

IN CONFIDENCE

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.

BS21P00154

IN THE FAMILY COURT AT BRISTOL

2 Redcliff Street,
Bristol

Date of hearing: 25th January 2022

Before:

HIS HONOUR JUDGE WILDBLOOD QC

RE K (inability to instruct guardian)

Between:

A mother

Applicant

- and -

A father

Respondent

-and-

Two children

Second and
third

(by their guardian, NYAS)

Respondents

Ms Matthews, solicitor, for the mother.

Mr Pem, solicitor for the father.

Ms Szwed, counsel instructed by NYAS.

HHJ Wildblood QC:

1. This short judgment relates to a difficulty that, currently, is being experienced in many private law proceedings in this area. The court has joined the children to the proceedings. It has not been possible to secure a report from a guardian. The three legal representatives agree that it is in the public interest that this anonymised judgment should be published in relation to that issue.
2. These proceedings concern two children. As to their ages, it is sufficient to say that they are both at primary school. They live with their mother. The father's contact with them is currently limited to indirect contact (i.e. by way of letters or cards) and there is supposed to be a video call between the father and the children each week for 15 minutes.
3. The parents originate from an Eastern European country but are habitually resident in this country. The mother wishes her address to remain confidential. The father lives in the Bristol area.
4. The legal representatives agree that the underlying allegations between the parties are these. The mother alleges that the father was coercively controlling of her and that he physically chastised the children. She says that the children are fearful of their father and do not want to see him. The father alleges that the mother was coercively controlling of him and has manipulated the children against him. No party suggests that there is a need for a separate fact finding hearing.
5. The marriage between the parties ended in January 2021 when the mother left the home, taking the children with her. On 26th January 2021 (almost exactly a year ago), the mother issued the only formal application in these proceedings. In February, interim orders were made that the father must not remove the children from the mother or from anyone to whom she had entrusted their care. Thereafter, the focus of these proceedings has been the father's contact.
6. On 30th April 2021 a Recorder directed that the father should have indirect contact only with the children, as set out above. He also ordered that the children should be joined to the proceedings and should be represented by a guardian appointed by Cafcass.
7. Cafcass indicated that it did not have the resources to accept the appointment. I accept that it could not accept the appointment due to its workload. This problem, in which Cafcass cannot accept appointment as a guardian under Rule 16.4 of The Family Procedure Rules 2010, is now longstanding in this area.
8. On 10th August 2021 the case came before me. Faced with the position of Cafcass, I appointed NYAS (The National Youth Advocacy Service) as the guardian for the children in substitution of Cafcass. I listed a final hearing before me on 24th November 2021.
9. On 24th November 2021 the hearing had to be adjourned. NYAS had written to say that it had not been able to appoint a caseworker to these proceedings. It did not know when it might be able to do so. Therefore, I directed that NYAS should instruct an independent social worker to report to the court and I listed the case for today. Cafcass had confirmed

that, if an order were to be made for it to report under section 7 of The Children Act 1989 (that is, not as a guardian but by provision of a report from a Family Court Adviser), it would not be able to do so until February.

10. On 13th December 2021, NYAS wrote to the court and to the parties. The legal aid agency had refused to extend the legal aid certificate of NYAS to cover the instruction of the independent social worker.
11. Today, the case has returned to my lists. NYAS says that it still cannot appoint a caseworker. It is considering a scheme that would involve engaging some social workers to assist with its workload. However, given the large number of cases that it has outstanding where a caseworker has not been appointed, it could not give any guarantee as to when a social worker might be available, if this new scheme is put into effect. I accept that NYAS has done everything that it can to provide a guardian and its inability to do so is not a matter of fault. Nor is it in any way the fault of Cafcass. The workload of both organisations is such that they cannot accept the appointment.
12. Thus, the position has been achieved whereby the court has directed that a guardian should be appointed in private law proceedings. Cafcass cannot act as guardian because of its workload. NYAS cannot act as guardian because of its workload. The legal aid agency will not fund an independent social worker. It is now seven months since the order joining the children was made and indirect contact only was ordered. It is now a year since the parties separated and these proceedings started. No effective progress has been made.
13. Today, I have discharged the children and NYAS from the proceedings. There will be no more guardian appointments in these proceedings, as far as I am concerned. I have ordered that the issue of interim contact should be listed before me for a 30 minute hearing; because my own lists are full until the summer, I will hear the case over a lunch-break. I have directed that Cafcass should report on the issue of contact in a report ordered under Section 7 of The Children Act 1989. I have listed the case for another 30 minute hearing (a 'Dispute resolution Appointment) once that report has been filed in May 2022. That means that it will have taken 16 months of proceedings before the court receives advice from a professional on matters relating to the welfare of these two children.

HHJ Stephen Wildblood QC
25th January 2022.