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IL13CO931/WT11P00176

Neutral Citation Number: [2014] EW Misc 27 (CC)

IN THE CHELMSFORD COUNTY COURT

IN THE MATTER OF X AND Y (CHILDREN)

Friday, 14th February 2014

Before:

HER HONOUR JUDGE LYNN ROBERTS

B E T W E E N :

THE LONDON BOROUGH OF LONDON BOROUGH OF P
Applicant

- and -

MR G
First Respondent

- and -

MISS H
Second Respondent

- and -

X and Y
Third and Fourth

(through their Children's Guardian)
Respondents

-and-

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APPEARANCES

MR. G. CAMERON (instructed by Legal Services, London Borough of P Council)
appeared
on behalf of the Applicant.

MR. SAWTELL appeared on behalf of the First Respondent.

MS. J. BRINDLE appeared on behalf of the Second Respondent.

MR. G. REED appeared on behalf of the Children's Guardian.

MS. MESSENGER appeared on behalf of R County Council.

JUDGMENT JUDGE ROBERTS:

1 This case is about X, who was born on the 28th April 2004 and who is now nine, and Y, who was born on the 12th July 2005 and who is eight. This is the final hearing of the private law proceedings between the parents and the child protection plans brought by the London Borough of London Borough of P. The London Borough of P is involved although this case is in the Chelmsford County Court because at the moment both girls are living within that borough. The parties are London Borough of P, X's father, Mr G, the mother of those girls, Miss H, R County Council, who have been joined, and the children by their Guardian, Faith Senior of CAFCASS. The representation has been Mr. Cameron for London Borough of P, Mr. Sawtell for Mr G, Miss Brindle for Miss H, Miss Messenger for R and Mr. Reed for the children.

2 I have read much of two ring binders of documents which include some documents from the private law and public law proceedings, probably all from the public law proceedings. The most important documents to mention are a

judgment by Murfitt HHJ from September 2011, statements from both of the parents, a s.37 report by the current social worker in London Borough of P, Sarah O'Connor, psychological reports on both parents and answers to questions put to him by Dr. Darren Spooner, a report from Working Close, the unit which has been working with the family in London Borough of P, and reports from the Guardian, and I have heard oral evidence from Miss O'Connor, from Miss Prior, who is the team leader in R, from each parent and from the Guardian.

- 3 There have been proceedings about these children since 2006 when the parents originally separated, with a gap from 2008 to 2011, when they were reconciled. I am not going to attempt to summarise the chronology, which is set out in detail at pp.A1 to A26 of the private law proceedings. It has been unhelpful that there has been little in the way of judicial continuity at least until 2011 when Judge Murfitt took hold of it. Both girls had always lived with their mother and for much of the time with their father as well, but on the 17th May 2013 the pre-existing joint residence order, as it was termed, was amended so that the girls would spend the weeks with Mr. G for the first time and alternate weekends and half the holidays with Miss H; in other words, Mr. G was to become the primary carer. Judge Murfitt was to hear the final hearing in this case last week but was unexpectedly unavailable and the case was adjourned to this week, when she was also not available. The hearing was considered to be urgent so that any move by the child should take place prior to half-term which starts at the end of today. The hearing has been to resolve Mr. G's application to vary Judge Murfitt's order and he issued that in August last year, and then in December last year London Borough of P issued an application for a care or supervision order for both girls.
- 4 Yesterday was my first introduction to this case and reading it over the preceding days, today and yesterday, has been rather shocking even for a judge who has sat for a long time. The agreed final threshold document summarises the harm which these parents have caused their children but it is a short document and in no way describes in any detail - and I am grateful for that - the failings of the parents and the detrimental effect on the children. For all these years both parents have put their hostility and conflict with the other parent above the interests of the girls and the girls have suffered emotional harm and distress of a significant nature as a result. As the Guardian said to me today, we are now a hair's breadth away from the girls needing to be removed from their parents pursuant to a care order. Mr. G told me yesterday that he had understood this was hanging over the family for the last three years which makes me worried that it has not been seen by him, maybe by both parents, as a real threat. I must emphasise that I have been considering what is the appropriate public law order most carefully because the parents should not be under any illusion I could disagree with what is being proposed and make care orders. I will not be doing that but I agree with the experts in this case that this is definitely the very last chance for the parents to make it work having the children at home.

- 5 The position of the parties now is this. The two local authorities, Miss H and the Guardian recommend to me that X moves to live with her mother in R under a shared residence order, and that she be under a supervision order to R for a year. They all propose that Y remains living with Mr. G pursuant to a shared residence order under a supervision order to London Borough of P for a year. I will come back to the contact arrangements a bit later. Mr. G wants X to stay living with him and Y. He accepts that there should be a supervision order in respect of both girls. If the two girls live in two different homes it is proposed that after a three month settling in period they see each other each weekend, alternating, spending the weekends together in the home of one parent and then the other parent, but that is subject to it being affordable as both parties are currently on benefits. For the first three months as the girls adapt to the new arrangements the visits will be on alternate weekends. The holidays would continue to be shared with both girls staying together but spending half the holidays with one parent and half their holidays with the other parent, but if the girls were living with Mr. G it is proposed that Miss H would continue to see both girls on alternate weekends and half the holidays. I have to note that for the last eight weeks or so Y has not seen her mother at all, and this is a matter of concern.
- 6 The main area of disagreement has been over whether it is right to separate the girls, and I appreciate that Mr. G's case is based most on his belief that it is best for the girls to stay together rather than on his own wishes or any other factor. The issues I have to decide are therefore should the girls be separated so that one lives predominantly with Miss H and one lives predominantly with Mr. G, do I agree with the proposals for the girls to see each other, do I agree that there should be one year supervision orders, and should there be a s.91(14) order for two years as each parent ask me to direct, and the court Guardian agrees. As far as the public law aspect of the case is concerned, the relevant law is s.31 if I am considering making final supervision orders today, or indeed care orders, and s.38 if I am considering making interim orders, as I have been thinking about. As far as the arrangements for where the girls should live, s.1 is the key section and, in particular, the welfare of each of X and Y is my paramount consideration.
- 7 I cannot, in the time left today, attempt to summarise all the evidence about the past and it also would not be helpful. Perhaps the most important evidence as to the way ahead is the report and the addendum by Dr. Spooner. I have to say that of the many professional witnesses I have, he writes in a very blunt and clear way, which I find helpful. He has not been challenged and I accept his evidence which I have found to be most cogently argued. He eloquently expresses the serious damage which the parental conflict not only causes to hypothetical children but has caused and could cause further to these children. He does go as far as recommending the separation of the girls and I do not agree with submissions made on behalf of Mr. G that he does not go that far; he does, and he sets out the disadvantages that could ensue as well as the advantages. He accepts that it carries risks but, on balance, however, he thinks it is necessary. He

finds that Y's primary attachment figure is Mr. G and that Miss H is X's primary attachment figure, and I agree with that. He then says that he agrees with the local authority proposal to place X with her mother, and he gives various reasons. He says that:

“If the children are placed separately it would mean that the best therapy for these children at the moment is to enjoy a significantly better and more consistent level of empathetic attunement, attention and response from their parents, and it is for this reason, especially in light of the feelings and wishes of the children, that I think there is mileage in considering the separation of the children. Notwithstanding L [who is Miss H's baby] this would mean that Y and X would have considerably more access to the primary attachment figure of their choice.”

He says:

“Neither child wishes to compete with each other for parental attention on a daily basis and both would feel something of a sense of empowerment and therefore feeling that they matter by having their feelings and wishes respected and agreed to. Such an arrangement would also hopefully serve to demonstrate to both X and Y that their parents had collaborated to prioritise their needs”

And I very much hope, even though I know this decision is not what Mr. G wants, that he will hear that paragraph. It will be important for both girls to see that their parents have collaborated to ultimately prioritise their needs.

8 On the issue of separation, Dr. Spooner says:

“Primary attachments are more important to children than sibling relationships. The primary attachments provide protection and safety and meet the majority of the basic and complex needs of children. Sibling relationships do not. It is clear that attachments to care givers are significantly more important than attachment to similar age pre-adolescent siblings.”

I agree with what has been submitted to me, that there is so much abuse in this family as contained in the reports and I do hope that both parents read them again when the dust has settled. As Dr. Spooner says, and he says it is characteristic of him repeating himself, but I of course am under the same risk:

“I am therefore saying that the greatest risk to these children is continued exposure to their parents' problems. I think this risk overshadows the risks to therefore being separated as long as the parents sort themselves out.”

9 I turn to the witnesses who attended. I first heard from Miss O'Connor, a social worker who has given evidence before me in London, and of whom I hold a high opinion. I found her in this case to be fair, realistic, thoughtful and overwhelmingly sensible. She was carefully challenged by Mr. Sawtell but I accept her evidence both of X's wishes and feelings but, even more important, about it being in X's best interests, in her professional opinion, to go and live with her mother. She did not hold back in recognising the good aspects of Mr. G's care for the girls but she was of the view, which I accept, that there is evidence of X feeling that she is on the outside of the relationship between Mr. G and Y, and that stems in part at least from Mr. G and Y's shared negative view of Miss H. Miss O'Connor told me that Mr. G will not allow her into his house and says he will call the Police if she tries to enter. That is completely unacceptable behaviour by Mr. G and a prime example of him putting his own wishes and feelings before the interests of the girls. Although obstacles have been put in her way,
I find that this social worker has done excellent work with this family in a very difficult case, and that her proposals for future work to try to improve the parental relationship - mediation, work with Working Close, direct work with the children - is what is needed.

10 Miss Prior gave brief evidence. She knows this case from old and she will have management of it if X returns to live in R. She agrees with the plan for X to return to Miss H and considers that she can work with Miss H as she has done before. She gave evidence of the improvements in Miss H's ability to care and in herself, and I accept that evidence.

11 I then heard from Mr. G. Dr. Spooner had said:

“There is no evidence that I am aware of to suggest that his basic parenting skills and his parenting knowledge are anything other than good enough. The children are reported to have settled well with him since May. They have settled well back into their old schools and they are ostensibly doing well.”

He also says that Mr. G can talk the talk about the importance of Miss H and him working together and the importance of them ending their hostility, but Dr. Spooner questioned whether Mr. G can walk the walk, and this was exactly my impression. Mr. G was able to tell me what the problems were and how things should be done, but he was very easily tipped into the sorts of behaviour which Dr. Spooner identified. He was unable to see what he had done wrong, everything was everyone else's fault, and he was negative about the professionals and the mother. On the basis of his written evidence, my impression of him in the witness box and what he said, and on the basis of what Dr. Spooner says and the failure to get Y to see her mother for the last eight weeks, I do not accept his evidence that he is never negative about the professionals or about the mother to

the children, and I do not accept his evidence that he does all he can to get Y to spend the time which the court has ordered she should spend with her mother. I conclude that although he loves both girls, and I am sure provides much of what they need, he is not consistently able to meet their emotional needs and this causes particular difficulties for X when she lives with him because her primary loyalty is towards her mother. I am not sure if this point has been dealt with by other judges or not, but there must be no more recording of telephone conversations, or indeed any conversations. Certainly I will not accept any bundle with any transcripts like that in any future hearing.

- 12 Miss H gave briefer evidence, and I was impressed. Of course she is equally to blame for the awful history, but I saw real signs of progress in Miss H and I have some confidence that she not only has made important changes which her son, Freddie, is benefiting from, so much so that the local authority are not involved with him at all, but that she has really taken in the changes which have to be made for both girls' benefit. I also accept she has no current mental health problems and that she has acted appropriately over the recent incident when one of the girls was exposed to sexual material in another child's house.
- 13 Both parents, I am told, are committed to the work at Working Close and to the mediation process, and that is very important. However, there is no guarantee that their progress will be at the same pace or that both parents will stick to the work. The local authorities must be alert to this so that the failure of one parent does not bring down the other parent. It is vital for both these girls that not only are they considered as individuals but that each parent is as well.
- 14 The Guardian, Miss Senior, gave very helpful evidence. She has thought through all the issues in this case with great care, and I accept her decision to limit her direct work with the girls as the right one in a case where the girls have had far too many people asking them questions and generally intervening. I have listened carefully to her advice over the issue of what orders to make to confirm the placement of each girl as I have been thinking of making individual residence orders, but the Guardian persuaded me of the merit in this case of continuing the shared residence orders. I am satisfied that the Guardian makes her recommendations based on her professional opinion about what is in the best interests of each of the girls, not just on their express wishes and feelings, which in the case of X the Guardian concedes until recently had been confused. As I think I said at the start, the Guardian is only just persuaded that these girls should stay living with a parent and not in foster care, and I agree the decision is very finely balanced.
- 15 On the central issue as to the separation of the girls, the Guardian commends to me the evidence of Dr. Spooner, with which she agrees, that it is very important for each girl to be with her primary attachment figure. Miss Senior recognises that there are difficulties in implementing the amended care plan, which

otherwise I am happy with, because a parent may not be able to afford a round trip each week to facilitate the weekends which each girl should spend with each other after the first three months. She has proposed an alternative cycle of two in three weekends. The mother would accept that because of the money worries, but Mr. G would rather it remained weekly, the Guardian would rather it remained weekly, so would I, and I will see later what discussions have taken place on this point.

- 16 My decision therefore, as I have said, is I agree with the proposal that X should move to live with her mother under a newly drafted shared residence order and that there should be a one year supervision order to R, and that Y should remain living with Mr. G under a new shared residence order and that there should be a one year supervision order to London Borough of P. My reasons are many and are probably best addressed with reference to the check list in s.1. As to two preliminary points, if it is not already clear, I am not saying by this order that all is well with Miss H's parenting. There is clearly room for her to improve and, in particular, to work on the relationship with Mr. G. However, I have seen enough positive change to conclude that she can care for X at this time. My second preliminary point is that in my judgment living with her mother as opposed to with Mr. G will best promote X's welfare, which is my paramount concern.
- 17 As for their wishes and feelings, I accept the evidence from Miss O'Connor that X has been consistent with her in saying that she wants to live with her mother since Miss O'Connor first met her in June. Indeed, it seems that her wish to live with her stepfather was short-lived. Miss H has also given evidence, which I accept, of X's wishes, and Miss H was brave enough to tell the court when X did not wish to live with her and to accept that Y does not wish to live with her, and I do accept what she says are X's wishes. Mr. G has rightly pointed out that at other times X has said the opposite, but I am satisfied that her views have crystallised and she knows what she wants. Her wishes and feelings are only one factor and I know that she is only nine but I consider that she has recently been consistent in her view that she is expressing a wish to return not just to her mother but also to her other family and friends in R, and indeed the life she used to live until May. As far as Y is concerned, I anticipate that she will not like the decision that X will go but that cannot be central to this aspect of the decision, otherwise it is clear that Y wants to stay with her father.
- 18 As to the children's needs, their needs have been clearly identified. Mr. G has been meeting much of what X needs but I have already found he has not been able to meet all her emotional needs. Miss H in the past has not met her children's physical needs but I find she is likely to be able to now. X's educational needs will be met in R, as they were in London Borough of P, and I have said that X's emotional needs are more likely to be met by her mother, but I reiterate her needs will only be fully met if the conflict with Mr. G diminishes. X also needs to maintain a close relationship with her sister and with Mr. G. Y's

main unmet need is to improve her relationship with her mother and for this to happen both parents have to improve the way they deal with each other and how they refer to the other parent. Y must be allowed to love her mother even if her primary attachment is to her father. Miss H may well need to improve her management of Y and this will be addressed in the work she is doing. Y needs the conflict between her parents to be in the past for her and to be able to meet her potential. She must not continue to remain living in an emotional war zone.

- 19 The likely effect of any change: They both had to undergo a great deal of change but I find that the proposed change for X now is most likely to meet her needs and it is of course a change back to what was her familiar life. Y will have some benefits from having individual time with her father, who is her primary attachment figure.
- 20 Age, sex, background, any particular characteristics: No one has emphasised to me in this case the fact that Mr. G is not X's father. I wholly accept that he is her psychological father and that there is a great deal of love between Mr. G and X. However, like any other child, X has a right to be brought up by a natural parent if this is possible, and I have found that it is possible in this case and that X should be with her mother, and this is just one of the factors in my mind in making this decision. Everyone agrees that Mr. G should retain parental responsibility for X, which is in part why there should still be a shared residence order, and I agree to that, and X must continue to be aware that Mr. G remains everything he always has been for her when she moved to Miss H's care.
- 21 I do not think I need to say anything further about the harm which each child has suffered and is at risk of suffering. It cries out from all the papers and what I have already said.
- 22 All I would add is that X must now be allowed to have a proper relationship with Y and Mr. G, and Y must be allowed to have a proper relationship with her mother. Similarly, I have said all I need to say about the capabilities of each parent in what I have already addressed. As Dr. Spooner has said, the girls are just young enough to recover if all that the parents have done wrong by fighting all this time is now in the past.
- 23 Looking ahead, under the shared residence order the holidays need to be shared as before, though it may be sensible for neither parent to have more than two weeks at a time with the girls. Christmases should be alternated. As for the supervision order, I approve the threshold document. I make a one year supervision order with regard to X to R, and a one year supervision order with regard to Y to London Borough of P.
- 24 I have considered very carefully whether I should make an interim supervision order in particular with regard to Y. I have considered making interim

supervision orders for both girls to see if the parental relationship is going to improve because if it does not it seems to me that care orders are necessary. For Y, it seems to me that if Mr. G does not manage to get Y to spend time with her mother and if he does not change his attitude towards Miss O'Connor, in particular if he does not allow her to enter his house, then it may be appropriate for the court to consider making interim care orders and invite the local authority to remove Y from his care.

- 25 On balance, I have decided to make final supervision orders because I want to give the professionals, who have impressed me, the best chance to make the new arrangements work, and I also want to remove the children from the court arena. I do not think the local authority should allow things to get any worse, and if they do not get noticeably better in a matter of months I would hope that the local authorities or one of them will issue fresh s.31 proceedings.
- 26 I shall make an order by consent of the parents under s.91(14) prohibiting either parent from making an application to the court with respect to either child without leave of the court for two years.