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Case No: MK24P00014

Neutral Citation Number: [2024] EWFC 393 (B)

IN THE FAMILY COURT AT MILTON KEYNES

351 Silbury Boulevard
Witan Gate East
Milton Keynes
MK9 2DT

5 September 2024

Before:

RECORDER PATEL

Between:

M

Applicant

- and -

F

Respondent

MS ALEXNDRA GILMORE, of counsel for the **Applicant** instructed by **Seth Mensah** of **Goldfield Solicitors**

MS BETH HIBBERT, of counsel, for the **First Respondent** instructed by **Sadie Glover** of **Machins Solicitors**

JUDGMENT

Introduction

1. This has been a final hearing about A, a boy born in 2008 who is now 15 years old.
2. An application was made by A's mother to vary a child arrangements order made final on 13 October 2023 following an application by A's father.
3. While there has been dispute about the 2023 order, it has been followed and A is spending time with both his parents in accordance with it. The order provided for A to live with both his parents. His time was to increase incrementally until he was spending 50% of his time with both parents.
4. Shortly after the order was made, the mother stated A was not coping with the new arrangements and in January 2024 issued an application to vary the arrangements.
5. The parents have attended in person for the hearing that was due to last just one day. However, a second day was necessary and the matter was adjourned. On the second day of the hearing the evidence and submissions were completed but there was insufficient time for consideration of the case and a judgment.
6. The parties were living as a married couple until their separation in 2021, A was born in the course of that relationship. I previously found there was parental conflict between the parents and A was exposed to it.
7. The mother seeks to vary the time A lives with his father to alternate weekends and extended holiday contact. The father opposes this.
8. The parties agree there are exceptional circumstances for an order to be made beyond A's 16th birthday. An order should not be made for a child who has reached 16 but A's particular needs make his circumstances exceptional. He is autistic and non-verbal. He is not able to express his wishes and feelings to the degree other 16 years old would be. I am also mindful that the communication difficulties and conflict between the parents, together with the findings I make about the mother mean that an order is necessary as otherwise A's welfare needs will not be met.
9. Prior to the hearing beginning Ms Hibbert pointed out the mother had filed 6 statements totalling 33 pages rather than the one statement of 8 pages. Initially Ms Gilmore submitted that the mother was unable to provide any explanation as to why there are 6 statements. Upon prompting by me to seek an explanation from the instructing solicitor present at court, I was informed the solicitor had misunderstood and took the direction literally to file a statement for each point listed in the direction.
10. The father's statement was filed in accordance with the direction, a single statement in response to the points listed in the direction. The direction for the mother's statement was identical but as it was in response, a later date for filing was given. That direction read -

"9. By 4pm on 29 July 2024, the mother shall file and serve a statement dealing with the following matters:

- i. her proposal for a final order in these proceedings;
- ii. her response to the Addendum Section 7 report;
- iii. her position in respect of the father's application for Prohibited Steps Orders against her and a Specific Issue order in relation to [A]'s schooling;
- iv. her response to the father's application for a Section 91(14) order against her; and
- v. her position in respect of the father's application that she pay the costs of these proceedings.

b. Every statement must:

- i. start with the name of the case and the case number;
- ii. state the full name and address of the person making it;
- iii. set out what the person has to say clearly in numbered paragraphs on numbered pages;
- iv. end with this statement: 'I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I believe that the facts stated in this witness statement are true'; and
- v. be signed and dated by the person making it.

c. Statements must be no longer than 8 pages of A4 paper (not including exhibits), preferably typed in a font no smaller than 12pt and at no less than 1.5 in line spacing.

d. In the event that either party wishes to rely on screenshots of messages attached to their statements, they must attach the entire conversation and message.

e. In the event that either party seeks to rely on video or audio recordings attached to their statement, the number of recordings submitted must be proportionate to the issue and must state that date and time that the recording was made."

11. I do not accept that the mistake was a simple misreading of the direction. The direction is clear - "*a statement dealing with the following matters*". The father filed a single statement and it would be suspicious that he did not file several statements.
12. An application to adduce further evidence was made by the mother in respect of a compilation of videos of A and some still images. While Ms Hibbert made submissions that the clips were undated, contained narrative to explain them and were so short little could be discerned from them, there was no objection to the videos or recordings being admitted. Ms Hibbert did seek the full recordings to be produced. However, I considered that was disproportionate as it would cause delay and require additional court time. Ms Hibbert rightly submitted that these videos and stills should have been submitted earlier but were not and there was no opportunity to respond to them.
13. For those reasons, while I permitted the videos and stills as relevant to the issues before me, limited weight is attributable to them given the full clips are

not submitted, there is no date on many of them, there has been no opportunity to respond.

14. I note further direction 9e given on 1 July - a proportionate number must be submitted. Discussion took place at that hearing, Ms Hibbert seeking I limit the number. I did not at that time but gave an indication it should only be 2 or 3 videos to demonstrate a point. The mother has submitted a small number of videos however, they are compilations and contain 45 videos across them. that is far from the indication that I gave as to what might be proportionate. In my assessment it is in direct violation of the direction and purposefully so.

Legal Principles

15. In terms of any facts that the court must find, it is for the person that alleges the fact to prove it. I bear in mind the possibility in such cases that one parent might seek to gain advantage in the battle against the other. That does not mean that allegations are false but it does increase the risks of misinterpretation, exaggeration or fabrication. It is not for the other person to prove a negative.
16. The standard of proof is the simple balance of probabilities. No more and no less. The seriousness of an allegation or the seriousness of the consequences of the facts being proved do not change that standard.
17. In so far as any further decision is concerned, once the facts are settled, A's welfare is my paramount consideration.
18. I remind myself that there is a presumption that the involvement of both parents in a child's life promotes A's welfare unless it can be shown to the contrary. Delays in decision-making are prejudicial to the welfare of a child.
19. Orders should only be made if I consider it better than not making any order at all.
20. I remind myself that the right to a private and family life in so far as, firstly, A but also the mother and the father are firmly engaged.

The Evidence

21. I have had the benefit of the bundle in this case which totalled 574 pages containing the applications, orders, statements of the parties, Cafcass safeguarding letter and s7 report from the local authority social worker and disclosure from A's school including his EHCP, CPOMS records and CIN review meeting minutes.
22. I also had the benefit of a transcript from the final hearing in October 2023 and an additional report prepared by a family support worker who observed A at both the mother and father's home.
23. I heard oral evidence from Ms F, A's social worker, the mother and the father.

24. The evidence in this case is extensive and it would be disproportionate and frankly impossible to reference it all. I have considered the totality of the evidence but only mention that which is necessary to explain my decision.

Ms F, social worker

25. Ms F is A's allocated social worker under the Family Assistance order. She was present at a pre trial review hearing on 1 July 2024. While I level no criticism at Ms F, it is evident the local authority have not provided the support that this court envisaged when the order was made. Ms F was under the impression that the order only permitted signposting of services and not direct support. I note that she has never been an allocated social worker under a Family Assistance Order before.
26. Ms F readily accepts she is not an autism specialist. She stated she understood the impact of autism on A's welfare and I am satisfied that is right. Her evidence clearly demonstrated an appreciation of the effects his different needs might have on A. It was supplemented by her knowledge of teenagers generally and autistic children.
27. I note that Ms F had not read A's EHCP prior to writing her s7 report. However, she has liaised with his school, called the GP and spent time with A. Her role did not extend to providing support out of hours but following the 1 July hearing, a family support worker did observe A in both parents' homes. She was not idle, she took an active role in this family. I am therefore satisfied that Ms F's evidence was wide ranging and robust.
28. My assessment of Ms F is that she has been tasked with a role and not provided training or the correct knowledge for that role. She described being instructed by her manager as to the support to be provided. Ms F was fixed in some of her views, not unlike my assessment of the mother. I consider it likely this has prevented a positive communicative relationship between them.

The mother

29. The mother attempted to place a gloss on her written communications by saying her first language is not English. However, I am satisfied that there was little that could have been misconstrued. For example, she wrote emails to withdraw A from his school. There was nothing ambiguous in the emails. The mother claimed she was assisted and that she immediately retracted that request. However, she continued to pursue it which demonstrated contradictions in her evidence. Equally, she stated she was moving to [City] but sought to retract that in oral evidence. I have no doubt she meant what she said even if said in frustration.
30. The mother presented meekly in court which I consider is not an accurate portrayal of her true persona. In her written communications withdrawing A from school, interactions with Ms F and in particular the CIN meeting where the mother is shouting and agitated while A is present, the mother is far more forceful.

31. During the course of the FHDRA hearing, on 21 March 2024, the mother revealed that she had placed a recording device in A's bag. Extensive covert recordings were made of A and his father. The mother stated she was concerned about A, however, it is clear her intention was to gather evidence to demonstrate that A was not appropriately cared for. The small amount of information she gathered was set upon and elevated into major issues. The knowledge that the father had utilised a babysitter - she claimed this individual had sexually assaulted A, that A was dysregulated in father's care. However, those were exaggerations. It is clear the mother is prone to collecting evidence, at one time asking the school to record things and making videos of A directly.
32. A further feature of the mother's evidence is that she is not listened to by professionals. I accept there appears to be a fixed view on their part. However, the mother's view is also rigid. She takes the approach that only she can regulate A's behaviour, only she has seen the extent of his dysregulation and that dysregulation comes from the time he spends at his father's. I also note the mother does not accept the advice of professionals in relation to changes to A's routines, foods or regulation methods.
33. I give significant weight to the mother's evidence as A's mother, that since the parents separated, she has been caring for A more than the father, that A can be dysregulated and because of his needs overall there is a burden on her which takes a toll. I do not seek to minimise the impact of those experiences. However, even taking that into account, I am satisfied the mother has not been honest, exaggerated and holds fixed views about what is right for A.
34. Overall, the mother's evidence was inconsistent with her written statements and independently recorded evidence, she raised new details in oral evidence for the first time, exaggerated and at times was not honest.

The father

35. The father's evidence was direct and to the point. However, I noted that he did not always present openly and there were times he held back. Professionals have previously assessed that there are no problems for A while in the father's care. I have no doubt that assessment will begin with what the father has said to professionals. Yet in oral evidence he was more accepting that there are times when A is dysregulated, not to the extent the mother describes. He uses techniques to calm A which are effective and that dysregulation does not continue for very long.
36. The distrust between the parents was evident. The father accepting, for the first time in oral evidence, that A's behaviours in the mother's care are as she describes them, yet never having discussed it with her.
37. I also noted that the father took a semi rigid view about the mother's assertions, for example that A could not have certain foods and wanting to see evidence of it. I am satisfied that he too holds an entrenched view towards the mother and is not able to accept her input just as she will not accept his. My assessment is that he also holds a dislike for her because of the dispute in the financial remedy proceedings regarding his childhood home.

38. The mother alleged the father was racist towards her, possibly jealous and would come to the house and look for a black man, stalked her on Facebook and commented about the people liking her posts. I note there was no evidence save for the mother's from the witness box. Previously the mother relied on similar messages about father saying she should get a different lawyer to mean not a black lawyer. That interpretation was purely the mother's and not borne out in those messages.
39. Overall, I am satisfied the father was not dishonest and a reliable witness of fact

Discussion

40. I remind myself of the findings I made in October 2023 -
41. There is conflict between the parents and A is exposed to it. That has not changed. Neither parent trusts the other. The mother to the extent she planted a covert recording device in A's bag.
42. The parents were on an unequal footing - the mother considering she was the one who knew best and made decisions about A. That has not changed. The mother still considers herself the authority on what is right for A, including what he should eat, his routine and deciding to withdraw him from school.
43. The mother has significant suspicions about the father. Her mind is fixed that the father is racist towards her, that he is unable to parent A and that he is the cause of A being tired at school and unsettled at home. Such is her belief that she keeps A home from school and points to his lack of sleep as the explanation after he returns from his father. However, Ms F has observed A following time with his father and not noted any significant difficulty in A's presentation. A may mask or present differently owing to her presence. However, the school, save on two occasions, raise no concerns that A is tired or unable to engage. In fact the school have seen A after he has been in father's care and there is no report of tiredness.
44. Ms F rightly points out that at his age, 7.30pm might be too early for A to sleep. The mother is rigid when she states that she knows other children with A's needs go to sleep at that time. That rigidity extends to A's diet and the claim that he is constipated because of the foods father feeds him. It also encompasses the mother's approach to A's dysregulation, she says to him to calm down or it is time to sleep. There is no adaptability to A's needs, just the routine that she seeks to follow strictly.
45. I agree with Ms F's assessment, the mother does not want to hear alternatives for A's dysregulation. A's dysregulation is caused by the time he spends with his father and nothing else.
46. I have no doubt that the mother has been frustrated by a lack of support and assistance from others. The school have been a source of support for a number of years and little has changed. Ms F has been involved under the Family Assistance Order but nothing particular has been done as a result save that which would have happened either under the CIN plan or in any event by the

mother approaching the local authority independently. The mother did not approach the local authority, the occasions on which she does ring Ms F it is for a self-serving purpose - she seeks to record A's dysregulation. There is no acceptance of the help being offered. The sleep workshop offered was ignored and only in the witness box is there any mention of attending an alternative workshop. There is no record of the same. There are several other examples of the same in relation to food and not offering A other foods when he rejects one. There is a fixated ideology as to the cause of A's dysregulation.

47. The behaviours that the mother complains of are not apparent at school. Again, it is possible A is masking. However, A has been at the same school for a number of years, is comfortable and settled there. The CPOMS records demonstrate that he does not mask at school. They record challenging behaviour at times, including attempting to pull a female staff members top down. This is a further example of the mother using this to suggest that A is exposed to inappropriate behaviour in father's care. There is no evidence to demonstrate this at all. In fact, the school's evaluation is that this is likely attributable to A experiencing puberty.
48. The father accepted that A has become dysregulated in his care but he didn't know the cause of it. He directs him to a jigsaw, food or a drink or distracts him.
49. A's diet was raised as a cause for concern by the mother. That A has difficulty passing a stool once he has stayed at his father's. The father denies this is an issue. There is supporting evidence about this, A cannot say and what the GP was told would be what the mother said. The father stated he provides a varied diet and I am satisfied that is correct. Although I note it is likely yet another difference between the two households that A will be eating different foods at different times.
50. With regard to A's poor sleeping pattern - mother was offered support by the school but she did not attend the sleep workshop. In oral evidence she stated for the first time that she rearranged and attended the workshop at a later date, no evidence of this was produced or shared about its contents.
51. During a child in need meeting on 22 January 2024 the mother was advised by the school to obtain a letter from the GP about A's learning needs. That would allow a referral to the Community Nurses for Children with a Learning Disability - specialists who are very experienced and can support with sleep concerns. It was accepted by Ms F that her initial referral to this team was rejected because she misunderstood a pre-requisite for their involvement was a diagnosis of learning disability. That has caused some delay and cannot be said to be the fault of the parents.
52. I do not doubt that both parents can meet A's needs. I have no doubt that the mother feels unsupported. However, I do not assess her as unable to cope with A. His needs are challenging and changing as he grows. That has not been taken account of by his mother in my assessment. What may have worked for him before may not work for him now. It is not that there can be no change in A's life.

53. The mother's motives have been questioned and linked to the financial proceedings. Mother denied any link. My assessment is that she remains bitter or angry at the father. She seeks that A is regulated, yet her primary proposal is for alternate weekends with father - he would continue to be dysregulated every week if I were to accept her evidence and the challenges that she faces would not significantly reduce.

Welfare

54. I noted A's needs in the October 2023 judgment -
55. He is diagnosed with Autism Spectrum Condition a lifelong condition that means A does not respond in a neurotypical way.
56. He is partially verbal, he uses his voice at times for functional and practical day to day tasks or requests. I am satisfied that he cannot tell anyone what he wants but I am satisfied that he would want to have a relationship with both his parents. Neither parent is seeking to prevent that relationship.
57. A has a limited capacity to cope with change and difficulty with emotional regulation.
58. A is also sensitive to sensory stimulation.
59. If he becomes dysregulated, A displays stimming, hyperactivity or repetitive traits.
60. He has experienced change in his parents separating and contact with his father reducing. It was unclear how well A was supported in those changes. He has been supported at school.
61. A has gone through or was experiencing puberty. Given his lack of speech or other more childlike behaviours, it would be easy to assume that his physiological development is similarly delayed but that is not a certainty.
62. A's needs have remained largely unchanged. He has experienced more change because the order that was made in October 2023 has been followed and he has spent more time with his father. As far as the school, Ms F and the father are concerned, A has coped well with that change. It has been slow and taken over a period of time. Ms F pointed out the parents do not follow the October 2023 order rigidly, there are times when it is varied to allow for father's work. I note that if it is varied without consistency, it is highly likely to unsettle A.
63. The evidence supports that A has coped well with those changes. The school have not reported any difficulties in A's behaviour over and above what might be expected. In fact they note that A has difficulty at times in transitioning to swimming at school, something he has done regularly since he was 3 years old. He is supported by the school and achieves this. It was submitted this demonstrates inability to cope with change. However, there is no evidence to suggest he is dysregulated while at swimming thereafter. I am also mindful that in the school setting, they have a duty of care to A and it could be that this 1 to 1 support is for his safety as much as coping with the transition. I am

satisfied therefore it is more likely than not the transition that is the difficulty. A has been observed in his father's home and is comfortable there. His father is the adult support in that transition. Ms F has observed him after school in both parents' care and notes that he is settled.

64. A has also experienced change, and in my assessment harm, from his mother keeping him home from school for a day or two after he returns from his father's. This has led to a change in his routine and would be unsettling. The mother pointed to the assessment of the GP to demonstrate how dysregulated A is. I am not surprised A was dysregulated when at the GP surgery - he was taken to see an unfamiliar adult, in a setting he does not frequently visit, with other stimuli around him after he had a change in his routine. The GP saw A for a short time and I do not consider that assessment demonstrates A was dysregulated because he was in his father's care.
65. The social workers have observed A in both parents' care and note that A was not dysregulated. There was a time when he was difficult to get to sleep but he did so as observed by the family support worker. The mother stated this was not the true extent of A's dysregulation. However, even the videos the mother produced do not demonstrate A being dysregulated to the extent that she states. I am satisfied that is because she has exaggerated it or at the very least views the level of his dysregulation differently.
66. I again note that there has been little support provided by the LA and little has been taken up by the parents independently.
67. My previous assessment that A can cope with change at a slow pace, if he is properly supported, remains unchanged.
68. I am satisfied that A has experienced harm from the changes in his circumstances because he has not been properly supported and the parents' failure to communicate. The lack of a parenting plan, ordered in October 2023, demonstrates that each of them have continued to parent separately not together for A's benefit.

Conclusion

69. The full range of involvement and co-operation between the school and LA, together with the input of the parents builds a picture that A is in school and ready to learn, he is not tired frequently, there is a difference between mother and father's routines, he can be dysregulated at times and there are suggested ways of managing that and that it is unlikely he is dysregulated to the extent that mother perceives. The mother has not been able to accept the input of the professionals. I appreciate the mother and father are likely to know their son better than anyone. However, that does not alter that they themselves may become entrenched in their own thinking and close themselves off to the input of others in particular each other. It is essentially parental conflict - not of the kind that often comes to mind - shouting and arguing but it does pull A in different directions because they cannot agree.
70. I note that parental conflict stems from the intransigence from both parties, but more so of the mother. Her disclosures less than a month after the October

2023 order of coming back to court and then applying in January 2024 demonstrate there was no real attempt to give the order time to work. That was compounded by the lack of real support as envisaged by the Family Assistance Order. I therefore consider it necessary to revoke that order and impose a fresh order for 12 months from today. The local authority are now aware that it requires real intervention on their part and not merely signposting. Without that support I do not consider the parents capable of resolving their disputes and therefore A, a vulnerable child, will come to harm.

71. I have determined that there has been no material change in the circumstances of the parents or A in the period since October 2023. However, there has been a digging in by both parents. I note there are ongoing financial proceedings between them and this likely has added to the conflict. That ongoing conflict is harmful to A. The current arrangement of time means there are more transitions for A. The mother states that she does not have time to settle A for school. In those circumstances I consider it necessary to vary the child arrangements order to reduce the number of transitions and the level of conflict that A experiences. The order will be a week on and a week off, with handovers from school on a Friday. Holidays will be as per the October 2023 order. The prohibited steps order preventing travel to [an African country] is revoked. The parents must give notice for any travel and therefore any objection can be properly resolved, including by application to the court prior to the travel date.
72. I have taken into account the impact on A and the potential he might be dysregulated. However, I am satisfied that he is well supported by his school. The father has effectively been able to calm A. The mother is able to do the same but is less open to adapting. The evidence before me demonstrates that A has coped well with the changes and I am satisfied that he would be able to cope with a change to the days he spends with both parents.
73. The mother emailed A's school withdrawing him, quoting statute and relying on legal rights. This was a concerted and thought out act, not spur of the moment or done in anger or frustration. She was persistent thereafter in seeking his removal on that basis, even if only over the course of a short time. [School] is named in A's EHCP and is a protective factor; he receives excellent support from them. I reconcile this with the right to educate a child how a parent wishes to, however, I consider in this case it would be more harmful to remove A from his school. Therefore, I make a prohibited steps order that A is not removed from [School] or the school named in his EHCP. The order lasts for 3 years. I do not then consider a specific issue order that has the same effect to be necessary. Nor do I consider it necessary to restrict the mother to remain residing within [County]. Any move that required A to change his school would require both parents consent or an order of the court. This order must be disclosed to A's school which will also act as a safeguard because the school would refer to the local authority if concerned about a move.
74. The father seeks a non-molestation order be made for a further 12 months. That as a result of the mother's behaviour the order made by the court of its own motion is necessary to control the mother's behaviour. I note the order

was made in response to the mother's revelation of covertly recording the father and A. At the time the father alleged abusive, harassing and/or threatening messages. These are substantiated in the messages produced to me. Since the order was made in March 2024. I note there have been further messages sent by the mother of an abusive nature in May 2024. I am mindful a NMO is a short term order. There are ongoing proceedings and I have concerns that it brings the parents into conflict. Ordinarily I would be satisfied that it could be properly addressed by restricting the means of communication between them to a parenting app in which neither party is capable of deleting messages. However, that was the order made in October 2023 and it did not provide adequate protection. I am therefore satisfied that a non-molestation order is necessary given the mother's accepted behaviours and threats made in the text messages. That order will last for a period of 9 months which will allow time for matters to settle and the financial proceedings to be concluded.

75. This is the second application made about A in 12 months. I note the first was by the father for contact, the second by the mother for a variation of that order. I am satisfied that this application was without merit. While the mother applied for a variation, the underlying focus has been a reduction of time in the father's care. That application was not made by way of an appeal, which much like this application would likely have been considered as without merit. The mother's application was put in motion from as early as 9th November 2023 when she attended the GP surgery and complained about A's sleep being dysregulated and hitting out at her. Yet by this stage, there had been no change in A's arrangements as from the final hearing in October 2023.
76. In pursuing that course, the mother has not complied with court directions. While ultimately a party's conduct is their own, I note that some of that conduct is attributable to her solicitors, in particular in relation to statements. I therefore consider it necessary for the solicitors to show cause why there should not be a wasted costs order against them for their failures in this case as well as any costs against the mother owing to her litigation conduct.
77. I accept there was a lack of support offered by the LA however, that does not detract from the need for parents to work collaboratively with each other for A's benefit, that did not happen. Largely because the mother was intrinsically opposed to it, in the previous proceedings and now, without any real basis. I am mindful the mother has made threats to return to court again if the outcome is not in her favour.
78. A has an allocated social worker. As a result of his needs that is likely to be for many years. He is going to be exposed to professionals. However, that exposure should be limited. Any further application is likely to lead to more exposure and uncertainty in his arrangements, anxiety in his care givers and that would be harmful to his welfare.
79. I have balanced the parties Article 6 and 8 rights. A s91(14) order restricts their ability to litigate but it does not prevent it. It simply introduces an additional stage to provide protection which I consider is necessary and therefore an order is a proportionate interference with their rights to safeguard

A's welfare until he is 18, alongside the child arrangements order continuing until then given his exceptional circumstances.
