

NEUTRAL CITATION NUMBER: [2024] EWFC 173

Case No: ZW23C50506

IN THE WEST LONDON FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Date: 28/02/2024

Before :

MRL. SAMUELS KC
Sitting as a Deputy High Court Judge

Between:

M

Applicant

- and -

(1) LONDON BOROUGH OF HOUNSLOW

(2) G (BY HER CHILDREN'S GUARDIAN)

Respondents

Lisa Peacock instructed by MB Law Ltd for the mother
Mark Roscoe instructed by the local authority
Mark Rawcliffe instructed by Creighton & Partners for the child

Hearing dates: 25 January and 28 February 2024

Judgment

Re G (Notification of Father with Parental Responsibility)

.....

Mr L Samuels KC sitting as a Deputy High Court Judge

APPROVED JUDGMENT

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

Introduction

1. These proceedings concern a 14 year old girl ('G'). Her mother is 'M' and her father is 'F'. It is agreed that F has parental responsibility for G. The local authority commenced public law care proceedings under Part IV Children Act 1989. They allege that G suffered significant harm in the care of her mother due to a number of issues including neglect and her non-attendance at school. G is currently the subject of an interim care order and has been placed with a family member. There are ongoing assessments of M and that family member.
2. F was not automatically served with notice of proceedings because his address was unknown. The local authority has obtained an order against the Department of Work and Pensions for disclosure of his address. In the meantime, the mother has applied for orders under FPR Part 6.36 and Part 12.3(3) to discharge the obligation to serve F with notice of these proceedings and to remove F as a party. That application is supported by G, represented through her Guardian, and opposed by the local authority.
3. I heard submissions from all the advocates on 25 January 2024 and reserved judgment. I have decided to refuse the application but on the basis that F be served in the first instance with very limited papers, sufficient to be able to argue, if he wishes, for further involvement in these proceedings. In the judgment below I explain my reasons for reaching this decision. I sent this judgment out in draft to the parties on 26 February 2024.

Background

4. M and F were in a relationship between 2004 and 2013. M has three children. F is the father of her youngest two children. G is their younger child. M alleges that F was domestically abusive towards her including by inflicting serious violence, by threatening to kill her and by coercive and controlling behaviour. It is also alleged that F sexually abused M's oldest child when she was about 5. G has not seen her father for 10 years.

5. The chronology filed by the local authority highlights neglect issues from 2012 when F was part of the family. There was an incident in 2013 when F followed M who was on a bus and made threats to kill her in front of the children. Ms Peacock handed me a police statement from M made at the time describing the incident. M's eldest child made allegations of rape against F in 2015 (dating back to when F was part of their family) but M described concerns at the time about whether she was being truthful. F was interviewed by the police and denied the allegations. It is recorded that the police's view was that it would be a difficult case to prosecute as there were discrepancies in the child's allegations. The local authority formed the view that the allegations were 'substantiated' but took matters no further as there was no ongoing contact between that child and F. The local authority does not currently have access to any further information about F (save as below) and no party sought to adjourn these proceedings to enable that information to be obtained.
6. A PNC print out for F shows a number of offences of dishonesty and driving whilst disqualified. He was convicted in 2009 of an offence under s.5 Public Order Act 1986. He was convicted in 2012 of an offence of common assault and an offence under s.5 Public Order Act 1989. His last conviction in 2014 appears to relate to the incident in 2013 with the bus and shows he was convicted of affray under s.3 Public Order Act 1986, failing to stop and dangerous driving and he was sentenced to a total of 12 months imprisonment. There was also a 4 year restraining order in relation to M.
7. M has filed a statement in support of her application. She says that she met F when she was 18 and he was 36. She has set out the domestic abuse that she suffered from F which included him putting his hand down the front of her trousers as punishment, throwing her out of the car when pregnant, locking her into her flat, taking her bank card so he could spend her money on all night gambling clubs, and assaulting her by grabbing her by the throat and banging her head against the wall. She says that she was warned previously by a social worker that other women had been abused by him. Foolishly, she says, she ignored the warnings. In 2011 he assaulted her in front of their children by ramming a pair of scissors into her forehead. She needed stitches and still has a long scar which is visible. She says she separated from him when she told him a friend had killed his girlfriend and children and then himself so they could all be together, and F said that this sounded like a good idea. She says she has not seen

him since they separated and has needed extensive therapy and counselling to help her move forward following such an abusive relationship. She describes her eldest child making allegations of sexual abuse against F and that F's next partner reported him for sexually abusing her 3 year old child. All her daughters are petrified of F. He tried to make contact with their middle child about 2 years ago and she reported this to the police. About 4 years ago F drove past the two eldest girls and called to them saying "I know who you are" and tried to get them to go in the car with him. He has never sought any contact with G. She is concerned that if F was notified of these proceedings then he would "use the opportunity to continue to abuse and intimidate my family" and that would have a serious impact on her, on G and on her other children. She said that she had a panic attack at the thought that F might one day be permitted to attend court. Such participation would, in her view, cause G significant harm.

8. Out of respect for G's wishes I will not give any further details of the matters which have given rise to the local authority's application under s.31 Children Act 1989. G does not want her father to know that information. I have however read in full the initial social work statements and interim threshold allegations.

Submissions

9. Ms Peacock submits on behalf of M that this one of those rare cases where a father with parental responsibility should not be served with notice of the proceedings and should be discharged as a party. This father has not sought to exercise his parental responsibility for G for over 10 years and has not sought to establish any relationship with her. It is said that F's involvement in the proceedings is likely to be counterproductive as he will undermine M's chances of resuming care of G and his presence in these proceedings will re-traumatise M and all three children. He is unlikely to be able to play any future role in G's life and poses a risk of physical, emotional and sexual abuse to her. If, contrary to these submissions, F is to be given notice of these proceedings so that he may be heard on the question of his party status, then she submits that very limited documentation should be provided to him at this stage and M should be excused from attending any future hearing where F attends.

10. The local authority opposes the application on the basis that, on its facts, the high bar for excluding a parent with parental responsibility from knowledge of even the existence of proceedings is not met. The local authority acknowledges that the prospect of F being assessed to be a safe carer for G is remote and even the prospect of contact would have to be the subject of a detailed risk assessment. They also acknowledge that there has been a significant allegation of sexual abuse made against F, that he has played a very limited role in G's life to date and that G's wishes and feelings are an important factor. However, he may be able to assist in identifying other family members on the paternal side who can play a role in G's life and his last criminal conviction was in 2014, so 10 years ago now. In submissions Mr Roscoe sought to distinguish the facts of this case from the stark examples in other cases where similar applications have succeeded. He suggests that the appropriate course in this case would be to notify F of the proceedings and ask him if he wishes to attend the next hearing or otherwise participate in the proceedings. If he does not respond, or says he wishes to play no part then he should be discharged as a party. If he does wish to attend then he can be served with a very limited selection of documents.

11. G's guardian supports M's application. G is believed to be *Gillick* competent (she is 14 years and 7 months old) and the Guardian considers that she should give effect to G's wishes and feelings. On speaking to G, she was articulate and spoke about feeling unsafe if F knows details about her life, particularly as he is a sex abuser. Mr Rawcliffe accepts that the starting point should be full participation and any limitations should be considered on an incremental basis. F could be given notice of the proceedings and could be told that if he wishes for active participation he must apply to the court. Measures could be adopted to manage risk including limiting the documents to be served on F, using the powers to direct special measures and making orders for injunctive relief. The orders sought by the mother are measures "of last resort". It is accepted that F has not had any opportunity to answer M's allegations. However, Mr. Rawcliffe argued that the high bar of exceptionality could be met on the cumulative basis that here there is no existing family life or relationship and no realistic prospect of one given G's strong views, there are allegations of serious sexual abuse of a sibling and of domestic abuse, there is extremely sensitive information and that G strongly objects to F being given notice.

Legal Framework

12. Rule 12.3(1) Family Procedure Rules 2010 identifies the automatic respondents to an application under Part IV Children Act 1989. These include “*every person whom the applicant believes to have parental responsibility for the child*”. Rule 12.8(1) provides that a person who is a respondent to proceedings must be served with the documents specified by rule 12.8(5), namely the application, the documents identified in FPR Practice Direction 12C and the notice of any hearing set by the court. PD12C provides that the application form and Form 6C (notice of proceedings) must be served on every respondent 7 days before any hearing or directions appointment unless the court directs otherwise (paragraphs 1.1, 2.1 and 2.2).
13. Under Rule 6.36 FPR (applied by Rule 12.8(7)) the court has the power to dispense with service of any document which is to be served in proceedings. Under Rule 12.3(3) FPR the court may at any time direct that a party be removed.
14. In *A Local Authority v M and others* [2020] EWHC 2741 (Fam), [2020] 4 WLR 157 MacDonald J considered the question of service of proceedings on a father with parental responsibility in the context of an application for authorisation of deprivation of liberty under the inherent jurisdiction. The child B in that case was 17 and struggling with mental health disorders. He had displayed highly emotionally dysregulated behaviour. The local authority applied to dispense with service of proceedings on the father and the application was supported by B who did not want his father to be informed and by B’s mother. MacDonald J granted that application.
15. Within the previous care proceedings the court had initially acceded to an application to dispense with service on the father but he later became a party, having been notified of the proceedings by the mother. There were contested allegations of domestic abuse against the father and also B said that he and his siblings had witnessed his father harming adults with extreme violence and suggested he had killed people. Expert advice had been taken on the issue of contact between B and his father and that advice was that such contact would place B at risk of harm with respect to his emotional wellbeing and stability, given his vulnerabilities.

16. MacDonald J noted that in the context of care proceedings previous authority has confirmed that the court has a general discretion to dispense with service of proceedings on a respondent, but that discretion should only be exercised “*in highly exceptional circumstances*” (*In re AB (Care Proceedings: Service on Husband ignorant of Child’s existence)* [2003] EWCA Civ 1842, [2004] 1 FLR 527). The right to access to the court is enshrined in Article 6 ECHR, but it is not an absolute right and therefore not every limitation or even exclusion is unlawful. Similarly, the Article 8 right of a parent to be fully involved in the decision-making process is a qualified right (*A local authority v M and F* [2009] EWHC 3172 (Fam) [2010] 1 FLR 1355 per Hedley J.).
17. He noted that, in the context of adoption, Peter Jackson LJ had undertaken a review of the authorities dealing with notifying fathers in *In Re A and others* [2020] EWCA Civ 41, [2020] 3 WLR 35 and had said (paragraph 89(7)) “*It has rightly been said that the maintenance of confidentiality is exceptional, and highly exceptional where a father has parental responsibility... but the decision on whether confidentiality should be maintained can only be made by striking a fair balance between the factors that are present in the individual case*”.
18. MacDonald J then said:

“32. *Drawing these threads together, in determining the local authority’s application for an order dispensing with service of these proceedings on the father, I am satisfied that I should apply the following legal principles in deciding whether to exercise my power to dispense with service of proceedings for an order under the inherent jurisdiction on a father with parental responsibility:*

(i) The starting point is that a father should be able to participate (in a wide sense) in proceedings concerning his child. The court should start with full participation then consider partial participation and then, only as a device of last resort, the father’s exclusion from the proceedings.

(ii) The court’s task is to identify the nature and extent of the harm in contemplation. The court should be rigorous in its examination of the risk and gravity of the feared harm.

(iii) *There is no requirement that a significant physical risk be demonstrated. Harm and risk comes in many guises.*

(iv) *When evaluating the risk of future harm, there is no minimum requirement. The court must be alert both to the risk and to the magnitude of the consequences should the risk eventuate, and must also consider whether and to what extent that risk can be managed by the court's control of its own processes. The greater the harm the smaller need be the risk.*

(v) *The court is not determining a question with respect to the upbringing of the child so the welfare of the child, whilst an important consideration, is not paramount.*

(vi) *Authorities in the Strasbourg jurisprudence put a high bar on excluding a parent with parental responsibility. In this context, where a parent has parental responsibility or a right to respect for family life under article 8, a high degree of exceptionality must be demonstrated by strong countervailing factors to justify their exclusion from participation in the proceedings.*

(vii) *It must be remembered that exceptionality is not, in itself, a test or a short cut and a fair balance must be struck between the factors that are present in the individual case.*

19. I note that in *The Mother v Northumberland County Council* [2021] EWCA Civ 1221 Macur LJ expressed the caveat to the above line of authorities (at paragraph 19), that differentiating between 'exceptional' and 'highly exceptional' might "*detract from the essential task of balancing fact specific features in every case. It will become 'the test' or 'the short cut'*". A comparison was drawn between this differentiation and the difficulties identified by the Supreme Court in evaluating the difference between 'wrong' and 'plainly wrong'.

20. In the more recent case of *A County Council v a mother, a father and M* [2023] EWFC 122 Recorder Kendrick KC dismissed the mother's application to discharge a father with parental responsibility from proceedings. Those were care proceedings involving a 12 year old child. The mother had alleged domestic abuse against the father including physical violence and coercive and controlling behaviour. The father had played no role in M's life for over 10 years. He had issued an application for contact but that had been dismissed in 2015. Within those proceedings some findings of

domestic abuse had been made. The Recorder set out in his judgment a number of cases where the “*stark facts*” had led to the discharge of a father from proceedings. These included a case before Hogg J where the father (who did not have parental responsibility for the subject children) had been convicted of the murder of a child and a case before Knowles J where the father with parental responsibility had been convicted of sexually abusing children and had been sentenced to 22 years imprisonment. In that case the father had been given notice of the applications and had been given limited redacted disclosure of documents. He was not given all the papers as this was adjudged to have amounted to a violation of the children’s Article 8 right to respect for their private lives.

21. The Recorder balanced the competing ECHR rights of all the parties and determined that the concerns expressed by the father “*are not at the level of severity to provide compelling reasons to justify discharge of the father from these proceedings*”. He noted the fundamental importance of parental responsibility and that under the FPR a parent with parental responsibility is an automatic party to proceedings (paragraphs 64 and 65). The Recorder did however grant the father’s own application to be discharged as a party on different grounds but subject to a right for reconsideration in the defined circumstances set out.

Analysis

22. By a combination of Rule 6.36 and Rule 12.3(3) FPR the Court has the power to exclude F from participation in these proceedings notwithstanding the fact that he has parental responsibility for G. Such decisions always require a careful balance to be drawn between the respective ECHR rights of the parties. Both parents have competing Article 6 and Article 8 rights, and G has her own Article 8 right to respect for her privacy.
23. When considering an application of this nature the court has limited information available. My first task is to establish the facts as clearly as possible. I need to bear in mind that the evidence has not been tested by cross examination and that I do not have any information from F or from the paternal family.

24. The evidence I have read identifies the following core information:
- (1) There was a serious incident in 2013 which led to F's convictions for affray, failing to stop and dangerous driving. He was sentenced to 12 months imprisonment. That incident must have been frightening for M and for the children. It was, however, over 10 years ago. F has not sought to repeat his actions following his conviction for affray and is not alleged to have breached the restraining order placed upon him.
 - (2) M alleges domestic abuse during the course of the parties' relationship which includes serious physical violence. However, again, those events were now over 10 years ago and there have been no further allegations raised during that time frame.
 - (3) There are allegations that F has sexually abused G's older sister, but those allegations were not tested in court and some doubt was expressed about their reliability at the time they were made in 2015.
 - (4) F has not seen G for over 10 years nor has he sought to play any part in her life.
 - (5) G does not wish to see F or to have anything to do with him. She does not wish him to have any information about her life.
25. Following the path identified by MacDonald J, the Court's task is to identify the nature and extent of the harm in contemplation. M identifies a history of violence from F but this was over 10 years ago during or at the end of their relationship. She identifies a risk of sexual abuse to G but any direct contact between them is not being considered at this time. In terms of F's participation in proceedings the risk of harm is said to lie in the potential re-traumatisation of M and the children, including G, and the potential undermining of her prospects of resuming care of G. She is concerned that he would continue to abuse and intimidate her, but any direct risk of violence appears to be more remote. M is understandably worried about the impact on her participation in these proceedings, but those risks can be managed, in my view, by way of clear participation directions.
26. G's objections as a *Gillick* competent child clearly carry significant weight but they are not decisive. Notification of F as a first step need not involve any direct involvement between F and G and her concerns about disclosure of sensitive information can be met through him being provided with only limited and redacted documents. F's involvement does, as identified by the local authority, raise the

potential for the investigation at least of paternal family support for G. Ultimately it is G's best interests for her to have the widest possible enquiry into what family options and support may be available to her.

27. There is, on any view, a high bar for excluding a parent with parental responsibility from the opportunity to participate in court proceedings. In particular, there is a high bar for excluding such a person from proceedings without even the opportunity to be heard on the issue. This is not one of those cases where F is unaware of the existence of his child. Fairness demands that F be given the opportunity to make representations on the subject. As Mr Roscoe rightly submitted, service upon F may be met with a range of possible reactions. It may be ignored, or else F may indicate no wish for involvement in the proceedings, in which case it is likely that an application to remove him as a party would then be successful. Or else he may wish to be heard on the subject in which case careful consideration would then need to be given as to the papers he is to see. In my view, they should be limited to those necessary to enable him to argue the point as to future involvement. They are the documents that centre upon his past life, the allegations against him, his lack of previous involvement in G's life and the reasons provided by M and G against his future participation in proceedings. M should be excused from attending the hearing where F's further involvement in these proceedings is to be decided.
28. Accordingly, I refuse M's application under Rule 6.36 FPR and adjourn her application under Rule 12.3(3) FPR to an on notice hearing.