

## TRANSCRIPT OF PROCEEDINGS

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Ref. PE19P01621

### IN THE FAMILY COURT AT PETERBOROUGH

Rivergate  
Peterborough

Before **HER HONOUR JUDGE DAVIES**

**IN THE MATTER OF**

**F. (Applicant)**

**-v-**

**M (Respondent)**

**MR C HALE QC, appeared on behalf of the Applicant Father**  
**MISS MEREDITH, appeared on behalf of the Respondent Mother**  
**MISS S REED, appeared on behalf of the children, through their Guardian,**

### **JUDGMENT**

**24 JUNE 2021, 10.13-11.03**

**Approved**

**Her Honour Judge Lindsay Davies 24 8 21**

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**JUDGE DAVIES:**

1. I am concerned in this case with the future arrangements for two children, B, who was is now 12, and D who is nine and a half.
2. The father, who is the applicant in this case, has been represented by Charles Hale QC. The father asks the court to make an order that the two children should live with him in X and attend schools in X. There should be a period of no or limited contact to the mother and then they should have contact with their mother on alternate weekends and half of the holidays. It is the father's case that the mother has alienated the children from him.
3. The mother in this case has been represented by Will Tyler QC. The mother asks the court to make an order that the children should live with her and have contact to the father on alternate weekends in Y but spend half of the holidays with the father in X. She denies that she has alienated the children from their father.
4. The children's Guardian was K who became ill in February 2021 and was unable to continue. The case was then transferred to G who is the children's Guardian who has attended this hearing. The Guardian and the children have been represented by Susan Reed. The orders that the Guardian proposes, or recommends, are that the children should live with their father in X and have contact with their mother after a period of time when there is no or minimum contact and contact should build up so that the children spend alternate weekends in Y and half of the holidays in due course.
5. Before I embark on the judgment, it shines through this case that these are very much wanted children. They are greatly loved by each parent in their own way. Both parents have let the children down by their inability to recognise the damage that they have done by fighting over the children for most of their lives. It is remarkable that on the whole, they appear to be bright, engaging, and successful in their school environments. This must be despite their parents and not because of them. They both have serious emotional problems. B is very depressed and D is very anxious.
6. I have before me two ring binders of documents. I have read most, if not every single page of these bundles. They include the following key documents; there is a transcript of a judgment of a DJ from 2015. Then there is the order that I made in January 2019. There are reports from KK and from DD from 2016, and KK's report to the court in November 2018. There are reports from P, the jointly instructed psychologist from 12 October 2020, replies to questions on 25 October 2020, an addendum from 12 January 2021, a transcript of the evidence she gave in court on 1 February 2021, and a second addendum prepared for this hearing dated 4 May 2021.

7. The bundle includes the Guardian's analyses; the first two prepared by K on 28 October 2020 and 25 January 2021, and the third report from G dated 7 June 2021. I have read witness statements from each of the parents and those have attached to them a number of exhibits which include photographs, letters, and emails, including information from the children's schools. I have a letter which B wrote to me which is dated 4 March 2021.

8. I have heard oral evidence from P. I heard evidence from her in February 2021 and then again this month in June 2021. I have heard oral evidence from each of the parents and from the Guardian. I have read position statements prepared and filed by counsel for each of the parties from October 2020 up to this hearing in June 2021.

### **The background to this case**

9. This family has been in litigation since 2014. The parties were married in 2007. It was the mother's first marriage and the father's second marriage. The father had two adult children from his first marriage. They are R and S. The parties wanted children but after failed IVF cycles, a decision was made to seek conception by egg donation. B's was arranged through a clinic in the UK and D's through a clinic in the United States.

10. Father is a Chief Executive Officer of an international company. The mother ran the household and the family. This marriage ended in September 2014 when the mother and children left the family home where they were living in X. The mother applied for permission to relocate from X to Y where she had family support, in particular, support from her sister.

11. The father petitioned for divorce. The father made a cross-application to prevent the mother from moving to Y with the children. The mother made allegations of abusive behaviour against the father. The father made allegations of abusive behaviour against the mother. The parties had arguments, including arguments about what should happen at Christmas 2014. An independent social worker, KK, was appointed to report on child arrangements, including the application to relocate.

12. On 17 July 2015, a DJ gave judgment. She gave the mother permission to relocate to Y. She made findings of fact in relation to the allegations and counter-allegations. Overall, she found the mother's evidence was more credible than the father's. For the purpose of this judgment, I will just summarise briefly some of the DJ's key findings.

13. First of all, she found there was a considerable degree of emotional abuse in the relationship, and as a result, the mother felt anxious, emotional, and vulnerable. Then she

found that the father could not think creatively around the issues of contact and to some extent was inflexible. She said in her judgment that it goes to the heart of the father's concerns that the mother is trying to side-line him in his relationship with the children and to damage their relationship with their half siblings. The DJ stated that the mother had genuine concerns about the father properly managing contact with the children and with S. The Judge concluded, "I do not consider in the circumstances that she, the mother, behaved badly".

14. Of the father's allegations against the mother, DJ said, "I saw the mother giving evidence and formed the view that she might be defensive, she might cry and get upset, and she might shout in an argument. I do not find that the mother had an uncontrolled temper. I do find that she threw the father's phone across the room following an argument about chocolate. I also found that the father threw the mother's phone across the room and that the police were called. I do not find that she beat the father about the head with her hands. I do not accept that the mother assaulted the father physically on a weekly basis."

15. She did make a finding that the parties argued in the Summer of 2014 and as a result, the children awoke and were distressed. In relation to the allegation that the mother had hit the father on the head and scratched his face, she found that allegation was not proved. Nor did she find that the mother was hostile to S. She found the allegation that the mother had a high level of hostility to the father's biological family, were vague, unsubstantiated, and rejected them. She found that the mother did use abusive or hostile phrases about the father's first wife, as did the father.

16. On the balance of probabilities, she did not find that the mother used the phrase that she "intended to exact revenge" or "make the father pay". DJ said if she was wrong and she did make those statements, they would have been made in the heat of the moment and did not reflect her true intention. DJ said, "From the first weekend after separation, the mother has ensured that the children see their father, and in my view, that is her true intention. She had such a poor and damaging relationship with her own father. Why would she not want a full and happy relationship for her own children with their father?"

17. The 2015 proceedings concluded with the mother and children moving to Y. Contact was to take place twice a month during term time. DJ ordered that on one of these, the mother should take the children to X where they will be from Friday to Sunday. On the second weekend, the father shall spend time with the children in Y, and if it was possible, that could be from Thursday to Sunday.

18. Throughout the lengthy judgment, DJ considered the father's worries that the mother would alienate the children from him and his comment that he would "fight and fight for the

children”. DJ was clear that she believed the mother would support the children having a good relationship with the father. The father has never accepted DJ’s decision to allow the family to relocate. However, relocate they did.

19. The father funded the school fees for the children to attend Y school, and in due course, the father and R, the eldest child of his first marriage, bought a house in Y for the father to use on contact weekends. At the end of judgment, the DJ set out how the parents should deal with the question of the children’s conception. There was something of a dispute between the parents. The mother was inclined to say that she did not want the children to know, or at least not yet. The father thought the children should know as soon as possible. DJ was clear that it was crucial that the children should be made aware of the donor egg conception as soon as possible. She said that the longer it was left, the more difficult it would be. She thought the parents would need to obtain advice and assistance jointly in doing this and she stated, and I quote, “I suspect that the parents will be more anxious about this than the children.”.

20. As a result of that comment, KK, the independent social worker, suggested that the parties ask DD to help work out a way of talking to the children about the donor conception, and a note has been prepared of the meeting that they had with the parents in January 2016.

21. Following that meeting with CC, it seems the mother had bought a simple children’s story book about donor conception which she read with B on one or more than one occasion. She said the book was then put in the bookshelf. In August 2018, while the children were staying with their father in the Summer holidays, B raised the issue of donor conception while the family were at the dinner table. It seems that father dealt with this rather out of the blue issue in a clumsy way. B has been under the impression that the father said in response to the questions that the child “had two mothers”. At some point, but it is not clear when, B says that the father also said “you will never look like your mum”.

22. By this time, the Summer of 2018, arguments had been ongoing between the parents. The mother had stopped sharing the travel. The mother said the father was not always consistent about the weekends due to his working pattern. Disputes had arisen about the children going to X for weekends because the mother wanted all term time contact to be in Y. The father was anxious to ensure that the children should continue to come to his home for weekends for a number of reasons, including the fact that the older children, R and S, were often there and it was his home. He sometimes used the phrase that the siblings and the paternal grandmother were their “blood” relatives. The mother found that to be hurtful.

23. B had started dance classes. These dance classes at one point were on Friday evenings, and at other times were on Saturday mornings. The mother did not want B to miss the dancing class and B enjoyed the dancing class. School hockey matches would be on a Saturday if B was selected for the team. B was of course still very young at that stage in 2018.

24. After the August 2018 Summer holiday, contact stopped. The mother applied to the court to suspend contact and to obtain a specific issue order about the information that should be given to the children about their conception. The mother alleged there was ongoing emotional abuse. The father filed a cross-application and his application was to enforce the 2015 contact order. In the course of those proceedings, KK, who had continued to work with the family since 2015 off and on, was requested to file an updated report.

25. KK spent some time with both children in November 2018. She read them a letter that the father had written in which he apologised to the children for the conversation they had about their conception. D said to KK in 2018 that *the father does not like mummy and is cross when he talks about her, but mummy does not really like him, but she does not say mean things. D said that she likes H, father's new partner. D said I love to see daddy but not when he says mean things. D wished mummy and daddy liked each other. D said mummy does not come to dad's house, he does not come to ours. If they agree, it would be nice. It is horrible when mummy and daddy meet.*

26. B read the father's letter with KK and said it made B feel a little better, but did not like the reference to the dog. B said that *daddy had been saying mean things about mummy since they broke up. He says horrible things about my family and about my Auntie. The last time I saw him, which was August 2018, he said I will never look like my mum. I was upset and Granny said do not talk about it. Then I was upset, and S and R were kind to me. When KK asked what bits of seeing daddy are good, B said all is mostly, B always wants to see him, but then he spoils it.*

27. B said that when the parents were together, B only remembered the fighting or the not liking each other. B described an occasion when they heard yelling, they were *fighting outside the door, they had "devils eyes". They hated each other. When they came to school, they sit like they have a brick wall between them. They look ahead, they do not speak, mummy looks tense and stressed, the handovers are horrible, they look weird. If he stops saying mean things, if he and mummy were nice to each other just a bit, that would make it so much better.*

28. B said they were fine about seeing the father with KK being there. B did want to see him again but wanted to get used to it again. B said it was a big thing not to have seen him. B did not want less time with daddy but wanted the activities taken into account when contact was being worked out.

29. KK took the children to see their father at Pizza Express and KK reported that there followed a very jolly evening where B was particularly funny and enjoyed teasing the dad. They went back to his house, they played the piano and games. KK took them back to the mother's, when they said goodbye the children were hugging their father and chatting to him quite easily.

30. The next day, B said to KK it was very nice with daddy the night before, he is good fun when he is like last night. There was further conversation between B and KK. B said it was great to see daddy and B liked joining in the phone call, and B wants to talk to the father next time. B said B is not frightened or worried apart from when B knows he is angry. B thought he was cross with mummy and that worried B. B liked to be with father but was not ready for overnight stays.

31. KK spent another day with the family on 26 November 2018. The father and children all talked sensibly. D repeated that they wanted the parents to be nice with each other. During that day, they met the mother by agreement and KK noted the parents could not have been nicer to each other. At the final discussion KK had with the children in November 2018, the children said they had been pleased at the way the parents had reacted during the joint meeting. B repeated that when the parents meet, there should be, and this was in capitals, "*NO WALL AT ALL BETWEEN THEM*".

32. B said in the context of H, that is the father's girlfriend, that *B only gets half the attention B needs because D takes a lot of attention and dad really likes H as his girlfriend. B said B liked it when daddy really concentrated on B, properly. B said I really like it if it is daddy and us for at least some of the time.*

33. That then was the position in November 2018. Despite this positive report, B had no further contact with the father. B refused to attend contact in X over the Christmas holidays 2018. I heard the case over two days in January 2019. I concluded that contact should continue as was set out in the 2015 order with one weekend a month in Y and one weekend a month in X in term time. I made that order on 10 January 2019. On 11 January 2019, the mother met the father with the children for supper but B refused to speak. That was the last time B had any contact with the father until the Autumn of 2020 in the context of this application.



34. The mother did not accept my decision of January 2019 and applied for permission to appeal. Mr Justice Cohen stayed the appeal on the basis that the parents agreed to go to family therapy. KK recommended a family therapist, and in 2019 the parties began some work with DD but the contact did not progress, although D's contact was re-started in October 2019.

35. In the Autumn of 2019, the mother arranged for B to have counselling sessions with somebody called V but she did that without consulting the father. In December 2019, no progress having been made, the father applied to enforce the contact order, and it is that application that has eventually come before me this month. I have heard this case over five days. The children were joined as parties and a Guardian was appointed. Directions were given for a psychologist with an interest in parental alienation to be instructed jointly, and that was P. Neither party nor the Guardian had had any previous dealings with P.

36. P's report was filed late in October 2020. P's assessment concluded that the children had been alienated by the mother. P said that B showed signs of a severely alienated child, and D was on the same trajectory. P was clear the whole family needed therapeutic intervention. P recommended that the children should be immediately removed from the mother's care. P suggested that B could board at Y school and D could move to live with the father. She recommended that the mother should have no contact with the children for a period of time.

37. I listed this case for an urgent interim hearing over two days in October 2020. I heard the case and made an order in those terms, the terms suggested in P's evidence. I provided for D to live with the father, for B to start boarding, and I provided for the children's contact to the mother to re-build cautiously after a break.

38. The children were initially upset at this peremptory change in their lives. D went to X and settled remarkably quickly. The schooling matters were complicated by the various Covid rules and regulations and some home schooling. B's first contact with the father was distressing, but by the end of the Christmas term, when B went to stay with the father in X, which was the first time B had been to X since August 2018, B appeared to relax and join in the family Christmas. The family in X over the Christmas holiday consisted of the two children, R and R's partner, S, the paternal grandmother, father's partner H, and her two student children.

39. The Guardian spoke to B and D on 24 December 2020, and she reported on the change in the children. This is at paragraph 19 at page C164 of the bundle, and I quote, "I observed a striking change in B's presentation. B presented as far more relaxed than I had previously



seen . B was smiling, eager to talk about things B had been doing, was playful, and used humour. They were laughing. B said the time with dad had been OK, quite fun. B spoke about going for walks, playing with D, and had spent some time with dad alone. B said this was good, all right. B was also positive about their new therapist, W.

40. P had suggested various forms of therapy should be undertaken by each member of the family. DD was to work with the father, and the mother and father were to do VIG which is a video intervention project. The father was to do EMDR which was specifically to deal with him and enhance his ability to have insight. W was appointed to work with each of the children. The mother had identified her own schema psychotherapist, N.

41. The final hearing was listed for five days in February 2021. I heard oral evidence from P on the first day. On the second day, the Guardian was taken seriously ill and it was clear we would have to abandon the case. On day three, I heard submissions as to the interim arrangements including contact. I wrote a letter to the children explaining why I had not been able to conclude the case. I invited the children to write to me if they wanted to.

42. The case was then re-listed this month, June 2021, with a new Guardian being appointed. Work has continued with each of the therapists. The therapists have liaised with P who has drawn together the work they have been undertaking. The mother's psychotherapist has not taken part in the discussions, as she and the mother have taken the view that the mother's therapy is confidential.

43. This background summary has not included every single incident to which I have been referred. Nor have I mentioned every single person who has worked with the family over the years. Suffice it to say that the first reference to therapy or counselling is some time in about 2011.

44. Before I turn to my analysis of the evidence that I have heard during these last five days, I need to set out the legal principles that I must apply. These applications are brought under section 8 of the Children Act. I must have the welfare of each of the children as my paramount consideration. I must apply the welfare checklist that is set out in section 1 (3). I must take into account section 1 (2) (a) that a court presumes that unless the contrary is shown, involvement of both parents in the life of the child will further the child's welfare.

45. When it comes to the evidence, I take into account that a person who makes an allegation must prove it on the balance of probabilities. It is an elementary proposition that findings must be based on evidence including inferences that can properly be drawn from the evidence, but not on suspicion or speculation. I must take into account all of the evidence and furthermore, consider each piece of evidence in the context of the rest of the evidence. I

must have regard to the relevance of each piece of evidence and I must exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by one party or the other has been made out to the appropriate standard of proof.

46. Because the evidence in this case includes the evidence of the expert, P, I must take particular care about the way I deal with P's evidence. The mother challenges P's expertise and qualifications. She believes that P has carried out the assessment in a prejudiced way as P has approached the case from the perspective of an expert on parental alienation. I note that P was a jointly instructed expert. P was unknown to any party before this case began. The letter of instructions specifically refers to P being instructed because of P's expertise in parental alienation. The mother says that the therapists P has brought in have also approached the case in a blinkered way, even though DD has been working with this family long before P was involved, and had in fact been proposed by KK, for whom the mother had great respect.

47. I must nevertheless approach P's evidence with care and I must test it against the rest of the evidence in this case. I remind myself that the roles of the court and the expert are distinct. It is the court that is in the position to weigh the expert evidence against its findings on the rest of the evidence. I remind myself that I, the Judge, am the person who makes the final decision based on all the available material.

48. When I consider the evidence, I must again remind myself that the evidence of each of the parents is of the greatest importance. I must form a clear assessment of their credibility and their reliability. The parents have had the fullest opportunity of taking part in the hearing by filing their written evidence, and giving their oral evidence, and challenging the evidence of each of the witnesses. I am bound to place considerable weight on the evidence each of the parents has given and the impression I have formed of them.

49. In this case, there are allegations and counter-allegations that one or other parent has not been always telling the whole truth. I remind myself there are many reasons why people in proceedings such as this may not tell the whole truth, not necessarily because they are culpable of some act, but they may do so because they want to protect somebody, or because they want to bolster a just cause, or because they are ashamed, or because they want to disguise disgraceful behaviour from their family. It is almost never sufficient evidence of blameworthiness to establish that somebody has lied.

50. I must then remind myself of the definition of coercive and controlling behaviour set out in practice direction 12J when I read the findings made by DJ six years ago.

51. I have helpfully been provided with a copy of the case of *Re S*. It is reported as *Re S (Parental Alienation: Cult)* [2020] EWCA Civ 568, a decision of the Court of Appeal led by Lord Justice Peter Jackson. He set out the law relating to parental alienation in paragraphs 7 to 13. And I quote, from paragraph 7:

“... it must be acknowledged that, whether a family is united or divided, it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent. Children have their own feelings and needs and where their parents are polarised they are bound to feel the effects. Situations of this kind, where the concerned parent is being no more than properly supportive, must obviously be distinguished from those where an emotionally abusive process is taking place. For that reason, the value of early fact-finding has repeatedly been emphasised.”.

52. At paragraph 8:

“As to alienation, we do not intend to add to the debate about labels. We agree with Sir Andrew McFarlane ... that where behaviour is abusive, protective action must be considered whether or not the behaviour arises from a syndrome or diagnosed condition. It is nevertheless necessary to identify in broad terms what we are speaking about. For working purposes, the CAFCASS definition of alienation is sufficient: “When a child’s resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent.”. To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive.”.

53. Paragraph 9:

“Where a child’s relationship with one parent is not working for no apparent good reason, signs of alienation may be found on the part of the other parent. These may include portraying the other parent in an unduly negative light to the child, suggesting that the other parent does not love the child, providing unnecessary reassurance to the child about time with the other parent, contacting the child excessively when with the other parent, and making unfounded allegations or insinuations, particularly of sexual abuse.”.

54. Paragraph 10:

“Where a process of alienation is found to exist, there is a spectrum of severity and the remedy will depend upon an assessment of all aspects of the child’s welfare, and not merely those that concern the relationship that may be under threat. The court’s first inclination will be to reason with parents and seek to persuade them to take the right course for their child’s sake, and it will only make orders when it is better than not to do so. Once orders are required, the court’s powers include those provided by sections

11A to 11O of the Children Act 1989, and extend to consideration of a more fundamental revision of the arrangements for the child. We agree that whilst a change in the child's main home is a highly significant alteration in that child's circumstances, such a change is not regarded as "a last resort" ..." and that is in quotes from Sir Andrew McFarlane P. The judge must consider all the circumstances and choose the best welfare solution."

55. Paragraph 11:

"Cases at the upper end of the spectrum of alienation place exceptional demands on the court. It will recognise that the more distant the relationship with the unfavoured parent becomes, the more limited its powers become. It must take a medium to long term view and not accord excessive weight to short-term problems."

And he then quotes from McFarlane LJ again in the case of *Re A* at paragraphs 53.

56. He continues in paragraph 12:

"Unhappily, reported decisions in this case tend to take the form of a post mortem examination of a lost parental relationship."

Lord Justice Jackson then quotes from a number of cases where there have been many years of proceedings and many cases where there have been many professionals involved. Jackson LJ also considered whether or not this would be a breach of Article 8 of the European Convention of Human Rights.

57. Paragraph 13:

"In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention. Above all, the obligation on the court is to keep the child's medium to long term welfare at the forefront of its mind and wherever possible to uphold the child and parent's right to respect for family life before it is breached. In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken. It is easier to conclude that decisive action was needed after it had become too late to take it."

I take that judgment into account.

58. I have also been provided with a copy of the Cafcass toolkit to which Cafcass officers are encouraged to refer when considering issues of potential alienation. There are five headings as to why a child may resist post-separation contact. The reasons may be appropriate, or due to affinity and alignment, or due to attachment, or due to alienation, or due to harmful conflict. The toolkit sets out typical behaviours exhibited by a child where they have experienced alienating behaviours. These include; that the opinion of a parent is unjustifiably one-sided, all good or all bad; Vilification of a rejected parent; Trivial, false, weak, or irrational reasons; Reactions may be unjustified; The child talks without prompting about the rejected parent's perceived shortcomings; The child may report events that they could not possibly remember; And the speech about the rejected parent appears scripted and uses adult language. Again, I remind myself of that toolkit and that list when I consider the evidence about B and D.

59. I turn then to my impression of the parents, having read their witness statements and heard their oral evidence. In each case, I have used some examples of incidents to analyse the parents' credibility and reliability, I have not referred to every incident about which evidence has been given.

60. I start with the father because he is the applicant in this case. The father is an intelligent, hard-working, and successful businessman. He is a high achiever, he is used to being in control in his business life. I am satisfied that he wants to have a good relationship with his four children and he wants the four children to see themselves as a family. He is pleased that his two adult children R and S, now have such a good relationship with him, with each other, and with the children.

61. The father is not good at relationships. He and his first wife had a disastrous separation and the two adult children were damaged by the fallout. DJ set out the details of this in the 2015 judgment. Since then, the father has been able to re-build his relationship so that recently, he and his first wife have been able to co-parent the children. In his oral evidence, he said he and his first wife have been able to socialise and have even been on holiday together.

62. In 2015, it seemed that he and his mother, the paternal grandmother, were not close, but since 2015, that relationship has also been re-built and strengthened so that the children talk fondly of Granny who is often at the father's house.

63. The father has not been able to re-build his relationship with the mother. He said in evidence that he hopes in due course that he and the mother will be able to co-parent the children. That appears to be a vague hope and an irrational comment given the history of this case and the total lack of trust between him and the mother.

64. The father has done various unwise things and I give some examples; he took his new partner H to a school fair when she was comparatively new in the relationship. This caused great upset to the mother who was also at the fair and the father knew she probably would be because she was on the PTA arranging the fair. The mother decided to join in the father's time with the children at the fair. It seems to have ended up with the mother and father shouting at each other. The father very unwisely described the mother as a "nutcase" to H in the mother's hearing, although he says that was not in the hearing of the children.

65. The father has no concept of how difficult it would be for anyone to go back to their former home in which the father, in this case, and his new partner now live, to do a contact handover. It would be particularly difficult when the house has electronic gates and the mother would have to wait outside the gates to be let in. He did not apparently see that the mother would feel humiliated by this, as would any person.

66. The father accepts he was clumsy when talking to B about the conception by donor egg and had said something along the lines that they had two mothers and he appears to have discussed who would be on the family tree.

67. Despite the work that was done with both parents in 2016, he had not thought how he would deal with this sensitively when the children asked questions. He had not bought little books to read with the children. Equally, he has been insensitive in describing his older children as "blood" brothers, not seeing that for the mother, that would be rubbing salt into the wound.

68. I have to look at whether the father has changed, or started to change, or identified a need to change since he embarked on the work suggested by P. It was clear from his oral evidence that the father has been somewhat shaken by the turn of events. His application was to enforce contact. He had not, in 2019, applied to change the "live with" arrangements; he only made his application for the children to live with him after P's report was filed.

69. The father has had to adjust his working pattern, although, partly, that would have happened anyway because of Covid. He has been sensitive to the children's needs to be with each other. I am satisfied he has made life as easy as possible for them in his home. He appears to have carved out some time to spend with the children on his own, which is what they have both said they want. He has recognised that the children say they miss their

mother. He has ensured that the children have the contact with each other every weekend, and that they have had contact with their mother over the last months. The father has been supportive of the children at school, has liaised with and engaged fully with the children's schools.

70. I am satisfied that the father has begun to acquire a degree of sensitivity and started to acquire an understanding of the mistakes he has made. There is still work to be done. He has a tendency to hark back to the pre-2015 situation and the fact that he is sure that DJ was wrong. In particular, I noted that he said the school B would attend in X if B came to live with him was the school B should have been attending had they never left X.

71. Having said that, overall, my analysis was that I found him to be sensible and mostly realistic. I found his evidence to be thoughtful. I found that he has started to acquire some understanding of the mistakes he has made. I found his evidence was reliable and credible, particularly when talking positively about how the children have been when in his company over the months and during the history of this case, but also particularly now when the children are at his home in X.

72. I turn, then, to my analysis of the mother's evidence. The mother has devoted her life to the children. She is anxious and she is clearly quite fragile. Like the father, there are a number of incidents about which I have heard evidence that illustrate the mother's difficulties, the mother's approach to life and the mother's difficulty in having any insight into the needs of the children.

73. First of all, the donor egg issue. This is clearly a most sensitive matter for the mother and I turn back to DJ's judgment. At the time the mother did not really see the need for the children to know about their conception, at that stage, however DJ was clear that the children needed to be told sooner than later. The mother's evidence as to the steps she took to deal with this was muddled and unimpressive. She said she had bought a little book and on one, or possibly more than one, occasion she had read it to B. She said it was on the bookshelf, it could be read if the children wanted to read it. She had got a number of booklets and pamphlets to help her explain to the children. It is clearly still a very sore issue for her.

74. B says that the mother had told B about the egg donation before there was the conversation with the father in August 2018, but B appeared to want to explore the topic more. There is no reason why B or D should be so distraught about the discussion they had with their father, except it was unhelpful that he made a remark about "mothers" and how many would be on the family tree.



75. My view of this is enhanced by the children's response to KK shortly after that, in November 2018, when the children said it was not really a major issue for them. They saw it as an example of when their father had said something "mean" about their mother. They thought his letter of apology was acceptable. However, the mother has never accepted that the father is sorry.

76. I have no doubt that the mention of the donor conception hurts her, and it may well be that the mother somehow feels belittled or at fault or inadequate, even though she has no reason to feel any of those things. She gave birth to the children and without any doubt she is their mother in every aspect that is important to the children, but I am satisfied the mother has not been able to separate out her own feelings about this and she has projected her feelings on to the children.

77. I turn next to the mother's relationships within her own family, which raise cause for concern. I turn back to DJ's judgment, in which she mentions the difficult relationship the mother had with her own mother and with her own father. The maternal grandmother has not really featured in the evidence before me. The maternal aunt is important and has been a great supporter during these last months. I have no doubt the children know their grandmother and her husband, and no doubt they are very fond of them.

78. The mother gave evidence about her own father, and it is clear that the mother had, and still has, a very poor relationship with him. The mother said she was cross that the father in this case had said something to the children about the maternal grandfather being on a family tree. She said in evidence that the children did not know about her father, they believe that her stepfather is her father and that their step-grandfather is their birth grandfather. The mother did not want the children to know about her own father until she was ready to tell them when they were older.

79. The mother had clearly failed to take on board the comments made by DJ at the end of the judgment. The comments that were made about telling the children sooner rather than later about the conception would have applied equally to the "secrets and lies" about the grandfather.

80. It appears that, to some extent, the mother would have preferred to have wiped her father out of the picture entirely. That approach is not child-focused. It puts the children in an invidious position where adults are expected to lie to them. The mother had not appeared to see the problem.

81. The mother's view does, however, reinforce the father's view about the mother's understanding of the importance of a father. It undermines DJ's view which was that because

of her relationship with her own father she was sure the mother would not want to marginalise the father in this case.

82. The next matter I consider is the mother's evidence about some of the comments B has made. B has made a number of very critical comments about the father; some of them cannot be as a result of B's own experiences or memories. B says that as a baby B would scream when the father came near them. When asked how B knew this, B said the mother had told them. The mother denies that and says that B had misunderstood something.

83. I found the mother's account about this was not credible. The mother said that she had been making a comment to B about new-born babies screaming when new people came to them, and that this statement was made in the context of a new baby being born to her nephew or niece. That makes no sense and it is clearly not what B was saying. I reject the mother's account. B must have heard the mother making this statement.

84. Then I turn to the letter B wrote to me in February 2021, but which is dated 4 March 2021. B had been staying with the mother at February half-term as I had ordered. The guardian's analysis at page C283, paragraph 23, sets out what the guardian knew about this letter.

85. On 26 February 2021, B went back to school and asked school for an envelope and a stamp because "B had written a letter with the mother but so it didn't seem suspicious the mother told B to post it from school". The school were so concerned that they contacted the guardian. The guardian spoke to B about this on 3 March. B said on 3 March that B had written it the day before, having asked the advice of the aunt.

86. The letter is typed, it is set out in a formal manner and it is extraordinarily well written for an 11-year-old who has never written such a letter before. Even though B is a bright child who is doing well at school, nevertheless the layout and structure of the letter is most unusual for an 11-year-old.

87. Even though B spoke to the guardian on 3 March, the letter is dated 4 March. It is full of highly critical comments about the father. The letter was eventually posted, but it did not have enough postage so it was returned to the school and it was resent. It made its way to me and to the court at the end of May 2021. I read it and directed that the letter should be copied to the guardian and to all parties.

88. The mother's account of how this letter came to be written was not credible. She said that because I had written a letter to the children and invited them to write back to me if they wished, B wanted to write back to me. B raised this with the mother during half-term, in

February. The mother offered to help B with the layout of the heading and the footing. She needed to get the address of the boarding house, she needed to get the court's address, and she helped set it out.

89. The mother said that she, the mother, put the date, 4 March, on the letter and the reason for doing that was she said that 4 March was a Thursday which would be a day when B could go into town to post it. That, of course, would have been 10 or 12 days since B had seen the mother. The mother said she assumed the school would provide the envelope and stamps because B was a boarder. She said she did not help B write the letter but she did write the conclusion to the letter; as it were, the footer. She said she did not tell B to post it from school so that it would not be suspicious.

90. I found the mother's account to be a nonsense. The school were so concerned about B's statement that they contacted the guardian. I have no hesitation in finding that the mother encouraged and helped B to write the letter, the content as well as the formal parts. The mother clearly thought it would look better if it was posted from school, as B said. This letter was designed to deceive.

91. I turn then to D's description of having a diary. D talked about having a diary at the mother's home, where D would write down "all the bad things about dad". Even though D also has a diary and some writings at the father's home D does not apparently write things about the father there. The mother says this is not the purpose of the diary at her house, but that is clearly D's perception. D is described as "a people pleaser" and I have no doubt that D believes that writing bad things about the father will please the mother.

92. Lastly, D has in a bag that goes backwards and forwards when D goes to stay with the mother, something that is described as a "tassel". There are apparently three tassels the same. D explained D has one, the mother has one and B has one and they are a secret, and the secret of these tassels is effectively to bind the three together when they are apart. The mother had no sensible answer as to why D should talk about the tassel in this way; she was unable to give an explanation.

93. I found the mother's response to each of these matters that I have dealt with undermines the accounts given to independent people by the children, and the mother's response in each case is not credible.

94. I turn, then, to where the mother is, psychologically and emotionally, at this stage, and ask the question, has the mother demonstrated any insight into her behaviour or any willingness to change? The mother's schema therapist has been working with the mother but

I do not have the benefit of a report and she has no input into the work the other therapists are doing.

95. The mother's oral evidence to the court did not indicate she was at a point of understanding what she had been doing in turning the children from their father. The mother did not indicate she saw the need to make any changes in her attitude or approach, and she did not indicate any wish to make any changes in her behaviour.

96. The mother was, of course, caught up in a conflict of her own making. She said in oral evidence that she wanted the children to have a good relationship with the father and to see him, but equally she was clear that she believes the very worst things that the children have said, namely that "*the father is a violent drunken man who beats up the children*". The mother is not able to say how the children can be safe if that is the case. She had no answer to this conundrum. Overall, I found the mother's evidence was not reliable or credible.

97. I turn, then, to the rest of the evidence. How does my impression of the parents fit in with the expert evidence?

98. P's evidence is that the children demonstrate dichotomous and polarised thinking. B is now only able to say negative things about the father and has rejected him completely. B has exaggerated B's negative views of the father. P noted that when B was asked to scale the parents, B gave the father a score of nought out of 10. The score for the mother was 9.5 out of 10. P said B's negativity is semantic and does not fit with the lived experience or the observation of others including the schools, the guardian and the therapist. B is becoming more entrenched.

99. When B has been seen with the father and D, B has been more relaxed and the therapists have noted "lovely attuned moments" between B and the father. The therapist noted that B was seen to move towards the father and touch him, and she commented that "that sort of body language cannot be faked".

100. B is having to compartmentalise their feelings. B is depressed. B's polarised thinking, mother all good/father all bad, will be linked with serious mental health issues. At B's age this way of thinking will interfere with their maturation as B goes through adolescence.

101. P said that D is being influenced by B. D enjoys themselves with the father but there is a tension when D is describing the relationship with each parent. D's anxiety has begun to reduce, but not significantly. P noted that D's scoring of the father was less extreme, D gave him four out of 10.

102. Having heard P's evidence now on more than one occasion, I have concluded that P has correctly identified the issue for each of these two children. Both have been influenced and

encouraged to think bad thoughts about their father. The damage being done to them is very significant. I found P was perhaps too optimistic about the impact of the therapies on each party. The therapists are each trying to put right the damage that is being done, but I bear in mind that this family has been in therapy for years and, so far, that merely seems to have entrenched rather than resolved the problems.

103. I found that P's evidence was balanced and was given in a professional way. P was clear that they have an expertise in parental alienation; P is used to working with families to identify alienation, and particularly to try and resolve the problem by bringing in a team of therapists. I noted that P was critical of the father to some extent and was sympathetic to the mother to some extent.

104. I am driven to the conclusion that P's assessment of the children as having been alienated is borne out by the work done with the children and the work that the therapists have done and which is included in P's reports.

105. Finally, I consider the evidence of the guardian. G approached the case with great care, having taken over at such a late stage. She spoke to the children separately on two occasions, and with the parents. She had read all the papers, and in particular she had read the previous guardian's reports.

106. She had spoken to the schools. B's school reported to her that B appeared more settled since Christmas and happier in Themselves. The school described B as smiling and giggling, whereas previously B had been anxious, upset and withdrawn. B talked positively when at school about the Christmas visit to the father's. D's school told the guardian that D had settled quickly and well and the school had no concerns about D. The school described D as mature, resilient, confident and happy-go-lucky.

107. B told the guardian that B wanted to live with the mother. B said B did not want to see the father. B scaled the father as nought out of 10. B could not recall any good times with the father. B said the father was angry and controlling. B said he had not been physically aggressive since they moved to Y, six years ago.

108. B gave contradictory accounts about the letter written to me. B could not remember the contents of the letter. B said the father lies and has not owned up to what he has done. B said B was angry that the father said that the mother was not B's mother. B said that the therapy is making things worse, not better.

109. D told the guardian that they were upset at moving to the father's home, but talked positively about the new school. D scaled the father as four out of 10. D appeared to complain that the father did not spend enough time with Das he was always busy. D's main

complaints appeared to be that he was bossy and “We” – (*I emphasize “we”*) – “**We** still haven’t forgiven him for letting H come in without asking us”. D made one very wise comment which was that B did not realise you can have a good time at both houses. D said D remembers the father saying that mother was not their mother “despite being only three at the time” and (– my emphasis –) D said “**We** haven’t forgiven him fully”.

110. D said to the guardian that the father tells D off badly, which makes D feel scared. D spoke about the diary at the mother’s where D writes down every bad time with the father. D said [D]likes seeing him but does not really want to live with him. Being with the mother was nine out of 10, D really misses the mother. D thought the therapy was boring but fine. D wants to be back in Y with friends and said D would be “heartbroken” if D had to stay with the father.

111. The guardian took into account P’s reports and oral evidence and the conclusion from P that the children’s current relationship with mother has placed them at significant risk of imminent and future psychological problems and emotional harm. The guardian applied the Cafcass tool for assessing alienation, which I have already referred to in this judgment, and particularly identified four of the key factors; that the children’s opinion of the parent is unjustifiably one-sided, all good or all bad; the reactions and perceptions are unjustified or disproportionate; thirdly, that they have revised the history to eliminate or diminish positive memories, and lastly, that they have no guilt or ambivalence towards the rejected parent.

112. She weighed up the impact on the mother of the father’s emotional abuse which was found by DJ in 2015. She took into account that this may have impacted on the mother’s narrative in relation to the father which may, intentionally or not, have influenced the children.

113. The guardian concluded that the children have felt a great sense of loss and distress in being separated from their mother, but she was clear that had to be balanced against their welfare needs and the need to protect them from parenting that has been assessed to be harmful. She noted that the mother did not accept any part of P’s report and shows little recognition or openness to the idea that her own views and behaviour may have influenced the children.

114. The guardian concluded that if the court accepts the concerns about alienation, then placement with the father will provide the best opportunity for the children’s needs to be met and safeguarded and for them to remain in a relationship with both parents.

115. I found the guardian’s analysis of the issues to be compelling. She had approached this case with an open mind. She properly applied the Cafcass toolkit when doing her own

independent assessment. She took into account P's assessment but did her own separate analysis as well. She took into account the mother's anxiety and was careful to note that the mother's influence on the children might have been unconscious. I accept the guardian's comment that without significant change the children's negative views of their father will become even more entrenched, resulting in long-term emotional harm.

116. I turn, then, to the welfare checklist as I conclude my analysis, and in looking at the welfare checklist I take into account three major sources of information; first of all, my analysis of the oral evidence and the written evidence of the parents, then P's report and thirdly the guardian's evidence.

First of all, the wishes and feelings of the children, given their age and understanding. Both children say they want to live with their mother; they do not want to live with their father. B says B does not want to see the father. B says he is a drunken and violent man who beats B. The observation is that B can, and does, enjoy their time with him.

117. When I listen to the children's wishes and feelings, I have to take into account the evidence from all sources, which is overwhelming, that the mother has influenced the children against their father in a negative way. I reiterate, I have come to this conclusion from the three different sources. Even though I must listen to what the children say, in this case I find I cannot place any weight on their statements.

118. Next, their physical, educational and emotional needs. The children need to live in a home where they are going to be permitted to develop healthy relationships with both parents. They need to be freed from the obligation to support the mother's perspective on the failings of the father.

119. Both parents are able to meet the children's physical needs. D's school in X is clear that D has settled well and is doing well. If B goes to the father, B will have to change schools. B will have to do an assessment before the new school can offer B a place. The father is concerned that B may not approach the assessment in a positive way. If B is living with the father, the father will have to manage this. He will have to liaise with Y and the new school to try and ensure that B's emotional difficulties are taken into account when the schools consider the assessment.

120. The emotional needs of these children are of the greatest importance in this case and I must take into account both the guardian's view and P's view that the children have already suffered emotional harm and the more entrenched they become the longer-term emotional harm they will sustain.



121. I must take into account the effect of change on the children. Moving both children to live with their father will be a huge change for them and they will initially be distressed. They will find it difficult to understand why they had to move from the care of their mother who they both consider to be an excellent caring mother and parent. They are not able to see any fault in her. They will not be able to understand how or why their mother has caused them emotional harm. They will need to be supported through the periods of distress and through the changes that they will be going through by their father, by the family and by the professionals.

122. I must take into account their age, sex and special characteristics. B is at an age when the emotional damage caused must be repaired urgently as B enters into adolescence, and I accept P's evidence that this is a critical time in B's life.

123. I must take into account the harm the children have suffered. I have no hesitation in finding that the mother has caused emotional harm to the children. She has been unable to accept that the children enjoy their time with the father. She has failed to promote the relationship. She failed to see that in the autumn of 2018, according to KK, B was willing and open to restarting contact with the father. The father has had no influence on B since the summer of 2018, yet B's views of the father has become increasingly entrenched. The only person who can have been responsible for this is the mother.

124. The mother has been unable to separate her own negative feelings and has imposed her negativity on the children. The mother's encouragement in writing the letter in February 2021 shows that, even as recently as the last few months, the mother has still failed to see the harm that she is causing these children.

125. I must take into account the capabilities of each of these parents. Both parents are practically capable of providing a nice home for the children. Both parents have flaws in their personalities; both need to continue to engage in therapy to deal with those flaws and difficulties. I find that the father has embarked on the therapeutic work with a positive attitude and has started to make changes. The mother has resisted any need for change and she is not even at the starting point for making changes because she does not see why it is necessary. I am satisfied that the father is more capable and in a better position to understand and meet the needs of the children than the mother.

126. Finally, I must look at the range of powers and orders that might be made in respect of these children. There are two matters about which the parents actually agree. They both agree that the children must live together and must not be separated; they both agree that boarding at school is not the right answer for B. Those are the only two things that they

agree about. The options that I must consider are should they live with their mother, should they live with their father, and in each case I must consider what contact they should have to the other parent, so I must look at the advantages and disadvantages of each.

127. If the children live with their mother, they will go back to the situation as it was before. There will be no change. The harm that the children have suffered will continue and the children are likely to become even more entrenched in their negative views of the father. The advantages of living with their mother would be that it is what the children say they want, they would be in the schools that they say they want to be at and they would not be suffering any short term or immediate distress. The disadvantages are that the long-term emotional harm will continue, the relationship with the father will not be repaired, the long-term polarised thinking will cause long-term damage including damage to their ability to develop relationships as they mature.

128. I look at the advantages and disadvantages of living with the father. If they live with the father they will be able to have a relationship with both parents. The father knows and acknowledges that the children will feel distress in the short term. There is a prospect of the emotional damage being repaired by the children continuing to engage in therapy. It is an advantage to the children if they are able to be, as D says, happy in both households. The disadvantage of moving to the father are the short-term impact of change, the short-term distress, the father having to manage the fallout and the children not understanding why they cannot live with their mother.

129. So I weigh the advantages and disadvantage of each carefully. I have reached the following conclusions: The mother has alienated the children. The mother is not in a position to repair the damage she has done. It is in the best interests of these two children to live together with their father. The father is in the better position to enable the children's emotional damage to be repaired. He is in a better position to enable them to develop a good relationship with each of their parents. I am satisfied it is in the best interests of these children to order that both B and D should live with their father.

130. I turn to the issue of contact. Both the children will need to know that their mother is all right. They love her and care for her; they will worry about her. The mother may not be able to deal with or manage her distress in the short term. I have to ensure that the children are protected from any further harm being caused to them. I am satisfied that the evidence of the guardian and P is correct; the children will need a further break from their mother to enable them to settle and to start to rebuild. They will need to continue to work with their therapist, W, to help them understand what has been happening. I am sure the mother will

benefit from continuing to work with her psychotherapist who will help her come to an understanding of how I have reached this decision.

131. I am satisfied that from now to the end of the summer term, the children should be living with their father. B needs to complete the term and say goodbye to friends but that must be balanced against the need to apply to the new school and not be destabilised over these last weeks. The school has been an excellent support for B, but I am not satisfied that the school will be able to protect B from the distress that B is now likely to exhibit.

132. B must move to the father this week. The father must liaise with Y and the new school to sort out a date for B to undertake the assessment. B must be at the father's home for a few days – a good few days if it is possible – before the assessment, to give B the best chance of making a good impression in the assessment.

133. This almost inevitably will mean B will miss some days of schooling at Y. The father must consider with Y school the best way for B to say goodbye to the school, goodbye to friends, goodbye to the staff. It will not be easy and it must be managed sensitively. B breaks up on 8 July so there is a very short time in which these things must be managed.

134. I am satisfied that there should be a video contact to the mother each week. The children need to see that their mother is all right because they will be worrying about her.

135. Covid rules permitting, the father is hoping to take a holiday in Greece in the middle of August. I am satisfied that the children should see their mother for a day visit in X before they go to Greece. I will need a bit of help as to the dates, but between breaking up and going to Greece they should be living with their father, they should have one day visit in X before the Greek holiday. When they get back from Greece, there should be a day visit in Y and that should take place each week until the start of term. The father must take the children to Y and bring them back from Y. So that is one day a week in Y for the last weeks of the school holiday.

136. Once term starts, from September to half-term, the children should spend a day with their mother in Y once a month and in X once a month, so they would see her once a fortnight; once in Y, once in X; but that should be day visits only until October half-term. The father will be responsible for taking the children to Y for those day visits.

137. At October half-term there should be staying contact. The children should stay with their mother in Y for three nights during October half-term. The father must take them to Y and bring them back from Y in October half-term. From October half-term, contact should revert to the pattern that it has been up till now; in other words, two weekends a month, and those should both be in Y. The father is to do the journey once a month and the mother is to

do the journey once a month, so the father is to take and fetch them to Y once a month and the mother is to collect them once a month.

138. The arrangements for collection and handover.

The mother should not be expected to go to the father's house to collect or return the children. When the mother is seeing the children for the days out in X, the collection and handover can be at a railway station unless the mother can suggest an alternative suitable venue for the day's outing, in which case the pick up and drop off will be from that venue. After October half-term, the mother, when she comes to X, could collect the children from school, or she could, if she preferred, collect them from the railway station after school on a Friday. She must return them by 7 o'clock on Sunday. She should deliver them back to the railway station, not to the father's home.

139. In the longer term, the children should be able to spend time with their mother as follows. They should be able to spend half of each school holiday with their mother, and starting at Christmas 2021 they should be able to spend the first half of the school Christmas holidays with their mother in Y, or wherever else she wants to be, assuming it is within the jurisdiction. They should spend the second half of the school Christmas holidays with her in 2022. Easter, they should spend the first half of the school holidays with their mother in 2022 and the second half with her in 2023.

140. From 2022 onwards, the summer holidays should be divided and in default of agreement between the parties the children should be with their mother for weeks 2, 5 and 6 in 2022 and weeks 1, 3 and 4 in 2023, but of course the parents can change these arrangements by agreement in writing in advance. If they do not agree, then those will be the weeks that contact takes place, and the children should be with their mother for half of each half-term holiday.

141. It is my hope that I have given sufficient detail of contact for the parties to work out a plan. If I am asked to determine exactly which day contact has to take place, then I will do so, but I would hope I do not need to do that.

142. I give permission for this judgment to be disclosed to the therapists who are working with the mother, the father and the children. The work W is doing with the children should continue. I cannot make either the mother or the father continue with therapy, although clearly they would both benefit from further work as they both have further work to do and further steps to go on their journeys in trying to repair the situation for their children. That then is the judgment of the court.

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Approved

Her Honour Judge Lindsay Davies  
24 August 2021