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In the Family Court Case No: WH23F00015
sitting at Carlisle

Neutral Citation: [2023] EWFC 97_

In the matter of
The Family Law Act 1996

<i>D (acting by her Litigation friend)</i>	Applicant
T	Respondent

Judgment
HHJ Baker - 9th June 2023

1. This is an application pursuant to section 42 of the Family Law Act 1996 i.e. a non-molestation order. The application, which is before me without notice being given to the respondent, was transferred to a circuit judge because it has a number of unusual features.
2. The applicant is a minor who is presently 14 years of age. The respondent is also a minor who is presently 15 years of age. The applicant appears by her litigation friend (her mother).
3. An application for a non-molestation order made by a minor requires the leave of the court as set out in section 43 of the Family Law Act 1996. Having heard evidence from the applicant I was satisfied that she has sufficient understanding to make the proposed application for a non-molestation order. Her statement and oral evidence revealed that she understood what she was asking the court to do and why. Further her statement revealed *allegations* of an abusive and harassing pattern of behaviour against the respondent over a prolonged period of time.

4. However, the issue that has led to me to give this judgment, which sets out a preliminary view, is that of whether the applicant and respondent are associated persons pursuant to the Family Law Act 1996.
5. The relevant section of the Act states as follows (my emphasis):

Sections 42 Non-molestation orders

(1) In this Part a “non-molestation order” means an order containing **either or both** of the following provisions—

- (a) provision prohibiting a person (“the respondent”) from molesting another **person who is associated with the respondent**;
- (b) provision prohibiting the respondent from molesting a relevant child.

6. Although the applicant and respondent are both children, section 42(1)(b) above does not in my view found a basis for this application for reasons I do not need to set out in this judgment.
7. It is therefore necessary for the court to be satisfied that the applicant is a ‘person associated with the respondent.’
8. The definition of an associated person is set out at section 63(3) of the Act, as follows (my emphasis):

Section 63:

...

(3) For the purposes of this Part, a person is associated with another person if

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- (a) they are or have been married to each other;
 - (aa) they are or have been civil partners of each other;
 - (b) they are cohabitants or former cohabitants;
 - (c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
 - (d) they are relatives;
 - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
 - (eza) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);
 - (ea) **they have or have had an intimate personal relationship with each other which is or was of significant duration**;
 - (f) in relation to any child, they are both persons falling within subsection (4); or
 - (g) they are parties to the same family proceedings (other than proceedings under this Part).

9. Neither the application (on Form FL401) nor the applicant's written statement or oral evidence proposed any other ground for the applicant and respondent being associated other than having had "an intimate personal relationship with each other which is or was of significant duration."
10. The combination of the applicants' oral and written evidence in respect of their relationship is as follows:
 - a. They became boyfriend and girlfriend on 5th January 2021;
 - b. The relationship ended on 1st May 2021;
 - c. They would go out together and spend time in each other's company;
 - d. The respondent would visit the applicant's parents' home to see the applicant;
 - e. The applicant would describe the respondent as her boyfriend to her friends and if asked about who the respondent was viz-a-viz the applicant;
 - f. She regarded herself as being his girlfriend;
 - g. They would kiss;
 - h. They would send each other text and social media messages asserting their love for each other and containing affectionate and loving expressions, phrases and emojis etc.;
 - i. The applicant had no other relationships that she would describe as 'boyfriend' or consider in the same way during this period.
11. There was an occasion when the respondent is alleged to have sent the applicant an unsolicited photograph of his private parts in February 2022.
12. The applicant did not assert any other form of what might be referred to as sexual contact or intimacy between herself and the respondent.
13. That since they separated time the respondent is alleged to have acted in various ways that, if true, amount to acts of threatening, intimidating and harassing (stalking) behaviours that have persisted until just before this application.
14. What does "intimate personal relationship ... of significant duration" mean?
15. The term is not defined in the Act. Neither can I find any specific definition within case law that my research has been able to unearth.
16. In *Domestic Abuse: Law and Practice 8th edition, Jordans, 2020* the following is set out in Chapter 2:

[2.28]

The class of associated persons was extended by s 4 of the DVCVA 2004 so that s 62(3) of the FLA 1996 reads as follows:

"For the purposes of this Part, a person is associated with another person if—

(ea) they have or have had an intimate personal relationship with each other which is or was of significant duration."

[2.29]

When explaining the possible meaning of this clause in debates on the Bill leading to the 2004 Act in Standing Committee¹, the Parliamentary Under-Secretary of State Mr Goggins said that it was the government's intention to close a significant loophole in the protection afforded by the FLA 1996 by including within it non-cohabiting couples. The Bill defined the meaning of this in the broadest terms and it would be for the court in individual circumstances to determine whether it applied. It was not the government's intention to include platonic friendships or brief sexual encounters such as one-night stands. Intimacy and duration were the key elements. For short or non-intimate relationships the Protection from Harassment Act 1997 (PHA 1997) was available.

[2.30]

It seems, therefore, that the intention of the legislation is to include the boyfriend and girlfriend who had not actually lived together. It is easy to see the problems of definition which might be encountered, and it has to be said that the court may be faced with significant difficulties in certain cases. While it may not have been the government's intention to include platonic relationships, the word 'intimate' has a variety of meanings and cannot be taken always to import a sexual connotation. Again, what is 'significant duration'? Would one month, or one week, suffice?"

17. The problem anticipated by the authors of that work is exemplified by the short version definition of the word 'intimate' in the Oxford English Dictionary:

“Close in acquaintance or association; closely connected by friendship or personal knowledge; characterized by familiarity (with a person or thing); very familiar. Said of persons, and personal relations or attributes.”

18. Although notably one of the definitions is:

“euphemistic of sexual intercourse”

19. The situation is further complicated by the fact that the form that anyone applying for a non-molestation or occupation order (FL401) asks the applicant not to confirm if the applicant and respondent were in an intimate relationship but in fact, at paragraph 4.1, asks the applicant to “select the one which best describes your relationship” and the relevant option is “Former boyfriend, girlfriend or partner who did not live with me.”

20. In relation to interpretation of the provisions of the Family Law Act 1996, In *G v F (Non-molestation Order: jurisdiction)* [2000] All ER (D) 927 Wall J considered an appeal from the Magistrates' Court in which the Lay Justices had determined that the applicant and respondent could not be considered to be cohabiting. In allowing the appeal Wall J observed:

“In my judgment, the message of this case to Justices is that where domestic violence is concerned, they should give the statute a purposive construction

and not decline jurisdiction, unless the facts of the case before them are plainly incapable of being brought within the statute. Part IV of the 1996 Act is designed to provide swift and accessible protective remedies to persons of both sexes who are the victims of domestic violence, provided they fall within the criteria laid down by section 62. It would, I think, be most unfortunate if section 62(3) was narrowly construed so as to exclude borderline cases where swift and effective protection for the victims of domestic violence is required. This case is, after all, about jurisdiction; it is not about the merits.”

Discussion

21. Children below the age of 16 are inherently unlikely or unable to fall within one of the other categories of associated persons as defined by section 63(3).
22. If the term ‘intimate personal relationship’ is restricted to mean only relationships that involve some element of sexual intercourse, it *should* exclude the possibility of any minor below the age of 16 from being able to rely upon the provisions of the Family Law Act for protection, as sexual intercourse below that age is illegal as a matter of law.
23. Likewise, a requirement for there to be other sexual intimacy short of sexual intercourse could be interpreted as some form of encouragement or approval of potentially inappropriate or harmful sexual activity by minors.
24. If the bar were set at a level whereby ‘intimate personal relationship’ always included some element of sexual intimacy it could result in excluding law-abiding teenagers from the protection afforded by the Act. The existence of section 43 must indicate that this was not the intention as otherwise the Act would simply exclude the ability of people under the age of 16 from being able to apply.
25. Therefore, my view is that any determination as to whether a particular application falls within the statutory criteria must be set in the context of the circumstances of the case and indeed relevant characteristics of the applicant and respondent.
26. The background of this application known to the court at present is a relationship between two teenagers who at the time of their relationship were 13 and 14. They should not be having sexual intercourse and any sexual intimacy is likely to be non-existent or of a very limited nature.
27. What does an intimate personal relationship for teenagers look like? I would suggest (although I certainly do not intend to attempt to provide an exhaustive list): they spend time with each other; describe each other as boyfriend and girlfriend to themselves and to their friends; say and send each other messages expressing their loving or affectionate feelings for each other; and act in ways commensurate with their age and stage of development that both subjectively and objectively can readily be said to be a relationship that is more than casual or fleeting in terms of its depth and characteristics. It does not, in my view, require the relationship to be a facsimile of an adult intimate personal relationship.

28. I have concluded, on the evidence as it stands at present and for the reason set out above that in the context of the circumstances of this application the applicant and respondent were in an 'intimate personal relationship' as required by the Act.
29. Likewise, in the context of this applicant and respondent, I have little hesitation in concluding that four months is a significant duration for parties of their respective ages to be in a relationship. It is impossible to ascribe a 'time-limit' whereby a relationship goes from being of 'insignificant' to 'significant' duration. The setting of any such evaluation is of significant importance - in one context four months is no time at all and in another it can be a very long time indeed. In the circumstances of *this* relationship, on the facts known to me at present, I have little hesitation in determining that the qualification imposed by the Act is satisfied.
30. I would emphasise that I have considered it necessary to determine this element of the case on a preliminary basis and at a 'without notice' hearing in the absence of the respondent because of the need to determine the application for leave pursuant to section 43. If I could not be satisfied, at least on the evidence available to me at this hearing, that the application could qualify under the Act, the application would go no further.
31. The applicant was not legally represented at this hearing and therefore the research undertaken with respect to this issue has been entirely my own. It may be that the respondent, at the return date, wishes to argue a different legal or factual matrix that would give rise to an alteration in my assessment of the situation and a re-evaluation of the qualifying criteria.
32. I have listed this matter for an 'on notice' hearing at which both the applicant and respondent will have the opportunity to attend (by video link, by reason of directions I have given pursuant to the parties' actual or potential vulnerabilities).

HHJ Baker
9th June 2023