Neutral Citation Number: [2021] EWHC 1351 (Fam)

Case No: MA20F01181

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sitting Remotely

Date: 21/05/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

M	**Appellant**
- and -	
D	**Respondent**

- -
- -

Mr Simon Crabtree (instructed by **Makin Dixon Solicitors**) for the **Appellant**
The First Respondent was not given notice of the hearing

Hearing dates: 30 April 2021

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 21 May 2021.

THE HONOURABLE MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. This is an appeal against a without notice order made on 17 December 2020 by District Judge Colvin at the Family Court sitting in Manchester dismissing, for want of jurisdiction, the appellant's application for a non-molestation injunction pursuant to s.42 of the Family Law Act 1996.

2. The appeal from the learned District Judge was listed before me pursuant to the provisions of FPR PD30A para 2.1 on the grounds that the appeal raises an important point of principle or practice, namely the meaning of the term "associated person" in of s. 62(3) of the Family Law Act 1996. The appellant is represented by Mr Simon Crabtree of counsel, who did not appear below. In circumstances that I will come to, the application to the learned District Judge for injunctive relief was made without notice to the respondent to that application. Accordingly, the respondent has not been given notice of this appeal against the dismissal of that without notice application.

3. In circumstances where it appeared to the court that the point of law being argued on this appeal may affect the Ministry of Justice (namely, the meaning of the term "associated person" in of s. 62(3) of the Family Law Act 1996), that the point was being argued in a case where that department is not represented and that that department may wish to be represented, the court invited the Attorney General to indicate whether he wished to intervene or to instruct an advocate on behalf of the relevant government department in this appeal, pursuant to the terms of paragraph 5(i) of the Memorandum agreed between the Lord Chief Justice and the Attorney General on 19 December 2001. On 27 April 2021 the Attorney General's Office indicated that the Attorney General did not wish to intervene nor to instruct an advocate on behalf of the Ministry of Justice.

4. In determining this appeal, I have been greatly assisted by the comprehensive written and oral submissions of Mr Crabtree. I am particularly indebted to Mr Crabtree for the assiduously fair manner in which he has conducted the appeal, assisting the court not only by making all the submissions that could reasonably be advanced in support of his client's appeal but, in circumstances where the respondent does not have notice of these proceedings, pointing up for the court the contrary points that might have been taken by the respondent had he been given notice. In addition, I have had the benefit of reading the appeal bundle, which bundle includes a transcript of the judgment given by the learned District Judge on 17 December 2020. Having heard Mr Crabtree' submissions, I reserved judgment on the appeal and now proceed to set out my decision and the reasons for it.

BACKGROUND

5. The background to the matter can be stated shortly for the purposes of this judgment.

6. On 17 December 2020 the appellant applied without notice for a non-molestation order pursuant to s.42(2) of the Family Law Act 1996 against the respondent. By that application, the appellant alleged that the respondent had been verbally abusive and threatening to the appellant, including by means of abusive telephone calls, social media posts and in person. The threats were alleged to include threats of rape, murder and the threat of acid attacks. Prior to the application being made by the appellant in

December 2020, the appellant's sister and niece had made applications for, and been granted, a non-molestation orders against the respondent in November 2020.

7. The respondent to the appellant's application under s.42(2) of the Family Law Act 1996 is the step-son of the appellant's sister by reason of her marriage to the respondent's father, now deceased. The respondent's father died in 2020. Within this context, the respondent was referred during the hearing before the learned District Judge, and has been referred to during the course of this appeal, as the appellant's "step-nephew", i.e. the stepson of her sister. I will adopt that nomenclature for the purposes of this judgment where appropriate.

8. As I have noted above, having considered the appellant's application, on 17 December 2020 District Judge Colvin dismissed that application for want of jurisdiction. I have the benefit of a transcript of the judgment given by the learned District Judge on that date, which it is convenient to set out in full:

> "[1] The matter that is listed before me is an application for a non-molestation order on an *ex parte* basis. I have had regard to s. 45 and s. 42 of the Family Law Act 1996. In support of the application there is a statement of evidence from [the appellant], dated 17 December 2020. Of course, *ex parte* applications are reserved for those matters which are exceptionally urgent and it is said on behalf of the applicant that this case meets that threshold. Reliance was placed upon the recent incidents of 15 December 2020, in which a Facebook message was sent which says as follows:
>
> > "You fucking evil bitch. Tell your whore of a sister God will punish you and her for killing [W]. You fucking whore. Tell [X] God will punish her for the rest of her miserable, fat, oppressed, lonely, so-called life and tell them hood rats [Y], [Z] to grow a brain between them and see the lies their dumb bitch mother has been telling them over the last year. She lied about Dad's illness, health, and everything else".
>
> [2] I am satisfied that, in the context of the evidence that is before the Court, that the threshold at s.45 of the Family Law Act 1996 is met, and so I am going to deal with the application on an *ex parte* basis.
>
> [3] I have invited Ms Begum to make submissions to me in relation to whether or not the parties are associated persons for the purposes of legislation. Pursuant to s. 62 of the Family Law Act 1996, the Court only has the power to grant a non-molestation order in respect of associated persons, and subsection 62(3) sets out who those associated persons may be. The applicant relies upon s. 62(3)(d), namely that the parties are "relatives". The relationship between the parties, I am told, is that the respondent is the step-nephew of the applicant. The evidence on the point is limited to a single paragraph in the applicant's statement of evidence.
>
> [4] I have been referred to s. 63(1)(a) and (b) of the Family Law Act 1996 which, of course, provides an interpretation for me to apply in respect of s. 62. It lists the following people as being relatives. Under paragraph (a):

> "The father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person, or of that person's spouse, former spouse, civil partner or former civil partner".

It goes on to state at (b):

> "The brother, sister, uncle, aunt, niece, nephew or first cousin, whether of first blood or of half-blood, or by marriage or civil partnership, of that person or of that person's spouse or former spouse, and includes, in relation to a person who is cohabiting or had cohabited with another person any person who would fall within paragraph (a) or (b) if there parties were married to each other or were civil partners of each other"

[5] It is said on behalf of [the appellant], and it is accepted that this is a "borderline matter", that I should adopt a purposive approach to the interpretation of the statute and, although step-nephew is not referred to in the statute, stepmother and stepfather are, and then in paragraph (b), niece and nephew are mentioned. It is submitted that "step nephew" falls somewhere between the two and bearing in mind the incidents of domestic violence, the Court should adopt the purposive approach in respect of the interpretation of statute, and grant the order as sought.

[6] Ms Begum wished to rely upon case law in support of the application but did not provided me with a copy of the case. She attempted to paraphrase a very small section of the case which I did not find to be particularly helpful.

[7] In my judgment, I am not satisfied, on the balance of probability, that the respondent and applicant are associated persons for the purposes of s. 62(d). I am not satisfied that the relationship of step-nephew falls within the definition of s. 62(3)(d) or the interpretation set out at s. 63(1)(a) or (b). If it were the intention of the statute to include a step-nephew I would have expected the statute to set that out in terms. It uses the phrases "stepfather, stepmother". It does use the phrase "stepson and stepdaughter"; it does not go as far as saying "step-niece and step-nephew".

[8] I do not have any real evidence in relation to the relationship between these parties save for what is set out at paragraph 1 of the applicant's statement of evidence.

[9] For all of those reasons, the application that is before the Court is dismissed because I am not satisfied that the parties are associated persons for the purposes of s. 62(3)(d) which is the basis upon which this application is made. Therefore, the application will be dismissed."

9. The appellant appealed the decision of the learned District Judge by way of an Appellant's Notice dated 22 December 2020. As I have noted, I agreed that the appeal should be listed before me in circumstances where, pursuant to the provisions of FPR PD30A para 2.1, the appeal raises an important point of principle or practice.

GROUNDS OF APPEAL

10. As conceded by Mr Crabtree in his Skeleton Argument, the rather idiosyncratically expressed grounds of appeal drafted by the solicitors for the appellant can be reduced to the following assertion:

> "The learned District Judge erred in law when he found that the appellant and the respondent were not associated persons within the meaning of the Family Law Act 1996."

11. Within this context, Mr Crabtree advances two substantive submissions in support of his contention that the learned District Judge was wrong to dismiss the appellant's application for want of jurisdiction.

12. First, Mr Crabtree submits that s. 63(1)(a) of the 1996 Act expressly includes certain types of step-relatives and, accordingly, the term "nephew" in s.63(1)(b) should be read as including a "step-nephew". Within this context, Mr Crabtree submits that s. 63(1)(b) defines "relative" so as to include a "nephew…by "marriage". Within this context, Mr Crabtree submits that the section *must* therefore include a step-nephew or a nephew-in-law who, Mr Crabtree submits, is by definition a nephew acquired as a result of a marriage, namely the second marriage of an applicant's sibling to a person who already has a son. Accordingly, Mr Crabtree submits that although properly directing himself to the importance s.63(1)(a) and (b) of the 1996 Act, the learned District Judge erred in that he failed to acknowledge that a nephew could be acquired by marriage and, had he done so, he could and should have proceeded to a merits-based analysis of the application.

13. Second, Mr Crabtree submits that, in any event, the term "relative" in s.62(3)(d) should be construed as including step-nephew or nephew-in-law in circumstances where a purposive construction of the statute is required, which purposive interpretation must be undertaken in the context of the ever-expanding complexities of modern family dynamics and in a society in which different relationships and different means of legitimised conception are recognised. Within this context, Mr Crabtree submits that there was ample interpretative scope for the learned District Judge to have concluded that the respondent was an "associated person" for the purposes of the 1996 Act and erred in not so concluding.

14. Mr Crabtree further submits that the death of the respondent's father did not act to change the position contended for above. Whilst acknowledging that the dissolution of a marriage from which a familial relationship is derived might end that relationship unless statute provides otherwise (for example, s.10(5)(a) of the Children Act 1989) the court should look to the law of probate to determine whether the death of the respondent's father meant the respondent ceased to be the step-nephew of the appellant. In this regard, Mr Crabtree submits that the primary legislation in that area, namely the Administration of Estates Act 1925, is geared to the preservations of familial relationships following death. Whilst Mr Crabtree concedes that the there is no statutory recognition of relationships such as that of "step-nephew" in the 1925 Act, he further submits that this is not surprising given the rarity of divorces when the 1925 Act was under consideration and the prevalent views at that time with regard to re-marriage. Within this context, Mr Crabtree submits that if the respondent was a "relative" of the appellant before the death of his father, he remains so after it and, further, that as the

acts complained of both pre and post-date the death of the respondent's father, that death goes merely to the issue of whether the court should exercise its discretion to grant or refuse relief.

15. Finally, whilst at an early stage in the appeal proceedings it appeared to be being argued within the grounds of appeal that the appellant and the respondent could potentially be parties to the same family proceedings for the purposes of s.62(3)(g) of the Family Law Act 1996 because, as noted above, the applicant's sister and niece had made applications for non-molestation orders against the respondent, Mr Crabtree wisely chose not to pursue that point.

THE LAW

16. Section 42 of the Family Law Act 1996 gives the court jurisdiction to make a non-molestation order…:

> "**42 Non-molestation orders.**
>
> (1) In this Part a "non-molestation order" means an order containing either or both of the following provisions—
>
> (a) provision prohibiting a person ("the respondent") from molesting another person who is associated with the respondent;
>
> (b) provision prohibiting the respondent from molesting a relevant child.
>
> (2) The court may make a non-molestation order—
>
> (a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or
>
> (b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.
>
> (3) In subsection (2) "family proceedings" includes proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act).
>
> (4) Where an agreement to marry is terminated, no application under subsection (2)(a) may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
>
> (4A) A court considering whether to make an occupation order shall also consider whether to exercise the power conferred by subsection (2)(b).
>
> (4B) In this Part "the applicant", in relation to a non-molestation order, includes (where the context permits) the person for whose benefit such an order would be or is made in exercise of the power conferred by subsection (2)(b).**]**
>
> (4ZA) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be

made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

(5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—

(a) of the applicant; and

(b) of any relevant child.

(6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(7) A non-molestation order may be made for a specified period or until further order.

(8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed."

17. Within this context, pursuant to s.42(2)(a) of the Family Law Act 1996 the court may make a non-molestation order if an application for such an order has been made by a person who is associated with the respondent to that application (as I have noted, it was conceded that the appellant cannot bring herself within s.42(2)(b) of the 1996 Act). Within this context, s. 62 of the Family Law Act 1996, as amended by the Domestic Violence, Crime and Victims Act 2004, provides as follows with respect to the question of whether the applicant is a person who is associated with the respondent:

"**62 Meaning of "cohabitants", "relevant child" and "associated persons".**

(1) For the purposes of this Part—

(a) "cohabitants" are two persons who are neither married to each other nor civil partners of each other but are living together as if they were a married couple or civil partners; and

(b) "cohabit" and "former cohabitants" are to be read accordingly, but the latter expression does not include cohabitants who have subsequently married each other or become civil partners of each other.

(2) In this Part, "relevant child", in relation to any proceedings under this Part, means—

(a) any child who is living with or might reasonably be expected to live with either party to the proceedings;

(b) any child in relation to whom an order under the Adoption Act 1976, the Adoption and Children Act 2002 or the Children Act 1989 is in question in the proceedings; and

(c) any other child whose interests the court considers relevant.

(3) For the purposes of this Part, a person is associated with another person if—

(a) they are or have been married to each other;

(aa) they are or have been civil partners of each other;

(b) they are cohabitants or former cohabitants;

(c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;

(d) they are relatives;

(e) they have agreed to marry one another (whether or not that agreement has been terminated);

(ea) they have or have had an intimate personal relationship with each other which is or was of significant duration;

(eza) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);

(f) in relation to any child, they are both persons falling within subsection (4); or

(g) they are parties to the same family proceedings (other than proceedings under this Part).

(4) A person falls within this subsection in relation to a child if—

(a) he is a parent of the child; or

(b) he has or has had parental responsibility for the child.

(5) If a child has been adopted or falls within subsection (7), two persons are also associated with each other for the purposes of this Part if—

(a) one is a natural parent of the child or a parent of such a natural parent; and

(b) the other is the child or any person—

(i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or

(ii) with whom the child has at any time been placed for adoption.

(6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.

(7) A child falls within this subsection if—

(a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, has power to place him for adoption under section 19 of that Act (placing children with parental consent) or he has become the subject of an order under section 21 of that Act (placement orders), or

(b) he is freed for adoption by virtue of an order made—

(i) in England and Wales, under section 18 of the Adoption Act 1976,

(ii) [repealed]

(iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987, or

(c) he is the subject of a Scottish permanence order which includes provision granting authority to adopt.

(8) In subsection (7)(c) "Scottish permanence order" means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267))."

18. The meaning of "relative" for the purposes of s. 62(3)(d) of the Family Law Act 1996 is further defined in s.63(1) of the Act as follows:

"**63 Interpretation of Part IV**

(1) …/

"relative", in relation to a person, means—

(a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse, former spouse, civil partner or former civil partner, or

(b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person's spouse, former spouse, civil partner or former civil partner,

and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other;"

19. Finally with respect to the statutory regime, I note that s. 76(7) of the Serious Crime Act 2015 adopts the definition of "relative" used in s.63(1) of the Family Law Act 1996 when defining the offence of controlling or coercive behaviour in an intimate or family relationship. I further note that the text of the proposed Domestic Abuse Bill 2019-2021, published by Parliament on 10 February 2021, proposes to adopt the definition of "relative" given by section 63(1) of the Family Law Act 1996 in the definition of "personally connected" under section 2(3) of that Bill.

20. At the heart of this appeal is the question of whether the term "associated person" can, by reference to statutory provisions set out above, be interpreted so as to include the respondent. Mr Crabtree's industry has not revealed a reported English or Welsh authority in which the scope of the term "relatives" in section 62(3)(d) of the 1996 Act has been directly in issue.

21. Some assistance with interpreting s. 62(3)(d) of the Family Law Act 1996 can however, be derived from the authorities that concern the proper interpretation of the

encompassing term "associated person" in the Act. In *Chechi v Bashir* [1999] 2 FLR 489 the Court of Appeal was concerned with the refusal to make a non-molestation order under Part IV of the Family Law Act 1996 in the context of a dispute over land between brothers and nephews in circumstances where the court at first instance took the view, *inter alia*, that the family relationships were incidental to the dispute and that civil proceedings would be more appropriate. In dismissing the appeal, but concluding that the judge at first instance had been wrong to conclude that the family relationship was incidental to the dispute and emphasising that the Court was *not* laying down general guidelines, Butler-Sloss LJ (as she then was) held as follows at page 493 by reference to the passages from the report of the Law Commission cited above:

> "The conclusion of the Law Commission was to favour the third choice suggested by them in their consultation exercise, that is to say, to widen the range of applicants to include anyone who is associated with the respondent by virtue of a family relationship or something closely akin to such a relationship. That proposal was enacted in the 1996 Act in ss 42(2), 62(3) and 63(1) (above). Although in the present case the brothers and their families do not live together, it is clear that they continued to be deeply involved in the family dispute, at least during 1998. It follows that the dispute between the brothers and the nephews is not only technically but genuinely within the ambit of Part IV of the 1996 Act, and if that jurisdiction is not to be exercised, it must be for reasons other than the first reason advanced by the judge."

22. In *G v F (Non-Molestation Order: Jurisdiction)* [2000] Fam 186, Wall J as he then was, considered the meaning of the term "associated person" in s.62(3) of the 1996 Act. Whilst noting that this case concerned the question of whether a couple in a sexual relationship who had not lived together permanently were "cohabitants" for the purposes of s. 62(3)(b) of the 1996 Act, and therefore "associated persons" for the purposes of the statute, rather than the interpretation of the term "relatives" in s.62(3)(d), I bear in mind that Wall J concluded as follows at page 196 with respect to the proper approach to the construction of s.62(3) of the Family Law Act 1996:

> "In my judgment, the message of this case to justices is that where domestic violence is concerned, they should give the statute a purposive construction and not decline jurisdiction, unless the facts of the case before them are plainly incapable of being brought within the statute. Part IV of the Family Law Act 1996 is designed to provide swift and accessible protective remedies to persons of both sexes who are the victims of domestic violence, provided they fall within the criteria laid down by section 62. It would, I think, be most unfortunate if section 62(3) was narrowly construed so as to exclude borderline cases where swift and effective protection for the victims of domestic violence is required. This case is, after all, about jurisdiction; it is not about the merits. If on a full enquiry the applicant is not entitled on the merits to the relief she seeks, she will not get it."

23. With respect to the meaning of the term "nephew" itself, *prima facie* and in the specific context of the law of probate, the term was historically held to mean the son of a brother or sister (*Shelley v Bryer* (1821) Jac 207 and see *Seale-Hayne v Jodrell* [1891] A.C. 304). However, over time it is apparent that the interpretation of the term "nephew" has become somewhat more expansive in its scope, again within the context of the law

of probate. In *Grieves v Rawley* (1852) 10 Hare 63 the terms "niece" and "nephew" were held also to encompass the children of a person's half-brothers and sisters. Nearly 100 years later, in *In Re Daoust* [1944] 1 All E.R. 443 Vaisey J stated at page 444, again in the context of probate law, that:

> "I have in the first place, to consider what is in contemporary English the proper meaning of the word "nephew" and of the word "niece". There seems no doubt at all that the strict and proper meaning of the word "nephew" is "son of a brother or sister"; and, similarly, "niece" means, in the strict sense, "daughter of a brother or sister". But the meaning of each of these words is, in my judgment, susceptible of extension, having regard to the context and circumstance of the case, in two directions. First of all, the word may describe the child of a brother-in-law or of a sister-in-law; and, in the second place, I think that "nephew" is often used to indicate a niece's husband and "niece" is often used to describe the wife of a nephew."

24. In *Pepper v Hart* [1993] AC 593 at 617, Lord Griffiths observed as follows with respect to the proper approach to the interpretation of statues:

> "The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted"

25. In the present context, such material includes the relevant report of the Law Commission. In respect to the question of the range of persons against whom an applicant may seek injunctive relief, the Law Commission Report (Law Com No. 207) on Family Law Domestic Violence and Occupation of the Family Home, published in 1992, concluded that a broader approach to providing protection from domestic abuse by means of a non-molestation order was merited. At paragraph 3.8 of its report, the Law Commission concluded that:

> "We originally suggested in the working paper that non-molestation orders should be available to protect spouses, former spouses, cohabitants, former cohabitants and perhaps parents or those with parental responsibility,' and certain children." But although domestic violence tends to be thought of as taking place in a "husband and wife" context, there is no doubt that harassment and violence can occur in many types of relationship. For example, abuse of the elderly by members of the family with whom they are living is coming increasingly to be recognised as a social problem' and significant numbers of women find it difficult or impossible to obtain protection from their violent teenage or adult sons." The Council of Her Majesty's Circuit Judges has stressed to us that instances of family violence by adolescent sons and against elderly people by members of their family have become quite common. In the light of the representations we have received, we now consider that there is a case for extending the range of applicants eligible for this protection. There is an argument for having no limitations at all, on the basis that it is difficult to see why there should be any restrictions on the ground of relationship or residence if the main aim of

> the legislation is to provide protection from violence or molestation for people who need it. Why should applicants have to prove the existence of facts which do not relate directly to their need for protection if orders are only available on the ground that they are necessary for this purpose? On the other hand, to remove all restrictions would involve the creation of something approaching a new tort of harassment or molestation."

And at paragraph 17:

> "The need to extend the scope of injunctions in family proceedings beyond the scope of the law of tort has been explained by reference to the special nature of family relationships. When problems arise in close family relationships, the strength of emotions involved can cause unique reactions which may at times be irrational or obsessive. Whilst these reactions may most commonly arise between spouses and cohabitants, they can also occur in many other close relationships which give rise to similar stresses and strains and in which the people concerned will often continue to be involved with one another. The object of the law should be to provide a framework to enable people in this situation to continue their relationship in a civilised fashion."

Within this context, the policy that was given effect by the concept of "associated persons" in Family Law Act 1996 was that of extending protection from domestic violence to a wider category of family relationships than had been the case previously.

26. With respect to the question of which family relationships would ground relief under the legislation, the Law Commission Report noted as follows at paragraph 3.21 and 3.22 of its report:

> "Having chosen to base our recommendations upon association through family relationship, it becomes necessary to define the relationships in question. We have not found this to be an easy task, but have eventually settled upon six types of relationship in addition to spouses, cohabitants, former spouses and former cohabitants… The second category includes immediate relatives, whether blood relatives or relatives by affinity, including in the case of cohabitants, people who would have been relative had the parties been married. Applications can still be made in respect of these categories of people after divorce or after cohabitation has ceased. We are satisfied that there is a need to cover these cases, which are not always adequately provided for under the present law of tort."

Within this context, the Law Commission Report recommended at paragraph 3.26 that a non-molestation order should be capable of being made between two people who are associated with one another by reason that they fall within a defined group of *close* relatives.

27. When construing an Act of Parliament, the principle in *Pepper v Hart* also permits the court to take account of statements made in Parliament when construing the meaning of the legislation at issue where that legislation is ambiguous, obscure or where its literal meaning may lead to absurdity. I am satisfied that in determining whether the term "relatives" in s.62(3)(d) of the Act should be construed as including a "step-

nephew", it is appropriate to consider the relevant statements made in Parliament concerning the provision.

28. Within this context, the only mention in Hansard concerning familial relations in the Family Law Bill states that relatives caught by the relevant provisions of the legislation should be "close":

> "Part III enables the law to extend protection against non-molestation to former spouses (who some think were excluded irrationally from the 1976 Act) to persons who used to live together as though married; to those living together in the same household for reasons other than that one is employed by the other; to a tenant lodger or boarder and to close relatives such as parents, grandparents or children. The so-called "grasping mistress" will be given no greater protection than she enjoys today. But parents will become safe from harassment by their children and a lodger from assault by his landlord." (Lord Irvine of Lairg, HL Deb 30 November 1995, Vol 567, Col 709-710)."

29. The debate leading to the enactment of the Domestic Violence, Crime and Victims Act 2004, which amended the terms of s.63(1) of the Family Law Act 1996, is also informative in circumstances where that amending legislation was concerned, in part, with extending the definition of the term "relative" in s.63(1) of the Family Law Act 1996. Whilst the original amendment proposed that the word "cousin" be inserted into the definition of "relative" in s.63(1), that amendment was withdrawn and ultimately the term "first cousin" formed the amendment approved by Parliament. The basis for this change was articulated thus before the Grand Committee by Baroness Scotland of Asthal:

> "I am grateful to the noble Baroness for highlighting the fact that cousins are not currently included in the definition of "associated persons" in Sections 62 and 63 of the Family Law Act 1996. That definition controls the type of relationships, which are eligible for protection through non-molestation and occupation orders. It already, as the noble Baroness rightly says, includes a wide range of family members, including aunts, uncles, nephews and nieces, but, as she says, not cousins. We would like to consider further whether cousins without a more precise definition may cover too wide a category of relative. For instance, should it cover first and second cousins? I believe that in some cultures "cousin" can be used to describe almost any blood relative. In our House, that may have some very interesting ramifications. It is important that we make any additions to the relevant person category of the Family Law Act consistent with what is already included. If the Committee is content, I would like to consider this matter further. I give notice to all noble Lords who currently say "my noble kinsman" that they may wish to consider their positions. (Baroness Scotland of Asthal, Grand Committee Debate 9 February 2004, Vol 656, Col GC 478)."

30. On behalf of the appellant, Mr Crabtree also prays in aid of the purposive interpretation of s.62(3)(d) of the 1996 Act for which he contends the development in understanding that has taken place since 1996 with respect to the seriousness of, and the grave impact of domestic abuse. In this context, FPR 2010 PD12J, entitled *Child Arrangements and Contact Orders: Domestic Abuse and Harm*, now provides as follows at paragraph 3:

> "For the purpose of this Practice Direction –
>
> "domestic abuse" includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment;"

31. Finally, in circumstances where the court is considering where the boundary is properly to be drawn between those persons who come within the meaning of the term "relatives" in s. 62(3)(d) of the Family Law Act 1996 and those who do not, it is also important to consider the extent to which the latter category of persons have available to them an alternative remedy to that provided by the Family Law Act 1996. Within this context, I note that Protection from Harassment Act 1997 s.1(1) prohibits a course of conduct that amounts to harassment of another. Section 3(3)(a) of the 1997 Act makes clear that the High Court or county court may, by way of civil remedy, grant an injunction to retrain a person from pursuing a course of conduct which amounts to harassment. An injunction granted in the High Court or county court can prevent a person from entering a defined area around the applicant's home (see *Burris v Adzani* [1996] 1 FLR 266).

32. In the foregoing context, I further note that in *Chechi v Bashir* at 495, Butler-Sloss LJ (as she then was) observed, when commenting on the decision of Sir Stephen Brown P in *C v C (Non-Molestation Order: Jurisdiction)* [1998] 1 FRL 554, that with respect to alternative remedies:

> "The conclusion of the President was that the material came nowhere near molestation as envisaged by s 42 of the Family Law Act. I respectfully agree with the President that the application under s 42 was a wholly unsuitable use of this procedure on the facts of that case. In cases where there may be alternative discretionary relief available, the court always has the power to grant or refuse the relief sought if it is not appropriate."

DISCUSSION

33. Having considered carefully Mr Crabtree's erudite Skeleton Argument and oral submissions, I am satisfied that appellant should be granted permission to appeal the decision of the learned District Judge. I am further satisfied however, that the appellant's appeal must be dismissed. My reasons for dismissing the appellant's appeal are as follows.

34. At the heart of the appellant's appeal is her contention that, by reason of the appellant's sister being married to the respondent's father before his death, the respondent is the appellant's "nephew" for the purposes of the definition of "relative" provided by s. 63(1) of the Family Law Act 1996, notwithstanding that the respondent is the appellant's sister's stepson, and therefore the appellant's step-nephew, and not the appellant's sister's son, and therefore not the appellant's blood nephew. Within this context, the question for the court is whether the term "nephew" or the phrase "nephew

… by marriage" in section 63(1)(b) of the Family Law Act 1996 can be interpreted to include a person in the position of the respondent.

35. In answering these questions, I have of course borne in mind that the proper approach to the interpretation of the statute, as made clear in *Pepper v Hart*, and reiterated in the context of s.62(3) of the Family Law Act 1996 by Wall J (as he then was) in *G v F (Non-Molestation Order: Jurisdiction)* is one that has regard to the purpose of the statute that is being interpreted. The observation of Wall J in *G v F (Non-Molestation Order: Jurisdiction)* bears repeating at this point:

> "In my judgment, the message of this case to justices is that where domestic violence is concerned, they should give the statute a purposive construction and not decline jurisdiction, unless the facts of the case before them are plainly incapable of being brought within the statute. Part IV of the Family Law Act 1996 is designed to provide swift and accessible protective remedies to persons of both sexes who are the victims of domestic violence, provided they fall within the criteria laid down by section 62. It would, I think, be most unfortunate if section 62(3) was narrowly construed so as to exclude borderline cases where swift and effective protection for the victims of domestic violence is required. This case is, after all, about jurisdiction; it is not about the merits. If on a full enquiry the applicant is not entitled on the merits to the relief she seeks, she will not get it."

36. As is clear from the summary of the materials I have set out above, it having been recognised that, whilst harassment and violence most commonly arise between spouses and cohabitants, domestic abuse can also occur in a range of other close relationships, the purpose of Part IV of the Family Law Act 1996 is to ensure that an alleged victim of domestic abuse in a family relationship or something closely akin to such a relationship has available to them swift and accessible access to protective remedies against a wider range of family members than was previously the case. Within this context, I further I accept Mr Crabtree's submission that the context for the purposive interpretation of the statute is the still evolving recognition of the pernicious nature and damaging consequences of domestic abuse. Further, and within that context, also relevant to my mind is the continued increase in the prevalence of so called 'blended' families, as the result of divorce followed by re-marriage, in which it is very often the case that a range of step-relatives will be integral members of the new family.

37. Against this, it is however plain on the face of the statute that step-nephews are not expressly provided for as a category in s.63(1) of the Family Law Act 1996, in contradistinction to other step-relationships that are expressly listed in s.63(1)(a). As noted by the learned District Judge, this means that whilst the categories of "stepfather", "stepmother", "stepson" and "stepdaughter" are expressly provided for by the statute, the category of "step-nephew" is omitted under the definition of "relative" in s.63(1) of the 1996 Act. Whilst Mr Crabtree seeks to persuade this court that the express provision for certain step relatives in s.63(1)(a) allows the court to read the term "nephew" in s. 61(3)(b) as including a "step-nephew", there are two difficulties with that submission.

38. First, the fact that Parliament expressly provided for some step-relatives to come within the definition of "relative" for the purpose of identifying an "associated person" under s.62(3) of the Family Law Act 1996 tends to suggest that the omission from the statute of "step-nephew" as a category of such step-relatives was deliberate, rather than being

an oversight. Second, in my judgment there is a difficulty in using, as Mr Crabtree seeks to do, the list of persons set out in s.61(3)(a) of the Family Law Act 1996 as an aid to interpreting the list of persons set out in s.61(3)(b) of the Act, as the respective lists deal with different degrees of family relationship. Section 63(1)(a) deals with relationships of lineal descent. By contrast, s.63(1)(b) deals with collateral relationships. Thus, Mr Crabtree's argument becomes one that contends that the fact that Parliament decided to include certain step-relationships with respect to family relationships of lineal descent must indicate that Parliament also have intended to do so in respect of certain collateral relationships, including that of nephews and nieces. In my judgment, the structure of the 1996 Act is apt to indicate the opposite, namely that Parliament was prepared to include certain step-relationships with respect to family relationships of lineal descent but decided not to include step-relationships in respect of any of the collateral family relationships stated by s 63(1)(b) as falling within the definition of "relative" for the purposes of the Act.

39. I am reinforced in these conclusion by consideration of the Parliamentary materials that I have summarised above, which materials make that Parliament was expressly concerned with the degree of genealogical proximity that would allow a person to fall into the category of "associated persons" who could obtain injunctive relief under the Act and, importantly, the need for that category to be confined to "close" or "immediate" relatives (a point reinforced in my judgment by the ultimate conclusion to specify "first cousins" rather than merely "cousins" in the amending statute during the passage of the Bill that became the Domestic Violence, Crime and Victims Act 2004). Families are, by genealogical reality, extended. Indeed, if one is so minded, it is possible to continue almost *ad infinitum* to identify relatives of a given applicant for relief under the Family Law Act 1996. If it was not to risk creating a new tort of molestation, in crafting a statute to protect members of a family from domestic abuse Parliament had to draw a line somewhere (see Law Commission Report (1992), *Domestic Violence and Occupation of the Family Home*, Law Com. No. 207, p. 20, paragraph 3.8). With respect to relatives of the applicant, Parliament drew that line with s.63(1) of the Family Law Act 1996. Within this context, the Parliamentary material to which I have referred that speaks of "close" or "immediate" relatives, in my judgment supports the conclusion that Parliament intended the step-relationships covered by the Family Law Act 1996 to be confined to those *expressly* provided for in s.63(1)(a) of the Act, and that had Parliament intended to include "step-nephews" as a category it would have said so in terms in s.63(1).

40. In the alternative, Mr Crabtree invites the court to construe the phrase "nephew… by marriage" as encompassing a person in the position of the respondent. However, in addition to the points I have set out above dealing with the difficulty in construing the Act as encompassing a "step-nephew", there are in any event additional difficulties with this submission. Whilst I accept that there are decisions within the context of the law of probate stating that a "nephew" can be the son of a person's brother-in-law or sister-in-law as well as the son of a person's brother or sister, as was made clear by Vaisey J in *In Re Dauost*, the question of inheritance rights is a very different one to the question of protection from domestic abuse. Within the context of family relationships, in so far as a formal category of nephew or niece by marriage recognised, such a relationship is ordinarily understood to be the spouse of one's niece or nephew. Within this context, and having regard to my conclusion that had Parliament intended to include "step-nephews" as a category it would have said so in terms in s.63(1), I am satisfied that the

term "nephew…by marriage" as used in s. 63(1)(b) must be read to mean the spouse of the applicant's niece or nephew. Accordingly, in my judgment s.63(1) of the Family Law Act is, in speaking of a "nephew…whether of full blood or of half-blood or by marriage or civil partnership", is not wide enough to encompass a person in the position of the respondent.

41. I have born in mind that interpreting the Family Law Act 1996 as excluding from consideration a person in the position of the respondent acts to constrain breadth of the statute, having regard to its purpose as articulated above the increasing prevalence of so-called 'blended families' in modern society, which families are, sadly, no more immune from risk of encountering the scourge of domestic abuse than the so called 'traditional family'. Within this context, it could be said to be a peculiar outcome if an applicant for injunctive relief under the Family Law Act 1996 was able to secure protection from domestic abuse if that applicant's sister had her own children by her first husband and those children became domestically abusive to the applicant in the family home, but that applicant was thereafter precluded from securing such protection if that applicant's sister went on marry for a second time a person who already had children and those children too became domestically abusive towards the applicant in the family home, depriving the applicant of protection on the basis that, in the former case posited above, the aggressor was her nephew or niece but, in the latter case, the aggressor was merely her step-nephew or step-niece by virtue of the sister's marriage.

42. I am however, satisfied that the foregoing issue not does act to change my conclusions in this case in circumstances where the Protection from Harassment Act 1997 provides, subject to the qualifying criteria under the Act being met, an alternative remedy in respect of those persons, including a person in the position of the respondent, whom an applicant for relief cannot bring within the definition of "associated person" for the purposes of s.62(3) of the Family Law Act 1996. As I have noted above, the Protection from Harassment Act 1997 s.1(1) prohibits a course of conduct that amounts to harassment of another. Section 3(3)(a) of the 1997 Act makes clear that the High Court or county court may, by way of civil remedy, grant an injunction to retrain a person from pursuing a course of conduct which amounts to harassment. An injunction granted in the High Court or county court can prevent a person from entering a defined area around the applicant's home.

43. Within this context, and whilst I accept the need to adopt a purposive interpretation to the Family Law Act 1996, for the reasons I have set out I am satisfied that the respondent is plainly incapable of being brought within the meaning of "associated person" under s.62(3) of the 1996 Act, even on a purposive interpretation. In the circumstances, and having regard to the foregoing analysis, I am satisfied that the learned District Judge was not wrong in concluding that the respondent was not a "relative" for the purposes of s.63(1) of the Family Law Act 1996 and, therefore, not an "associated person" for the purposes of s.62(3) of the 1996 Act. It follows that I am satisfied that the learned District Judge was not wrong to dismiss the appellant's application for want of jurisdiction.

44. By reason of the foregoing conclusions it is not necessary for me to address the question of whether the death of the appellant's brother in law, the respondent's father, acted to remove from the respondent his status a "step-nephew" and I make no further observations on that point.

CONCLUSION

45. In the circumstances, I grant the appellant permission to appeal but I dismiss that appeal and make no order as to costs.

46. That is my judgment.