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IN THE FAMILY COURT
(Sitting at Cambridge)

No. PE23P00048
Neutral Citation Number:
[2024] EWFC 186 (B)

Cambridge County Court and Family Court
197 East Road
Cambridge
CB1 1BA

Monday, 18 March 2024

Before:

HIS HONOUR JUDGE SPINKS

(In Private)

B E T W E E N :

MT

Applicant

- and -

FT

Respondent

MISS K BUNDELL (instructed via Direct Access) appeared on behalf of the Applicant.

MR S FIDLER (Qualified Legal Representative) appeared on behalf of the Respondent in order to cross examine the Applicant.

Hearing dates: 8-9 February; 6 March 2024

J U D G M E N T

JUDGE SPINKS:

- 1 This judgment will be published following a request that I do so and in light of the increasing encouragement that now exists to do so. Accordingly, I have avoided use of names and (for the most part) other details, including exact dates or precise locations, that may lead to identification of the parties or young people involved and have used random initials in the case header.
- 2 These proceedings concern two young people whose ages make the term “children” inapt. They are HT, born in mid-2006, who is now 17, nearly 18 and RT, born in mid-2008, who is now 15. Their parents are MP, formerly known as MT, and FT.
- 3 At a previous hearing I directed that H remain subject to the proceedings, notwithstanding the provisions of s.9(6) and (7) of the Children Act 1989, which factors I have taken into account. I am satisfied that the circumstances of the case are exceptional.
- 4 In summary, these two young people have utterly rejected their mother. They want nothing to do with her whatsoever and, when asked about it, make suggestions along the lines of non-molestation orders being made against her.
- 5 The reasons for this application, issued by the mother on 8 February 2023, are set out in fairly plaintive terms and I refer to p.17 of the bundle at section 5 headed: “Why are you making this application?” The mother wrote:

“The children have been moved from the family home and I don’t know where they are living or who with. The school (my daughter’s will not correspond with me) and my daughter is not attending - I believe this is very detrimental to her health and well-being. I am making this application so that the court can order R’s school to liaise with me to confirm that they a) know where she is living and; b) what steps the school are taking, alongside other relevant agencies, to ensure R’s return to school. And I am asking the court to order FT to confirm a correspondence address so that the section in the children act order that enables me to correspond with the children is fulfilled

and I am asking the court to remind FT that he must offer the letters to the children, and if they do not want them, to save them for a future time when they wish to read them.”

6 Reading that, it is immediately clear that this is not an application for what may be described as a more usual or common Child Arrangements Order dealing with whom children should live or spend time with but is limited in its terms to obtaining some knowledge and seeking to put in place a situation where the children can understand in the future, even if they do not want to engage with her now, that they had and have a mother that was interested in and loves them.

Background

7 The parents were married and until separation there is no evidence of any difficulties in the family unit that involved or required police or local authority involvement. There are no reports from the children’s various schools or any other evidence of the involvement of outside agencies.

8 The parties separated in July 2019. The circumstances of the separation involved a heightened discussion or disagreement between them. Unusually, both parents recorded it and transcripts prepared by both appear within the bundle. There is no doubt that as part of that discussion the father was insisting that the mother leave the family home in W. She did so and in the following days there were various exchanges of messages between the parties in respect of child arrangements in particular. The mother’s case now is that the father had started in earnest a campaign of distancing the children from her.

The previous proceedings

9 An application to the court was first made very quickly after the separation under case number PE19P00925. That application was issued by the mother on 12 July 2019. A hearing took place on 17 July at which both parents were represented. The court made a

shared care order and set out dates when the children would live or otherwise spend time with each parent. The terms of that order provided that both children should accompany the mother on a pre-arranged holiday to Canada. The provisions in that order, including those relating to the holiday, appear to have been opposed by the father. There is photographic evidence from that period at p.77 onwards of the bundle, including of the holiday to Canada.

10 The mother, in her statement, says that in October 2019, things began to unravel. She found the children were hostile and resistant to her when in her care and during those periods were in consistent touch with the father.

11 Over the first weekend in October the children were with their mother. She describes them as “unsettled” but they were saying they were content to stay with her if they were permitted to spend a few hours the next day with their father. The mother arranged that. They went to the father, however, the children were not returned. In messages exchanged between the parents at the time the father sought to rely on what he asserted were the children’s wishes and feelings. He sent the mother a text which indicated he had approached the police for advice.

12 On 10 October the mother therefore issued an application in form C2. In it she wrote:

“The Respondent is in wholesale breach of the order made on 4 September 2019 for shared and equal care of both children. The children have been in his care since 5 October. He has failed to facilitate any direct or indirect contact with me and says to me through text message he will not do so. This happened previously with B upon separation. DJ Bosman heard FT’s case put by his lawyer . . . but made a shared and equal care order. That order was continued by the consent of both of us at the last hearing on 4 September. The children have been living happily in a shared and equal care arrangement for the last nearly three months. However, FT recruits the children to take sides in our marital breakdown, to feel responsible for him . . . and to reject and blame me. He then says that they don’t want to see me and he won’t make them and they feel unable to go against his line. This behaviour increased significantly last week.”

13 A further hearing took place on 16 October 2019, when, again, both parents were

represented. The shared care arrangements were reinforced and a warning notice was attached. Again, that order was made in the face of opposition from the father.

- 14 Importantly, two days later (18 October) is the date upon which these young people last spent any meaningful time with their mother. Whilst at her home they were again in regular contact with the father. During that period two police officers attended her property and, in summary, removed the children and took them to the father's home. It was later acknowledged by the police, not least in the face of professional concerns expressed both by the local authority and Cafcass, that that had been inappropriate.
- 15 Within a day or two the mother received the following text from both children (see p.87 of the bundle):

“We will not be coming back to your house as we feel unsafe and don't trust you. Dad has done nothing wrong we choose to stay here please don't try and convince us you are right. Please don't text back as we do not want to talk to you ever again, goodbye.”

Cafcass – 2019

- 16 Within those proceedings an order had been made that Cafcass prepare a welfare report. That report was provided on 27 November 2019, extracts from which it is important that I set out. During wishes and feelings work with H he is recorded as saying:

“[21] . . . ‘I do not wish to see my mother, I hate her, and don't ever want to see her or speak to her ever again. There is nothing mum can do for me to change my mind as it is too late. I was 100% relieved when my parents split up and I knew that Mum was going to leave and not Dad, they told us together; R cried her eyes out for a couple of hours because she didn't want Mum to go.

[22]. Mum has sent what seem like nice messages, but they feel like threats. R told me she was thinking about jumping in front of a car, so we didn't have to spend time with Mum. I thought the same.”

- 17 R's wishes and feelings work follows. R said:

“[23]. . . ‘Mum has been abusing us for as long as me and F can remember; mentally and physically abusive, which she denies it when we try and talk about it. We don’t feel safe when we’re around her. Mum screams at us, she complains that everything we do is wrong, but we are not that bad. She just screams at us, she denies it. People don’t believe it when we say she screams at us for hours and hours. She puts us in a room and stands by the door, so we can’t get out. She’s not a good parent. Our dad is the good parent, he’s always looked after us, fed us. We are really scared of our Mum and we are never going to forgive her. Me and F just want her out; all we’ve ever wanted is to be a happy family, the happiest family in the world is just Dad, F and me.’”

18 In the next paragraph:

“[24]. ‘There is nothing that Mum can do. I have given Mum so many chances, I have apologised so many times, when it hasn’t been my fault and I am fed up with feeling guilty. She’s ruined everything. I only ever wanted Dad, when Mum was there, it was like a nightmare, I’m having nightmares, so angry and scared that she’s coming to my house, so need to be close to dad.’”

19 From para.55 onwards in that report is the section headed “Professional Judgment”. Ms F had considered the concerns expressed by each parent about the other and referred to what, at that time, was concerning use of class B drugs and alcohol by the father. By the time of her report she confirmed that there was no evidence to suggest that those issues were impacting his care of the children.

20 Ms F had also considered the issue of coercive and controlling behaviour, as alleged by the mother and in almost all areas considered those concerns were mitigated by the fact that she no longer resided with the father. Separately, she wrote in para.58:

“There are no other obvious barriers to Mrs T’s capacity to meet the children’s needs.”

21 Importantly, at para.59 she wrote:

“The remaining issue is a consideration of whether Mr T is attempting to control Mrs T by alienating the children against her and with this in mind, I have used the Child Impact Assessment Framework . . . to

determine whether parental alienation is a factor in this case.”

- 22 There follows from para.60 onwards what, in my view, is a considered, thoughtful and comprehensive analysis by reference to the tool referred to of whether alienating behaviours were or might be a factor in this case or whether there were other reasons why the children were saying what they were. The first possibility Ms F considered was referred to as “Appropriate Justified Rejection”. She wrote:

“[60]. . . both children have talked about being shouted at for hours and being made to feel bad about themselves. If true, this could be a reason for justified rejection. I have questioned whether it is possible for someone to shout continuously for 3-4 hours, as alleged.”

Pausing there, that reference is important for reasons that I will come back to in a moment.

- 23 The second possibility is referred to as “Affinity/Alignment” and Ms F’s analysis included:

“[61]. . . whilst H and R show a strong connection to their father, affinity and alignment tend to occur when a child does not exhibit strong negative feelings for one parent; rather it is the result of a natural preference to spend time with the other. This is not the case for H and R given they strongly oppose seeing their mother.”

- 24 The third consideration is “Attachment”. Ms F wrote:

“[62]. . . H and R view their father as their primary attachment figure and they see him as protective of them. It is evident that they see their mother as an ‘unsafe’ person but it is likely in my view that H and R are aware of their father’s own apprehension and concern about their mother and this is contributing to their reluctance to see or communicate with her.”

- 25 The fourth possibility is “Alienation”. Accurately, Ms F wrote:

“[63]. . . This occurs when a child’s resistance and/or hostility towards one parent is not justified, rather it is a consequence of psychological manipulation by the other parent. To consider this I have applied the ‘*Typical behaviours exhibited where alienation may be a factor*’ Cafcass tool. This is a three-part tool . . .”

26 Ms F then applied it in full in the following ways:

“[64]. Part I explores ‘typical behaviours exhibited by a child where they have experienced alienating behaviours.’”

Ms F’s view was:

“In applying this, many indicators of parental influence were present in the children’s account of their parents, which was unjustifiably one-sided, an idealised view (all good) of their father and wholly negative view of their mother, their vilification of her amounts to a campaign against her and extends to other members of her family; neither child exhibited any guilt or ambivalence towards their mother and at times H’s views about his mother appeared scripted. For example, H’s opening words when I met him related to the fact that it was perfectly possible to shout at someone for 3-4 hours, something I had challenged with his father in interview. Neither H nor R could identify any happy memories of being with their mother and their speech was weighted with extremes such as ‘always’ and ‘never’.”

Pausing there, it is right to record that in her oral evidence to me Ms F confirmed that the fact that H’s opening words with her involved challenging the notion that it is not possible to shout at someone for three to four hours was strong evidence that his father had explained to him the Cafcass officer’s view, the way in which she challenged him and that was an explanation for H, without prompting, offering the view that shouting at someone for three to four hours was indeed perfectly possible.

27 The second part of the tool explores “*Typical alienating behaviours demonstrated by a parent who is intermittently or persistently alienating*”. Ms F’s analysis goes on:

“[65]. . . Such behaviours include, a parent coaching a child about what to say to professionals about the rejected parent, discounting previous positive time between the child and rejected parent, showing little interest in the impact on the child of the lost parental relationship, portraying the other parent as unjustifiably dangerous and exposing the child to their own distress.”

28 In the next paragraph Ms F wrote:

“[66]. There is some suggestion that the children may have been coached; both mentioned that professionals don’t believe that Mum

can shout for 4 hours and they have also told a professional that she has ‘an undiagnosed mental health problem’. Both children are acutely aware of Mr T’s distress; they have both told me that he had a difficult childhood, and that it is their mother who is controlling because she has more money than their father. Mr T has informed me that he is trying to persuade the children to spend time with their mother and that she can come and collect them but he is not going to drive them to her house which suggests he does not value the children’s relationship with her.”

29 Part 3 of the tool explores “*Typical behaviours exhibited by a parent from whom the child has been alienated, which may contribute to the dynamic.*” Ms F’s own analysis was:

“[68]. This is a grey area and has proved difficult to assess as it depends on whose account is true. If the account of the father and the children is true, then losing her temper, being angry and demanding with the use of an authoritarian parenting style and outrage at having authority challenged may well have contributed to the children’s views of her.”

30 In the next paragraph:

“[69]. If the mother’s account is true, then the opposite is the case. In my meetings and interaction with Mrs T, she does not lack empathetic connection to the children and her desire to spend time with her children in this situation cannot be considered self-centred.”

31 Ms F went on:

“[70]. I am concerned not only about H and R’s current emotional wellbeing but also their future emotional health. It concerns me that if they do not alter their view of their mother and repair their relationship with her, they will continue to experience emotional distress and may also experience guilt in late adolescence and adulthood for rejecting her. They may grieve the loss of having a connection with her at this point in their lives, time which they cannot get back.

[71]. It is of significance that H mentioned to me how upset R was when they were informed that their parents were separating, and it isn’t clear how she has gone from ‘crying her eyes out’ due to being upset that her mother was leaving the family home to her assertion that ‘me and H just want her out’ in a period of some three months.”

32 That represents Ms F’s analysis of the dynamic at the time and in particular the

circumstances in and the reasons for which the children came to express the wishes and feelings that they did. As a result she considered and put before the court what are referred to as five options, the first of which is enforcing the existing order. Ms F wrote:

“[73]. . . this has been tried and has failed as the children have voted with their feet and although Mr T could improve his efforts to get the children to their mother’s home, I accept that H and R are too old to physically be put into a car and even if they did get to their mother’s home, in my view it is unlikely that they would stay. Furthermore, forcing them isn’t likely to be as helpful as it could further entrench their current position.

[74]. Option 2 - a change of residence so that the children predominantly live with their mother . . . but I don’t believe this would be successful due to the same reasons as outlined above.”

33 The third option was supervised contact. That would involve the children spending some limited time with their mother, supervised by a known and trusted adult. However, given the children were currently unwilling to consider any form of contact, then Ms F considered that was also likely to be unsuccessful.

34 Option 4 was for the family to engage in family therapy. That would include taking steps to overcome unresolved issues and improving family relationships. The therapists would be able to provide guidance on when the children should begin seeing their mother and how and in what circumstances. Ms F wrote:

“[76]. . . The benefit of this approach is that if Mr and Mrs T both express a willingness to engage in therapy, it would send a message to H and R that they are not the problem. However, there are drawbacks; firstly, it can be difficult to find a suitable resource through primary healthcare services and funding it privately can be costly.”

35 More significantly, in my judgment, Ms F concluded:

“It would be my concern that based on Mr T’s current position that he might not be invested in working towards H and R seeing their mother again, and his motivation might be solely to demonstrate why H and R should not see their mother. This approach could introduce further delay in repairing this critical relationship.”

36 The fifth option is advanced on the basis that:

“[77]. . . either parent does not believe that the Family Therapy route will bring about positive change . . . if the Court is concerned that *‘there is irrational but implacable hostility to contact or where the child may be suffering harm associated with the contact dispute’* they may consider that it is necessary to make H and R party to proceedings in accordance with the Family Procedure Rules 16.4 and that I am appointed as their Guardian. Should this be the trajectory, I believe that the Court would need to consider whether it would be necessary for a psychological assessment of H and R to be undertaken to fully explore the various issues surrounding their antipathy towards their mother and the potential effectiveness of family therapy. Such an assessment could include H and R’s parents.”

37 The next hearing in those proceedings took place on 11 December 2019 and at it the children were, indeed, formally joined as parties. At para.9 of the order, under the heading “Key Issues”, the court listed: what are the genuine, uninfluenced and ascertainable wishes and feelings of the children; whether the children are being influenced in their views and whether they are suffering emotional harm; and is there alienation of the children? It is recorded in that order that the parties agreed the fifth option set out in Ms F’s report.

38 On 15 January an order was made providing for the instruction of Dr H to report in April. He is a chartered counselling psychologist. There were delays in that piece of work. In March 2020, of course, the country entered the lockdown at the start of the global pandemic and his main report was not produced until 3 July 2020.

39 At a hearing on 15 July 2020 permission was given to the parties to raise questions of Dr H based on his report and the matter was listed for a four-day final hearing in December of that year before HHJ Gordon-Saker. I will come back to Dr H’s reports in a moment but I record that in September the mother had applied for permission to instruct an alternative expert and that was refused by HHJ Gordon-Saker.

40 In so far as Dr H’s reports are concerned – and I say “reports” because in addition to his main report of 3 July 2020 he prepared an addendum report dated 4 September 2020, the

contents of which largely involved replying to a number of questions raised by or on behalf of the mother – I need to recognise that in the current proceedings he has not been called to give evidence. Indeed, he was not called to give evidence (for reasons I will come back to in a moment) in the earlier proceedings either. To that extent I need to be cautious before I offer detailed views or analysis in respect of his reports, bearing in mind he has not been provided with the opportunity of dealing with challenges to his work and conclusions.

41 In summary Dr H's view was that, whilst he observed certain features in the father's presentation and behaviour that might be consistent with alienating behaviour, "on balance" he was not of the view that alienation was a significant feature of the dynamic. There are, I must say, elements of his main report which at first blush I find somewhat surprising. I make clear that I, unlike him when he was writing it, have the benefit of hindsight and the events of the intervening now three and a half years.

42 At internal p.41 of 50 Dr H addressed the specific question of the respective ability of each of the parents to promote the children's relationship with the other. Notwithstanding the issues identified by the court, he began his analysis by referring to the mother and he wrote:

"[263]. It is presently difficult to foresee a situation in which mother could successfully promote a relationship between the children and father at present. I will be making therapeutic recommendations later which at least have the potential to address this issue to an extent, though it must be stressed that a considerable degree of change would be required for this to happen."

43 In the next paragraph he wrote:

"[264]. Superficially, father appears more able to promote a positive relationship with mother and reports that he has repeatedly encouraged the children to have contact with her. However, at times, his account of this promotion of mother appeared to take on the quality of a threat to the children. Perhaps to an extent, father may make the offer of living with mother with the best of intentions, but it might be experienced as a threat that there is an alternative to living with him. In this sense of course, the intended promotion of mother may in fact reinforce behaviours in which the children remain oriented

towards and close to father and perhaps communicate to him some degree of their idealisation of him.”

44 Bearing in mind by that stage the children had not had any meaningful form of contact with their mother at all whilst in their father’s care for some seven or eight months, it is not easy to understand on what basis he came to that conclusion.

45 In answers to some of the questions put, he confirmed, in his addendum report, among other matters, that in assessing the issue of alienation or alienating behaviours he had not used any tool or process. Asked why he had come to such a different view from others, including not only Ms F, whose report I have quoted from at some length, but also a therapist that R was seeing at the time, it seemed to be on the basis of the “here and now” meeting of all four members of the family.

46 At internal p.2 of 21 of the addendum report from para.10 onwards he dealt with the question:

“How did you consider the view of the Children’s Guardian . . . and her concern of alienation. . . ?”

Dr H wrote:

“The entire bundle was read as background prior to the assessment. Doing so helps inform aspects of the assessment process and sets a broad background to the overall process. However, a majority of the formulation is based on what takes place during my meetings with the family members themselves. In this sense, it is based on the here and now experience of meeting with them generally much more so than on historical evidence.”

47 Those proceedings concluded with an order made on 7 December 2020 by HHJ Gordon-Saker by consent. That consent order was in a form submitted to the court in advance of the four-day final hearing that I have referred to and was made by the judge, therefore, on the papers. The order appears within the bundle starting at p.4. There are a

number of recitals which include:

“... the Applicant mother having decided to pursue these proceedings no further at this time in the best interests of the children, given the children’s current expressed positions.”

48 The order recorded that the parties agreed not to discuss the proceedings with the children.

49 The father was recorded as agreeing to notify the children of correspondence from their mother or members of her family on a monthly basis and to offer that correspondence to the children; if they did not wish to accept it at the time, to keep the correspondence safe for the children should they want to access it at a later date and not to do anything to undermine or impede the children having more contact with the mother or her family, if they wished to do so. The mother agreed to send indirect contact no more than once a month to the children by way of post, unless they sought more and there were agreements about savings accounts and passports which are no longer relevant.

50 No separate or substantive order was made in relation to the children’s contact with the mother. It was ordered that the children live with the father and:

“10.3 Mrs T will not visit the children herself or cause any third party to visit on her behalf, save with the advance written agreement . . . of the Respondent father or the relevant child . . .”

51 And, sadly, it may be thought, 10.4:

“Mr T will no longer provide any form of update to Mrs T about the children.”

52 Events in the meantime are the subject of dispute between the parents and centre around the extent to which the mother has sought out contact with the children of a direct nature and/or otherwise has gone beyond the terms of that agreed 2020 order. The period can be summarised as one in which no direct contact has taken place at all. The children have become more hostile to the idea of having any sort of relationship with their mother. It is

clear from the evidence that they have moved house on at least two occasions and there has been police involvement instigated by the father and said to have been justified by the mother's approaches to the children.

53 It is right to record and it is acknowledged that there have been occasions when the children may have seen the mother in the village(s) where they were going to school or in which the mother was living, they being in close proximity to the north of Cambridge, including the mother standing at the end of her drive, which she did sometimes during 2022, having, she says, been advised by a therapist she was working with to find ways of letting the children know that she was 'still out there' but without making any direct approach to them.

54 There were two specific occasions in 2022 when the mother went to an event or a place where she knew or understood the children would be. One was H's end of secondary school prom at the village college and another, a month or two later, was a concert at J venue in Cambridge where H was due to perform music on stage. There was also a chance meeting in the street in W which I will come back to in a moment.

55 The current position is that the mother does not know where the children are, where they live, where they go to school or anything at all about their lives.

These proceedings

56 The father submitted an application in form C79 for enforcement based on a number of assertions that the mother was going beyond the terms of the 2020 order. He did not pay the relevant fee at the time and so that application was not issued until 10 March 2023. In the meantime, the mother had submitted her application in form C100, the terms of which I have already quoted from, and that was issued on 8 February 2023.

57 More recently the mother has made a further application in form C2 for permission to instruct an expert to provide, initially at least, an overview report on the case prepared on a

desktop basis about what, if anything, might now be done or achieved. For the avoidance of doubt, the mother within that application makes clear there is no suggestion that the proposed expert should see either her or the father, still less the children and that she would be solely responsible for the funding of it.

58 The first order in these proceedings was made by me on 16 March 2023. I summarised the written applications at the time, which were expanded orally and are listed at the top of p.41. The mother's application sought specific disclosure of the children's addresses and R's school. The father that day applied orally for variation of the 2020 order to stop all contact, including indirect contact between the children and the mother.

59 The father applied that day for an order pursuant to the terms of s.91(14) of the Children Act to limit further applications to the court and for a non-molestation order, which I declined to make but suggested should be listed with this application if any formal application in written form was made.

60 That hearing had been listed on an urgent basis and so the court did not have the benefit of a safeguarding letter from Cafcass. The safeguarding letter is dated 10 May 2023 and makes for important reading. The author, Ms G, in my view undertook considerably more work in preparing the letter than one often sees for a piece of correspondence that is aimed at (and limited to) recommending to the court at the first hearing what further evidence might be required and what interim arrangements might be appropriate.

61 The history for the family is described in the letter as "complex". There is local authority involvement, including in the context of the mother's attendance at J venue in order to see H's performance. There are references to her watching the school bus and emotional abuse by her of the children.

62 Under the heading of "Local Authority", there is the line:

“The school have reported that R is no longer attending school as she does not feel safe due to her mother and family members approaching her after school.”

63 The family had been re-referred to Early Help but no worker had by then been allocated. There is reference to the father having been provided with an Independent Domestic Violence Advocate. There is a summary of previous Cafcass involvement as a result of the 2019 proceedings.

64 There is then the usual section summarising the interviews undertaken with each parent. The interview with Mr T included him asserting that:

“Ms T had written 147 letters in a year and her family are writing letters too.”

He said:

“Family members have tried to attend the family home to see the children on their birthdays”

and:

“Ms T has multiple personalities as Dr H suggested. The children are scared of her.”

65 He said that he:

“ . . . and the children have changed address four times as they are in hiding from Ms T. They have lived in a refuge previously” and he “. . . has panic attacks every day as he is worried they will be found.”

66 In her interview, Ms T denied the allegations being made against her. She did say, in my view rightly:

“The whole maternal family have been frozen out of the children’s lives. They are unable to have any contact with H and R at all.”

67 There is then, over the course of a full page of A4, analysis of issues arising from safeguarding or risk of identification from which I am going to quote the following:

“Safeguarding checks are complete and I remain seriously concerned at the entrenched views that have been historically documented regarding these children. The information from the agencies is concerning that the level of fear that is described by Mr T, including the need to go into hiding and have support from an IDVA, is not balanced with the information given by [him] that [the mother] last sent H an online message at Christmas. [The father] also stated he is having panic attacks every day in fear that they will be found, which would be very distressing for the children to see, especially if they are no longer attending school and replicating this response . . .

Mr T described the report of Dr H as noting Ms T has multiple personalities, however, having read the report this is not what was written.”

68 Pausing there, it is in my view right to pay particular credit to the author of a safeguarding letter that took the trouble of reading an extensive expert’s report nearly three years old as part of that piece of work. She went on:

“The section 7 report dated November 2019 in conjunction with Dr H’s report stated that any contact agreed would be unlikely to work due to the children’s ingrained negative views of Ms T. The section 7 reports that Ms T has claimed the children have been alienated against her, and [the father] suggests the children have been exposed to verbal abuse. It is clear there are significant underlying issues within this family, however, having read the historical papers for the previous proceedings, I am worried by the level of distress and anxiety the children are experiencing regarding their mother, and question if this is proportionate considering the historical information and the current allegations. The children’s involvement within proceedings is a further concern, and their perception of the situation is worrying . . . I would suggest the narrative that Mr T is providing for the children is not safeguarding them, but rather is exacerbating their mental health and causing them to live in fear and instability. I am concerned the children remain very involved within the court process and are being continually exposed to adult matters throughout the court. There are no findings of fact concerning Ms T’s alleged abusive behaviour, and both historic and current allegations are not suggestive of the family’s need to live in a refuge.”

69 The author went on to consider the provisions of Practice Direction 12J but, in light of the previous extensive assessment process, coupled with the ages of the children, suggested that

a separate fact-finding hearing would not make a difference to the current situation. The view essentially was that an updating Section 7 report would be appropriate given the passage of time since the previous proceedings and the children's ages now.

70 At the First Hearing Dispute Resolution Appointment DJ Slaney ordered an updated Section 7 report from Cafcass. Happily, Ms F was again available to prepare and write it. She did so by 16 August 2023 and that report appears at p.281 of the bundle.

Cafcass – 2023

71 Ms F asked the mother about the various allegations of her going beyond the terms of the 2020 order. The mother was clear in denying having sent anything like 147 letters in a year. She asserted that she had complied with the provision that she sends one a month, save for May 2022 and additionally having sent parcels at Easter, Christmas and on the children's birthdays.

72 In June 2022, around H's birthday, the mother was seen on the opposite side of the street by R, who is said to have run away and there is an audio recording made by the father of her reaction immediately after that, which I will come back to in a moment.

73 In July, the following month, there was H's end of year prom and in August, H's concert at the J. In that respect the mother said that her intention was to stand at the back to watch H perform with his duo but not to approach him and, as H was performing, he did not see her. Mr T saw her with some friends. He filmed her and then made a fuss for them to leave. He followed a close family friend, referred to as Auntie R, and told her she was "a nutter". That is the mother's account to Ms F of that particular episode.

74 There are, as I have referred to, and as Ms F deals with at para.20 of her report, other occasions when the mother simply stood at the edge of her driveway to watch the school bus

go by with a view, she says, to sending the message that she has not simply gone away and disappeared from their lives.

75 Ms T was able to evidence that the police were taking no further action in relation to the various complaints made to them by the father and, when she had been asked to think about the costs and benefits of the children feeling forced to do something against their wishes and feelings, I quote from Ms F's report:

“[24]. . . Ms T agrees that she does not want to force H and R to do anything but that she wants the best she can do for her children in light of the current situation, which she feels is unsafe for them.”

76 In terms of Ms F's interview with the father, he clarified to her, as he did to me in oral evidence, that in fact the family had never been into a refuge. He asserted to Ms F, as he did to me, that he was advised by the police that he and they should “go into hiding” and to Ms F he expressed unhappiness at the police taking no further action against the mother. Indeed, there is within para.29 of the report a clear suggestion that one of the reasons, if not the only reason, for the father seeking a non-molestation order now is to encourage the police to, as it is put in the report, “have another look”; in other words there is the suggestion that the father seeks a non-molestation order now in order to persuade the police to take up their enquiries with a view to taking further action against the mother.

77 At para.42 onwards there is the wishes and feelings work undertaken with the children. At para.45 H is recorded as saying:

“It would be absolutely detrimental if mum was told where we live and for me personally, I'm already anxious and worried about what's happened. I'm upset and have been through a lot of trauma. Damage has been caused because of stalking and harassment. The Police told me during an interview that this was the case. I have spoken to the police three times, for about two to three hours so have had to relive the whole experience.”

78 In the following paragraphs:

“[46]. ‘I want a non-molestation order for me and my family, so that no one, not her, her family or her friends can keep contacting me. That’s what’s making it difficult to sleep. She should not know our address. I want to live with dad and not have anything to do with her, she has just done far too much for me to be able to forgive her. That’s the most extreme I can make it. There can be no redemption.’”

“[47]. ‘When I spoke to the GPs and the Police, they told me to get a non-molestation order. The Police said I needed to make it online and not just mum, but all of her friends and family. The thrust from all the communication is that ‘you should go back to your mother.’ It’s all manipulating; the emails. I’ve changed my mobile number twice and my email address and I don’t do social media anymore.’”

79 Importantly, in my judgment, H finished his wishes and feelings work by saying:

“‘At Christmas . . . [*which is a reference to Christmas 2022*] “. . . she sent me her new address and then a lot of information that upset me via . . . Instagram . . . about the stuff she had put in a new room for me for ‘when you come back?’”

H said to Ms F:

“‘What kind of person says that? I have made it obvious that I want nothing to do with her and that we are well past the point of no return.’”

80 R’s wishes and feelings work produced similar sentiments:

“[51]. ‘I was getting chased home from school, five or six times. They would follow in the car or wait outside the house . . . Also, her parents when they came over and her friends.

[52]. ‘I appreciate everything dad does, he’s done everything to get us out of the situation. It’s been absolutely traumatic, and I have nightmares about her every night.’”

81 In the next paragraph:

“[53]. ‘I only read one or two of her letters because they felt like a guilt trip. I had one from my aunt about what I had done to my mother. I’m the one being abused, not them. I got loads of letters, they would be at the door when I got home from school. It made me so upset.’”

- 82 There is also reference to non-molestation orders, to what Dr H had said and what he had reported previously, which of course by now was more than three years earlier.
- 83 Ms F's professional judgment in this report begins at para.58. At para.59 she wrote:
- “I have no reason to doubt what H and R have said about the impact on them of Ms T's actions, and the actions of her associated friends and family so I do not consider that any form of alienation is a factor to be considered. It appears that both parents had hoped, as had I, that with a bit of time and space, matters would progress beyond letters and cards in due course.”
- 84 I will come back to that paragraph and other paragraphs that were put to Ms F when she gave oral evidence to me.
- 85 On 16 August 2023 I heard the Dispute Resolution Appointment by which time the mother had herself made the suggestion that there should be a fact-finding hearing, as the father had previously done. The father again made clear his position that there should be no direct or indirect contact at all. I therefore made an order that the parties prepare statements and lists of allegations with examples under each heading. I appointed a Qualified Legal Representative for the father, given the provisions of PD12J and the Domestic Abuse Act. I listed the matter for a pre-trial review and for a final hearing with a time estimate of two days.
- 86 On 8 and 9 February I heard oral evidence from Ms F, the family court adviser, the mother and the start of the father's evidence. The mother was cross-examined by Mr Fidler, the father's QLR. Matters did not conclude over those two days and had to be adjourned to 6 March. Miss Bundell, counsel, who has represented the mother throughout both these and the earlier proceedings, completed her cross-examination of the father and I heard submissions that day.
- 87 There was, however, insufficient time for me to properly consider and give a judgment and

so I have adjourned to today, 18 March, to give this oral judgment.

The Law

88 The legal principles that apply to cases such as this are settled and well-known. Section 1 of the Children Act 1989 makes clear that in making decisions about the upbringing of a child, that child's welfare is the paramount consideration. In considering how to apply that principle the court has the checklist of factors set out at s.1(3), which includes but is not limited to the ascertainable wishes and feelings of the child concerned, which should be considered in the light of their age and understanding; needs; the effect of changes in circumstances; any harm which they are suffering or are at risk of suffering; the capability of their parents to meet their needs and the range of powers available to the court. I also bear in mind the principle that delay in decisions being made for children should be assumed to be contrary to their welfare unless the alternative is shown.

89 Where the court is asked to determine matters of fact I bear in mind that the burden of proof is on the party asserting the relevant matters. The other party does not have to disprove what is alleged against them. The standard of proof is the simple balance of probabilities, whatever the nature and extent of the allegations; in other words, whether something is more likely than not to have occurred.

90 I also bear in mind the principle that to the extent to which the court departs from the views of experts or professional witnesses, it should clearly articulate good reasons for doing so. I have referred already to the provisions of PD12J and I refer too to those in PD 3A and 3AA. A screen has been present in court throughout not only at this final hearing but all of the previous hearings that have taken place before me in these proceedings.

91 Within her note filed on behalf of the mother, Miss Bundell referred me to what has already become a well-known case, decided by the President: Re C ("Parental Alienation"):

Instruction of Expert) [2023] EWHC 345 (Fam). The bulk of that judgment turned very much on the facts of the individual case but one of the paragraphs that is, in my experience at least, most frequently quoted and which I am going to refer to in this judgment is 103. It refers in particular to a paragraph in a skeleton argument submitted to the Court of Appeal by the Association of Chartered Psychologists. The President indicates that it is widely understood and would strongly urge:

“[103] ‘Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that ‘parental alienation’ is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, ‘alienating behaviours’. It is, fundamentally, a question of fact.’

It is not the purpose of this judgment to go further into the topic of alienation. Most family judges have, for some time, regarded the label of ‘parental alienation’, and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of ‘alienating behaviour’ should be the court’s focus, rather than any quest to determine whether the label ‘parental alienation’ can be applied.”

I apply those observations and principles.

92 I have been provided with a comprehensive bundle consisting of two main volumes. There is, separately, a volume marked “Police disclosure” and a further, shorter volume containing various documents sent to the court by the father in March 2023, that is to say at the same time as he issued his application. I have read all of that material and listened carefully to the oral evidence, to which I will now turn.

Oral Evidence

93 Ms F gave evidence first. She was asked about the first report, from 2019, prepared in the

earlier proceedings. She confirmed in her evidence that the concerns for H and R's emotional well-being remain. She was cross-examined in detail about the children's expressed wishes and feelings and what the root cause of them may be and the extent to which the children were challenged about them. I have referred already to H's closing comment in his wishes and feelings report at para.47, when he purportedly quoted his mother as texting, "When you come back." He said to Ms F, "What kind of person says that?" The message that H is referring to is within the bundle at p.274 and, in short, it says nothing of the sort.

94 Having texted H with her new address in a message that opens, "Happy Christmas my love," with a reference to having sent them presents, it then refers to her new address. The mother texted:

"Not far away. It is a sweet house in a lovely street and even space for a basketball net! There is as always a place for you when we are here together. You are always welcome. I'm enjoying setting up your room in our home here. I look forward to the day we can see each other and spend some time together. In the meantime, know that you and R are both always in my heart and in my thoughts. I love you very much. Looking forward to hearing from you any time."

95 Ms F's reply was that H's words were how he perceives it. There is, in my view, something of a disconnect, and a need to explain the difference, between what the mother actually said and why H understood or perceived it in the way he clearly did. Importantly, Ms F also said that the children, this time around in particular, do not feel listened to and they have perceived this application by their mother as one for direct contact. Pausing there, that is, as Ms F fairly acknowledged, an error that appears both in her main report and in the safeguarding letter: the mother has not, I record in clear terms, at any time in this application sought or suggested any direct contact. These matters are important because, as I have indicated, the children's wishes and feelings are a factor. It is also important, in my view, because they are the sorts of matters that a primary carer that genuinely wanted to

support and allow some form of relationship with the other parent might be expected to be able to correct, explain or clarify, and otherwise deal with.

96 Ms F was asked about the disconnect between the children's expressed wishes and feelings, including their fears, and the evidence and reality in the case. In this regard I refer to a document headed "RT testimonial", which is the document that appears at the end of the bundle of documents submitted to the court by the father. At para.4 R wrote:

"By far some of my worst experiences ever is when they follow me going home and try to take me and chase me down the street. I have never been more scared in my life and one of the worst parts is that most of the times this has happened while I was with my friends, who had to witness this all happen and ran down the street with me while I was having a panic attack and screaming. I genuinely thought they were going to kill me and no one especially no child should ever feel that way. [It] wouldn't have been so bad if they weren't following me home and stalking me 24/7 in real life as well as online while sending threats [to] my dad[sic]."

97 There are separate references in that same document to R hiding under her bed and she concluded the document by writing this:

"My mother and others related to her have been shown to be unwell mentally by doctors but i still don't believe that makes up for anything we have experienced growing up and to this day. My great aunt . . . stated in an email sent to my dad that she hired a hitman to kill him. this all feels like I'm in a movie but who on earth would think that is a safe environment to be around?"

98 Ms F, understandably, agreed that there is a significant disconnect and wondered why it was there. She said that the source, as she put it, of that disconnect is something for the court to determine.

99 Whilst Dr H had left open the possibility of what is referred to as 'the mother's behaviour' accounting for the children's views, it seems to me the same point cannot possibly explain comments like, "She has been shown to be mentally unwell." There are in the evidence numerous examples of this, what I regard as, extreme reaction in the children, including the

audio recording I have already referred to, made by the father, as became clear during the evidence, in a pub toilet shortly after R had seen her mother in the street. R has reported to her school that she sleeps with a hammer under her pillow and Ms F, not unsurprisingly, agreed that that all made for very worrying reading.

100 Ms F accepted that there is nothing inappropriate in the content of the mother's letters to the children, examples of which appear within the bundle. When taken to the safeguarding letter, extracts from which I have already quoted, Ms F importantly agreed with those relevant sections of it, including the disconnect between the level of fear asserted by the father in him and the children and the events reported to justify it. Ms F said, and I accept, that the lack of proportion is "worse this time round". She was taken separately to a document within the police bundle, a DASH report that refers to the father shaking, retching and being sick on a daily basis and Ms F confirmed that she, after her enquiries, had never had the idea that things were as bad as that and nor did the children describe anything of that kind.

101 At para.65 of her report Ms F had written:

"There is no evidence that H and R have experienced any harm in the care of their father. They are happy in his care and he makes them both feel safe. The harm appears to have been caused by the troubled relationship between H and R with their mother and her attempts to remedy the relationship before they were ready or willing to do so."

102 When cross-examined on the assertion in particular that they have not suffered any harm in their father's care she qualified it by saying there is no evidence of *significant* harm, nor is there evidence of any sexual risk. I am not quite sure why there was any reference to there being no sexual risk, that not having been an allegation or concern ever expressed by either of these parents.

103 Ms F agreed it is potentially harmful if the children are being fed a false narrative but said

that is not how they see it. In other words, her view seemed to be that because the children did not understand the narrative is false, they are not and cannot be harmed by it. When pressed, she very fairly said that she would need to think about rewording para.65 and, to make clear on that particular point, it is, in my judgment, undoubtedly the case that children that are being fed a false narrative, especially in circumstances where they do not understand that it is false, are at risk of suffering harm and harm that, in my judgment, can, certainly in certain circumstances, be described as significant.

104 The father asked only a few questions of Ms F and I took the opportunity of going back to her work of November 2019 and the detailed analysis from which I have already quoted of alienating behaviours. Her evidence around this in answer to questions from me I found striking. When looking at what seemed to be the difference between the views she held then and the views she has expressed now she said, tellingly, “Unfortunately Dr H did not find alienation,” and that word “unfortunately” spoke, in my judgment, very clearly to her disagreement with the recommendations or the conclusions to which Dr H had come. Her use of the word “unfortunately” in describing Dr H’s conclusions is also entirely consistent with her own analysis in November 2019.

105 Those points borne in mind, I asked her why her view had changed. She paused and said, “Good point.” She referred to the children being older but that plainly cannot be a factor in whether alienating behaviours have been in play or not.

106 So, having been troubled by aspects of her written report and conclusions this time around, it is right, in my judgment, to record that Ms F seemed to move away from them and back towards what I regard as a more comprehensive and considered piece of work in November 2019.

107 The mother gave evidence next and confirmed the truth of her document that starts at p.348 of the bundle, which is her schedule of indirect contact that she has exercised with the

children. It starts in January 2020, which she rightly narrates as being during proceedings, and continues through 2021, finishing in October 2022. If that document is accurate, it completely belies any suggestion that she has in any meaningful way gone beyond the terms of the 2020 order. Separately, the mother told me about attempts made by friends of hers to deliver items to the children in the form of presents, only to find that the letterbox at the house had been boarded up. That was sometime around 2020.

108 From a date in mid-2022, which was R's birthday, items began being returned to sender, evidence of which she has included at p.244 of the bundle. The mother told me about her reasonably extensive family, some of whom live in Canada and others who are in this country. There are two aunties, R and M, both of whom live in Cambridgeshire and previously enjoyed a very close relationship to the children. There is no doubt that the children have lost a relationship with all of those wider family members.

109 One of the appendices to the statement that she prepared for these proceedings, beginning at p.222 of the bundle, is a series of photographs to which she has added descriptions and timelines starting from mid-2019 lasting a few months (including the month the parties separated and afterwards) and including, as I have said, images from the holiday to Canada. There are, separately, examples of communications that she has had or attempted to have and has at least sent to the children.

110 The mother was cross-examined by Mr Fidler; that began towards the end of the first day. On the morning of the second day Mr Fidler produced, from the father, a very short "bundle" of screenshots of texts and other such messages sent either by the mother or members of her family to the children. Bearing in mind the bundle is only some seven pages long and that a number of the messages are duplicated, that provides an example of the number of messages that I am looking at. It was put to her that these messages were, *"evidence that you and others have been trying to contact the children."* All of it, of

course, was during a period when under the terms of the 2020 order that was entirely permissible.

111 I must say the point of that exercise was completely lost on me. Nothing within it represents a breach of any order, nor was it put in that way. Not one of the messages is in any way inappropriate. If anything, the production of this evidence and the way in which it was put to the mother might be seen to reinforce the mother's own case that the father simply does not want the children to have any sort of relationship either with her or members of her family.

112 The mother was asked separately about the audio recording of R taken by the father in mid-2022 after the chance meeting in the street. That recording was not played during the course of the hearing. It has been made plain that the mother has not and does not wish to listen to it. She gave a straightforward account of seeing R in what she referred to as "the blink of an eye". She did not follow her, nor she did not see H at any point during that episode. R simply turned and ran away. It was not put to her that she did follow or chase R and during that part, and indeed at other times of her evidence, the mother was in evident and, in my judgment, genuine distress. Her evidence overall was measured and careful, notwithstanding her (entirely understandable) very considerable distress at the current situation. She betrayed no ill-will or particular animosity towards the father at all. In this regard she presented very differently to the way in which it appears that she had presented to Dr H.

113 In re-examination the mother referred to therapy that she had been having, it seemed to me, for some time. One of the therapists said to her that children do "look around corners" when they are no longer having a relationship with you and it was suggested to the mother that she find ways of letting them know that she is out there and that they are still loved. That was the context of her evidence and explanation for those occasions where she had

placed herself in the crowd at the time of H's prom, at the J event and otherwise on occasions stood at the end of her drive when the school bus might be going by.

114 Whilst I bear in mind that the father in these proceedings has not been legally represented, he was, of course, assisted by Mr Fidler in cross-examining the mother on the relevant aspects of her evidence and, in my judgment, there were no inconsistencies or other problematic features of her evidence or her case generally revealed during the course of it.

115 The father then gave evidence and equally confirmed the accuracy of the documents that he has prepared, including the bundle of documents that he sent to the court before the first hearing at the time of submitting his application, including what I referred to as "testimonials" from both children which I have already referred to and which make for alarming reading.

116 He was cross-examined by Miss Bundell. She began by asking the father about his two 'timeline' documents, one at p.206 and one at p.254; the latter being an update to the former. Notwithstanding comments he has made elsewhere that there was physical abuse of the children, it was put to him that there are no references to any sort of physical abuse of the children in either of the timeline documents. He told me that that was because it was "not as important as the mental stuff".

117 He was asked about a specific episode very shortly after separation, which begins with the narrative "R asked to see her mum." The father's case in the past had been that that episode was instigated by the mother either insisting on seeing R or simply taking her away. He explained the apparent anomaly by his poor "command of the English language".

118 Mr T told me that he remains hopeful of a reconciliation between the children and the mother and said to me in terms, "I think it will happen." Having read and now listened to the evidence I have, I remain entirely unclear on what basis that optimism is expressed or

what otherwise justifies it.

119 When asked about the last time that he did anything that might be seen to promote that reconciliation and what it was, Mr T was unable to answer. He confirmed that he had never responded to any of the letters that the mother sent to him shortly after separation and afterwards asking for a repair to the relationship and the possibility of the family moving on because “the relationship had broken down.” He accepted, in terms, not engaging with those attempts.

120 He made clear to me that he does not consider he bears any responsibility for what has happened or the situation that now exists. He also denied, when it was put to him, that any of his evidence is exaggerated. In this regard he was asked about the terms of his enforcement application, which at section 7, p.34 of the bundle asks why the application is being made. The typed parts of that section include reference to the previous proceedings and the terms of the orders made. There are also handwritten additions which read: “Stalking”, “In dom violence refuge,” which I am satisfied refers to a domestic violence refuge, “S91,” which I am satisfied is a reference to s.91(14) of the Children Act and, in capitals, “URGENT HEARING REQUESTED”.

121 I have already referred to there being evidence elsewhere that father has reported on a number of occasions having been in a refuge. This is another example. He accepted in oral evidence, as he did to Ms F, that he never was in a refuge. His explanation for the difference is that he was at one stage offered a place in a refuge but either did not take it or did not need to take it.

122 He denied that the handwritten additions on the enforcement application at section 7 are his handwriting, and it may not be, but it stretches credibility beyond its elastic limits to suggest that whoever did write those things simply made them up. I am satisfied that those handwritten additions reflect what the author was told by the father.

123 He was next taken to an email from Ms S at the college the children, or H anyway, were then attending in September 2022, which includes the words: “Have spoken to dad this morning.” There are a series of acknowledged inaccuracies in that report which the mother has set out in a schedule: the suggestion that there was at that time a warrant out for the mother’s arrest; the notion that the police had indicated to him that they “hoped to have her in jail overnight” and that they were “looking to get her a custodial sentence”. There is clear evidence whereby the police have confirmed in writing that none of those matters were either said or are accurate. I myself asked him what his reaction was when a police constable allegedly said to him, “We will try and get her a custodial sentence,” and he told me that he could not believe it. I agree, at least, with him in that respect. It is unbelievable and I do not believe it.

124 There are, similarly, various inconsistencies in the father’s answers given as recorded in the DASH questionnaires: the suggestion, for example, that R did not want to go to the mother in July 2019 when, as I have just referred to, his own timeline confirms it was R’s request to go and see her mother.

125 Within a statement that Mr T gave to the police on 29 September 2022 he wrote:

“A psychiatric report was done on M in 2020 showing she has several mental health problems which I believe are Psychotism[sic], schizophrenia and multiple personality disorders, resulting in her withdrawing from the children’s proceedings and a child arrangement order was put in place in December 2021.”

Save for the fact that a child arrangements order was indeed made, albeit in December 2020, none of that is true.

126 I next turn to the transcripts made by each parent of the conversation they had on the day they separated, the father’s at p.203 of the bundle and the mother’s at p.105. Miss Bundell took the father through the transcripts. One has more detail at the start of the conversation

and the other has more detail towards the end of it. She suggested to Mr T that the transcripts revealed a number of examples of gaslighting and coercive and controlling behaviours by him. There are, for example, references to authorities, including the local authority and the police, having suggested that the mother should not have access to the children. The father referred to the mother during that conversation as “perimenopausal”. He referred, as he has done on previous occasions, including in writing, to her need for her to access psychiatric help and he said to her, “You might be bipolar.” He purported to play a recording to her of a voice message he says was left to him by somebody at the local authority. No further evidence has been led in relation to that. He referred during the course of the conversation to his having taken recordings of the children over some time after they were crying, having been shouted at by their mother.

127 More generally, the overall context and thrust of the conversation is the father insisting that the mother leaves the property. He talks about the possibility of her not seeing the children again. He says:

“I will pack your bags, I will get you somewhere sorted . . . I will even start to think about you having some access to your children . . .”

He goes on:

“. . . but right now you are looking as bad as this woman that I met when I went out for half an hour the other night . . .”

He referred to a conversation with her and she said:

“I haven’t seen my kids for seven months.”

The father says to the mother, and I quote:

“And I just thought, that’s where you’re going.”

128 As I said at the start of this judgment, the context for this was the evidenced absence of any

professional concerns from the school, local authority or otherwise of this family prior to separation.

129 Mr T accepted, albeit very reluctantly, that aspects of what he said may be read as evidencing the sorts of behaviour I referred to. At p.343 of the bundle is what has been called a “warning letter” that the father sent to the mother on 16 August 2022. It starts:

“M

I am writing to demand a stop to your constant breeching[sic] of the court Order.”

130 There are references to the provisions of the order. There are assertions, I record, not that the mother has sent a wholly excessive number of letters and cards, and there is no reference to the number 147 or any other number, merely that she has been sending more than the required one letter a month and unwanted parcels. Importantly, in my judgment, the father did write in the letter:

“This is against the Court Order and I have kept all letters and parcels as proof.”

131 He again referred to the mother’s mental health problems as “needing addressing”. There is then a long list of maternal family members and friends, none of whom (he wrote) are to have contact with the children. He finished the letter in this way:

“In conclusion I want to request for confirmation that the unwarranted contact will stop and that you/family and friends will comply with the terms of the order. This has been sent by email and letter on today’s date 16 Aug 2022. You have 24hrs to comply.”

132 It is impossible to read that letter as involving any elements at all of a parent wanting to find a solution to a very significant problem. There are no suggestions, firmly or gently offered or otherwise, that a different approach might be taken. There are no reassurances that with a different approach the children might come round. There is simply a demand, backed by

insistence that she behave within 24 hours, that she walks away.

- 133 There is then the audio recording of R that I have referred to taken in 2022 after a chance meeting with the mother in the street. R is breathless and barely able to talk during that recording. She is breathing in short gasps and said, among other things: “she was on the other side of the road...I ran away.” The father asks some leading questions, including “Did she follow you?” “What do you want to happen?” to which R said, “Why won’t she leave us alone?” and the father’s response is: “I’ll get this sorted.” He said to R, “You don’t have to go to school tomorrow.”
- 134 The comments at the end of the recording confirm, as father himself did in evidence, that this recording was not taken at home. In fact it was made in the toilet of a nearby pub where R got off the school bus. The father says to her, “Let’s get you home now.” R, possibly importantly in my judgment – I cannot know for certain – says, “Can I go now?” and the father says, “Yes, you can go.”

Analysis

- 135 Ms F was a thoughtful and fair witness. Her evidence in respect of this family and these children goes back to her 2019 report, which in my view was a comprehensive and detailed piece of work. There was considerable analysis around various different explanations for the children’s very troubling presentation. It is, in my view, telling, that of the five options she referred the court to one of the reasons for family therapy being rejected was the father being unlikely to engage, or engage meaningfully. It is clear that her view at that time was that in various respects, and evidenced by a number of comments made by the children themselves and the father, that alienating behaviours were at play. That, I am satisfied, justified her use of the word “unfortunately” when referring to Dr H’s own conclusions. Whilst, as I have said already, I acknowledge the need for caution in circumstances where he has not been called to give evidence, I agree with her description of his conclusions.

- 136 I am afraid I find the view, even in 2020, but particularly bolstered by the clear and unequivocal evidence of what has happened since, that it was the father who was more likely to be the parent able to support and promote the children's relationship with the other is obviously flawed. Time has borne out that point by itself.
- 137 In my view Ms F's report prepared in these proceedings therefore must be described as problematic for the same reasons. Having heard her give evidence, it is not at all clear to me why she did not stick to her 2019 guns. In answer to my question why has she changed her view she answered, "Good point," which did at least suggest a willingness to reflect, think again and be willing to change her mind. The reality is that things have not changed, save that the situation for the children is much worse, even if they do not feel it now because they have become entirely used to it. Her view then, in my judgment, was correct, as, again, events in the intervening period of now nearly four years has demonstrated.
- 138 I have referred to the need to give good reasons for departing from the views or recommendations of a professional and in essence the central reason, in my judgment, is the apparent marked difference in her view between 2019 and 2023 when there is, with respect, nothing to justify that change of view.
- 139 I referred earlier to para.59 of her recent report and it seems to me that that involved some implicit acceptance that the reasoning for the children's current stance is founded in Ms T's *alleged* actions. That is not an opinion based on any findings having been made and it necessarily follows, it seems to me, that if I do not find that the mother has done anything that would justify the extreme reaction in the children seen then and seen now, then it must, by definition, be a very good reason for rejecting the view expressed in that paragraph.
- 140 For the avoidance of doubt, I also do not accept the evidence that both parents had hoped that matters would progress. There is no evidence before the court at all, I am afraid, beyond what came out of his own mouth, that the father does indeed hope for some

improvement in relations.

141 Similarly, in respect of para.65, in respect of which she was challenged by Miss Bundell, as I have already indicated I do not accept the notion that the children have not suffered or are not suffering harm and, in my judgment, significant harm, in their father's care. At para.72, which again refers to Ms T's actions, she wrote:

“... while not intentionally harmful, have had the opposite impact of what she might have hoped for. Her wish to remind them that they still have a mother who loves them has been unsuccessful and has resulted in H and R becoming even more estranged from her than before...”

142 In my judgment I am afraid this is too simplistic and fails to recognise the context and influence of the father's own approach.

143 In answer to what I regard as one of the central questions in this case: is there material in either of the parents' evidence, or in other evidence that has been filed, to support conclusions that the children have been alienated from their mother? As will probably already be apparent from what I have said thus far, the answer to that question is: plenty. Chronologically, whether or not the father was planning an exit strategy from this relationship with the children remaining in his care, matters start with the audio recording of the conversation that took place. No criticism has been offered by the father or on his behalf of anything that the mother said or did during the course of it. The transcripts both confirm that she in fact said very little and I accept, for reasons that I have already set out, Miss Bundell's characterisation of the father's approach as controlling, coercive, gaslighting, bullying and materially misleading in so far as comments that he ascribed at the time to the police and the local authority. For the avoidance of doubt, I reject the notion and do not find that either the police or social services at that stage, and based only on the report of one parent, had decided either that the children should remain in their father's care or, indeed, not see their mother at all or very much.

- 144 That is the conversation that took place. Next is the reality that most of the aspects that featured in the early court orders in respect of the mother spending time with the children were contested. That relates to the initial shared lives with order. It relates even to the pre-arranged holiday to Canada and I record, although it is not in the bundle, that the father told the Cafcass author of the first safeguarding letter that he had sought support in stopping H in particular going on the Canada holiday.
- 145 Thirdly, the father's account, both in writing and oral to me, was unsatisfactory. His repeated references to having been in a refuge are untrue on his own evidence and his explanations for having said it at all do not bear up. There has been the creation of a world where the dominant emotions in these children around their mother should be fear and panic and it seems, from one comment R made in her 'testimonial,' even a threat to their life. That is and has been profoundly abusive to them and it is difficult now to see what can be recovered for these obviously damaged children. The repeated reports to the police, the schools, the local authority have been without foundation, which, in my judgment, fully justifies and explains the lack of action and the conclusions of those agencies that intervention levels are not met.
- 146 The father actively wants the mother to be punished. It was his own words that described the need for a non-molestation order to encourage the police to have 'another look' in circumstances where they had decided to take no further action and I am afraid to say that I found his evidence – that he hopes for a reconciliation between the mother and the children and that he has done everything to try and achieve it – risible. However unpleasant things were at home at times, there is no reliable evidence before the court, nor was there in the 2019 proceedings, to justify anything close to the level of rejection that the children have expressed, not only for this mother but for her entire family and any close friends associated with her. They have not been supported or encouraged or allowed to rebuild their relationship with her and are profoundly the worse off for it.

147 Central to the father’s allegations are that, despite the terms of the 2020 order, the mother has gone well beyond it in sending 147 letters (as he said, in one year), excessive and unwanted parcels, social media contacts, texts and so on. For the most part those are matters that are all so easily capable of proof. He said to her in the conversation on separation that he has been recording the children. He wrote in the warning letter in 2022 that he has kept the letters and parcels as proof. As I have said, on the morning of day two, a short bundle of somewhere around 15 messages over the space of more than a year or two was submitted. That absence of evidence makes clear, in my judgment, that his allegations are false. The evidence does not come close to making good his claims about the volume of correspondence and I bear in mind, as I say, his failure to prove that central allegation must be seen in the context of it being an allegation that could so easily have been proved had the evidence actually existed.

148 That point led him in oral evidence to assert to me that the mass of letters received has been retained by the police and that explained the reason why he was unable to produce them. In answer to that Miss Bundell was able to provide me an email sent to her client in October 2023 from DC Rose. I am not sure whether he is the officer leading these various enquiries but he wrote then to Ms T:

“No letters as far as I am aware are being retained by the police. When the initial investigation was ongoing he provided letters which were seized as potential evidence, however, were subsequently returned to him once the outcome of the investigation was decided. No new alleged charges, just a continuation of the same that I interviewed you for previously. It was deemed not to reach the threshold for a criminal offence and was closed very promptly.”

149 That, in my judgment, goes beyond an officer not involved in the enquiry expressing some doubt. DC Rose’s name appears throughout the police disclosure and he confirms in that email, in terms, that any letters the father was able to provide had been returned to him.

150 I now turn to the lists provided by the parties in compliance with the earlier court direction

that I referred to. Dealing with the father's first, that appears at p.1 of the bundle and I am afraid to say the terms of it bear out a number of the observations that I have made about the father's priorities and focus. The list was intended to be specific allegations or findings that he sought against the mother in support of his suggestion that she was in breach of the earlier order and more generally, which may explain the children's current thinking. The first matter raised is:

“1. Have you had a reason in the last 2 years to make you believe the children wanted any contact with you and your wider group?”

151 The second is:

“2. Why has there been a significant drop in child maintenance and money owed from the past? Was this in the best interests of the children?”

152 Given the issues with which these proceedings are so clearly concerned, that question by itself evidences a significant lack of focus and perhaps more fairly reflects the father's priorities. There are references to the mother bringing presents to the village, approaching the children and going to the J concert. Those findings can, of course, be made but the context of them is important and which I have already dealt with in this judgment.

153 The mother's list starts at p.2 and goes just over on to p.3 of the bundle. There are five headline allegations, all of which are supported by bullet point examples of each and the document is a good example of why the more simplistic format of Scott Schedules are no longer used in these sorts of cases. Most of her allegations, in my view, are amply supported by the evidence and I will go through them accordingly. The first is:

“Instilling and perpetuating a false narrative of me (and broader family) which has induced fear in the children.”

Examples include (but I am not referring to all of the points the mother makes) allegations

that she is a danger, that she is mentally unwell, that they (she and her family) are violent, bad, scary, abusive and stalk the children; inappropriate interventions from the police and otherwise and there is the discrete reference to allowing C to sleep with a hammer under her pillow. As will be apparent from this judgment, that finding is amply borne out by the evidence and I make it.

154 The second is:

“Involvement of children in complex adult matters”.

There is evidence that the children have been interviewed by the police, have been encouraged (by the father) to write to the judge, have had court information shared with them, have had information about the divorce, finances and other adult matters shared with them. I make that finding. It is borne out of Ms F’s evidence, the father’s own evidence, comments made by the children to Ms F, as well as the various emails from the school and the police.

155 The third is:

“Coercive control of the children and of me.”

The examples are one-word examples in this particular case: gaslighting, isolation, monopolisation of perception, threats, intimidation, dominance, terrorisation, financial lack of ambivalence, withholding educational, medical, therapeutic information. I make the headline finding. I do not need to make separate specific findings in relation to each of the examples but the matter, as I say, started with the conversation at separation which is replete, as Miss Bundell successfully established in cross-examination, with examples of coercive and controlling behaviour.

156 The fourth is:

“Failing to promote and impeding any relationship or contact with me by gatekeeping the children and isolating them.”

Examples include moving home and school, sending back and not passing on gifts, parcels and cards, blocking contact on social media and non-responsiveness. I make that finding and in this particular category regard all four of the bullet point examples under it are justified findings by reference to the evidence that I have read and heard.

157 The fifth is:

“Denigrating me to the children and others (including professionals) for many years.”

Some of the examples here are the same as elsewhere and I make that finding. Describing the mother to the school, to the police, to Cafcass and to others as mentally unwell, as having been described or reported on by Dr H as having multiple personalities, is blatantly inaccurate and abusive.

158 Accordingly, I am satisfied on balance of probabilities, on all of the evidence that these children have been alienated by use of various means and measures from their mother. They have been denied any sort of relationship with her since late 2019 and those means have included, but have not been limited to, the involvement of authorities and the children’s school; encouraging the children to think that the father is suffering because of the mother’s actions and needs protecting from her; not supporting their reconciliation with her and indulging and encouraging their views of her as dangerous to the point where, as he confirmed in oral evidence, if I do make an order requiring him to disclose his current address to the mother they will move house again because, as he explained, and I quote, “I’ve promised them we will.” In the same way, all of those behaviours have extended to the mother’s family and close friends.

159 On the important question, recognising as I do that alienating behaviours do not need to be

malign, deliberate or planned, I am satisfied that at least some of the elements in this case have been. The observations that I have made cannot possibly fairly be characterised all as elements of subconscious feelings by the father or said simply to be an unfortunate consequence of an understandable reaction to anything. The father's focus has been, as it was in the 2019 proceedings and as it has been throughout his written and oral evidence, vilifying the mother and not looking at taking a problem-solving approach to achieving some reconciliation.

160 I am also clear that the father's own expressed wish, and agreement at the time of separation that there should be a shared care arrangement was false. He sought to justify and explain a lot of his behaviour by reference to what occurred in the past between the mother and the children and matters of which he was unaware. I do not accept that explanation at all and there is left a simple marked inconsistency between this father who says at separation that there should be a shared care arrangement and the situation in which the children find themselves now. It cannot possibly be grounded in matters relating to the more distant history, matters in their childhood of which he was left completely unaware. He intimated, after all, in the discussion that took place at separation that she may never see them again. He left, in my judgment, that threat hanging and that, of course, is what has come to pass.

161 I am conscious that this judgment will read as fairly condemning of the father and in this regard I need separately to ask whether the mother herself does or should bear any responsibility for what has happened or could have acted differently with the benefit of hindsight. On a superficial level it is easy to say that those occasions when she acknowledges placing herself in sight of the children and in particular in the crowd on H's prom night and taking the risk that he may have seen her at the J concert was unwise, whether or not based on advice from a therapist at the time and, particularly with the benefit of hindsight, it was only likely to have one consequence. I am, however, persuaded by Miss Bundell's submission that this situation has represented little more than a Hobson's

Choice for the mother and in particular I bear in mind that those latter events only took place in 2022, that is two and a half years on from the 2020 order. The mother must have known or suspected what was likely to happen and was taking a serious risk by playing into the father's hands, but of course at the same time had the only other option facing her of completely walking away from her children entirely. That may have been too big an ask but of course, save for indirect contact, it is what the mother had proposed in the 2020 order.

162 I put that matter no higher than that. In that period, and despite acknowledging approaches by the mother to try and heal and repair matters, the father accepts he did not even respond to those messages. It is untrue, in my judgment, to assert that he supports the idea of a reconciliation between these children and their mother. He has gone about the proceedings and wider matters in a way that reinforces in the children's mind that he really struggles with things. He does not and has no need to. I am satisfied he just does not want it to happen.

163 In light of those observations and findings, I determine the applications before the court as follows. I am going to refuse the mother's application for disclosure either of the children's school or their private address. I must attach significant weight to their wishes and feelings, even though I am satisfied those wishes and feelings do not represent what is in their long-term best interests and have been influenced to a very considerable extent by their father. Equally importantly, I am satisfied that making an order is only likely to lead to short-term and detrimental further change: more angst, more anxiety, a move of address, a potential move of school and so on; ultimately, I am satisfied, to further damage, if that is possible, any prospects of reconciliation in the future.

164 I will make an order reflective of the obligations the father himself acknowledged, that he shall immediately take steps to inform the mother of certain instances and events in their lives. There may need to be further thought given to this at the drafting stage but examples

must include: them requiring surgery that requires a general anaesthetic; travel abroad for more than two consecutive months; a permanent move abroad; if they marry, have children or pass away.

165 I refuse the father's application for an order under s.91(14). I have borne in mind the provisions of Practice Direction 12Q. I bear in mind that H will be 18 in just a few months' time and otherwise I am satisfied an order would send out entirely the wrong message to say that a mother who has not made any unreasonable applications, who has not behaved unreasonably and who has been alienated from her children, should require permission before making further applications. Her previous approaches in litigation, including the terms of the December 2020 consent order, do not suggest that she pushes too hard when she can see that doing so is not in the children's best interests.

166 I dismiss the father's application for enforcement. I refuse the father's application for a non-molestation order. The mother does not know where he lives. She does not have any contact details for him and it is not just, convenient or necessary to make an order. Neither he nor the children require any protection from this mother.

167 I allow the mother's application, which I will limit in terms to permitting disclosure of relevant case papers to any potential expert or professional for the purposes of her taking advice, support, or even seeking a formal desktop report from the perspective of the expertise such a professional might be able to provide or bring. This does not include the giving of permission to disclose a report into these proceedings, which I am bringing to an end with the making of this final order.

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