In the Family Court sitting at Horsham neutral citation number: [2024] EWFC 169 (B)

Case Number SD23P20335

Before DDJ Nahal-Macdonald

Wednesday 3 July 2024

Sitting in private

RD (Father)

v

MG (Mother)

The Children T and B – Re Relocation and Schooling

(Prohibited Steps Orders)

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Note: in this judgment the parties will be referred to either as 'F' for the father/applicant or 'M' for the mother/respondent, as is usual in in these proceedings, and no discourtesy is intended.

Preliminary

1. The case before me today concerned cross applications in regards Prohibited Steps Orders pursuant to section 8 of the Children Act 1989 ('the Act'). The respondent mother ('M') seeks to relocate approximately 28 miles from East Grinstead, West Sussex, to Esher, Surrey, with the two children- T (aged 3) and B (aged 2), and to place them in schools in that area. The applicant father ('F') objects to the application but did not advance a positive alternative prior to today.

2. I was also asked to deal with a relatively minor dispute as to who should pay the costs of prior supervised contact outlay which has in the first instance been borne by M, who says F should pay half. F refutes this and maintains that he and M had an agreement that she would pay it.

3. The applications were to be listed for a full day before, if possible, the same Judge, DJ Spanton, who has dealt with the prior directions hearing and aims to hear a final Fact-Finding Hearing ('FFH') concerning nine allegations of domestic abuse between the parents, listed in August. However, Judge Spanton was unavailable today hence this part of the case came before me to hear.

4. F was a litigant in person and is the applicant in the matter, having issued his application to stop the proposed relocation in February 2024. M is the respondent and issued her application shortly after and was represented by Ms KELSEY of counsel and attended by her solicitor, Mr VAITLINGHAM also.

5. I listened closely to F and heard helpful submissions as to the law and facts from Ms KELSEY on behalf of M. I had a bundle of circa 600pp provided prior to the hearing by M's solicitors, in line with prior directions, and during the hearing was made aware that F had also sent an email on Sunday to the court attaching his own bundle and a 'position statement' which was a copy and paste of his witness statement dating to May 2024.

Background

6. Though the parents names are on the case as litigants, I reminded them that the case is all about the children, and indeed that the court would have in mind at all times the Overriding Objective in considering their welfare when making decisions today. The two children were born in 2020 and 2022 and are currently 3 and 2 years old respectively.

7. The romance between M and F was fairly described as "*unconventional*" and a "*turbulent*" by counsel in her position statement, and I agree. They met through a dating app prior to the pandemic and shared time together in several countries around the world. The children have since birth always lived with M as their primary care giver, whereas until 2023 F did not live in the UK but has now moved to the UK to exercise his rights as their parent and seeks to be involved in their lives.

8. F is 53 years old. He is an Israeli and US citizen. F was previously based in the USA and he also spent significant time in Israel. Since he issued these proceedings (in August 2023) he has lived in England, and currently has a rented property in East Grinstead.

9. M is 40 years old. She holds British, Israeli and South African citizenship. She grew up in England and, save for short periods during Covid-19 and when she stayed with F in the USA, has always lived and been based in England. Since December 2021 she has been living with family in East Grinstead.

10. The crux of the dispute before me today is that M wishes to move over the summer to her own home in Esher and for T and B to attend school and pre-school there, respectively. M has evidently put a good deal of time and resource into securing a home and school places for the children in that area. It is common ground that the journey from East Grinstead to Esher is about 28 miles, or 45 minutes by car.

11. At present the children live with M and spend time with F based on supervised contact for two hours per week at a contact centre. I did not disturb this arrangement,

pending the FFH, albeit F wanted further contact, as this was not in an application before the court.

12. I sought to hear evidence and submissions on the factual matrix and then apply those facts to the legal framework- noting that there is no special test for relocations within the same jurisdiction, and that the '*Welfare Checklist'* at section 1(3) of the Act is key.

Evidence Framework

13. At the outset of this hearing, I was addressed as to 'Special Measures' and consequent applications for a prohibition on cross examination arising from allegations of domestic abuse. I made a ruling that F be prohibited from cross examination of M at this hearing and going forward, and signposted F as to options for representation or the appointment of a *Qualified Legal Representative* ('QLR') if he could not afford an advocate. Alternatively, the court directed a list of questions from F to put to M at the FFH.

14. For today, both parties agreed that I could decide the case further to the written witness statements from F and M, and supporting exhibits, and from hearing submissions from both parties in turn, rather than the witnesses being cross examined.

15. M's witness statement in support of her application to move with the children is dated 24 June and runs to six pages, in the usual format and with numbered paragraphs, each addressing the merits of her proposal and the lack of a concrete or cogent response from F. Indeed, M's solicitors had been trying to seek agreement as to the proposal prior to the matter coming before the court in correspondence.

16. F's witness statement runs to four pages and is dated 20 May 2024. It is not in the usual format for a witness statement, nor does it use numbered paragraphs or a cogent or accessible format for the reader. It variously contains excerpts from caselaw, the Welfare Checklist, and a series of questions referred as "Detailed prawns and cones" which I took to mean "pros and cons" running to 24 questions, many of which were rhetorical and included questions apparently for the court to address rather than for M.

17. Due to the nebulous and confusing nature of F's statement, M's solicitors wrote to him to seek clarification and understanding, but he did not respond. In turn, solicitors went to the extraordinary length of setting up a video call with F to seek his clarification.

18. At that meeting on 30 May M's solicitors updated F about M's plans and F confirmed that he would not agree to a move to Esher. When asked why, he did not offer any objections to Esher or the schools per se but alluded (as he has done before) to M "*needing support*" to look after the children. He did not, despite being asked, give more information about why he believed this, but it seems that his view is that M was not able to care for the children alone.

19. Therefore, the witness statements I had before me today were very different in scope, structure, format and probative value, but because of the approach I adopted in not allowing cross examination of live witnesses, F was allowed instead to make detailed submissions.

20. F thereafter raised almost a dozen discrete issues in the hearing which were either extraneous to, amplified or clarified, points he made in his written evidence. In short, those submissions amounted at times to F attempting to give new evidence, and the court and Ms KELSEY had to adapt to the issues in ensuring that F's case was properly addressed. I took the view that as a LIP I would give him a wide leeway in advancing such submissions, notwithstanding that many of his arguments were not put in formal evidence and that M had been unable to comment on them prior to oral responses via Ms KELSEY today.

    Several new issues were raised by F in oral submissions:

    (i) As to the financial independence and ability to support the children by M, namely that F had examined four companies set up prior by M on Companies House and averred that none of these had made a profit. F went on to say that "*M has never worked*". This was entirely refuted by M via her counsel, who pointed out that F has not disclosed anything about his own employment, nor does he contribute financially at all toward the children. Ms KELSEY submitted that the argument as to this point by F was not relevant, and M provided evidence that she had previously run a successful jewellery business in London, and intended to revive this in the future. She submitted that M would be closer in terms of rail links to the City than the current home at East Grinstead. Ms KELSEY pointed out that F had not made any counter proposal as to financially supporting the children. F maintained that he had recently moved to the UK from the USA and had no financial history here, he was working three jobs whilst trying to establish himself financially and was, broadly, not in a position to contribute significantly to the financial support at this point.

    (ii) F submitted that he had not been able to offer a cogent alternative proposal (e.g. schools in East Grinstead) at a granular level, for example by visiting the schools himself to assess them, because he would have to visit those schools with the children personally. I found this to be unedifying, and asked him why he could not visit the schools himself, to which he did not offer a convincing of cogent answer. In any event, M rebutted this submission by F, noting that F had sought to adduce *Ofsted* ratings for schools in the East Grinstead locality, some of which were over a decade since the last inspection, and largely moot as the schools which M had identified for the children and paid for were fee-paying schools which are outside of the remit of *Ofsted* as the state-school regulator.

(iii) F claimed that M had a 100% mortgage on the property which she has purchased for herself and the children, at approximately £1.9m, M denied this and indeed said it was not only irrelevant to the central issue today, but was, in terms, an extension of the coercive control alleged by M in the substantive case.

(iv) F in turn alleged today that M "*does not cook or clean*" and that she would allow the children to consume "*junk food*" including McDonalds. M was upset by these assertions, which were without an evidential basis and had not been put prior by F. Ms KELSEY did deal with them on behalf of her client, who refuted the allegations and pointed out (per her witness statement) that M had raised the two children single handedly prior to moving in with grandparents in East Grinstead, and that there had not been any concerns raised by any party prior to this, including CAFCASS, who had 'NFA'd their investigation into F's allegations prior.

(v) In respect of timing, F suggested that there was no reason why the move could not be put off for a year or more, to allow for the FFH to go ahead and for consequential decisions as to Child Arrangements to be put in place. M refuted this on the obvious basis that the school term starts soon, and the children need to be moved and ready for school prior to September, deferring the move or the issue before me would be akin to a fatal delay to that plan. Again, F had not put forward any positive case i.e. a worked alternative plan.

(vi) Geographically, F asserted that the distance between the two towns was such that it would have the effect of stopping contact and prejudicing his future application. I found, as asserted by Ms KELSEY, that this issue is not particularly compelling – for example it was not as if the parties would be moving hours or hundreds of miles away – the parties could meet or arrange contact in a mutually accessible place with little identifiable issue.

(vii) F criticised M for "*not having a Plan B*" if the court rejected the move to Esher. This was slightly surprising, as F had not put forward a cogent Plan B himself. It was dealt with in erudite submissions in response from Ms KELSEY as to the lack of probative weight I could attach to F's criticism.

The 'Welfare Checklist'

21. It is well trodden, that absent any specific rule or rubric for a matter in private Children Act proceedings, the court needs to consider the 'Welfare Checklist' within the Act at section 1 subsection (3), which details the considerations the court must have in mind when being asked to exercise one of the powers under section 8 of the Act, namely:

(3) […] a court shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

22. In the specific case of T and B, they are too young for their wishes to really be sought in these proceedings, and the court notes it is far from unusual for a parent to make a decision about moving home or deciding which school a toddler goes to, so I consider that subsection (3) a) was somewhat moot.

23. I have heard nothing as to the specific physical emotional or educational needs of T and B that lead me to concern for their wellbeing in the proposed move, for example a disability or other concern which requires that they stay close to the present accommodation. Quite the opposite, M adduced evidence about the schools she had registered them with which appears positive. They are both fee-paying establishments which are commended, and no doubt offer a huge range of activity and support for children in growing and learning. F had failed to even identify the correct reports from the ISI in regards these schools, and had not advanced any positive reason to the court as to why they would not be ideal establishments for the children going forward. In the specific case I found that the consideration of subsection (b) resolves in favour of M.

24. As to sub section c) and the "*likely effect of a change in circumstances*" I was not assisted by F as to anyone's circumstances other than his own. I heard lengthy submissions as to his means and that he is living in East Grinstead currently, but it was asserted at a prior hearing that his lease is shortly due to end and that he could live anywhere, including closer to or equidistant from Esher, if he wanted to. M on the other hand had addressed the issue that the children and her are currently living at the largesse of family and she wanted to move into her own home and to help the children grow in that home with an established base. I take it as axiomatic that moving house can be stressful for an adult or younger person, but at ages 3 and 2, I had no evidence before me that the house move would cause the children any harm. I note that they will be further away from their grandparents, but again the journey is only 28 miles, and there are many grandparents who live much further away from their grandchildren and who still make the effort to spend time with them despite this. I heard evidence as to the beautiful and spacious home which M has bought for the

family in Esher, and took the view that it, in conjunction with the schools she has secured, and the locality itself, would provide a wonderful environment for the children growing up. Finally, I heard evidence that the commute into London is around an hour less than in East Grinstead, so the children and M would be able to visit the City relatively easily to enjoy excursions there going forward.

25. As to subsection d) there was no characteristic in terms of the children's age, sex or background which I was addressed upon which gave me any cause for concern or objection to the proposed move. For example, there was no evidence as to a cultural, gender-specific or religious nexus to their current living arrangements which could not be addressed by M on their behalf in the new locality.

26. As to subsection e), having read limited information from CAFCASS as to their safeguarding checks and in turn noting that they had no concerns regards M's ability to look after the children or safeguard them from harm, I did not find that this caused concern as to the proposed move. I did not have any positive or compelling evidence whatsoever as to harm identified by F which was not a bare assertion such as that M "*allows them to eat junk food*" which was neither compelling nor evidenced, and whilst there may be harm longer term if a relocation was such that it deprived one parent from seeing the children due to cost or distance, this is not that type of case, cognisant of the fact the distance is less than 30 miles.

27. As to subsection f) I heard no reliable evidence from F whatsoever as to warrant calling into question M's ability to care for the children. Quite the opposite, I took the view from the evidence before me and the lack of a negative report from CAFCASS that M is a perfectly good and loving mother, and that she has single handedly raised the children thus far with little or no assistance from F and with no evidence as to problems she cannot surmount. It is to her credit that she has secured a home and good schools for them, and there was evidence of lots of time spent working out where to live and which schools to attend, and that M had reached out to F to try to gain his input in the matter, without success. On the contrary I heard no positive evidence that F has some degree of capability to care for the children which would displace the inference that they are perfectly well placed with M, and indeed I do not propose to interfere with any interim Order in that regard.

28. In regards g) the range of powers available to the court in this specific case means the power to allow the relocation and change of schools, or to refuse them. I have heard no positive evidence to any compelling degree with supports the view that the court should stop M from moving home and schools in this case, and indeed on the contrary I have heard positive evidence on behalf of M that the facilities, location, housing and commuting aspects of the proposed move are all in line with the children's best interests.

Conclusion

29. The court finds that in all the relevant aspects of the *Welfare Checklist* in this case the matter resolves in favour of M's application. The court finds that the children's interests are met in moving to Esher and going to school as proposed by M.

Costs of prior contact

30. At a prior hearing on 21 March 2024, F was ordered to set out:

iii) the amount, if any, he proposes he should pay in respect of the referral fee and the first two contact sessions supervised by Freedom Care.

His statement shall exhibit:
i) the contract he alleges he entered into with the mother which he states stipulates that the mother would pay the full cost of the difference in price between the AG Contact Centre and any other contact supervisor.

31. F's statement filed on 20 May does not deal with these issues at all. The statement exhibits selected correspondence between M's former solicitors, CRS and Aid Hour who were initially approached to deal with contact supervision, but M simply does not understand what his case is and nor does the court. In submissions today, F attempted to refer to a transcript of a hearing in this case from January 2024, to support his point that costs should be borne by M, but the court was not persuaded by that argument.

32. M's case is simple. She believes the costs of contact should be shared equally in line with the orders that have been made in the case. That is the approach that she has taken throughout and at no stage was any "contract" agreed that stated something else. Early in this process M paid the full amount to ensure that a contact session took place.

33. The court takes the view that there is no compelling evidence that there ought to be a departure from the approach that these costs are borne equally, and orders that F pay £553, being half of the total, within 21 days to M.

DDJ Nahal-Macdonald