

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 child and members of the 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

Case No: BS20F01075/BS20P01076

IN THE FAMILY COURT AT BRISTOL

2 Redcliff St,  
Bristol.  
BS1 6GR  
Date: 25/09/2020

Before :

**HIS HONOUR JUDGE WILDBLOOD QC**

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**Re B (a child) (Unnecessary Private Law Applications)**  
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**The names of counsel and solicitors are omitted**

Hearing dates: 25th September 2020  
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**JUDGMENT**

**HHJ Wildblood QC: :**

1. In error and, no doubt, under intense pressure from a busy court list, a legal advisor made an unnecessary and disproportionate order for the disclosure of five years' worth of medical records relating to a mother in private law proceedings. The legal advisor was acting under powers delegated to her by Practice Direction 2C and Rule 4.1(3)(b) of The Family Procedure Rules 2010. The child involved in the proceedings is not yet two years old.
2. I am releasing this judgment for publication not because of any legal point relating to the disclosure of medical records – I have dealt with that separately in a much longer judgment. I have concluded that, as matters currently stand, the order for disclosure of medical records was unnecessarily and disproportionately invasive of the mother's right to respect for her private life.
3. I am releasing this judgment to highlight the extent to which court lists are being filled by interim private law hearings that should not require court involvement. By January 2021 we expect that, in this court, we will have double the number of outstanding private law cases that we had in January 2020. We already have over 1 ½ times the number of such cases since January 2020. There is a similar position in relation to applications for public law orders (e.g. applications for care orders). Therefore, not only is unnecessary litigation wasteful. It clogs up lists that are already over-filled – in terms of the over-riding objective, it amounts to an inappropriate use of limited court resources (see Rule 1.2 (e) of The Family Procedure Rules 2010).
4. I am not pretending to give any guidance on the issues that I raise. It is not for me to do so. However, as the Designated Family Judge for this area, I know how much time is being taken up by unnecessary litigation of this nature. I also know that, in giving this message, I have the backing of all judges (including magistrates) who sit in the Family court in this area. The message that we wish to give is that this type of litigation should only come before a court where it is genuinely necessary. That is especially so where lawyers are involved, since they can be expected to steer their clients away from court except where necessity otherwise demands.
5. I wish to put the issue in this appeal into perspective now:
  - i) The application for disclosure of medical records has to be put into the context of there already being orders for records held by two Local Authorities and the police to be produced over a five-year period. There will therefore be a large amount of information available to the court.
  - ii) The order for disclosure of the mother's medical records also has to be viewed against the backcloth of a case where it is accepted that the child involved would either live with the mother and have contact with the father (the mother's case) or would share his time between the parents (the father's case). Thus, whichever case ultimately prevails, the child will spend a lot of time with the mother. The mother says that she did not visit the doctor in relation to any of the incidents that she alleges, save for one, and she is prepared to give disclosure of medical records from and including the date that she says that incident occurred.

- iii) Both parties have been represented by experienced counsel and solicitors.
  - iv) The court lists in this court are packed with work. I am fully listed until the middle of March and have listings into June. The lists of my colleagues are the same.
  - v) This appeal has taken me 3 ½ hours to prepare. I have had to read full skeleton arguments on the very simple issue that arises. I have been referred to ten legal authorities (some being domestic authorities and others being Convention cases) and several of the Family Procedure Rules 2010. The appeal was listed for two hours and has been attended by counsel for both parties. Another judge gave directions in the appeal on paper. Therefore, this appeal has taken a large amount of time.
  - vi) The cost of this appeal runs into thousands of pounds. The court (including myself) is paid for out of public funds. The mother is legally aided and thus her legal costs are paid from public funds. The father has funded his own solicitor and counsel.
6. The judges at this court have an unprecedented amount of work. We wish to provide members of the public with the legal service that they deserve and need. However, if our lists are clogged up with this type of unnecessary, high conflict private law litigation, we will not be able to do so.
7. To further explain the problem, I give these examples of similar requests for micro-management that have arisen before me in the past month: i) At which junction of the M4 should a child be handed over for contact? ii) Which parent should hold the children's passports (in a case where there was no suggestion that either parent would detain the children outside the jurisdiction? iii) How should contact be arranged to take place on a Sunday afternoon? Other judges have given me many other, similar examples.
8. I accept that it is no fault of the parties or of the lawyers that a legal adviser was persuaded to make an erroneous order. However, if common sense had prevailed, it would not have been necessary for the legal adviser to determine the issue at all and, when faced with the erroneous order, common sense could have led to the avoidance of this appeal.
9. Therefore, the message in this judgment to parties and lawyers is this, as far as I am concerned. Do not bring your private law litigation to the Family court here unless it is genuinely necessary for you to do so. You should settle your differences (or those of your clients) away from court, except where that is not possible. If you do bring unnecessary cases to this court, you will be criticised, and sanctions may be imposed upon you. There are many other ways to settle disagreements, such as mediation.

HHJ Stephen Wildblood QC

25<sup>th</sup> September 2020