

This judgment was delivered in private. 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.

Case No:RG11P01660

Neutral Citation Number: [2014] EWHC 2749 (Fam)

IN THE SINGLE FAMILY COURT

Date: 24/07/2014

Before :

MRS JUSTICE PAUFFLEY

Re D (a child: private law proceedings)

Alex Verdan QC and Haylee O'Brien for the applicant, father

Amanda Buckley-Clarke for the respondent, mother

James Mulholland for the local authority

Andrew Leong for the Children's Guardian, a NYAS caseworker

Hearing dates: 21 - 24 July 2014

Judgment

Mrs Justice Pauffley:

Introduction, essential background and issues

1.

These proceedings were begun as long ago as September 2010. They relate to a child, D, who is just 10 years old. She has been at the centre of conflict between her mother and father since she was 6. Throughout the past four years, there has never been a time when her relationship with her father has been free and easy.

2.

There have been 23 court hearings prior to this one. All of the District Judges at the local court, past and present, have been involved with the case at some stage. Final hearings have been listed on four occasions – in December 2012, April 2013, June 2013 and October 2013. A compromise order was made on the second day of the October 2013 hearing. No evidence was heard on any occasion.

3.

I became the allocated judge in January this year. This hearing has been –

•

to discover why it is that D has been unable to maintain an untroubled relationship with her father;

•

to consider various practical alternatives for the ways in which she might be spending time with him;

•

to decide whether there is a legitimate basis for the making of an interim supervision order and, if so, whether that would accord with D's welfare needs.

4.

D was born in 2004, the only child of her parents' relationship with one another.

5.

The chronology prepared by the father's legal team extends to 41 pages. It is an invaluable forensic tool. It would not add anything to incorporate extracts within this judgment.

6.

The hearing has been dynamic. Positions have shifted so that, by the end, almost nothing remained for decision.

The cause of the problems

7.

The single most important question is why there has been so much trouble for D in maintaining a good and loving relationship with her father. Unless there is firm basis for understanding why there has been so much difficulty, it will be really quite impossible to make improvements for the future.

8.

It is not hard to answer that question now that the parents and B, the mother's partner, have given evidence. The first thing to say is that responsibility for what has gone wrong does not lie on one side only. It is clear there have been mistakes made by the father as well as by the mother and B.

9.

As long ago as September 2010, when the father did not allow D to go home to the mother after a holiday, he accused B of having sexually abused his daughter - a very serious allegation to make against anyone, as he acknowledged in evidence. The father explained he had heard that B had washed D (then 6 years old), without a flannel, between her legs. He did not think she should have done that, it should have been the mother; and, as he said in evidence, he "showed his concern and wanted to protect his daughter in the best way possible." He did that by contacting the police and social services. Significantly, he did not open a dialogue with the mother which, almost certainly, would have been the most sensible, reasonable and appropriate thing to do in the circumstances. He took the matter of how D was washed to the authorities. He caused a great deal of trouble.

10.

Though the father agrees he did not act in D's best interests by failing to return her home after holiday contact in September 2010, I gained no sense from his evidence that he is regretful about accusing B of sexual abuse. He made no secret of his wish that B would disappear from D's life and said he believed that if she did then he would be able to have good communication with the mother and restore his relationship with his daughter.

11.

It was clear to me that the father has very little regard for B. He believes she is trying to damage him. He has known her for 30 years, considers her two-faced and believes it is much easier not to be

friends "to save all the hassle." Most importantly of all, he accepted in evidence that he has said to D, "A lot of people are frightened of B." That was a very harmful thing to have said – as he would realise immediately if he were able to put D's feelings ahead of his own.

12.

The inescapable fact is that the mother and B have been a couple for several years now. They would seem to be committed to one another and wish to share a home together. At the moment, they live close by to and spend a lot of time with one another. B is close to D and plays an important part in her life – a fact which the father finds extremely difficult. He believes that B yearns for a daughter. His evidence revealed how frustrated he is by the way in which he feels his place in his daughter's life has been taken by B.

13.

The mother and B are on the defensive and feel, as they both said in evidence, that everyone is picking on them. They feel they have been "unfairly criticised for being bad parents." Both of them consider themselves to be good parents – a fact which has prevented the mother, almost certainly, from taking part in parenting classes or separated parents' programmes whenever they have been offered. After all, she would say, I am a mother to several children; I know what I am doing and do not need help.

14.

The mother feels she is under attack as the result of the court case. It's all been very stressful and is "too much pressure." As B said, the father has "made a lot of appeals and it does become a bit of a war."

15.

The single most important error made by the adults has been to allow D to be exposed to their strength of hostile feelings, as happened – for example – in September 2011. There was a protracted, angry and aggressive handover. The mother has claimed it was the father who grabbed D under the arms and forced her into his car. The father's sister has said it was a member of the mother's family who was responsible. In evidence, the father said he had carried D into the car because the mother's sister had said, "You have to take her." He agreed that D had bumped her head on the way into the vehicle. Initially, the father said he was not responsible for his actions on that day but then added he could have done things differently. He said it had been a cruel thing to do to a child and the person who had been most hurt by what happened was D – there was no doubt about it in his mind.

16.

When B was asked about the impact of that incident upon those present and who had been most hurt by what had happened, she said that she had been upset and then added the mother and also her own sister. B said the idea to film the handover had come from the police because she would then have had proof that the father was harassing her – "he had been bringing up (her) name all the time and, no, it had not helped in the long run."

17.

By all accounts, the events of that contact handover were really quite dreadful. Some twenty or so adults were present. D was in the middle of and witnessed terrible conflict. After that, she could have been in no doubt. She knew – because she saw it for herself – that her mother, B and that side of her family are strongly antagonistic to the father and his family. It was a scene which no child should have witnessed. If it was a set up – and it's difficult to believe it could have been anything else, given the video recording made – then it is a very worrying sign that the mother and B were prepared to expose

D to such harmful conflict. She must have been caused considerable emotional harm. It is very worrying indeed that B, seemingly, had no appreciation of the effect upon D of being literally in the middle of such a ghastly fight.

18.

The likely effect upon D was to remove any doubts she may have had about her parents' ability to co operate and behave in a civilised way towards one another for her sake. What happened on that day has cast a long shadow. If the mother and B were prepared for so public a fight over D, what I wonder do they say to her about her father when they are at home and in private? There really is no room for doubt. Currently, the mother and B are strongly averse to the father, as all of their discussions with professionals reveals. I believe D has been either actively or passively encouraged by the mother and B to join in with the negativity directed at her father.

19.

Another of the mother's and B's biggest mistakes has been to allow D, from a very young age, to become so powerful. They both believe that court proceedings and court orders are "a waste of time." They have said that "people should listen to D's views and give her a break from contact." The mother fails to recognise the need to provide guidance and appropriate boundaries. It is quite simply unacceptable to leave decision making to a 10 year old child, still less a child of 6 or 7. All the indications are that from just such an early age D's feelings have been used by the mother as the prime reason to oppose contact.

20.

D's views - however they may have been formed - are important considerations. But that is not to say, they should take priority over other factors. Quite obviously they should not.

21.

It was very interesting to listen to the mother's evidence about the possibility of a particular group activity. I found her to be remarkably resistant to D taking part. What she said about the issue provided a prime example of how she is allowing D to take important decisions which, as a parent, the mother should be making for her child. She said that D has a busy life - with her other activities. She was not sure D would have time for the group and added, "I'm not bothered if she wants to go but I'm not sure how she'll feel about it, how she will respond." The mother said that although it would be fine for her to go, she did "not want to see her tired."

22.

I was left in no doubt about the extent to which the mother can be stubbornly resistant to agreeing to something which most parents would immediately recognise was a good option for their child. The mother is overly sensitive and becomes very defensive whenever she feels some aspect of her parenting is being criticised.

23.

I have little doubt but that she has viewed the advice of judges and court orders in a similar way. The mother, supported strongly by B as she has been in relation to everything to do with the father, has simply believed she knows best and will take very little notice of professionals' advice or court orders if she does not agree. That, to my mind, is why so far there has been such pitiful compliance over the years.

24.

One of the final matters for comment in this section of my judgment is the obvious point that none of the adults seems to have much understanding apparently of the impact of their actions upon others. Currently, they do not seem capable of empathy towards one another maybe, just maybe, because the dispute has lasted so long. The father is so furious at the way in which his position with the mother and D has been usurped by B that he fails to see how his dislike for her must hurt the mother as well as D. The mother and B are so bound up in their relationship and desire to be together, to the exclusion of the father, that they cannot envisage a role for him and they deny D the opportunity to have a positive relationship with him.

25.

So there has been fault on both sides; and it has probably not helped that all of the adults have known each other for such a long time and, as I understand it, move within a comparatively small social circle. The distrust and lack of respect run deep. It will be an immense task for the local authority social workers to try to effect changes in attitude after such an extensive period of corrosive bad feeling.

26.

Lastly in this section of my judgment I should say that in their different ways the parents are both impressive people. Neither of them is a villain. Each has been affected by the harmful effects of almost four years of litigation. The father has been persistent in using the court to secure a relationship with D – but he has done so because he sincerely loves and cares about her, not in an attempt to make life difficult for the mother or B. His frustration with them is obvious but he genuinely wants to make things better for D's sake.

27.

Almost certainly, the mother has a softer side than she was able to reveal at this hearing. I'm sure she looks after D extremely well in almost every area of her development and, generally speaking, the mother is fun to be with. She, like any parent, deserves respect for the things she does well. Constant criticism is too much for anyone to take.

28.

It has not assisted the situation at all that the broad swathe of professional evidence has tended to attribute almost all of the responsibility for the problems at the mother's and especially B's door. A more balanced approach in the years preceding this hearing might well have resulted in progress much earlier.

29.

The past four years of relentless litigation has caused the mother in particular immense anxiety. There is a way through these difficulties. The key to success will be acknowledgment of responsibility and a willingness to accept advice.

The practical alternatives for the time that D should spend with her father

30.

There is no apparent disagreement, whatever the papers might suggest, with the idea that D should spend a longer period with her father whenever she sees him. The mother said she would agree but she would rather have the social worker there to see how D gets on. The mother thought D would "panic" if the extension of time happened too quickly but she was "fine about it if the social worker was involved" adding that D could be "stubborn minded."

31.

The father who told me he “loves D to bits” believes longer periods of seeing her with the paternal grandmother’s home as the base, is a “great idea.” He described how the first hour of any contact, under the current regime, would be spent in trying to calm D down; and that once the ice is broken, contact is almost over. So there has not been enough time; and he talked about all of the activities they would be able to do if he were to see D over a longer period other than in the current venue.

32.

I see every reason to make alternative arrangements not least because the current scheme has become so very fraught. It is a fundamentally bad idea for the mother to be in close proximity and for D to know that. It gives credence to the idea that in some way D will not be entirely safe with her father and / or that he (and his very capable sister) will not be able to cope with her behaviour. Indeed, it may well have made it more likely that D will have put on a performance of being unhappy. It must have been acutely embarrassing that her sobbing resistance to her father has occurred in a public place under the gaze, presumably, of curious strangers.

33.

So there is every reason for the arrangements now to switch to the paternal grandmother’s home and to be extended beyond three hours. I can see no good reason why D should not spend a full day with him; and within a short while (by which I mean after two months or so) she should be spending weekends at her father’s home as she did, so satisfactorily, in the period before September 2010 as well as on two occasions in 2011.

34.

It is vital that early steps are taken in an attempt to re-build relationships between the mother and father for D’s sake. Viewing the matter realistically and understanding the depth of ill feeling between the father and B, I consider it unlikely that they will be able to bridge their differences in the very near future. But there is ample scope for the parents to concentrate upon restoring some semblance of a civilised relationship with one another. There is a long overdue need for each of them to express regret and, hopefully, remorse for the mistakes they have made, for the hurt caused and for them to understand how their actions have affected D. Until they have had an opportunity to talk about the distress, unhappiness, mistrust and bitterness arising out of their relationship breakdown, to understand how difficult it has been on both sides, there will be no adequate basis for restoring trust between them and a common purpose in relation to their daughter. The starting point is the work envisaged by the local authority’s plan with which, so encouragingly, both parents are fully in agreement.

35.

In answer to one of my questions, the father said that “of course” the mother would be welcome to come in to the home he shares with the paternal grandmother. She is an elderly lady. The father poignantly described how, in a way, his mother misses D’s mother; and that she has not seen D for two and half years.

36.

From D’s perspective, there could be no better news than that her parents were going to sit down around the paternal grandmother’s kitchen table; that the decision has been taken by them together that it is much better for her to have longer with her father than just three hours; and that she will be seeing him at his home from which they will be able to go out and enjoy all sorts of activities. The

mother will be able to say to D that there is no reason at all for her to be anxious. Her father loves her to bits and only wants her to have a good time.

37.

It is not, and should never have been, a question of the mother having to force D to see her father. The mother has a responsibility to offer D wise guidance and boundaries. If she is able to demonstrate there is no problem whatsoever in any arrangement for D to spend time with her father, that it is something the mother warmly welcomes and supports, then all of the problems of resistance and 'acting up' will simply fall away. Children take their cues as to how they should behave from those to whom they are closest. The mother does not have to say she does not like the father for that to be obvious to D. The time is long overdue for the mother to begin to act responsibly and with courtesy towards the father.

38.

It would be a very encouraging sign if the father were able to bring himself to say he is sorry to the mother for the unkind things he has said about B. The snide remarks must stop if there is to be hope, for the future, of improved relationships. The mother would be acting in her daughter's best interests if she were able to acknowledge some of the father's pain – that he is no longer a day to day part of D's life, feels excluded and has been through a terrific ordeal in trying to preserve his relationship with his daughter. Only when the parents are able to relate together as civilised, polite and respectful former partners will they truly be able to say they are doing the best they can for their daughter.

Is there a legitimate basis for the making of a supervision order: would such an order serve D's welfare interest

39.

Whether there is a legitimate basis for making a supervision order depends upon my findings in relation to significant harm. Unless I am able to find there is reasonable cause for believing D has been so harmed then there would be no foundation for making an interim supervision order. Such an order could only be made if also I were to be satisfied that it is in D's welfare interests.

40.

The local authority's application encapsulates the problems in a way, broadly speaking, I cannot improve upon. It must follow from the findings made in the earlier parts of this judgment that I wholeheartedly endorse the local authority's quite excellent formulation of the grounds for intervention.

41.

I can go further than is required by s.38 (the test for interim orders) because evidence was given over four days. So these findings are made not on the basis of "reasonable cause to believe", they are my final findings. I am altogether persuaded that D is suffering significant emotional harm attributable to the way in which her parents have responded to her needs over a period of almost four years.

42.

The mother and the father have exposed D to their adult conflict and acrimony. She is deeply aware of the dispute between them but powerless to change it. She has grown and developed in an environment where her requirement for a relationship with both parents has not been prioritised by them.

43.

D knows all too well about her mother's negative feelings towards her father and his hostile attitude towards the mother's partner, B. D has responded to the situation in the only way possible for a child of her age. She has associated herself strongly with her mother – her primary carer – to protect herself from constant conflict with the one person upon whom she is dependent.

44.

The mother is unquestionably able to provide D with good basic care but she shows no insight into how her lack of guidance and boundaries around contact is detrimental to D's welfare. She allows D to make decisions about whether and where she should see her father and places decisive weight upon D's expressed wishes and feelings. This is a grave error and places D in a profoundly difficult, almost impossible, position from which she does not have the resources to extricate herself.

45.

Currently and for several years now, the mother has shown no insight into the need to adapt her parenting so as to meet D's emotional needs and refuses to acknowledge she has any difficulties in this area. She is on record as saying, "This is nothing to do with me – it's D and I have nothing to say really, no comment."

46.

The father has been persistent in his quest to have a relationship with his daughter but he, too, lacks intuitive understanding of the likely impact of his actions. It has been profoundly unhelpful to his relationship with the mother than he loses no opportunity to criticise B. He fails to see how his negative attitude towards B, of which D is all too aware, will have affected her. He allows his own frustration at the current situation to infect his relationship with D.

47.

If there is to be early potential for dramatic improvements, the father will have to moderate his responses and begin to accord respect to the mother in the choices she has made about how and with whom she lives. She will have to react swiftly and positively to suggestions about how she can behave differently towards the father and D so as to rescue her daughter from the impossibility of her current situation.

48.

D's welfare demands that a supervision order be made. The local authority's plan for immediate action is a good one. Every aspect of what is suggested, as emerged during the social work manager's thoughtful evidence is endorsed by me. There is no time like the present for the work to commence – so I reject the mother's suggestion of a delay until September. The plan will be implemented, as planned, next week. The father will spend extended time with B in just over a fortnight from now after preparatory steps have been taken. A final order will be made in the private law proceedings.

49.

Such further judicial involvement as may be necessary will arise within the public law process.

Postscript

50.

In the aftermath of judgment, there were a number of very pleasing and, from my perspective, extremely surprising developments. B whose facial expressions during judgment had alerted me to the likelihood that she accepted much of what I was saying, indicated she was indeed in agreement with my judgment. That led to similarly positive reactions from both parents. After I left court, so I was

later told, the three adults hugged and apologised to each other. They agreed to sit down that afternoon to discuss 'next steps' with the social work professionals. That they did for over an hour. They discussed together how they would try to work together for D's sake. All the adults agreed to draw a line under the past and move forward.

51.

During the following week, there was a meeting between the allocated social worker, the parents, B and D. There were detailed discussions about every aspect of the local authority's plans. Appointments were made. Afterwards the NYAS case worker met with the parents, B and D to ensure that D in particular understood her parents' agreement to working together.

52.

Whereas during the hearing there had been provisional plans for D to meet with me so as to better understand why a judge had been involved in making decisions about her and for answers to be given to any questions she may have had, no such arrangement was considered necessary. All involved believed D had a good understanding of what would be happening. There was no need for her to meet with me.

With the benefit of hindsight

53.

It is often relatively straightforward to be wise with the benefit of hindsight. But this case exemplifies how important, even crucial, it is for the court to hear evidence in those private law disputes which show signs of being impervious to very early compromise. The process of describing the difficulties of itself, for those most intimately involved, can be immensely cathartic.

54.

The court can only make informed child arrangements orders when there is a full understanding of why relationships between parents have faltered. Trying to impose what may seem like common sense proposals, against the wishes of one parent and without permitting each of them the opportunity for a proper hearing may impede rather than expedite progress. A sticking plaster over a gaping and infected wound would never be an adequate treatment plan.

55.

Where, as here, ill feeling and mistrust have persisted for years the parents may come to believe – with some justification – that their litigation problems will never end. Almost always, the impact upon their child / children will be profoundly damaging. Ensuring early and appropriately child centred finality must be a priority in every private law case.

56.

The judgment, as the litigation end point, may open the way to reconciliation and a desire to cooperate in a way that did not seem remotely possible prior to the hearing.