

Neutral Citation Number: [2024] EWFC 216 (B)

Case No. LE22P00367

**IN THE FAMILY COURT**  
**SITTING AT LEICESTER**

15 Pocklingtons Walk  
Leicester LE1 6BT

Wednesday, 31 July 2024

**Before:**

**MR RECORDER O'GRADY**

-----

**K (CHILDREN: ALIENATING BEHAVIOUR)**

-----

**Victoria Brankovic** (instructed by Dodds Solicitors) for **the Applicant**  
**The Respondent** represented himself

Hearing dates: 30 - 31 July 2024

**JUDGMENT**

*This judgment was handed down remotely by the Judge by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 2:00pm on 31 July 2024.*

*The Judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children 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.*

**Mr Recorder O'Grady:**

**Introduction**

1. The names in this judgment are pseudonyms to protect the identities of the parties and the children.
2. This case is about two children: Elijah, who was born on 6 August 2015, and Kobe, who was born on 30 November 2016. Elijah will be 9 years old next week. Kobe is 7 years 8 months old. I will refer to Elijah and Kobe collectively as “**the children**”.
3. The Mother is 28 years old. She is the Applicant. The Father is 45 years old. He is the Respondent. I will refer to the Mother and Father collectively as “**the parents**”.
4. This is the judgment of the Court at a Final Hearing that took place on 30 and 31 July 2024.
5. The Mother was represented by Miss Brankovic, of counsel. The Father was represented himself.

### **Participation Arrangements**

6. The Court’s order of 9 April 2024 records that special measures and participation directions were not made for this hearing because the parties did not require them. It was confirmed at this hearing that they were not required.

### **Background**

7. The parties’ short relationship commenced in 2014 and ended in 2016. Both parties have connections to Ghana. The Mother has lived in Ghana for large periods of her life. She and the children were there in 2018-2019. They then returned to the UK for a short period before she returned to Ghana without the children in late 2019. It is common ground that the Father has been the children’s primary carer since December 2019. The Mother returned to the UK in April 2022 after 2 years 4 months in Ghana.
8. It is common ground that the time the children have spent with their Mother since her return to the UK has not been consistent. The parents do not agree on the reasons for that being the case.
9. These proceedings were commenced by the Mother’s application as long ago as June 2022. The proceedings have been beset by delays, including a DRA in September 2023 and a Final Hearing in April 2024, that were vacated or reduced in time due to judicial unavailability. No less than four section 7 reports have been prepared by Family Court Adviser (“**the FCA**”).
10. On 9 April 2024 the Court ordered that the children spend alternate weekend overnight time with the Mother (Fridays to Mondays) between then and this hearing. That was informed by the parents’ agreement that the Mother’s time with the children had gone well and they wished to have more time with her. No concerns were expressed about that progression. It is the unhappy situation that the time that the Court ordered on 9 April 2024 has not taken place.
11. Since the breakdown of the spend time arrangements, the children have been made subjects of Child in Need plans. I was told this is because of the breakdown of the

children's relationship with the Mother and the parental conflict. Under the Plan a programme of work is taking place in which the Local Authority are endeavouring to, what was described as, "unpick" why the children resist seeing the Mother. For reasons I will set out, on the evidence I have read and heard the reason is plain. A Child in Need meeting took place on 20 June 2024 and it was not disputed by the parties that the parents became very agitated and angry with one another and their voices, especially the Mother's, were raised.

### **The Issues**

12. The issues I must determine are:
  - a. What Child Arrangements Orders the Court should make, including spend time with orders and whether the Court should make a suspended live with order;
  - b. Whether the proceedings should be concluded or not; and
  - c. If the proceedings are not concluded, what case management orders are appropriate pending a part-heard Final Hearing, including whether the children should be made parties to the proceedings.

### **Positions of the Parties**

#### **The Mother**

13. The Mother opposes the finalisation of the proceedings. Her position on a final basis is that the children should live with her. She seeks interim orders for the children to spend time with her and an interim suspended live with order should the Father default in ensuring the children's compliance with any interim Child Arrangements Order. The Mother submits the children should be made parties to the proceedings.

#### **The Father**

14. The Father initially sought the conclusion of the proceedings at this hearing on the terms proposed by the FCA, including with the making of a Family Assistance Order. Later in the hearing the Father said he did not resist the resolution of the case being adjourned to a different day.
15. It is important to note: it is common ground between the parties that it is in the children's best interests to spend regular overnight time with the Mother. At least two conclusions must follow from that: (A) regular time is in their best interests notwithstanding any of the children's wishes and opposition to it; and (B) the Mother can safely meet their physical and emotional needs during regular overnight time.

### **Key Features of the Evidence Including Assessment of Witnesses**

16. The Court has been presented with 170 pages of written evidence. The FCA, the Mother and the Father gave evidence.

17. I have read all the written evidence carefully. I similarly listened carefully to the oral evidence. This judgment is not intended to be a repetition of everything I considered and my failure to recite a particular part of the evidence does not reflect a failure on my part to consider it. What follows is only intended to be a summary.
18. Where I make observations about the demeanour and behaviour of the witnesses (favourable and unfavourable), I remind myself that discerning fact from demeanour carries inherent challenges and is an unreliable exercise. Thus, whilst in *Re P (A Child: Remote Hearing)* [2020] EWFC 32 the President stated at [12]:

“... a crucial element in the judge’s analysis for the judge to be able to experience the behaviour of the parent who is the focus of the allegations throughout the oral court process; not only when they are in the witness box being examined in-chief and cross-examined, but equally when they are sitting in the well of the court and reacting, as they may or may not do, to the factual and expert evidence as it unfolds during the course of the hearing.”

I remind myself of what MacDonald J said *inter alia* in *Cumbria County Council v R (Special Guardianship Order or Interim Care Order)* [2019] EWHC 2782 (Fam) at [24] and [26]:

“The need for care with witness demeanour as being indicative of credibility has also been highlighted by the Court of Appeal in *Sri Lanka v the Secretary of State for the Home Department* [2018] EWCA Civ 1391. The Court of Appeal observed that it has increasingly been recognised that it is usually unreliable and often dangerous to draw a conclusion from a witness' demeanour as to the likelihood that the witness is telling the truth, noting research suggesting that interlocutors cannot make effective use of demeanour in deciding whether to believe a witness and some evidence that the observation of demeanour diminishes rather than enhances the accuracy of credibility judgments ...

Within the context of the foregoing legal principles, this court must bear in mind that the assessment of the credibility and reliability of the parents should coalesce around matters including the internal consistency of their evidence, its logicity and plausibility, details given or not given and the consistency of their evidence when measured against other sources of evidence (including evidence of what the witness has said on other occasions) and other known or probable facts. The credibility and reliability of that parent should not be assessed simply by reference to their demeanour, degree of emotion or other aspects of their presentation. This of course works in both directions. It is as problematic to rely on an impression that a witness has an 'honest' tone, manner or presentation, for example that they appear "genuinely upset", as it is to rely on an impression that the tone or manner of a witness appears 'dishonest', for example that they cross their arms or look at the floor. These principles must apply both when the court is evaluating the parent in the witness box and when the court is evaluating the significance of the observations of other's regarding the parent's demeanour at a given point.”

19. The FCA has provided the Court with four reports over the course of two years. Her evidence is informed by a close and detailed understanding of this family.
20. In her first report (12 December 2022), the FCA identified that neither social services nor the children's schools identified concerns about the Father's care of the children. The FCA concluded the children had positive relationships with both parents and it was important for them, the children, to gradually resume spending time with the Mother. The FCA recommended the children spend time through the Improving Child Family Arrangements service and then through a contact centre with a review 5 months afterwards.
21. In her second report (25 April 2023), the FCA once again identified that the children's school held no concerns for their care. Their attendance was good and they presented well. The FCA identified that the children were reluctant to spend time with the Mother and are afraid of her, attributing that to "their past experiences and trauma". Furthermore, the FCA was left in "no doubt" that the Father presents the Mother in a negative light to the children. The Father sent the FCA a video recording that he had taken of the children. In that video he told the children if they did not listen to him then they would go to their mother. They became distressed and begged the Father not to send them to the Mother.
22. In her third report (22 September 2023) Elijah reported the Father told him he should go to contact with the Mother, but he and Kobe did not want to. Elijah could think of little positive about the Mother. Kobe refused to engage with the FCA. The FCA found the children to be very attached to the Father. The FCA was troubled that the children hold onto negative thoughts about the Mother and that they are not being allowed to move on. The report recommended unsupervised time that was to progress to overnight time alternate weeks Fridays to Mondays.
23. The FCA's fourth and most recent report (11 July 2024) should have been informed by the children's experience of regular and extended overnight time with the Mother that was ordered in April 2024. Unhappily, that time did not take place after Elijah and Kobe made allegations about the Mother that resulted in further social services involvement with the family. There were two central allegations. The first, that the Mother strangled one of the boys. The second, that the Mother locked the boys in her bedroom. The first was explained to the FCA's satisfaction as being a time when one of the boys was about to step into the road and the Mother pulled him back with his clothing, which caused the clothing to catch on his neck. The account from the children about strangulation has not been consistent. Kobe told his school that he had been strangled and they both now say it was Elijah. The Mother denies she locks the children in rooms. The FCA confirmed that social services have visited her home and found no evidence of locks on doors. The FCA noted that Elijah's school is concerned by the high level of hostility between the parents.
24. The FCA is troubled that, at the Court hearing in April 2024 there were no concerns raised about the children spending time with the Mother and, in fact, it was agreed that they had enjoyed themselves and asked for additional time with her. Within days, the Father said the children did not want to spend time with the Mother. In the FCA's opinion the proceedings can be concluded with some trust that the Local Authority

will support a restoration of the relationship between the children and the Mother. In her opinion the harm of delay outweighs the benefit of the proceedings concluding, fairly noting that they have been ongoing for 102 weeks.

25. I was told by the FCA that the children present as though they are unwilling to allow themselves to say they enjoy their time with the Mother. In explaining the children's reluctance to spend time with the Mother, the FCA said that at this point, the evidence leads to the conclusion this is due to a deficit in the Father's ability to promote the children's relationship with the Mother. The FCA worries about the impact on the children of not having a relationship with the Mother. She explained that the impacts can be long-term, including their own ability to form secure relationships and how they view each of their parents.
26. I was impressed by the FCA's analysis and reflection on this case. Her opinions are informed by working with this family and other professionals for an extended period of time. I conclude I must give significant weight to her evidence.

### The Mother

27. The Mother contends that the Father has alienated the children against her. Kobe now refuses to speak to her and she speaks with Elijah on Tuesdays and Fridays. She has not had meaningful time with the children since April 2024, and limited time prior to that.
28. The Mother said that she went to collect the children from their school on 12 April 2014, as ordered at the Court hearing only a few days earlier. She collected Elijah and then went to collect Kobe at 4:00pm. She said that Elijah described her as being, "Daddy's enemy." When the Mother approached the Kobe's school's gates she saw the Father was present at the school. She claimed that the Father said the children do not want to be with the Mother. The children ran and cried. The Mother was then able to leave with the children after re-gathering them. They spent that weekend with her.
29. On 26 April 2024 the Mother went to collect the children again. Elijah was not happy to see the Mother, although the Mother was able to leave with him. She was told by the Head Teacher that the parents' conflict was detrimentally affecting the children. The Mother then went to collect Kobe. When Kobe saw the Mother he went back into the classroom. A teacher told the Mother that Kobe did not want to go with her. Kobe made allegations that he had been physically harmed by the Mother. Social services were contacted. The Mother then saw the Father was present in the school reception. She says he shouted, "I have told you the children do not want to see you. I cannot force them." The children left with the Father. The children have not spent meaningful time with the Mother since the weekend of 12 April 2024.
30. The Mother is plainly frustrated at her circumstances. Those feelings bubbled to the surface during the hearing. She could be argumentative in her evidence and, occasionally, declined to answer direct questions preferring to offer her own narrative. At times the Mother betrayed agitation at the Father when in the well of the Court. At one point she had to be reminded to remain calm.

### The Father

31. The Father told me that that the Mother has poor anger management and the children are affected by the way she shouts in their presence. The Father said that the Mother does not understand her absence from the children's lives had on them. He points to himself as being the one stable and consistent person in the children's lives and does all he can to encourage the boys to re-build their relationship with the Mother.
32. The Father denied he went to the school on 12 April 2024. He said he was outside a local shop for a few minutes and the Mother called him, asked the Father to speak to the boys and she said that, "Daddy is coming." The Father said the purpose of him going near the school was for him to drop off football boots. His explanation for why he had not left them at school in the morning was not satisfactory. He denied the Mother asked him to bring the football boots to her home once she had settled the children. The Father said he attended school on 26 April 2024 because the school asked him to attend.
33. The Father told me that he "records everything", that "everything is on my phone" and "I record everything on my phone." The Father was unable, when asked, to produce the video recording he sent to the FCA. Later in his evidence he denied that he records "everything". He said he records whenever he meets the Mother and then said he does not record all interactions with her.
34. The Father was casual in his evidence. He remained even-tempered, although at times also had difficulty answering direct questions. His own evidence was not always consistent with itself and he did not create the impression of being a reliable historian. It was not obvious that the Father understands the seriousness of these circumstances and the significant detrimental effect they are having on the children. The "penny dropped" only on the third time the Court told him that very serious consideration would need to be given to whether the children should live with the Mother rather than with him. His evidence left me unconvinced he values the importance of the Mother in the children's lives.

## **The Law**

### Factual Determinations

35. When a fact is in dispute, the burden is on the party alleging the fact to be true to prove it is true. The standard of proof is a simple balance of probabilities. Whether an assertion of fact is true is binary. If the standard of proof is met, then the assertion is fact and treated so for my decision-making. If the standard of proof is not met, then the assertion is not a fact for my decision-making. There is no room for treating suspicion as fact for the purposes of my decision-making.
36. Any findings I make must be based on evidence, including inferences reasonably drawn from the evidence and not speculation. That evidence can be written or oral and I can rely on hearsay evidence from witnesses who have not given oral evidence. However, I must consider carefully what weight to give that hearsay evidence as I have not had the opportunity to consider how it would have stood up to challenge by cross-examination.

37. Baroness Hale cautioned on fact-finding in private law proceedings in *W Children* [2010] UKSC 12 at [29]:

“...there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert Local Authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false, but it does increase the risk of misinterpretation, exaggeration or downright fabrication”

38. The Court must take into account all the evidence, considering each piece of evidence in the context of the other evidence – surveying a wide landscape – and must avoid compartmentalising.
39. I direct myself in accordance with the case of *R v Lucas* [1981] QB 720 and subsequent Family Court case of *ABC* [2021] EWCA 451 in the event that I consider that any of the evidence I have read or heard contains inaccuracies or lies –

“[that a lie] may be probative of guilt. A lie is only capable of supporting other evidence against [the person telling the lie] if the [court is satisfied] that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of [the person telling the lie], or for some other reason arising from the evidence, which does not point to [the person telling the lie]'s guilt.” And “... only if [the Court is satisfied] that these criteria are satisfied can [the person telling the lie]'s lie be used as some support for the [case against him], but that the lie itself cannot prove guilt. ...”

### Welfare

40. Each child’s welfare individually has been my paramount consideration. I assess each child’s best interests within the context of the considerations in section 1(3) of the Children Act 1989.
41. I remind myself that when considering whether to make a section 8 order, I must presume unless the contrary is shown, that the involvement of each parent in the child’s life will further each child’s welfare. A parent will be treated as benefiting from that presumption unless there is some evidence before the court to suggest that the involvement of the parent in the child’s life would put the child at risk of suffering harm.
42. The Court must not make an order pursuant to its powers under the Children Act 1989, unless it considers that doing so would be better for the child than making no order at all, or no less draconian order. Delay in resolving a question about the children’s welfare, especially in proceedings as long-running as these, is detrimental to the welfare of the children.

### Parental Relationships and Alienating Behaviours



43. I remind myself when dealing with alleged alienation, it is the nature of the behaviour and the impact on the children that matters and not the motivation or label. The manipulation of the children need not be malicious or even deliberate (see *Re S (Parental Alienation: Cult)* [2020] EWCA Civ 568). In *Re C (Parental Alienation: Instruction of Expert)* [2023] EWHC 345 (Fam), Sir Andrew McFarlane P said:

“Most Family judges have, for some time, regarded the label of ‘parental alienation’, and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of ‘alienating behaviour’ should be the court’s focus, rather than any quest to determine whether the label ‘parental alienation’ can be applied.”

44. The Court has a positive obligation to promote the relationship between parent and children. I have in mind what Peter Jackson LJ said in *Re S (Parental Alienation: Cult)* at [13]:

“In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention. Above all, the obligation on the court is to keep the child's medium to long term welfare at the forefront of its mind and wherever possible to uphold the child and parent's right to respect for family life before it is breached. In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken. It is easier to conclude that decisive action was needed after it has become too late to take it.”

45. This reflects the need for the Court to set “set a strategy” for the case and stick to it consistently (*Re A (A Child)* [2013] EWCA Civ 1104 at [60]). I must consider whether I am prepared to see an order enforced before I make it because not to enforce an order of the Court would be to abandon the strategy and be inconsistent with the rule of law.

#### *Change of Residence, Suspended Live With Orders and Care Proceedings*

46. An order to change where the children live must be justified by the children’s welfare

and in considering their best interests as paramount. It should not be done out of a desire to punish or as a means of enforcement. There is no gloss to be put on the paramount consideration of the children's best interests. As Sir Andrew McFarlane P said in *Re L (A Child)* [2019] EWHC 867 (Fam) at [59], "What is required is for the judge to consider all the circumstances in the case that are relevant to the issue of welfare, consider those elements in the s 1(3) welfare check list which apply on the facts of the case and then, taking all those matters into account, determine which of the various options best meets the child's welfare needs."

47. The Court can suspend an order that the children live with the other parent (see *Re A (Suspended Residence Order)* [2009] EWHC 1576 and *Re M (Contact)* [2012] EWHC 1948 (Fam)).
48. Within the tools available to the Court is removal of a child from a parent into foster care for assessment or change of residence where the children's interests necessitate it (see *Re M (Intractable Contact Dispute: Interim Care Orders)* [2003] EWHC 1024 (Fam) and *Re W (A Child)* [2014] EWCA Civ 772).

## **Discussion and Findings**

### Welfare Findings

*The ascertainable wishes and feelings of the children concerned (considered in light of their ages and understanding)*

49. In April 2023 Kobe said he did not like playing with his mum and he did not want to be with her. He said he would feel sad if he had to see his mother. Elijah said he was worried that if his father was not around then his mother would take him to Ghana. Kobe was adamant he did not want to spend time with the Mother whilst Elijah was open to it.
50. Most recently Elijah said that spending overnight time with the Mother was really bad and he does not want to go. He is happy with the Father. Elijah made 'sniper hands' and said he would do that to the Mother (i.e. shoot her). Kobe said the Mother was really mean and strangled Elijah with his hoody. Kobe wants to be with the Father and for the Mother to "leave" and stop hurting them.
51. The children are resolute they do not want a relationship with the Mother. I conclude I should give little to no weight to their expressed wishes because: (A) they have no appreciation of the impacts on their long-term welfare of their wishes coming to fruition; (B) their views are inconsistent with the beliefs of both parents that they should spend regular time with the Mother; (C) they are sat in the middle of an acrimonious conflict; and (D) the Father has, whether intentionally or not (it is not necessary to reach a conclusion), significantly influenced their wishes by his failure to promote a relationship with the Mother and his actions (detailed below) that have actively undermined the relationship with the Mother.

### *Physical, emotional and educational needs*

52. The parents agree the children require meaningful relationships with each of their

parents. They need to be safe to enjoy those relationships without fear of repercussions or influence from the other parent. The children need to be protected from the conflict between their parents.

*Age, sex, background and any characteristics of which the court considers relevant:*

53. The children have a mixed ethnic background. Their mother is white-British and Ghanaian and their father is Ghanaian. The children have been raised in the Christian faith and speak passionately about their faith. They lived their early years in the primary care of the Mother, including a year in Ghana. For the majority of their lives, they have lived in the Father's primary care. They are closely bonded to him. They have been denied the opportunity to have a meaningful relationship with their mother as a result of their Father's parenting.

*How capable each of the parents is of meeting their needs*

54. The Father and Mother both have the capacity to meet the children's physical and educational needs. At issue is their capacity to meet their emotional and psychological needs.
55. I accept the FCA's evidence that the Father has an impaired capacity to meet the children's need for a relationship with their mother. This is a significant deficit in parenting capacity because it strikes at a core aspect of the children's emotional and psychological needs. It may well be true that the Father "has done everything" *he* can to promote the relationship between the children and the Mother. In which case, his best efforts and his capability to meet this important aspect of the children's needs are inadequate for the task the children's needs require. It is not necessary for the Court to answer why this deficit exists, or whether it is intentional behaviour or not. In my judgment, what matters is the children's lived experience that the Father is unable to ensure this aspect of their needs is met consistently, or at all. The lack of capability to meet the children's emotional needs is reflected in his actions that have caused and risk causing significant harm to the children.
56. I turn to the Mother.
57. The Mother can be hot-headed. She harbours animus for the Father, which has impaired her judgment and capability to meet the children's needs. I accept that some of that hostility arises from the frustration of her relationship with the children. I accept the FCA's evidence that the Mother can become angry quickly and she saw an occasion where the Mother did not show emotional warmth to the children.
58. I am unable to determine at this hearing whether the Mother does or does not have the capacity to meet the children's emotional need to have a relationship with the Father or the other aspects of their emotional needs. The time between now and the adjourned Final Hearing will require a careful analysis of the Mother's capacity to meet these needs and identify whether she can temper her hostility and prioritise the children.

*Likely effect of any change in circumstances*

59. Change in the children's arrangements will cause disruption to their routines. They understand and are comfortable with not seeing the Mother. Change will likely be unsettling and confusing, especially as they hold strong views they do not want to have a relationship with the Mother. That will likely manifest itself in unsettled behaviour, strongly rejecting her and them expressing themselves to be unhappy and upset. I accept change from their current experiences to something they do not want and will be harmful.
60. However, in the context of the next decade of the children's lives, that is likely to be short-term harm and disruption. I consider it is likely the children will come to adjust to new arrangements. Change that reinforces meaningful relationships with each parent is likely to be change that promotes their long-term emotional and psychological well-being. Conversely, change – or the absence of it – which empowers one parent to subjugate the status of the other is likely to be change that causes long-term harm.

*Any harm which they have suffered or are at risk of suffering:*

61. I find the children have been caused significant emotional harm by the Father in that he:
- a. Weaponised the children's time with the Mother by using time with her as a threatened punishment;
  - b. Recorded the children when they were distressed. In doing so he prioritised his need to have evidence in this litigation, rather than meet the children's emotional needs;
  - c. Showed the children at least one document from the Court proceedings that caused them to be very distressed;
  - d. Does not genuinely support and promote the children having a relationship with the Mother. Rather, he is critical of the Mother to the children and manipulates their opinions of her to the point where Elijah views the Mother with such animus that he acted out shooting her; and
  - e. Persistently reinforces to the children negative experiences they have had with the Mother, such that they are unable to move forwards.
62. Furthermore, I accept the Mother's evidence that on 12 April 2024, rather than attend at the Mother's home as she requested, he attended near to the children's school. He did that knowing that it would destabilise the first extended overnight contact. Thus, I find this was a further piece of behaviour that was significantly harmful in that it frustrated the children having a meaningful relationship with the Mother.
63. I accept the Father's evidence that he attended school on 26 April 2024 at the school's request. I accept the Mother's evidence that the Father said at reception, "I have told you the children do not want to see you. I cannot force them."
64. I prefer the Mother's evidence of these two events because they are consistent with

the Father's pattern of behaviour and attitude that has undermined the children's relationship with the Mother. I find it unlikely that the Mother would have willingly urged the Father to attend near the school on the first occasion of her extended overnight time and more likely she would have wanted to get the children home, settled and in a place where they could not see the Father when he delivered the football boots.

65. This behaviour is harmful in a significant way because of:
- a. How it has taken place over a significant period of the children's lives;
  - b. The children are young and impressionable, incapable of making their own judgments about what is best for them;
  - c. Its effect of breaking, in a fundamental way, the connection between children and mother; and
  - d. The long-term harm it poses to the children's own development as adults.
66. I find the children are at risk of ongoing significant emotional harm of this kind by the Father because:
- a. The Father has limited, if any, insight into the harm his behaviour has caused; and
  - b. The Father claims he has exhausted all the tools within his capacity to promote the relationship between children and the Mother – thus improvement is unlikely.
67. I have very little confidence if I make a final order today for the children to spend time with the Mother that the time will take place or will not quickly breakdown because there have been orders requiring time to occur in recent weeks and that time has simply not occurred. Whilst the Father takes the children to school so they can be collected by the Mother, he undermines the relationship by his actions (and omissions, such as not supporting the time) to the point where getting the children to leave school with the Mother is essentially impossible
68. I find the children are at risk of emotional harm from the Mother's hostility towards the Father. They have seen her temper and anger rise quickly. If she lacks a capacity to support the children having a relationship with the Father then that risks long term harm also. The Court requires additional evidence of the Mother's capacity to meet the children's emotional needs should they live with her.
69. The parents have been unable to contain their hostility towards each other in the children's presence. I accept the FCA's evidence that being exposed to this behaviour will have had a significant impact on the children.

#### Welfare Analysis

70. I am concerned that the coming months may be the last best chance to restore the

children's relationship with the Mother and delay in this task beyond this time risks a permanent entrenchment of the children's antipathy to their mother.

71. I am determined that these children will have meaningful relationships with both parents. That is overwhelmingly in their best interests. The parties agree it should be so. I am prepared to use all the tools at the Court's disposal that are necessary and proportionate in achieving that end.

#### *Spend Time*

72. At the conclusion of the parties' submissions I informed the parties that I would reserve my judgment, however indicated I would be making orders for the children to spend time with the Mother as early as Friday of this week given there is agreement that the children should be spending regular overnight time with the Mother. I asked the parties to discuss what arrangements they thought best and to present their proposals to me on the following day for determination if there is a dispute. The parties agreed that the children should, from this Friday, spend week-on-week-off during the holidays and also spend each Wednesday night and every other Friday to Monday with the Mother.

#### *Suspended Live With Order*

73. I have carefully considered whether I should, today, make an order that the children live with the Mother if the Father does not ensure the children spend time with the Mother in accordance with the orders made this day.
74. If I make such an order I would reinforce to the Father in a very serious way the paramount need for him to comply with orders that promote the children's best interests. It would, upon a default by the Father, cause the children to live with the Mother. They would then be able to have a relationship with her. Such an order would mean that professional work can be done with the children away from the Father's influence that would serve to undermine professional work.
75. However, such a draconian step would be very disruptive for the children. They would likely resist and reject it. I accept they would be very upset and be caused emotional harm. I do, however, have a degree of hope that they would come to accept the change and settle – much as they soon enjoyed their time with their mother once it started. At present, I do not have sufficient evidence (against the background of parental hostility) to give me confidence that the Mother can meet all the children's emotional needs. To require the children to live with her in the interim, would therefore, carry risks that are presently unknown.
76. I have determined I should not, today, make a suspended order that the children live with the Mother. I should not make such an order unless I am prepared to see it executed and, today, with evidence about the Mother's ability to meet all the children's emotional needs outstanding, I am unable to conclude that the harm of them remaining with the Father for the next 9 weeks is greater than the harm of them moving to live with the Mother.
77. The Father, however, should not be under any misapprehension. In 9 short weeks I

will hear this case again and review the evidence. I will not hesitate to order the children live with the Mother immediately and without any suspension, if the evidence leads me to conclude that is necessary and in their best interests. If such a change of residence is necessary, but cannot be executed immediately, I will consider all other options, including the appropriateness of them being in a bridging foster care placement to give them a neutral environment from which they can re-build their relationship with the Mother and be safeguarded from the significant harm they have suffered to date and which I find they are at risk of suffering. If the Father breaches the orders I have made without reasonable excuse I will not hesitate to make an appropriate Enforcement Order to promote his future compliance with the Court's orders.

### Case Management

#### *Section 37 Report and Interim Supervision Order*

78. I have concluded the children have suffered significant harm and they are at risk of suffering significant harm. I have reasonable grounds to believe the circumstances of the children are as described in section 31(2) of the Act. Consideration needs to be given to whether Public Law proceedings should be issued to safeguard the children from this ongoing harm.
79. I have considered whether I should make a Public Law order alongside this direction. I am mindful of my obligation not to make an order unless doing so is necessary, in the children's best interests and better than making no order at all.
80. If I make no order then the children will continue to have social workers work with them under the Child in Need plan. They will be seen approximately twice weekly. No order is less interference in the parties' right to privacy and family life. There is force in the FCA's evidence that, if I make an Interim Supervision Order little practically will change on the ground for the children. However, if I make an Interim Supervision Order the Local Authority will be under a duty to advise, assist and befriend the children.
81. I have concluded it is in the children's best interests that I should make an Interim Supervision order. First, the order will place a statutory responsibility on the Local Authority and emphasise this Court's significant concerns for these children's welfare. That may result in greater intervention to promote their welfare. Secondly, it will emphasise the seriousness of the circumstances to the FCA, whom I will go on to appoint as a Children's Guardian. Thirdly, and perhaps most significantly, it will reinforce the seriousness of the circumstances to the Father and it may, thereby, improve the prospects of him complying with the other orders I will make, which is overwhelmingly in the children's best interests.

#### *Appointment of Children's Guardian*

82. I have concluded it is necessary for a Children's Guardian to be appointed pursuant to Rule 16.4 of the Family Procedure Rules 2010 because (A) this is a high conflict case in which the children are not seeing one parent, contrary to their best interest; and (B) I am not confident the children's best interests will break through the competing

positions articulated in courtroom (especially as the Father is not represented).

### *Delay*

83. I am mindful that the conclusions I have reached will mean these proceedings must be delayed. Such a delay is very harmful to the children because it prolongs the seat of conflict between the parents – this litigation. However, I consider the delay is necessary and proportionate in promoting the children's welfare.
84. If I make final orders today, I have very little confidence they will be complied with. The children would be left to the Father's willingness/capacity to promote time and the Local Authority's work. Even though the Local Authority is doing its very best (and indeed perhaps more than might be expected of it), I am very concerned that weeks of work have not yielded fruit. I am troubled that the work done with the children may be undermined when they are in the Father's care. To make final orders today would be an abdication of this Court's responsibility to promote the children's best interests and restore their relationship with their mother.
85. The delay is one of 9 weeks. Final orders will be made in October. The harm to the children of a delay over such a short period of time is outweighed by the importance of promoting the children's relationship with the Mother.

### **Conclusion**

86. For these reasons I make the orders I have today. The issues the Court will need to consider at the adjourned part-heard final hearing include:
  - a. With whom the children should live;
  - b. What time the children should spend with the parent with whom they are not living;
  - c. Whether these parents are capable of jointly exercising Parental Responsibility and, if they are not and/or it is not safe, whether one of the parents should have determinative Parental Responsibility to the other's exclusion; and
  - d. Whether a final Prohibited Steps Order should be made.
87. The Court will require a holistic analysis from the professionals of the welfare options for the children.
88. At the adjourned hearing I will consider making directions pursuant to section 91(14) of the Act of the Court's own motion (see section 91A(5)(b) of the Act).
89. That is the judgment of the court.