

IN THE EAST LONDON FAMILY COURT

11, Westferry Circus,
LONDON,
E14 4HD

Date: 22nd September 2023

Before :

HER HONOUR JUDGE CAROL ATKINSON

Between :

**Father
- and -
Maternal aunt**

Applicant
Respondents

The applicant father in person
A solicitor for the Respondent maternal aunt
Ms Mufti, counsel, for the London Borough of Havering

Hearing date: 21st September 2023

JUDGMENT

HER HONOUR JUDGE CAROL ATKINSON:

1. A is a girl aged 12 years. She is the eldest of three siblings. She has lived with her father and siblings since November 2019. She was placed in the care of her father by an order made in a family court in the Midlands pending the final determination of cross applications by both parents that the children should live with them. There was no final hearing because in January 2020 the mother tried to end her life. She was taken to hospital but did not survive and passed away on 24th January 2020.
2. Since July 2023, A has been with her maternal aunt in the North. Her father does not agree that she should remain there. He is the only person with parental responsibility for her. The

current proceedings began with his application for her return to his care. I will set out the sequence of events shortly but suffice to say that there are two applications listed before me today. The first is the father's application to enforce the order for return that I made on 14th September (repeated in the order on 15th Sept) because the aunt has failed to comply with it and the second is the aunt's application for an interim 'lives with' order, a stay of the orders for return and a special guardianship order.

3. Because of the litigation trajectory of this case thus far, the multiple applications, the lack of candour by the father in his applications to the court and the suggestions made by the solicitor acting for the aunt that there was an appearance to her of a lack of judicial independence, I have felt driven to record in this judgment the precise basis for the orders I have made. I first need to set out some background.

Essential history

4. There had been a great deal of local authority involvement in this family up until the placement of the children with their father, and beyond. In the year leading up to the mother's death, a total of 6 referrals had been made to a Midlands children's services, mainly by their school. The referrals centred on the continued exposure of the children to domestic violence in the household. That domestic violence was recorded by the school and local authority as largely emanating from the mother towards the father. The mother, it was recorded was a vulnerable lady. She suffered from PTSD following an incident of sexual abuse when she was living at home with her parents, and she was periodically heavily dependent on alcohol. None of this was disputed by the mother within the family proceedings and to her credit her stated mission was to address those problems. I make no findings about these matters. I am simply recording what is contained in the papers.
5. I assume that it was because of the mother's dependency on alcohol and poor mental health that the children were considered by a district judge to be safer with their father in the South East where he had returned to live with the paternal grandparents. The Midlands children's services considered him a 'protective factor'.
6. There have been no findings regarding the level of domestic abuse, precisely what it was or from which of the parents. The tenor of the recordings by independent agencies is that it was mutual. In the months leading up to the court decision that the children should leave the Midlands and live temporarily with their father, possibly of greatest significance are multiple disclosures from A to her school, in particular a Mrs G. The school at the time reported that it considered these disclosures to be genuine and spontaneous. It is noticeable that A's concerns then were centred on her mother's abusive behaviour to her, her responsibilities in protecting her siblings and concerns about the wellbeing of her father and missing him. I highlight this because it is in stark contrast with her presentation now.
7. A further assessment of their circumstances was carried out by A South East local authority and overall, they were considered to be more settled having been removed from the domestic chaos and abuse that played out in front of them regularly when their parents were together.
8. Tragically, on 24th January 2020, the mother passed away. This was not her first attempt at suicide. At least one attempt had been made previously in the presence of the children when she had tried to hang herself with a dog leash and an attempt to jump out of the moving car on a motorway was also interpreted as an attempt to end her life. It was A who held onto her to stop her. I do not think it is disputed that during these dark times and prior to their removal to

the South East, the maternal family provided frequent care for the children, who spent a lot of time with their maternal grandmother.

9. After the mother's death there was ever decreasing contact between the maternal family and the children. This was compounded by restrictions during the pandemic. This no doubt added to the already significant losses that the children had suffered through the loss of their mother and moving away from their friends and the area they had grown up in. The father moved the family from the South East to London in early 2023 moving in with his new partner and her children. The partner's older twin girls soon moved out to live with their father.
10. It is the maternal aunt's case that her sister, the mother, was the victim of all forms of domestic abuse at the hands of the father and that it was his treatment of her that brought about her death. There has been no finding that her death was suspicious or linked in any way to the behaviour of the father. I have no information about the death, the causes or anything else.
11. In early 2023 the aunt agrees that she gave A a 'secret phone' for her to use to contact her. In Feb 2023 the children were taken to stay with the maternal family. It was because of conversations the aunt had with A at around that time that the aunt contacted the NSPCC and a referral was subsequently made to the London authority (Havering) regarding allegations that A made about the treatment of her and her siblings. A became increasingly unhappy over the following months to the point of expressing suicidal intent and by July 2023 it appears to have been agreed that she could go to stay with her aunt. The aunt insists that the agreement was that A was moving to live with her permanently. The father now accepts, I think, that he did contemplate this but changed his mind when he realised that he was being cut out of his daughter's life. The maternal aunt has photocopied selective parts of A's diaries which demonstrate the extent of her unhappiness and to which I will return.
12. The LB Havering investigated the complaints and were also involved in trying to broker an agreement as to A's future between the various members of the family. I was given some information about that orally by the allocated social worker at the hearing on 14th. It is recorded in my summary of reasons. It was not until a few hours before the hearing on 21st that I received the completed assessment – dated 21st September 2023.
13. It was against that background that the father sought an order for return of A on 11th Sept. I declined to hear this case on a without notice basis and listed it for an on notice hearing on 14th Sept. I was also keen to hear from Havering as I had no safeguarding information. I dealt with the case on 14th believing that the aunt had been given notice. I had the essential safeguarding information before me from the social worker and no reason why A should not return home. I refer to the summary decision I prepared to accompany the order.
14. It would appear that the aunt did not receive notice of the hearing on 14th Sept in sufficient time for her to engage. On searching my inbox with this case name when looking for something else, I can see that I did receive an email from the solicitor acting for the aunt informing me at 11.44 that she had been contacted by the aunt at 10.45. In this court we have an embargo on emailing the Judge direct and I regularly decline to respond to emails direct from parties or solicitors. By then the hearing was over. I did not see that until 20th September. However, the court received no formal application from the aunt during the remainder of that day.

15. The court received the aunt's application to stay the orders and seeking interim live with orders in her favour, at 3.18pm on Friday 15th – the following day at almost close of business. As Williams J observed on the face of his order (see later), given that there had been no effective service an application to set aside the order made on 14th might have been thought appropriate. However, no such application was made. Instead, I was asked to stay my orders on the merits and make an order that A should live in her aunt's care in the interim. Given the timing of the application any order would have been made on a without notice basis. I had to read the 102-page statement quickly. I declined to make the orders. However, recognising that there may have been more to the substantive position I listed it for hearing this week.
16. The aunt did not comply with my order. She made an application out of hours to appeal my orders and pending determination of those issues, stay the return order. She also sought to make the child a ward of court. The out of hours application was dealt with by Poole J on Saturday. The order for a stay and to ward the child was refused on a without notice basis. The order sets out full reasons. That left the appeal and a further application for a stay. I was also informed that the application to make the child a ward was still pursued.
17. On Monday 18th the father issued an application to enforce. I made entirely legitimate and usual enquiries of the High Court to see whether the applications there were listed. My purpose, if not obvious, was to avoid the duplication of effort. I was not told of any. So, I listed the enforcement hearing at 2pm on Tues 19th. Just before 10am on Tues 19th I was sent an order made by Williams J on the appeal not dealing with permission to appeal but imposing a stay until 12 noon on the 22nd September, the day after the hearing on 21st. That order was subsequently amended by reducing the length of the stay to the conclusion of the hearing on 21st. Everything else on the order remained the same. The recitals record the Judges' concern that I might not have been aware of the conflicts in the evidence, the child's view and that the aunt did not have proper notice of the hearing on 14th.
18. I adjourned the enforcement hearing to be heard together with the aunt's application which I had listed today. I did so at a time when I believed that the order of Williams J had stayed the return order until the day after that hearing. In my view, that did not prevent me from continuing to hear both applications on 21st. I mention this detail because it was the subsequent change in the order by Williams J that has prompted the solicitor acting for the aunt, without more, to conclude that there has been some impropriety between the Judges hearing these applications. I deal with this below.
19. For this hearing I have read the following:
 - a. The father's original application, his chronology prepared for the on notice hearing and a 62 page Bundle of historical papers;
 - b. The aunt's statement in support of her application running with exhibits to 102 pages;
 - c. The Bundle prepared for the appeal hearing and application to make the child a ward which is largely made up of the documents already submitted by the aunt to me.
 - d. The single assessment by LB Havering signed off on 21st Sept 2023.
20. The hearing was attended by the father, aunt and her solicitor and LB Havering, represented by Counsel at my request.

Decisions

21. It is against that background that I dealt with the issues– whether pursued or not – in the following ways.

The return of A to her father

22. I have dismissed the father’s application for enforcement of the orders of 14th and 15th September and discharged the order of 14th September 2023 and that part of the order of 15th September repeating the direction to return A to her father.
23. This was because the Havering assessment contained information so contrary to the information that I was given by the Social Worker on 14th Sept that it undermined the fundamental basis for my decision.
24. In short, contrary to what I was told at the hearing on 14th, there are safeguarding concerns which are relevant to the issue of A returning to the family home. The assessment reveals that whilst the historical concerns did not amount to any safeguarding issue, having been investigated already, there was support for what A describes as the way in which she was treated by her father in their present household. That came from a number of sources but notably, the children of the father’s new partner who have themselves left that house because of the behaviour of the father and domestic arguments.
25. It is correct that the report does record no safeguarding concerns in relation to A but that is because she is currently not in the father’s household and therefore not exposed to those things. In those circumstances and without making any findings as to the truth or otherwise of those allegations, my original orders could not stand.

The broader safeguarding concerns in the paternal home

26. The assessment itself is focused on the welfare of A but the information contained in it, if correct, should have alerted the local authority to the circumstances in which the other children are living. By way of example:
- a. The older girls detail regular domestic arguments and volatility as between the father and his new partner which have played out before all of the children.
 - b. There are allegations that the father shouts and is abusive to the children.
 - c. It is suggested that he is out of the house for most of the time leaving his children to be cared for by his partner or her older children.
27. In the historical context of this case – set out above - this raises obvious safeguarding concerns in respect of the younger two children – B and C - who are not subject to the current application. Whilst they appear settled, I am concerned at the possibility that they may continue to be exposed to domestic arguments and volatility. I am worried that the apparent fragility of that household is raised and the suggestion that there are frequent break ups and reconciliation adding to the children’s confusion. These children have lost their mother. They have also suffered the losses outlined above. They need stability and security. These matters demand investigation and if found to be correct could found the basis of an application for statutory orders.

Potential safeguarding issues in the maternal aunt’s home

28. There is another issue which concerns me relating to A which nowhere features in the Havering assessment. However, it may be because Havering did not have access to the material that highlights it, as this has been provided by the aunt herself.
29. I want to pause for a moment to say this to the aunt. I realise that she has lost her sister in all of this. I am very sorry for her loss. These children have lost their mother. No matter what my conclusions at the end of this case, the maternal family are enormously important to A and her siblings. I have already described the impact of that loss upon them, but it is also right that the maternal family are the only means by which their mother can be kept alive to them, given the history.
30. The diary pages photocopied by the aunt has provided selective disclosure of A's diary. There are some excerpts from 2021 in which she expresses dismay at her lot – and wishes to live with her mother's family. She describes overhearing conversations at that time about her mother's death. It is entirely likely that she was grasping for the truth of what had happened at that time and looking for answers. The absence of any pages through 2022 suggests, however, that the things she overheard did not leave her with a belief that her father was implicated in her mother's death. This emerges in 2023.
31. There are many more troubling excerpts from Jan/Feb 2023 and June/ July 2023. By this stage A has had her secret phone for many months. On 12th Jan 2023 the aunt makes an anonymous ref to NSPCC – pg 142 – she says this: *'The child lost their mother to suicide due to being a victim of domestic abuse and is currently in their dad's care. The child feels very unhappy as she is now old enough to realise her mum died due to her dad's actions....'*
32. A's outpourings during Jan/Feb 2023 and June/July 2023 are desperate and show that by this time she considers her father and paternal family responsible for the death of her mother – *'I need help well yeah I do I'm living with a murderer and his minions who knew there [sic] so killed my mum...'* . And worse – *'I need help yeah I do I'm living with a murderer and his minions who knew there so killed my mum but they're his fake alibis...its no longer safe for me here...'* . A threatens to harm herself and expresses a suicidal intent in the same recordings.
33. It seems to me that these recordings suggest a child who has at best been drawn into adult matters and at worst encouraged or permitted to believe that her father is implicated in the death of her mother – possibly caused it. That, of course, is her aunt's case but at this stage there has been no determination of that issue and no evidence filed, as yet, in support. In my view this has the potential to cause her significant harm and needs to be investigated as a matter of urgency. Havering, having now seen that evidence, agrees.

Section 37 direction

34. As a result of the significant safeguarding concerns set out above in the household of both the father and the aunt, I have directed Havering to prepare as a matter of urgency a report pursuant to s.37 Children Act 1989. That report should concern itself with A and her siblings. I have not rehearsed the applicable law on the making of such an order as there was no issue taken with me on this point. There was no opposition to the making of that order.
35. The aunt opposed the direction being made to Havering arguing that they had done precious little so far and preferring the authority in the North where the aunt lives. Havering is the correct authority to carry out this work pursuant to s.37 (5)(b) and also s.37(5)(a) for B and C

(not determining the ordinary residence of A at this stage). I have, however, invited Havering to use an Independent Social Worker and they have agreed. I want the report within 6 weeks. Whilst the full report may not be available within the 6 weeks that I will relist this matter to return, I intend that urgent work should be carried out with A to ensure that she is safe in her current placement and for her continuing education in the interim.

36. I did consider the making of an Interim Care Order (ICO) at this hearing pursuant to s.38(1)(b) Children Act 1989 but concluded that this was not necessary right now because whilst the interim threshold might arguably have been crossed:
- a. The only real purpose of an ICO would be to remove her from her aunt and place her in foster care. I am quite certain that would heap yet more emotional harm upon her particularly if not planned and without the support of a Guardian through whom she would have an independent voice.
 - b. The aunt has offered an undertaking that there will be no discussions with A about the matters that I have identified above, and she will be protected from being drawn into the dispute between the adults. That undertaking was offered freely upon my enquiry. I am grateful for that and trust that she will keep her word.
37. I have relisted the case on 7th November 2023 at 10am. In the meantime, A will receive education from her London school.

Allegations of judicial misconduct

38. At 10.20am on Wed 20th September my clerk was sent an urgent C2 application by solicitor acting for the aunt. The application sought disclosure of all communications between me and the High Court, me and Poole J (who had dealt with the OOH application), me and Williams J (who dealt with the permission to appeal). No reasons were given. My clerk was '*respectfully*' asked to provide the communications or refusal by 1pm that day. As a result of an admin error some communications were sent but immediately recalled by my clerk on my instructions.
39. I dealt with this application today and dismissed it. I did so because when asked if it was still pursued I was told that as the recalled communications had been sent, there was no need. In fact all communications had not been sent. This is a serious issue and it seemed necessary, therefore, for me to be clear that in my assessment the application was totally without merit. I enquired as to the reasons for such an application and was told by the aunt's solicitor that '*there were concerns in respect of judicial independence regarding my client's appeal at the High Court*'. An explanation was given that centred on the amended order made by Williams J and what the aunt's solicitor thought was the suspicious timing of my order adjourning the enforcement application.
40. As I explained to solicitor for the aunt that there are frequent communications between Judges about the listing of cases. As a matter of courtesy, when one Judge makes an order in a case in which another Judge is involved that order is sent – sometimes with an explanation. However, Judges are bound by their judicial oath of independence and impartiality. They are well aware what can and cannot be discussed. Lawyers acting for the aunt had absolutely no basis for suggesting that there was a lack of judicial independence as between me and the two High Court Judges named. Apart from anything else, had I decided to tell Williams J what to order, I might have told him not to stay my order. This was a shocking application. It was unnecessary and totally without merit.

41. Just after midday on 20th September my clerk received another email from the solicitor for the aunt informing him that *'I will be making a formal application for HHJ Atkinson to recuse herself from this case prior to the hearing tomorrow afternoon. I will send the same with my formal submissions by the morning.'*
42. I received no application on the morning of the hearing and no position statement. No oral application was made during the hearing. I asked the aunt's solicitor what had happened to the application she was so keen that I should know about. She told me that she had decided not to pursue it *'Having heard how I dealt with the father's enforcement application'*. She went on to observe that my handling of the case today had caused her and her client to no longer consider that there was *'a perception of bias'*.
43. The comments above betray a fundamental misunderstanding of the circumstances in which a party can legitimately seek the recusal of a Judge. Decisions by Judges must be made free from actual bias or perceived bias. The modern law of apparent bias was settled by Lord Hope in *Porter v Magill* [2001] UKHL 67, where Lord Hope indicated that the *'question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased'*. There has been nothing in my exchanges with the aunt's lawyers which would found an application for recusal as she demonstrated through her comments set out above. Prior to today's hearing, all I have done is make a decision on the aunt's application on the papers.
44. It is entirely understandable that lay people believe that when a Judge decides against them or does not accept their account at face value, that they are 'biased' against them. This is not the case. As lawyers should know, there is a difference between bias or perceived bias on the one hand, and making a decision in favour of the other side on the other hand. Deciding whether to accept one person's account over another is my job. It is what Judges do. If I do so on an erroneous basis, then the appeal court will put me right.
45. Finally, the aunt's solicitor told me that she had received a notice of hearing from the High Court listing the application for Wardship on notice. The case is listed on 28th next week. She did not suggest that this prevented me from proceeding but she did inform me that she had asked for the application to be listed before the President of the Family Division and had sent him a note about the case. After the hearing I saw that I had been sent that email by the President's Office for my information along with the response. In her email to the President, the solicitor explains that she has significant concerns about judicial conduct. I note that she was informed that should she wish to challenge my decisions she should appeal but she should not email the President of the Family Division directly and accordingly, he had not read the content of her email.

Candour on the part of the father

46. I have to set out my concerns that this father has not been candid in his applications and exchanges with the court. One example. The father was absolutely clear with me at his application on 11th and 14th that A had gone to stay with the aunt for a holiday. He repeated that in front of the Social Worker before me on 14th. There is credible evidence that he had indicated a willingness to allow A to live with her aunt in the North and go to school there. It seems he changed his mind. He now tells me that was because he realised that A was being 'alienated' from him by the aunt. That may be his case, but it does not change the fact that his position before me was to present this as a holiday – nothing more.

47. The father cannot hide behind the fact that he is a litigant in person. He is a trained lawyer and should know the importance of candour in proceedings, especially when seeking orders without notice. I do not expect to see this again.
48. I am hopeful that now all of these peripheral but time-consuming matters have been dealt with, we can proceed to focus on the real issues in the case. Namely, the children A, B and C. For the avoidance of doubt, as I outlined at the hearing, a copy of this Judgment will be sent to the High Court along with my order of today so that it is seen by whomever deals with the application to make A a Ward. That is perfectly permissible.

Press attendance

49. For completeness, I should add that we were joined at the hearing by a member of the Press, Ms Tickle. She was welcomed and at the end of the hearing asked for permission to report the case. I gave that permission subject to restrictions designed to avoid identifying the children in the case.

Postscript

50. After the handing down of this Judgment, and my invitation to be notified of any errors, I have received a number of lengthy emails from the aunt's solicitor. It is not appropriate to email a Judge in confidence during a case. However, I believe that the aunt's solicitor is aware of that. The content of those emails has been largely irrelevant to the case or just inappropriate. I have chosen not to disclose the full extent of those messages to all parties because they contain extensive personal detail about the author which in my view it is unnecessary for me to share. These emails have, however, informed the decisions that I have made regarding anonymisation and publication of this Judgment.