hearing on 23rd October 2023. At that hearing:
    - I directed the Guardian to file an amended Final Analysis which correctly spelt the name which A seeks to give D as a given name. For the avoidance of doubt I accept the Guardian's explanation that she had used the Welsh spelling by error and that this was not a deliberate or purposeful act to cause upset to A as he alleges;
    - I directed the disclosure of the Guardian's notes (which was not actively opposed);
    - I directed up to date medical records of B in respect of her mental health;
    - I allowed A some additional time to file his statement in respect of welfare which was already late (he said because he needed all of the disclosure which he was seeking);
    - I refused to re-open findings of fact which had not been appealed;

- I refused to have Dr Durward, who provided a report on B's seizures and ability to give evidence, called to give evidence;
- I refused to permit D's 'headmaster' (sic) to be required to provide written and oral evidence for this hearing (as it happens there is no such person as D has not even commenced regular nursery);
- I refused to recuse myself, the application being made on the basis that I had made adverse findings about A. He had previously sought an order that Ms Justice Russell should recuse herself;
- I refused an application to remove the Guardian and / or her solicitor from the case;
- I refused A's application for disclosure of a raft of documents; and
- I refused an adjournment of the welfare hearing which was listed for the 31st October 2023.

10. A appealed that order on Friday 27th October 2023 but the appeal was dismissed on paper on the 30th January 2023 by Peter Jackson LJ who expressed the view that the appeal was an attempt by A to adjourn the hearing in order to allow him time to challenge the findings of fact and that there was nothing in the appeal documents which indicated that an appeal of those findings would have any merit. He indicated that the decisions made on the 23rd October 2023 were case management decisions well within the proper use of the Court's powers.

11. The reasons for refusal are supported by the fact that having filed his notice of appeal A was emailing this Court asking for the case to be adjourned as A did not have time to write a skeleton argument for the appeal and also prepare his statement for this hearing. A was also urging me to reconsider my findings. I refused.

Hearing and representation

12. This hearing commenced on 31st October 2023. It was listed for 3 days and I had imposed a strict timetable when listing the case. On the 23rd October 2023 I re-stated

that timetable and amended the witness template which as drawn clearly would not have permitted this case to be dealt with in the 3 days allotted to it. A had suggested he was going to cross examine the Guardian for 8 hours and B for 4 hours, if that had been allowed it would have been more than 2 of the 3 days.

13. On the first day of the hearing A brought an application sent by email to attend remotely by CVP. He claimed that he had not realised there was a bus strike in the North East (even though it had been ongoing off and on for a month) and had not therefore been able to catch a bus down to this Court. I gave him permission to attend by CVP but then he had no camera, eventually we started at 11 am. The loss of that hour proved significant at the end of the case.

14. At this hearing the representation has been as follows:

A	In person
For B	Owen Thomas KC and Rhys Davies, Counsel
For C	Kate Hughes KC and Michael Hammett, Counsel
For D	Katy Morgan, Counsel

15. At the fact finding I had an electronic bundle of evidence and a supplementary bundle (totalling 1,747 pages in all). At this hearing I have received and read a second supplementary bundle which contains 167 pages and a subsequent statement from A, filed later even than my order of the 23rd October 2023 permitted, which, with exhibits, runs to 274 pages. Some additional documents have been provided during the hearing.

16. I have case managed this case in the High Court since the 24th August 2022.

17. I have heard oral evidence from:

A	on 31st October 2023
B	on 31st October 2023 and 1st November
C	on 1st November

The Guardian on 1st November

18. Prior to the hearing I received skeleton arguments about the application for a section 91(14) order and relating to publication of the judgment and naming of A. I have received a number of authorities on the issue of Declaration of Parentage in particular (many of them during the morning of the 2nd November 2023). I heard oral submissions from each party during the morning and afternoon of the 2nd November 2023 concluding at 2.50 pm. I then had insufficient time to prepare and give a judgment that afternoon so I adjourned to give or hand down judgment at 11.30 am on the 10th November 2023.

The relevant findings of fact at the fact finding hearing

19. At the fact finding hearing I made a number of important findings in respect of the matters which I had been asked to decide. At paragraph 79 of that judgment I found:
    - The circumstances of conception were by syringe injected by C, I did not accept A's evidence that there was any form of sexual intercourse between A and B which was alleged to have taken place secretly in the back of a car and without the knowledge of C;
    - B and C intended at the time of the conception that A should have no future involvement with the child until such time, if ever, as the child made an enquiry about paternity and expressed a wish to see him. Their evidence, which I accepted, was that they chose a sperm donor who advertised that he would leave it up to the mother as to whether there should be any contact. There was evidence from his own social media material that A has indicated that to be the position;
    - The motivation for A commencing the proceedings was principally to support his immigration position to stay in the UK. A had denied this but D was one of two children who were named in his application which was based on a right to family life. A had arrived here just prior to the first Covid lockdown and has stayed here since, he is at risk of being arrested if he returns to the USA

because of arrears of periodical payments, he claimed that he had tried to appeal this order but the appeal had not been processed;

- The registration of the child's birth (which included C's name as a second parent) was carried out incorrectly as a result of an innocent error by the Registrar who did not know either B or C and was not colluding with them (as A had suggested). There was no impropriety on the part of B and C or indeed the Registrar. The incorrect entry has been amended.

Assessment of the parties

20. In my fact finding judgment I also made a number of findings about the parties and their evidence. I repeat those findings for the record and indicate below whether anything has occurred to change my view.

21. In respect of A I made the following observations:

"A gave evidence first. He was not an impressive witness but more perhaps is learnt about him by the way that the application has been conducted. Apart from taking the position which he has in respect of the issues which I have already referred to, he has shown himself to be someone who will take every point that is available to him, however good or bad the point. He is a man who, in my judgment, once he believes that he is right cannot even contemplate an alternative view. His assertions about B suffering from malingering or even Munchausen's Syndrome, his unsustainable interpretation of the allegedly hidden subtext of perfectly plain comments by medical experts to back up his allegations, his demands in respect of the Court or B reporting herself to the DVLA (which she indicated very plausibly in evidence that she does regularly) all bear witness to this. They are wrapped up in a veneer of seeking to protect the welfare of D but in reality he is man who seeks to control, women and children appear to be almost a commodity to him as he sets about increasing the number of his children around the globe – China, USA, Argentina, Australia and UK to name just some of the countries where he has fathered children.

He sees conspiracies everywhere – B or C must have been in contact with other mothers. The impression is of a man who has a complete absence of sensitivity or empathy, is wholly self centred and will stop at nothing to obtain what he wants. When it was suggested that C was to give evidence he indicated that she must first "undergo police checks to confirm her credibility" [214].

Once he believes he is being challenged he doubles down on his allegations and takes further issue – thus, for example, he was insistent that there is an exit out of the back garden of the home that B and C were living in even though he had only been there in the dark. This was to support his assertion that B may have been able to sneak out of the home on the 8th November 2020 in order to meet him. The provision of maps and the direct evidence of B to the contrary did not deter him, the maps must have been taken at a different time."

22. If anything events since the finding of fact hearing only confirm my views about A. I have already referred to the applications which I heard on 23rd October 2023 which included the suggestion that I should recuse myself because of the findings that I had made, that Counsel for the Guardian may have written my fact-finding judgment for me (something which I described as 'impertinent' and is obviously not true) and that both the Guardian and her solicitor should be removed from the case. A was asking for disclosure of medical records because he still wanted to allege that B may be suffering from 'Munchausen Syndrome' and he then filed his 274 page statement, on Sunday 29th October 2023, later even than the permitted extension, to which he attached a substantial report on FII which has not been referred to, but which he clearly felt relevant only two days before this welfare hearing (the only change thereafter was the dismissal of his appeal by the Court of Appeal). He also recorded the Guardian's interviews with him without her permission (if he had asked permission it would have been granted, but agreements would have been signed and the Guardian would have been accompanied by a note taker). This only became apparent when he attached his transcript of the note to his statement, he had not mentioned it at the hearing on the 23rd October 2023. There has been no opportunity for his note to be checked for accuracy. In the course of the run up to the hearing he has insisted

that C should not be referred to as a 'mother' and suggested that she should be called 'aunt'. He has no comprehension how offensive and dismissive that is of her and the role that she has played and will continue to play in D's life. He has continued to describe B as promiscuous because she has had two relatively short relationships since her separation from C in November 2022 and has commented on her poor level of education in comparison to his own, in his oral evidence he did not see this as being at all critical because as far as he is concerned it is true, it is a simple statement of fact for which he should not be criticised. He does not recognise any connection between the stress of these proceedings and B's mental health struggles through 2023 even though it was her non-epileptic seizures the night and morning before she was to give evidence that delayed the fact finding hearing and resulted in her solicitor calling for an ambulance.

23. In respect of B I found previously that:

"[She was] a thoughtful and restrained witness. She continued on the second day of her evidence despite having had a number of seizures the day before, and, under some pressure because of the nature of the cross examination by A, alleging that she was faking the seizures and her health problems, she retained her composure even when being asked frankly absurd and entirely inappropriate questions about her medical history and also questions aimed at suggesting that she may be promiscuous to further A's claim about the nature of the conception. She became noticeably emotional when dealing with questions about D's name and whether there had been any discussion with A about the chosen names, she clearly saw that part of this application as a wholly unacceptable intrusion into her decision making."

24. At this hearing I find that B's position has become rather entrenched. She has been exhausted by these proceedings and by the requirement to answer questions again about her relationships and about her mental health difficulties during 2023 which are clear to see on the paperwork. She cannot countenance any dealing with A or with him being in D's life. She did however readily accept that the time would come when D would ask questions about paternity and some explanation would be required. Her

position in respect of D spending time with A was clear but she has become so opposed to it that she was unwilling to consider the practicalities should the Court order such contact. I indicated to the Guardian at the conclusion of her evidence that I did not think these practicalities were insuperable *if* contact was appropriate and the Guardian agreed, the Court is used to introducing children to parents through Contact Centres and supported contact. What impact that might have on B and C and consequentially on D is another issue.

25. In respect of C my findings were:

"C was a balanced witness who answered the questions asked of her in a straightforward way. The very clear message that came through her evidence was that she had always wanted to be a full part of D's life, she wanted to be recognised as a parent and thought that the C51 form was the answer, she believed throughout that A was someone who was prepared for 'no contact' and that was what B and C wanted. She appeared to be frank and honest."

26. In her evidence before me within this hearing that assessment has been more than confirmed. She has been calm, balanced and child focussed. Even in the emotionally charged 'Whatsapp' messages between herself and B when B was struggling with the concept of being away from D and was asserting that she needed to take control as was her right as the biological mother, which was inappropriate and not child focussed given C's commitment to D, C herself remained child focussed and was concerned about returning D to B in her current condition, she called the police and made an appropriate application to the Court. In cross examining C about this A seemed again to have no recognition that C was acting appropriately and was a protective factor for D, he wanted to concentrate on the words rather than the actions alleging that a reference by C to the possible views of B's mother was threatening and abusive.

27. My only mild criticism of C as a witness is that she was reluctant to share information with A which she didn't consider relevant – she was correct in saying that some matters which she was being cross examined upon were irrelevant, but to me her

attitude spoke clearly of a position in which both B and C are so distrustful of A and what he might do, that they are reluctant to share even the most benign piece of information about D because it will open another area of dispute which A will pick over. Two examples of this were declining to say how much money she provided to B to enable her to gain housing after one of her post-marital relationships had broken down leaving her homeless, and, secondly, refusing, initially at least, to indicate the country to which B had intended to take D on holiday (this had been arranged for the time of this hearing and B asked if the hearing could be moved, it could not, and so her application was refused). The proposed holiday was to Spain and there was no real reason for C not to disclose that.

28. However, that reluctance must be viewed through the prism of how A then dealt with the information about Spain. As C had perhaps anticipated the discussion of the proposed holiday did open up a whole new area about which A expressed his concerns, claiming to me that the granting of parental responsibility to him would enable him not to worry about such trips, unless they were to non-Hague Convention countries, whereas without parental responsibility he would have concerns even about such a holiday to Spain. The idea that a short holiday to Spain by a non-working mother from this area, with no foreign connections of which I am aware, and whose past and future is deeply rooted in the locality, should be a matter of concern to A is quite unfathomable. In my judgment, it is a clear indication of the level of intervention in D's life that A expects and threatens to have if allowed to do so. I regret that my view is that far from reducing the risk as A alleges, the granting of parental responsibility to him would open up an expectation that he would be consulted about all matters and would expect his objections to be heard and acted upon. This vignette is also an indication of the need for an order restraining unnecessary applications.

The law

29. In determining issues of where a child lives, and the making of child arrangement orders generally, I must have regard to section 1 of the Children Act 1989 which reads as follows:

(1) When a court determines any question with respect to—

(a) the upbringing of a child…

the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his or her age and understanding);

(b) his or her physical, emotional and educational needs;

(c) the likely effect on him or her of any change in his circumstances;

(d) his or her age, sex, background and any characteristics of the child which the court considers relevant;

(e) any harm which he or she has suffered or is at risk of suffering;

(f) how capable each of his or her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

30. I must also have regard to the European Convention on Human Rights in particular Article 6, which requires me to ensure that each party has a fair trial, and Article 8 which requires me to respect the right of the parties to family life.

31. Where there are factual issues which need to be determined the law is straightforward:

- In respect of any disputed fact the burden of proving a fact lies with the person who asserts that fact;
- In order to find a fact proved the Court must be satisfied on the balance of probabilities that it occurred. The Court operates a binary system in which the only values are nought (not proved) and one (proved);
- The Court is entitled to draw logical conclusions based on accepted evidence. However, the Court cannot make findings based on suspicion or speculation which can play no part in the Courts decision making: *Re A (a child)(fact finding hearing: speculation)[2011] EWCA Civ 12.*

32. Hearsay evidence is admissible in cases involving children, but it is not subject to cross examination and therefore must be considered with caution.

33. I must direct myself in accordance with the case of *Regina v Lucas 73 Cr App R 159*. If I find that a witness has lied I must ask myself "why?" The mere fact that a witness tells a lie is not in itself evidence of culpability about what he or she has lied about. A witness may lie for many reasons, and they may possibly be 'innocent' ones in the sense that they do not denote any culpability, for example out of panic, distress or confusion.

34. There are other legal issues relating to some of the other applications which I will consider when dealing with the individual application.

35. I intend to look at each application separately although many of the factors to consider are relevant to more than one application.

Application by C for a Child Arrangements order in respect of D to recognise the existing arrangements and to include an order for parental responsibility

36. I deal with this first because in my judgment it is by far the most straightforward application.

37. C seeks such an order, she says that when B became pregnant it was their intention to co-parent D, they married during the pregnancy and that although their relationship has not continued there remains every reason to recognise her importance in D's life by the making of such orders.

38. C says that although an order which indicates that D lives with each of B and C gives her parental responsibility by reason of section 12(2) of the Children Act 1989 she would also like an order for parental responsibility to confirm her role in D's life. She sees herself as a 'mother' of D because that is the role she performed until separation, and since, and that was the role that was always intended for her. She is deeply offended by A musing over what she should be called and concluding that she should be called an 'aunty' being a female friend of the family.

39. B, the birth mother, agrees that C should have such an order. Although there was some disagreement between B and C in the early days after their separation (B was finding it difficult to contemplate being without D and inappropriately, as she now recognises, played the 'biological' card) more recently they have been making arrangements satisfactorily between themselves and have agreed significant changes which result in the current regime whereby D is with B during the week and with C during weekends (from Friday to Monday), the rationale is that C is working and so this arrangement works well for both parties. In due course when D starts nursery, the collection and return of D will take place from the nursery (as a matter of convenience rather than to avoid B and C meeting).

40. Both agree that there should be a mopping up provision for 'any other contact that is agreed' with C indicating that there already have been times when she has had an additional day by agreement with B. It is clear that they are now managing the day to day arrangements for D in a responsible and child focussed manner. They are co-parenting as they had always envisaged though in different circumstances.

41. I have already indicated that C is a mother to D in every sense except biological. She was present at the pre-birth scans, she was present at the birth. She was and remains at law a step-mother as B and C were married by the time of the birth and still are

married now. She has provided care to D throughout D's life. She is calm, responsible and child focussed. The Guardian points out that she has stepped in to meet D's care needs when B has been unwell or has struggled with her mental health.

42. D is fully attached to her as a primary care giver and refers to her as a mother. The Guardian who has observed D in the care of both B and C says that the child presents as happy and content with a clear attachment to both B and C.

43. I find that A's view of C is demeaning and dismissive. He insists that she is not a mother, she is an ex-stepmother and should really be referred to as an aunt, he does not really see why D should be 'saddled' with the relationship between B and C. He told the Guardian that he did not see 'why D should be forced to perpetuate a relationship that B and C have not been able to maintain', and, 'why should D be forced to be the standard bearer for a failed relationship?' Since B will always be D's birth mother this logically must mean that really he sees no real role for C. When he discusses the reason why he wants parental responsibility for D, in order to assist and support B, at no time does he recognise that C already does that and that really he should be seeking to assist and support B and C. He suggests that "two eyes are better than one" which again ignores C. The impression clearly given is that he considers C to be largely irrelevant, he sees it is a matter for B whether to allow C to spend time with D but that it should not affect his time with D which he proposes should be at weekends so actually within the time that C currently spends with D. There is simply no recognition of the importance of C as a primary attachment figure and also as a stabilising presence when B was suffering with her mental health.

44. In my judgment the welfare argument for the making of orders that recognise C's important and continuing role in D's life is overwhelming. In terms of the welfare checklist the predominant factors in respect of this application are:

    (b) the child's physical, emotional and educational needs: D is emotionally attached to C who provides for the child's physical, emotional and educational needs during the significant periods of the week when the child lives with her. C also supports B when necessary in providing for those needs;

(d) the child's age, sex, background and any characteristics of the child which the court considers relevant: the child is aged two and C has been a constant presence in the child's life and has always been a primary caregiver;

(f) how capable C is of meeting the child's needs: amongst all the criticisms that A levels against B (mental health, promiscuity, Munchausen syndrome) there is no real criticism of C other than her lack of a biological connection to D and her consequent irrelevance to D. It is plain on all the evidence that she is very capable of meeting D's needs and is fully committed to doing so.

45. I am satisfied that putting D's welfare as my paramount consideration, as I am required to do, it is both necessary and proportionate that I should make a live with order under Section 8 of the Children Act 1989 to reflect the current arrangements that have been agreed between B and C for D's care.

46. Pursuant to section 12(2) of the Children Act 1989 once the court makes a child arrangements order naming a person who is not a parent or guardian of the child as a person with whom the child is to live, that person has parental responsibility for the child while the 'live with' order remains in force. Thus C gains parental responsibility while the order is in force without any specific order.

47. However, that provision does not in any way derogate from the court's powers under section 4A of the Children Act 1989 to make an order for parental responsibility in favour of a step-parent. In such an application the court must again consider the factors set out in the welfare checklist, the paramountcy of the child's welfare, but can look as a starting point at the degree of commitment shown by the applicant for parental responsibility, the degree of attachment between her and the child and the reasons why an application is being made.

48. There is no doubt that C has shown commitment to D before and throughout D's life, I repeat that she attended scans, was present at the birth and has been a primary caregiver throughout D's life. Her commitment to the child is such that she sought to protect D from B's mental health issues by applying to this Court which, of course,

alerted A to the difficulties. It is a clear example of her putting D's needs first. There is a strong attachment between C and D and she makes the application as she wants her role to be recognised always as D's non biological mother.

49. In A's final oral submissions he indicated, when pressed, that he did not oppose a live with order in favour of C providing it did not interfere with his contact but he opposed an order for parental responsibility. He saw no need for C to have parental responsibility, as far as he was concerned if D is left with a grandmother then the person with care of D does not have parental responsibility and there is no difference if D is left with C. This wholly ignores the fact that D is left with C for 3 nights at a time and that B may not always be contactable over such an extended period or that in the future C may wish to take D abroad just as B was intending with the trip to Spain.

50. In my judgment it is apparent that A has a fear that anything given to C reduces his involvement or entitlement in respect of D. I have seen no evidence that he recognises the role of C or that he would be able to do so in the future.

51. I have no doubt that it is in D's welfare interests to make orders recognising the current arrangements of D living between the homes of B and C and granting C parental responsibility so that she can share in making important decisions about D's future with B and access information about the child independently.

Application for a change of name

52. A proposes that the name should be changed to include a given name chosen by himself and also his surname.

53. B is opposed to this. The names of D were chosen by herself and C who were married at the time and there was no suggestion at the time that A would be involved in the choice. The disclosed correspondence between them gives no indication that A was ever consulted or that he ever sought to influence the choice of name. B says that this is now an attempt at control by A.

54. C is also wholly opposed to the proposed changes of names. D's given names were chosen as family names from each of B and C and D has taken the surname that B and C used when they were married, and B still uses. She questions what possible benefit there would be to D in the proposed name changes.

55. I find A's arguments on the issue of the given name frankly absurd. Very few of his 170 children have the given name of his choice, he told me two, he himself does not have that given name. There is absolutely no benefit in changing the name other than for A to somehow assert some form of ownership over D.

56. In respect of the surname again there is simply no justification for the change from the surname which B was born with and which B and C adopted as their married name. The fact that C no longer identifies by that name makes no difference. A's proposal is that his surname would be used which would mean that D would have a different name to both of the women who are D's primary carers and primary attachment figures.

57. I am conscious of the decision in Dawson v Wearmouth [1999] 1 FLR 1167 and the principles set out therein. The mere fact that the mother and child bear the same surname is not necessarily a sufficient reason for refusing a change if there are valid countervailing reasons. However, in the present case in my judgment there are no such reasons.

58. A suggests that using his surname would ensure that eventually D will be told about him. However, in my judgment, it is inevitable that the time will come anyway. D will have sex education lessons at school and will realise that every child has a father and the issue of paternity will have to be addressed. Both B and C indicate that they will do so when the time is right, they said this in messages to A before proceedings even began, and I believe them, although I think they may be a little unrealistic about when that will occur. Miss Hughes KC says to me that the process of this hearing and the issues raised have and will create an opportunity for some reflection on the part of B and C. I genuinely hope that that is the case.

59. I can see no positive welfare benefit in changing D's name as requested by A. In my judgement, A is motivated by ownership and perceived, and rather old-fashioned, entitlement, rather than looking at the welfare of D.

60. I refuse the application for a change of D's names.

Application by A to spend time with D

61. A asks for an order whereby he spends time with D. He has only met D once, when D was a few weeks old, B and C agreed for him to meet D and have a photograph taken of him and the child, the meeting lasted no more than 10 minutes and B and C indicated clearly at the time that they considered it a one off meeting. A is a stranger to D.

62. A proposes in paragraph 30 of his statement of the 29 October 2023 that he should have contact from about 3 pm to 6 pm on a Saturday and from 10 am to 12 noon on the following Sunday, on one weekend each month. He proposes that after three months the fourth period of contact should be in Darlington where he would propose to introduce one of his daughters to D. He proposes thereafter that that routine could be maintained, or altered by agreement, and that perhaps within a year, contact could become overnight. To the Guardian A indicated that he would like to be involved in D's birthdays and during Christmas and summer holidays.

63. The birth mother, B is opposed to any order for direct contact. She has expressed concern about A's lies during the proceedings, his derogatory statements about her and the risk of conflict because of his fixed views, and confrontational and challenging behaviour throughout the proceedings. She does not want D exposed to this sort of behaviour. She is willing for A to send a physical card on an annual basis to C's address. She was opposed to it being sent by email as she was worried that there will be a flood of emails. She is willing for a letter to be sent once a year informing A of any developments in D's life. In oral evidence she accepted that if there was a designated

email address and A was not permitted to use it other than for the one letter each way, there was no issue about using an email address. This was a sensible concession. If A abused such an arrangement then it is within the power of B and / or C to simply close down the email address and I would expect them to do so and make arrangements for postal delivery instead via C.

64. C takes a similar view: she too is concerned about A's false statements, the level of conflict and his minimisation of her position, and reiterates that it was never the intention that he should have contact, that he was a sperm donor only, and one who was selected because he advertises that contact is a matter for the mother concerned and that he is willing for there to be none. She is willing to provide an annual message to A providing she is not expected to reply should A seek to engage with her. She will also receive a card from A on an annual basis whether through the post or by email.

65. The Guardian points out that A does not have regular contact with the majority of his children and when A gave evidence within the fact finding hearing it was clear that those he does see are often not seen regularly. A said he expected to meet D because there had been initial plans that C would also have a child and he would be the sperm donor for that child, thus he expected to see D when making his donation. Such occasional meetings are in sharp contrast to his current proposal and B and C struggle to understand why he has continued to pursue contact with D, this is the only child that he has pursued through application to the Court.

66. The Guardian believes that conflict is highly likely if contact was ordered. A says if contact was missed on more than a few occasions then he might seek medical information in order to confirm that the reasons for any contact not occurring were genuine. It is another example of how A would use parental responsibility and his general lack of empathy and uncompromising stance.

67. The Guardian who has held the case throughout the proceedings and had dealings with all parties, and who has attended the fact finding and welfare hearings, concludes that:

"…direct contact between D and A would not be within D's best interests in that it has the potential to affect [his/her] caregivers ability to meet [his/her] needs due to their availability being compromised by A's involvement in their lives and gives rise to a significant risk of D being exposed to conflict. This would then pose a risk to D's stability, having implications in terms of [his/her] attachments to [his/her] primary caregivers if their availability to respond to [his/her] needs was diminished and place [him/her] at risk of emotional harm" (paragraph 2.12 of final analysis).

68. I entirely agree with this analysis and also conclude that A having contact with D would inevitably lead to uncertainty and conflict about the role of C and about her entitlement to be involved in making decisions about D. As I have already indicated A sees no real role for C and has been unable to ameliorate that view other than to acknowledge that if B wants C to spend time with D then that it is a matter for her.

69. I acknowledge that generally there is a real emotional and psychological benefit in a child knowing his or her father but in this case my judgment is that the risk of harm is too great, because of the character and mindset of A, to allow such contact.

70. Looking at the checklist factors the crucial factors are:

(b) D's physical, emotional and educational needs: D needs to have stability and to have caregivers who are fully functioning and able to respond to all of D's needs. Because of the way these proceedings have been conducted effectively throughout D's life any involvement by A in D's life is likely to affect the way D's caregivers satisfy D's needs;

(c) the likely effect on D of any change in circumstances: the likely effect of allowing A to spend time with the child is confusion and upset and D is unlikely, in my judgment, to end up receiving the benefits of a child / father relationship;

(d) D's age, sex, background and any characteristics of D's which the court considers relevant: I have noted D's age and noted also that D is a child who

has had no contact of any substance with A;

(e) any harm which D has suffered or is at risk of suffering: there is a real risk of harm to D because of the circumstances of the conception and the initial intentions of B and C and because of A's wholly uncompromising nature, he is a man who appears almost to seek conflict – myself, Ms Justice Russell, the Guardian, the Guardians solicitor should all be removed from the case, the Registrar should be subject to further investigations, there should be a full assessment of B as to whether she suffers from Munchausen's Syndrome, doctors and 'headmasters' should give oral evidence. I do not believe that B has the necessary resilience to meet A, deal with him or withstand the inevitable conflict that would occur. C is stronger but she too speaks of this being a nightmare and a horror story and says that she has been worn down by A's persistence;

(f) how capable each of D's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting D's needs: in my judgment A cannot change, he does not recognise what he has been doing as wrong, he does not recognise the likely effect on D, he is concerned with his rights, he feels mistreated by the fact that the birth was wrongly registered and is asserting his rights and still intent on getting his name on the birth certificate.

71. Thus although I accept that not making any provision for direct contact does infringe the Article 8 rights of A I believe that such an infringement is absolutely justified in ensuring D's rights to family life with B and C, the primary caregivers, are not adversely affected.

72. The Guardian proposes that there should be what within adoption proceedings would be called 'letterbox contact'. An annual updating letter from B and C to A and an annual card or letter from A which would be retained for D for when D was of an age to understand from whom the document derived. This is not opposed by either B or C and C agrees to facilitate it by setting up an email account specifically for that purpose. I agree that such an order for indirect contact should be made and is in D's best interests. It is not a substitute for direct contact but will ensure that when B and C tell

D about the existence and significance of A, they will be able to provide the child with something of substance which will ensure that D knows that A has taken an interest. I am satisfied on the evidence that B and C do intend to tell D about A and that they should do so at an appropriate time of their choosing when D is able to understand and accept the circumstances of his/her conception.

Application by A for parental responsibility of D

73. A asks for parental responsibility. It is plain that he wants to be consulted about many matters, he feels he is better able to consider and understand medical records than B (he did not specifically mention C in this context in keeping with his general view about her position), he would want to know whenever the child was abroad even to somewhere such as Spain, he would propose to access information from D's school and GP.

74. The birth mother, B, opposes this application. She says given the history there is no prospect of she and A ever agreeing anything about D. Her position is supported by C who also expresses concern that A would misuse any parental responsibility to undermine B and/or C. She sees no benefit in A having such an order given the limited role that he will play in D's life. He was only ever intended to be a sperm donor. They told the Guardian that the stress from the proceedings had resulted in the breakdown of their relationship, I certainly accept that it was a contributing factor given the level of stress suffered by B in particular, and they believed that granting parental responsibility to A would create a situation fraught with difficulties, stress and conflict.

75. When one considers what A himself has said about how he would use parental responsibility, which I have set out earlier within this judgement, the fears of misuse are substantial.

76. A says he has been committed to this application for over 2 years and that during that time he has never abused B or C or tried to see D other than through the Court. He has shown that commitment however my finding in the fact finding was that the initial

motivation for the application was to support his immigration position. Although it is right to acknowledge that he has continued to pursue his applications even after his immigration position had been settled I am not convinced that that is because of a genuine interest in the child as opposed to a means to control and / or punish B and C for their perceived behaviour in arranging registration to include C. There is no real attachment between A and D; A has met D once over 2 years ago and has had no further contact either direct or indirect.

77. The Guardian expresses concern that A would use parental responsibility to seek to exercise control, she believes A would continue to undermine B and C and that this would not be in D's best interests.

78. I agree with that view. In my judgment B and C are justifiably wholly unable and unwilling to discuss D with A, and A would use parental responsibility to question decisions and demand that he be heard even though his role, without direct contact, would be very limited. It is not in D's interests for A to have parental responsibility and I dismiss A's application.

79. It is of interest that Lieven J came to a similar conclusion in MacDougal v SW (Sperm donor; parental responsibility or contact)[2023] 1 FLR 231. Each case must be decided on it's own facts but it is worrying that two judges in different cases with different sperm donors have reached similar conclusions about the character and motivation of the donor. It highlights the need for women to understand the risks which they expose themselves to in approaching unlicensed, unregulated, and unofficial sperm donors.

Application by A for a declaration of parentage

80. A accepts that D is his child and wants a declaration to that effect. He says that a declaration of parentage would ensure that D is told about him. He wants the birth certificate amended to include his name. The incorrect registration of the birth which included C's name continues to upset him, he returns to it as an issue frequently, and he wants the record put straight. On the 23rd October 2023 he was asking me to make

some form of order to ensure that a marginal note which referred to C was removed altogether. I did not feel able to make such an order.

81. Both B and C accept that A is the father of D but oppose the making of a declaration which would lead to the birth certificate being amended to add A's name as father. They argue that I should refuse to hear the application and make an order that A should not be permitted to bring any further application.

82. I have been referred to Re S [2012] EWCA Civ 1160 in which the Court of Appeal considered the legislative provisions relating to such applications. Black LJ deals with the relevant law at paragraphs 12 to 14 of the judgment which I summarise as follows:
    - Under section 55A(5) of the Family Law Act 1986 the court may refuse to hear an application for a declaration of parentage "if it considers that the determination of the application would not be in the best interest of the child";
    - if a declaration of parentage is made then the court is obliged to notify the Registrar General in accordance with rules (section 55A(7)) and the Registrar General will then alter the record to include the father's name;
    - the re-registration of a child's birth naming the father as a parent would be under Section 14A of the Births and Deaths Registration Act 1953 and therefore would not have the effect of conferring parental responsibility on the father.

83. A fuller and very clear assessment of the legislative provisions and authorities to like effect is found in the decision of MacDonald J in H v A [2020] EWFC 74 at paragraphs 22-29.

84. The decision in Re S was considered by MacDonald J in MS v RS and BT [2020] 2 FLR 689 in which he considered the circumstances in which the court should refuse to hear an application for a declaration of parentage. MacDonald J indicated that one of the factors in determining the issue was the right of the child to know, and the importance of the child knowing his or her paternity. A decision to reject the father's request to

determine the child's paternity is an interference with his right to respect for family life unless it is in accordance with the law and pursues an aim or aims that are legitimate and can be regarded as necessary in a democratic society, however the child's best interests will be paramount. In the case itself MacDonald J did refuse to hear the application on the basis that there was deficient evidence and the children themselves were opposed to findings being made. The children were of an age where their views could be taken into account and McDonald J directed the Guardian to speak to the children about the possibility of providing material for DNA testing so that the truth about their paternity was known.

85. A, faced with this application, has said (I paraphrase) 'but you have heard it, how can you now refuse to hear it?", In my judgment the answer lies in the decision of MacDonald J in H v A (cited above) in which he indicated that a decision to refuse to hear a case *can* be heard as a preliminary issue in appropriate cases (see paragraphs 61-67) but can alternatively be determined at a final hearing and indeed in that case was to be heard at a final hearing (see paragraph 68-76). The factors that led to that decision were that in that case:
    - all parties (in particular the adoptive parents) were already aware of the application;
    - a determination about the child's best interests had to be made and a factor was the right of the child to know about his or her paternity;
    - there is a benefit in a child having access to genetic information;
    - issues of status, such as parentage, can be expected to be approached by the Court with some formality.

86. Those factors are all present here and so had the issue been considered before this hearing had commenced then it is very probable that the Court would have directed evidence to be filed and had the same hearing which we have just completed. Accordingly, I am satisfied it is appropriate to consider whether the determination of the issue is not in the best interests of D. The burden is on those parties who suggest that it is not in the best interests of D to establish that to be the case.

87. Having decided already that it is not in the child's best interests for A to be granted parental responsibility in respect of D, it appears to me that many of the same factors apply in respect of this application.

88. A's wish to have his paternity recognised is understandable but it is difficult to see what the concrete benefits are for D. Once I accept that B and C will inform D about his/her parentage in due course, the presence of A's name on the amended birth certificate has no positive benefit, whereas given my findings about A's motivation, character and his likely misuse of parental responsibility there is every prospect that A would also misuse having his name on the birth certificate. The subtlety of the consequences of the re-registration being under section 14A of the Births and Deaths Registration Act 1953 will be lost on almost every lawyer never mind doctors, school teachers or other persons for whom the grant of parental responsibility would be significant.

89. I have therefore come to the conclusion that it is not in the best interests of D for me to hear this application. It is likely to create a situation which would provoke anxiety in B and C for the reasons already provided, may therefore adversely affect D and could lead to A seeking the benefits of parental responsibility through a side door.

90. I refuse to hear the application.

Application for an order under s.91(14) of the Children Act preventing further applications by A during the minority of D

91. I have received skeleton arguments from each of the parties as to the propriety of making an order under section 91(14) of the Children Act 1989 which reads:

> *"On disposing of any application for an order under this Act, the Court may (whether or not it makes any order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court".*

92. Guidelines for the use of such orders were provided by the Court of Appeal in Re P (Section 91(14) Guidelines)(Residence and Religious Heritage)[1999] 2 FLR 573. I do not repeat those guidelines in full, they are well known and have been set out in the Skeleton Arguments placed before me. The welfare of the child will be paramount, the Court is exercising a discretion and must balance all the relevant circumstances, the order should be the exception rather than the rule, although it is generally a weapon of last resort in cases of repeated and unreasonable applications there are cases where the welfare of the child demands such an order even though there has not been a history of unreasonable applications.

93. The Re P guidelines have been updated by the decision of the Court of Appeal in Re A (Supervised Contact)(section 91(14)) [2021] EWCA Civ 1749. The landscape has changed significantly since Re P, Re P does not limit cases to those where there have been excessive applications, nor do they require exceptional circumstances. There is scope for wider use of such orders to protect children from endless applications or harassment but also to benefit other children whose cases will be heard more quickly. There should be wider use in cases where the litigation is causing either directly or indirectly real harm.

94. Section 91 A of the Children Act 1989 now also provides that orders under s.91(14) may be made in circumstances where the Court is satisfied that the making of an application for an order under the Act would put the child or another individual at risk of harm.

95. Hayden J has referred to the effect of section 91A in F v M [2023] EWFC 5 in which he indicated that:

> *"… this amended provision strikes me as properly recognising the very significant toll protracted litigation can take on children and individuals who may already have become vulnerable for a variety of reasons. It also dovetails with our enhanced understanding of the nature of controlling and coercive behaviour.*

When all other avenues are lost, too often the court process becomes the only weapon available. Lawyers and judges must be assiduous to identify when this occurs, in order to ensure that the court is not manipulated into becoming a source of harm but a guarantee of protection".

96. It was the Guardian who raised the possibility of such an order and the parties have been put on notice that the Court will consider making such an order.

97. B and C both support the making of such an order. The current proceedings have been ongoing for over 2 years and for almost all of D's life. They have been stressful and have contributed to the breakdown of the marriage between B and C and B's ill health.

98. A does not accept that there is any proven link between this case and any marital problems or any mental health problems. I disagree – partly because of the non-epileptic seizures which B suffered during the fact finding hearing when under extreme stress because of this case and partly because of her medical records which indicate that on the 14th February 2023 when B was at a particular low point in her mental health she was informing her GP that the 'main factor' was these ongoing proceedings.

99. B says that A will challenge everything and given the opportunity will simply bring more and more litigation.

100. C also expresses her concern that litigation emanating from A will continue if he is not restrained. As D gets older any continuation of litigation is likely to adversely affect D but perhaps more importantly she is worried about the effect of the litigation on B's health.

101. I am satisfied that it is appropriate to make such an order. I made findings within the fact finding hearing about A's character and have indicated above that nothing has changed my view about him. This is a case which goes beyond the norm of parties falling out and arrangements having to settle down. A has pursued every application that he has made with vigour, many have had no merit whatsoever. When

his options were running out before this hearing he appealed my case management order, continued to take every point he could in his statement and has shown no understanding whatsoever of the consequences of his actions upon B and C and consequentially D. My findings about the likely effect of further applications put the case squarely within section 91A.

102. Such an order does not of course prevent A from making applications it just means that he must obtain the permission of the Court before the application is allowed to go forward, it provides a judicial filter which allows B, C and D to avoid applications that have no merit but which might cause stress and anxiety.

103. I make an order under section 91(14) preventing A making applications under section 4, section 8 and section 13 of the Children Act 1989 without permission until D's 16th birthday. That degree of protection is required for D and B and C.

104. I make a similar order in respect of an application for a Declaration of Parentage. It is permissible to make such an order under section 55A(6) which reads:

> *"Where the Court refuses to hear an application under section (1) above it may order that the applicant may not apply again for the same declaration without the leave of the Court".*

105. The same principles should apply as under section 91(14). The making of a further application would have no merit and, in my judgment, would amount to a campaign of abuse / control. I prevent A making another application for a declaration of parentage without permission until D's 16th birthday.

Application for the publication of the judgment and naming of A

106. B, C and the Guardian all seek an order that the judgment should be published and that A should be named both as to his pseudonym and as to his real name.

107. B supports the publication of the judgment providing her name, and those of C and D are not published and nor is the area in which they live. She wants to prevent or reduce any risk of identification of D.

108. C too supports the publication as she believes that the world needs to know of the risks associated with unregulated sperm donation. I have already referred to those risks earlier in this judgment. C says the last two years have been a 'nightmare' or absolute 'horror story' and people need to know of the risks. She supports the naming of A but no other party.

109. I have received helpful skeleton arguments as to the legal position which have appropriately referred me to Re J [2013] EWHC 2694, Re S [2004] UKHL 47, Re AI M [2020] EWHC 122 (Fam) and the interplay and balancing exercise involved in considering the qualified rights in Articles 6, 8 and 10 of the European Convention on Human Rights in respect of the parties and the child.

110. As long ago as 2014 the then President issued guidance as to the publication of judgment which indicated that permission to publish a judgment should always be given whenever the judge concludes that publication would be in the public interest: [2014] 2 FCR 226 paragraph 16. There is a strong public interest in cases of this nature as is evidenced by the media frenzy which A creates for himself wherever he goes.

111. What is being asked for here is for me to publish this judgment within the National Archives that have taken over from BAILII. This is a High Court judgment and such judgments should be made readily available. The President has encouraged all Circuit Judges to also anonymise and publish judgments, the target some years ago was 10%, but there has been little enthusiasm for that because of the time that is taken in anonymisation, time which simply is not available within a busy Circuit Judge list. There is still a target of 5-10 judgments each year for each Circuit Judge.

112. This is a Court which is one of three operating the Transparency Pilot scheme so had a journalist asked to report this case it would have been almost inevitable that

a Transparency order would have been made, which would have permitted the reporting of the case in newspapers subject to anonymisation.

113. It follows that I am satisfied that there is a public interest in publishing the judgment and the real issue is not publication itself but whether any publication should include the name of A, either his real name or pseudonym. No one suggests that B, C or D should be named and there is agreement that any judgment should be anonymised to try and prevent any such identification. I have given this judgment in terms that do not identify the precise age or gender of D and do not indicate geographically where B, C and D live.

114. A opposes any publication which names him either under his real name or his pseudonym. He is concerned that it would affect his ability to make applications to spend time with his other children and he says that it creates a risk that D will be identified and increases the chance of D discovering information about D's paternity in an unstructured and harmful manner. He says his Article 8 rights will be infringed if I name him.

115. I have been referred to a number of cases in particular, MacDougal v SW and others (cited above) a case in which Lieven J allowed publication including the sperm donor's name because she determined that there was a public interest in naming him as an informal sperm donor who continued offering his services despite knowing that he had a significant inheritable health condition (fragile X syndrome). The decision to name the Applicant was not however *just* because of that condition, there was also a public interest in the risks of private sperm donation being more widely known and considered. Lieven J considered that naming the Applicant was likely to lead to wider dissemination of the impact of using him as a sperm donor had had on the mothers in the case. She referred to Tickle v Griffiths [2021] EWCA Civ 1882 indicating that there were some cases where the public interest in naming parents is sufficiently great as to outweigh the risk of identification of the children and their Article 8 rights. Although Lieven J recognised that there may be some negative impacts on the sperm donor in that case, she indicated that was a consequence of his own actions in pursuing the

applications despite opposition. Lieven J was not persuaded that the risk of the children in that case being identified altered her conclusion, they were too young to be conscious of any comment at the moment and the mothers would have to explain the position at some point in the future in any event. Lieven J concluded her judgment by commenting that in her view the provisions and practice in respect of anonymity in family law are there to protect the children and not the parents.

116. In my judgment the decision as to whether to name A by his pseudonym is relatively straightforward. On my findings A is a sperm donor who has advertised his services on the basis that he will allow the mother to make decisions about whether he sees the child and yet in this case he has ignored that position and pursued contact, parental responsibility, a declaration of parentage and a change of name for over 2 years in a manner which is rightly described by C as a 'nightmare'. The public, and vulnerable women seeking to get pregnant, should know that is the case and they risk a similar 'horror story'. There is a clear public interest in naming A as 'Joe Donor'.

117. However, the consequence of naming A as 'Joe Donor' has the consequence of exposing his real name too. A does not advertise under his real name. In the articles in newspapers and his television appearances he generally uses his pseudonym. There is one exception, to which I was directed, which is an article in the Times newspaper in August 2022 in which both names are mentioned. It is available online if one is a Times reader or if one obtains a free trial for a month and a simple search on Google will provide A's name although clicking the link will then require some payment or commitment to the free trial. Thus, naming A as Joe Donor will in all likelihood lead to his real name being identified too by the most rudimentary of searches.

118. The issue that then must be considered is that he has five children who bear his surname which is not a particularly common surname in the UK at least. Naming him will create a risk of identification for them too. As in MacDougal those children are young, certainly those within the UK, and will have to have their history explained to them at some point, indeed part of A's case is that he wants to introduce D to those children (and others with whom he remains in contact) so his case is that he wants 'his' children to know about each other and form sibling relationships.

119. I am satisfied that there is a public interest in naming A as Joe Donor in order to protect women from the potential consequences of unregulated sperm donorship, generally, but also from Joe Donor himself. The consequence of that decision is that A will be identified by name because of the article in the Times to which A presumably agreed. He has put his own name into the community and therefore exposed his children to the risks which he now seeks to prevent. He is seeking to protect Article 8 rights of privacy which he himself has allowed to be lost. It is perhaps another example of him taking what he himself described in the course of the case as a 'litigation position'.

120. The reality, in my judgment, is that his opposition to being named has little to do with any concern about his children discovering details about him but is actually about him not wanting the mothers of his children and others to know about my findings in this case.

121. I therefore intend to publish this judgment and to name A as Robert Charles Albon who offers sperm donation under the pseudonym Joe Donor. I am satisfied that it is in the public interest to do so as he is a man who intends to continue donating sperm and vulnerable women who are interested in such services should fully understand the risks of becoming involved with him. Naming him does infringe his Article 8 rights to privacy and family life but he himself has chosen to diminish that protection by engaging with the Press in order to advertise his services. Any infringement of those rights is in my judgment legitimate, necessary and proportionate in order to protect the rights and freedoms of others.

122. As I have included in this judgment the key findings from the fact finding judgment I do not see there is any need to publish that fact finding judgment.

Ancillary issue

123. Ms Morgan on behalf of the Guardian has reminded me that one of the allocation directions made on the 23rd August 2021 was an order prohibiting B from

removing D from the United Kingdom, that order is discharged and will be replaced by the usual provision in a Child Arrangements Order.

Potential appeal

124. I do not know whether A will seek to appeal my orders but given his unsuccessful attempt to appeal my order of the 23rd October 2023 I must accept that there is a possibility that he will seek permission to do so. I will not publish my judgment until either such time as the time for appeal (21 days) has expired or, if he does appeal, the determination of any appeal.

HHJ Jonathan Furness KC.
Sitting as a Deputy Judge of the High Court.
10th November 2023.