

FAMILY COURT
SITTING IN LEYLAND

A Lancastrian Council v M

Approved Judgment

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.

HH Judge Duggan sitting at Leyland on 7 March 2019

1. The court is considering an application by the local authority for permission to refuse to allow direct contact between a father and his son. The child was born in early 2018 and on 5th December 2018 was made the subject of a Care Order to a Lancastrian council. He continues to live at home with his mother under the care plan approved at that time. The father is an asylum seeker from the Democratic Republic of Congo. The authorities report that it has been determined that he should be deported but the time indicated elapsed some time ago. He met the mother in 2016. Previous proceedings involving the father triggered care proceedings at the birth of the new baby and the father was excluded from the mother's home where the baby remained. The father was not allowed interim contact. There was a favourable assessment of the mother but at the final hearing the father asserted that the mother had allowed him unofficial contact with the child such as to justify a continuing contact relationship. The mother accepted some limited contact. I heard evidence in October 2018 and concluded that the father was exaggerating for his own purposes. His contact with the child comprised one encounter in the street, two meetings on the Promenade and one visit to their home. There has been no more. With the support of the local authority, the mother sees no future in her relationship with the father. The father seeks professionally supervised

contact but this is opposed by the mother, the local authority and the Children's Guardian.

2. The relevant material has been assembled in a bundle with which I am familiar. Advocates have represented the local authority, father, mother and child. I have heard oral evidence from the social worker, the father and the Children's Guardian.
3. The Court of Appeal has given guidance as to the approach which should be taken when considering refusing contact between a parent and child. Contact is a fundamental element of family life and is almost always in the interests of the child. It should be terminated only in exceptional circumstances where there are cogent reasons for doing so and no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare. There is a positive duty to attempt to promote contact, grappling with all available alternatives before abandoning hope. Contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt. The court should take a medium and long-term view. The judge should take all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case. The child's interests must have precedence over any other consideration. This requires the familiar holistic approach to paramountcy.
4. The father has been involved in different Children Act proceedings over many years. He has been involved in proceedings relating to 6 older children and he has contact with none. The most recent decision was made on 4 August 2017 when a different local authority were given permission to refuse the father contact with a daughter. In the present proceedings the Care Order of 5 December 2018 was by clause 10 made on the basis of an agreed threshold dated 3 September 2018 which appears at page B 98 of the bundle. This refers to old findings which are established in lengthy judgments which are to be found later in the bundle. The psychologist Dr Nick Banks then saw joyful contact with an older son. However there were mental health issues including low mood and self harming behaviour which required therapy. The father did not accept this. Later he saw change for the better. He did not see a direct risk to the child when the father was emotionally stable and in a supervised context. He made a valuable contribution explaining that the father's background made understandable the agitation and anger he

felt towards the local authority and system. He advised professionals to listen before attempting to redirect back to the purpose of any meeting. The witnesses said that they had accepted this advice.

5. Through much of this litigation the children's interests have been represented by the same Children's Guardian. She told me that at the time of the daughters Care Order in February 2017 she argued successfully in favour of continuing contact with the father. She had seen two very positive contact sessions in which the father had introduced positive cultural elements. The father had agreed to work with local authority staff. She had concluded that if the father was able to manage his behaviours contact could continue to the benefit of his daughter. Agreement emerged but this was clearly a balanced decision. The subsequent judgment records: –

There were several issues that caused concern, involving concerns that he did not acknowledge the risk in some of his behaviours, that he took the opportunity of contact to harangue social workers rather than enjoy time with his daughter, and that the contact, because of that and because of his behaviour, was not always in the child's best interests.

He seemed unwilling to accept that even though his daughter was still very young at the time and could not understand what was being said, that she would still be influenced by raised voices or aggression or ill feeling that was going on around her.

6. Six months later Her Honour Judge Forrester had the case before her again, this time hearing the local authority with the Guardian's support seek permission to refuse contact on the basis of experience in the intervening months. The full transcript is at M 9 of the bundle. In summary the father's behaviour and attitude were very similar to those seen previously. Concerns about physical risk in contact had abated but the father's comments to the social workers created concern about physical risk. He made a comment about abduction. He likened himself to a suicide bomber. He pushed the boundaries of any rules and would not recognise and comply. He breached an injunction

granted to protect the social workers. The judge concluded that although contact was particularly important in the case for cultural reasons, the local authority had met the high standard necessary for it to be suspended in the best interests of the child.

7. Now, 19 months on, this court is asked to reach the same conclusion in relation to the youngest son. On behalf of the father it is argued that circumstances have changed. For the first time the father has agreed to engage in therapeutic work and work to address domestic violence. He was not threatening towards his assessor. There has been no violence only empty threats that were made in frustration. The local authority assessment is criticised on the basis that it derives largely from the historic material with only one recent session with the father after he failed to attend the first. The reader looks in vain for the advantages of contact, the positive arguments in favour and discussion of ameliorating the risk. However these were fully addressed in oral evidence, including cross examination on behalf of the father. The social worker's discussion with the father involved appropriate exploration of the old issues. It really is very difficult to see any significant change. He said that there was no need for him to tell the truth when he was manipulative and exaggerated in court his unofficial contact with his son. He plans that the family reunite in the future. He was passionate about his own culture but evasive about all areas of personal criticism. The long delayed words about engaging in therapy and other work are yet to be translated into action, let alone established change. The father says he will oblige but still questions the necessity.

8. On the first day of this hearing the father shared the following views as to the future:-

I do not have any intention to hurt anyone. The day I decide to kill myself, I will not go alone. I am not feeling suicidal. I have no intention to hurt anyone but I will defend my family at any cost. The day I decide to kill myself I will not go alone. I am happy to comply with the LA if they push it too far, I will make worldwide news. I have come to the stage where I have had enough.

9. He was cross-examined and gave an enigmatic part explanation, referring to a divine duty to protect his children and the intention to include those who have harmed them. His words were a brooding, manipulative, intimidating threat aimed at those involved

with his children. The words are similar to his ambiguous reference to a suicide bomber in the previous proceedings.

10. The consistently appointed Children's Guardian brings advantages of continuity which are not available to the local authority social worker. In the context of her previous temporary support for contact, great weight attaches to her current view that there has been no change. It would be inevitable that the father would need to be advised or challenged and even a simple thing would escalate into a bigger incident. He would be unmanageable. The child would be exposed to the father's aggressive outbursts with a stop/start experience when sheltered from the worst. The Guardian advised that the impact would be detrimental. She suggested that the child would not be safe until there was reassurance that this would not happen. This would only arise if the father successfully followed through with his recent words about self-improvement. The position of the Guardian in February 2017 clearly establishes her credentials so far as the special value of contact in this case, if it can be achieved safely. She also has the advantage of long sessions with the father during the present proceedings which drive her to the conclusion that he has not changed.

11. My paramount consideration is the welfare child. I have applied the guidance to which I have made reference above, respecting the principle that contact should be stopped only as a last resort. The steps taken to facilitate contact have to be considered with the outcome of steps recently taken for older children. The options are starkly whether direct contact should commence or not. This child has dual heritage with the mother from Poland and the father from the Congo. Contact with the father would be by far the best method of ensuring that his son was brought up in his culture and understanding its value. In cross examination holes were picked in the written care plan but the local authority offer a written recording to take appropriate steps within the Care Order. Nevertheless this is an inferior approach to this issue with indirect contact making only a small contribution. In most cases the loss of contact is seriously detrimental to the child. In this case the detriment is more significant than in most cases. However contact is even more detrimental in both the short and longer term if it is unsafe either physically or emotionally. The history clearly establishes this element. I am equally satisfied that

there has been no significant change. By way of example only, father must address his thoughts and words about suicide involving others.

12. I welcome the father's new expression of the intention to take up the work recommended for him. The successful completion of this work can render temporary this suspension of contact. Even in the special circumstances of this case, contact with an unchanged father would be seriously detrimental and against the overall best interests of the child. Accordingly I grant the local authority permission under section 34 (4) Children Act 1989 to refuse the father direct contact with his son. My finalised order contains the various recordings agreed during argument.

RD 7.3.19