

IN THE FAMILY COURT AT YORK

Piccadilly House
55 Piccadilly
York YO1 9WL

Friday, 6 April 2018

BEFORE:

HER HONOUR JUDGE FINNERTY

BETWEEN:

(1) FATHER
(2) MOTHER

Applicants

- and -

(3) A LOCAL AUTHORITY

Respondent

JUDGMENT FOUR

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(Official Shorthand Writers to the Court)

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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.

1. JUDGE FINNERTY: I am once again concerned with Children A, B and C and their parents, who appear as litigants in person. The other parties before the court are The Local Authority, represented by Mr Hutchinson of counsel, and the children through their Guardian, Lucy Monk, represented by Ms Heckingbottom. This is the fourth judgment which I have given in relation to these three children. To understand it, the three previous judgments are essential reading. They are dated 8 March 2016, 27 January 2017 and 30 June 2017, and titled Judgements one, two and three.
2. There are four applications before the court. The Father seeks permission to apply for discharge of the care order in relation to Child C. The Mother seeks permission to apply for discharge of the care orders in respect of all three children. The Local Authority seeks an order pursuant to section 34(4) Children Act 1989 for permission to refuse contact between the Father and Child C. However, as there is no contact presently taking place between the Father, Child A and Child B, the correct application should be for permission to refuse contact between the Father and all three children. The Father's position is that he concedes the application pursuant to section 34(4) in relation to Child A and Child B, but resists it in relation to Child C. The Local Authority also seeks orders pursuant to section 91(14) Children Act 1989 for there to be no further applications to the court under the Children Act 1989 by either parent in relation to Child A and Child B until each of them attain the age of 16 and, in relation to Child C, for a period of three years.
3. At the commencement of this hearing, the Local Authority and the Guardian objected to permission being given to either parent to pursue an application for discharge of the care orders. The Guardian also supported the Local Authority's applications in relation to section 34(4) and section 91(14) Children Act 1989.
4. After hearing evidence, the final position of the parties is as follows. The Father pursues his application for permission to discharge the care order in relation to Child C. The Local Authority and the Guardian oppose the Father being granted permission. All parties now agree that the mother should have permission to pursue her application for discharge of the care orders.

5. On the final day of this final hearing, the Guardian issued an application pursuant to part 25 Family Procedure Rules 2010 for the instruction of an independent social worker to assess the prospects of the children being rehabilitated to the care of the Mother. The parents oppose that application.
6. The Local Authority, supported by the Guardian, pursues its application pursuant to section 91(14) in respect of the Father alone. The Local Authority accept the recommendation of the Guardian that the application pursuant to section 34(4) in relation to the mother should be adjourned.
7. The essential background is set out in the three previous judgments and I do not intend to rehearse it again
8. . I deal first with the Father's application. I remind myself of the law. Is there a genuine need for further judicial intervention to investigate the merit of the Father's application, which I remind myself is for the rehabilitation of Child C alone to his sole care. I am perfectly satisfied that there is not. These are my reasons.
9. The Father has once again dominated these proceedings and used them as an opportunity to criticise the Local Authority and the professionals involved with the children. At no stage did he give any impression that he had thought about the practicalities of the application for which he sought permission. At no stage did he give evidence about his plans for caring for Child C. He gave no impression that he had even thought about the consequences of separating Child C from Child A. The Father has not accepted the more serious findings of this court, which essentially are that he is a man of violence who presents a risk of harm to his children. In my second judgement I found that the father's proposal to care for all three children was wholly without merit. I reach the same conclusion in respect of his proposal to care for Child C. He is not granted permission to bring an application to discharge the care order.
10. In relation to the application pursuant to section 91(14) The Father issued his wholly unmeritorious application to discharge the care order in respect of Child C three months after the last judgement of this court in which it was made clear that he was the

primary barrier to the children being rehabilitated to the care of their mother. It is essential, that the children should not have to be embroiled in further unmeritorious litigation brought by the Father. I accede to the applications in relation to section 91(14) insofar as they are made against the Father.

11. In relation to the application pursuant to section 34(4) Children Act 1989. Child A and Child B have made it very clear that they do not wish to see their father. There was reference at the case management stage of those children having made allegations against the father which are the subject of a police investigation. I know nothing about the substance of those allegations and they have played no part in the decision making of this court. As a result of them the father has chosen not to have contact with Child A or Child B.
12. In relation to Child C, the Local Authority's rationale appears to be that it would be emotionally harmful to Child A if Child C had contact with the Father without Child A being present. The Guardian recommends that further work should be carried out with all three children to explore contact issues. I agree with that recommendation. The application pursuant to section 34(4) shall be adjourned.
13. I turn now to the Mother's position. As I have already indicated, no party now opposes her being granted leave to pursue her application for discharge of the care orders. The issue for the court is whether it can deal with that substantive application today or whether the court requires further assistance from an independent social worker.
14. At C46 of the bundle, there is reference by the key social worker to a 'multifaceted assessment' of the Mother in the latter months of last year. The mother did not recall having been assessed. The court called for notes of the assessment sessions. They revealed that not only was there not a 'multifaceted' assessment' of the Mother, there was no assessment of her at all. The Guardian was unaware of that, as was the court. It is in those circumstances that the Guardian made her application under Part 25.
15. I deal with that application on its merits. Beginning with the relevant law, which is set out in s13 Children and Families Act 2014 and part 25 Family Procedure Rules 2010.

The court should not accede to an application for an expert assessment unless the court deems such necessary to resolve the proceedings justly. I have also very firmly in mind the definition of "necessary" which was given by the President of the Family Division in the case of *Re: H-L (A Child)* [2013] EWCA Civ 655.

16. If the absence of a 'multifaceted assessment' of the mother had been noted at an earlier stage in these proceedings, I have no doubt that a Part 25 application would have been made and granted with the agreement of all parties. The difficulty for the Mother is that this application has come at a very late stage. She opposes it on the grounds of delay and because of her concerns about Child B's behaviour.
17. I have considered those submissions carefully, but reached the conclusion that I simply do not have enough information to decide the Mother's application justly because of the absence of an assessment. In those circumstances, I have concluded that an independent social work assessment is necessary.
18. The assessment must address the following issues.
19. My previous judgements determine that the Father presents an unmanageable risk of harm to the children.
20. It is disappointing to this court that the Father chose to behave within these proceedings precisely as he behaved in previous proceedings (not listening, being domineering, talking over people, refusing to sit down) His behaviour raises real concern that the risk remains unmanageable because the father is unable to control himself or be controlled by court orders.
21. Balanced against that is new evidence which has not been properly assessed. It was the Father's evidence that he has another child who has been born since the three subject children were removed into care. He has been identified as presenting a risk to that child, who remains with her Mother. It is the Father's case that he has stayed away

from that home because he wants that child to be with her Mother. If that is correct, it may suggest that the Father might be able to leave the Mother and the children in peace if the children were returned to the Mother's care.

22. Another issue is in relation to the Mother herself. I have observed her during the various proceedings appear to have developed from the person whom I described in my first judgement as a prisoner of her own fear of the Father into a confident, assertive woman. In the previous hearing, I insisted upon the Father cross-examining the Mother through me. In these proceedings, I decided not to do that because I wanted to have the opportunity to observe the Mother's reaction to his questioning. I have already described him as a domineering individual who many professionals find intimidating. It appeared to me that the Mother was not intimidated by him. Is she now strong enough to protect the children?
23. Another issue is whether any risk from the Father might now be managed by the mother having practical and emotional professional support for example, there has been mention of each of the foster carers having a telephone which gives direct access to the police station.
24. The independent social worker will need to balance any unmanageable risks against the advantage to the children of being rehabilitated to the Mother. In all my previous judgments, I have praised the Mother. She is in many respects, an excellent mother who is wholly committed to her children.
25. The independent social worker must also take account of the evidence that in some respects the needs of the children are not being met in foster care, in particular their cultural and religious needs. This court shares the abhorrence of the parents at the references in the foster carer's logs to Child C eating bacon sandwiches and being provided with a cooked breakfast of eggs and bacon.
26. The evidence from the Local Authority appeared to be that the older children had chosen to turn their back upon their religion and culture. The Court is concerned that this may have resulted from their cultural and religious needs not having been

sufficiently nurtured in foster care. The evidence of Child C being encouraged to eat bacon increases that concern. Child C is a small child. Choices should be made for him. The choice in respect of his diet should honour his cultural inheritance.

27. The need of the children to be brought up as a sibling group is no longer being met in foster care. Child A has been separated out from her brothers. This was done without there having been a sibling assessment. That also needs assessment by an independent social worker.
28. Child B's behaviours are of great concern to this court and the independent social worker must look carefully at whether any unmanageable risk from the Father outweighs the disadvantages to the children of remaining in foster care.
29. Another element of the case which requires assessment is in relation to the expressed wishes and feeling of the children. At the commencement of my involvement with these children, they were clear that wanted to return to the care of their mother immediately. Only last year, the children were expressing that same wish but at some date in the future. The sense from the guardian's report is that the older children are now saying that they do not ever wish to return to the care of the Mother, nor indeed to have contact with her other than in a supervised setting. I have no explanation for this dramatic change in their wishes and feelings.
30. Finally, I would like the independent social worker to look at what support can be put in for these children, whether they are rehabilitated to the care of their mother or whether they remain in foster care.
31. I hope it is clear to the Mother that, in the light of so many unanswered questions, I feel quite unable to make a final determination in relation to her application to discharge the care orders. But I remind the Mother that, when we began this case, the position of the Local Authority and the Guardian was that she should not even have permission to bring the application for discharge. They now agree that the possibility of the children being rehabilitated to the care of their mother needs to be revisited. That should be viewed as progress by the mother.

32. The case will stand adjourned.

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