

NEUTRAL CITATION NUMBER: [2024] EWFC 239 (B)

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 1ST TO 4TH JULY 2024

JUDGMENT GIVEN ON 22ND AUGUST 2024

BEFORE HER HONOUR JUDGE OWENS

F

And

M

And

A & B

(Acting through their CFAB Children's Guardian, Michael Nwoye)

Representation:

**The Applicant represented by Mr Hale KC
For the First Respondent: Ms Murray, KC
For the Second and Third Respondents, A and B,
acting through their Children's Guardian: Ms Bazley KC**

This judgment is being handed down in private on 22nd August 2024. It consists of 23 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the children and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties and the child will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

Introduction

1. This case concerns two children, A aged 16 and B aged 15. Their parents are M and F.
2. I produced this judgment in the expectation that A and B may see it in the future. I think it will be important for them to have an objective and unbiased summary of these proceedings, the issues that I had to decide, the decisions that I made about them and the reasons for those decisions.

Applications and issues

3. The issue for this court is whether I should make any orders about arrangements for A and B.
4. The Guardian, having heard all of the oral evidence during this final hearing and read all of the written evidence, has made a recommendation to the court that there should be an order saying that A and B should live with each of their parents, but that A and B should decide when they live with F. The Guardian also recommends some orders about the parents sharing important information about the children with each other and making decisions as their parents together wherever possible. The Guardian was very clear that there is no safeguarding risk to the children from them seeing F, and if the children don't have a relationship with their father, this creates a risk to their welfare and that risk is likely to result in very significant and long-term problems for them.
5. F agrees with the Guardian that there should be an order saying that both children should live with both M and F and that A and B should decide with which parent they live and when. F also wants some orders about the parents sharing information about the children with each other and making decisions together

wherever possible, but he also wants these orders to cover more than the Guardian proposes.

6. M doesn't think any orders are necessary.

Background

7. M and F married in 2007. At this point they were living in country A. In 2008 A was born, and B followed shortly afterwards so both children are very close in age.
8. It is agreed by both M and F that there was a serious incident of domestic abuse in 2013 in which F hit M in the face, causing her to have visible injuries. At the time of this incident A and B would have been very young, potentially too young to fully understand what happened, but they were present in the house at the time of the incident. Both M and F also agree that they had been arguing before this incident and that M had been trying to film F during the incident. While M and F were arguing with each other, it seems they agree that they were not focused on B who had earlier been hurt playing on a bike. It is not clear how much of this incident A and B remember but I have taken judicial notice of the fact that, as research shows, an incident of this type would have been harmful for them even if they were not directly present and even if they had no clear memory of it or clear understanding of it because of their age.
9. F accepts that he has also had problems with controlling his temper and this has led to him shouting, banging tables and throwing things at times, both during the marriage and afterwards.
10. F told the court that he was wrong to behave in the way that he did, he apologised to both A and B in a letter written with help from the Guardian, and he apologised to M too. During these proceedings he has completed the recommended work

designed to help him understand why what he did was wrong and to stop it happening again.

11. M accepts that she has told A and B some things about what happened in the past and inappropriately shown A and B (at different times) photographs of her injuries sustained during the incident in 2013. She has told professionals involved in this case of her extremely negative view of F and accepted in her evidence to me that she could not say anything positive about him when she was asked about this. She has not yet completed a recommended Mentalisation-based Approach for Parents in Court Proceedings course designed to help her protect the children from her negative views of F.
12. As a result of the incident in 2013, M and F decided to temporarily separate, but they reconciled the following year.
13. In 2017 the family moved to this jurisdiction and A and B went to a school here. At the time A and B were day pupils.
14. In 2020 the whole family spent some time in country B before returning to this jurisdiction in 2021.
15. In July 2021 M and F separated permanently.
16. In September 2021 A moved to B's current school. Later that same month, A had a very serious accident, which M and B witnessed. As a result of that accident A suffered a life-changing injury. A has had a lot of specialist medical treatment and rehabilitation because of the accident and has made incredible improvement since the accident but remains an out-patient at a specialist rehabilitation institute in country C and requires a package of care that includes help from carers with day to day living including transfers. A also uses a wheelchair.
17. In September 2022, B became a full-time boarder at school.

18. In November 2022 A moved to the previously mentioned specialist rehabilitation institute in country C and both F and M moved to that country. This is when F made the first application under the Children Act in respect of B.
19. In December 2022 there was an incident when F became frustrated and angry, shouted at A and banged on the table. F does not dispute this, though he does dispute that he called A disabled during this incident, something that A says F did and has told professionals about since. A few days later, B, who had been seeing F regularly up to this point, sent F a message saying that B didn't want to see him again.
20. The first effective hearing about F's application in respect of B was on 7th February 2023 before a District Judge. At that hearing everyone agreed that an Independent Social Worker (ISW), William Walker, should be instructed to report on B's wishes and feelings. The District Judge permitted this, and William Walker reported on 14th April 2023. William Walker made various recommendations which included that F should complete a parenting course, F should write a clarification letter to B and respect B's current position about spending time with him but gradually work towards a relationship with B. He recommended that M should also complete a course and move from her neutral stance about B spending time with F to one that actively promoted this.
21. HHJ Vincent then saw the case on 27th April 2023 as it had been listed before her on 28th April 2023. M and F asked her to vacate the 28th April hearing because they had reached agreement about directions to try to progress the proceedings, and the case was to be re-listed on the first available date after 15th September 2023. Those directions included William Walker preparing an updated report after

M and F had completed the recommended work. A hearing date of 22nd September 2023 was set.

22. In June 2023 F made an application in relation to A. F had been regularly spending time with A in country C while A recovered from the injury, but this stopped happening regularly from about May 2023 and then in June 2023 A sent F an email saying that A did not want to see him again. This new application in relation to A was listed before HHJ Vincent on 17th August 2023.

23. HHJ Vincent then considered the case on 16th August 2023 because both parents had agreed that the hearing on 17th August was not required, and they had agreed various directions to link both sets of proceedings to be considered on 22nd September 2023. The agreed directions included joining A as a party to the proceedings and appointing a Guardian for him, but not B. I am unclear as to the reason for differentiating between A and B in this way.

24. One unfortunate aspect of the directions made in August 2023 was that they invited CAF/CASS to appoint a Guardian for A. A was still in country C at this point and CAF/CASS cannot act internationally, something that I am a bit surprised was not realised before by the lawyers involved. CAF/CASS notified the court of this fact when they received the 16th August 2024 order, which led to CFAB being invited to appoint a Guardian since by this point CFAB had expanded their services to offer rule 16.4 Guardians in international cases. CFAB accepted the invitation and appointed Michael Nwoye as Guardian, and simultaneously instructed another ISW, Pilar Cubelos, to provide a report since country C is one where social work is a protected profession so only those people qualified to work there can undertake social work in that country.

25. The hearing on 22nd September 2023 was before a District Judge rather than a Circuit Judge, for reasons that are not clear even though allocation guidelines in relation to the issues in the case would normally mean that it should have been a Circuit Judge. The Guardian had not yet had a chance to complete his enquiries nor had Pilar Cubelos completed her report. The case was adjourned to a dispute resolution hearing which should have been listed as soon as possible in mid-December 2023. It seems it was not listed until 3rd January 2024, but that hearing was then moved administratively to 21st February 2024. At this point the proceedings for both A and B were being heard together but had not been consolidated for reasons that are not clear.
26. On 24th January 2024 F made an urgent application to the court asking the court to consider, amongst many things, listing an urgent hearing in both sets of proceedings and considering if the cases should be transferred to the High Court. CFAB had also raised the issue of potential transfer to the High Court. This led to a hearing before HHJ Gibbons on 2nd February 2024.
27. HHJ Gibbons consulted with the Family Division Liaison Judge, Mr Justice Williams, about transfer to the High Court in accordance with the procedure set out in the Family Procedure Rules. Mr Justice Williams refused permission to transfer to the High Court but directed that the case should be allocated to Circuit Judge. At this point the case was allocated to me, and various reports were directed to be completed by professionals involved in the case, and the case was listed for an interim hearing before me on 22nd April 2024.
28. On 27th March 2024 M applied for orders to end proceedings for both A and B. That application was listed to be considered by me at the hearing on 22nd April 2024. At that hearing I consolidated the proceedings for both A and B so that there

was no danger of them being heard separately or of separate court records continuing. I also joined B as a party and appointed Michael Nwoye as Guardian to ensure that B was separately represented in the proceedings in the same way as A and for the same reasons having considered Practice Direction 16A about when children should be parties in proceedings. I timetabled the case to a final hearing before me starting on 1st July 2024.

Evidential summary

29. I have had written evidence in the Bundle from M and F. I have also had written safeguarding letters from CAFCASS, and written reports from William Walker, Pilar Cubelos, Michael Nwoye, as well as from the specialist rehabilitation institute for A. I also heard oral evidence from William Walker, Pilar Cubelos, M, F and Michael Nwoye.

30. All of the professional evidence concludes that there is no risk to A and B from spending time with F. The professional evidence is also clear that A and B have consistently said that they do not want to spend time with F, though their stated reasons for this vary. The evidence also shows that F has completed the recommended courses, but M has not. The Guardian was very clear in evidence that if A and B grow up without a relationship with their father, this will harm them in the long term because it will affect their sense of identity.

Relevant legal considerations

31. The court must consider the welfare of the children, and this must be the court's paramount consideration. The court must apply the relevant aspects of the welfare checklist contained in section 1(3) of the Children Act 1989.

32. Practice Direction 12J is also relevant given the allegations in respect of both M and F in this case. The principles outlined in ***Re H-N and others (children) (domestic abuse: finding of fact hearings) [2021] EWCA Civ 448*** are also relevant. However, given the admissions made by both M and F, which in M's case were about her telling the children things that were not appropriate and in F's case were about his failure to manage his temper, I decided that a separate fact-finding hearing was not necessary, deciding that those admissions were sufficient to enable the Court to consider what was in the welfare interests of A and B.

33. It is not in dispute in this case that A and B can be regarded as habitually resident in this jurisdiction despite the fact that A is currently in country C and has been there for a considerable period of time. I have not therefore had to determine whether this court has overall jurisdiction to decide the main issues in this case because it is accepted that I do have jurisdiction but would note, as I pointed out to the parties, that my power to make orders does not extend to areas outside of this jurisdiction.

34. The fact that A is 16 and B is nearly 16 is also significant because section 9(6) of the Children Act 1989 says that:

“No court shall make a section 8 order which will end after the child has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.”

Section 8 is the section which allows a court to make orders about arrangements for children, including where they should live and the time they should spend with their parents. However, the restriction on making section 8 orders which would extend after children reach 16 does not apply *“if the arrangements regulated by the order relate only to either or both of the following – (a) with whom the child*

concerned is to live, and (b) when the child is to live with any person” (section 9(6B)). Section 9(7) says that “no court shall make any section 8 order, other than varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional”. This means that to make an order, even one that is just setting out arrangements for where A should live, requires me to be satisfied that there are exceptional circumstances because A is already 16.

35. I also have to carefully consider what the Guardian is recommending in this case.

A Court must have very good reasons for doing something that is different to the recommendations of a Guardian.

36. I have also considered the cases of ***AZ v BX (Child Arrangements Order: Appeal) [2024] EWHC 1528 (Fam)*** and ***Re T (A Child) (S9(6) Children Act 1989 orders: Exceptional Circumstances: Parental Alienation) [202] EWHC 59 (Fam)***. The judge in the AZ v BX case considered carefully when a court should make a shared lives with order and to what extent an arrangements order should be defined. It confirms that a court has a “*free hand*” to “*make a tightly defined order for the division of time, to leave the arrangements undefined, or to make an order that lies somewhere between those two extremes, provided always that the court’s primary consideration is the best interests of the child, that the court has regard to the matters set out at CA 1989 s1(3), and that it applies the principles within CA 1989 s1 relating to delay (s1(2)), the involvement of each parent (s1(2A)), and only making an order if it is better for the child than making no order (s1(5)) (Lord Justice Jackson in AZ v BX at para 5)*. **Re T** considered what might be exceptional circumstances and concluded that the word ‘exceptional’ is to be given its natural meaning, in other words something that is unusual but not unique.

37. I have also had regard to the cases of *Re S (Parental Alienation: Cult) [2020] EWCA Civ 568* and *Re C ('Parental Alienation'; Instruction of Expert) [2023] EWHC 345 (Fam)*. The latter case makes it very clear that to find alienating behaviours (the preferred legal term), a court would need to be satisfied that a child is refusing, resistant or reluctant to engage in a relationship with a parent, that refusal, resistance or reluctance is not as a result of the actions of the parent that they are not living with, and the parent that they are living with has engaged in behaviours that have led directly to that refusal, resistance or reluctance.

Analysis

38. The first relevant welfare checklist heading in this case is the ascertainable wishes and feelings of A and B in light of their age and understanding. They are 16 and 15 as I have noted, and their views to professionals have been largely consistent in that they do not want to spend time with F now. Their reasons for this have been different at times, but the key themes they have referred to are F's anger when he lived with them, and B in particular has referred to being angry at F for leaving them and to being told things by M or A which on any view should not have been shared with him (for example M telling him about the incident in 2013 and B being told about the incident with A when F lost his temper in June 2023, which F disputes). Both A and B are clearly very angry with F and suspicious that he has not changed and therefore remains likely to lose his temper with them, A referring in particular to the incident in June last year when F became frustrated and shouted at him (page 389). However, A also talked about being angry with F for 'cheating' on M and knew about this because of what A was told by M (page 389), and Pilar Cubelos noted that A gave her a variety of reasons for not wanting to see F and

did not rate the incident in June last year very highly when asked to rate the reasons for not seeing F. A gave 'cheating' and calling A 'disabled' as the highest rated reasons for not wanting to see F. As I noted earlier, F does not accept that he called A 'disabled', but the evidence from A to professionals seems clear that this is what A believes F said and, since F accepts he became frustrated and lost his temper, it is likely that his recollection is also not reliable. On balance I am satisfied that he must have said something that A interpreted as being called disabled and that is now what A believes F said.

39. I should note that, although A has made very significant progress in recovering from the injury, the medical evidence shows that this injury did result in some cognitive impairment and behavioural disorder, with elements of disinhibition and impulsivity present at times as well as cognitive fatigue (see page 410 neuropsychological report dated 4th March 2024), which will no doubt have impacted on the sessions with professionals trying to ascertain A's wishes and feelings for this case (see for example page 392 Pilar Cubelos report, and page 419 Michael Nwoye's report). Despite this, it is clear on the evidence before me that A does not want to see F at present and wants F to respect A's wishes and "*back off a lot*" (page 418). B's views appear to have become more fixed in not wanting to spend time with F, as William Walker noted (page 358).

40. I think it is important to note that it is the wishes and feelings of the children in light of their age and understanding that a court has to consider. Clearly A and B are both older teenagers and that means greater weight should normally be given to their wishes and feelings than would be the case for younger children. However, their understanding has in my view been considerably impacted by prolonged exposure to parental conflict in this case. I am satisfied on the evidence before me

that both parents have failed to protect A and B from their adult conflict, and this includes F losing his temper and assaulting M in the past as well as M sharing inappropriate information with A and B during these proceedings. It also includes the parents' refusal to communicate directly with each other, another form of demonstrating ongoing conflict as William Walker noted (page 328). As a result, neither A nor B have a properly balanced and objective viewpoint informing their wishes and feelings about spending time with their father. This will also not be helped by the negative view of F that M has expressed to various professionals and during her evidence to me.

41. One issue that has been raised by F is whether M has been engaging in alienating behaviours and this has led to A and B not wanting to see him. The reasons for A and B not wanting to see F is not just because of what M has done. The evidence in this case is not that simple. Both M and F have admitted doing things that will have influenced what A and B now think about seeing F as I noted earlier. Equally, as the Guardian's evidence shows, some aspects of what M has done, for example showing A and B the photos of her injuries from 2013, not doing enough to encourage them to see F, and sharing her negative views of F, are not child-focused and show her not actively supporting and encouraging the children to have a relationship with their father. However, F has also had a long history of failing to manage his temper and exposing A and B directly and indirectly to this, and both M and F have failed to stop A and B from being exposed to their adult conflict. All of this will have undoubtedly contributed to the views that A and B have about not seeing F.

42. The next relevant welfare checklist heading is the physical, emotional and educational needs of A and B. Both A and B have an emotional need to have an

understanding of and relationship with F, as well as potentially their wider paternal family. The professional evidence is very clear that if they don't have this then they are at risk of harm, as Michael Nwoye reiterated to me in his oral evidence. The professional evidence is clear that knowing about their father and paternal heritage is an important part of understanding who they are, where they come from, and it will not benefit them to completely sever their relationship with him. William Walker described a potential for B to have "*a lasting hole in [B's] identify as [B] becomes an adult*" (page 327) if B is allowed to carry on life without F being involved. A has additional physical, emotional and educational needs arising from the injury, and the medical evidence also supports a conclusion that the parental conflict in this case has negatively impacted on A's welfare whilst trying to recover.

43. The likely impact on A and B of any change in circumstances is the next relevant heading. I am not asked to make any changes about A being in country C, A's medical care or education. Similarly I am not asked to make any changes to B going to school here. It is submitted by Ms Murray KC for M that if I make the order that the Guardian and F want, specifying that A and B should live with both M and F, but it being up to them to choose when they live with F, this will be a change in circumstances. On balance, I am not persuaded that this would be a change in circumstances within the ordinary meaning of the phrase in the Children Act. Each parent has parental responsibility for A and B and the proposed order would not change this, unlike in the case of a parent who doesn't have parental responsibility but may acquire it if a child arrangements order directing that a child will live with them is made. Before these proceedings and during them A and B could choose to live with either or both of their parents. At the moment they are choosing to live with M and not to live with F or spend time with him. The proposed order is subject

to the wishes and feelings of A and B so they would still, as now, be the ones choosing when they live with F and that would include whether they live with F at all. The only change as a result of the proposed order would potentially be the message that it sends to A and B about the need to have a relationship with both of their parents, and that their parents both need to help support A and B with this.

44. The next relevant checklist heading is the age, sex, background and any relevant characteristics of A and B that the court considers relevant. I have already noted their ages, but would also note that, as the Guardian put in his written evidence and F told me, it is incredibly difficult to get children of this age to do anything that they don't want to do. Obviously both A and B would benefit from having a relationship with their father in terms of their own identity needs and I have already noted that. Similarly, their background is inextricably linked to both of their parents. A also has additional challenges arising from the injury including issues around working memory, impulsivity and physical mobility. I have also noted the anger that both A and B have clearly expressed to professionals in this case, often using very extreme language. Learning to manage that anger appropriately is going to be important for each of them considering F's history of failing to do that. As the Guardian noted in his final report at page 420, A also needs to focus on rehabilitation without the weight of the ongoing issues between F and M.

45. Any harm which A and B have suffered or are at risk of suffering is the next relevant welfare checklist heading. As is clear from all the professional evidence before me, A and B have both suffered harm from the failure of both of their parents to protect them from adult conflict. They have also suffered harm from F's anger and that includes the impact of this on them directly and indirectly. It is also clear from the evidence of William Walker and the Guardian that A and B are also at risk of

harm through not having a relationship with their father. The Guardian described that F and M were “*consumed by their own needs and have demonstrated limited insight into the harm that they continue to indirectly perpetrate to A through their ongoing actions*” (page 420). He also described M as having placed both A and B in a difficult position because she says that she will support them having contact with F if they want (something she repeated in evidence to me), but M has also shared inappropriate information with them and accepts that her negative views about F may have ‘bled’ into the children’s feelings about F as well. My conclusion is that M may say that she will do what the children want but has created a situation where A and B may well feel awkward about asking her, therefore making it less likely that they would tell her if they wanted to see F in future. This is no doubt partly why both William Walker and the Guardian have provided evidence pointing out that M needs to move to actively encouraging and supporting A and B to want to see F. It was very striking in M’s evidence to me that she was completely unable to describe how she might do that, perhaps not helped by the fact that she has yet to complete the recommended work.

46. Although I can understand that her experience of F is significantly affected by the serious incident of domestic abuse in 2013, it is now 11 years since that incident and F has provided evidence of taking positive steps to change. M and F are no longer together as a couple and A and B are now of an age where, as the Guardian told me, they are less likely to be afraid of F losing his temper because they can protect themselves. Equally, there is clear evidence from both William Walker and the Guardian to show that A and B are at risk of harm if they continue to be exposed to their parents being unable to resolve matters in a co-operative and child-focused manner. As William Walker said “*It is understandable that M has reservations and*

fears about engaging with F due to his past behaviours and that F may be reluctant to communicate with M for fear of his words or tone being used against him. F and M must find a way to present in a way that shows they want the best for their children. This can only be done by supporting each other's relationship with their children, such as showing up together at essential meetings regarding the children and encouraging and supporting their children to communicate any stated difficulties with the other parent. Communicating with each other can be difficult, but it doesn't always have to be. The ability to work together is at the heart of a healthy co-parenting relationship and produces positive outcomes for children" (page 361). This is also important, as he noted at page 360, because of what M and F are teaching A and B about how to handle disagreements, which may have profound implications for A and B's ability to have healthy adult relationships in future.

47. What is unusual in this case is that M and F have been able to work together and agree what is necessary when A had the accident and needed rehabilitation. It is very sad that it took such a serious accident to force them to do this, but it does show that they can do it when they really try.

48. It is accepted by the Guardian in this case that making the order he recommends could be said to be contrary to the stated wishes and feelings of A and B. However, the Guardian gave me clear and compelling oral evidence that he is not saying that A and B must be forced to spend time with or live with F against their wishes and feelings. His evidence was that these children need to know that not only do their parents share legal parental responsibility for them, but they are also equally responsible for them in reality and neither parent has priority over making decisions that affect A and B. He also told me that the wishes and feelings of the children

would be what decides when and how they might choose to live with F, and that it may take considerable time before they might be at the point where this was possible so F would have to be patient. M would also have to do more to actively support and encourage A and B to want to spend time with F. The Guardian was also clear that he was confident that if the order was made and explained to A and B by him in the right way, and not misrepresented to them by anyone, then they would not be angry and upset.

49. Parenting capability is the next relevant checklist heading and all the evidence in this case supports the conclusion that both M and F are good enough parents in most respects. The one area that requires improvement is in F and M handling their adult conflict and ensuring that they each equally promote A and B's relationship with the other parent. Historically the concerns about the latter have related to M and she is the one that has to improve this, but it is important that F must also continue to promote A and B's relationship with M if and when they start to spend time with him again.

50. Finally, the court must consider the range of powers available under the Children Act 1989. In this case that is to make no order, or an order under section 8, having applied the relevant considerations under section 1, as Mr Justice Poole noted in *AZ v BX*.

51. Taking all the above into account, I find that:

- a) A and B have the right to a relationship with both of their parents and there is no safeguarding reason to stop that;
- b) They do not want to spend time with F at the moment;

- c) They have reached the point of not wanting to spend time with F because of the actions of both M and F. As a result, F and M both need to change what they do and how they approach being A and B's parents in future;
- d) If M and F don't make changes to enable A and B to have a relationship with both of their parents, then A and B will suffer long term harm and are highly likely to be unable to understand and enjoy healthy relationships in future;
- e) F needs to continue to learn to avoid becoming frustrated and losing his temper;
- f) M needs to be able to positively support and encourage A and B to want to spend time with F;
- g) Forcing A and B to do something that is against their wishes and feeling is likely to be counterproductive;
- h) Making an order that clearly shows both M and F, as well as A and B, that their parents share parental responsibility for them and should both be involved in their lives by saying that they live with both of their parents but that A and B can choose to live with their F would strike the balance between all the issues in this case. It would send a powerful message to all of them that neither M or F has priority in making decisions about A and B and that a court has decided that A and B will be harmed by simply cutting F out of their lives and really do need to be supported by both of their parents to have a relationship with the other parent.
- i) It is not possible to define the time that A and B will live with M and F under any order because that is dependent on A and B's wishes and feelings given their ages, but it is not legally necessary to define the time under such an order. I appreciate that means the order is not one that could easily be enforced but would note that there is scope for an older child who is subject to an order to

apply with permission from the court and that could include if A or B wanted to live with F or M but felt that M or F were stopping them (see section 11J(5)(d) Children Act 1989).

- j) F will have to be patient with A and B and must learn that being forceful about making them live with him is likely to push them further away.
- k) M needs to complete the recommended course as a matter of priority and within a year (in fairness she did accept this in her oral evidence to me), and to start to positively encourage A and B to see F. Given the oral evidence in the case from M and F and the Guardian, it is agreed and accepted by all, and approved by the court, that F should take steps to attend events at B's school.
- l) This is an exceptional case within the meaning of section 9(7) because of the level of parental acrimony and the impact that has had on A and B, and the very clear professional evidence from the Guardian about the benefits of an order specifying that the children shall live with each parent, but subject to when A and B want to live with F. In addition, A needs time and space to concentrate on continued rehabilitation and B to concentrate on education and not getting into trouble at school. They do not need the threat of further proceedings if no order were to be made given that there is no prohibition on an application being made as long as they are under 18. Making a section 8 order even though A is already 16 and which will last beyond B turning 16 is therefore also necessary and proportionate in their welfare interests. The order should last until 9th March 2026, which is when A turns 18 since that may give sufficient time for A and B's relationship with F to be restored.
- m) Somewhat unusually in the circumstances of this case I have not been asked by the Guardian or M to consider an order under section 91(14) applying the

provisions of section 91A. An order under section 91(14) can prevent further applications under the Children Act 1989. I did consider raising this of my own motion but consider that making the order I am going to make will avoid the need for future proceedings under the Children Act 1989 and it is not necessary or proportionate to therefore prohibit future applications using section 91(14).

n) I also find that it is necessary to make specific issues orders in this case as follows:

o) The parents shall use Our Family Wizard to communicate with each other in respect of matters concerning the welfare of either A or B and shall ensure in addition that each parent has up to date emergency contact details for the other. The parents shall also use Our Family Wizard to share reports and information about school and medical issues regarding each child, though this does not prevent each parent seeking such information direct from anyone or institution involved in the provision of education or medical treatment providing they then promptly share that information with the other parent via Our Family Wizard. This is necessary following M's evidence about not communicating with F except through solicitors and considering the history of conflict between both parents. However, it is simply not sustainable for them to continue to communicate about A and B through solicitors indefinitely, and nor is it appropriate for there to be no communication between these parents about A and B because that would perpetuate some of the arguments that have taken place in the past. It would also continue to expose A and B to their adult conflict in the way that William Walker noted at page 327.

p) F is permitted to take all necessary steps to obtain EU passports for the children. Both parents agreed in their oral evidence to me that this would

benefit the children in the future since it will give them many more options for travel, education and work, and the Guardian supported this too. M qualified her evidence about this saying that she would support this if the children wanted the passports. As I noted when clarifying her evidence, it will be up to A and B as to whether they use those passports but at least they would have the option if the passports are obtained now.

- q) It is also necessary to make a prohibited steps order preventing either parent from making major decisions about the education, health or welfare of either child without the prior written agreement of the other parent. This is because, despite being able to work together to arrange A's rehabilitation, the history of conflict and dispute means there is a risk that one parent may do this in future and if that happens it would undermine the intention of my order which is to demonstrate to all concerned that the parents not only share parental responsibility but must learn to co-parent co-operatively in the best interests of A and B or they risk causing them harm.
- r) It is not necessary to make specific issues orders in relation to discussing and agreeing medical treatment for A's rehabilitation or what to do in an emergency. The parents have been able to agree this before and are capable of doing this again in the future. In any event, the prohibited steps order about not making major decisions about the health or welfare of A or B would also cover this.

Conclusions

52. This is a sad case with many of the same issues that Family courts grapple with daily. What is unusual is the serious injury that A suffered, the strength of views expressed by the children, the fact that both parents' actions have led to those

views and that I am satisfied that the Guardian is right and that making this order will not cause A and B to be angry if it is properly explained to them that they can still choose when they live with F. As I have already also noted, both M and F need to change what they do in relation to each other and A and B if they are to have any hope of A and B becoming adults who understand healthy relationships. F will have to continue to be patient and to show M, A and B that he is being patient and continuing to build on the progress that he has already made in completing the recommended work. M needs to prioritise undertaking the work that has been recommended for her and to start as soon as possible to actively support and encourage A and B to want to spend time with F. I appreciate that M actively supporting and encouraging A and B to want to spend time with F may not be popular with A or B, but a good enough parent doesn't do things to remain popular with their children, they do what is in the welfare interests of the children. This includes not sharing inappropriate information with A and B in future.

A handwritten signature in black ink, appearing to read 'A. Jones'.

22nd August 2024