No. ZE14C00003

Neutral Citation Number: [2016] EWHC 1438 (Fam)

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

Friday, 10th June 2016

Before:

MR. JUSTICE MOSTYN
(**In Private**)

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B E T W E E N :

A LOCAL AUTHORITY
Applicant

- and -

D & Ors
Respondents

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MR. H. LAMB (instructed by the Local Authority Legal Department) appeared on behalf of the Applicant.

MR. J. SELLARS (of Sellars & Co., Sutton) appeared on behalf of the Respondent Father.

THE RESPONDENT MOTHER appeared in Person.

MS. K. RODD (Solicitor) appeared on behalf of the Guardian.

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J U D G M E N T MR. JUSTICE MOSTYN:

1 Having considered very carefully the very helpful skeleton argument of Mr. Lamb, which sets the case out, to my mind, conclusively, I am satisfied that the court's power to extend a supervision order pursuant to Schedule 3, para.6(3) of the Children Act 1989 does not depend on the supervision order which is sought to be extended to be current or, for that matter, for an extension to have been made prior to the expiration of the existing supervision order.

2 In my judgment, an application to extend can be made properly after the supervision order has run out, so to speak, and there are, in my judgment, very good policy reasons why the statute should be interpreted in that way. These are set out in para.5.19 to 5.22 of Mr. Lamb's skeleton argument. As he rightly says, supervision orders are entirely child-focused and will only be extended if it is in the child's best interests. There are practical benefits, as he rightly says, to local authorities and to parents of an interpretation of the statutory words, which would enable the local authority to monitor the children's progress whilst the supervision order has not run out without the need to rush back to court, and he rightly says, in para.5.21, the three-year limit to the extension of a Supervision Order prevents families having a sense of lingering uncertainty. So there are strong policy reasons for reading down of the words of the statute to permit the application to be made after the order has run out. Indeed, there is nothing in para 6(3) to suggest to the contrary.

3 To my mind, the reasoning of Lord Justice Mance (as he then was) in *Jones v Jones* [2000] 2 FLR 307, when dealing with the analogous situation of the power to vary or extend a periodical payments order, is very helpful. In para. 48 of his judgment he proceeded on the basis, without having perhaps analysed the matter specifically, that an application to vary could be made after the expiration of the order "based on an application made prior to its expiry". That view was followed by Lady Justice Black in the recent decision of *Mutch v Mutch* [2016] EWCA Civ. 370 at para.18, where she said:

> "Provided, however, that an application is made prior to the term of the periodical payments ending, the fact that it is heard after the end of the term does not affect the court's power to extend it".

4 I, for my part, do not see why an application must have been made before the expiration of the term in order for it to be capable of valid adjudication. The power to vary depends on the prior making of a periodical payments order. That is what Lord Justice Mance plainly accepts in his judgment in *Jones v Jones*. As he says in para.44, the fact that requirements to make payments under the order may have come to an end does not make the order disappear,

nor is it discharged. If arrears exist then they will be enforceable. Similarly, in relation to the field of contract, one would not say that at the end of performance of obligations under a contract that the contract had come to an end. Both under the Matrimonial Causes Act, in relation to variation of periodical payments, and under the Children Act, in relation to extensions of a supervision order, the only requirement set by Parliament is the making of an original order.

5 So I am of the clear view, following the line taken by the President in *Re X* [2014] EWHC 3135, which was concerned with the seemingly unextendable term of six months referred to in s.51(1)(c) of the Human Fertilisation and Embryology Act 2008, that that should be read down in a way which is consistent with the interests of children as well as human rights. So following that line I reach the clear conclusion that I do and, in so doing, I am conscious that I am making a decision at variance with the *obiter dictum* of Lord Justice Thorpe in the decision of *T v Wakefield Metropolitan District Council* [2008] EWCA Civ. 199, where, at para.20, he, in giving his guidance, was clearly of the view (although the point that I have to decide had not been argued before him in any depth) that the application for extension in fact had to be not only issued before the expiration of a current order but heard before the expiration of a current order. I have to say that I do not agree with that approach in the slightest.

6 I am satisfied that I have jurisdiction. It is debateable in this case, as a matter of timing, whether the application was made before the expiration of the original order. The original order was set to expire on 17th February 2016 at, one assumes, midnight. The application here is dated 17th February 2016 but was only issued on 18th February 2016. I have not analysed, because I do not judge it necessary to do so, what the status of an application which is dated on one day but only issued the following day is. I do not need to decide that point for the reasons that I have given. So I am satisfied that I have power to make the extended supervision order.

7 I now turn to the merits of the matter. There are, as set out in the statement of Ms. GD, the allocated social worker from the Local Authority, dated 3rd June 2016, certain fairly serious concerns about the welfare of JD, aged 2; PD, aged 4, and MD, aged 9. I have been, in effect, supervising this family for over two years now and the standards of parenting of this family, who come from the travelling community, is certainly not to the same standards as one would expect from a conventional nuclear family. However, I have always been strongly of the view that tolerance must be shown, in a spirit of diversity, to the traditions of different communities. The parenting in this case has certainly been far more, one might say, robust, also delegated, than one would expect in the conventional nuclear family.

8 However, there have nonetheless, as the statement of Ms. GD makes clear and

as is reinforced also by the position statement of the Guardian, been events and incidents which take the matter beyond mere tolerance. As Ms. Rodd rightly says, there have been incidents which go beyond mere robustness into the realm of neglect. For this reason, she urges the local authority to take active consideration in the forthcoming weeks and months to considering issuing care proceedings. She accepts, of course, that under the scheme, as enacted by Parliament, the call lies solely with the local authority and that the views of the Guardian, whilst no doubt on a practical level are influential, are certainly not in any sense decisive.

9 The position of the local authority is that they wish to continue to work with this family. Although there have been these questionable events, and there are concerns, overall the progress of the children is considered to be broadly satisfactory. The local authority wish, under the supervision order that they seek to be extended for six months from today, to monitor the situation closely. As I say, there is nothing before me which would justify me, of my own motion, taking some kind of proactive steps. I cannot, of course, take steps in care proceedings without the local authority issuing an application, so I suppose the proactive steps might be in wardship, as I seem to remember I have done previously in this case. But I am with the local authority on the plan that they have adopted.

10 Mr. D and Ms. C must understand very clearly that even though the court is tolerant of their different traditions, their fundamental obligation is to care properly for their children and they must do so. They have heard what I have said and they will realise that during the period of supervision that if they fail in that then further, more dramatic, steps will no doubt be taken.

11 When the matter was before me in February the suggestion was that the extension of the supervision order should be six months from February. It is now June. I agree, and there is no dispute from anybody, that the supervision order should be extended to six months from today, so that is until 10th December 2016.