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**Neutral citation: [2024] EWFC 179 (B)**

**IN THE FAMILY COURT SITTING AT LEICESTER**

**LE21P00509**

**IN THE MATTER OF THE CHILDREN ACT 1989**

Date: 19 June 2024

**Before:**

**HIS HONOUR JUDGE REDMOND**

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**A & B (Indirect Contact & Protective Orders)**

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Counsel for Mother: Elizabeth Allingham  
Father appeared in person

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**JUDGMENT**  
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**Introduction**

1. In these proceedings I am concerned with private law applications for A and B, a girl of rising 6 and a boy of 4. This judgment is given ex tempore at the conclusion of a final hearing heard today in proceedings which have lasted over 3 years and are currently in week 165. Various matters have been the subject of appeal and the delays have impacted upon the children.
2. This judgment records my reasons for making orders limiting contact to indirect only in line with the mother's position and CAFCASS's recommendation, changing the children's surnames (though not their middle names), making a non-molestation order for

8 years and an order under section 91(14) of the Children Act 1989 for 5 years requiring the court's permission to make further applications. The continuation of a prohibited steps order is agreed. In coming to that conclusion, I have listened carefully to the father's challenges to the CAFCASS officer's recommendation and his submissions to me today but, ultimately, I have rejected them.

### Background

3. The procedural background to this application is voluminous and it ought to have been determined in a much more focused manner. It has been subject to appeal and a second finding of fact hearing before an experienced circuit judge took place. Such made numerous and highly significant findings of domestically abusive behaviour against the father. He was not content with those findings, but has never attempted to appeal them despite raising that with the court in January 2024, at the dispute resolution hearing and, again, before me today. Until and unless they are *successfully* appealed, they are the factual matrix upon which I determine the applications.
4. CAFCASS have prepared a section 7 report and provided a welfare recommendation to the court for indirect contact only. The mother is in agreement with that recommendation. The father disagrees with the recommendation and I listed a hearing at which he could provide his challenges to CAFCASS and I could determine them.
5. Prior to the dispute resolution appointment, the mother also filed an application for a change of the children's names. I made directions placing all parties on notice that, in addition to determining those applications for child arrangements and specific issue order, the court would consider whether protective orders were required under Family Law Act 1996 and whether the court should restrict further applications through a requirement of permission pursuant to section 91(14) of the Children Act 1989. All parties were therefore on notice of all the matters dealt with within this final hearing. The father has filed an email responding to all applications and so I knew prior to the hearing that he was on notice of them.

### Law

6. When considering a question as to a child's upbringing, I must consider all the circumstances and, in particular, the welfare checklist in section 1(3) of the Children Act 1989, reminding myself ultimately that A and B's welfare is my paramount consideration. I must only make an order where doing so is better for the child than making no order. I must consider and carefully balance the child's and each party's article 8 rights to private and family life, interfering with those rights only where it is necessary and proportionate to do so. Where there is tension between the parents and child's article 8 rights, it is the child's that ought to prevail.
  
7. I would note that while section 2A of the Children Act 1989 expresses that, unless the contrary is shown, that the involvement of both parents within the child's life will further the child's welfare, such 'involvement' may be in a myriad of ways, including indirect contact only or other lesser types of involvement. It is in any event rebuttable from the words 'unless the contrary is shown' and I have referred myself to what MacDonald J said in **D v E [2021] EWFC 37** at paragraph 25. It is then imperative that a court reads this through the prism of **Practice Direction 12J** of the **Family Procedure Rules 2010** as noted at paragraph 26.
  
8. When looking at all applications encompassed by this hearing, **PD12J** requires me to consider domestic abuse as a substantive issue. It absolutely is in this case. It has been proven and I have the details of those findings recorded in a judgment by an experienced circuit judge. As a general principle domestic abuse in whatever form is contrary to a child's welfare, is harmful to them and puts them at risk. Any welfare determination that I make must protect the safety and wellbeing of the child and the parent with whom that child is living so as not to expose either of them to the risk of future harm. Specifically, I refer myself to the following:
  - *Paragraph 35 - When deciding the issue of child arrangements 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.*
  
  - *Paragraph 36(1) - In the light of- (a) any findings of fact, (b) admissions; or (c) domestic abuse having otherwise been established, the court should apply the*

*individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.*

- *Paragraph 36(2) - In particular, the court should in every case consider any harm- (a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and (b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.*
- *Paragraph 36(3) - The court should make an order for contact only if it is satisfied- (a) 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; and (b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.*
- *Paragraph 37 - In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider – (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living; (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents; (c) 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 domestic abuse against the other parent; (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.”*

9. Regarding a change of name for the children, the law was summarized by Cobb J (as he then was) in **Re B and C (Change of Names: Parental Responsibility) [2017] EWHC 3250 (Fam)** starting at paragraph 33. It refers to the leading authority of **Dawson v Wearmouth [1999] UKHL 18**. Both forenames and surnames are of significance to a child providing their essential identity. On any application, the child's welfare is paramount and the court should have regard to those factors summarised from previous case law at paragraph 35.

10. Section 91(14) of the Children Act 1989 provides, at the conclusion of proceedings, for the court to restrict the right of a parent to make an application by requiring them to obtain leave of the court. That is not a bar on applications, but a restrictive filter. The leading case law is still **Re P [1999] 2 FLR 573**, but such must now be read in light of section 91A and the observations of King LJ in **Re A [2022] 1 FLR 1019**. That is now supplemented by the provisions in **Practice Direction 12Q** and I have had regard to those

principles when considering whether to make an order, the duration of it, what it ought to cover and how it ought to be implemented.

11. At the dispute resolution appointment, I separately considered participation directions for both parties. I held this hearing remotely at the request of the parties. I gave permission for mother to have her camera off during the course of the hearing. I raised the question of those directions again this morning and all were content. I gave each space and time to make the submissions they wished to make, making allowances for any difficulties that father may have with writing or voicing his submissions and assisted him with those where I could providing structure to the hearing. Mother has been represented and father was unrepresented. However, I consider both have been able to fully argue their case and I have understood each.
12. I should also note that midway through the hearing father spoke of his eligibility for legal aid. I took that to be an application for an adjournment of this final hearing and with regard to the test of the interests of justice of which the children's welfare is a relevant but not paramount consideration, I refused that application giving my reasons for doing so briefly in the context of an application proceeding for over three years. I should note that this court has not prevented him from bringing legal representation to any of the hearings, including this one; such has remained a matter for him.

### Evidence

13. I have read carefully all the evidence filed in this matter. I gave permission for the CAFCASS officer to give oral evidence and for father to cross-examine her. I further gave directions for each party to make their submissions as to which orders I should make. I have listened carefully to those submissions.
14. I have the full judgment of HHJ Handley and have read it carefully. In essence, he makes several serious findings against the father of abusive behaviour that can be summarised as follows (and I have not here provided all of the details):
  - a) Emotional abuse including being overly critical and degrading of her, stating that if she refused to get rid of her dogs she would have to get an abortion and sent her information on the same.

- b) Within an argument, pulled a door closed onto her hand leaving it there for approximately 2 minutes. There was bruising to her hand and fingers.
- c) During an argument, he grabbed her by the throat and slammed her into the wall causing an indentation. A walked in such that he stopped. They went into another room and he grabbed her by the throat again before taking her car keys to prevent her visiting her mother. The children were present in the house and upset. He took A in the car, driving it towards mother and left with A.
- d) A meeting took place in breach of his bail conditions and that he would knowingly be brought into contact with mother by virtue of his actions.
- e) He drove past the mother's house in breach of the non-molestation order. He asked a friend to monitor and report on the mother's movements by his own admission. He accepts he placed a tracker on her car.

15. In essence, the father's case is that all of this is built upon an unsound foundation as he utterly rejects any of the factual findings made against him. As I have explained, those findings stand. It is difficult for him to make good his case for direct contact in those circumstances when faced with the welfare evaluation of the professional. He wishes to have direct contact, which could include video contact, but he appreciates the uphill struggle he faces in regard to those. He does not want there to be a section 91(14) order and wishes the freedom to make further applications as he chooses. He says he wants to get legal advice.

16. CAFCASS refer back to the findings made by HHJ Handley and the seriousness of them, placing them into context with the children's welfare and the impact of any direct relationship both on the children directly and also indirectly through the impact upon their mother. The CAFCASS officer did not move from her written report under cross-examination and in my judgment was an impressive witness who explained her reasoning fully. She undertook interviews with all parties and the children, completing direct work with them. She also spoke to those involved in their education.

17. I shall then place all the evidence and submissions within the context of the welfare checklist in order to determine which, if any, orders are in the best interests of the child.

18. I turn first to risk which is a significant issue in this case and one covered by the findings made by Judge Handley. That the father does not accept them is a further risk factor as they are unable to be subject to amelioration or change at this moment in time. They include placing a motion tracker on the mother's car to monitor her movements and enlisting a friend to monitor and report on the same. He drove past the mother's house when he knew he ought not to in knowing breach of bail conditions and made contact with her when he should not have done. Repeatedly it is seen within the fact-finding judgment that he prefers his own reasoning to that of any professional, police officer or court. I have no reason to believe that evaluation of risk has changed. He has previously left court when not agreeing with the findings the court was making. He has, on at least one occasion, simply said he was unavailable for a court hearing without any proper application causing it to be vacated. I am greatly concerned as to how much he would observe the court's orders in this matter and the finality that I am attempting to bring with this hearing. Sadly the risk that he poses and his lack of acceptance of his behaviour means that his capability as a parent is greatly diminished and such is recognised within the CAFCASS officer's report.
19. I consider that the CAFCASS officer has captured the risk in this case in the following paragraph: *"history shows a pattern of behaviour in which [father] is abusive towards his partners which results in them seeking protection through the courts. [Father] shows limited understanding of why his behaviour is problematic. I am concerned that this pattern of behaviour will continue until [father] engages in an intervention to address how he behaves within relationships, but this will only be achieved when [father] truly acknowledges his behaviour to be problematic."*
20. The children have not seen their father since 2021. B was too young at that stage to retain vivid memories of that. A would do. There is always an impact upon a child of not seeing a significant parental figure in their life, but this court has to evaluate which is better for them. It cannot be the case that continued abusive behaviour would promote their welfare and my evaluation is that if direct contact were to be put in place that would follow as the father is unaware of, or unwilling to accept, the impact of his actions. Those actions today stand without amelioration. I am further highly concerned that his previous behaviour in this and other cases, including his admission to the CAFCASS officer, means that he will remain committed to seeking out his children regardless of orders that are made.

21. I should refer to a strikingly odd matter raised for the first time in the CAFCASS report, which is that following three years of litigation, including continuing at this final hearing, father also raises a concern that he may not be the children's father and seeks DNA testing. The two simply do not hang together. It does not affect the orders I make, but is worthy of note.
  
22. A is almost 6 and B is 4 years old. B holds no memories of his father. A may do but they are not concrete and will be tainted with the abusive behaviour that was taking place within the household whether directly or indirectly concerning A. Both children are currently known in education by their mother's surname. CAFCASS have assisted mother with a narrative that can be given to them in a child-appropriate manner as to their father and the identity that flows from it. At this tender age they cannot express to me their wishes and feelings, other than within the direct work that CAFCASS has completed with them. They are well-cared for by their mother and I accept the CAFCASS officer suggesting that the works she has done with them and the supportive environment has assisted them with the early experience of trauma. A in particular was emotionally harmed by the actions of father within the incident which she walked in on, but children of any age will be greatly and detrimentally affected by the presence of abusive behaviour within the household they live in regardless of who it is directed towards. B has his own particular needs which she attends to and such makes his ability to understand more reduced than his age may suggest. I consider that the indirect contact can provide the involvement with their paternal family that is proportionate to the protective steps to contain the behaviour that has been previously demonstrated.
  
23. My consideration of the welfare checklist and balancing exercise leads me to conclude that the father lacks any insight into the findings made against him and the domestically abusive behaviour he has pursued. He is currently unable to behave in a manner which will keep the mother and the children free from harm were direct contact to be instigated. This would include any form of video contact which would provide a window into the family's home life. This welfare determination is about what the best order for the children is and harm that either they or their mother is exposed to strikes at the heart of that determination. Indirect contact is accepted by the mother as being workable and the



professional recommends it to me. From my own welfare evaluation, I accept the evidence of the CAFCASS officer, for the reasons given within her report, that it is in the children's best interests for contact to be restricted to indirect only. I would commend the CAFCASS officer's recommendation to the father as to how he could accomplish that, taking on assistance from others in terms of helping him to prepare it. I have further considered the period and agree that 4 times a year is an appropriate frequency, allowing for proper thought to be given to each communication. It can be shared with the children as provided for by the CAFCASS officer and I am grateful for the mother's suggestion that she will provide an update to him 4 times a year in the month before his communication is due to be received. While that will be absent of any identifying information as to their location, it will give a meaningful update as to their likes and dislikes and what they may have recently done or achieved.

24. I have carefully considered the change of names. Both children were originally registered with their father's surname. B carries mother's surname and his paternal grandfather's first name as his middle names and A carries father's grandmother's first name as her middle name. Original registration is a factor to consider, but not a decisive one. Their ages means that their wishes on this matter are not determinative of the application. Originally the CAFCASS officer was supportive of double-barreling, which was not an option suggested by either party and did not find favour with the court. However, on reflection of all of the circumstances, including the abusive behaviour and its persistence, the officer inclined to the change of surname to the mother's name, but leaving the forenames intact to preserve paternal identity (as these were to father's relatives rather than himself). I have to fold in the abusive behaviour and its impact upon the family unit as a whole. For a mother to see her child carry her abuser's name on a daily basis must have, in my judgment, a significant and detrimental effect on her. Such therefore has an indirectly detrimental effect on the child. I do not accept it is punitive towards the father, but rather when one stands back one can see the impact upon the family of continuing as they are. I am told that the children have been known by their mother's surname alternatively for some time and therefore the change for them is minimal. While that may not have been entirely appropriate given the statutory restrictions, it is the reality with which I am faced at this hearing such that a change is less impactful upon them and that in fact making them known by their present legal names would be impactful as they would ask why there has been a change. Within the currency of this hearing I am setting

the family up for its future arrangements, which will have limited involvement from the father at this time and that their identity with the paternal side of their family will be promoted through indirect contact. I consider the course of behaviour which the father pursued against the mother, as found by HHJ Handley, to be incompatible with her and the children's welfare. I have considered but rejected the father's contention that a change of surname is unfair on the children; it is directly through his abusive actions that it even falls to be considered. I consider that identity to the paternal family can be considered by reference to the middle names, though they not tie the children directly to the father's name, and only to relatives. On balance, I consider that it is within their welfare interests to change their surnames as requested within the application, but not the middle names (other than to remove mother's surname such that it is not repeated) and will make orders to that effect.

25. I have considered protective orders. I note they can be made of the court's own motion and may protect not just the mother but also the children. The factual matrix giving rise to their need is outlined in the finding of fact judgment including physical harm to the mother as well as significant and detrimental coercive and controlling behaviour over a lengthy period of time, including stalking. I have discussed that already at length. In my judgment, it is horrific, it impacts the mother and the children and it is at real risk of repeating.

26. As I have recorded above, the risk is further compounded as the father does not accept his behaviour which itself feeds into the likelihood of repetition which requires the safety of an order. He has been found to have breached bail conditions in order to carry out that abuse. It involves stalking behaviour, asking a friend to monitor and report on the mother's movements and tracking her car. He has also turned up unannounced where he then claims, untruthfully, that it was simply out of the blue and unplanned. Findings have been made against him in this regard. He has also previously knowingly breached non-molestation orders put in place by the court. It seems clear to me on an analysis of the evidence that an order is required that permits him to be arrested for abusive behaviour prohibited by the order. I have looked carefully at the terms put forward on behalf of the mother. I consider that they are proportionate and that they do not come into conflict with the child arrangements order. There is no reason for him to know the location of the

mother or the children in order to maintain the relationship within the bounds I have set and, in fact, it is within the children's interests that such should be actively kept from him in my judgment for the foreseeable future.

27. Furthermore, I have been greatly concerned to learn of his behaviour with his older children. Regardless of an order for indirect contact only being made, the father took it upon himself when in a park even some 5 years later to introduce himself to his son and tell him that he was his father. Such revelation of paternity was completely unmanaged and contrary to the established court order. He did not appear to understand the full impact of that upon the young person. It indicates a pattern of behaviour that I have regard to within the whole of these proceedings taking the need for any protective order outside of the normal where father considers that he knows best regardless of what professionals may put in place and that includes prohibitive orders by courts. It mirrors the behaviour subject of findings within these proceedings. It puts the mother and the children at real risk of repeated and continued harm. I have therefore reflected such within both the terms of the order and the time period. Were he to violate its terms, he could be arrested and subject to the criminal process.

28. Therefore, he must not:

- a) Use or threaten violence against the mother or his children.
- b) Intimidate, harass or pester the mother or his children.
- c) Telephone, text, email or otherwise contact the mother or his children save for the order for indirect contact that I am making today.
- d) Damage or attempt to damage or threaten to damage property belonging to the mother.
- e) Enter or attempt to enter any property by which he becomes aware she is living.
- f) Take any steps to locate where the mother or the children are living.
- g) Take any steps to locate where the children attend school or nursery.
- h) Come within 25 meters of the children or draw the children's attention to him with a view to encouraging them to engage with him if he happens to see the children.

29. I have further thought about the period of such order. I have heard mother's submissions that it ought to be until the youngest child turns 16. I consider that my determination of a

period should also be considered in respect of any filtering order and will therefore give my reasons for both below.

30. Upon disposal of the case, as I told the parties I would, I consider whether there should be a litigation filter on any further applications. I have taken into account the type and nature of the domestic abuse referred to throughout this judgment and to the length of time the parties have been in proceedings, including having to face finding of fact hearings on more than one occasion and an appeal. I have listened to what father says about obtaining more legal help. I would note that is at the end of long-running proceedings when such has been available for him to consider at each and every stage. I also note that it is indicative of the father's approach to this litigation, which is that if he does not like a court decision, he just ignores it and continues in any event. That mirrors the manner in which he has approached his abusive behaviour towards the mother. His explanations of meetings by chance in respect of the mother were rejected by HHJ Handley and mirror those in relation to his elder child in another relationship. In any event, to disclose the child's true parentage to him was a conscious choice, actively placing his needs above those of the child.
31. Even now father does not really consider, in my judgment, that this application is over. He tells me that he is in contact with solicitors, although within the lengthy period of these proceedings since disposing of his representation they have not appeared at any hearing. I am highly concerned that he will not think this final order brings the finality it should for the foreseeable future.
32. With reference to section 91A, I consider that everyone needs a break and it is in the best interests of all, including the children, to have this be the final order. I consider further applications themselves are at a real risk of continuing the behaviour that has been the subject of this application and properly dealt with within this final hearing. It is clear to me that the father does not consider this to be the final word; until there is material change, then it is.
33. Were there to be a material change in circumstances or some other significant matter then permission may be given, but such will need to be shown very clearly to the judge

determining the application for leave. I would venture to suggest that such ought to be supported by strong evidence that includes acceptance of behaviour and significant work reflecting upon that acceptance and understanding of his behaviour to a high level where change is clearly demonstrated. I would further suggest that is likely to remain the case following the lifting of the filter given the lengthy history of problems in this case and previous behaviour in any event. Those, of course, are suggestions only and such is entirely at the discretion of the determining judge on the evidence before them.

34. Therefore, I have considered carefully the period for both the protective orders and the filtering order and have regard to the behaviour but also time period we have been in court and the ages of the children. I have also considered his behaviour outside of proceedings in respect of his other children. I consider an appropriate period for a protective order under the Family Law Act 1996 should be lengthier than any for section 91(14) of the Children Act 1989. I have regard to all I have said above and in the unusual circumstances of the behaviour in respect of court orders, findings and bail conditions, including approaching someone prohibited from doing so in contravention of an order and in approaching a child and revealing their paternity in such a manner as described above which would be actively harmful to the child. I note that such was several years after the making of a court order with no recourse back to that court. However, I consider there is a likely risk of repetition without the benefit of an order. I have further concluded that the abusive behaviour of the father and the applications themselves have a detrimental affect on both the mother and the children. On balance, I make the protective order for a period of 8 years. I have set that period in the context of the severity of the behaviour and its repeated nature, occurring not just in this case but in others and for a significant period regardless of the orders in place at the time. His behaviour spanned not only the time they were in a relationship but after its dissolution. I therefore consider that period to be proportionate to the harm identified and the risk of that harm re-occurring over that period. The order may be subject to an application to variation or discharge were there to be a change to the circumstances known today that needed to be accounted for.

35. I have reflected as well on section 91(14) in the context of an application proceeding for over three years and only just now concluding. It has been the subject of appeal and has taken its toll on all parties and the children. The final order will set the tone for the

foreseeable future unless and is unlikely to alter until very serious help is found and properly attended to by the father and I note and endorse the CAFCASS officer's recommendations to that effect. In respect of the section 91(14) order, I make such order for a period of 5 years from the date of this decision. I note that such does not bar his access to the court, but simply provides a much-needed filter. I will further direct that any application is considered first on paper by a circuit judge and may be dismissed at that stage were it not to withstand scrutiny. I would note that the indirect contact is for his children's benefit and should be regularly and consistently engaged with.

### Orders

36. In my judgment the following orders are in the children's best interests, and in light of all the evidence I consider them to be proportionate and necessary:
- a) A child arrangements order for indirect contact only between the children and their father by way of emails four times a year.
  - b) The children's surnames shall be changed to the mother's name. Mother's surname name will be dropped as a middle name for child B (such that it is not repeated), but all others remain intact. The order will reflect the names in full.
  - c) I make a non-molestation order against the father in the terms listed in my order for a period of 8 years.
  - d) I make an order under section 91(14) requiring any party to obtain the court's leave prior to making any section 8 application under the Children Act 1989 or variation of the same (other than for enforcement of an existing order) for a period of 5 years. Any such application will be dealt with at circuit judge level and at first instance considered on the papers only without service on the respondent.
  - e) I continue the prohibited steps order that the father is not to remove the children from the care and control of the mother or anyone to whom she has delegated that responsibility until the youngest child turns 16. I will attach a penal notice to that order.
37. Following agreement and the opportunity to give submissions regarding publication by all parties, I have determined that this judgment will be released to the National Archives

once properly anonymised. Such is in line with the President's guidance and the continued need for transparency within the Family Court as to its decision-making.