

IN THE FAMILY COURT AT LEICESTER

Leicester County Court and Family Court
90 Wellington Street
Leicester
LE1 6HG

BEFORE:

HER HONOUR JUDGE PATEL

BETWEEN:

A Mother

APPLICANT

- and -

**A Father
CHILD (VIA THE GUARDIAN)**

**(1) RESPONDENT
(2) RESPONDENT**

Legal Representation

Miss N Miller (Counsel) on behalf of the Applicant Mother
The Father (Respondent Father), Litigant in Person
Miss Vickers (Counsel) on behalf of the Respondent Child via the Guardian

Other Parties Present and their status

None known

Judgment

Judgment date: 3 May 2023
Transcribed from 12:01:57 until 12:58:43

Reporting Restrictions Applied: **No**

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Her Honour Judge Patel:

1. I am concerned with the welfare of a child known as Eve who was born in 2013 and so she is currently nine but soon be ten. Eve is a party to these proceedings and her children's guardian instructs Miss Vickers. Eve has two older brothers, A, who is 18 and D, who is 17 who are no longer the subject of any Children Act proceedings. The Applicant is her mother, who is represented by Miss Miller of counsel and the Respondent Father appears in person as he has done in the previous proceedings before me.
2. This is the mother's application which started off as the enforcement application of the order of 4 July 2022 which was issued on 13 September 2022. The mother's application for enforcement was followed by her application for permission to vary the order of July 2022 and to change the living arrangements of Eve. I granted her permission at the Directions Hearing on 18 November 2022 and went on to direct a psychological assessment by an expert Chartered Psychologist, which all parties agreed was necessary in the circumstances of this case. Her reports were filed in February and April 2023.

Background

3. The background of this case is set out in my judgment dated 5 July 2022 and at that hearing I made the following orders. The father's application to relocate the children to a country in Africa – "Country A" – was refused, both parents were prevented from taking Eve to any non-Hague Convention country until she reaches the age of 16, Eve was to live with her father and by doing that I refused the mother's application for a change of residence last year and that father was to make Eve available to spend time with the mother as follows; every other weekend during term time, the entire of the Easter holidays, half of the summer holidays, half of each day of Eid, every day indirect contact by telephone or Facetime and for such other contact as the parties were able to agree.
4. Holidays abroad were to be taken with eight weeks' notice to the other parent. Four weeks prior to travel the other parent was to be provided with travel documentation and the father was to provide the children's passports within a minimum of 48 hours in advance of travel.
5. I do not repeat the extensive background to these proceedings because, as I said, this judgment needs to be read with the one I gave last year. Save to say that this is the fourth set of proceedings in this jurisdiction for Eve. The judgments that need to be read are the judgments of Judge Ambrose in 2019 sitting as a Deputy High Court Judge, Judge George 2021 and, of course, my judgment of 5 July 2022 where she, Judge George and I, have sat and I continue to do so, Section 9.
6. There are already a number of significant findings against the Father regarding his unlawful abduction of the children across several jurisdictions, of his lack of regard for any value or contribution that this mother has to give to the children and the way that he has controlled and restricted the mother's contact to suit him, interfering and restricting her on his own terms.

Parties Positions

7. The parties' positions have been that the mother's application is to change the residence of Eve and for her to be removed from her father's care, living in a city in the East Midlands, and to live with her in a city in the South of England where she is settled and has a large community of support from both Muslim and non-Muslim groups.
8. The father opposes this application vehemently. He has already told the Children's Guardian that if I switch the residence/living arrangements of Eve he will be appealing my decision. Such was the concern of the mother and the Children's Guardian that last week at the Pre-Trial Review I decided to make a freestanding Port Alert Order to prevent the father from removing Eve from the jurisdiction in light of the findings against him regarding abduction of the children from Country B to Country A and then to England and as a result of that I made the order out of an abundance of caution.
9. The Children's Guardian now supports the mother's case having previously given significant weight to recommending that Eve remains in her father's home so that she could grow up with her two brothers. Matters since July 2022 can only be described as having 'deteriorated'. There is, to an extent, an agreed chronology since the last hearing which is rather striking.

Update since July 2022

10. One day after the last final hearing on 6 July 2022 the father informed the mother that he was going to Country A with A until the end of the summer holidays and that she must look after D and Eve until his return. Both children arrived at the mother's home some hours later having been sent in a taxi from a city in the East Midlands. On 4 August 2022 the father returned to England and within a few hours' notice went to collect the two younger children.
11. On 10 August 2022 the mother sent an email to the father enquiring why she had been unable to have her indirect contact with the children which particularly for Eve was daily and the father did not reply. She also asked about their whereabouts. On 12 August the mother's solicitors contacted the father enquiring why the mother has not been able to have indirect contact and where they were. Again, the father did not reply. On 15 August the mother was so concerned that she contacted the police to ask if enquiries could be made with the paternal family about the children's whereabouts.
12. I pause at this stage to say that in his oral evidence the father blatantly admitted that he took the children to Portugal and deliberately failed to inform the mother or even ask for her consent because he was upset that her cousin was staying at her house when the children were there, and she had not bothered to tell him.
13. On 16 August 2022, Eve called the mother to tell her that she was in Portugal. The mother alleges that the father was furious with her during the call for calling the police and says that the father instructed Eve about what to say to the mother which was making Eve upset. On 18 August 2022 the mother received a call from Eve to say that she was back in England.

14. On 25 August 2022, the father emailed D's exam results and later that day the mother spoke to D but it was a difficult and awkward conversation. On 26 August 2022, the mother emailed the father asking for her direct contact to resume after the summer holidays and the father proposed 2 September knowing full well by that point, it seems, that the mother was going to her sister's wedding in a country in Asia, something that everybody had notice of during the proceedings that ended in July 2022. On 30 August the mother travelled to a country in Asia and went to her sister's wedding and therefore did not have any contact with the children.
15. On 27 September, on her return, the mother sent the father an email again asking if her contact can resume, the father did not respond. On 30 September she sends a WhatsApp message enquiring about contact and the father says that she is welcome to come for the children but he does not reply when the mother asks for the details of their new address – he accepted that he had he moved addresses without even informing her.
16. On 4 October 2022 the mother sends another WhatsApp message enquiring about contact and there is no response from the father. On 6 October the mother emails the father enquiring about contact for the weekend of 7 October again there is no response. On 9 October by that point the mother, of course, had already issued her application and so I made directions for both parties to file statements. On 10 October the mother emailed about half-term contact and on 12 October the mother's solicitor served the father with the mother's application to enforce the order of July 2022. That appears to then have triggered a response from the father which was that he will drop the children at the mother's home on the 14th on route to the airport and she is to return them to a city in the East Midlands on 23 October.
17. On 14 October the children were dropped off at the mother's home. The mother alleges that the father was aggressive towards her, that he also told her that Eve was not permitted to leave the house. A's behaviour is described by the mother as being 'disrespectful and aggressive'. In his oral evidence the father admitted that A had told him that he did not want to go and stay at his mother's but because he did not have a ticket for A to go to Country A he would have to go to his mother's. This period of contact, therefore, occurred after the father had not allowed there to be any direct contact between the children and their mother from the end of August, I appreciate she was away for September, but certainly nothing from the end of September until October half-term.
18. On 16 October 2022 a very serious incident occurred. A's behaviour deteriorated to the extent that he was physically abusive towards his mother. The mother ended up having to call the police and he was removed from the home, taken to the police station and then eventually discharged to a paternal relative as a result of the father being, of course, in Country A. I have seen the videos related to this incident that were supplied by the father. The video of the aftermath of Eve and D pleading with A to calm down before the police arrive is poignant and it is fair to say that the incident is nothing short of horrific behaviour on A's part.
19. On 23 October the mother does return Eve and D to a city in the East Midlands and then direct contact did not happen until the matter came before me later in November. On 4 November the mother drives to a city in the East Midlands to collect Eve for her weekend contact, the father refuses to allow Eve to go for contact and when the mother refers to the court order she is very clear that he tells her he

‘did not care what the court orders says’, that Eve was not going with her and he tells her to go to the police station. As a result of that the police were contacted and a welfare check was undertaken.

20. The mother has filed, as part of her application for enforcement, a schedule of breaches in respect of the July 2022 order from July to date. But in reality the fundamental application before me is a fresh application to change Eve’s residence on the basis that if she continues to live with her father she will never be able to have a deep, meaningful and consistent relationship with her mother. The mother’s case is that the father will continue to engage in alienating behaviours as he has done so with A and D which is a pattern that demonstrates that he will not or cannot stop. Her case is that the evidence, by virtue of the facts before me, is that the pattern of the father’s behaviour has resulted in neither of the boys wanting to speak to her, they do not answer her calls and they do not respond to any of her messages.
21. The expert has not given live evidence because everyone agreed that it was unnecessary. At the hearing on 8 December I granted the permission for her to be instructed and, as I have said, she has filed two reports. In her first report she highlighted the conflict that Eve feels regarding her relationship with her parents and is clearly aware of the division between them. Further the expert comments that Eve is likely to be negatively influenced by the views her older brothers have regarding their mother.
22. Furthermore, the expert suggests that if Eve remains in the care of her father she will not have a meaningful relationship with her mother and this will have a significant impact on her. What she says in particular and I quote is this:

“In my view Eve has suffered harm as a result of the proceedings and the seeming inability of the parents to come to and stick to some reasonable agreement in terms of contact. This harm is in the form of damage to her self-esteem, her sense of identity from being from both of her parents and her anxiety. She is trying to conform, in my view, to the expectations of the father and is conflicted as she sees her mother as not conforming to the expectations of the father in terms of the care given to the children.”

23. She goes on:

“If Eve remains in the care of the father, in my view, she will not have a meaningful relationship with her mother and this will have a significant negative impact on her identity and self-esteem as well as her mood and her overall attachment relationships. I suggest that there is a conflict between the parents arising out of cultural and religious views as to the expectation of women and that Eve is already unconsciously aware of this and it will cause a tension within herself.”

24. The expert recommended regular contact between Eve and her father should she move to live with her mother but equally highlighted her concern in respect of the father’s ability to adhere to court orders based on the history of this case. Unfortunately, the expert was unable to observe Eve in her mother’s care and therefore the second report was ordered.

25. Within the second report the expert undertook an observation of Eve spending time with her mother. The interaction was described as warm, relaxed and positive. Eve shared her views that the current arrangements for spending time with her mother were not fair as this did not allow her equal time with her dad not realising, of course, she lives with her dad. Eve further shared that she wished to live with her dad and highlighted her friends as being important to her. The expert comments that a change of living arrangements would cause Eve distress, possibly anger, when her clear views are to remain with her father and her school friends.
26. Further in the expert's view a change of living arrangements may impact on Eve's long term emotional welfare and to her attachment with her mother. The expert suggested splitting the holidays equally between the parents depending on the father's work and travel commitments. The expert concludes the assessment with the recommendation for the father to promote Eve's relationship with her mother but if he is unable to do so then the Court may need to consider a change of living arrangements to ensure that Eve's relationship with her mother is not lessened or broken over time.
27. I have this comment having read that excerpt which is this: The expert appears to have failed to take into account that everything that she has recommended is exactly what was tried and tested when I made my orders in July 2022.

The law

28. “(1) When [the] Court determines any question with respect to -

(a) the upbringing of a child ...

the child's welfare shall be the Court's paramount consideration.”

As set out in section 1(1) of the Children Act. As I have said from the outset Eve has therefore been at the forefront of my mind and her welfare has been my paramount consideration.

29. Further in determining any question about the child's upbringing the Court shall have regard to the general principle that any delay in determining the question is likely to be prejudicial to the child's welfare. I have had regard to the presumption that the involvement of a parent in the life of a child furthers his welfare unless the contrary is shown. I also remind myself that the Court should not intervene and make an order unless it considers that doing so would be better for the child than making no order at all.
30. When the Court is considering making a section 8 order whether that is a fresh or considering a transfer of residence the welfare checklist is the test and those are the factors as set out in section 1(3) of the Children Act. All of those factors are to be considered and no one factor in the list holds any more weight than the others.
31. Where I have made findings in this judgment on disputed issues I have reminded myself that where any party is asserting a fact the burden of proof lies on that party to prove it and the other party does not have to prove otherwise and the standard of

proof is the balance of probabilities and that any findings I make must not be based on suspicion or speculation.

32. Further the Court must take into account all of the evidence and consider each piece of evidence in the context of the other evidence before the Court. I also note that it is not uncommon for witnesses to tell lies in the course of a hearing. The Court must be careful to bear in mind that a witness may lie for various reasons such as shame, misplaced loyalty, panic, fear or distress and also that just because a lie may have been told about one thing does not mean that that person has lied about everything.
33. I have, of course, had regard to Article 6 and also Article 8, the rights to private family life, in respect of Eve and both of her parents and, of course, where there is a tension between the Article 8 rights of a child and their parents the rights of the child prevail.
34. Pursuant to Practice Direction 12J contact for any child must be safe and it must be beneficial.
35. In terms of the mother's case regarding alienating behaviours in *Warwickshire County Council v The Mother and Ors* [2023] EWHC 399 (Fam) Lieven J last year was charged with dealing with a case where there had been a badly planned reunification plan that went horribly wrong. In that case she gave some guidance about the concept of parental alienation and said this:

“23. There are a number of cases concerning alleged “parental alienation”. This is a highly fact specific scenario in which labels and generalisations are not in my view helpful. In a very large number of cases that appear before the Family Courts, particularly concerning private law, the parents have some degree of animosity towards each other ... whether consciously or unconsciously may influence the views of children about the other parent. It must however be remembered that children are autonomous human beings who have their own feelings and their own perceptions. That becomes particularly true as they become older and begin to wish to assert their own personalities separately from any parental control.

24. It needs to be accepted, and carefully considered, that the “muscularity” of Court intervention suggested at [13] of [the case] *Re S Parental alienation* [2020] EWCA Civ 568 may be in considerable tension with the wishes and feelings of children. As ... children get older, and more weight would be accorded to their wishes and feelings, the Court has to consider very carefully the degree to which a very significant interference in the Article 8 European Convention on Human Rights ... rights against their wishes, is both justified and proportionate.

25. In my view said Lieven J, the Court should also bear closely in mind in these difficult cases, that there may be no “good” solution. The Court cannot rewrite the past and only has limited influence on the future. It is often not possible to cure the wrongs that have happened, and it is particularly hard to change a mindset or [a] narrative that has been firmly adopted. It may be, although I am ... considering the facts on this particular case, that these comments are particularly apt in respect of

slightly older children, who are less open to being told what to do by adults, whether for good or ill.”

Summary of the evidence and assessment of the witnesses

36. I have heard oral evidence from the Children’s Guardian and both of the parents. This children’s guardian is both experienced and she is considered. She has changed her mind about Eve’s living arrangements since last year because of her rising concerns regarding the levels of emotional harm that Eve is being exposed to.
37. In her report dated 21 April 2023 she opines that both options before the Court bring the likelihood of further emotional harm to Eve. If she remains living with her father her relationship with her mother will be significantly impacted which will impact on Eve’s emotional wellbeing. If Eve moves to live with her mother, she will feel the loss of her family and life in a city in the East Midlands which will equally be damaging to her emotional wellbeing and identity.
38. Whilst Eve is competent in sharing her views the Guardian does not believe that she is competent when it comes to understanding the harm and the impact that this will have on her emotional wellbeing, her sense of self, identity and future relationships. The Guardian was very frank that in her view the expert’s reports are not entirely helpful because they do not offer a definitive recommendation to the Court nor do the reports suggest a suitable way forward should the Court change Eve’s living arrangements.
39. Rather disappointingly she says that she does not believe that the expert has fully considered the complex history of the family or the findings made in previous proceedings. Furthermore she does not believe that the expert has fully explored the impact on Eve should she move to live with her mother. I am afraid, and I say it loud and clear at this point, the Children’s Guardian seems to be absolutely right on both of those points.
40. The Children’s Guardian goes on to say in her report that she is aware that within these and previous proceedings there has been no expert assessment dealing specifically with the concept of parental alienating behaviours but she has considered the Cafcass inhouse tool:

“Typical behaviours exhibited where alienation may be a factor.”

To inform her own assessment and in her analysis there are clear themes and patterns of alienating behaviour displayed by the father which is evident, she says, in his statement, in his behaviours and in his thoughts.

41. Examples of alienating behaviours can look like the following; a parent that actively denigrates and exaggerates the flaws of the other parent to the child, directly or indirectly. Refusal to hear positive comments about the other parent. Quick to discount the child’s good times as trivial and unimportant. The parent expresses no concern or empathy that the child is missing out on a previously positive relationship with the other parent. Is disinterested in the impact that this may have on their development and identity. Does not correct the child’s rude defiant behaviour directed towards the other parent but would not permit the child to do this with others.

42. In the Guardian's view the above list is a clear list examples of how the Father has alienated the children, specifically A and D, against their mother within these and previous proceedings. She is therefore extremely worried that Eve's relationship with her mother will follow in the same footsteps as her older brothers and that there is clear evidence before the Court of the Father repeatedly not abiding by court orders. He continues to maintain that he did not abduct the children, despite the findings having been made against him, and he continues to fail to promote the mother as a positive influence in the children's lives.
43. Ultimately the Guardian concludes that the previous proceedings, which only ended in July 2022 some ten months ago, have evidenced since then a clear deterioration in the breakdown of D's relationship with his mother which mirrors A's relationship with his mother both which are sadly, now, non-existent. This, says the Children's Guardian, is a clear indicator of the likely outcome for Eve if she remains in her father's care. Especially where the father seems to support A and D's decision to stop all contact with their mum rather than to try and support and encourage their relationship.
44. In her view the Father was clear in his statement that they do not need their mother in their life:

“Period.”

This in itself is a significant concern for the Children's Guardian because it clearly highlights the Father's lack of insight of the importance and value that mother has in the children's lives. In her oral evidence the Children's Guardian confirmed her conclusions. She acknowledged that moving Eve from her father was going to be distressing, that Eve will miss her brothers and that she will struggle to initially settle. However on balancing the welfare factors for Eve she remained clear that these negatives come nowhere near the long term negative impact on Eve's emotional and psychological wellbeing of not being able to have a lifelong relationship with her mother which if she remains with her father, she will not be able to have.

45. Whilst Eve is not at this point openly hostile to her mother it is clear that she blames her mother for not being able to go to Country A and that she has been allowed to think that the mother allowing others into her home creates a risk for Eve. Eve has already said that she wants the Children's Guardian to tell her the outcome of my decision today and so in the Children's Guardian's professional opinion the move should happen imminently otherwise there is a risk that Eve will be further subjected to emotional harm from her father and her brothers. She also confirmed that the Improving Child and Family Arrangements Service (ICFA) will be able to support the family and that she has permission to take this referral forward by her service manager which would mean a referral to a local service (to the mother) who will be able to start work, hopefully, within the next four weeks and offer six sessions of supervised contact to the father.
46. In the meantime, however, the Children's Guardian's view, and of course this is a view she has had to formulate on her own professional opinion because of the lack of recommendations in the expert report, her view is that once Eve's residence has changed that for a period of four weeks she should only have indirect contact through

supervised video contact twice per week with her father for five minutes to allow Eve to settle in her mother's care. Anything that the father might do to undermine that settling period is going to be hugely detrimental.

47. The Children's Guardian also acknowledged that at this time the mother has no school place for Eve who is doing well at the local Academy. However given that this month has three bank holidays and then it is half term, this will give the mother the time to confirm a place, and in the meantime the Academy are able to provide written work for Eve to do. She was clear that the boys should have their own contact with Eve and that they should not join the father's contact but accepted that it was unrealistic to think that the boys will actively call their mother to engage in this.
48. I found the Children's Guardian, as I did last time, to be just as thoughtful and considered in her recommendations. I agree with her that much has happened since I made my decision in July 2022 and that the cumulative effect of the chronology of events since then does not provide any confidence in the father's ability to ensure that Eve has a positive long term relationship with her mother. On the contrary the level of emotional harm that she is being exposed to has only got worse.

The mother

49. The mother remained calm and also considered in her evidence. She was emotional at times and has made it clear to me that after years and years of litigation if my decision was to allow Eve to remain with her father then she would not be bringing any more applications. I took that comment in the good faith that it was given, not used as a threat but as a sign of her exhaustion with the situation and her resilience significantly waning.
50. In her evidence she genuinely accepted that moving Eve will create a huge loss for her but that she will do her best to try and support her emotionally and give her both the academic and religious education which includes sending her to the local mosque for classes and integrating her into her own network of support, many of such friends and connections Eve already knows. The saddest part of her evidence was listening to her describe her relationship with the boys as being:

“Severed.”

And that her biggest fear is that if Eve is not moved now she will lose her mother but also the freedom to make choices due to the father's strict expectations.

51. I re-read my summary of her evidence from July 2022 and at that time she thought that if Eve was placed with her then D would have followed because he was talking to her about studying in a city in the South of England and going to university there. There is not a shred of evidence in the last set of proceedings that D was afraid of his mother as the father asserted in this hearing. I found the mother to be consistent, reliable and controlled in her evidence. In the face of the father's scathing statement of November 2022, to which I will return below, despite that (which she must have found reading incredibly painful) she nevertheless remained calm and considered and not once has said anything denigrating of the father.

The father

52. The father has filed two statements. As a Family Court judge I see many parents give evidence in really difficult circumstances often far more extreme than this case and it is rare for me to be surprised by a parent's evidence. Regarding the Father I can say that parts of his evidence were frankly astonishing. In his November 2022 statement he refers to being:

“The three of us [A, D and himself] mentally scarred by the mother’s behaviours over the last eighteen years.”

He then proceeds to explain to the Court how she is a ‘narcissist’ and what that means in great detail. He goes on to say how the children are meaningless to her.

53. In his oral evidence when I put to him that he was vociferous in his first statement but much more conciliatory in his second, he said that he wanted to retract his first statement and that he had made a mistake by putting that statement in at a time when he was angry with the mother for what had happened in October. He rather confidently believes that had he been in the country then the incident would not have happened with A. Despite saying that he wanted to retract his statement he then went on to develop his theme about the boys being:

“Afraid of their mother.”

And hating her, something which he had said about A hating his mother in the previous proceedings but certainly not D and, of course, I rejected that assertion by him in any event as I rejected it on A’s behalf last time.

54. When I took him through the schedule of breaches, he pretty much accepted all of them which is behaviour that amounts to him blatantly breaching my order of 5 July 2022. The only breach he refutes is not making Eve available for indirect contact because he says the mother did not call him despite the fact that he did nothing to facilitate Eve speaking to her mother or even emailing her or her solicitor to ask why she was not ringing. He admitted that from 4 August until mid-October when he dropped the children on the way to the airport he did nothing to facilitate indirect or direct contact on weekends that the mother was asking for. That could have happened at the end of August before the mother went to a country in Asia but he did not make the children available.

55. In his second statement filed in early March 2023 he does appear more conciliatory, more accepting that he has made some mistakes by breaching court orders and refers to himself as:

“Only being human.”

In his oral evidence he largely accepted, as I say, those breaches in admitting that he took Eve to Portugal without notifying the mother or even gaining her consent because he was upset for her not telling him that her male cousin was staying at her address. He accepted this was a deliberate decision on his part.

56. He admitted delaying sending the children, in particular Eve, for contact after the school holidays because he said the children did not want to go. He accepted that he did not send Eve in mid-September to mid-October, he only sent the children for half-term holidays when he had booked the flight to Country A despite the fact that

A had said he did not want to go to stay at his mother's. He accepted that since the incident in October 2022 he decided not to drop off or collect Eve but for a taxi to be sent and for one of her brothers to accompany her during this journey despite the fact that the mother had reported A to the police and had him arrested and now the father says that as a result of that and her making allegations against him - he is afraid.

57. He did not appear to accept that there was an irony in him sending A to do the job which he decided that he did not want to do particularly in circumstances where he keeps telling me that A's autism has a huge part to play in his functioning which I do not doubt for a second but does not explain to me why the father came to that decision.
58. The most astonishing aspects of the father's evidence was as follows; a) Despite all of the historical findings against him he is clear that nothing he has done has impacted on the boys' negative views of their mother. He cannot explain their behaviour but this is not down to him even though it is clear that he has shared court papers with them and has done nothing to persuade A to apologise to his mother.
59. b) He seemed to lack any ability to show understanding or was deliberately denying the link between his strong feelings about the mother allowing random boys or men into her home and A calling his mother a 'whore'. This is in the context of him insisting at the November hearing that I should make an order preventing the mother having any males staying at her home even though the male staying at her home was a cousin and her then offering an undertaking about this.
60. c) Despite the horrific nature of the incident in October 2022, A putting his hands around his mother's neck and dragging her downstairs, telling his siblings that he should have 'fucking killed her' and that she is a 'whore' and that D was a 'pussy for not standing up to her', the father's attitude to A was that he was:

“Over the incident.”

He did not think that A needed some therapeutic intervention for his strong feelings and reactions towards his mother which are all now deeply embedded in a 17 year old boy who seems to think that it is OK to make judgments about his mother's lifestyle which the Father appears to accept he did nothing to correct, only then to tell him that he should not say these things to anyone because he would get into trouble.

61. d) It is clear that he did not see, in the videos from the incident, what everyone else in the courtroom saw. He believes that the videos show him in a good light because Eve and D are asking A to calm down and that they are going to ring their dad. He does not seem to place any weight on the fact that A was screaming at both of his siblings and telling them that 'she is not their mother'. He did not see that Eve and D failing to tell A that he should not have strangled their mother was of importance.
62. e) He also appears to confidently believe that by restricting the male company that the mother is allowed in her home when Eve is there has resulted in Eve having more time and attention that she needs from her mother which means she is relaxed and happy. He is certainly more relaxed and happy with this restriction in place. He failed to see how this is controlling behaviour and that his explicit assertion is that the mother is doing something sexually immoral with men or college boys that she has allowed into her home. He did not even know any details about this and he has

never asked the mother about this in an email or through her solicitors but he seems to have held that opinion about her.

63. f) Most astonishingly was his firm belief that D has traits of ‘covert narcissism’ and that he has now sat D down and has told him this and that D has accepted it. He told me that he:

“Personally started to treat D”

as stated in his statement by signing him up to a gym and telling him that he must be kind to A and to speak nicely so as not to isolate his friends. He said that in the last six months he has seen a real change in D, he is now kind and not rude and he is a much better person having taken his father’s advice on board. He seemed to have no concept of the damage that this conversation may have caused to D’s psychological wellbeing.

64. He appears to have no concept that linking D’s anxiety to his mother being a ‘narcissist’ may be exactly the reason why D has stopped talking to his mother because being like her would make his dad and A think that he was a failure and that he was ‘weak’. The father has no concept of the fact that he appears to have self-diagnosed D even though he has no medical qualifications whatsoever and has not bothered to take him to the GP. He failed to accept or even consider that there is a link between his assertion that D’s behaviour has improved over the last six months when that is the same period that D has had no contact with his mother – something that he appears to want to rely on for his own self-serving purposes.
65. I have to say I did not think that the Father’s evidence could surprise me but his evidence yesterday went to another level and I was left with no doubt that my impression of him is that he has some sort of God complex and has no regard for how emotionally damaging it is for his children to not only have a poor or no relationship with their mother, but to be actively encouraged to ‘hate’ her.

Discussion, analysis and decision

66. I have considered the welfare factors as set out in section 1(3) of the Children Act. I have considered Eve’s welfare, which has been at the forefront of my mind and it is my paramount consideration. I have considered all of the previous proceedings, the existing findings against the father which were made in the High Court, by Judge George and by myself last year.
67. As the Children’s Guardian says central to this application is Eve. The purpose of this hearing is to consider her long term arrangements and whether it is safe and in her best interests to remain living with her father and her two brothers or whether she should move to the South of England to live with her mother. This is the fourth set of proceedings in which she has been involved over the last seven years in the UK alone. She has known nothing other than her parents being involved in legal proceedings about her.
68. The children have known nothing else other than being moved from country to country being taken away from their mother again and again, being locked into the parents’ legal proceedings, being the subject of applications where they might move

to Country A or they cannot move to Country A. Being directly exposed to the evidence within the proceedings by their father as he did last year with the boys.

69. Despite my best efforts to make the right decisions about Eve's welfare last year, less than ten months ago, and to make a section 91(14) to prevent any more applications and give her and her brothers the breathing space that they deserved, I am satisfied that this mother had no choice but to issue these proceedings in September 2022.
70. Within a day of the final hearing taking place the father was once again acting unilaterally to suit his needs and only facilitated contact on his own terms in the summer of 2022.
71. He admitted breaching my orders repeatedly with little to no remorse. On the contrary at the time when he was annoyed or upset and he has felt entirely justified in cutting the mother off and obstructing her contact to Eve. He even went as far as deliberately not telling her that he took the children to Portugal leaving the mother hanging for days not knowing where the children were or whether they were even alive to the point that she had to call the police.
72. Having heard the oral evidence, the submissions, as well as reviewing the findings that have all been previously made, I am satisfied that all the breaches that the mother seeks are proven on the balance of probability. On issue of obstructing indirect contact, where out of 70 possible occasions the mother was only able to speak to Eve 6 times, I am satisfied this breach is proven because frankly I am not prepared to give any weight to the father's evidence on this issue when he came across in his evidence as inconsistent, controlling and frankly making it up as he was going along in respect of D's behaviour which he had never raised before.

Findings

73. I make the following findings. 1) The father has engaged in a pattern of behaviour to undermine the mother's role in the lives of the children. 2) He has behaved in this way for years. 3) Four sets of proceedings have not changed his actual view which is that the children do not need their mother in their lives.
74. 4) He blindly continues with his behaviour despite the Court's clear findings against him in three previous judgments. 5) He has used the mother to drop off the children to when it suits him and on his terms when he needed to travel to Country A as if she were some sort of baby sitter. Even then he has dictated terms about whether she can leave the house with Eve like in October half-term.
75. 6) He has deliberately fed into and supported the boys' negative views of their mother, views which he has exacerbated by showing them court papers on the last occasion and for A, making him think that it is OK for him to judge his mother and to question her decision making because she is inferior to his father. The example is making the boys think that the mother was doing something wrong or immoral by letting her male cousin stay in her home when Eve was staying there.
76. 7) He cannot explain why D has gone from seeing his mother fortnightly and staying with her in the summer of 2022 to not speaking to her at all. This has got nothing to do with D sitting his exams nor is it anything to do, in my judgment, with his mother's care. I am satisfied that D has found himself under so much pressure to

align himself with his father and his older brother that he has had to choose or risk being called weak and not standing up to her.

77. 8) In my judgment both boys now no longer have a relationship with their mother because their father has influenced them. He has influenced them throughout. In my last judgment I referred to the fact that he blatantly admitted he had shared with the boys how the mother had got him sent to prison unjustifiably in Country B and how he suffered during that time.
78. 9) When he says in his statement that the mother has subjected:

“Us to mental cruelty.”

He means all three of them, he believes this and I find that he has shared this with the boys. If they are afraid of her calling the police on them it is because he has put this into their minds that there is a risk that she would do this unjustifiably. Rather than correcting the narrative, he twists it to suit his own agenda and that is the narrative that she did this to A in October 2022 and that she had her son arrested. Not that she was reacting by calling the police to protect herself.

79. 10) He has done nothing to reprimand A whose autism cannot be a reason for there to be no boundaries in his behaviour. The Father has done nothing to support A to apologise to his mother for such extreme behaviour because he does not see the incident as the Children’s Guardian, as the mother and as the Court does. 11) I do not accept that he sends A to see his mother in a taxi accompanying Eve as a means of keeping the door of communication open. He does this because it suits his own agenda and because he is (as he says in his statement that) :

“Tired at weekends and doesn’t want to do this [himself].”

Again having no regard for my order of July 2022 and giving the impression to the boys that he can do as he sees fit and he does not need to engage himself in communicating or even trying to be civil to their mother.

80. I am satisfied having made all of those findings that Eve is at high risk of being subjected to alienating behaviours by her father in the same way that her brothers have been alienated by him against their mother. I only have to remind myself of the words used by A in the aftermath of the October incident. He says to D:

“You must be horrible to her. She is the enemy. Why aren’t you disrespecting her? Say no to her. Don’t be a pussy.”

I am satisfied that is not A speaking for himself or from within himself. There is a stark lack of empathy by all of the children for what happened to their mother as seen in the video of the aftermath of the October incident and the fact that she was experiencing being dragged downstairs by her neck by A.

81. The children’s discussions outside the home whilst waiting for the police to arrive are illuminating. They demonstrate that all the children have already been exposed to their father’s strong and denigrating views about their mother being an inferior parent and in effect a second class citizen to them. Eve says to A:

“You shouldn’t have done that. Papa didn’t tell you to hit her. You will now have to go to the police station but Papa will bail you out. Let’s ring Papa.”

And then, of course, that is what they did.

82. I am satisfied, sadly I am satisfied, that everyday Eve remains living with her father and her brothers she is being exposed to a negative and untrue narrative about what her mother has ‘put the family through’ and what her mother has ‘done’ to her father and her brothers. The father’s behaviour over years and years has simply not changed. After hearing all of the evidence it is very clear to me that he has not been able to control himself. He has not been able to prioritise the emotional wellbeing of any of the children by allowing them to be loved by their mother.
83. Despite repeated findings against him he has not moved or corrected himself. He does not believe there is anything to change and I am afraid his solemn promise that he offers me in his closing submission is one that I can place no weight on when the evidence plainly and overwhelmingly points to the fact that instead of supporting the children to have a positive relationship with their mother he has done everything he can to break it.
84. I am satisfied that removing Eve from her father’s care will cause her a huge amount of distress and I take account of her wishes and feelings to continue to live with her father. But at aged nearly ten years old those wishes and feelings cannot be the determinative factor. It is not too late for her, there is a solution available to the Family Court that might avoid her suffering the same levels of loss that her brothers are now experiencing.
85. I ought to say here that I am equally satisfied, as the Guardian says, that neither A nor D understand the significance of the loss that they will now experience for the rest of their lives into their adulthood by cutting off their mother who has spent the last seven to ten years of her life fighting for a chance to mother them. In those circumstances I am very clear that Eve also does not understand what she will lose if she continues to stay with her father.
86. I have to balance what Eve will lose to what she will gain. With her father she will be exposed to his alienating behaviours and unintentionally and intentionally such behaviours that flow from her brothers. There is also a risk that she will be self-diagnosed by her father with some sort of mental health trait if she behaves in a way that he disagrees with as he has done with D. She is at high risk of never being able to have a deep and meaningful relationship with her mother.
87. Positively she would be able to live with her father who she loves and who has cared for her to a high standard for almost all of her life. She will continue to live with her brothers who she loves and she is close with and she will be able to stay at the Academy and be with her friends.
88. If she is placed with her mother she will have the chance to be with a parent that is able to love and care for her and meet her needs and also support her having an ongoing, positive relationship with her father and her brothers. She will have an opportunity to go to a new school and make new friends and become part of the

mother's network of support. She will lose her current cohort of friends but I am satisfied that her mother will try and support a continuing relationship with them.

89. In the mother's care she will be free from the toxic narrative that the father has created about her mother and the rather restrictive cultural and religious expectations that he puts on her. If she is able to settle in her mother's care and given her age, I do not see why this should not happen as long as the Children's Guardian says that contact during this period, this crucial settling in period, is managed with her father and her brothers and that this period of time allows her to have a positive parenting experience. The ultimate positive would be that she would be parented in a way that would meet all of her emotional needs including to maintain her faith by attending the local mosque that the mother is already a volunteer at.
90. Whilst there is a risk, and I have no doubt that the impact of my decision does not just impact on Eve although she is my paramount consideration, there is a risk that the boys will never forgive their mother for Eve being moved from their father's care and they will blame her as he will. There is always a chance, on the converse, that the boys will see Eve grow and flourish in their mother's care and that they will see that she is not the 'big bad narcissist monster' that the father has painted her out to be.
91. In the circumstances, I have considered whether I should go against the recommendations of a very experienced children's guardian who knows this family very well and I have concluded that it is very difficult for me to do that. I have no reason to depart from her views and recommendations and given her level of expertise I am satisfied that her analysis is far more valuable than the reports of the expert which I agree were rather disappointing.
92. I am satisfied on the evidence before me, and I take no pleasure in coming to this decision as it has been an extremely difficult one, that Eve cannot continue to live with a parent that 1) has no regard for court orders. 2) Will continue to breach them. 3) In the last six months, despite robust orders being in place, he has shown that he will still behave in ways that resulted in the October incident and A's behaviours spilling out in the presence of Eve which I am satisfied is an incident that caused both Eve and D significant emotional harm.
93. 4) A parent that has no value for the role of a mother in his children's lives. 5) In my judgment a parent who deliberately and consciously has alienated his boys against their mother because she chose to divorce him and leave him to lead a life of her own, something which I find he will never ever forgive her for and 6) a parent who told me that Eve should not be sent a message that he has done something wrong. On the contrary I am satisfied that is exactly what the Court needs to do because the only current protective factor for Eve is her age that is keeping her relationship with her mother going.
94. She needs to know that what the father has done for years and years is wrong and it amounts to emotional abuse of her right to have a free and unrestricted relationship with her mother who has been fighting for years to be able to love her. If I leave her there any longer it will be too late.
95. If she had been 12 or 13 it would have been too late but she is 9 and the benefits of her living with her mother now, despite this no longer involving living with one of

her brothers, far outweighs any benefits of her staying with her father. He cannot be trusted to meet her emotional needs, for her to have a relationship with her mother. On the contrary I am satisfied one way or another he will not rest until he has got all three children with him not speaking to their Mother and not seeing her unless I do something about that now in Eve's long term welfare interests.

96. I am therefore going to make the following order. There will be a change of residence. Eve will live with her mother as of 3.00pm today and she will be told the outcome of this hearing by the Children's Guardian and her solicitor, Miss V. She will be collected by her mother from school and taken back to the South of England. Over the next four weeks there will be indirect contact between Father and Eve supervised by the mother at 6.00pm on two days to be agreed for a period of five minutes duration with the mother having the capacity to bring the call to an end if the father says anything inappropriate.
97. The Children's Guardian will make the referral to ICFA and in four weeks' time there will six sessions of supervised contact to take place fortnightly with the father. The involvement of the boys will be dependent on the views of the ICFA worker in consultation with the Children's Guardian on days and times to be directed by them but not before 31 May. I am going to make a Specific Issue Order that the father will go home and pack S's belongings and bring them to the Academy for no later than 4.00pm.
98. In respect of school, I am going to make a Specific Issue Order permitting the mother to unilaterally enrol and start Eve in the school of her choice therefore not requiring the father's exercise of parental responsibility or his consent. In the meantime the port alert order will expire in the next 20 days or so. Upon expiry I will amend the Prohibited Steps Order to say that at this time the father is not permitted to take Eve out of the jurisdiction until further order of the Court.
99. The Prohibited Steps Order preventing the father or any person removing Eve from her mother's care and control is also made. I am satisfied that that is necessary to protect this placement. I am also going to make an order preventing any additional contact outside the indirect contact I have ordered which shall be worded in this way. The father shall not make any attempt to contact Eve directly or indirectly and shall not send any messages through the boys until further order of the Court. I am going to attach penal notices to all of those orders because the evidence to me suggests that it is highly unlikely that The Father will comply with any of my orders.
100. The Father can you stand up please? I am making a series of orders in this case. I know you disagree with them, I know you will be devastated but I have made a decision that I consider to be in Eve's best welfare interests. I am attaching penal notices those orders.
101. What that means is that if you now breach those orders not only will you be flagrantly and blatantly breaching an order of the Court but you will also be in contempt of court and if a breach is proven in relation to any aspects of those orders you may be sent to prison or fined if I find that the breach is proven beyond reasonable doubt. I am making that clear to you now so you understand the consequences of any behaviours that might flow as a result of the decisions that I have made today. That is my judgment.

Postscript of final judgment handed down on 25.9.2023

1. This is a very sad case in which I had hoped I could make final decisions by agreement for the child Eve to have direct contact with her father. He has not attended this hearing and so I have proceeded in his absence being satisfied that he has known full well that this hearing was listed in May 2023.
2. I had hoped I could finalise the case with some agreement from the parties following the hearing in May 2023 when I drastically transferred Eve from living with her Father to living with her Mother. In two previous judgments I set out in detail the history of the difficult decisions the Court had to make with respect to Eve and her older brothers A and D, who are now at an age when the Family Court would not be making orders in their interests.
3. Unfortunately, despite wanting to allow Eve to continue to have a relationship with her Father even though the court made very serious findings against him that he had caused her significant emotional harm, the evidence for that being the way he has deliberately and purposefully alienated Eve's brothers from having a relationship with their Mother, I allowed the opportunity for Eve to continue her relationship with her Father. I made provision for the specialist service ICFA to support the relationship moving forwards in direct contact and for the Children's Guardian to make further recommendations about direct contact.
4. The Father, as could have been predicted, has typically dug his heels in instead of co-operating in Eve's best interests. He has shut down and not co-operated with ICFA and therefore has had no direct face to face contact with Eve since May 2023. He has not co-operated with Cafcass and has not made any efforts to contact the Children's Guardian despite her making efforts to get in touch with him on numerous occasions. He has not been in contact with the Mother and appears to have blocked her mobile number.
5. There appear to be rumours on the ground that he and the boys have left the jurisdiction and relocated to Country A, which was of course the reason for his applications that triggered these proceedings in 2019 and 2020. He appears to be, yet again, deliberately behaving in a punitive way to punish Eve and her Mother for the Court making this decision.
6. I am very disappointed he has behaved in this manner. On the one hand, it is fairly predictable he has reacted in that way; on the other hand I am surprised that he has walked away from having a relationship with the child he told me he had "been a Mother and a Father to". It is a really selfish decision, to think it is OK to leave the country, if that is indeed what he has done. He has not had a relationship with Eve for the last 4 months and has not made himself available for the regular contact which has been offered but has made ad hoc calls.
7. Having regard to the Mother's position and the Children's Guardian's recommendations, and the reasonable and sensitive position taken by both, I will make a final order that Eve lives with her Mother. I am really pleased she has settled and coped with the transition very well. She is engaged with school, making friends, doing lots of activities like martial arts and horse riding. I am really pleased she has been able to get used to living with her Mother despite the fact that

I see the Father's behaviour having been totally intended to undermine that relationship, which he has repeated year after year of Eve's life. Notwithstanding his attempts to directly undermine this by shutting down his contact with Eve over the last 4 months, she appears to be thriving and progressing in her Mother's care.

8. I will make a time spent with child arrangements order for Eve to be available for three video calls per week to take place via the Mother's mobile phone. If the Father has blocked her then it will have to go through A or D telephoning; the order makes clear they are able to participate in those calls which will happen at 6pm on Wednesday, Friday and Sunday. The calls will continue to be monitored by the Mother and she will be given permission to end the call if the Father makes inappropriate or abusive comments as has happened in the past. I can only hope, but I have no confidence in the Father changing his ways, but what I hope will happen is the Father can at least make himself available to check in with Eve and see how she is doing.
9. I am going to make a positive order that there should be no direct contact between Eve and her Father.
10. Eve has inevitably struggled to understand why I made the findings that her Father had harmed her. I appreciate the fact that the Children's Guardian has offered to sit and go through the judgments with her or to read them with Eve and speak to her about the judgments. I am in no doubt that it will be distressing for her but it will also be eye opening and I am satisfied and in no doubt that the narrative she will have had from the Father will have been completely one-sided.
11. I have no doubt that the narrative she has had from her father was designed to completely denigrate and undermine the Mother and make out that the Mother is someone who would seek to dissuade Eve from behaving in the way expected of a young Muslim girl. It is really important Eve sees the findings that I have made about her father; why, in 2022, I did not want to separate her from her brothers and hoped that the Father would promote her relationship with her Mother, and why, in May 2023, I decided enough was enough and that I would have to order that she moved to live with her mother. This was the only order I could make so that she could be protected from the abuse she was experiencing in father's the home and so that she could be given the opportunity to have a relationship with her Mother and brothers, in reality for the rest of her life. It is important that she reads my judgments and I am grateful to the Children's Guardian who will support her in understanding my decisions in a child focussed way.
12. I will make an order that the Father must provide each of Eve's passports and any identity cards and her birth certificate to the mother, and that they need to be sent in the post. The expectation is that he will send them in the post by no later than 6th October. I am going to have to say the rest of the order can be served by email and post, but the burden will be on the Mother's solicitors to effect personal service of paragraphs 9-12 which have a penal notice attached.
13. I will make a prohibited steps order that the Father will continue to be prohibited from removing Eve from the care and control of the Mother or any other person with whom she places her. He is prohibited from removing Eve from the jurisdiction of England and Wales. He is prohibited from making any contact with Eve either directly or indirectly until further order. The prohibited steps order

against the Mother is discharged and she is able to take Eve out of the jurisdiction, including to non-Hague countries.

14. Regarding the s.91(14), in my view, and it is my analysis based on the previous judgments I have given, the Children's Guardian has been entirely reasonable in suggesting 3 years but I do not think that is enough. It warrants five years, which I accept is extreme, but the facts are so extreme as to warrant a period of five years. That is so that this little girl can grow up in her Mother's care not having to worry about being exposed to further applications. This Father is exactly the type of person to want to make an application for the sake of it even if he knows on the ground it is hopeless, in the same way he knew it was highly unlikely that I would give him permission to relocate with Eve to Country A only nine months after making the first application. Enforcement is not covered by the s.91(14) restriction and any applications for leave will come to me. The applications will not be served on the Mother until they have been gate-kept by me, so the Mother does not need to be burdened with it until I have decided what I will do with it.
15. I give permission for the order to be served on the DWP and a copy of the order should be sent to the Passport Agency. I make another order that, in the event that the Father does not hand over the child's passports, I have no other choice but to allow the Mother permission to apply for a passport in Eve's name without needing the Father's consent. That is a fairly draconian order to make without the Father being here but he knew full well about the hearing, he has known for months and has chosen not to engage, he has not given any excuse for not attending and has not contacted the court. I have no confidence he will comply with that paragraph, even with a penal notice attached, even if it is personally served on him, but I am really conscious of the cost to the Mother of personally serving him in Country A and that it is going to be really difficult. I want to limit the need for the Mother to come back to Court, so in the event that he does not comply, from 7th October onwards the Mother is permitted to make an application for a passport in Eve's name and she will have permission to do so without the need to obtain the Father's consent in writing. I make that as an order of the High Court.
16. I have published the judgments in this case for a number of reasons. Firstly it is important for the purposes of transparency that the Family Court publishes its reasons for making decisions in respect of children, especially where there has been a change of living arrangements. It is also important to be transparent about cases where there have been findings of emotionally abusive behaviours by one parent against the other and the impact this has on the relationship a child might have or not have with their other parent for the rest of their minority and likely into their adulthood. It is important for transparency that the Family Court publishes its reasons for deciding whether it can do something about such behaviours and whether it can actively address the way the child has been impacted including taking into account the child's own views in so far as their age and understanding allows and based on whether they have been negatively influenced or not, or whether it is simply too late. The court also sometimes has to consider whether to continue to take active steps to promote a child's relationship with the other parent when that child is resistant and question whether there comes a point where this in itself becomes an emotionally abusive process. It is important to be honest about this because in some cases it is just too late.

17. In this case I found that for Eve it was not too late and so I acted in her best interests. I am pleased that she has managed to settle and a huge amount of credit has to be given to her mother who over many years of litigation did not give up hope of being able to have an unfettered relationship with her daughter. I hope that in the years to come Eve will be able to reflect on my decisions for her and see that. I still hold out the hope that in the future Eve's brothers will be able to see the good in their mother.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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