

IN THE READING FAMILY COURT

Neutral Citation Number: [2024] EWFC 352 (B)  
Case No. RG21P00751

The Family Court at Reading  
Friar Street  
Reading

Wednesday, 24<sup>th</sup> April 2024

Before:  
HIS HONOUR JUDGE GREENFIELD

B E T W E E N:

W

and

J

MR PYE appeared on behalf of the Respondent Father  
DR C PROUDMAN appeared on behalf of the Appellant Mother

JUDGMENT  
(Approved)

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*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 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.*

HHJ GREENFIELD:

1. This is an application to appeal on grounds one and five of the order made by District Judge Harrison. I repeat again my comments in the permission judgment I gave in this hearing this afternoon. Of course, a different consideration now, I have to consider Family Procedure Rules 30.12(3)(a) that I can only allow this appeal if I think the decision is wrong or 30.12(3)(b) if I decide that the decision is unjust and because of a serious procedural or other irregularity in the proceedings. I have listened very carefully again to counsel on grounds one and five.
2. The fundamental issue is this: that the order was made by the judge as a final order having heard the evidence that she thought appropriate at that hearing. Again, I remind myself, a very experienced family judge and I should be slow to interfere with that decision. I also bear in mind that the judge heard, I think, the DRA on 19 June 2023 and the fact-finding hearing where she heard evidence from the parties. Again, I am not clear about that because I have not got a transcript of the fact-finding hearing but the mother was unrepresented. However, in any event, that is a different type of hearing to the welfare hearing. It just deals with allegations of conduct. It is not particularly focused although it is not separate from the proceedings. However, it is not focused on the welfare issues in this case and that requires, perhaps a different mindset under section 1 of the Children Act 1989 for P's welfare being the paramount concern and the Welfare Checklist as well.
3. The complication in this case is that clearly because of the findings that the judge made which are findings of rape of the mother, the previous conviction which is relevant because that still has consequences for the father by way of the notification requirements. That may well be, essentially, reporting or communication with the police once a year, I do not know, and their standard requirements on there. However, it is a complication not least because of the notification requirement in respect of the father, if, I think, he is in a position of more than 12 hours with the children under 18, he has to report that.
4. That is a complication of how it would manage on a final order as P progresses through her young life with her friends etc. being present and it is another factor that makes this complex case somewhat more complicated. Although Mr Pye is right, these are all standard term potential notification requirements, it is a notification requirement that is an indefinite term. It is going to be unless, there is an application and, I think, I am not quite clear that the father can make it actually within time during P's minority that complicates how contact could be arranged.
5. There is really no discussion about that in the learned judge's discussion about how this is all going to work. The father's statement filed in the proceedings, clearly, his aspiration is for extensive contact with P for holidays and much more than the seven hours in the community, supervised at present. It is a big jump and something the father also, I think, slowly admitted, I think, some culpability, I think it was on the day of the final hearing in respect of his conduct towards the mother.
6. Again, all allegations of coercive and controlling behaviour are serious but these are serious because there is a pattern not just against the mother but against another female back in 2011. Accordingly, that still has consequences because of why it happened, and it may show a pattern of behaviour. There is also the incident in the car in 2019, again, involving a female. For the father's benefit, I am not saying that his version of what happened there is incorrect or not; it is just a factor that needs to be looked at as regards behavioural issues which have occurred in respect of a father and females, and P is going to be in contact with females presumably in the future.

7. Contact is going well. It seems that the mother contests some of that but broadly, P has a close relationship with her father for the time being. However, there will come a time when she wonders why she cannot go back to her father's house and also why she cannot go on holiday with him. That will need some explaining and I have seen the explanation from the Cafcass officer. I am not going to say anything about that particularly, but it is an issue that if the order stays as it is, P is going to wonder why she has to see her father in those straitened circumstances of being in a public place. That will become almost an embarrassing issue potentially for her as she gets older and she has to explain that potentially to friends and colleagues.
8. In the round, my concern about the order is this: as a final order, clearly, the judge was doing best to try and conclude proceedings and that is right because proceedings are stressful and cause emotional harm in themselves sometimes and they need to be moved on. However, the Court has in its charge P's welfare under section 1 of the Children Act. It is difficult to circumvent that responsibility for expediency, because a Court is not available. It could well be that other ways of exploring risk could have been explored by way of a psychological assessment or some other expert assessment under Practice Direction 12J, paragraph 33(a).
9. I get the impression from the judge's judgment that that took her somewhat by surprise and it was not seriously explored to actually find a risk assessment within the proceedings so the Court has control of the letter of instruction, to release the papers so it is a meaningful assessment, so that assessor has the full story including findings of fact made by the Court against the father. That is necessary, in my view, because the assessment has to have some purpose to it rather than, I think, Dr Proudman mentioning it as "a tick box exercise". That is no good for a risk assessment. It is not fair to the father if his contact is being restricted and it not fair on P either who has to see her father in restricted circumstances.
10. I think it is an order that essentially leaves the mother, the father and also P, with due respect to the learned district judge, in a state of some limbo. If and until the father applies to go on the DAP course at a time of his choosing, so, again, yes, he can choose whether to do that or not or not to do the course and leave the order essentially as an order with restrictions which, again, would go against the parties' Article 8 rights and that the Court is essentially, indefinitely, imposing restrictions on the father's contact against section 1(2)(a) of the Children Act where there is a presumption that both parents have a beneficial role in a child's life. It has the look of being not fully formed, with due respect to the learned judge because it seems that the other options apart from the DAP course which may or may not commence in 12 months' time were not sufficiently explored.
11. I am also concerned at the judgment again about the evaluation of the harm towards the mother, of that limbo situation with the possibility of applications being made back in the future and, if they are, how that impinges on the mother's mental health given the medical evidence before the Court. In addition, the fact that the mother will know that the father is in charge in the applications he will want to make in the future or if those applications are not made, the mother exposed to the father potentially saying "Agree to these proposals otherwise I'll come back and I'll make an application to the court". That just seems to be an incomplete order.
12. Accordingly, my concerns, really, are that the judge clearly is doing her best to resolve matters fairly and swiftly for the parties so they can move on but the feasibility of that programme, I think, is just really unclear about whether the father would qualify for that given the state of his admissions. There were admissions on the day but they were limited and just made through his counsel against a backdrop of filed documents when the father was not accepting any culpability at all for his actions towards the mother. Whether that is

enough; there are some admissions for him to be accepted on the course; I do not know. Whether the parameters of that course will include perhaps, first of all, some form of psychological assessment. The Court is outside the proceedings so there is a disclosure issue as well. Under Practice Direction 12J, paragraphs 32 to 40, all those provisions that the judge really does not factor in of how that order is going to affect the mother and P. Also, the issues of the notification requirements which Mr Pye is right, they are standard requirements but they are a problem in this case, potentially.

13. In the round, I just do not think there is enough evaluation of this order of Practice Direction 12J paragraphs 32 to 40 in respect of risk assessment. The only risk assessment really is from the Cafcass officer who, I think, with due respect to the Cafcass officer, was struggling to find a DAP programme and was essentially, on the matter of expediency, working around trying to find a programme that might be appropriate. However, I think there may well have been other alternatives such as psychological assessments that could have been in the proceedings. They could have had full disclosure and essentially concluded matters, potentially, with the father being on an appropriate programme through another means.
14. In the round, with respect to the learned district judge, I just do not think there is enough in the judgment. Accordingly, I am going to allow this appeal under ground one and ground five for those reasons. Subject to submissions from counsel, I will set aside paragraphs three and four of the learned judge's order in respect of contact and also, I think, paragraph seven on the schedule recital and also paragraph nine. I think it is part of the mother's application and, again, I will hear from Dr Proudman in a second, that they wish some direction as to the format of a future hearing. The order I make is that the matter should be remitted to a different district judge to undertake a welfare hearing, that the matter should be listed for directions, first of all, before that judge and the judge then should decide the parameters of the hearing.
15. I have to say also, that all the comments I make hear should not be implied as affecting a decision by a district judge in due course as to the best way forward; entirely a matter for the district judge how they conduct the welfare hearing; entirely a matter for them, obviously how they get to the evaluation of the evidence and their conclusions and nothing I have said in this judgment should affect that independent evaluation by the judge. However, on the basis of that, I allow the appeal. I think it should be remitted back for directions before a district judge as soon as possible.

**End of Judgment.**

Transcript of a recording by Acolad UK Ltd  
291-299 Borough High Street, London SE1 1JG  
Tel: 020 7269 0370  
legal@ubiquis.com

Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the judge.