

Neutral Citation Number: [2024] EWFC 360 (B)

IN THE COVENTRY FAMILY COURT

IN THE MATTER OF THE CHILDREN ACT 1989

BETWEEN

16<sup>th</sup> July 2024

A FATHER

Applicant

-v-

A MOTHER

Respondent

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JUDGMENT

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**Miss Bond for the Appellant**

**Mr Lewis for the Respondent**

1. This is an application for permission to appeal against a decision of District Judge Qureshi, dated the 5<sup>th</sup> July 2024. The context of the application is a private law dispute between the mother and the father, of one child, C, who is about to be three years old).
2. The decision of DJ Qureshi was that:
  - (1) Contact between the father and C should move on from being fully supervised at a local contact centre for 2 hours per week to being unsupervised but supported by the paternal grandparents for 5 hours.
  - (2) The Judge refused permission to appeal but was also asked to stay the order pending the permission application being renewed before me. I do note that, in fact, this is not an issue which I have had to resolve today, given that contact last weekend was stayed pending this hearing, by order of Her Honour Judge Jones.
3. The pleaded grounds of appeal are as follows:
  - (a) The District Judge erred in that he determined contested matters at the Dispute Resolution Hearing without hearing evidence

- (b) Specifically, the Judge made the determination that contact could move on to being supported by family members without hearing evidence from the parties; a decision which was contrary to the recommendation of the CAFCASS officer. It is also said that the Judge did not have any evidence as to the suitability of the grandparents to support that contact.
  - (c) The appellant contends that she was 'refused the right' to challenge aspects of the CAFCASS report.
  - (d) It is contended that the Judge refused the mother 'the right' to raise issues relevant to the child's welfare outside of allegations already being investigated by the police.
  - (e) The Judge refused the mother 'the right' to challenge allegations made by the father that she has alienated the child and had been unwilling to support contact.
  - (f) The mother contends that the Judge wrongly made determinations about the credibility of allegations made by her and determined that those allegations were not relevant to the welfare of the child at an interim hearing.
  - (g) It is also said that the Judge was wrong to determine that he was not bound by the recommendations of the CAFCASS officer, absent affording the parties the opportunity to challenge the evidence orally.
  - (h) The Judge made a pre-emptive decision that it was in C's welfare to attend a particular family event (a wedding) without having any details, beyond the date
  - (i) The Judge listed the matter to a final hearing in the absence of full police disclosure being available.
4. Although a transcript of the judge's determination is not available to me, due to the urgent listing of this appeal, counsel who were instructed on the day have been able to agree a note of the decision. I do not know whether that note has been provided to the Judge for him to approve as it should have been.
5. The brief history of the case is as follows.
6. The couple met in 2019 and separated in August 2023. They are both professional people. When they first separated, the mother tells the court that she was anxious to encourage the relationship between the father and C and offered him the opportunity to visit C every day. In fact, he had regular unsupervised time with her on a Saturday and Sunday for a number of months. The father contends that restrictions were placed upon his time, including not being able to have C overnight. It was for that reason he felt that he needed to make an application to the court.
7. The father issued this application on the 3<sup>rd</sup> November 2023. When discussing his application with the Family Court Advisor, he said that he simply wished to be able to spend quality time with his daughter and to co-parent with the mother. He was also anxious about the mother potentially relocating to an area of the country which might make this more difficult, given that he lives near to London himself and she was based in the Midlands.

8. In fact, the mother suspended all contact only a week later, alleging that C had returned from spending time with her father with sore genitals/anus.
9. Warwickshire Social Care has investigated those allegations, in consultation with all parties and after speaking to C's GP, and have determined that there are no concerns, save for the impact of parental conflict upon this little girl.
10. At FHDRA, the court reallocated the case to a District Judge and directed documentation to enable a decision to be taken about whether a fact-finding hearing was necessary.
11. The court had benefit of scott schedules from both parties on the 16<sup>th</sup> February 2024 and determined that there was no necessity for a fact-finding hearing in relation to the allegations of sexual risk to be conducted. That decision was not appealed by either party. The court directed that a s7 report be prepared, and listed the case for a DRA, without the author of that report being required to attend.
12. On the 11<sup>th</sup> April, the father was arrested for alleged rape of the mother which she said had occurred during the course of their relationship. I am told that the investigation is on-going and the father has been bailed to October 2024. There are a number of police forces who are involved.
13. The s7 report was prepared by Ms Sharma Lail. She undertakes a comprehensive assessment of risk, which included visiting the father's home address (where he lives with his parents), given that the mother had made reference to it being like a 'crack den.' It was far from that, with a lovely garden full of toys and a Disney decorated bedroom for C. Ms Sharma Lail considers the contact recordings, which reflect a positive relationship between C and her dad, with the father being child centred and attentive. The father showed her a video which apparently shows the mother assaulting him whilst holding C, and so the FCA was clearly concerned about the impact of parental conflict upon this little girl but she also concludes,

*"However, given the current serious allegations made by the mother and the on-going Police investigation, I am currently not in a position to make safe recommendations in relation to contact progressing from supervised to unsupervised contact. With a criminal matter that is relative to welfare which, has not yet concluded and where a potential custodial sentence could be given, I cannot complete my assessment as this could have an impact on the recommendations for spending time arrangements."*

14. And so, the matter fell to be considered by DJ Qureshi on the 5<sup>th</sup> July.

#### The Law

15. Rule 30 of the Family Procedure Rules applies. This hearing is a review of the

decision below. An appeal will be successful if the appellant can demonstrate that the decision of the lower court was either (1) wrong or (2) unjust because of a serious procedural irregularity.

16. Some of the decisions complained of are case management decisions, and the law is very clear that I should be very slow to interfere in those decisions.
17. The appellant requires permission to be able to appeal. Permission should only be granted if there is a real prospect of success.
18. The test which the court must apply as to whether to engage in a fact-finding exercise within private law proceedings is *K V K [2022] EWCA Civ 468*.

*“65. A fact-finding hearing is not free-standing litigation. It always takes place within proceedings to protect a child from abuse or regarding the child's future welfare. It is not to be allowed to become an opportunity for the parties to air their grievances. Nor is it a chance for parents to seek the court's validation of their perception of what went wrong in their relationship. If fact-finding is to be justified in the first place or continued thereafter, the court must be able to identify how any alleged abusive behaviour is, or may be, relevant to the determination of the issues between the parties as to the future arrangements for the children.”*

### The Appeal

19. The grounds of appeal were apparently written immediately upon the parties leaving court on the day in question, and it does read rather like a stream of conscious complaint, rather than a properly pleaded document. I am going to try and address the various complaints under the following headings which summarise the grounds into four, taking my lead from the focused way in which Ms Bond dealt with the matters in submissions.
  - (1) The Judge erred in declining to adjourn these proceedings to obtain further disclosure from the police in relation to the allegation of rape, a recommendation made by the CAFCASS officer.
  - (2) There was a procedural irregularity by way of the Judge making a determination to vary the contact arrangements to allow for supported contact without hearing evidence from the parties or from the CAFCASS officer at a Dispute Resolution Hearing rather than at a final hearing.
  - (3) The Judge erred in making determinations about the likely outcome of the mother's allegations of rape, and took account of allegations that the mother was unfairly opposed to contact with the father.
  - (4) The Judge was wrong to provide for contact to be supported by the paternal grandparents without there having been any assessment of their ability to do so/whether such an arrangement was safe.
20. I have read all of the documents within the bundle together with the very helpful documents prepared by both counsel, particularly given that neither of them was present at the hearing in question. They have both done their utmost to assist me.

### Ground 1

21. The learned Judge rightly noted in his judgment that there were significant consequences to the recommendation of the FCA. If he adopted the approach that she recommended (which was, to all intents and purposes, to delay making any determinations about how and whether contact between C and the father could move on in any way pending a decision by the police), this would mean an indeterminate adjournment of many months, if not years, given the state of the criminal justice system. The Judge also noted the practical ramifications, noting that given that the alleged offence took place some years ago, and there was little corroborating evidence, the investigation would be even more complex. The context of that discussion was that C, a little girl of only three, would continue to have a restricted relationship with her father.
22. But even more importantly, having considered the application of the mother to adjourn generally, the Judge rightly directed himself to the question of such a course was necessary. In that regard, he referred himself to the fact that a fact-finding hearing had already been refused. That court was well aware of the allegations of rape when that decision was made. And as I have said, there was no appeal from that decision, nor any application to re-open that determination.
23. Within that context, I am entitled to assume that the judge had taken into account the mother's own position as set out in the document that she signed and filed only two weeks before the hearing. Within that document, the mother makes reference to the allegations of rape and says.

*“The police having considered the matter are investigating the Applicant and he is on bail restricted contact with me (sic). This shows my allegations are not made up. Despite this, I have always put C first and have always said that as long as C is safe and happy I will encourage their relationship.”*
24. She repeats this statement again further on in the document in respect of all the allegations of abusive behaviour which she has made. She gives the court a number of examples of how she has sought to support contact, including offering an olive branch to the paternal grandparents, noting how pleased C was to see her father at the first supervised session and that she helped C make a father's day card.
25. One can only extrapolate from this document that the mother is *not* contending that whatever abusive behaviour took place between herself and the father during the course of their relationship, that it is relevant to the welfare decisions in respect of C. That is the only possible interpretation one can place on these statements. That position is further strengthened by the fact that, as a matter of principle, it would be highly unlikely that the mother's complaints which predated the birth of their child and which had not stood in the way of C spending time with her father between August 2023 and November 2023 would be determined by the court as being materially relevant to welfare, whatever the police disclosure said. The factual background is very similar to the one faced by the Court in *K v K* in that respect.

26. Therefore, not only would it be unnecessary to delay awaiting the outcome of that determination, it would also be wholly disproportionate, and contrary to the welfare of this child. There is no merit in this ground of appeal at all, and permission is refused.

## Ground 2

27. Rule 22 of the Family Procedure Rules allows the court to control the evidence upon which it makes a decision, including the power to limit how evidence is adduced, and whether it is subject to cross-examination. The court should always have regard to the overriding objective and the factors within Rule 1.1.
28. There is no right of a party to have a disputed matter heard after hearing oral evidence. It is entirely a matter for the Judge as to whether oral evidence is necessary and on what issues cross-examination is permitted. The mother says that she was prevented from raising welfare issues that stood in the way of contact moving on from being at a contact centre and moving into the community. She was not relying on any of the allegations of abuse (as I have noted above). I am aware of the fact that her statement talks of C being young, being unacquainted with being out of her care for long periods of time, and being worried about her staying overnight with anyone else, but those were issues which were before the court, and it is clear that the Judge did take the need to progress cautiously into account.
29. But the mother's statement and the FCA's report raised no issues which prevented the Judge from making a determination on the evidence before him that C's time with her father should move on, after hearing submissions. There was no right for that decision to be taken after hearing evidence. The mother says that she wanted to challenge the FCA about the video which was taken by the father, but with the greatest of respect, that has little bearing on the father's application to spend time with his daughter in a setting other than a contact centre.
30. The Judge was entirely right to say that a report within a s7 report is not binding upon a court, and that if it were, parties would have their cases determined by CAFCASS and not a judge. The FCA had reached no positive recommendation for the future, only to delay doing so in order to await information which the parties and the court had already determined were not relevant to welfare. Therefore, the Judge cannot be criticised for regarding that approach as being fundamentally flawed, and departing from that proposal.
31. Although the matter was listed for a Dispute Resolution Hearing, all those who appear regularly in family court at the current time are well aware of the fact that every court will be proactive at these hearings in an effort to narrow issues and to move the litigation on. The complaint here is that the Judge made the decision without listing the case for a final hearing and without hearing evidence, but he did hear submissions from both parties. I keep returning to the fact that, given there was not to be a fact-finding hearing, there were no safeguarding issues which precluded the Judge from making the welfare decision that he did, without hearing evidence. There is no merit in this appeal and permission is refused

### Ground 3

32. This ground is also without merit in my view. The Judge did not reach any conclusions as to the mother's allegations, nor did he do so in respect of the father's view that the mother has stood in the way of contact. In fact, he reminds himself that he must not make findings on any of the disputed matters. It is right that the Judge reflects what might be more generic concerns about the legal and evidential difficulties for the court when dealing with complaints of sexual assault that are alleged to have taken place within a relationship and which took place a number of years ago. However, the judge was entitled to make those generalised comments as they were important context to his overall premise that there was no basis at the current time to re-open the fact-finding determination and that the FCA was fundamentally wrong in suggesting that delay was necessary and proportionate. The mother's position that effectively these proceedings be adjourned generally to await the outcome of that investigation was untenable, within the factual context that she had allowed unsupervised time between C and her father post separation.
33. The judge does not make a decision based on the fact that the mother has sought to alienate the father at all, although he does note that she has struggled to accept the positives about C's time with his father as he has noted them to be. He also notes that the mother's allegations about the state of the father's home were unfounded. Those matters were objectively right, given the time that the FCA had spent visiting the father's home and reading the contact recordings, and could not be challenged by the mother in any meaningful way, as she had no evidence to the contrary.

### Ground 4

34. Nowhere in any of the papers which I have read have I seen the mother suggest that the paternal grandparents pose a safeguarding risk to their granddaughter. Her complaint has been about their lack of commitment. Therefore, in the absence of any direct evidence which might require investigation, the Judge was more than entitled to work on the premise that they were "run of the mill" grandparents.
35. The whole premise of the mother's appeal on this ground is misplaced. She is no longer asserting that the father poses a risk to C by way of his behaviour towards her or towards C. There is to be no fact find into those issues. Therefore, there is a limited basis upon which the court would be entitled to conclude that the father's time with C needed to be supervised, save to offer some physical and emotional reassurance. The Judge asks the grandparents to be present to act as a safety net, in order to assure the mother over the coming few weeks that the father has support. Therefore, there was no need for an 'assessment' or evidence as to the suitability of the grandparents, as their only role, as I understand the Judge's order, was to assist the father, particularly with the handover, given that his bail conditions preclude him coming into contact with the mother. To fulfil that role, it was only necessary for the court to understand which third party might be able to assist, and to make a determination about it.
36. It is therefore clear that I do not consider that any of the grounds of appeal have a real prospect of success and the appeal is dismissed.

37. However, I would end by saying this. The one determination with which I disagree with the District Judge was his decision to list this case for an inevitable two day final hearing, but not until December 2024, without knowing what the issues will be, nor on what issues oral evidence will be required. It is my intention to make further case management decisions today which will seek to list this case towards a further DRA, before me, after the preparation of the addendum s7 report.
38. Whilst I appreciate that the father has not made a formal application to vary the order of DJ Qureshi in respect of the arrangements for his brother's wedding, he does seek to raise today that the practicalities of the last order mean that the purpose (by that, I mean C being able to attend an important family occasion) may be thwarted. Therefore, I will also hear submissions today as to how her attendance might be better arranged.

### Dispute Resolution Hearing

20<sup>th</sup> November 2024

**Mr Lewis** for the Applicant

**The Respondent** appeared in person

1. I am, once again, concerned with the welfare of a little girl called C, who is three and a half. I have previously determined an appeal in these proceedings in which I set out the background to the application, so it is not my intention to detail that again. That determination should be read alongside this judgment. Suffice to say, these are the significant matters for today's hearing.
  - (1) C is currently spending time with her father, supported by his parents, every other week for five hours
  - (2) The court has determined twice (for reasons set out in two decisions) why it is not relevant to C's welfare to decide upon the mother's allegations of rape and domestic abuse
  - (3) Determinations about C's welfare cannot and should not await the outcome of the criminal investigation, given that could be many months away. There has been absolutely no progress in the investigation since this case was last before me, save for the fact that the father has been re-bailed. The mother accepts that there is unlikely to be a charging decision in support of a prosecution.
  - (4) The mother does not contend that the father poses any sexual, physical or emotional risk to C. In fact, C enjoys spending time with her father and reported positively to the family court advisor about him and his parents.
  - (5) The mother, in submissions today, was accepting that time between C and her father needed to move on, although she remained concerned about the quality of the communications between them and the impact of these proceedings upon her.
2. The father wishes me to conclude proceedings today, on the basis of an order that he spend alternate weekends with C, plus one half of all school holidays. The mother is

also desperate for these proceedings to end, although she hasn't felt able to make a specific proposal as to what basis that should be on.

3. Between the appeal and this hearing today, two significant events occurred. Firstly, CAFCASS published a document entitled Domestic Abuse Practice Policy on the 9<sup>th</sup> October 2024. This is a document intended to support and strengthen the accountability of family court advisors due to the fact that it is a public document. It is said to set out the practice requirements that support practitioners and managers to improve the effectiveness of their practice and advice to the court for children and adults who have experienced or are experiencing domestic abuse. That guidance states, *"For example, a parent being investigated by the police for a sexual offence... provides a clear starting point to inform a recommendation for a child **not** to spend time with that parent due to the significant risks that exist."*
4. Secondly, the court received an addendum section 7 report. That report is dated the 22<sup>nd</sup> October 2024. Within that report, the author says,

*"I have considered whether the current contact arrangements can be extended to overnight. Contact arrangements have been progressing very well, which has been echoed by both parents, and as a result, C has benefitted from establishing a relationship with both parents. The court will however be aware that there is an active police investigation into the sexual abuse reports, and the father is currently on bail. In making recommendations for future contact, I have relied on the Cafcass Domestic Abuse Practice Policy, which stipulates that where there is a disclosure of sexual offending resulting in a police investigation, direct contact between the child and the accused party or parent is not to take place. The policy recommends that direct contact is suspended where it is already taking place, with very limited room for exceptional situations where some form of safe contact arrangements can be arranged. It is my view that C's case is an exceptional one, as I worry that the suspension of ongoing contact at this point could impact on her ability to develop a bond with her father given her young age and the fact that this is the time when she is forming a close bond with her parents. There is also compelling evidence from enquiries that the current contact arrangements have been consistent, positive and in C's best interests. There are safe arrangements in place where paternal grandparents are supervising contact, to help safeguard her while investigations are completed. Paternal grandparents have shared their commitment to continue supporting these arrangements.*

*In terms of going beyond and progressing contact, at this point I am not in a position to recommend that the current contact arrangements are extended due to the ongoing police investigation into the rape that is still taking place while the father is on bail. This recommendation is in line with the Cafcass Domestic Abuse Practice Policy. It is therefore my view that contact arrangements remain the same, until investigations are completed and a final outcome is received from the police."*

5. I cannot place any reliance upon those recommendations of the section 7 report. The family court advisor has, in my view, gone badly awry in making a recommendation that C's time with her father must remain as it is until the conclusion of the criminal investigation. The court has already determined an application by the mother to adjourn indefinitely. That application was refused, and then the application for permission to appeal that decision was dismissed. The court has already decided that the allegations of domestic abuse made by the mother are not relevant to decisions about this child's welfare, save that there is a communication difficulty between the parents. Permission to appeal that decision was refused.
6. The court has made a determination about the matters which are directly relevant to risk, as it is incumbent upon the court so to do. The allegations of physical/sexual harm are not being litigated, in large part because the local authority assessed that the father did not pose such a risk, and the court accepted that professional opinion. But also, on two occasions, the court determined that the allegations made by the mother were not relevant to risk, save that there was on-going concern on the part of both parents about the other's ability to communicate positively and to co-parent. There was, and is, no additional evidence before the court today which would justify the recommendation of the FCA to 're-open' those issues, such that they should prevent the proceedings concluding, or the father's contact progressing. The fact that the CAFCASS officer has relied upon the recent CAFCASS practice guidance, and not accepted the previous determinations by the court is a problem in terms of her analysis of risk, and therefore, the conclusions which she reaches.
7. Whilst the practice guidance may set out internal policies to ensure 'good practice' within CAFCASS, ultimately, it is for the court to determine risk, within its overall analysis of where the welfare of the child lies. As I have said, the court had already determined, and given reasons, for why the allegations of the mother were not directly relevant to the time that C should spend with her father, and it was erroneous of the family court advisor to effectively seek to re-open those matters when considering how and when contact should move on.
8. Further, in my view, the FCA has also not considered the risks to C of waiting for months or years before she can have any kind of normal relationship with her father. All of the evidence before the court, including that of the mother, is that C enjoys being with her father, looks forward to their time together and benefits from spending time within his home, together with his parents. What harm would befall her in the event that her time with her father were to be limited to five hours, once per fortnight, for the foreseeable and indeterminate future?
9. From hearing the submissions of the parties, it is apparent to me that the greater risk to C comes from allowing these proceedings to continue, and preventing the parents from moving on with their lives. The mother mentioned a number of times in her submissions that she wanted to 'co-parent' with the father, and she felt that these proceedings were preventing her from doing so. I am going to make a final order today and encourage the parents to develop their communication to the benefit of their

daughter, whose welfare is my paramount consideration. Having said that, I have spent some time reading the messages between them since July, and all of them are perfectly appropriate, and there is no evidence of the 'control' which the mother fears.

10. C is only tiny. She has never spent a night away from her mother, and so to spend an overnight with her father will be a change for her. However, she loves him, and he lives with his own parents, who are a great source of support to the father. The mother is also reassured by their presence in his home and she told me that. The arrangements that I put into place must be gradual to take account of C's age and understanding. She is also not going to be in school until next year, and so the concept of school holidays is a little premature. She is not at risk in her mother or her father's care. She will benefit from spending time in both their homes. They both love her and will ensure that she is able to develop into the young person that they want her to be. I can understand why the mother finds the video contact difficult at times, as sometimes C does not want to speak to her daddy. Three-year-olds can be fickle.
11. I see no basis for the father to need to be supported by his mother in terms of his care of C. He is able to meet the physical needs of his child, and there is no evidential basis to support the ongoing need for supervision.
12. The final order I am going to make is:
  - (1) That C lives with her mother and spends time with her father.
  - (2) From 7<sup>th</sup> December 2024, C is to spend alternate Saturday nights with her father, from 10am on Saturday until 6pm on Sunday.
  - (3) There will be no special arrangement for Christmas this year, as the father will be able to celebrate with C on the weekend of the 21/22 December.
  - (4) The father is to be responsible for collecting and returning C, until his time with C moves on to being for the whole weekend. I appreciate that this is a long trip for him, but the mother does not have local support from her parents, and I cannot require them to give up a weekend every other week for ever more. I accept that communication between the parents needs to improve before it can be a handover between just the parents, and until that time, the father will have to bring one of his parents with him to assist with the handover. They should be the person who gets out of the car to collect C.
  - (5) However, from the weekend closest to the date of C's fourth birthday (being 29<sup>th</sup> July), time with the father will move on to being from Friday evening at 6pm until Sunday evening at 6pm. And at that point, the parents must do one journey each.
  - (6) From Christmas 2025, C will spend one half of all Christmas, Easter, Summer and half-term holidays with her father, dates of those holidays to be agreed by no later than 1<sup>st</sup> January each year. Christmas Day next year shall be with the father.
  - (7) I am not going to make specific provision for birthdays, mother's day or father's day, as I would hope and expect that these can be agreed between the parties. Although if they cannot be agreed, they should be celebrated during the time that the parents already have with C.
  - (8) Friday telephone contact will continue to take place on the intervening weekend at 5pm for as long as C is enjoying the call

- (9) The order should include a recital that the mother understands that she cannot move location with C without the father's consent, and that she is going to ensure that he has an epi-pen that is in date. He should give her notice of the expiry of the one he has well in advance to enable her to do so. If either parent wishes to go abroad, then the passport should be in the possession of that parent 28 days in advance of the holiday. Otherwise, it should remain in the possession of the mother.
- (10) The parents should continue to communicate using the parenting app that they now use.

*HHJ Elizabeth Walker*