Neutral citation number: [2022] EWFC 64

CASE NO: 0X19P00291

THE FAMILY COURT SITTING AT OXFORD

HEARD ON 26TH APRIL 2022 TO 29TH APRIL 2022 AND 6TH MAY 2022

JUDGMENT GIVEN ON 6TH MAY 2022

BEFORE HER HONOUR JUDGE OWENS

BETWEEN

F

And

M

And

A & B

(Acting through his Children's Guardian, Emma Brown)

Applicant, F, acting in person
First Respondent, M, acting in person
Second and Third Respondents, A and B, acting through their Children's Guardian, represented by Ms King, Legal Executive Advocate

This judgment is being handed down [in private] on 6th May 2022. It consists of 29 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the children and the adult members of their family must be strictly preserved. 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. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties and the child 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.

Introduction, Background and Evidential summary

1. This is a final hearing to determine an application by F for a Child Arrangements order to have direct contact with his children, A and B. That application was made in May 2019. A and B's mother, M, has asked the Court at this final hearing to consider making a non-molestation order under section 42(2)(b) against F to protect her as well as A and B from direct contact from F. The Guardian has applied for a section 91(14) order prohibiting F and M from making any further Children Act 1989 applications in respect of A and B for the next two years.

2. I dealt with the detail of the background and history to these proceedings in an earlier judgment given at the end of a Fact-Finding hearing (JU1-JU50 of the Bundle). That Fact-Finding hearing took place over the period 14th-18th December 2020 and 14th January 2021, with judgment handed down on 4th February 2021. I adopt the contents of that judgment for the purposes of this judgment and will not repeat the detailed background save to note that these current proceedings have been underway for nearly 3 years at this point, and they follow on from earlier proceedings which concluded in 2016. As noted by the Guardian in closing, there have been interim applications in these proceedings, including issues around supervision of contact and an application for a specific issues order to enable A to move to a different primary school identified as being able to meet his needs but which F would not agree to. Significant findings were made against F in the Fact-Finding stage of these proceedings, including that his actions since the parents separated have been purposefully designed to undermine M and have harmed A and B and that he has not been able to act in their best interests

above his own perceived interests. The outcome of F's actions in making false allegations has also been the complete loss for the children of any relationship with their maternal uncle. The children have remained living with M and recently there has been no direct contact taking place between them and F, with virtual contact taking place although recently B has declined to participate in this virtual contact.

3. Following the Fact-Finding hearing, Dr Dowd was instructed to complete a psychological assessment of F. His report, dated 21st June 2021, is at D59-96 and makes several conclusions and recommendations about F, identifying that F will need to undertake psychotherapy to address his issues which include elements of narcissism, avoidant personality and paranoid traits, though does not diagnose him as having a personality disorder. F had earlier confirmed before this hearing was listed that he did not challenge Dr Dowd's conclusions and recommendations and thus did not require Dr Dowd to be called so that he could question him. That remained the case at the PTR, but I should note that in his closing submissions F appeared to take issue with Dr Dowd's evidence.

4. In the course of this hearing, I have read all of the evidence contained in the Bundle (as well as the following documents added to that Bundle – a Caring Dads Programme report dated 14th February 2022 D105a and a statement from the Social Work Team Manager dated 16th February 2022 D108a, plus text messages exchanged between F and M on 6th and 7th March 2022), and heard live evidence from the allocated social worker, social work Team Manager, M, F and the Guardian. The hearing has proceeded as wholly remote with the consent of all concerned, given difficulties with court accommodation in Oxford arising from building works and this has facilitated

the court being able to sit for longer than would have been the case to accommodate M's childcare when the children finish school. Special measures prohibiting F from cross examining M directly have continued, and directions were given to enable F to hear M's evidence in chief in support of her application for a non-molestation order on day one, and then to consider his proposed questions for her so as to provide them to me in writing by 9am on day two to enable me to ask her his questions on day two of this hearing.

Parties' positions

5. F seeks a Child Arrangements order for him to have direct contact with A and B, on a gradually increasing pattern building up to overnight staying contact but starting with direct contact immediately. He does not accept the recommendations of the Guardian in this case and opposes the making of a non-molestation order. He said in closing that he agreed with the making of a section 91(14) order, though later in this judgment I will consider whether that was his case as put during the hearing or not. He opposes the limitation of his parental responsibility as suggested by the Guardian.

6. M agrees with the recommendations of the Guardian and is seeking a non-molestation order to prevent F approaching her or the children for the same period as any section 91(14) order. She agrees with the Guardian that orders limiting the exercise of F's parental responsibility, and having permission to disclose those orders to anyone who might query that (eg schools, doctors, dentist or the UK Passport Office), would avoid her having to make further applications to the court, though she was also in agreement

with a potential section 91(14) order against her to stop further proceedings involving the children.

7. The Guardian recommends that final orders need to be made for A and B allowing for virtual contact only to continue and for F to provide presents to the children only on their birthdays, Orthodox Christmas and Orthodox Easter, as well as non-Orthodox Christmas and non-Orthodox Easter. She does not recommend any progression of contact at this time because she has concluded that F is unable to recognise the harm that his actions have caused the children and has yet to complete any of the recommended psychotherapy to address his difficulties. She also recommends a section 91(14) order prohibiting F from making further applications under the Children Act 1989 in respect of A and B for the next two years. Her recommendation is that a condition of any application for leave under section 91(14) could be proof of F's consistent engagement with the psychotherapy identified by Dr Dowd, but also notes that even if he has successfully completed such therapy there would be a need for further assessment to consider whether contact would be in the best interests of the children at that time and it is therefore not automatic that direct contact could resume after F has completed the necessary therapy. She recommends that F should continue to attend the courses that have been identified by the Caring Dads programme, and that indirect contact should continue with the focus on perhaps shorter sessions of greater quality for the children. She does not recommend that F should approach the children in the street and that orders may need to be made to protect the children from this, as well as recommending that F should have limitations placed upon his exercise of parental responsibility so that he is kept informed but no longer has the ability to undermine any treatment or choice of school for the children in light of his previous

opposition to necessary CAMHS assessments for A and refusal to consent to change of school for A.

Relevant legal considerations

8. At the welfare stage of proceedings, the Court must consider the relevant aspects of the welfare checklist contained in section 1(3) of the Children Act 1989. I have also been mindful of sections 1(2A) and 1(6) of the Children Act 1989. The former creates a presumption, unless the contrary is proved, that involvement of a parent in a child's life will further the welfare of a child, and the latter requires a Court to consider when making or varying a section 8 order that, even if there is some evidence of risk of harm, whether there is a way to involve the parent in the child's life in a way that does not put the child at risk of harm. I have also had regard to the provisions of Practice Direction 12J, and Practice Direction 3AA given the harm found to have been caused by F towards M in the past. In relation to the application for a non-molestation order, I have had regard to section 42 of the Family Law Act 1996. In considering the Guardian's application for a section 91(14) order, as well as the primary legislation, I have considered the leading authority of Re P (Section 91(14) guidelines (residence and religious heritage) [1999] 2FLR 573. This states that the court must carry out a balancing exercise between the welfare of the children and the right of unrestricted access of the litigant to the Court when considering whether or not to make the order. The welfare of the children is still a paramount consideration of the Court when considering whether to make a section 91(14) order and the Court must weigh all the relevant circumstances. Such an order is an interference with the right of a party to bring proceedings and be heard on matters

affecting their children, and therefore an interference with the article 6 and 8 rights of the party concerned, so such orders must be used with great care and sparingly as well as only being made where necessary and proportionate. They are usually a weapon of last resort in cases of repeated and unreasonable applications, though not exclusively reserved to such cases. The Court must be satisfied that the facts in a case go beyond the usual need for time to settle after proceedings, and that there is a serious risk that, without the imposition of such a restriction, the children or primary carer will be subject to an unacceptable strain.

Findings

9. I have considered the welfare checklist in relation to the children in this case. The first relevant heading is the ascertainable wishes and feelings of the children concerned, taking into account their age and understanding. A is aged 11 and B is aged 8. A has told the Guardian that he thinks the current amount of indirect contact is about right and does not want the arrangements to change. The Guardian told me in her evidence that A struggles to communicate in a way that B does not. B told the Guardian and the social worker assigned to do some direct life story work with her that she does not want to any contact with her father at present (D103 and D119). During this hearing, when questioning the Guardian, F alleged that B's letter at D117 in the Guardian's report had been possibly altered in different ink. It does have the figure 10 crossed out and the figure 20 inserted in the part where B asks for an order that F should stay a certain distance away from her, but there is no difference in the ink on the image that I had, and more importantly the Guardian explained that B wrote the letter in her presence and she immediately took a photo of the letter for the

report so there was no opportunity for anyone apart from the Guardian to alter it. The Guardian confirmed that, as a court appointed professional, she would not have altered it. This seems therefore to have been a manifestation of the sort of paranoid traits that Dr Dowd identified F as having. The Guardian's professional opinion is that B's views are her own, supported by her own clear reasoning of viewing her father as someone who has harmed her, and she has not been influenced by anyone else in coming to her view (D119).

10. In terms of their physical, emotional and educational needs, A struggles at school academically and socially, and has exhibited challenging behaviour at school and at home so has additional needs beyond those which would be usual for a child of his age. He has significant social and education development needs, has been referred by social services to CAMHS for assessment and as a result is awaiting an ADHD assessment at present. It may be that he will not be able to manage in mainstream school as the social work and Guardian's evidence suggests. As noted by Dr Dowd and the Guardian, both children have suffered significant hardship, trauma and harm since their parents separated: "*It is likely that B and A will require better than good enough standards of parental care in the future, in order to repair any emotional or psychological difficulties they now experience as a result of the difficulties between their parents" (D72 Dr Dowd).* The Guardian noted in her final report: *"It is my view that his (A's) social functioning has been dramatically impacted by his experiences at home. His emotional needs were unmet for most of his primary school life and this has had a profound impact upon his abilities to form relationships. Coupled with possible attention deficit difficulties have compounded A's vulnerabilities and leave him at a disadvantage from his peers. He is described as a*

child who very much wants to engage socially but does not know how. B has very different personality traits and needs, in my view her social abilities amongst her peers will soon, if they have not already, over take those of her brother. There are no concerns about M's parenting and care of the children, she has had the scrutiny and support of children's services over a period of many years. The court have (sic) made findings that F's allegations are not proven and that he had purposefully acted against the children and M in making allegations" (D122). The social worker told me that there are no concerns about B academically or at home, despite some minor concerns initially that she may have been copying A's behaviour at school and displayed some challenging behaviour towards her mother this has now settled. The social worker also pointed out in answering questions from Ms King on behalf of the children that it will be important that anyone having contact with A understands A's needs, is emotionally attuned to him and able to manage his behaviour. The social worker went on to explain that it will also be important that anyone having contact with him gives A consistent messages that do not undermine his main carer (M) or cause A any confusion, as well as being supportive of any interventions that A is receiving. The Guardian also noted this in both her report and oral evidence to me and has suggested that it would be helpful if the parents could agree a form of words to help them deal with answering any questions from the children and to promote this consistent message giving. She is, exceptionally in my experience, offering to remain involved in a very limited capacity for a short time after this final hearing to assist the parents with finding an agreed form of words. She will do so only in writing and for a very short period, being very clear that it is not appropriate to continue professional involvement beyond that. When I asked her how this might work if F was unable to agree the form of words (which seems likely given that he has yet to undergo the sort

of psychotherapy that Dr Dowd assessed as necessary), she accepted that in such a case it would be down to M to agree the wording with her and for M alone to provide the children with any explanations required.

11. It is not clear to me how far F accepts that A has additional needs at this point, nor the extent to which he accepts that M is capable of meeting both children's needs. F originally refused to consent to A being referred to CAMHS in 2020 but told me that he now supports A having further assessment. He also told me that he feared B may be overweight and asked the social worker and Guardian questions about B potentially being bullied and manifesting some challenging behaviours. Despite F's concerns, it is clear to me that A has significant needs over and above those of B and that M is quite capable of meeting both children's needs now and in the future based on the overwhelming professional evidence.

12. Likely effect on them of any change of circumstances is the next relevant heading. If contact were to move to face-to-face contact as F seeks, this would represent a change for A and B from the current arrangements. Both have clearly said to professionals that they are happy with the existing arrangements and do not want them to change. I think F tried to put a case that A and B were happy to see him when he had bumped into them on unplanned occasions in the community and that, by extension, this means that they want to have face to face contact with him. This is not what the evidence of the Guardian shows, and the work that the Guardian did to establish the wishes and feelings of each child was clearly carefully, thoughtfully and thoroughly done in my view. F questioned the Guardian about why she had not met A in person, but the Guardian was quite clear that, although this had been the initial plan and it was

only prevented by unexpected difficulties with A's availability, she considered that meeting with A remotely in the way that she did enabled her to properly explore A's wishes and feelings. It also balanced his need to have his views captured against the risk of further delay, as well as took into consideration his own considerable needs as well as the fact that both children have had many professionals in their lives because of F's false allegations. As Ms King told me, she deliberately has not met A or B considering the overwhelming number of professionals that they have had in their lives and the ample evidence that has been obtained because of that professional involvement. As the children have very clearly told the Guardian that they are happy with the existing virtual contact and do not want face to face contact, there is a thus a risk that forcing A and B to have face to face contact against their clearly expressed wishes may cause them further harm based on the evidence of the Guardian about this.

13. The next welfare checklist heading is the children's age, sex, background and any characteristics of theirs the court considers relevant. Much of this has been covered already in this judgment under the first two headings. It is of note that the children are of Croatian heritage and normally having regular contact with their father and wider paternal family would promote this for them. Previously the children were able to maintain their links with their wider paternal Croatian family and A in particular spoke both Serbian and English but given the inability of the wider paternal family to understand the concerns about F after the outcome of the fact-finding hearing or to appropriately supervise contact these links have ceased. The Guardian told me that neither child now speaks either Serbian or Croatian. As a result of the false

allegations against him, the children have also lost their relationship with their maternal uncle.

14. Any harm which they have suffered or are at risk of suffering is the next relevant heading, and in this case this links inextricably to the heading that considers how capable each of their parents is of meeting their needs. As is clear from the social work evidence, that of Dr Dowd and the Guardian, both children have suffered emotional harm, initially arising from the parental acrimony and failure to protect them from that but latterly because of the actions of F in making false allegations to try to achieve the return of the children to his care and to gain litigational advantage. That was a finding that I made during my Fact Finding judgement (JU29, JU30) and I also found that F has placed the children at risk of significant emotional harm. I found M's allegation that *"F's behaviour continues to cause the children emotional harm" (item G on her schedule of allegations; JU50)* was proved on balance of probabilities and that at the point of the Fact Finding hearing both children remained on the Child Protection Register under the category of Emotional Neglect as a result (again JU50). Although F said repeatedly during the Fact Finding hearing and has again said during this hearing that he was simply repeating what the children told him, that is not what I found had happened. My judgment makes it quite clear: *"The motivation for F making so many patently unsubstantiated allegations is also of concern, I find. He has consistently sought to show that the children are better off living with him, I find, even to the extent of saying it was reasonable for him to refuse to allow A to be referred to CAMHS because if A returned to live with him for six months he would be fine…All too often the timing of his allegations is also significant, as I have noted earlier…I am satisfied that F has made the allegations*

that are the subject of this fact-finding hearing (including the abandoned allegation about breach of bail) in bad faith pursuing them despite a paucity of credible evidence to substantiate them…In addition he has done so with a view to establishing that the children should be returned to his sole care, and in so doing has placed his interests above the emotional welfare of the children placing them at risk of significant emotional harm and causing them actual emotional harm, I find. I am satisfied that he has sought to demonstrate that M is not fit to care for the children, and to recruit the children to his 'cause'. In so doing he has spoken negatively about the mother and her family to the children and in their presence when questioning them about any marks observed on their bodies…and in discussing the allegations in the presence of professionals such as the police and medical professionals. To this extent I am therefore satisfied that he has made these allegations in a deliberate attempt to undermine M, sabotage the children's relationship with their mother (and wider maternal family…), as well as to achieve litigational advantage in these proceedings. I am also satisfied that where the children have repeated the content of any allegations to professionals, they have done so having been encouraged by F to do so…F sought to justify his pursuit of the allegations by telling me in his oral evidence that he has only ever pursued allegations that the children have raised. However, as I have found, the children have not independently raised any of these allegations to any professional or independent third party without having first been spoken to by either or both F and PGM. F and PGM were deeply unsatisfactory witnesses and F's closing submissions acknowledged that in respect of some of his allegations he had not much credible evidence even on his case. The combination of this and his pursuit of allegations despite clear evidence to counter them does lead me to conclude that he has not raised the allegations against M and U with a view to

determining what is in the welfare interests of the children first and foremost" (JU28-29, JU33-34).

15. When Dr Dowd assessed F, he noted that *"If F has reflected upon the findings of fact, he appears not to have developed significant insight in to why such findings were made. In the alternative, F may be unwilling to acknowledge why the findings were made in order to resist the potential for negative appraisal to be attributed to him. This would be consistent with impulsive personality functioning as discussed above. (D68).* In the course of his assessment, Dr Dowd also recorded F repeatedly saying that although he accepted the findings of fact, he did not agree with them and in making his allegations was simply trying to protect his children (see for example D67). The only thing that Dr Dowd recorded F as accepting that he should do differently in future if he had concerns was not to report them to professionals (D67). Dr Dowd also noted that *"F has been assessed as functioning within the wider average range of adult cognitive capacity, and therefore, there is no reason why, in comparison to the wider population, he should not be able to understand such issues" (D69).* It seems clear to me that F really does not understand or accept the findings made against him and has a long way to go before he therefore demonstrates the sort of insight and acceptance that would enable professionals and the Court to have some confidence that he poses a lower risk of harm to the children. I am also satisfied on the evidence before me that not only does he lack understanding and acceptance of the previous findings and the risk that he poses to the children as a result, but he continues to minimise his role in causing harm to his children in a way that is deeply concerning and suggests that it is only because his complaints to the police and social services were not upheld that he now says he will not report anything else to them. It

does not appear to be the case that he accepts that he made false allegations, pursued them despite a real lack of evidence (as I found before) and in so doing caused his children to suffer emotional harm and to be at risk of significant emotional harm.

16. This theme of F not demonstrating insight into the harm that his own actions caused the children and why he needs to change is something that continued in the social work evidence for this final hearing, as the allocated social worker told me. As noted by the Team Manager in her statement dated 16th February 2022 – not in the Bundle but provided separately and subsequently paginated from D108a) F declined her invitation to participate in work designed to educate him about domestic abuse and has yet to contact her as invited to make arrangements to attend further parenting programmes. On 8th February 2022 the Caring Dads Programme produced a report (again not in the Bundle and provided separately, subsequently paginated from D105a). This was a programme that Dr Dowd had recommended for F designed to help F become more aware of and responsible for his use of abuse and healthy parenting strategies. The report notes: *"F was able to give examples of abusive and neglectful fathering throughout the programme. He did not take any responsibility for acceptance of his own behaviour towards his children and their mother… F appears incapable of moving forward".* This general inability to accept what he has done wrong in the past is also something that is evidenced in the letter that F produced following his attempt to obtain CBT (not in fact the sort of psychotherapy that was recommended but I will return to this later): *"During the 50-minute session we were unable to identify any specific therapeutic goals and the conversation would return to the details of his current legal case and the validity of the accusations made against him. (D106)*. It is thus deeply disappointing and concerning to hear F yet again

repeat during this hearing that he has simply repeated what the children have told him as I have earlier noted.

17. It was also concerning to hear him return to allegations that I had previously not found proved. These included an allegation against the social worker that he had verbally abused A during a contact session (at least, I think this is a repeat of the earlier allegation which I dealt with as follows because there is nothing in F's most recent statement about this: *"there is simply no credible evidence to support this contention" (*JU23)). F also returned to two allegations that he made against M, and which were considered during the Fact Finding, namely that M had grabbed A by his collarbone and had hit A. As I noted in the Fact Finding judgment at JU8-9, M accepted long before the Fact Finding hearing that she had grabbed A when the children were fighting, and she was trying to simply separate them. I did not find that, as F alleged, M had intentionally hurt A during this incident, and I accepted that Social Services records showed the task of separating the children when they were fighting could be challenging. I did not find F's allegation that M hurt A physically in 2016 to be proved at all. The fact that F seems to still believe that those allegations were true and found proved is extraordinary and rather underlines how little progress he appears to have made since the Fact-Finding hearing in my view. It also underlines that, as he told me, he has not in fact recently re-read my earlier judgment. As I did at the end of that judgment, I again urge him to re-read it and reflect on what it says about him and his actions in harming his children.

18. The Caring Dads programme recommended that F should undertake some work designed to help him understand the different types of domestic abuse. This links to

something that Dr Dowd also recommended for F: *"a programme of domestic violence awareness may very well be beneficial to F, although he suggests that his relationship with his ex-partner was at no time violent, his behaviour following his separation from his ex-partner, as in the findings of fact, inevitably impacted the emotional welfare and wellbeing of both his children and his ex-partner, who, as the primary carer of his children, was required to be emotionally stable" (D69-D70).*

19. The Guardian also noted that neither of the allegations against M were found proved in the Fact Finding hearing, as well as pointing out that there are simply no concerns about M's care of the children physically or emotionally, despite intensive and long-running scrutiny by social services of her and the children. The Guardian also told me that, in her professional opinion, F will continue to pose a risk of emotional harm to the children until he has completed the psychotherapy recommended by Dr Dowd and therefore should not have direct contact with the children until this is completed and he has been reassessed. This is also in her report: "*I do not recommend any progression of contact at this time. Unfortunately F is unable to recognize the harm that his actions have caused and notwithstanding the input from professionals continues to minimise the extent of his actions. F has consistently said he would do whatever is needed to address his difficulties but has either not done so (psychotherapy) or has not been able to use programmes to reflect on where he needs to change and then demonstrate that ability in what he says. I am concerned that if contact were ordered the impact on the children would be significant and they would at risk of emotional harm" (D122).* The allocated social worker also confirmed this in his evidence, though he did suggest that professionally supervised contact may mitigate the risks to the children. The Guardian was very clear that even

professionally supervised contact was not appropriate for A and B until F has completed the required psychotherapy and been re-assessed. I found her evidence to be more compelling about this since the social worker seemed to add the possibility of supervised contact as a later consideration (it is not in the updated social worker evidence) and acknowledged that he has returned to the case in early April having temporarily left the Local Authority in November last year. It is also clear from the social work evidence that previous supervision of contact by the paternal grandmother was not in the welfare interests of the children due to concerns about her ability to work openly and honestly with professionals and whether she was unable to prevent F potentially negatively influencing the children's behaviours (D47 and D42). Any professional supervision of contact would not be funded or provided by the Local Authority as the social worker also told me, so it would be up to the parents to source and fund that even if it was deemed to be in the welfare interests of the children. Given that both appear to be experiencing financial problems arising from these proceedings from what they have put in their evidence and told me, and there is also an apparent dispute about child maintenance, it seems unlikely that either or both could afford such professionally supervised contact in any event.

20. There are no professional concerns about M posing any risk of harm to the children. I noted in my earlier judgment that: *"I am satisfied on balance of probability that that M has addressed the historic concerns about failure to protect the children from the parental acrimony, based on the social services records which show that from May 2019 there are no concerns about her parenting" (JU28).* The social work evidence since the Fact Finding hearing and during this hearing was clear and overwhelming that M poses no risk of harm to the children now and has in fact made really good

progress with the professional support that she has had so that social services have now closed their case. The Guardian also confirmed in her final report (D122) and in her oral evidence to me that there are no concerns about M's parenting despite years of professional scrutiny of her. F, in contrast, is still subtly suggesting that somehow M is not parenting the children appropriately. He suggested during his questioning of M and the Guardian that B is overweight and is being bullied, despite not having put anything about this in his written statement. Following the CAMHS referral in 2020, F has suggested more than once that if A were to be returned to his care, F could guarantee that A would have no additional needs. F repeated this during this hearing, something that calls into question the extent to which he accepts that A has profound and significant additional needs which require further assessment, I find. It also calls into question the extent to which F accepts that the concerns are about A's level of need and F's ability to meet those needs, even in the limited form of contact, I find. I find that M does not pose any risk of harm to the children despite F's failure to accept and understand the earlier findings, and his insidious allegations that somehow M is not meeting their needs are a repetition of the sort of unfounded allegations that culminated in the wholly false allegations dismissed because of the Fact Finding. The social work team manager also gave evidence in her final statement and orally to me that F needs to complete the Take 3 Parenting Programme (C10), and it seems clear to me that F would need to complete this to also start to reduce the risk of harm that he poses to the children by improving his ability to sensitively and appropriately respond to them in contact (something which the Guardian and allocated social worker also told me).

21. There is also an issue about the extent to which F has tried to source and start the work that Dr Dowd recommended. F told me that he had taken Dr Dowd's original report and addendum to his GP to try to obtain a referral for the psychotherapy that Dr Dowd identified as necessary for him. F told me that he first went to the GP in December 2021, so it must have only been Dr Dowd's main report that could have taken at that point as the addendum is dated 4th February 2022. It is not clear why it took F from the end of June 2021 when he received Dr Dowd's main report to December 2021 to speak to his GP or show his report to the GP. His evidence about this was confused and confusing. Even allowing for what have been widespread delays in obtaining an appointment with a GP, six months is a very long time and far more likely to be due to F's avoidant personality traits (as identified by Dr Dowd) than purely due to NHS delays, I find. The fact that F seems to have tried to source CBT also suggests that either he did not disclose Dr Dowd's report to his GP or somehow F himself tried to source that CBT without fully appreciating that CBT is not the same as psychotherapy. During this hearing F repeatedly said that he had not been diagnosed with anything and nobody had told him what sort of therapy he needed to complete – this suggests he had not read Dr Dowd's report properly and does not understand (or perhaps accept) that it recommends psychotherapy to enable him to change his fundamental psychological approach. In his addendum report Dr Dowd was asked to clarify whether CBT would be a valid alternative which led to the following clarification: *"it was not CBT that was recommended for him as it is primarily his opinion and psychological approach to these issues that required adjustment, not his secondary behavioural responses necessarily. F needs to appreciate and accept that his children are exposed to the consequences of long term turmoil, and that it is stability that will have the potential to address this issue moving*

forward. Psychotherapy is perhaps the only real alternative for F and this would focus upon how his personality traits influence his beliefs, attitudes and resulting behavioural responses. However, as discussed above, there would need to be the need for positive engagement and acceptance for its need. Without this there may be no psychological interventions that can assist and what has existed historically, will persist" (D107-D108). This could not be clearer, I find, F needs to source and undergo psychotherapy, but such therapy will only be successful if he accepts that it is necessary and engages positively with it. I have earlier noted in this judgment that Dr Dowd found F to have the necessary intellectual ability to understand the issues and what he must do, the question is therefore the extent to which he accepts that he has these issues and must undergo psychotherapy to attempt to make the necessary psychological changes. On the current evidence before me, including his oral evidence and submissions during this hearing, it seems as if he has a long way to go before he even begins to accept that he has the issues which all the professionals and the Court have identified that he has.

22. The final welfare checklist heading is the range of powers available to the court under the Children Act 1989. The no order principle applies, so any orders are only justified if the welfare of A and B require it. I find that direct or face to face contact is not in the welfare interests of the children at this point. Given the risk that F continues to pose to their welfare based on the evidence before me, it is not in the welfare interest of A and B to have direct or face to face contact with F until he has completed the required psychotherapy and been reassessed by professionals. Dr Dowd suggested that the likely timescale for the psychotherapy would be around 12 months minimum (D69). He is also going to need to complete some form of domestic violence course, I

find, based on the lack of insight and knowledge that he displayed about this both to the Caring Dads Programme but also during this hearing. He told me that he had Googled domestic abuse and did not agree that what he had done to M and the children by making his false allegations met the definition as a result, I think, because he was saying that there had been no violence. This completely ignores the definition of domestic abuse used in Practice Direction 12J and The Domestic Abuse Act 2021, which includes emotional or other abuse and, since F's false allegations were abusive towards both M and A and B as I found earlier, therefore he needs to do some work to improve his understanding as Dr Dowd and the Caring Dads Programme have identified. Since F continues to seek direct contact and does not appear to accept or understand my earlier findings against him, it is necessary to make an order specifying that A and B will live with M but will spend virtual time only with F once per week. The duration of the virtual contact shall be as set by M in the welfare interests of the children since she will be loosely observing and supervising the virtual contact to ensure that F does not expose the children to inappropriate questioning or further emotional abuse, unless she and F are able to agree the duration of the virtual contact.

23. The Guardian has made an application for the Court to consider making orders under section 91(14) Children Act 1989 prohibiting either parent from making any further Children Act applications in respect of A and B for the next two years. She is very clear, as was the social worker, that A and B have had years of litigation at this point, together with many professionals as a result, and A and B need proceedings to end and for there to be a period without further litigation. M agrees with this, and initially indicated that she did not oppose the making of such an order against her. However,

as clarified in her oral evidence to me and by the Guardian in her oral evidence and closing submissions by Ms King, the concerns about M are different to F. The concerns about M bringing any further proceedings, as both she and the Guardian told me, only arise from F refusing to consent to perfectly reasonable actions for A and B such as changing their schools to one that better meets their needs, seeking necessary medical assessment or treatment, or applying for passports for them. Given that F has previously refused during these proceedings to consent to a change of schools when all professionals and the school identified that this was necessary for A and, as I have noted earlier, there are real questions about the extent to which he accepts that A has significant additional needs and requires expert assessment, it does seem likely that he would fail to promptly consent to these sorts of things in the future. He has also refused to consent to a holiday for the children last year, necessitating a court order, which also adds weight to the conclusion that he may not put the needs of the children before his own desire to obtain an advantage over M in any form, I find. He has also no understanding or appreciation of the concerns about his previous abusive behaviour towards M and the children and has yet to complete the require psychotherapy so would be more likely than not to repeat his abusive behaviours, I find. Dr Dowd also noted that the primary response of F to further concerns will be to seek legal advice and that there is thus the potential for similar proceedings *(D68)*. Combining this with the lack of empathy and inability to understand how his past behaviour has negatively impacted on A and B, or why findings were made against him as Dr Dowd also noted (D68 again), it does seem very unlikely that he would simply stop making applications to court if he felt justified in making them.

24. A section 91(14) order against F does represent an interference with his article 6 and 8 rights because it would mean that he could not automatically commence proceedings of a specified type for a set period. He has also not made an exceptionally high number of applications in relation to the children in the past. However, such an order is necessary and proportionate given the likelihood of him making further applications that are not founded in legitimate welfare concerns for the children, I find. I am not sure how far F actually agreed with the making of a section 91(14) order despite telling me in closing that he agreed with one. He had earlier said in his evidence to me that he thought he should be able to apply if it was in the welfare interests of the children and the fact that he clearly doesn't accept any of the concerns or recommendations at this point means he does seem likely to want to apply. A period of two years is also necessary and proportionate, as the Guardian recommended, given how long the children have been subjected to litigation to date and how long it is likely to take F to address his issues with necessary psychotherapy and domestic abuse work. As the Guardian suggested, it can be a condition of any application for leave to apply under section 91(14) during the two-year period that F is able to supply proof of his consistent engagement with and successful completion of the sort of psychotherapy recommended by Dr Dowd (D123 and Ms King in closing). I also find that it would be necessary for F to supply proof of consistent engagement with and successful completion of some form of accredited course or programme about domestic abuse. And, as the Guardian also noted, even with such proof it is by no means automatic that it would be in A and B's welfare interests for direct or face to face contact to resume at that point. Further professional assessment would be required before that could be contemplated, I find. I will therefore make an order under section 91(14) prohibiting F from making any applications of any kind under

the Children Act 1989 in relation to A and B without leave of the Court for a period of two years, ie until 5th May 2024 or earlier if F can prove that he has consistently engaged with and successfully completed psychotherapy, the Take 3 Parenting Programme or an equivalent accredited parenting programme, and accredited domestic abuse work.

25. In relation to M, as I have noted the issues about further litigation initiated by her are different and wholly relate to applications that would be prompted by F yet again refusing consent to reasonable requests in relation to changing schools or medical treatment. These issues can be tackled by making specific issues orders, as the Guardian accepted in her evidence. M asked for these to include allowing her to not just change schools without F's consent if the children's welfare requires that, but also in relation to allowing her to make unilateral decisions about which GP or dentist practice to register them with, such assessment or treatment as they may require and to enable her to apply for UK passports for the children or take them on holiday without F's consent. This does represent an interference with F's article 8 rights and would limit the exercise of his parental responsibility but is necessary and proportionate given the likelihood of him refusing consent again in the future and his failure to understand or acknowledge the impact on M and the children of the way in which he has operated in the past. I have also had regard to the social work evidence which notes not just F querying the necessity of the 2020 CAMHS referral for A, but also questioning whether A needed to wear glasses which had been prescribed for him (D48). I will therefore make Specific Issues Orders permitting M to make decisions with F's consent about which schools the children should attend, which GP, optician or dentist practice they should be registered with and what assessment or treatment

they would require. M is also permitted to apply for UK passports for A and B without having to obtain F's consent, and she is permitted to take the children away on holiday (both within and outside of the UK) without F's consent. The interference with F's article 8 rights that these orders represent is also mitigated by the fact that, as M told me, F can attend separate parents' evenings for A and B with their respective schools (albeit he is not permitted to attend the same parents' evenings at which A or B and their mother will be present). F is also able to obtain updates from their schools about the children's academic progress too, again as M told me, and M also said that she will keep F informed of medical issues beyond the very routine or minor ones that all children are subject to from time to time. I will also make a Specific Issues Order permitting M to apply for UK passports for A and B without needing to obtain the consent of F to this, as well as to her being able to take the children on holiday both within and outside of the UK without F's consent to this. F asked to be told where the children were going on holiday, both the country and precise address. It is reasonable for him to be told the country that they are going to, but I am concerned about him being given their precise address given his behaviour during these proceedings in persisting in seeing the children in the community when direct or face to face contact was not permitted. I also cannot see any practical or welfare need for him to know the precise address based on the evidence before me, so I will simply note as a recital to the Specific Issues Order that M agrees to inform F by text message when the children are going on holiday and which country they are going to, but she is not obliged to notify F of the precise address that they will be staying at. Similarly, she does not have to inform F of the precise travel arrangements for the children.

26. In terms of the non-molestation order that M has asked me to make, this would also represent a potential interference with F's article 5 rights, as well as his article 8 rights. The test is whether is it necessary to protect the safety and welfare of M, A and B. M's case is that F has seen her and the children out in the community and has either deliberately created an opportunity to approach the children directly or failed to move away before the children have seen him. F's own evidence to me seemed to accept that he has had opportunities to walk away when he has seen the children and before they have seen him but has chosen not to walk away. He also said something about never forcefully approaching the children or making them have direct contact in the community despite the order for indirect contact only, which implies that he may have created the sort of opportunities for the children to see him that M alleges. Based on my previous findings and the up-to-date evidence, it does seem credible that F may well have seen the children and M out and about and either failed to withdraw before the children saw him or deliberately manufactured opportunities at times for the children to run across him (such as the incident outside of the rail station or the one in Home Bargains). Given that he clearly does not understand or accept why it is not in the children's welfare interests to only have indirect or virtual contact with him, and the fact that he kept saying that the children were happy to see him so there was no problem (ignoring the evidence of the professionals and M about the negative impact on the children after they have seen him in the community), there does appear to be a real risk that he would seek to see the children face to face in the community despite an order for indirect or virtual contact only, I find.

27. There is also the evidence about how he continues to undermine M's parenting of the children in relation to presents. Both agree that F has been buying the children

whatever they ask for, and M was very clear and credible when she told me that F continually asks the children what they would like in the virtual contact (something that had been noted as an issue in the social work evidence too). The text messages between them following the virtual contact on 6th March also show that this places M in a very difficult position as she told me, with the children then expecting presents and F refusing to allow them to be posted and insisting on bringing them to the family home which in turn creates a further opportunity for him to have some direct contact with the children. F's evidence about buying the children presents was sadly illustrative of the concerns about his inability to put their welfare first, I find. He seemed unable to understand or accept that just because a child asks for something does not mean that a parent should buy whatever the child has asked for, and really unable to understand or accept why this might undermine what M is doing in parenting them since she cannot afford to buy them whatever they want and does understand why a child might need to be told in the interests of their welfare generally that they cannot have whatever they want whenever they want it. This also underlines the social work evidence about the necessity of F completing the Take 3 Parenting Programme. It therefore seems necessary and proportionate as the Guardian told me, to limit the scope for F to buy presents for the children to presents for significant days or events. M agreed with this approach. Given that the children celebrate both Orthodox and non-Orthodox Christian festivals, this means that I find F is permitted to buy presents for the children for their birthdays (making it clear to the child concerned and their sibling that this is in individual birthday present so as to avoid the sort of unfairness that he has created in the past by buying only one child a present for occasions other than birthdays), Orthodox Christmas and Easter, and for the non-Orthodox Christmas and Easter. He is not otherwise permitted to buy presents for the

children. It will be up to M to ensure that the presents are appropriate for the children (including whether nor not F has sent any inappropriate message with them) and thus it will be in her discretion to be able to withhold any inappropriate presents or messages accompanying them from the children if required. I will therefore make a Specific Issues Order accordingly.

28. Returning to the question of whether I should make a non-molestation order, I am satisfied that F does not accept that he should only have indirect or virtual contact with A and B and will continue to create opportunities for direct or face to face contact unless a non-molestation order is made to protect the children. Such an order also needs to protect M given the history of F's actions to date and his complete failure to accept that what he has done to her in the past with his false allegations and recently in relation to forcing her to accept direct contact in the community and that he should deliver presents in person is abusive to her. I have also been mindful of my finding that F has previously put M and her family through hell (JU30) and seems unable to acknowledge that this is what he has done let alone show any contrition or remorse for this. In fact, as he has told the Guardian, he hopes that he and M can simply find a way to work together, something which seems very unlikely until he has addressed his issues and ignores the huge impact that these proceedings on M and the children as the Guardian noted (D121-D122). M also told me that she found it very difficult to stand up to F, perhaps entirely to be expected after the years of abusive behaviour from him to her, and that he does not stop until he gets what he wants. For all these reasons, I do find that a non-molestation order is necessary to protect M, A and B. The order will prevent F from molesting, abusing, or harassing M, A or B, and will also prevent F from having any direct contact with M, A or B. He is also

prevented from any indirect contact apart from the virtual contact ordered under the Child Arrangements Order that I have made, and any necessary text communications between M and F about that virtual contact, any presents bought by F for the children for the occasions specified in the Specific Issues Order. If F sees the children in the street, he must walk away if they have not seen him and not do anything to alert the children to his presence. I also expect that it would be reasonable for him to speak to his employer to try to plan so that he does not have to drive the school bus that either child may take. It seems to me that this would be a reasonable request of an employer by an employee where there is an order in place that prohibits direct contact and, since this would only involve at most two school routes, a request which an employer should find reasonable to grant. It is wholly up to F as to whether he wishes to make that request of his employer, but if he chooses not to make that request, he must understand that if there is evidence to suggest that he has not taken reasonable steps to avoid being in breach of the non-molestation order, he risks being arrested and prosecuted for breach.

29. I have also taken into account that I did consider whether to make a non-molestation order to protect M, A and B at the conclusion of the Fact Finding hearing and set out my reasons for not doing so at JU32 of my judgment. Since then, despite clear orders only permitting indirect or virtual contact, F has continued to see the children directly in the community as I have noted. He has also continued to display the same concerning lack of acceptance or understanding of the risks that he poses to the children and has yet to engage in any of the necessary psychotherapy or domestic abuse work to reduce that risk. The children are also very worried and anxious about F approaching them directly based on the evidence of the allocated social worker, the

team manager and the Guardian as well as M. I accept that they may well not show F so clearly how anxious they are, though from M's evidence and F's evidence too it is possible that they have displayed reservations about hugging him or speaking to him when he has come across them in the community. I find it is not in the welfare interests of the children to be worrying about F approaching them or coming to their home. B has also clearly told the Guardian that she does not want any post from F either (D117). M asked for an order that covered the same period as the section 91(14) order and that is reasonable and in the welfare interests of the children, I find, so I will grant a non-molestation order in the terms set out above for a period of 2 years, ie until 5th May 2024.

30. Finally, it would be a very good thing in the welfare interests of the children if M and F can agree a form of words to use for the children when they ask about things like why they don't see F directly and I am very grateful to the Guardian for agreeing to undertake this time-limited piece of work with the parents to achieve this. F has said he agrees to this too so I hope that is fully agreed between all concerned but note that if he doesn't agree then the Guardian will work with M for her to have the necessary form of words. I am also grateful to Ms King and the Guardian for agreeing that it would be helpful for a translated summary of the earlier findings to be provided to the wider paternal family. This will help to mitigate the current concerns about them and will hopefully mean that they are able to participate in the indirect contact with F. All agree that the paternal grandmother, step grandfather and paternal aunt have been important to the children so if they can participate in the virtual contact with F for short periods and in an appropriate and informed way after they have received the

summary of findings, then that is in the welfare interests of the children and the Child Arrangements Order will record this as a recital.

Conclusions

31. Despite F repeatedly saying that he will do whatever is required in these proceedings, to date he has yet to even begin the sort of work that Dr Dowd, the social workers and the Guardian have all recommended. He has also yet to demonstrate that he has fully understood and accepted the findings made against him at the conclusion of the Fact Finding Hearing. Again, I urge him to re-read the previous judgment and this judgment and think about whether he can accept the findings against him. Until he can do that and complete the work that has been identified as necessary, as noted by Dr Dowd, it seems very unlikely that he will be able to make the sort of progress that all the professionals and the Court have concluded he needs to make before he can safely spend face to face time with A and B. Given how lengthy and complicated the proceedings have been, I will reserve any future applications regarding A and B (whether under section 91(14) or otherwise once that order has expired) to myself if available.

6th May 2022


THE FAMILY COURT