



Neutral Citation: [2024] EWHC 272 (Fam)

Case No: FA-2023-000153

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

ON APPEAL FROM THE FAMILY COURT SITTING AT DERBY
HER HONOUR JUDGE WILLISCROFT
Case No. DE21P60053

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/02/2024

Before:

MS JUSTICE HENKE

Between:

The Mother

Appellant

- and -

(1) The Father

Respondents

(2) F

(via her Children’s Guardian)

James Cleary (instructed by **Bakers Solicitors**) for the **Appellant**
The First Respondent appeared **In Person**
Samuel Coe (instructed by **Elliot Mather**) for the **Second Respondent**

Hearing date: 5 February 2024

Approved Judgment

This judgment was handed down remotely at 1pm on 9 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MS JUSTICE HENKE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Henke J:

1. This is an appeal against an order made by HHJ Williscroft on 21 June 2023. The grounds of appeal can be briefly stated. They are that: -
 - (1) The learned judge was wrong to reject the recommendation of the children's guardian and the agreed position of the parents that the time spent with her father, should be progressed in a way consistent with her wishes; and
 - (2) The judge did not indicate to the parties that she proposed to make an order and failed to invite submissions on that point before she did so.
2. The grounds placed before me have been advanced on behalf of the appellant by Mr Cleary who represents the subject child's mother. The child's father has represented himself before me. The subject child has been represented before me by Mr Coe who takes instructions from her Guardian. I am grateful to each of them for their succinct and focused oral and written submissions. I am also grateful to those who prepared the appeal bundle that is placed before me for their observance of the relevant rules. Thus, I have before me a bundle which has all the essential documents in it. It runs to 72 PDF pages. I can confirm that I have read and re-read that bundle. The manner in which this appeal has been conducted enables me to proceed to judgment today and to do so shortly.
3. My decision is that this appeal should be allowed. My reasons for coming to that decision can be given briefly.
4. The subject child, F, is now 11 years old. It is agreed that F should live with her mother. It is agreed that F should see her father. The dispute before HHJ Williscroft was the rate at which F's contact with her father should progress, in particular how quickly it should progress to staying contact.
5. The Child's Guardian in his report to the court below had set out F's wishes and feelings. F herself had written to the judge. The Guardian's opinion was that there might be a regression in contact *if it was pushed onto her too early*. His view was that *it is too early at the stage to make final recommendations as to how the case might further progress in a year or so. This will need to be a child led process*. On the basis of the Guardian's report which was before the court, all parties agreed that the progression of contact should be at F's pace.
6. I am told that when all parties entered the courtroom on 21 June 2023 the expectation was that the proposed scheme of progression should be reflected in an agreement and not an order. That would allow flexibility of the arrangements to meet F's needs and the views she is likely to express as the scheme for contact with her father progressed. However, HHJ Williscroft did not agree with that unanimously held view and instead she proceeded to make an order. She did so without telling the parties of her intention and without giving them the opportunity to make submissions to the contrary or to say why a recital not an order was in F's best interests. In my judgment that was a serious procedural irregularity which amounted to an injustice. Ground 2 of the appeal is therefore made out. I also consider that given the views of the Guardian, the learned judge should have dealt with them in the judgment. She did not do so and thus ground 1 is also made out.

7. Having allowed the appeal for the reasons I have stated, I must consider what I should do - should I remit this case a re-hearing or should I delete recital 7 from the order and accede to the representations of all before me that the substance of paragraph 2 (d)-(g) should be in a recital rather than an order. All before me agree that a recital is preferable because it provides flexibility, and it avoids the perils of potential enforcement proceeding when the contact as currently ordered is contrary to F's wishes and feelings. All agree before me today that contact is progressing well and in accordance with the parties' agreement as reached in June 2023. All agree that there may be bumps ahead particularly when the issue of when and how staying contact should happen needs to be grappled with, but all agree that the way forward is mediation and for F herself to be part of that mediation process to enable her to express her wishes to a neutral third party. All before me urge me to travel down that route rather than remit for a rehearing which will just provide further delay. All agree that given the history in this case, progression should be child not court led. Hence in the circumstances of this case, I substitute the recital for those parts of the order I have set aside. I ask counsel for the appellant to draft the order accordingly for my approval.

8. Finally, I pay tribute to F's parents for the way each has conducted themselves before me. The father has behaved honourably before me. He has stood by his agreement before the lower courts. He has remained child focused, and not sought a litigation advantage despite the judge's order. Both parents accept that each has a different standpoint upon the issue of progression especially when it comes to staying contact. However, both have been able to put their daughter first. They are respecting her wishes and feelings and agreeing to proceed at her pace. Both are agreeable to mediation to iron out and negotiate their disagreements as they arise. I hope as F grows, they each can continue to be reasonable and reasoned in their approach and that they will continue to put F first.