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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
(On Appeal from the Family Court at Watford)
[2022] EWHC 3479 (Fam)



No. FA-2022-000190
WD19P01380

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 18 October 2022

IN THE MATTER OF **THE CHILDREN ACT 1989**

Before:

SIR JONATHAN COHEN

(In Public)

B E T W E E N :

SR

Appellant

- and -

OR

Respondent

ANONYMISATION APPLIES

Ms E TRAUOGOTT (Counsel) appeared on behalf of the Appellant.

THE RESPONDENT appeared as Litigant in Person.

J U D G M E N T

SIR JONATHAN COHEN:

- 1 This case concerns the three children of Mr and Mrs R, who are married but have been separated now for a considerable period of time. The three children are: a daughter U, who is aged ten; and two boys, A who is eight-and-a half, and N, who is seven.
- 2 The procedural history is that, following the separation and the institution of proceedings in which the applicant father sought contact, there was a five-day fact-finding hearing that took place before Recorder Genn. The Recorder made a number of findings which are relevant. They are not set out in an annex to the order (which I think would have been preferable) and can only be found in the body of the judgment. Her findings included:
 - (1) a finding that the father demonstrated a clear intention to cause the mother financial hardship when the relationship broke down;
 - (2) that he ceased to support her immigration application and threatened her with deportation; and
 - (3) that she found that the mother experienced a level of control and, to an extent, some physical abuse “at least to the extent of some hitting in the relationship that might well have given her cause for concern”, but, also, financial control and concerns that she expressed about the fear that she would be returned to Bangladesh.

It is right also to say that the Recorder was critical of some aspects of the mother’s behaviour and found that she had been verbally abusive to the father and had improperly involved the children in adult disputes.

- 3 The order of the Recorder is instructive. It is dated 12 July 2021 and, at para.8, it recites:

“It appears to the Court that it may be appropriate for a care or supervision order to be made with respect to the children because of the seriousness of the Court’s findings in its judgment.”

So, to that end, Hertfordshire County Council were instructed to prepare a report on the children’s circumstances under s.37 of the Children Act. A contact order was made which continued the indirect contact provisions of the order of 20 April 2020, which provided for weekly video contact and further contact by way of gifts and cards to be sent through solicitors. The order did not, on the face of it, say that there should be no direct contact, but that was plainly the intention of the Recorder.

- 4 The matter was to be listed for directions in September 2021 and, thereafter, in the absence of agreement, for a final hearing. It is not clear to me why it was that the final hearing did not take place for eleven months, until June 2022, when the matter came before a different Recorder.
- 5 The second Recorder was faced with a difficult position. The order of the first recorder was not sent promptly (as it should have been) to Ms T, the social worker who was to prepare the s.37 report; nor, indeed, was the judgment provided to her until 17 September. By then she had already arranged, at her own initiative, supervised contact between the children and their father. I do not see how she could have done that if she had known of the contents of the court order or the judgment.

- 6 Her section 37 report is dated 27 September. No doubt most of its work was done before then. I presume that she had still not by then read the judgment. Thus, it was that the s.37 report was carried out by Ms T in, as it appears, complete ignorance (I cannot imagine it was defiance) of the findings and order of the first recorder. That is a very unsatisfactory situation.
- 7 It is clear from reading the report that Ms T approached the task allotted to her, amongst other things, to see if she could get contact up and running. By that I mean direct contact. She had a series of discussions with the mother, both in person and on the telephone, in which the mother expressed unhappiness about contact taking place. She should not, of course, have been having these discussions at all in the light of the order made by the first recorder.
- 8 Ms T formed the view from the outset that the current indirect contact arrangements were not working and needed to be replaced. That can be seen at para.16.4 of her report. But, with respect, that was not a matter for her; it was something that the judge herself had ordered.
- 9 The matter came for directions rather later than Recorder Genn had anticipated before a circuit judge sitting in Watford. He expressed his disquiet at what had happened, but the mother, at that hearing, took what the judge described as a pragmatic view and did not object to the continuation of the proposed contact which the social worker had organized, provided it was supervised. That contact was to take place fortnightly at a contact centre under the arrangements that the social worker had promoted. In fact, there was something of a delay in setting up those contact arrangements, but that is what eventually happened.
- 10 The matter, thus, came for its final hearing before a different Recorder to whom the case had been released by the DFJ for Watford, the previous recorder being unavailable. He heard the matter for three days in June 2022. He had no independent update from any observer of the contact arrangements and, although he had a brief supplemental statement from Ms T, the last of her reports was prepared in December 2021, by which time there had been just two sessions of two-hourly contact at the contact centre.
- 11 The second Recorder accepted the proposal made by Ms T in her final report and the order made was as follows: that the father should have contact every Wednesday from after school until 6.00 p.m. if it be a school day, and if it is in the school holidays or half-term for all day, for all three children; and alternate Saturdays for half a day, with collection and delivery to and from the contact centre, with all contacts being unsupervised in the community. He also went on to order that, from 17 September 2022, the children should spend alternate weekends with their father from Saturday at 10.00 a.m. until the following Sunday at 4.00 p.m., and added to that a recital that, in the future, at a time undefined, overnight stays might happen from Friday evenings until Monday mornings, subject to the commitments of the parents and children, and school holidays should be shared.
- 12 The mother appealed that order and the appeal was allocated to the President of the Family Division, who granted a stay of the order for staying contact to last until this appeal.
- 13 The processes that have been adopted in this case are plainly unsatisfactory. It was not proper for the s.37 reporter to prepare her report on a basis different to that which the court had instructed and, in particular, in ignorance and/or noncompliance with the terms of the order that was made and the findings of fact that the first recorder had made. That, in itself, it seemed to me, would be sufficient for me to allow the appeal.

- 14 However, it is not possible or right to look at this case without reference to what in fact has happened. Contact has taken place every Wednesday after school and on alternate Saturdays. The mother, realistically, does not ask me to interfere with the current arrangements. She is right to do that. The children's lives move on and they would find it very difficult to understand why the contact which is taking place and about which no complaint has been made was not going to continue.
- 15 However, it would not be right for the contact to extend to staying contact without further investigation. I say that, in part, of course, because of the judgment and findings that were made by the first recorder. The court needs to know what it is that the mother feels about contact; what it is she feels about the children going to spend overnights with their father. The court needs to know how both parents have reacted to the traumatic events which led to the fact-finding hearing and the findings that were made in that hearing. That alone would be reason for saying that there needs to be updating inquiries into the children's welfare.
- 16 But, in fact, it goes further than that, because the father has, in July 2022, separated from the lady with whom he was then living and whose part of the family was an aspect touched on in the judgment of the second recorder. It is plain that the break-up of that relationship has caused him very considerable difficulties. The father claims that he is a victim of domestic abuse at the hands of his recent ex-partner (not the mother in this case) and is receiving advice not only from the domestic abuse team in Stevenage but is also receiving assistance from a mental health worker through his GP.
- 17 The father is currently staying with his brother, having left the home in which he was living when the matter was last before the court, and I know nothing of the current circumstances as to whether that is a suitable place for staying contact to take place in any event. The father, realistically, has said to me that he is content with the current arrangements to continue for the time being and both parties accept the need for a fresh report to be prepared on the children's welfare.
- 18 I am of the clear view that there should be a new reporter. I am not going to direct that Ms T prepare a supplemental report. There should be a report prepared by Cafcass in respect of the ongoing contact arrangements for the children, in the light of: (1) the judgments and findings of the court as set out in the Recorders' judgments; and (2) the contact that has taken place since last year and the impact of that on the children and on each parent. The father must provide an updating statement within 28 days (unless otherwise suggested) setting out his current circumstances and those of the break-up of his relationship with Ms L. He must also provide a report from his GP as to his current health issues.
- 19 I am told that it will take twelve weeks for Cafcass to prepare a new report, which takes us to 10 January 2023. The matter is to be listed in Watford before either a district or circuit judge or recorder, in the week commencing 23 January, for any IRH/direction/early resolution, and each party shall, not less than three days before the hearing, file a position statement as to the orders that they seek and the best arrangements for the children.
- 20 But, for the reasons that I have given, I allow this appeal and make the fresh order in the terms that I have indicated, continuing the stay granted by the President until the matter is next before the court.
- 21 I order a transcript of this judgment at public expense to be prepared by 28 October 2022 and a copy will be provided to each party.
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CERTIFICATE

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This transcript has been approved by the Judge