Neutral Case Number: [2023] EWFC 61 (B)

Case No: ZW21C50019

IN THE FAMILY COURT AT WEST LONDON

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 20/04/23

Before :

HIS HONOUR JUDGE WILLANS

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Between :

A Local Authority **Applicant**

- and -

(1) GG **Respondents**

(2) FF

(3) Z (by his Children's Guardian)

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Nairn Purss (instructed by **The Local Authority Legal Department**) for the **Applicant**
Martina van der Leij (instructed by **Duncan Lewis**) for the **First Respondent**
Barbara Connolly KC and Hannah Gomersall (instructed by **Lock & Marlborough**) for the **Second Respondent**
Mark Rawcliffe (instructed by **Blaser Mills**) for the **Third Respondent**

Hearing dates: 18-20 April 2023

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JUDGMENT N0.2: WELFARE DECISION

His Honour Judge Willans:

Introduction

1) On 1 June 2022 I gave judgment following a fact-finding hearing in these proceedings. This judgment is reported within the National Archives with NCN **[2022] EWFC 190.** My essential findings were that the father in this case (FF) is a paedophile and has a sexual interest in children. Further, I found he acted on that interest and had in concert with another sexually abused a child. The full details of my fact-finding is set out within the written judgment. I do not intend to recite that detail within this judgment.

2) No findings were made in respect of the mother in this case (GG). Prior to final submissions during fact-finding, she informed the Court she was troubled by the evidence she had heard about the father and had separated from him. Before me today there is common agreement that the child is safe in her care, and she is providing him with good care. It has been agreed for some time that there should be a final order in this case confirming his living arrangements in his mother's care without need for a public law order.

3) The fundamental issue to be considered during this final hearing is the question of the father's ongoing contact with Z ("the child"). However, following the evidence of the social worker and the expert the father modified his position such that no further issues remained in dispute. Notwithstanding this agreement I considered I should provide a judgment setting out my reasons for approving the final orders approved by the parties. I consider the circumstances of this case merit clarity as to the manner in which the case ends both to inform the parties as to my conclusions and to inform any future litigation. Finally, I continue to bear in mind the significance of the decision I am being asked to make and consider the rationale for such should be set out in an appropriate manner. It is the least the parties deserve of the Court.

4) In reaching my conclusions I have full regard to the documents contained in the final hearing bundle; the written position documents of counsel for each party, and the live evidence of the social worker and the sexual risk assessment expert. In the light of the concessions made the parties informed me they did not need to make final submissions and neither the parents nor the guardian were required to give live evidence.

5) This hearing proceeded as an attended hearing save for the evidence of the expert that was received remotely.

The proceedings since fact-finding

6) I generally refer to section B of the bundle which contains the case management orders and applications.

7) Following the fact finding the father made clear he did not accept my findings. The mother accepts the findings. The father applied for a specialist risk assessment from the well-known Lucy Faithfull organisation. On 17 June 2022 I approved such assessment notwithstanding that this would necessitate delay within the proceedings given the report would not be available until November 2022. I fixed an IRH for 5 December 2022. This delay was problematic but on balance justified given (a) the security of the child in his mother's care, and (b) the fundamental need for a specialised risk assessment if contact between child and father were to be considered. In making this direction it was understood the assessment

might proceed notwithstanding the denial of culpability. In due course Dr Andrew Smith ("the expert") conducted the risk assessment and gave evidence before me.

8) Unfortunately, events did not proceed as intended. I was informed the father had failed to engage with the assessment. The applicant returned the matter to Court and on 4 October 2022, I discharged the direction for the assessment and fixed a final hearing for January 2023. Then 3 weeks later the father applied to recommence the assessment process. On 10 November 2022 I heard this application. There were many reasons for refusing this application but on balance I permitted the work to recommence. I reset the final hearing to this week. The father engaged with the assessment and the report is dated 26 January 2023.

9) This delay has undoubtedly been contrary to the child's welfare interests. However, I recognise he has throughout remained in the care of his mother and continues in this secure environment. This final hearing could have been resolved earlier but that would inevitably have been based on less clear evidence. As such it would have potentially left the parents to litigate these issues at a later date within private law proceedings without the support, funding and professional input provided within these proceedings. With reservations I consider this delay has been necessary. In making this point I do not lose sight that the mother has also had to await the conclusion of these proceedings and this delay will have impacted on her emotional wellbeing.

Background detail

10) This is sufficiently detailed in my fact-finding judgment. I will though detail the contact history between father and child which is subject to this final hearing.

11) The child was born in September 2020. The applicant became concerned as to his safety in January 2021 when it became aware of a finding (analogous to my own) made against the father in proceedings in another part of the country. Prior to this the child had been raised by both his parents whilst they lived together in a relationship. The applicant engaged with the parents and agreement was reached that the father could not continue to reside with the mother and child whilst further investigation was undertaken. He moved out and contact was then supervised between the father and child by the paternal grandmother. At this point in time the applicant considered her able to safeguard the child from harm. Proceedings commenced in May 2021.

12) In early November 2021 a social worker met with the paternal grandmother to conduct an updating risk assessment in the light of developments in the case. However, the grandmother advised she could not discuss the allegations as she had been advised not to do so. This prevented a risk assessment being completed and led the applicant to conclude the grandmother could not safely supervise contact. Instead, the contact would need to move into a supervised setting. The father opposed the same and applied for the arrangements to continue. In the interim the applicant planned for and offered supervised contact. The father refused to attend / claimed he could not attend due to mental health issues.

13) On 9 March 2022 I heard these competing arguments. By this time there was an updating risk assessment of the paternal grandmother. This continued to raise concerns as to her ability to safely supervise contact. I determined contact should proceed within a contact centre with professional supervisors. The father continued to refuse to attend contact at a centre. I should note the current expert evidence is supportive of this decision-making

concluding that pending a reduction in risk levels with respect to the father it would be unsafe for family members to supervise contact.

14) At the end of September 2022, the father applied to re-start contact within a contact centre. This was opposed by the professionals in the light of the findings and in the absence of a risk assessment. I shared these concerns and refused the application. As a result, contact with the father has not taken place since about November 2021. It is questionable as to whether the child maintains a meaningful memory of the father at this time.

15) Notwithstanding the above I have been told there has been an element of indirect contact in that the father has passed gifts (and possibly cards) for the child via a member of the mother's family. It is accepted the parents remain separated and are not in contact. The mother has relocated into a third-party local authority area and her address and location is confidential. The father is living at home with his parents and adult siblings.

Legal principles

16) My decision-making proceeds on the basis that the child's welfare is my paramount consideration. I have regard to the welfare checklist found in section 1(3) Children Act 1989. I also have in mind the right of the family members to respect for their private family life as enshrined in Article 8 ECHR. Any interference must be judged proportionate, necessary, reasonable and lawful.

17) A significant component of this judgment concerns the suggestion that I should order there to be no contact between the father and child. This engages the principles and case law set out in the paragraphs below.

18) The curtailment of a relationship between parent and child amounts to a most significant interference in a parent's right to an ongoing relationship with that child (and vice versa). Such an interference requires a particularly high level of justification.

19) Section 1(2A) Children Act 1989 creates a rebuttable presumption that contact with a parent will likely be in the welfare interests of a child and will advance the welfare of that child. To reach a conclusion that a relationship should not be developed or maintained requires the Court to identify clear and compelling reasons for such a course of action. This and the preceding paragraph reinforce the need for rigorous analysis before making any order which curtails the relationship in question.

20) I have been taken to the cases of J-M (A Child) [2014] EWCA Civ 434 (per Black LJ.) and D v E v G [2021] EWFC 37 (per McDonald J.) In addition to the points already noted above I note the following observations made by Black LJ in J-M:

    a. *There is a positive obligation on the State and therefore on the judge to take measures to promote contact, grappling with all available alternatives and taking all necessary steps that can reasonably be demanded, before abandoning hope of achieving contact.*

    b. *Excessive weight should not be accorded to short term problems and the court should take a medium and long term view.*

    c. *Contact should be terminated only in exceptional circumstances where there are cogent reasons for doing so, as a last resort, when there is no alternative, and only if contact will be detrimental to the child's welfare.*

21) In D v E v G McDonald J. added to the above the following 'key question':

> *The key question, and the question requiring stricter scrutiny, is whether the court has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.*

22) Any analysis must consider PD12J of the FPR 2010. This paragraph sets out the approach a Court should take in cases in which domestic abuse is said to apply, both in the management of a hearing prior to any determination of the same, and, in the fall out from a finding that domestic abuse is a relevant factor for the court's consideration when considering child arrangements. In this case there is no allegation of direct abuse of the mother or the child by the father and there is no evidence of the same. However, PD12J r.2 makes clear this practice direction does not require actual abuse to have taken place re the child in question or another party, the practice direction is also engaged in circumstances in which there is 'risk of abuse'. For the avoidance of doubt risk of sexual abuse is an understood component of domestic abuse.

23) Such a risk has at least two points of engagement with the law stated above. First, the presumption of a relationship advancing the welfare of a child (s1(2A)) must be read subject to s(1)(6) Children Act 1989 which makes clear (see J-M) that the presumption does not apply if involvement of the parent in the child's life would put the child at risk of suffering harm. As Black LJ noted:

> *the presumption of parental involvement is very strong, but it is not absolute. As in all matters relating to the upbringing of a children, welfare prevails.*

24) Secondly, under PD12J r.35-37 the Court must (per McDonald J. at [27]:

> *take the following factors into account when considering child arrangements in cases where the court is satisfied that such harm has occurred:*
>
> *i) The court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.*
> *ii) The court should apply the individual matters in the welfare checklist set out in s.1(3) of the Children Act 1989 with reference to the harm that has occurred, and any expert risk assessment obtained.*
> *iii) In particular, the court should consider any harm which the child, and the parent with whom the child is living, is at risk of suffering if a child arrangements order is made.*
> *iv) The court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact.*
> *v) The court should consider, inter alia, whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of abuse against the other parent and the capacity of the parents to appreciate the effect of past abuse and the potential for future abuse.*

25) I am also asked to consider the making of an order under section 91(14) Children Act 1989. In considering this issue I have regard to the principles found in Re P (A Minor)(Residence Order: Child's Welfare) [1999] 2 FLR 573 but I also read this subject to the updating guidance of King LJ in Re A (A Child) (supervised contact) (s91(14) Children Act 1989 orders and to the insertion into the Children Act 1989 of a new s91A which empowers the Court to make a section 91(14) order where the making of a further application would put either the child or another individual (in this case the mother) at risk of harm. Whilst it is well understood that section 91(14) orders are not permitted to require a condition to be met before a future

application can proceed the new s91A requires the Court at any future s91(14) permission hearing to consider whether there has been '*a material change in circumstances since the order was made*'.

Evidence received

26) In the light of the father's concession (see §38 below) I will provide only an overview of the evidence leading to the concession and the orders I am asked to make.

Rehabilitative work and the funding of the same

27) The expert provided an account of a suggested package of rehabilitative work that might be undertaken with the father. This amounted to 32 hours of work undertaken over 16 remote sessions. The cost of this work would be £6,760. The expert confirmed this work would have a timetable of commencing in July and finishing in November 2023. A report would be provided in December 2023/January 2024. The information indicated that such costs would not be met by public funding. This is undoubtedly the case in that it amounts not to an assessment but rather to therapy or quasi-therapy. This falls outside of such funding. The expert advised that there is no room for discounts for those who are impecunious. In his experience funding generally arose from those individuals who had the private means to fund the same or through local authority funding.

28) In this case the applicant was quite clear it would not be willing to fund the work. Those acting for the father initially indicated an intention to seek a firm indication from the court as a means of encouraging the applicant to rethink its approach before the point was conceded that this would not likely change the outcome. The father made clear he is unable to fund this work. He is unemployed and when employed paid at a relatively low rate.

29) The social worker in any event commented as to the timetable for the same being outside the timescales for the child. It was put to her that the child's timescales insofar as a relationship with his father was concerned endured for many years to come. She agreed in principle that the child would benefit from his father undertaking the work, whether it was in fact successful or not but did not believe the child's timescales and welfare was consistent with the same.

30) There is an obvious, but important, point that on my finding the father is a risk to children and that this child and society in general would benefit from this risk being reduced and any steps taken towards that goal have purpose. It is though quite a different question as to whether the applicant bears the societal responsibility for pursuing this goal whether within or outside of care proceedings. As is clear the scheme of the Children Act 1989 and particularly s38(6) is not intended to cover such therapeutic work[1] whilst within proceedings.

The prospects of success of such work

31) The expert identified a range of positive and negative factors in this case. The key positive prognostic indicators were the father's relatively young age and the judgment of the expert that he has emotional intelligence and insight. It was a positive that the father was willing to do the work albeit the motivation for doing so might be that this was seen as the last hope of achieving contact rather than a more inward-looking reason. Against this though were a

[1] See Y (A Child) (s.38(6) Assessment) [2018] EWCA Civ 992 per Peter Jackson LJ.

number of negatives which centred around the father's sense of grievance and disempowerment and of having been the victim of a miscarriage of justice.

32) The expert was quite clear that an approach in which denial remained the response was not of itself an issue. This was the hallmark of such cases, and it is now the norm of such work to engage with those in denial / minimising events. I pause to observe that this work was commissioned in the understanding that this would likely be the position. However, for the avoidance of doubt I do not consider the assessing expert loses sight of the fact of denial. It is undoubtedly the case that this remains part of the overall assessment of ongoing risk. But it does not prevent work being done or risk being reduced.

33) The expert accepted that professionally supervised contact would provide protection against the risks being assessed. The key focus was on the potential for third party (family supervision) to be put in place. The expert was quite clear that for this to happen and to be safe the risk from the father would need to be reduced to a low level. This reflects the potential for a family members safeguarding ability to be compromised by split loyalties and by their personal relationship with the father. In cases of child sexual abuse, the perpetrator will breach boundaries of normative behaviour, and this can be done in a creeping and insidious fashion rather than in a stark and open manner. Close interpersonal relationships can be exploited by reason of the deeply seated personal bonds and ties.

34) Further any family supervisor would themselves have to engage with some protective work and would need to have an understanding <u>and</u> acceptance of the findings made.

35) The evidence suggested there were two problems in this regard. First, the expert told me that on balance he felt the work would unlikely reduce the risk posed by the father to a low level and this is the only level consistent with safe family supervision. Second, the social worker reported that when the family members were contacted (as per a previous direction) to have shared with them the essential findings made by the court the grandmother responded:

> *Thank you for the offer but we don't want anything to do with any of you, I've heard what happened and how all the social workers have lied , [a family member] and I don't want any part of your lies*

Whilst it was suggested this was a response to the offer to share details of the findings it would appear the response was more expansive in its nature.

<u>The potential for the child to have contact with the paternal grandparents</u>

36) The social worker was challenged as to a failure to consider this as an option within her evidence given the previous contact with the grandmother and the role played by her in respect of contact supervision and further in the light of the applicant's position as to no contact with the father. It was put that there was a significant identity issue for the child which required a greater focus on family member contact. The social worker pointed to the response of the family when contacted as set out above. But in any event, she made clear the applicant was not seeking an order that prohibited contact with the grandmother that this was ultimately a matter for the mother and not the applicant.

37) It is important to record that the grandparents are not party to this application, have not applied for a contact order from the Court and are not referenced in the father's final evidence or position statement as a relevant issue so far as contact is concerned. However, in the light of the above the father did not pursue this issue further.

Parties' positions

38) Following the evidence set out above the father conceded it would not be possible to pursue the package of works identified by the expert. He could not pay for the work and agreed the applicant would not do so. He agreed on the state of the evidence he could not pursue an order for contact and agreed I should make an order that positively stated the mother did not need to make the child available for contact with him. He accepted the making of a section 91(14) orders. He agreed the mother should be entitled to exercise parental responsibility without reference to him. He sought to leave open the route of mother both receiving indirect presents and cards for the child and providing updates as to the child from time to time albeit without any onus on the mother to do so.

39) The applicant, mother and guardian agreed such orders were sufficient and supported the making of the same.

Discussion

40) I do approve the final position reached by the parties and placed before me for approval.

41) Insofar as the issue of rehabilitative work is concerned, I do not consider I could properly place pressure on the applicant to fund the same. It is by no means uncommon for a Judge to ask local authorities to reflect on the provision of services and funding of needs within proceedings. However, in this case (i) the costs are significant in the context of stretched resources; (ii) the work falls entirely outside of proceedings; and (iii) the prospects of success are judged as being less than likely by the instructed expert. Realistically, I do not consider the applicant would modify its position in any event and its stance is justified. I do though agree there is a benefit in the work at both a micro and societal level. But it is for the government to make provision for the funding of such services and not a local authority in the position of the applicant.

42) Although there was some questioning about failures to assess family contact, I did not find these arguments helpful. One might have expected the family members and particularly the father to raise this were it deemed significant. Yet this was not done prior to the hearing. Furthermore, I consider the response of the family to engagement justified the applicant in the position it took.

43) Part of the argument initially put before me was as to the draconian nature of a no contact order and it was suggested the same raised issues analogous with adoption. I am not confident this point holds in circumstances in which the child remains with his mother and will receive life story work that properly informs him as to his paternal family. I do not consider this analogy adds anything to the law stated above.

44) In any event I am not asked to make any order prohibiting contact with these family members. Whether this will happen will in due course turn on the mother's own decisions. She has in recent times expressed some concerns in this regard and she is seeking to preserve confidentiality as to where she lives. I would consider she would approach the question of such contact with appropriate care. She must be mindful of the potential benefits to the child but also as to the possible issues that may arise in circumstances in which the family may be advocates for the father and may directly or indirectly place emotional pressure on her so far as future contact with the father is concerned.

Undoubtedly until such time as there is clear evidence to the contrary, she must keep in mind that they reject the findings of the court and in doing so do not consider the father to pose any risk to the child. For the mother to find herself placed into the position of adopting this wrong thinking would be concerning and should be avoided.

45) I consider the father's concession as to no contact is to his credit and represents a reasoned and sensible evaluation of the evidence before the Court. In the course of the hearing, I asked Ms Connolly KC what she would be seeking at the end of the hearing. The options appeared to include either adjourning for the work to be undertaken or making final orders with or without contact. I was not asked to adjudicate on this but would been most reluctant to agree to a further delay in the proceedings. To countenance a delay for the best part of a year would have required the most compelling reasons. I cannot identify on the evidence where they would have been found. This child demands finality. These proceedings have now endured for nearly 2 years. It has been many months since the mother and child have been ready to leave the proceedings. To adjourn to see what if anything happens with the rehabilitative works would be very difficult to justify let alone explain. To avoid any doubt at no point was I asked to do this.

46) So, I would have proceeded to make a final order. Would I have ordered no contact, or would I have ordered contact? On the evidence before me I would have favoured the former. It would not have been right to proceed on the basis of professionally supervised contact as the only safe means of contact where there was no reasoned basis for a future exit strategy for the same and where the applicant would not be intending to remain in the parties lives outside the short to medium term. Further, such contact would have been analogous to a reintroduction of the father to the child given the gap in contact. It would have required some specific role for the mother to assist in the same. In my assessment there would have been strong countervailing arguments deriving from PD12J arguing against such a role. Furthermore, on the evidence received I would have had little if any confidence that the father would in fact have engaged with the works and I would have limited grounds for believing if he had, that this would have been successful in changing his risk profile. Finally, even were that the case there are no grounds for considering the family members would have shifted their attitudes such as to become safe supervisors of future contact. That would have left the applicant as supervisor or contact coming to end for want of practical support. Finally, I accept there would be real issues with obtaining a venue that would be willing to permit supervised contact given the findings in the case. Whilst the risk to the child could be managed, I accept the venues in question support other vulnerable individuals and the father's risk profile is such as to cause any venue to be unwilling to assist.

47) The alternative would have been no order. This is essentially where we have ended up.

48) But I would wish to give a clear indication with respect to the impact of the order for no contact with the father so that the mother is in no doubt. This is not a decision following which I consider the mother should feel free and unencumbered to choose equally between contact with the father or not. I have not reached a neutral evaluation as to contact. Rather the order is phrased in the manner it is because she has expressed a clear understanding of the Court's findings and agrees these concerns place the child at risk. It is quite clear to me that the mother should not be contemplating any direct contact with the father without the clearest evidence of progress with respect to his risk profile. I would expect this to include some form of professional work and re-evaluation of risk akin to that proposed by the Lucy Faithfull organisation. Were it to be suggested that this had been undertaken then I would not suggest she simply rely on statements to the same but should require sight of the same

and should seek professional advice from children's services before acting upon the same? A failure to self-protect in this manner may in future call back into question her ability to safeguard her son.

49) I have equal reservations about indirect communications sent by the father that might have the potential to encourage the mother to feel sympathy for his plight or suggest she re-evaluate the findings made against him. Within my fact finding I found evidence tantamount to grooming and expressed concerns as to the father's approach to encouraging/coercing the woman involved with him to act in line with his personal sexual preferences. At times this behaviour verged on the bullying. I consider the mother has some vulnerabilities and she must continue to keep in mind the potential for this to be exploited. I consider any cards should be short and focused and should not draw the mother into a dialogue. I consider any updating from the mother should be also focused and clear. It should not encourage a dialogue. The mother has left these proceedings successfully. I now want her to build on this. I do not want her care to be questioned.

50) I consider a section 91(14) order as suggested is appropriate. Any such request for permission will be placed before me if I am available. In my judgment this decision flows from S91A. Further applications are likely to cause harm to the child and the mother by requiring the revisiting of these issues. In my assessment if such an application is made and the Court is required to consider what change has arisen since this judgment then I suspect the issues the Court will look at are likely to be those identified by the expert:

    a. Whether rehabilitative work has been done and the outcome of the same. The Court is likely to want to see any such report;
    b. Updating information confirming there have been no further concerns reported
    c. Updating information as to whether the father is in a stable relationship and if so the protective capabilities of any such partner
    d. Updating information as to the father's continuing stability of mental health;
    e. Information supporting the view that his sexual relationships are not transgressing normative boundaries.

51) I agree this judgment, fact finding judgment and order should be disclosed appropriately to children's services in the area in which the mother now lives.

52) For the avoidance of doubt, I agree the child should live with his mother under a child arrangements order and without need for further public law order.

53) I consider the interferences set out above are proportionate, necessary and reasonable to safeguard the child for the reasons given. I cannot identify a lower level of interference which would at this point in time alternatively and adequately safeguard his welfare interests.

54) I consider this outcome is consistent with his welfare interests. The key components are with respect to his need for emotional security and stability and an entitlement to be kept safe from sexual harm. I am satisfied his mother has the capacity to meet his needs and to allow him to be both healthy and happy. I consider any material change to the current arrangements would be surrounded by unacceptable risk for the child.

55) This completes my judgment.

His Honour Judge Willans