

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
(On appeal from HHJ JONES)

NCN: [2024] EWHC 2116 (Fam)

1st Mezzanine, Queen's Building
The Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 16 July 2024

BEFORE:

SIR JONATHAN COHEN

BETWEEN:

GO

Applicant

- and -

MM

Respondent

MS B. ARMITAGE (instructed by Brendan Fleming) appeared on behalf of the Applicant

MM appeared in person

MS J ECOB appeared on behalf of the Children's Guardian

MR S YEUNG appeared on behalf of the Local Authority

JUDGMENT
(Approved)

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This judgment was delivered in public. 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.

1. SIR JONATHAN COHEN: This case involves three children. M who is fourteen, S who is twelve and R who is eight. They are the subject of prolonged proceedings which commenced as long ago as 2019, between the mother and the father following the breakdown of their marriage.
2. In November 2021, there was a fact-finding hearing before HHJ Jones sitting in the Family Court lasting over a considerable number of days, with the judgment being given on 24 November 2021. Each parent had made serious allegations against the other. The mother's allegations were of the highest gravity. She accused the father of sexually abusing S and raping M, inviting paedophiles into their home to abuse the children, grooming students when he was a teacher and raping and abusing M and S in front of relatives, and getting them to do so. She also accused him of controlling behaviour. These are about as serious allegations as one parent can make against the other.
3. The father accused the mother of coaching the children to make false allegations of sexual and physical abuse, against not only him, but a number of members of the paternal family. He accused her of stopping contact and restricting remote contact; he accused her of removing the children from their home and school without notice, and verbally abusing the father in front of the children, and discussing the case with them.
4. The judge in her judgment set out what the evidence was in support of the various allegations, and she came to very clear findings that these children were manipulated into making allegations against their father by their mother and their aunt. She found that there was no reliable evidence to support the allegations, and nor was the children's presentation consistent with what they described. The mother had sullied the children's positive memories of the father by providing sinister explanations to innocuous acts. In creating false memories, she caused the children intentionally and recklessly to suffer significant emotional harm. The judge did not feel it necessary to go beyond that into other allegations. This was a damning judgment.
5. The mother tells me that she accepts the judge's findings, and will not repeat the allegations. The ease with which she said she accepted the findings without, it appears,

any remorse for making the allegations which she did, was surprising and shows a lack of insight.

6. Following her judgment, the judge directed various reports, and the matter did not come back before her until 20 October 2022 when on the following day, she made what was a consent order. The delay is to be regretted, caused in part by the Covid restrictions and the backlog that created in private law proceedings in the court system. The order made by consent was that father was to have staying contact to the boys, by swiftly graduated steps from Friday after school to Sunday afternoon on a fortnightly basis. M was to have therapeutic work and supervised contact to the father, in the hope that it would lead to the same contact regime as applied to her brothers.
7. Dr Freedman, a well-known consultant psychiatrist who does a lot of work within the court system, was advised to give an expert opinion. Her recommendation was clear. The mother's narrative should be challenged by therapy with the children, and that if that was not successful, the children might need to be removed from the mother's care into a neutral setting, so their experiences could be unravelled.
8. The local authority did not support the removal of the children into foster care, and nor did the court, hence the order on 21 October 2022, under which the children remained living with their mother.
9. Very unfortunately, sight was lost of the essential recommendation that the mother's narrative had to be unravelled and challenged. This is not just a criticism of the local authority, but it is also a criticism of the mother, who has never done anything to discourage the children from believing that which she inculcated into them.
10. The local authority selected an organisation called Serendipity to provide for therapy. The parties could not provide the court with a copy of the letter of instruction that was given to Serendipity, but I think it is reasonably clear what they were instructed to do because in their summary of the report the introduction reads as follows.

"The M Family were referred to Serendipity Psychology Services Limited by Leicester City Council for the following...

"1.1 Work with MM to challenge her views and consider how she can commit to the children's contact plan with father.

1.2 Work with MM and the children to support them to reconsider their views about father. MM will be encouraged to share more positive representations of father.

1.3 Work with the children to support them to consider another narrative/restricting regarding the distant parent and an understanding of mother and father's positions."

11. What is absolutely clear is that Serendipity never began to challenge the mother's narrative with the children. Indeed, it did not even tell the children what the outcome of the fact-finding was. This failure is striking and it is not clear to me why the local authority, who after all commissioned Serendipity and received the reports, did not pick up that Serendipity was not doing the right work.
12. The father says there was non-compliance with the contact order, and that M did not engage at all, and that the boys' contact with him was sporadic. He says that the mother has not accepted the court's findings, and is still making allegations. Today, I think is the very first time that she has ever said she accepts the court's findings. The mother denied breaches of the order, and said that she had worked with the local authority and Serendipity, to which one might say, but only to a limited degree.
13. The matter came back before the court in December 2023. At the hearing before the same judge, Her Honour Judge Jones who case managed this throughout, the father made four applications. He sought an addendum section 7 report, the appointment of the children's Guardian, a report from the therapist and the admission of a judgment given by Her Honour Judge Ingram in financial proceedings which contained important material about the mother and her presentation. All those were dismissed. The father also sought that oral evidence should be given. That application was dismissed too.
14. The local authority said to the court that, in effect, enough is enough, and the court should bow out. It was abusive to the children to do any further work with them. The

judge was of broadly the same view that the court could do no more, and she dismissed the father's application for a change of residence and an enforcement order, and M's contact was reduced to no order, but that she should be encouraged to go out with the father. The notes taken by a representative of the local authority indicates that in discussion, the judge said that the children should not be told of the fact-finding outcome.

15. The father sought to appeal the judgment of the judge, and the matter was allocated to me to consider the application for permission to appeal. It was not obvious to me, when the papers were put before me, whether the children had been told of the outcome of the fact-finding proceedings, and so I caused the parties to tell me what the answer to that was. When the answers came back from the parties, it was clear that the children had never been informed of the outcome of the fact-finding judgment. Accordingly, two and a half years later, they remained living with their mother under the false impression which she alone created with her sister, that they are the victims of serious sexual abuse by the father and his family. I granted permission to appeal.
16. That presentation had caused them enormous damage, which the mother today seems not capable of recognising, even though she says that she does accept the findings. It is to me astonishing that now more than two and a half years later, the children have not been told of the outcome of the hearing, and they view their parents through the prism of a serious lie.
17. Serendipity took the view that to challenge the children's narrative, would risk undermining their relationship with the mother, and that might make them feel guilty with a consequent knock-on effect on their emotional development and stability. In other words, they should continue to live a lie. I find it strange, to put it at its lowest, that a professional organisation commissioned to carry out important work, should have given that advice.
18. The parties all agree that this appeal must be allowed, and that the children must be told the truth. It is, of course, a given that this delay of two and a half years, makes the therapist's task infinitely harder, and the damage done to the children that much greater.

19. At a directions hearing, it was agreed that the judgment of Her Honour Judge Ingram should be admitted, and I was very grateful to the Children's Guardian accepting the order I made, that there should be a rule 16.4 Guardian appointed to act on behalf of the children in these proceedings. Both she and the local authority are in agreement that the current state of affairs simply cannot continue. It is, as the children's Guardian puts it, significantly harmful to the children.
20. Three therapists have been put forward as therapeutic organisations to do work with the children. I reject, of course, Serendipity who, surprisingly, was on the list and the local authority had agreed to fund an organisation called Therapeutic Life Story Work International, to work for ten sessions with the children. I am grateful to the local authority for taking on that extra burden.
21. Dr Freedman has advised again, and her report and summary is at pages 138 to 141 of the bundle, and is essential reading. The children urgently need to know the finding of the court. Dr Freedman repeats her suggestion that the children may need to be removed to a place of neutrality. That is not a matter for me to deal with today. Much will depend on how the therapy goes, to what extent the court's narrative is successfully unravelled, and how the children react. Much will depend on the parents as well, the mother in particular. Her engagement in putting right what she has done wrong, needs to be substantial, not superficial. The father too needs to play a careful hand, and he must not press matters in a way that is burdensome to the children. He will be very wise to take advice from the social worker and Guardian if he has any questions about how he should behave.
22. The current position is that M does not want to see her father. A glimmer of hope was offered by the suggestion that she might be prepared to meet up with him in a public place. I hope that does happen, and I am grateful to the social worker for agreeing to speak to M, to see if a plan can be devised, which M is content with, whereby she will see her father, perhaps go shopping with him, perhaps have a coffee with him, whatever it might be. That, plainly, should be done.
23. The boys, I am pleased to say, are having fortnightly staying contact with the father, and at my instance, a small increase to the time that they will spend with their father

has been agreed. The way forward is not completely written in stone. The therapeutic work will be undertaken, starting in September. That will take place by way of ten-weekly sessions. At the end of that, there should be a report provided by the organisation to the parties, the local authority and the Guardian. The matter needs to be fixed for a hearing in December or January. I do not want it rushed into court within, say, three or four weeks of the therapy concluding, and so that probably means a hearing in January, I want to give the Guardian the opportunity to have a meeting or meetings with the parents, to see if a consensual way forward can be found.

24. I shall consult with the family presider for the Midlands Circuit, as to whom this next stage in the proceedings should be allocated. There will be an order that the mother ensures the children attends each of those sessions, and an order barring her from repeating the allegations. I should say that she says she has no intention of repeating the allegations, but she must not repeat them, and she must not start making fresh allegations.
25. The next hearing needs to be fixed once the identity of the next judge is established, because it is important to keep the Children's Guardian fully involved in the case. It follows, therefore, that this appeal must be allowed, and orders made in terms which are agreed between the parties in the event that I do allow the appeal.
26. I am very concerned about the damage that have been done, not just by the making of the allegations by the mother, but by the two and a half years' delay that has taken place. However, I cannot re-write history. Although I have been critical of the local authority, I appreciate they are now seeking to put things right, and I am grateful to them attending today with counsel and social workers, as they did on the directions appointment. I am grateful for the Guardian's involvement.
27. I pay tribute to Ms Armitage who has appeared on behalf of the father with skill, appearing, as I understand it from the last occasion, pro bono and as she does on this occasion. She deserves many thanks. I recognise, of course, that because the father is represented, he is able to an extent to shelter behind Ms Armitage. The mother represents herself, that means that she has been more exposed. Although I was concerned about much of what she said, I recognise that at other times she was more

constructive and considering the way forward. I have no means of judging whether any of her various complaints about contact that she makes are justified, but I hope very much she will not be making complaints to the father, but look to the benefits that contact is obviously bringing to the boys, and would bring to M if she had that opportunity.