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IN THE FAMILY COURT

GB (Parental Alienation: Welfare), Re
Neutral Citation Number: [2024] EWFC 168 (B)

24 May 2024

Before His Honour Judge Middleton-Roy

Between:

A Mother

Applicant

- and -

A Father

1st Respondent

**The Children 'G' and 'B'
through their Rule 16.4 Guardian**

2nd and 3rd
Respondents

Dr Proudman, Counsel for the Applicant instructed on a direct access basis

The First Respondent appeared in person

Miss Aman, Counsel for the Second and Third Respondents, instructed by Reeds Solicitors

APPROVED JUDGMENT

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His Honour Judge Middleton-Roy:

Anonymity

1. In line with the Practice Guidance of the President of the Family Division issued in December 2018, the names of the children and the adult parties in this judgment have been anonymised, having regard to the implications for the children of placing personal details and information in the public domain. The anonymity of the children and members of their family 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 and may result in a sentence of imprisonment.

The Parties, Applications and Background

2. This Court remains concerned with two children, referred to in this judgment as ‘G’ and ‘B’ to protect their identity. The children are aged 13 and 9 years respectively. The children are parties to these proceedings through their Guardian, appointed under Family Procedure Rule 16.4.
3. The Applicant is the mother of the children. The Respondent is their father.
4. This short judgment, delivered orally on an extempore basis, is given at the conclusion of a Dispute Resolution Appointment. This is the third and final judgment in a trilogy of decisions by this Court relating to these children.
5. The background is set out in an extensive judgment of 28 March 2024 (*GB (Parental Alienation: Factual Findings), Re* [2024] EWFC 75(B)) in which the Court made findings on the disputed facts. That decision followed an earlier judgment by this Court on 30 August 2023 in respect of an application for expert evidence (*Re GB (Part 24 Application: Parental Alienation)* [2023] EWFC 150). The background need not be repeated. In short, the Court made findings of fact in respect of the father’s use of coercive controlling behaviour towards the children and towards the mother, neglect of ‘B’s medical needs, financial control over the mother, making major decisions about the children’s lives without the mother’s consent, providing misleading information to the Court and using Court proceedings to emotionally torment the children and the mother. Further, and significantly, the Court made findings that the father raped the mother. The father made a series of allegations against the mother, including allegations that she had emotionally abused the children and that she had alienated or negatively influenced the children against him. The Court found none of the father’s allegations to be proved. At the conclusion of the Fact Finding Hearing, the Court made an Order that the father pay the mother’s costs assessed at £50,445.40.
6. At this Dispute Resolution Appointment, the mother is represented, as she was at those previous hearings, by Dr Proudman of Counsel. The father appears today as a Litigant in Person. At the previous hearings, the father was represented by Counsel. The children are today represented by Miss Aman of Counsel.
7. It is clear from the father’s statement filed in advance of this Dispute Resolution Appointment that he does not accept the Court’s findings of fact. He told the Court, “I do not accept the recent fact findings are lawfully made, and I do not accept them as true.” He continued, “I do accept that until and unless the findings are successfully appealed they are binding on all parties and for that reason...I do not oppose anything.” The father clarified at this hearing that he does not oppose the Orders sought by the mother.
8. Notwithstanding the father adopting at this hearing a position of non-opposition in respect of the Orders applied for, as the Court is tasked with determining questions with respect to the upbringing of the children, this Court proceeds to consider the mother’s applications, exercising, as it has throughout, an independent and objective judgement, the welfare of the children being the Court’s paramount consideration, pursuant to s.1(1) Children Act 1989,

having regard to the right to respect for private and family life afforded by Article 8, Human Rights Act 1998

9. The mother seeks the following final Orders:
 - (a) a Child Arrangements Order (a “live with” Order) recording that the children live shall live their mother;
 - (b) a Child Arrangements Order (a “spend time with” Order) that there be no direct contact between the father and the children;
 - (c) a Child Arrangements Order for indirect contact between the children and their father, whereby the mother would make the children available to receive letters or cards from their father at Christmas and on each child’s birthdays, for the children to reciprocate if they so choose;
 - (d) a Specific Issue Order permitting a change to the children’s surnames, removing their father’s surname;
 - (e) a Prohibited Steps Order, limiting or restricting the father’s parental responsibility, for the safety of the children, in circumstances where the Court has found that serious domestic abuse has been perpetrated by the father towards the mother, namely that:
 - (i) the father’s contact with their school is restricted only to receipt of formal school reports sent directly to him by the school;
 - (ii) medical issues relating to the children are reported to the father only where such issues are severe and require ongoing medical intervention; and
 - (iii) welfare issues are reported to the father only when significant and the child wishes that information to be shared with him
 - (f) an Order under s.91(14) Children Act 1989, preventing the father from making any further application to the Court in respect of the children without first seeking the permission of the Court, to continue until ‘B’, the youngest child, attains the age of 16.
10. Those Orders sought by the mother are supported by the Guardian on behalf of the children. The Guardian prepared a comprehensive rule 16 analysis, having met with children since the handing down of the Court’s fact finding judgment. That analysis by the Guardian includes updated consideration of the children’s ascertainable wishes and feelings.
11. Dealing first with the mother’s application for Child Arrangements Orders, respectfully, this Court can do little better than endorse the analysis of the Guardian. Having regard to each of the factors under s.1(3) Children Act 1989, in the judgement of this Court, the best interests of the children demand that the Court makes a Child Arrangements Order recording that the children live with their mother. Further, the best interests of the children demand the making of a Child Arrangements Order such that contact with their father be limited to indirect contact only. The best interests of the children demand that there should be no direct time spent between the children and their father, consistent with their ascertainable wishes and feelings, for the reasons articulated by Guardian. The Court makes those Orders as sought.
12. The mother considered whether physical letters or cards should be sent by the father to the children at a PO Box, which would provide a safe and neutral medium for indirect contact to be put into effect. However, setting up and maintaining a PO Box would involve a financial cost. The mother’s preference is to establish a dedicated email address for the purpose of indirect contact for the children from their father. The mother agrees to communicate that email address to the father. The mother seeks to use a third-party to act on her behalf to access the email address, to prevent the mother from having to facilitate such contact. The Court agrees the practical arrangements as proposed. The father may email Christmas cards and birthday cards to the children. He shall not use the email address for any other purpose. Further, the father is entitled to receive by email the children’s annual school reports once per year. If the children wish, the Order will permit a photograph of the children to be emailed to the father annually.

13. The mother seeks a Specific Issue Order permitting her to change the surname of both children, removing their father's surname and substituting the mother's surname or a derivative of it. Having regard to this Court's earlier findings of fact, this Court reaches the conclusion that it is in the best interests of both children individually to permit the change of surname proposed. Although the children were registered with their father's surname at birth, there has been a significant change of circumstances since, as recorded in the Court's findings of fact, such as to undermine the mother's psychological security, to an extent so serious as to represent a significant failure of parenting on part of the father. This Court acknowledges that the children's surname is an important factor in maintaining a link with their identity, with their father and with their wider paternal family. The names on the children's birth certificates will not change. Both children are of an age where they clearly understand their paternity. However, their surname maintains a connection to their father who has caused significant harm to them and who has caused significant harm to their mother. That name provides a daily reminder to them all of that connection. Their father's surname should not be imposed on them in those circumstances. Their mother will be their primary carer. The name of a child is not a trivial matter. It is a question to be resolved with regard to the child's welfare and requires all the facts and circumstances of the individual case relevant to the welfare of the child to be taken account and weighed up against each other. MacDonald J summarised the position in law in *D v E* [2021] EWFC 37: on any application, the welfare of the child remains paramount. This Court has regard to the s.1(3) Children Act 1989 criteria. In this Court's judgement, the application to change the surname of the children is reasonable and consistent with their welfare needs. For these reasons and those articulated by the Guardian, which this Court endorses, the Court makes a Specific Issue Order to permit a change of surname of each child.
14. The mother applies for an Order to limit the father from exercising his Parental Responsibility for the children. The mother cannot apply to terminate the father's Parental Responsibility, as the mother and father were married at the time of the birth of each child respectively. Accordingly, the father was granted Parental Responsibility for the children automatically in law. The Order sought by the mother seeks to prevent the father from communicating with the children's schools, save from receiving an annual school report and to prevent the father from making decisions about the children's education or health. For the reasons articulated by Children's Guardian, this Court is satisfied that the welfare of both children individually demands the making of a Prohibited Steps Order as sought, limiting the father from exercising his Parental Responsibility. For the avoidance of doubt, the mother will be required to inform the father through an identified third party if the children experience any life-threatening health issues or experience significant illness, notwithstanding the fact that the father's consent for any medical decisions for the children is not required. The mother is permitted to make all welfare decisions concerning the children in respect of their education, health and welfare without the consent or knowledge of their father. The Court makes a Prohibited Steps Order under s.8 Children Act 1989 prohibiting the father from communicating with the children's schools. No steps which could be taken by the father in meeting his responsibility for the children of any kind shall be taken by the father without the permission of the Court. Further, the mother is permitted to take the children out of the jurisdiction without the consent or knowledge of their father. Furthermore, the mother is permitted to apply for passports on behalf of the children without the consent or knowledge of their father.
15. The mother seeks an Order pursuant to s.91(14) Children Act 1989 prohibiting the father from making any application for Child Arrangements Orders or any other Orders under s.8 Children Act 1989 or from making any application for variation to the existing Orders or any application

under s.13 Children Act 1989 in respect of either or both children, without the leave of the Court until the child 'B' attains the age of 16. The mother makes that application on the basis that time is needed for the children to recover from the litigation and to recover from professional involvement, particularly in light of the serious findings made.

16. This long-standing, bitter litigation has been deeply distressing for the mother, the parent who has been the subject of abuse, as found by the Court, the mother being the primary carer of the children. The litigation has been highly debilitating to each of the parties and to the children. The distress and anxiety caused to the mother, and to the children who are at the centre of this raging dispute, cannot be overstated, nor can the damaging consequences of the litigation.
17. An Order under s.91(14) limits a party's ability to make an application to the Court. The Court's jurisdiction to make such an Order is not limited to those cases where a party has made excessive applications. In suitable circumstances and on clear evidence, a Court may impose the leave restriction under s.91(14) in cases where the welfare of the child requires it. In this Court's judgement, the sort of behaviour perpetrated by the father, as found by the Court, leads this Court to the inexorable conclusion that it is appropriate and necessary to make an Order under s.91(14), to protect these individual children and their mother from the effects of further litigation, where the Court proceedings have been used as a weapon of conflict. The Court is satisfied that such an Order is necessary to prevent litigation abuse and to prevent coercive and controlling behaviour in further private law proceedings, to protect both the children and the parent with whom they live, from corrosive, demoralising and controlling applications which have an insidious impact on their general welfare and wellbeing and can cause real emotional harm. The Court makes a section 91(14) order until the youngest child turns 16. Although that is some seven years away, in this Court's judgement, given the background facts, that is an appropriate and necessary exercise of the Court's discretion and is proportionate to the harm the Court is seeking to avoid.
18. In accordance with s.91(14) Children Act 1989 the father is accordingly prohibited from making any application for Child Arrangements Orders or any other Orders under s.8 Children Act 1989 or any application for variation to the existing Orders and any applications under s.13 Children Act 1989 in respect of either or both children, without the leave of the Court until the youngest child attains the age of 16. Any application by the father for leave to make an application under s.8 Children Act 1989 or under s.13 Children Act 1989 shall be reserved to me.
19. In this Court's judgement, the Orders made are each in the best interests of the children, are necessary and are a proportionate response to the risks.
20. The Court gives permission to the parties to share the final Court Order with the Children's respective schools. Further, the Court gives permission, as requested by the Guardian, for the Guardian to speak to the relevant personnel at both schools about the decisions made.

His Honour Judge Middleton-Roy
24 May 2024