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This judgment was delivered in private. 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 child and members of her 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.

Case No: WV19P01522
Neutral Citation Number: [2024] EWFC 245 (B)

IN THE FAMILY COURT AT WOLVERHAMPTON SITTING AT WALSALL COUNTY COURT

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF H

Date: 9th August 2024

Before :

District Judge Moan

- -

Between

N

_ And –

K

The Applicant Father did not attend
The Respondent Mother was represented by Mrs M Chaggar (instructed by Lalli and Co solicitors) and supported by Mrs R Gakhal from Black Country Womens Association.

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Hearing date: 9th August 2024

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JUDGMENT (no 2)

Introduction

1. This case concerns a very young lady called H. She will be six years old in November of this year. Her father is N and her mother is K. I will refer to them as mother and father throughout this judgment, no disrespect is intended to either party.

2. Father applied for a child arrangements order on 9th December 2019 and made an application for parental responsibility on 14th January 2022. Parents separated around March 2018 and their child was born in November of that year. Father has not spent any time with H since February 2019. My first involvement with the case was the fact-finding hearing in August 2023. Even at that stage, the proceedings were almost four years old. H has spent the vast majority of her life subject to proceedings.

3. H has additional physical health needs. She has undergone bowel operations and still requires medical oversight as well as the supervision of her mother. She has very specific medical needs as a result. Having seen her recent school report, she is performing very well at school with “outstanding” and “very good” markings on her last school report. She is clearly a very remarkable young lady despite the profound health issues that she has to contend with.

4. The allegations of domestic abuse made by mother against father were highlighted at an early stage in proceedings in the Cafcass safeguarding letter dated 15th January 2020. Cafcass confirmed via police checks that father had criminal convictions, some of which were in a domestic context. In addition, children’s services were aware of allegations of domestic abuse made by mother. Father disputed those allegations and the Court determined that that the disputed allegations of domestic abuse needed to be resolved at a fact-finding hearing before any consideration of child arrangements could take place.

5. In August 2023 I heard about those allegations and made findings against the father as follows:

(i) Verbal and threatening abuse towards mother between 2014 and 2019. There was a pattern of abusive and derogatory language towards mother. He would direct his anger towards property and damage items in an aggressive fashion as well as pushing mother.

(ii) In February 2015 the father was extremely intimidating and aggressive towards the mother.

(iii) His behaviour was exacerbated by excessive alcohol consumption.

I concluded in that judgment - "*I had no doubt that these allegations were true. The messages and convictions gave an insight into how father behaved…. His behaviour was observed in part by [mother's daughter] and it was likely that this behaviour continued to an extent when they were out in public, at pubs or with friends. That is not to say that father always behaves in this way but there were several examples of this as part of the evidence*."

6. In addition, there were allegations that:

(i) In 2016 the father attempted to rape the mother and

(ii) In 2015 the father raped the mother shortly after she suffered a miscarriage.

In the August 2023 judgment I found that "*These allegations were more difficult to make findings about, not least because there was no objective evidence about those allegations and the legal concepts of rape involve complex questions about consent and belief. I was satisfied on the evidence that in 2016 mother had put her legs to her chest to prevent father having sexual intercourse with her and that she had pushed father off her. I was also satisfied that in 2015 that she had previously intimated to father that she was not ready for sexual intercourse after her miscarriage and that father had sought to hasten her willingness to engage in intimacy. Her body language and actions were that of a woman who was very upset about having sexual intercourse. Father believed that she should have been ready and so*

continued to have sexual intercourse with her despite her outward presentation and previous indication of not being ready."

7. This father had previously been convicted of assaulted an ex-partner by holding a knife to his ex-partners head causing a small cut in 2004 and had been convicted of harassment against mother. I had the opportunity of reading father's messages to mother which were nasty and plain abusive.

8. As well as the calling her "*a cunt, a piece of shit, a whore*" and "*told to fuck off*", father messaged –
   "I just want to rip your head off."
   "I am going to make sure I can really hurt you if that's possible."
   "Kill yourself. Go fucking die."

9. He taunted her about killing her baby following a miscarriage in 2015 and gaslit her about other women and using cocaine.

10. Mother said that father told her that it was always her fault. This was reflected in the way father presented and how he presented his case. Whilst at limited times father accepted his responsibility, he was very quick in his messages, his statements and his oral evidence to blame mother. He wrote in his messages that she wound him up and made him "*talk shit*". In his statements he accused her of being drunk, taking drugs, being admitted due to her mental health and being aggressive. He regularly blamed mother in his oral evidence.

11. In combination, the objective evidence alone pointed to a pattern of behaviour that father would become difficult or controlling when things did not go his way. There was a theme that excessive alcohol consumption was often involved. He appeared to accept in his messages that he became "*much worse than he could imagine when drunk*". He readily became abusive and sought to excuse his behaviour for want of self-control.

12. I accepted mother's evidence and that of her daughter at the fact-finding hearing. It was credible, consistent, and was supported by the messages exhibited and the objective evidence. The criminal convictions suggested that this was entrenched behaviour that had existed for two decades.

13. During the fact-finding hearing, father presented as very controlling in court and unable or unwilling to listen. He gave bare denials to incriminating evidence without presenting any cogent evidence of his own. He talked over me as I asked him questions and would not listen to what he was being asked. He presented as a person wishing to control the narrative. I had no doubt that when under the influence of alcohol or drugs, that these traits would be enhanced and he would become even more difficult to deal with. I was aware from his convictions that father was a man who has been prone to poor behaviour including to police officers just doing their job. There was no doubt in my mind from the scale of the messages professing apologies, that father had regularly behaved badly towards this mother. In addition, father was contradictory at times in his evidence to me at that hearing and could not refrain from blaming mother.

14. Following that hearing I supplied Cafcass with a copy of my judgment and obtained a report under section 7 of the Children Act 1989. Indirect contact was ordered to continue and father was directed to undertake a drug and alcohol test to identify his use of alcohol and cocaine over the previous six month period. Mother's solicitors assisted with finding an approved tester. I advised (but did not order) father to undertake a course in anger management and domestic abuse as soon as possible.

15. Cafcass Family Court Adviser Lindsay Jones prepared a report dated 20th November 2023. As part of the preparation for that report, she spoke to both parents and observed H at home with her mother.

16. In his interview with Ms Jones, father did not accept the findings made against him and raised concerns about whether the cards and gifts that

he sent were being communicated and given to H. He had not completed any domestic abuse work and had not undertaken any drug and alcohol testing. He raised concerns about H's paternity.

17. Mother told Ms Jones that she had not received any cards from father since June 2023 and had withheld some of the previous communications due to their content, a decision with which the Cafcass officer agreed. Having reviewed the cards, Ms Jones questioned father's ability to communicate with H in a child-focused way in the indirect contact. She recommended father attend a parenting course.

18. Ms Jones remained concerned that father continued to blame the mother and took little responsibility for his behaviour. She doubted whether any domestic abuse work would have any effect in those circumstances. She was unable to assess father's ability to manage H's medical condition noting he had not been spending time with H, albeit this could be assessed during supervised contact, if this was appropriate in the future.

19. Ms Jones was concerned that despite the finding that alcohol was a trigger for his poor behaviour, the father had not undertaken drug and alcohol testing. She concluded that "*due to the concerns relating to domestic abuse and an inability to address this due to father's denial of its presence, …. that it was not safe to promote or endorse direct arrangements between H and her father*." She recommended that father send monthly letters to H and that mother provide regular updates to father. Father should complete a parenting programme and that father should be restricted from further applications regarding spending time with H until he has completed a suitable domestic violence course and undertook drug and alcohol testing.

20. The application was relisted in November 2023 at a Dispute Resolution Appointment. Father acknowledged that he had not engaged in contact since the hearing in August 2023, had not undertaken the hair strand testing. He did not remember some of the comments he made in the Cafcass report and did not accept the recommendation.

Thereafter, the case was listed for a final hearing in March 2024 with father and the Cafcass officer to give evidence. The mother was not required to give evidence as she endorsed the recommendations of the Cafcass Officer.

21. Mother's representatives lodged an application in February 2024 stating that father had disputed paternity with the Child Maintenance Service and considered that this issue may need to be resolved ahead of any final hearing. The application was dealt with by another Judge who vacated the final hearing in March 2024 for DNA testing to take place.

22. A further directions hearing took place in May 2024. Paternity testing had confirmed that father was the biological father of the child. The final hearing was rescheduled and parties directed to file their final witness statements. The Family Court Officer was given permission to attend remotely. The final hearing was originally listed in September 2024 but was able to be brought forward to 9th August 2024 with the Order notifying parties of the change of final hearing date and the revised date by which they needed to send in their final witness statements.

23. In her final witness statement dated 30th July 2024, mother supported the recommendations of the Cafcass officer for indirect contact only. She was content to continue to send updates to father albeit she was conscious that father continued to falsely accuse her of not sending updates. She indicated that father had only sent one piece of indirect contact since the last hearing rather than monthly as per the court order. She did not want to communicate with father directly by email and reminded the Court that she had the benefit of a restraining order. She accused father of continuing his abuse through the litigation and paternity disputes. She sought a barring order preventing father from making further applications.

24. Father did not file any evidence. He was required to file his final evidence by 4pm on 26th July 2024. He did not file any questions that

he had for mother as indicated in the Orders dated 23rd November 2023, 29th May 2024 and 27th June 2024.

25. On 8th August 2024 (the day before the final hearing) the Court received an email from father's email address at 11.48am. That email, signed from Scot Chillingham, said that father had been found passed out last Thursday (8 days ago). He "ended up" at the hospital on Sunday and the hospital gave him a prescription for his breathing. It appears that he was out of hospital but he was described as being "in and out of sleep no longer than 10 minutes at a time". It was claimed that he could hardly walk or stand.

26. That email did not enclose any information about his hospital admission/discharge the previous Sunday or his prescription which could have easily been attached as a photograph. There was no explanation of who Scot Chillingham was or why he did not send an email from his own email account rather than using father's. I was concerned that the email had the regular use of three dots … between sentences, something that I had noticed in father's abusive messages to the mother. Father clearly knew of the hearing date, and he was also well aware of the need to file his final witness statement which was directed in the same Order which he had not done.

27. In court, I made enquiries about the ongoing indirect contact. No further indirect contact had been sent. The ongoing concerns about father committing to indirect contact continued. Absent the other concerns, father could not reasonably expect his contact to progress if he did not engage with the indirect contact.

28. I also had to bear in mind the length of these proceedings, the original application was made in December 2019 and even after I advised father about what he needed to do in August 2023, no progress had been made. That is firmly down to father's refusal to accept the need to do any work and lack of commitment to engaging in the contact that he had been afforded.

29. In the twelve months that I have managed the case, there have been additional concerns about the way that father has presented his case. He continually accused mother of not sending updates. When explored in court, she was able to confirm by producing emails that she had sent emails to her solicitors for onward transmission. Her solicitors were able to show the emails had been sent. It was inexplicable that father persisted in his view that she had not sent uodates.

30. On the other hand, he had not taken full advantage of the indirect contact; he had not sent cards or letters regularly. Noting that this may be difficult for him, I previously had discussions with father about the content of his communications and how he might like to engage the child by referring to her interests and hobbies. This did not assist father to be consistent in his communications with H. I was very concerned that father sought to dispute paternity so late in the proceedings and that ultimately those DNA tests showed exactly what the mother said they would show, namely, that he was the biological father. The timing of that issue gave me concern that it was raised gratuitously as a response to the Child Maintenance Service's involvement without consideration of the impact on mother or the child.

31. I concluded that the case must proceed in father's absence. The email was unsatisfactory to explain father's absence, he had not complied with the order to file his evidence and so presented no positive case, there had been no progress or commitment by father and the delay in this case was appalling and unacceptable which was still impacting on the mother, a victim of domestic abuse.

32. I heard brief evidence from mother and Ms Jones. Ms Jones told me that she thought her recommendation of monthly indirect contact was too frequent in the light of the current circumstances and that now she considered that every three months or even less would be appropriate. She had significant concern that father had not adhered to the Orders as regards contact. She said that it was important for H to have something from father but that father would need to evidence change

by undergoing a domestic abuse course and parenting course before arrangements should be increased.

33. Ms Jones did not recommend that father be granted parental responsibility and commended a barring order.

34. Mother told me how the litigation had been a strain on her. She said that "enough was enough". Father had not sent any further indirect contact. She had sent her updates; I was sent some of those by email during the hearing to observe. She supported Ms Jones' recommendations. She said that she could not afford to pay the fee for a monthly dropbox facility to send her updates to father and was aware that her solicitors would not be able to continue to send the updates to father once the case had concluded.

35. The abuse in this case has been verbal, physical, sexual and emotional. It has extended to abuse via messaging and intimidation by directing anger towards objects. Father blamed mother for his behaviour and perceives himself as the victim. Despite the authority of the Court, the father has demonstrated his inability to regulate his presentation.

36. Quite apart from the allegations that led to the fact-finding hearing, father's presentation at hearings, his untrue accusations that mother had not been complying with the Court orders to provide him with updates and the very late issue about paternity has continued his abuse throughout the very protracted history of this case. Whilst the special measures can protect mother from being in sight of father and being questioned by him, she has had to listen to the way that he conducted his case. He has shown more commitment to blaming mother than he has to the indirect contact with his daughter. He has been given very generous opportunity to demonstrate his commitment to H and he has not done so by not fully engaging in the indirect contact and in undertaking the work recommended to him to ensure H was not exposed to his anger. He is well aware that H had physical difficulties but he had not asked for information from the specialists

treating her, asked how she was or in any way prepared himself to parent a child who had additional physical needs. He has taken a back-seat approach to her medical needs.

37. These proceedings are all about what is best for H. I am required to consider her welfare to be the paramount consideration under section 1 of the Children Act 1989. There are a number of factors that I need to consider under section 1(3) of that Act and I must be satisfied that it is better to make an order than no order at all. All individuals have a right to have their family life respected under article 8 of the European Convention on Human Rights. That is not an absolute right. The Court may as part of its order interfere with those rights to the extent that it is necessary and proportionate to do so. The rights of the child will always prevail where there is a conflict between the right to a family life of the parent or parents and the child.

38. H does not have a quality relationship with her father. It was within father's gift to engage fully and proactively in contact and make the changes necessary to improve that relationship. Whilst section 1(2A) of the Children Act 1989 provides the presumption that the involvement of a parent in a child's life will usually further the child's welfare, there is a very real risk that father will behave in a confrontational way towards mother or in the child's presence or will continue his campaign of blaming mother. Father had no insight into his behaviour or the impact of it, and therefore that is unlikely to change in the near future. It is hard to see how an increase in the arrangements between H and her father will be of benefit to her noting that they will undoubtedly expose to her to the very real risk of harm.

39. Father has not been able to be consistent with the indirect contact. He has not put H first in ensuring she has regular communications. The impact of inconsistency would be even greater if that relationship were to develop to direct contact. Despite an order requiring alcohol and drug testing and my concerns about substance use, I simply did not know the extent of this issue and how that might impact on father's presentation in the future.

40. The Court has a duty to consider Practice Direction 12J of the Family Procedure Rules which includes an obligation when making child arrangements orders for a child to ensure that it will not expose the child to an unmanageable risk of harm and will be in the best interests of the child. Paragraph 36 provides that – "*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*."

41. In summary, I do not consider that direct contact would benefit H. Direct contact with father would expose her to a level of harm that is impossible to shield her from. I could not ensure that H and her mother were safe from father's behaviour. Even supervised contact comes with a risk as father appears not to modify his presentation sufficiently when before authority.

42. Father has not utilised the indirect contact that he has been given. He has not used the contact each month and has struggled to utilise the letters in a constructive and engaging way. Father had been given advice from Ms Jones and from me about the content of those letters but that did not assist father. Ms Jones recommended that indirect contact take place much less frequently that recommended in her report and I agree. Ms Jones recommended indirect contact every three months or less. I consider that father shall have the benefit of an Order that allows him to send letters, cards and gifts three times a year and mother shall facilitate those being read to H, subject to appropriateness. The three times fits in with the school terms or Easter, summer Holidays and Christmas. He may additionally send a card and gift(s) on H's birthday.

43. Mother has been sending updates every other month. I am aware that she has found it difficult to find content for those updates. As father's

contact is reduced, it is also appropriate to reduce the updates from mother. I direct that mother sends updates twice a year to father.

44. At present those updates and indirect contact are facilitated by mother's solicitors. Mother is clear that she does not want father to have her address, email address or phone number, and that is understandable. Had father attended today, there would have been a discussion about how contact/updates are facilitated once the proceedings had concluded and mother's solicitors were no longer able to assist. Mother had addressed the issue in her statement to the extent that she could not afford to buy Dropbox storage every month. I was unable to explore with father whether he would subscribe to Dropbox or another cloud-based repository. I am aware that father is employed.

45. Within 21 days of receipt of this Order, father shall communicate to the mother's representatives a method by which his indirect contact can be provided to mother and that she can provide her updates to him that does not involve the party's either meeting one another, does not make father aware of mother's contact details and will not incur expense to the mother. Without a safe method of exchange, the arrangements are likely to come to a halt. In short, his failure to provide a method of communication will stop communication taking place.

46. Father also applied for parental responsibility. Whilst inevitably there is a nexus between contact arrangements and parental responsibility, the considerations are distinct. The most important considerations as far as parental responsibility is concerned are –

a. the degree of commitment the father has shown towards the child;
b. the degree of attachment which exists between father and child and;
c. the reasons of the father for applying for the order.

47. Father has not shown commitment to the indirect contact. He has not demonstrated commitment to H in any other way. I am aware that there are conversations with the Child Maintenance Service about child

maintenance but those are very distinct from the considerations about parental responsibility. The payment of child maintenance does mean that parental responsibility should be granted and the absence of child maintenance does not mean that parental responsibility should not be granted.

48. There is very little, if any, attachment between H and her father. He has not been consistent nor engaging enough to develop a meaningful relationship with H. She is aware of who her father is but he has no real presence in her life.

49. Father has not addressed the issue as to why he wants parental responsibility during the proceedings. There has to be some concern that parental responsibility may be misused and used as a device to abuse mother.

50. Father has not demonstrated commitment, attachment or a genuine reason for being granted parental responsibility. Conversely, there is a real risk that parental responsibility would be improperly used as a weapon against mother. It is not in this child's welfare for her father to have the ability to misuse his parental responsibility against the primary caregiver, namely mother. Father can still be given updates regardless about whether he has parental responsibility.

51. Ms Jones recommended at paragraph 17 of her report, restrictions to prevent father from returning the case to Court until he had done some of the work recommended. This application has lasted almost 5 years and has had an impact on the parties, and the resources of the Court, which could have been deployed elsewhere. Very little had been achieved although the stress on the mother was palpable.

52. Mother sought an end to litigation and some breathing space from court proceedings and father. Ms Jones reminded me that whilst H did not appear to be directly impacted, there had been a significant impact on mother which could in turn impact on mother as the primary caregiver.

53. The Court has power under section 91(14) of the Children Act 1989 to make an order restricting future applications. It is not an absolute bar but allows the Court to pre-screen or filter applications through the leave process without impacting on the other party, to ascertain if there is merit in the application going forward before the other party is made aware of the application. It reduces the impact on affected parties and restricts further applications that have no merit.

54. The threshold for making a section 91(14) has been lowered since the Domestic Abuse Act 2021 was implemented which clarified that the welfare of the child is the determinative factor and Practice Direction 12Q confirms that such a barring order may be made where there is harm to the caregiver of repeated and prolonged litigation.

55. With or without a barring order, the father needs to engage in domestic abuse work and a parenting course; he needs to engage in beneficial and regular indirect contact for any application for direct contact to be considered favourably. Despite those indications being given to father by me in August 2023, he has continued the litigation which has impacted on mother.

56. In my judgment, the child needs her mother not to be subjected to further litigation for three years. I therefore make an order that father is prohibited from making any further application under section 8 of the Children Act 1989 in relation to this child until midnight on 8th August 2027. I have deliberately extended the Order to cover all section 8 applications (although the prohibition does not extend to enforcement proceedings) because of the impact of these proceedings on the mother.

57. Father is advised that to obtain the leave of the Court to make a further application for a child arrangements order specifically, he is expected to support that application with results from a hair strand test showing his use of cocaine and alcohol for the six month period before the

application, evidence of undertaking anger management work and/or domestic abuse work and a witness statement which confirms when (i.e. dates) that he has sent letters, cards and gifts to H showing compliance with this Order as to the contact arrangements. Applications without these documents may be dismissed summarily as having no merit.

58. The Court will consider the merits of any specific issue or prohibited steps order without necessarily requiring the above noting the nature of such orders and on a case-by-case basis. Any applications for leave by father will be reserved to myself in the first instance.

59. The prohibition does not affect father's ability to enforce this Order for non-compliance although having regard to the unsubstantiated allegations that mother has not provided updates, any application for enforcement must include at the time of the application, a full witness statement indicating the nature of the non-compliance with dates.

60. These Orders are made placing H's welfare at the forefront of the decision-making process, and protecting her and her mother from harm. The provision of indirect contact will allow her to retain some safe connection with her father.

District Judge Moan
9th August 2024