



[2023] EWFC 156 (B)

Case Number: RG22C50104

FAMILY COURT SITTING AT SLOUGH

The Law Courts
Windsor Road
Slough
SL1 2HE

DESCRIPTION

Heard on 9 June 2023
Judgment given on 9 June 2023

Before

HIS HONOUR JUDGE RICHARD CASE

Between

WOKINGHAM BOROUGH COUNCIL

Applicant

and

MOTHER (1)
FATHER 2 (2)
FATHER 3 (3)
THE CHILDREN (4-8)

Respondents

Representation:

For the Applicant: MS S GRANSHAW counsel on behalf of WOKINGHAM BOROUGH COUNCIL

For the Respondents: MS J BROWN counsel on behalf of MOTHER
MR D MERRIGAN counsel on behalf of FATHER 2
MS D WRIGHT solicitor on behalf of FATHER 3
MS J DAIL solicitor on behalf of THE CHILDREN through the CHILDREN'S GUARDIAN, DAVID VINEY

This judgment was delivered in private. The judge has given permission for this version of the transcript 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.

HHJ RICHARD CASE:

1. I am going to give reasons for my judgment, but my decision is to grant the application that the mother makes to discharge Father 1 from the proceedings; I wanted that to be clear to the parties before I went any further.
2. This is an application by the children's mother, who is represented by Ms Browne of counsel, in respect of Child 2 aged 11. Child 2 is part of a sibling group of five children. Child 2's father is Father 2; the father of the three younger children is Father 3; the mother of all five children is Mother.
3. Father 2 is represented today by Mr Merrigan of counsel and Father 3 is represented by Ms Wright, solicitor, the Local Authority is represented by Ms Granshaw, counsel, and the Guardian is represented by Ms Dail, solicitor. On the last occasion the Guardian was represented by Mr Forbes of counsel.
4. The application comes in the context of public law proceedings brought by Wokingham Borough Council in respect of all five children and so far as Child 2 is concerned, and I restrict what I say to Child 2 because Father 2 has a biological relationship only with Child 2, so far as Child 2 is concerned the matter is listed for IRH today with a final care plan for her to remain, as she has done throughout the proceedings, in the care of Mother, and for the Court to make a 12-month supervision order.
5. I have had the benefit of considering a number of documents that touch on the application to discharge Father 2, in particular I have read a psychiatric report prepared in 2012 in respect of Mother and Father 2, and that is at page M39 of the bundle. I have read Mother's witness statement in support of the application at C60 and Father 2's witness statement in response at C81.
6. I have also had the benefit of a number of very helpful skeleton arguments prepared in relation to the application, which was originally to be heard in November 2022 and I have had the benefit of updating position statements from all parties and oral submissions on the application today.

7. As far as the law is concerned I do not understand there to be any dispute. The Guardian, acting through Mr Forbes of counsel, in his skeleton argument referred me to the case of *A Local Authority v B (Dispensing with Service)* [2020] EWHC 271 Fam, and sets out in the skeleton argument the following propositions from that case:

“1. The starting point is that a father should be able to participate in a wide sense in the proceedings concerning his child; the Court should start with full participation, then consider partial participation and then only as a device of last resort the father’s exclusion from the proceedings.

2. The Court’s task is to identify the nature and extent of the harm in contemplation. The Court should be rigorous in its examination of the risk and gravity of the feared harm. The Court must be satisfied that the child is likely to suffer harm in the sense of the real possibility that cannot be sensibly ignored having regard to the nature and gravity of the feared harm in a particular case.

3. There is no requirement that a significant physical risk be demonstrated; harm and risk come in many guises.

4. When evaluating risk of future harm there is no minimum requirement, the Court must be alert both to the risk and to the magnitude of the consequences should the risk eventuate and must also consider whether and to what extent that risk can be managed by the Court’s control of its own processes; the greater the harm, the smaller need be the risk.

5. The Court is not determining the question with respect to the upbringing of the child, so the welfare of the child, whilst an important consideration, is not paramount.

6. Authorities in the Strasbourg jurisprudence put a high bar on excluding a parent with parental responsibility, in this context where a parent has parental responsibility or a right to respect of family life under Article 8, a high degree of exceptionality must be demonstrated by strong countervailing factors to justify their exclusion from participation in the proceedings.

7. It must be remembered that exceptionality is not in itself a test or a short cut and a fair balance must be struck between the factors that are present in the individual case”.

8. Mr Forbes in his skeleton argument drew my attention to the Court of Appeal’s decision in *The Mother v Northumberland County Council* [2021] EWCA Civ 1221. The Court of Appeal in that case urged courts considering these sorts of applications not to treat exceptionality as a short cut nor use it to detract from the essential task of balancing fact-specific features in every case.

9. The Court of Appeal also approved of a passage of the judgment of His Honour Judge Bellamy sitting as a High Court Judge in *Re X (A Child) (Care Proceedings, notice to father without parental responsibility)* [2017] 4 WLR 110 and at paragraph 46 as follows:

“Each year Local Authorities issue care proceedings in the family court in which the fathers of the children concerned do not have parental responsibility and who, though not parties, are nonetheless entitled to receive a copy of Form C6A. Until they receive Form C6A some fathers are in a state of ignorance about the existence of their child, others are aware of the existence of a child and the fact that they are the child’s biological father but have thus far shown no interest in the child’s life.

For the children involved it is important attempts are made to engage with their birth father and perhaps also his wider family. The starting point must be twofold, first that it will normally be in the interests of a child that her birth father should receive a copy of Form C6A, thereby enabling him to apply for party status so he can participate in the proceedings. Second, the child and her mother should not be put at risk of harm as a result of seeking to engage the father in the proceedings. It is a matter of balance and that is the case whether or not the father is entitled to the protection of Article 8 and Article 6”.

10. In the skeleton argument prepared on behalf of the mother, for the hearing in November, at which hearing Ms Browne represented the mother as she does today, she says the starting point is FPR rule 12.3(1), parents with parental responsibility have an automatic respondent status in proceedings, but rule 12.3(3) provides the Court may direct a party to be removed, and rule 4.1 sets out general powers of case management, including provisions relating to disclosure under rule 12.12.

11. Within that same skeleton argument she set out some principles, which she submitted could be derived from the reported decisions, I did not understand anybody before the Court today or indeed before the Court in November took issue with any of those principles and I am going to read them out in full. The principles are:

“(a) to discharge Father 2 as a party requires particular justification or exceptionality;

(b) the Court must consider Father 2’s Article 6 and Article 8 rights;

(c) the Court will need to consider whether family life exists between Father 2 and Child 2, that is whether his Article 8 rights are engaged;

(d) when considering whether family life exists the following points

are relevant:

1. The determination of whether family life exists is essentially a question of fact.
2. Family life is not confined solely to marriage-based relationships.
3. Mere biological kinship is not of itself sufficient to constitute family life.
4. Co-habitation is an important factor to be taken into account when considering the existence or otherwise of family life.
5. Other factors may also serve to demonstrate that a relationship has sufficient constancy to create *de facto* family life.
6. There must be evidence of a close personal relationship, demonstrable interest in and a commitment to the child.

(e) if Father 2 does not have Article 8 rights then Article 6 is not engaged;

(f) the starting point must be that Father 2 should be entitled to participate in the proceedings;

(g) the children and the mother should not be put at risk of serious harm by the conduct of the proceedings;

(h) in considering Father 2's participation in the proceedings the court should start with full participation, then consider partial participation, such as disclosure of redacted documents, and then only as a device of last resort exclusion from the proceedings; and,

(i) in considering the risk to the children and the mother the court must be alert to both risk and to the magnitude of consequences should the risk eventuate and must also consider whether and to what extent risk can be managed by the court's control of its own processes".

12. The mother's application is premised on Father 2 having no family life with Child 2, it is said and I think accepted by Father 2 that he has had no contact with her since a few months after her birth in 2012.
13. It is said by the mother that biological kinship is not sufficient to establish an Article 8 right and it is said that discharge of Father 2 is justified on the particular facts of this case, in particular that Father 2 was convicted in 2010 of possession and production of indecent images of children.
14. He was convicted in 2012 of failing to comply with notification requirements under the Sexual Offences Act 2003 and post-dating the skeleton argument and position statements in

- November of last year he has subsequently been convicted in March 2023 of sexual assault of a child under 13 and further offences of possession of indecent images of children; and what is said on behalf of the mother is that he presents a real and substantial risk to Child 2.
15. On behalf of the mother, I invited Ms Browne to consider and address me on the practical effects of discharging Father 2 as a party in the context of, so far as Child 2 is concerned and I make no comment on the other children, matters proceeding effectively to an early final hearing today with a care plan that I have already identified. What is said on behalf of the mother is that any judgment made on this application in these proceedings will clearly be relevant to any future proceedings, whether that be to extend the duration of a supervision order, if that is an application which the Local Authority thinks is necessary, or indeed in any other public law proceedings involving Child 2, and that is why there is an imperative in determining the application.
 16. There are also some practical consequences of not making an order to discharge Father 2, but I will return to those in just a moment.
 17. As far as the Local Authority is concerned the application is not opposed, it is said that Child 2 has knowledge in a general sense of Father 2's offending behaviour and I have been referred to C69 of the bundle, the first witness statement of the social worker, and she records having spoken to Child 2 on 5 October 2022 and Child 2 referring to Father 2 as her, "seed donor".
 18. She said that she had seen a photo of him, "As Mummy had some photos on her old phone" and by inference had shown her, Child 2 said to the social worker she understood that Father 2 was, "A bad man, that he hurt children and that he had been to prison twice for hurting children".
 19. The social worker noted that she said she did not know how he had hurt children and at page C70 of the bundle the social worker asked her for her views about contact with Father 2 and she expressed ambivalence saying that she did not know, although she did say that she did not think her Mummy would want her to have contact.
 20. So far as Father 2 is concerned, he opposes the application and seeks access to papers. If the Court were not minded to give him full access he would be content with summaries and it is said in his position statement for today that he seeks indirect contact with Child 2. He puts it on the basis that ideally that would be by telephone but he acknowledges the difficulties of that given he is incarcerated by virtue of his conviction in March but says it could proceed by way of letters. I note that there is no such application before the Court.

21. He draws the Court's attention to the distinction between what Child 2 is reported to have told the social worker, as I have already set out, and a later report from the Guardian that Child 2 does not wish to have any contact with Father 2 at all and Father 2 considers that that view is likely to have been influenced by the mother. He says that he has parental responsibility in respect of Child 2; he says that the mother was aware of his offending behaviour prior to Child 2's conception; that he was not violent to Mother during the course of their relationship and he says that he has expressed remorse for his offences and he pleaded guilty to the offences in 2010 and I think he says in 2012 as well.
22. As I indicated earlier, of course that has to be seen in light of his conviction in March of this year. In the witness statement that he prepared in response to the application and which was before the Court on 22 November 2022 at C83 of the bundle, paragraph 18, he said this, "I also confirm that I have been charged for sexual assault of a minor and also indecent images of a minor about three or four years ago; I am pleading not guilty to both offences and I deny these allegations".
23. I have not been told whether he changed his plea in March or whether he was convicted on a not guilty plea, but in any event as distinct from his previous convictions this conviction was for a contact offence and his assertion of his lack of guilt in his witness statement for the hearing on 22 November tends to undermine his evidence that he has learnt lessons from his previous conviction and he is remorseful.
24. He says that he has made some efforts to re-establish contact with Child 2, at C85 of the bundle, paragraph 38 to 41 he says,

"When we separated I did try and have contact with Child 2, I contacted the mother to no avail and I also tried to contact her family. I also contacted Social Services, however they were not able to help me and were not willing to facilitate contact for me. I also did not have the benefit of legal advice and I now know that I may have been able to make an application to the Court for contact. I do recall trying to knock on her father's door five years ago to give a birthday present to Child 2..."

He goes on to say how that attempt at contact was repulsed.

25. On his behalf today it is said it would be more proportionate for him to remain a party to the proceedings and for the Court to exercise its case management powers so as to enable him to hear final submissions insofar as they relate to Child 2 and the judgment insofar as it relates to Child 2, and if I were to grant the application he would be unable to make his submission in relation to indirect contact.

26. I observed to Mr Merrigan, and I remain of this view, that a consequence of him remaining a party and therefore being able to make submissions in respect of the Court making a section 8 order for him to spend indirect time with Child 2 would almost of necessity mean an adjournment because there is not sufficient time today for him to consider the documents, which he would need to in order to advance those submissions, nor for the other parties to respond to them, and that would necessitate an adjournment at least in respect of Child 2 and I would not be able to make a final order today.
27. As far as Father 3 is concerned, he supports the mother's application and the Guardian does as well. The Guardian's skeleton argument for the hearing in November was, as I have said, prepared by Mr Forbes, and Mr Forbes set out an extremely helpful summary of the factors in favour of retaining Father 2 as a party and the factors against.
28. All of those are relevant to my decision and I am going to set them out in my judgment; they run from paragraph 15 of the skeleton argument:

“15. Father 2 is the biological father of and has parental responsibility for Child 2.

16. The test for discharging a father as party to care proceedings, particularly one with parental responsibility, is a very high one.

17. The sexual offences for which Father 2 was convicted whilst pertaining to children did not pertain to Child 2 herself. The offences for which he has been convicted are not as extreme as those in some of the reported cases.

18. There is no evidence that Father 2 has actively tried to contact Child 2 or undermine the care that Mother provides to her”.

Just pausing there, that is in the context of what Father 2 says in his witness statement, but I understand the Guardian to mean not directly contacting Child 2, and Mr Forbes continued:

“However, this may be because he has had no real opportunity to do so”.

29. Those are the factors in favour of Father 2 remaining as a party and then so far as the factors against are concerned Mr Forbes on behalf of the Guardian set them out in this way:

“19. Child 2 has had no relationship with her father since the age of five months, so whether or not Article 8 is engaged by operation of law, there has been no *de facto* family life for the last nine and a half years.

20. Father 2 has not, in that time, sought to make any application to Court or otherwise take steps to become involved in Child 2's life or otherwise exercise parental responsibility”.

Again, pausing there, I take account of what Father 2 has said in his witness

statement.

“21. Father 2 is not the parent of and has no involvement in the upbringing of Child 2’s half siblings”.

30. Then, skipping on to paragraph 25 Mr Forbes makes reference to the psychiatric assessment of Dr Baker, which I have already referred to. It was dated 5 November 2012. It is to be found at M39 of the bundle and he was instructed to prepare a report by West Berkshire Children’s Services in relation to the mother and Father 2.

31. The references that Mr Forbes makes to that document are as follows: at M94, paragraph 136, Dr Baker says,

“At this meeting I gave Mother my unequivocal opinion that Father 2’s problems in his life have created a man who presents a considerable risk to children generally and to her children in particular”.

32. Paragraph 137,

“I thought the prospect for contact with Father 2 being able to meet Child 2’s needs through the course of her childhood and adolescence was extremely improbable and that there is a strong case for any further contact to be denied”.

33. Paragraph 139,

“Father 2 presents with a complex psychological and personality profile; with respect to his offending he maintains he has not committed any contact offences and yet his sister [] has made allegations that he sexually abused her when she was a young child and by his own account he was involved as a 16-year-old in a sexual relationship with a 13-year-old girl for over a year until she became pregnant and subsequently miscarried. Father 2 has proved himself to be an unreliable communicator with a tendency to obfuscate facts”.

34. Paragraph 142,

“There is no doubt from my meeting with him that he was using illegal images as a stimulus for his own sexual arousal and satisfaction”.

35. Paragraph 143,

“There are some research studies, which suggest that individuals who become addicted to pornographic images do not necessarily go on to commit contact sexual offences. However, in this case it appears to be established that Father 2 has crossed the line with a 13-year-old and possibly also his own sister when he was much younger”.

36. Pausing there, of course it is now known that subsequently he committed just such an

offence and that was the reason for his conviction in March in relation to which he received a sentence of imprisonment as I understand it of just over eight years. The report continued,

“It would appear that he has grown up in a home that had corrupting influences, both in terms of violence and neglect and also the use of pornography”.

37. Paragraph 144,

“Father 2 has proved himself to be deceitful, manipulative, and controlling; he is a rule-breaker and has recently breached the terms of his probation. He has shown himself to be manipulating and controlling of Mother in supporting him by withholding information, for instance, from her own family, and he has inculcated in her a false sense of trust towards him at many different levels”.

38. Paragraph 149,

“I would go further and say that this is potentially an extremely dangerous relationship and my recommendation to Mother would be that she should cut herself off entirely from future contact with Father 2”.

39. Paragraph 161,

“My view is that any involvement of any member of this family with Father 2 would be likely to have a detrimental effect and undermine the progress that this mother and her children can make in establishing a secure family life for themselves”.

40. What the Guardian says through Mr Forbes in that skeleton argument is that it is clear Father 2 poses a high risk of sexual harm to children in general and to Mother’s own children in particular and of course I observed that that is borne out by the conviction in March.

41. The Guardian through Mr Forbes then makes some observations on Father 2’s motivation to be involved in these proceedings. At paragraph 28 of the skeleton argument the Guardian says this,

“In the circumstances, his stated position that he seeks to care for Child 2 if she is removed from Mother’s care and/or to rebuild a relationship with her is not a realistic option either within the timescales of these proceedings or more generally and this begs the question as to why this position has been adopted by him”.

42. Pausing there, I need to explain that was indeed his position at the hearing in November 2022. That in circumstances where, if I have understood it correctly, he was well aware that he had by that stage been involved in the sexual assault of a child under 13,

albeit he was denying that and of course he has subsequently been convicted.

43. The Guardian then considers what his motivation might have been,
- “Either (a) it has been done deliberately to cause the mother anxiety and distress knowing that it is not a realistic option, this would be concordant with the opinions expressed by Dr Baker in November 2012 or,
- (b) it has been done optimistically without any care or consideration as to the impact on Mother or Child 2 or,
- (c) Father 2 genuinely has no insight into why adopting such a position is unrealistic and likely to cause anxiety or distress to Mother and to Child 2”.
44. The Guardian says,
- “In any event, the net effect is the same, his participation in proceedings has caused and is likely to cause stress, anxiety, and emotional harm to the mother. This in turn will have a deleterious impact on Child 2 and the other subject children in her care”.
45. The Guardian also relies upon Child 2’s expressed wishes in respect of Father 2, which I have already referred to, and the fact that notwithstanding redaction of the bundle to remove references to the other children and to Child 2’s whereabouts, information in a very lengthy bundle, in this case over 2,500 pages, may slip through the net.
46. Having set that out at some length, I need only really draw the strands together briefly by way of analysis. It is clear to me that even as far back as 2012 Father 2 presented a risk of harm to Child 2 and to the mother for the reasons set out in Mr Baker’s report; that is made even clearer, in respect of Child 2 certainly, by his recent conviction. As I understand it the child victim was a female under 13 and I note Child 2 is a girl under that age [].
47. I am also troubled by his motivation initially to care for Child 2 and by his current motivation to adopt a position of contact initially, as it was presented in his position statement, by telephone and only because that is likely to be impractical does he say that should be by letters. That in the circumstances of his historical offending behaviour and his most recent conviction.
48. When I add in the absence of any actual relationship as a matter of fact with Child 2 over a significant number of years, [], I am drawn to the following conclusions. Firstly, that he does not have an Article 8 right established on the evidence before me, the only right he has derives from a biological right as a father and parental responsibility coming from being

named on Child 2's birth certificate.

49. Secondly, in those circumstances I am not satisfied that the Article 6 right to a fair trial is engaged. However, even if I were wrong about that and in any event because it seems to me I have to adopt the same test, namely a balancing act between the risks on the one hand and the advantages on the other, thirdly I come to the conclusion that the risks cannot be managed adequately by any case management directions that I could give, removing the risk or attempting to remove the risk of Father 2, identifying where it is the mother and Child 2 live.
50. I will come back to that in just a moment in a little more detail, but fourthly I conclude that it is proportionate to those risks when balanced against his rights to discharge him as a party and I do that.
51. I have considered whether it would more proportionate and meet the risks of the case for Father 2 to remain a party, but for me to restrict or continue to restrict his access to documents. Firstly, him remaining a party presents a risk of emotional harm to Mother and by analogy to Child 2, but in addition I accept what is said on behalf of the Guardian that the bundle is so significant that there is a risk that matters which he should not be aware of would slip through the net.
52. Whilst that might not be a significant risk given that the proceedings are likely to conclude today, it may be a risk if there are to be future proceedings and it would also present a substantial difficulty today in hearing submissions in relation to Child 2 and the other children because it would be difficult to separate out a welfare analysis in respect of Child 2 from a consideration of the welfare of all the other children.
53. As I indicated earlier in my judgment, if Father 2 were to remain a party and to therefore be permitted to advance a positive case that I should make a section 8 order in his favour for indirect contact, there would need to be time for him to consider relevant documents, which he has not yet seen, and for other parties to consider their response to that.
54. There would be inevitable delay for Child 2, delay is presumptively not in her welfare interests and as a matter of fact in this case I fully expect matters to resolve today in respect of Child 2 and all the children.
55. For those reasons, as I have indicated, I grant the application and discharge Father 2 as a party.

End of Judgment

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