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Case No: CV22C50070

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/08/2022

Before :

MRS JUSTICE LIEVEN

Between :

WARWICKSHIRE COUNTY COUNCIL

Applicant

and

THE MOTHER

First Respondent

and

THE FATHER

Second Respondent

and

X

(through her Children's Guardian)

Third Respondent

and

Z

Fourth Respondent

Ms Bridget Beresford (instructed by **Warwickshire County Council**) for the **Applicants**
Mr Simon Miller (instructed by **Jackson West Solicitors**) for the **First Respondent**
Ms Sarah Tyler (instructed by **Venters Solicitors**) for the **Second Respondent**
Ms Jemma Izzard (of **Wilson Browne Solicitors**) for the **Third Respondent**
Ms Jennifer Wilson (of **Penmans Solicitors**) for the **Fourth Respondent**

Hearing dates: **18 July 2022**

Approved Judgment

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MRS JUSTICE LIEVEN

This judgment is being handed down in private on 8 August 2022. It consists of 104 paragraphs.

The Judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates, the solicitors instructing them, or persons (other than the parties, members of their extended families and their children) identified by name in the judgment itself, may be identified by name or location. In particular the anonymity of the children and the adult members of their family must be strictly preserved. If reported, it shall be the duty of the Law Reporters to anonymise this judgment.

Mrs Justice Lieven DBE :

1. These are care proceedings brought by the Local Authority, Warwickshire County Council ('LA'), in respect of two girls, 'X' aged 10, and 'Z' aged 12. The issue covered in this judgment is the consequences of parental alienation and whether an Interim Care Order ('ICO') in respect of Z should be continued in the light of her implacable hostility to her placement, and the highly detrimental impact that the interim care plan and her current situation is having on her welfare.
2. Bridget Beresford represented the LA, Simon Miller represented the Mother ('Mother'), Sarah Tyler represented the Father ('Father'), Jemma Izzard represented X through the Children's Guardian, and Jennifer Wilson represented Z.
3. The matter has come before me at three interlocutory hearings on 14 June 2022, 20 June 2022 and 18 July 2022. After hearing submissions on 18 July 2022, I reserved judgment. The position of the Father, the LA and the Guardian is that I should continue the ICO in respect of Z and not seek to vary her current placement in foster care. The position of Z, who is separately represented having been determined to be *Gillick* competent (*Gillick v West Norfolk and Wisbech AHA* [1985] UKHL 7) in respect of these proceedings, is that the ICO should be discharged, and she should be allowed to return to live with the Mother. The Mother supports this position.

The Background

4. The Mother and the Father separated in December 2016 after 8 years of marriage. The children, then aged 7 and 5, lived for a short period with the Father and then moved to live with the Mother whilst having regular contact with the Father. Both parents are now in new relationships. The Father's new partner (now fiancée) is A, who has a child, Y, who is 9 years old. The Mother's new partner (now wife), B, has two children.
5. The Father said that contact became increasingly haphazard over time. On 10 June 2019 the Father made a private law application for a Child Arrangement and Prohibited Steps Order to prevent the Mother from changing the children's school and a Specific Issues Order seeking permission for him to take the children on holiday.
6. On 19 June 2019 a referral was made by Dr Garala to Children's Services advising that Z reported having been punched in the vagina by the Father's new partner's son, Y, as well as being made to shower with Y, and Y screaming in the children's faces and hitting them. The referral also mentioned aggressive emails received from the Father's solicitor.
7. On 19 June 2019 all contact between the Father and X and Z ceased.
8. On 8 July 2019 the Mother made a private law application for a Child Arrangement and Prohibited Steps Order preventing Y from being present during the Father's contact pending further investigations by Family Information Services.
9. In November 2019 a section 7 report was completed by Cafcass; the report raised no safeguarding concerns that would warrant further prevention of contact for the Father with X and Z, and the report recommended that the family engage with therapy.

10. On 18 December 2019 the Father's application was refused and the Mother was ordered to continue to make X and Z available for supervised contact on alternative Saturdays.
11. On 21 February 2020 an Interim Contact Order was granted in respect of the Father having contact with X and Z every 2 weeks and equal shared time during school holidays.
12. On 26 February 2020 a referral was made by the GP, Dr Lidder, raising concerns that X had disclosed that the Father hit her, and she was scared to see him. The referral also stated that the Mother had mentioned inappropriate games played during shower time, with the Father watching X.
13. On 29 February the scheduled contact time with the Father did not happen as ordered. The contact was refused due to the Mother stating that the court did not order it and that her solicitor did not agree with the order going forward.
14. On 7 March 2020 scheduled contact took place as per the court order, however this was apparently resisted by the children, and it was only due to intervention from the LA, who became involved due to further allegations being made, that contact took place.
15. On 12 March 2020 Children's Services Initial Response Team were appointed to complete a Children's and Families Assessment. On 21 March 2020 the scheduled contact did not take place and on 27 March 2020 the Father filed an application to seek to enforce the Interim Contact Order. The contact scheduled for 4 April 2020 did not happen as ordered as contact was being refused due to Covid. However, an agreement was reached, with the support of the LA, to have 2.5 hours direct contact in a local park.
16. On 8 April the Children's and Families Assessment was completed. No safeguarding concerns were identified. It was felt that X and Z's wishes and feelings were being influenced by the Mother. X and Z had not had contact with the Father for approximately 8 months at this stage. The outcome of the assessment was for the family to be supported on a Child in Need plan ('CIN') to allow Children's Services to support X and Z and ensure that contact could continue in a safe and productive way.
17. In April and May there were a series of occasions when contact did not take place. On 13 May the matter returned to court. The Father stated that the Mother was blocking contact and was alienating X and Z against him. The Mother stated that contact failed to take place due to social services refusing contact, issues arising such as Covid, or because X and Z did not want to attend contact. The parties agreed to adjourn the hearing on the basis that, with the assistance of the LA, contact had now started.
18. On 19 May virtual contact took place which X did not want to attend. The scheduled weekend contact on 22 May to 24 May, where the Father was to pick up X and Z from school on the Friday and return them to the Mother at 6pm on Sunday, did not happen as per the court order; instead, X and Z were made available from 9.30am on Saturday 23 May until 6.30pm on Sunday 24 May. This was repeated for the court

ordered weekend contact on 6 June 2020 when X and Z were made available from 9.30am on Saturday 6 June until 6.30pm on Sunday 7 June.

19. On 8 June 2020 Z shared concerns with Children's Services in relation to the contact with the Father. This included allegations of CCTV and Alexas in her bedroom watching her. Z also alleged that the Father had elbowed her during previous contacts.
20. On 16 June Z's school contacted Children's Services with concerns about Z's diminishing mental health and on the same date Children's Services provided Z with a virtual session to discuss coping mechanisms to reduce her anxiety and negative thoughts.
21. On 20 June the scheduled weekend contact did not happen as ordered, instead X and Z were made available to the Father from 9.30am on Saturday to 6.30pm on Sunday. This should have been a full weekend but instead it was a fourth single overnight contact due to "anxiety of the girls". Also on 20 June, Children's Services had a discussion with Children and Adolescent Mental Health Service ('CAMHS') as a result of Z disclosing suicidal thoughts. During this discussion, CAMHS advised that Z had called them from the Father's bedroom saying that if she was unable to go home, she would hang herself. CAMHS advised they would continue assessment if needed.
22. Z was closed to the CAMHS Crisis Team on 13 July 2020, however remained open to CAMHS as an agency. CAMHS advised Children's Services that a follow-up appointment had been provided to Z in June however this had not been attended, nor had they received any correspondence from the Mother in respect of this appointment.
23. On 26 August 2020 the allocated social worker, Laura Matts, completed a Statutory Child and Family Assessment. The outcome of the assessment was for X and Z to continue to have contact with the Father; for the Mother and the Father to continue to attend mediation in order to find child focused resolutions; X and Z to continue to attend counselling to get support with their emotions and mental health; for the Mother to develop a healthier relationship with Z to change the dynamics whereby Z does not feel emotionally responsible for the Mother; the Mother to engage with therapeutic support for her own past issues in relation to her relationship with the Father and their separation; and any other interpersonal relationships the Mother has had difficulties with.
24. On 21 September the Father made a request in relation to Christmas holiday contact and reported that he had tried to broach this subject on a number of occasions with the Mother as per the court order, which provides: "From October half-term 2020 and for every school holiday thereafter, for half of the school holidays. Parties to agree the division of the school holidays in writing no later than 4 months before each school holiday."
25. On 25 September 2020 the weekend contact did not happen as ordered; the Father went to collect X and Z from school as agreed however they had already been collected from school by the Mother. This resulted in the Father trying to find X and Z before contact could continue for that weekend.

26. In November 2020 the funded counselling sessions for X and Z ended with Z having attended 11 sessions and X having attended 2 sessions. In December, Z began weekly sessions with a private therapist.
27. On 18 December contact for half of the Christmas holidays, as per the court order, did not happen; there was a failure to agree contact over Christmas with the Mother wanting shorter periods. In addition, X and Z refused to go to the Father over the Christmas period. The scheduled contact on 1 January 2021 also did not happen.
28. On 12 January 2021 the Mother and Father began Systemic Family Therapy sessions separately. The scheduled contacts on 15 January and 29 January did not happen.
29. On 2 March 2021 a Section 37 report was completed by the social worker. The report outlined that the current court order should remain in place but that consideration should be given to X and Z's wishes and feelings; further therapeutic support should be provided to X and Z to provide them with the emotional ability to resume their relationship with their father; mediation between the children and the Father; the Mother to engage with a counsellor to explore how her feelings impacted X and Z's emotional health and the possibility of this leading to an influence regarding their own views and feelings; the Father to obtain support in relation to the impact on his emotional health due to not seeing X and Z; consideration for supervised contact between the Father and X and Z in order to provide them with security and reassurance in respect of their fears of not being returned to the Mother.
30. On 9 July 2021 the Mother and Father attended court where the Judge ruled that the current order in relation to contact should remain in place. The Judge also ordered that X and Z's advocate, Ms Rowe, was to cease her involvement and an Independent Social Worker ('ISW'), Ms Barry-Relph, was appointed to work alongside the LA.
31. On 27 July 2021, a Statutory Child and Family Assessment was carried out by the allocated social worker, Laura Matts, to assess the family's circumstances and any changes which had taken place for X and Z. The report noted that there were continuing concerns regarding X and Z's emotional wellbeing, their relationship with the Father and possible parental alienation. The report recommended that X and Z should be encouraged to take part in activities with and indirect contact with the Father, with LA support, to demonstrate to them that there were no concerns with regards to their safety when with the Father, and that both the Father and the Mother were supportive of the work towards restoring a relationship with the Father. On 28 July Z attended her first supervised session with the Father however Z only agreed to this as the Mother was present; X did not attend. The session was apparently not successful, and no further sessions have taken place.
32. On 23 October 2021 the ISW completed a Therapeutic Reunification Plan. The report stated: "In my opinion [Z] and [X] are suffering from severe parental alienation which has had a significant impact on their emotional development". The report recommended that X and Z were moved into the care of the Father for 90 days without contact with the Mother in order to repair their relationship with the Father as part of a Residential Reunification Programme. Due to the assessment from the ISW, the Systemic Family Therapy sessions were paused with the Father having attended 8 sessions and the Mother having attended 3 sessions.

33. On 27 October a Strategy Meeting was held due to concerns about the family being long-term on the CIN plan, the Mother's control of X and Z, and X and Z not wanting to have a relationship with the Father. The outcome of the Strategy Meeting was to initiate section 47 enquiries with a view to escalating the CIN plan to a Child Protection Plan ('CPP') under the category of emotional harm. On 28 October the section 47 enquiry was completed by the social worker. The outcome was for an Initial Child Protection Conference ('ICPC') to be convened as it was felt that X and Z were "suffering significant harm as a result of emotional abuse within their home".
34. A further Statutory Child and Family Assessment was completed by the social worker on 7 December 2021, the outcome of which was to convene an ICPC due to the emotional impact on X and Z as a result of the family dynamics. The ICPC was held on 15 December and the outcome was for X and Z to be made the subject of a CPP.
35. On 14 February to 17 February 2022 there was 4 day fact finding hearing at Coventry Family Court before HHJ Watson. Judgment was delivered by HHJ Watson on 7 March 2022. I will set out the Judge's findings in full below but, in brief, she made no findings against the Father but did make findings in relation to parental alienation against the Mother. As a result of the findings, a Child Arrangement Order ('CAO') was made which ordered the implementation of the 90 day Therapeutic Residential Reunification Plan from 12 March 2022.
36. On the same day as the judgment was given, a 'Help Save X and Z' social media page was set up. This page included a picture of the Father along with his work details, a photograph of the ISW and her work details, a photograph of the social worker and her work details and a copy of the letter which HHJ Watson had written to X and Z explaining her judgment to them.
37. On 8 March 2022 the LA lodged a C2 application seeking removal of X and Z from the Mother's care due to concerns about the levels of abuse they were being exposed to. A hearing was held on 9 March and the Judge agreed that X and Z should be removed from the Mother's care. The CAO for the implementation of the Therapeutic Residential Reunification Plan was brought forward to 9 March and X and Z were placed with the Father. The ISW also moved into the Father's property as part of the assessment process for the Residential Reunification Plan. The ISW reported that the first 2 days of the assessment were challenging as X and Z were very vocal about their dislike of the Father and the ISW and were very destructive, including smashing the television and smashing bowls.
38. On 14 March 2022 X and Z smashed a first floor window at the Father's house and escaped, the Father phoned 999 and reported X and Z missing. They were found by roadworkers at approximately 3.40am, the police were called and X and Z were made subject to a Police Protection Order. Z was also taken to hospital for an x-ray due to an injury she had sustained jumping from the first floor window although it was established that the injury was not serious. The Father agreed for X and Z to be accommodated in foster care by the LA.
39. On 15 March X and Z were transferred to a different social worker, Alaina Rayworth. X and Z were also separated and placed in separate foster placements. There was a court hearing to determine education provisions for X and Z and was it agreed that both children could return to school with safety plans in place.

40. On 21 March X was returned to the care of the Father. Z remained in foster care but was moved to the foster carer where X was previously placed. Z stated to the social worker that she would not attend sibling contact with X if the Father was present. On 28 March X and Z had virtual sibling contact which lasted for approximately 30 minutes and went well.
41. On 7 April 2022 an All About Me review was held with Z. Z shared that she was self-harming and had suicidal ideation. Z was offered support from CAMHS but refused the support. On 8 April an ISW, Cordelia Boyes, started work with Z to explore Life Story and Parental Alienation.
42. At contact on 11 April 2022 Z refused to participate as the Father was present. At the contact on 21 April, it was decided that the Father should not be present for the first hour in order to allow sibling contact; Z refused to stay for the second hour when the Father was present. At Direct Work with the ISW on 22 April, Z stated that she would destroy any photos from the paternal family.
43. On 3 May 2022 Z's foster carer reported that Z had self-harmed after contact by cutting her legs. On 4 May, Dr Ghauri (Locum Paediatric Registrar at George Eliot Hospital) referred Z for a CAMHS assessment due to the ongoing self-harm and suicidal ideation. Z was admitted to the George Eliot Hospital until the assessment took place. On 5 May Z stated to her foster carer that she would hang herself if she was returned to the Father's care.
44. On 6 May a mother of one of Z's school friends shared a video with Children's Services. The video showed a conversation between Z and a teacher with Z telling the teacher that she is self-harming and has suicidal ideation. The Head of Year 7 at the school also shared that during parents evening the parent of another pupil reported that Z had been asking her daughter to send messages to the Mother and that Z had become aggressive when the child refused.
45. On 6 May 2022 the LA held a Children's Decision Meeting where it was agreed to issue care proceedings. On 9 May Z had her CAMHS assessment and was discharged from hospital back to the care of her foster carer.
46. On 19 May an ICO was made by DDJ Montanaro and Justices Legal Advisor. On 7 June the matter was listed before HHJ Jones for a contested ICO. She continued the Order, transferred the matter to the High Court and it was agreed that the status quo in terms of the children's placements should remain until the matter could be listed in the High Court. At that stage the intention was that the next hearing would be before Mrs Justice Morgan on 22 July.
47. However, the case was listed before me, as Family Division Liaison Judge for the Midlands, on 14 June to consider the LA's application for a psychological assessment, the Father's application for Specific Issue Order that X should change schools and to determine whether Z should be separately represented.
48. As at that date, Z was living with her foster carer. Neither child was having any contact with their mother, with it being proposed by the LA that they have monthly written contact, the ISW having recommended no contact whatsoever. The girls were allowed weekly supervised contact with each other for two hours per week. Z was not

allowed a mobile phone because of the concern that she would use it to contact her mother. She was not allowed to spend time after school with her friends because of the concern that she might use friends' phones to contact her mother. The result of this was that she was isolated both from her sister, with whom she had necessarily lived since X was born, and from her friends. She was also isolated in a broader sense because mobile phones and the internet are the way that most children of at least 12 and older communicate with their peers.

49. The Therapeutic Reunification Plan has not been implemented, for a variety of reasons. As has been explained above, Z simply made it impossible to live with the Father. The Mother was required to engage in therapy to write a therapeutic letter of apology to the children in order to help the children change the narrative they had been given. The theory was that the children would then have been given "emotional permission" to have a relationship with their father. The Mother had not engaged in therapy and effectively no progress has been made in this regard.
50. I expressed my considerable concern at the situation in relation to these children, and particularly Z. The evidence of the Guardian was that Z was Gillick competent and should be separately represented before any decision was made about psychological assessment. I ordered that Z should be separately represented. The Father had opposed such an order, arguing that it would be harmful to Z to be separately represented. In my view, it was clear from the evidence of the Guardian that Z was competent to give instructions. She had indicated to the Guardian that she did not wish to be involved in a psychological assessment and therefore before I made any such order, I took the view that she had a right to be separately represented having considered the guidance of Williams J in *Re CS (Sufficiency of Child's Understanding)* [2019] EWHC 634.
51. I also urged the Father to re-consider his application to move X's school to closer to his home. I was very concerned about the impact that would have on X, taking her away from her friendship group and a school she was familiar with at such a difficult time.
52. I also expressed concern about the degree to which Z was isolated, both from family and friends, and whether this was in her welfare interests under s.1 Children Act 1989.
53. I held a further hearing on 20 June. Z was by then represented by Ms Wilson of Penmans Solicitors, a highly experienced solicitor in this field. She was confident that Z was competent to give instructions. At that hearing the Father withdrew his application for X to move schools save in the event X expressed a clear wish to move schools. I ordered that Dr Gemma Parker undertake a family psychological assessment. Unfortunately, Dr Parker had indicated that this work could not be completed until 30 November 2022. The parties had considered various other experts however there was no other suitable expert who could report in a materially shorter timescale.
54. I also ordered that there should be a further hearing on 18 July to consider whether the ICO should be continued, contact both with the Mother and other family members, and what intervention could be offered to move this case forward.

55. On 13 July the Mother made an application for the ICO to be discharged, failing which, to have direct contact with Z.
56. On 23 June there was an incident when the Mother hugged X through the school fence and X became very upset.
57. On 1 July Z ran away from school and was located by the police at the Mother's address. The Mother said that she promptly contacted the police when Z arrived, but the Father claims the Mother did not act quickly enough. The LA say that Z initially alleged that she had run away because the foster carer had assaulted her, but then retracted this allegation.
58. The following day Z again ran away, this time to the library from where she telephoned B's parents, and she was returned to the foster placement.
59. On 11 July the Mother attended Z's school play after the LA gave her permission to do so. After the play Z jumped off the stage and ran to the Mother and other family members who were not permitted to attend. Z was apparently abusive to the foster carer in the car on the way home and upon returning, ran away again. The police found Z in Nuneaton town centre and returned her to the foster carer at 12.15am.

Findings of HHJ Watson

60. The 4 day fact finding hearing took place on 14 February 2022 to 17 February 2022. The Mother sought findings in respect of 10 allegations against the Father. The Father sought findings in respect of 5 allegations against the Mother.
61. Following the hearing, HHJ Watson delivered judgment on 7 March 2021. HHJ Watson found that none of the Mother's allegations were made out and they were dismissed.
62. HHJ Watson found that the parental alienation findings sought by the Father were established on the balance of probabilities. The findings were as follows:
 - i. "The Mother has alienated the children leading to emotional harm by disrupting contact and family time with paternal family from January 2019 – June 2019 (when contact first stopped) and has continued disruption of family time and failed to encourage the children from June 2019 to present"
 - ii. "Z and X have been left unable to recollect any positive memories and having an unjustified view of their father as being absent and uninvolved in their childhood when the family unit was intact"
 - iii. Z and X have developed an unjust fear narrative of father.
 - iv. "Mother has intentionally disregarded boundaries by over sharing adult matters by "having no secrets from her children" thereby involving the children in matters which should be resolved between parents. The children should not be complaining that they were to stay with father for 9 days over Christmas 2020 and it was too long. This should not have been shared with them. Mother has also

failed to recognize boundaries with professionals by showing extracts/full reports with family members and allowing them to become involved with challenging the process and by constantly complaining has undermined their professionals independent and impartial analysis of the welfare interests of the children. Any correction of errors and factual mistakes could be done openly and transparently in full statements within the private law court process”

- v. “Allegation 3 is established as no contact has taken place in accordance with court orders, which have not been appealed and no application has been made to suspect or vary the court orders”
- vi. “Mother has failed to engage honestly and genuinely with professionals to progress matters in line with court orders. This includes the System Family Team in 2019, the Independent Social Worker, Ms Barry-Relph, who was tasked with the re-introduction of the relationship with father in 2021 and the social worker, Laura Matts, who since April 2020 has striven to work with the children and mother under a [Children in Need Plan] and then from December 2011 a [Child Protection Plan]. I make the finding that mother has disrupted the steps taken. She has met with the workers and kept appointments, but this has been disguised compliance as she has never fully engaged with the process. Mother has preferred to hide behind the expressed views of the children rather than challenging those views and working with the professionals to correct the false narrative.”
- vii. “Having read the police logs I also make the finding at Allegation 5 that mother has continued to escalate and raise allegations (11 Police crime numbers have been issued in relation to stalking, internet hacking and harassment involving father), none of which have been substantiated and none of which have been put to father. In all probability this has therefore been done to disrupt the court process, contact and the paternal relationship because the girls have been made aware and have changed their passwords and their devices and believe their father spies on them through Alexa.”

63. HHJ Watson made the following order:

“205. I shall make a CAO which permits the implementation of the 90 day therapeutic residential reunification plan from 12 March 2022 as recommended by the ISW.

206. Both girls shall be placed with their father at home or at an Airbnb and supported by the ISW and her assistant who will live alongside.

207. Father will engage with PACE.

208. [Z] and [X] will be expected to engage with therapeutic support from the ISW whilst attending school, engaging in activities and living with father.

209. All communication with their mother will cease save for specific arrangements put in place and supervised by the ISW.

210. Mother shall engage in one to one therapy delivered by her own therapist and supervised contact will be reinstated once the therapist is satisfied mother accepts the agreed narrative arising from the judgment and is considered to be genuine in her promotion of the relationship between father and daughters. This is likely to be in about 3 months but could be earlier if significant progress is made in therapy.

211. Mother will be provided by the LA with regular updates on the girls and the LA will supervise all contact under the CPP until further order of the court.”

64. It is important I make clear that I have read HHJ Watson’s judgment with care and I do not and would not in any event be in a position to disagree with any of her conclusions. She heard both parents and reached clear conclusions about their conduct. There are passages in her judgment where it is apparent that the children had had a good and close relationship with their father in the past.

The caselaw relating to parental alienation cases

65. The problems that arise in cases of implacable parental hostility, particularly where one parent is alleged to have “alienated” the child(ren) against the other parent, have come before a number of judges. Each case is necessarily highly fact specific, but the approach that the senior courts have taken are illuminative of the relevant considerations for this Court.
66. Rather than setting out a large number of individual passages, I simply refer to *Re S* [2020] EWCA Civ 568, where Peter Jackson LJ, giving judgment on behalf of the Court, summarised the law concerning the parental alienation in the following terms:

“The law concerning parental alienation

7. At the outset, it must be acknowledged that, whether a family is united or divided, it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent. Children have their own feelings and needs and where their parents are polarised they are bound to feel the effects. Situations of this kind, where the concerned parent is being no more than properly supportive, must obviously be distinguished from those where an emotionally abusive process is taking place. For that reason, the value of early fact-finding has repeatedly been emphasised.

8. As to alienation, we do not intend to add to the debate about labels. We agree with Sir Andrew McFarlane (see [2018] Fam Law 988) that where behaviour is abusive, protective action must be considered

whether or not the behaviour arises from a syndrome or diagnosed condition. It is nevertheless necessary to identify in broad terms what we are speaking about. For working purposes, the CAF/CASS definition of alienation is sufficient:

"When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent."

To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive.

9. Where a child's relationship with one parent is not working for no apparent good reason, signs of alienation may be found on the part of the other parent. These may include portraying the other parent in an unduly negative light to the child, suggesting that the other parent does not love the child, providing unnecessary reassurance to the child about time with the other parent, contacting the child excessively when with the other parent, and making unfounded allegations or insinuations, particularly of sexual abuse.

*10. Where a process of alienation is found to exist, there is a spectrum of severity and the remedy will depend upon an assessment of all aspects of the child's welfare, and not merely those that concern the relationship that may be under threat. The court's first inclination will be to reason with parents and seek to persuade them to take the right course for their child's sake, and it will only make orders when it is better than not to do so. Once orders are required, the court's powers include those provided by sections 11A to 11O of the Children Act 1989, and extend to consideration of a more fundamental revision of the arrangements for the child. We agree that whilst a change in the child's main home is a highly significant alteration in that child's circumstances, such a change is not regarded as "a last resort": *Re L (A Child)* [2019] EWHC 867 (Fam) at [53] to [59] per Sir Andrew McFarlane P. The judge must consider all the circumstances and choose the best welfare solution.*

*11. Cases at the upper end of the spectrum of alienation place exceptional demands on the court. It will recognise that the more distant the relationship with the unfavoured parent becomes, the more limited its powers become. It must take a medium to long term view and not accord excessive weight to short-term problems: *Re O (Contact: Imposition of Conditions)* [1995] 2 FLR 124 per Sir Thomas Bingham MR at 129. It must, in short, take action when and where it can do so to the child's advantage. As McFarlane LJ said in *Re A (Intractable Contact Dispute: Human Rights Violations)* [2013] EWCA Civ 1104; [2014] 1 FLR 1185 at 53:*

"53. The conduct of human relationships, particularly following the breakdown in the relationship between the parents of a child, are not readily conducive to organisation and dictat by court order; nor are they the responsibility of the courts or the

judges. But, courts and judges do have a responsibility to utilise such substantive and procedural resources as are available to them to determine issues relating to children in a manner which affords paramount consideration to the welfare of those children and to do so in a manner, within the limits of the court's powers, which is likely to be effective as opposed to ineffective."

12. Unhappily, reported decisions in this area tend to take the form of a post mortem examination of a lost parental relationship. Re A (above): 12 years of proceedings, 82 court orders, 7 judges, 10 CAFCASS officers, no contact. Re D (Intractable Contact Dispute: Publicity) [2004] EWHC 727 (Fam); [2004] 1 FLR 1226 (Munby J): 5 years of proceedings, 43 hearings, 16 judges, no contact. Re A (Children) (Parental Alienation) [2019] EWFC B56 (HHJ Wildblood QC): 8 years of proceedings, 36 hearings, 10 professionals, no contact despite an attempted change of residence. In some cases (e.g. Re A) a formal finding of a breach of the state's procedural obligation under Article 8 was made. Another recent example is Pisica v Moldova (Application No 23641/17) 29 October 2019, where a mother was deprived of contact despite five years of proceedings during which she had obtained orders for the children to live with her. Finding a breach of Article 8, the ECtHR stated:

"63. The Court reiterates that although the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective "respect" for family life (see, amongst other authorities, Glaser v. the United Kingdom, no. 32346/96, § 63)...

...

66. In cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence, in view of the risk that the passage of time may result in a de facto determination of the matter (see, for example, Ignaccolo-Zenide, cited above, § 102; Süß v. Germany, no. 40324/98, § 100, 10 November 2005; Strömblad v. Sweden, no. 3684/07, § 80, 5 April 2012; and Ribič, cited above, § 92).

...

73. It is against this background of increasing alienation of the two children from the applicant that from July 2013 she asked the court to decide the custody case in a swift manner. Despite this request and her many complaints about P.'s actions, the first-instance court took a year and a half to decide (see paragraphs 12 and 31 above). This added to the overall period during which the applicant did not have meaningful contacts with her two children, while P. continued to be able to alienate

the children from her (see paragraphs 12, 13, 18, 21, 23, 24, 26, 33 and 34 above). This delay in deciding the case is contrary to the principle of exceptional diligence referred to in paragraph 66 above.

...

80. In the light of the above considerations, the Court finds that, in the present case, the domestic authorities did not act with the exceptional diligence required of them (see paragraphs 66 and 73) or discharge their positive obligations under Article 8 of the Convention. There has therefore been a violation of Article 8 of the Convention in the present case."

13. In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention. Above all, the obligation on the court is to keep the child's medium to long term welfare at the forefront of its mind and wherever possible to uphold the child and parent's right to respect for family life before it is breached. In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken. It is easier to conclude that decisive action was needed after it has become too late to take it."

67. I have set out this very full extract, because it encompasses the law in this area, and the difficult balances that have to be drawn. Each case must essentially turn on its own facts, and the need to have the child's welfare interests as the paramount consideration.

Submissions

68. The Father strongly urges me not to return Z to the Mother's care and to continue the orders that provide for minimal, if any, contact between either girl and the Mother. Ms Tyler relies on the evidence that the Mother has been posting confidential information about the proceedings on Twitter. She submits that Z has become destabilized by seeing her mother, and possibly by the suggestion that the Court might allow her to return to the Mother's care. She suggests that the Mother is encouraging Z to refuse to engage in the psychological assessment. She submits that the Mother does not accept Judge Watson's findings, or the premise of these proceedings and is not giving the girls "emotional permission" to have a relationship with the Father.
69. The Father points out that Z started self-harming when in the Mother's sole care. He points to the fact that Judge Watson found that the Mother had caused the children

significant harm, and to place them in her care would be likely to cause them further and greater emotional harm.

70. Ms Tyler submits that “the status quo must remain until the detailed work proposed by the LA commences and the girls receive emotional permission and positive encouragement from the mother.” She submits that to return Z now would be to render efforts by the court and the LA to improve their circumstances and life chances completely pointless.
71. She also submits that the Court should not make an order to return without a longer hearing with further consideration of the evidence. She also strongly relies on the likely effect on X if Z is returned to the Mother’s care. This is highly likely to destabilize X’s placement with the Father.
72. The Father supported the somewhat greater contact between Z and X, supervised by a family support worker and was open to more contact over the school holidays. I note that the Father, his partner and Y were going to the USA on holiday with X for a part of the holidays. He continued to oppose any direct contact between Z and the Mother until such time as the Mother meaningfully engages in therapy. He said that X was happy and settled in his care.
73. Mr Miller on behalf of the Mother argues that Z’s emotional and mental health is currently being harmed. The Mother considers that the only place Z will be safe is back in her care. She refers to the number of times that Z has run away from the foster carer, each time putting herself at risk.
74. Mr Miller relies on Article 2 of the European Convention on Human Rights (‘ECHR’), being the right to life, and the duty of the Court under s.1 of the Children Act that the child’s welfare is the paramount consideration.
75. Ms Wilson on behalf of Z supports the Mother’s application. Z has been clear and consistent that she wishes to return to her mother’s care. Z says that she is extremely unhappy in foster care and recounted to Ms Wilson a number of incidents where she says the foster carer was unkind to her. I note that it was clear from the evidence on 18 July that Z and the foster carer had a very poor relationship. Subsequent to the hearing I was informed that the relationship had completely collapsed and the foster carer had served notice. Z was moved to a different placement on 22 July 2022.
76. Z had indicated that if she could not return to the Mother’s care then she would rather live with B’s parents.
77. Ms Wilson submits that Z’s unhappiness with her current situation is placing her at risk of continuing physical and emotional harm. Although Z was pleased that she would be able to meet friends over the holidays, she was disheartened by the need for police checks before this can happen. As at the date of that hearing she had not been given a mobile phone because agreement had not been reached about how her use of the phone would be monitored.
78. Z told Ms Wilson that she was not prepared to participate in the psychological assessment because of the conduct of Ms Barry-Relph. However, she would be prepared to have another discussion with Ms Wilson about this in the future.

79. The Guardian submitted that more time should be given for the very recent proposals of the LA to bed in, which might provide Z with more stability, before making a decision on the Mother's application. She accepts that Z is currently suffering harm as a result of her separation from her mother. However, she balances this against the findings that Z would suffer emotional and psychological harm were she to be returned to the Mother's care at this stage. The Mother has not taken steps to address those findings, although the Guardian accepts that there has been some recent movement by the Mother.
80. The Guardian is also extremely concerned about the impact that a return of Z to her Mother's care would have on X.
81. The LA also support the continuation of the ICO for the same reasons. The LA have sought to take into account Z's needs by amending the interim care plan to allow her to have a mobile phone, albeit subject to close supervision and blocking numbers associated with the Mother and her family. Neither Z nor X are allowed social media apps on their phones, although WhatsApp was to be considered. Contact time between Z and X is now two hours per week, supervised at a contact centre. From 19 July virtual family time between the children and the Mother was commenced, again supervised by the LA.
82. In the light of my comments at the 20 June hearing, Z was to be allowed to spend time with her friends, subject to Z agreeing a contract of expectations.
83. The LA have also put in place a plan for further family therapy and support and for further parenting work with the parents.

Conclusions

84. I will analyse the issues in this case through the prism of the Human Rights Act 1998 ('HRA') and the ECHR as it provides a useful framework for the various issues in play.
85. The present situation is a very significant interference in Z's Article 8 rights, namely her right to private and family life. Z is only 12 years old, but she has been assessed as being *Gillick* competent in respect of giving instructions in the litigation. That does not mean that she is entitled to determine her own best interests as would an adult, but she is entitled to have her views given considerable weight under Article 8.
86. There are also in play the Article 8 rights of the parents, neither of whom are now having contact with Z. As Peter Jackson LJ said in *Re S*, the State has a positive obligation under Article 8 to promote and support such rights. However, in any Article 8 balance concerning the welfare of the child, the child's rights must necessarily be those at the forefront of the Court's mind.
87. In many care cases, children are required by the State to live away from their parents, that having been determined to be in their best interests. However, in this case there is a further interference in Z's family life because Z is no longer living with her sister, with whom she is very close, and is allowed very limited contact with her. As at 14 June, when I first became involved in the case, she was having no contact with her mother and only two hours per week, supervised, with her sister. She did not wish to

have any contact with her father. Therefore, she was in essence having no family life whatsoever.

88. Further, she was not allowed to spend any time with her friends outside school and was deprived of a mobile phone so she could not even speak to her friends or contact them on social media. This was all justified on the basis that Z might use such social contact to get in touch with her mother.
89. It is also relevant that Z had a very poor relationship with her foster carer, even before that relationship totally broke down. There is no criticism of the foster carer and it might be said that the breakdown in the relationship was Z's "fault". But it must be remembered at all stages in this analysis that Z is a child and that the Court is supposed to be seeking to achieve her "welfare interests" (section 1 of the Children Act 1989).
90. It can be seen that the effect of the care plan as at that date was a very serious interference in Z's Article 8 rights, by which she was completely personally and socially isolated, save when she was at school. I note that the restrictions on Z's contact with her family were more draconian than would have been considered appropriate in many cases of serious alleged abuse by parents. I also note that the test for "separation" from a parent at an interim stage is that of the child's safety requiring immediate separation, safety including psychological welfare, see *Re L-A* [2009] EWCA Civ 822, and *Re B and KB* [2009] EWCA Civ 254.
91. At the June hearing I ordered that some of the restrictions on Z be lifted so that she could spend time with friends and have some access to a mobile phone. The LA have done what they can to ease the situation for Z, but she still remains highly restricted in her access to family life, to a degree that is much greater than would be the case for most children of her age. The fact that she is only allowed supervised contact with her sister, and can have no contact with wider family members, such as B's family, is an indication of the restrictions upon her.
92. However, the impact on her in HRA terms might be said to have become worse because of the risks that she now incurs to her life and safety. She has run away from the foster carer at least three times. On those occasions she travelled a considerable distance, on her own, with no adult supervision and no one knowing where she was. One of those incidents happened late at night. This put her at real physical risk, whether by accident, assault or exploitation. This is relevant because the risk of harm created by the Court's order has to be balanced against the harm which is the justification for the ICO.
93. The justification for the interference with Z's Article 8 rights is the risk of significant harm caused by her mother. That harm, as set out in the LA's Threshold document is the risk of emotional harm as set out in HHJ Watson's judgment. The rationale for the ICO is that Z will be protected from medium to long term psychological and emotional harm caused by the Mother. The intention is that through the work proposed in the care plan, her long-term psychological wellbeing will be protected because a relationship will be re-established with the Father and she will understand that she has been encouraged in a false narrative by the Mother.

94. I will address this Article 8(2) justification on two bases, firstly whether the asserted protection from significant harm outweighs the harm that is currently being caused to Z; and secondly, whether the asserted medium to long term benefit to Z's psychological wellbeing has a reasonable prospect of being achieved in any event.
95. Z is at the moment extremely unhappy and desperate to return home to live with her mother. In the period since she was removed from living with the Mother, in March 2022, she has self-harmed and says she has had ideas of suicide. I accept that she self-harmed earlier when still in her Mother's care, but the evidence is clear that she has become more emotionally dysregulated.
96. Further, by running away, on at least one occasion in the night, she has put herself at real risk of harm. I find it difficult to see how the Court is protecting Z's Article 2 rights when it is imposing a situation which is leading directly to her putting her safety at such risk.
97. It may well be that she is undertaking this behaviour in order to strengthen her case to be sent home and to try to force the Court's hand. However, ultimately that is irrelevant. She is currently at real and immediate risk of psychological and physical harm. The Court must be careful not to get into a battle of wills with the child and not to inadvertently find itself in the position where it is in effect punishing the child for "bad behaviour". The focus of this case is purely on the child's welfare.
98. I am also unconvinced that the ultimate justification for the distress that is being imposed upon Z is likely to be realised. The Therapeutic Reunification Plan has failed. Z has not been reunified with the Father. The Plan, with the ISW moving into the Father's home, may well have been doomed to failure from the outset. But in any event, Z has made it abundantly clear that she is not prepared to cooperate with it. In terms of Z being "alienated" from the Father, that has already happened. I cannot see how forcing her to remain in foster care, where she is very unhappy and highly likely to blame the Father for her situation, is going to make her want to see the Father. In my view it is far more likely that she will see him as the author of her misfortune, even if that is part of a "false narrative". In any aspect of human affairs, it is notoriously difficult to change "false narratives".
99. The current plan being put forward by the LA and supported by the Father is that there is a psychological assessment that will report at the end of November, that will then lead to a final hearing and presumably some further plan of therapeutic intervention. The Guardian's proposal was to delay a decision on the Mother's application for a limited period to allow time for LA recent proposals to bed in and potentially provide more stability for Z. It is highly unlikely on this timescale that the case will reach final hearing before Christmas 2022. Z will therefore have spent close to 12 months in foster care, being very unhappy, at immediate psychological and physical risk, for an outcome that is very far from certain.
100. I appreciate Peter Jackson LJ's words that this situation calls for "judicial resolve because the line of least resistance is likely to be less stressful for the child and the court in the short term. But it does not represent a solution to the problem." I accept this Court might be accused of lack of resolve. However, in some cases there is no solution to a problem, only a choice between two not good outcomes, and the need to choose the least worst outcome. What might be characterized as choosing the course

which is less stressful for the child could alternatively be described as taking into account and giving appropriate weight to the child's wishes and feelings.

101. I have reached the conclusion that keeping Z in foster care against her strongly expressed wishes, and at risk of serious harm to her, places her at greater and certainly more immediate risk than the risks set out in the LA's Threshold. It may well be that in years to come Z will appreciate the harm the Mother has caused her and seek to re-establish a relationship with the Father. However, I do not consider the current care plan likely to achieve that objective.
102. I do also take into account the impact of allowing Z to return home to the Mother may well have on X. I accept it is likely to destabilise X's placement with the Father and may, although I hope not, encourage X to adopt some of Z's behaviour. This is a very serious consideration. However, I do not see under the statute how I can make a decision which would not be in Z's welfare interest because of the impact it might have on her sister. At the present time X is relatively settled with the Father and if I have to reconsider her case I will do so at a further hearing.
103. In my view, the most appropriate course, taking into account all the considerations, is to ask the LA to amend the care plan so that Z can go home to her mother immediately. However, I do not consider the tests for interim separation are met and taking into account the welfare checklist, I consider it to be strongly in Z's best interests for her to live with her mother until a final order is made. If the LA do not consider they can amend the care plan with Z placed at home, then I will make an Interim Supervision Order with Z living with the Mother.
104. Therefore, an order should be drawn up that Z goes home immediately, and directions can then be agreed as to lead to the final hearing in this matter. There is likely to need to be a further Case Management Hearing shortly, and arrangements can be made for that.