Neutral Citation Number: [2018] EWHC 3253 (Fam)

Case No: 2018/0088

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2018

Before :

THE HONOURABLE MRS JUSTICE KNOWLES

- -

Between:

AEY	**Applicant**
- and -	
AL	**Respondent**

- -

This application was determined on the papers.

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APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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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.

Mrs Justice Knowles:

Introduction

This decision is concerned with multiple applications for permission to appeal by AEY, the father of two girls, the first being S (now aged 18 years) and the second being N (now aged 12 years). Until her eighteenth birthday, S was the subject of a care order and N lives with her mother.

1. I have decided that none of the applications for permission to appeal should be granted and I have also decided that all of them are totally without merit. Additionally, I have decided that I should make an extended civil restraint order preventing AEY from making any further application concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first seeking permission to do so. This order will be for a duration of two years in the first instance. Any application for permission pursuant to that order will be made to me.

2. I have case managed these seven applications for permission to appeal and determined that all of them should be determined together. On 31 July 2018 I also gave AEY an opportunity to address me in writing about whether I should make a civil restraint order in respect of him. I have read all the voluminous papers submitted by AEY which filled two cardboard boxes, many of which had no bearing on any of the applications for permission to appeal. I have also considered a number of written submissions from AEY.

3. This decision will consider each application for permission to appeal in turn and will then address the making of an extended civil restraint order. Given that the applications for permission arise in the context of a significant history of private and public law proceedings, there is some inevitable cross-over in the subject matter of the appeals. My approach has been to consider the merits of each application and decide whether permission to appeal should be granted. However, the similarities between each application were marked and that has been of relevance when I came to determine whether a civil restraint order should be made in respect of the father.

4. I have referred to AEY as "*the father*" in the remainder of this ruling and to the Respondent as "*the mother*". The Family Procedure Rules 2010 are referred to as "*the Rules*".

5. This is a sad, if not a tragic, case where the father has pursued litigation in relation to his daughters beyond reason and almost without restraint. His litigation conduct, as evidenced in these seven applications for permission to appeal, appears to be driven by a conviction that he alone is right and by a desire to punish the mother of his children. The dreadful allegations he made about her as well as about the judge who had to determine matters at first instance required a robust response from this appellate court.

Appeals: The Court's Approach

6. The role of the appellate court and its approach to applications for permission to appeal are determined by the provisions of the FPR and by case law. The test for granting permission is set out in FPR rule 30.3(7) and provides that:

    a) There is a real (realistic as opposed to fanciful) prospect of success, and

    b) There is some other compelling reason to hear the appeal.

    FPR rule 30.12(3) provides that an appeal may be allowed where the decision was wrong or unjust for procedural irregularity.

7. In Re F (Children) [2016] EWCA Civ 546, Munby P summarised the approach of an appellate court to decisions of the lower court as follows:

    "22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole, and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in SP v EB and KP [2014] EWHC 3964 (Fam), [2016] 1 FLR 228 para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."

    23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in Piglowska v Piglowski [1999] 1 WLR 1360. I confine myself to one short passage (at 1372):

    "The existences of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case… These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

    It is not the function of an appellate court to strive by torturous mental gymnastics to find error in the decision under review when in truth there has been none stop the concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis"."

8. I remind myself that my judicial duty is to identify the essential elements of the case and to deliver reasons which enable the parties to understand why I have reached the conclusions and made the orders I have. The overriding objective in FPR rule 1.1

applies as much to the appeal process as to other applications under the FPR and I must therefore seek to determine this application justly but also proportionately.

Summary of Background

9. Before I consider each of the applications for permission to appeal, it is important that I set out something of the background against which these applications for permission are to be determined.

10. In addition to S and N, the father and mother have an older daughter A who is now 21 years old. All three girls have been the subject of applications to the family court by the father who sought either that his daughters should live with him or that he should have very substantial contact with them. As far as I can ascertain from the two large boxes of papers comprising these seven applications, these legal proceedings began in 2013. The precipitating event was in February 2013 when S was taken into voluntary care by the local authority. The local authority had been involved with the family since 1999 but concerns about S's behaviour increased in 2012. It was said that she had physically attacked her mother and her sisters. She was thought to be a danger to both others and to herself (by reason of self-harm). S's departure from the family home was followed by an incident in April 2013 when the father assaulted the mother. He left the family home and did not return. I note from the judgment of District Judge Simmonds given on 19 December 2013 that in October 2013 the father was convicted of that assault on the mother. He also has a conviction in 1992 for conspiring to take a child out of the United Kingdom without the appropriate consent of the child's carer and was sentenced to 12 months' imprisonment.

11. District Judge Alderson determined a variety of applications concerning the children and I have read the transcript of the judgment given on 30 July 2014. It is noteworthy that the judgment details the father's vociferous refusal to accept the fact of his convictions for assault and child abduction and his belief that the local authority social workers and the police had sided with the mother and had lied so as to mislead in support of her case. The judge recorded A's desire to live with her mother in circumstances where she appeared to be unwilling to have any contact with her father and made no orders with respect to her. The social work evidence was that S was settled with foster carers and did not wish to see either of her parents or her sisters. Though she was accommodated pursuant to s.20 of the Children Act 1989, the local authority indicated that, if the consent to s.20 accommodation was revoked, it would issue care proceedings in respect of S. The judge made no orders with respect to S. He recorded that the mother believed the children should see their father and had facilitated his contact. He decided N should live with her mother and continued the prohibited steps order preventing the father from removing N from the jurisdiction. He ordered weekly contact between N and her father for three hours each week alongside telephone contact whenever N wanted this.

12. Insofar as I can ascertain the next instalment of the children proceedings began in early 2016 when the father once more applied for N to live with him. He also raised concerns about S being in local authority care when HHJ Tolson QC conducted a case management hearing on 9 March 2016. Those concerns were shared by the judge once he had established from the mother that it was two years since she had had a meeting with the social workers responsible for S. He directed the local authority prepare a section 37 report as to why the local authority considered it satisfactory that S

continue to be accommodated and directed the local authority attend at the next hearing. It is plain from the transcript of the hearing that the judge considered there was no proper foundation to the father's application that N should live with him. The mother told the judge that she supported N's contact with her father but did not want the father to say bad things about her to N. HHJ Tolson QC directed a further report from the local authority about N's contact with her father.

13. On 31 May 2016 HHJ Tolson QC conducted the first hearing in care proceedings about S. He made an interim care order re S which was not opposed by anyone. I have read a transcript of the short judgment the judge gave on that occasion. He observed that it was almost inevitable the outcome would be a final care order when the matter was next before him at the end of June 2016 and indicated that the real issue was in relation to care planning which he hoped would help S re-establish a relationship with her parents. A significant part of the judgment concerned problematic behaviour by the father towards S. He had been arriving unannounced at her foster home (which was some distance from his own home) even though he knew that S did not want to see him. He had also taken N to see S on one of these trips. The judge noted the lengthy history of private law litigation featuring repeated applications by the father, the most recent of which had met with a refusal of permission to appeal and certification that it was totally without merit. Presciently, the judge commented that the father "*clearly has an agenda of his own concerning past injustices which he alleges between himself and the children's mother*". The judge made an order excluding the father from an area within half a mile of S's foster home together with an order forbidding the father to contact S or to attend at her school. The judge concluded by making some brief observations about the unresolved contact application relating to N. He repeated his concerns about the father's communication with N which served to denigrate her mother and made a prohibited steps order requiring him not to behave in this way. It was, in the judge's view, plain that the father had "*an obsessive concern about N's mother's past actions and the significant danger of this impacting on N arises even on the limited information I have*".

14. In due course HHJ Tolson QC went on to make a final care order with respect to S. He dismissed the application by the father for a child arrangements order in respect of N on 28 June 2016. Thereafter, the father persisted in making applications in respect of N and the outcome of these applications are the matters where the father seeks permission to appeal.

Application 2018/0037

15. This application was filed in time on 20 February 2018. It sought permission to appeal an order made on 31 January 2018 by HHJ Tolson QC. The order made by HHJ Tolson QC was in response to reading a letter from the father dated 10 January 2018 enquiring what had happened in relation to two applications he issued in the East London Family Court but which he said had been transferred to the Central Family Court. Both were dated 11 December 2017, one being an application for a non-molestation injunction and the other sought "*live with*" orders with respect to both his daughters. HHJ Tolson QC's order dismissed both applications as being totally without merit and I note that he did so on consideration of both the papers and the court file. His reasons were set out on the face of the order itself.

16. HHJ Tolson QC established that the court file had a serial number from the West London Family Court and that neither of the father's applications had in fact begun in the East London Family Court but were received by the Central Family Court on 15 December 2017. His reasons for dismissing both applications read as follows:

"*Mr [the father] is a litigant who makes hopeless applications alleging past abuse of his children by his wife. These allegations have long ago been investigated and are groundless. I have dealt with innumerable similar applications in the last two years. They are all hopeless. These are no exception. Mr [the father] has now taken to issuing in East and West London in a bid to avoid my ruling on his cases. East and West London know to transfer the applications here".*

HHJ Tolson QC's order also recorded that N had been the subject of a judicial determination as recently as 8 December 2017 relating to the time she should spend with her father. That reference is incorrect as this in fact happened on 8 January 2018. Nothing turns on that error.

17. The father's Appellant's Notice did not disclose any ground of appeal. I issued case management directions in this appeal on 27 February 2018 and asked the father to provide me with copies of the applications which were before HHJ Tolson QC. In response, the father provided a copy of an application for a live with order which was dated 13 February 2018 and appears to have been issued in the Central Family Court on 26 February 2018. It sought relief for himself and both his daughters because of the mother's alleged violence to both girls. He also provided a copy of another live with application issued on 28 April 2017, the contents of which were similar to that issued in February 2018, and a copy of an application for an occupation order issued on 28 April 2017 which sought the eviction of the mother from a property on the basis that she had been assaulting his daughters. None of these documents were what I had requested. Many of the other documents submitted in support of this application were dated and incomplete, making it impossible to discern whether any were relevant.

18. The father's submissions alleged that HHJ Tolson QC was covering up the abuse inflicted on his daughters by the mother and by social workers from a local authority [unnamed so as not to identify either child] from 2013 onwards. He stated in emphatic terms that he was against all orders made by HHJ Tolson QC from 28 June 2016 to date. The remainder of his submissions consisted of a series of disjointed complaints and accusations directed at the mother, the professionals involved with his children and the judge. Amongst these accusations, he alleged that HHJ Tolson QC had "*destroyed*" his applications as part of this alleged cover-up.

19. There is one document which sheds some light on the sad background to this application. It is a social work report prepared for HHJ Tolson QC dated 27 September 2017 about whether N was spending time with her father and seeking to ascertain her wishes about that. The author of that report spoke with N at her school and in the absence of her mother. N confirmed she had not seen her father since April 2017 and that she found her father "*scary*". N said that "*when she sees him he is constantly asking questions about her mother, sisters and talking to her about court. [N] said she found it scary going to the police station and she really does not like that her dad asked her to lie about her mum beating her. [N] said this was not true. [N] said she is too scared to tell her dad that she doesn't want to speak about her sisters, the court or her mother*". N was clear that she loved her father but did not wish to see

him or speak to him at the moment but was happy to send and receive letters from him. She thought she might want to see him again when she was 13 because she thought she might be able to deal with him better and she recalled some happy times she had spent with her father. Following the interview with N, the father was spoken to by the author of the report and he confirmed he had taken N to the police station in March 2017. He was adamant N should be interviewed in his presence. He terminated the interview when the social worker began to talk to him about what N had said to her. I observe that the report author had seen the previous case notes and reports held by the local authority including a section 7 report completed in May 2016. She commented that her discussions with N and the father had echoed the concerns expressed previously, namely that N loved her father but felt nervous and anxious when he asked her about her mother or sisters or where she wanted to live. The father loved N but was unable to consistently prioritise her need for calm, child-focussed contact and appeared to be preoccupied with reiterating unsubstantiated allegations of physical abuse, resulting in him taking N to a police station in March 2017 and demanding that N make disclosures about abuse perpetrated against her by her mother. The social worker recommended letterbox contact between N and her father.

20. Further to the above, I had sight of HHJ Tolson QC's order dated 8 January 2018 which recorded that the court had considered the social work report and heard from the parties. The order stated that the father's submissions concerned alleged abuse by the mother which had been previously investigated and which were irrelevant. His denigration of the mother and lack of support for N evident from the report was also mirrored by his behaviour in court. HHJ Tolson QC made an order for no direct contact between N and her father and provided for indirect contact (gifts and cards) between N and her father. I deal with the father's application for permission to appeal that order below.

21. I have seen nothing in the documents submitted in support of this application for permission to appeal which either comes close to substantiating any of the serious allegations made by the father against the judge or contains anything which would justify the grant of permission to appeal. The judge had had lengthy involvement with this case and was in a good position to make substantive decisions about the applications made by the father. His reasons for dismissing those applications were terse but, given the lengthy history, that is no criticism.

22. As there is, furthermore, no procedural or other irregularity, I refuse permission to appeal. Having refused permission to appeal, I also certify this application as being totally without merit. In so doing, I have carefully considered whether a hearing would serve the purpose of "*giving an opportunity … to address the perceived weaknesses in the claim which have led the judge to refuse permission on the papers*" [Wasif v Secretary of State for the Home Department [2016] EWCA Civ 82 at 17(3)]. Though Wasif concerned itself with the permission requirement applying to applications for judicial review in the High Court and the Upper Tribunal respectively, the principles found by the Court of Appeal to be applicable to the certification of applications as being totally without merit are also relevant to applications for permission to appeal in this Division. Bearing in mind the seriousness of the issue and the consequences of my decision, I am confident after careful consideration that this application for permission truly is bound to fail and thus certify

it as being totally without merit. This is most certainly not one of those cases where, for example, proper presentation might disclose an arguable ground of appeal.

23. I thus certify that this application for permission to appeal is totally without merit and, in accordance with FPR rule 30.3(5A), I make an order that the father may not request the decision to be reconsidered at a hearing.

Application 2018/0038

24. This application was filed out of time on 20 February 2018. It should have been filed no later than 29 January 2018 as it sought permission to appeal HHJ Tolson QC's order dated 8 January 2018. The application contained no explanation as to why it was made so late. Submissions filed by the father on 16 March 2018 said that he had received a copy of the order a week after it was made and had then tried to make an application to the Central Family Court for permission to appeal without success. The father said he had heard nothing from the Central Family Court and had then applied for permission to the Family Division of the High Court.

25. HHJ Tolson QC's order is summarised at paragraph 15 above. He also gave a short judgment on 8 January 2018 and the transcript is available in the appeal bundle. The judge began by observing that the father was someone who made repeated applications. He said that, as a judge, he had given credence to more aspects of the father's applications than might at first sight have been warranted. Thus, he had brought about the institution of public law proceedings in respect of S who had been accommodated pursuant to s.20 of the Children Act 1989 when care proceedings should have been issued. Though all relevant issues had been fully aired in those proceedings, the father had continued to make many applications in many different family courts. HHJ Tolson QC then explained how he had become concerned that N no longer appeared to be seeing her father and said that "*notwithstanding the unstructured and often incoherent elements to Mr [the father's] appearances before the court*", he had decided to explore every possible avenue because a child not seeing a parent was a serious matter. The judge then went on to outline the steps he had taken by asking the local authority to investigate. The reports prepared in consequence led the judge to conclude that the father "*in his time with N behaves as he does in court. He is obsessional about alleged past abuse of the children at the hands of their mother. All this has been investigated on earlier occasions and there is nothing to it*". The judge stated that "*the reality is that Mr [the father's] behaviour in contact upsets N greatly and she no longer wants to see him; I regret that…. The most recent letter from Social Services indicates the difficulties the social worker had when she attempted to contact Mr [the father]. He described the judge as someone who was committing crimes. He rejected intervention from the social worker and "he was clear in his view that he would not have supervised contact with N and did not want to engage with the Local Authority to explore this further". I have absolutely no doubt that the social worker's report of that conversation is correct…*".

26. The father's Appellant's Notice did not disclose any ground of appeal. His submissions (together with many of the documents appended thereto) filed with the appeal were in identical form to those filed in application 2018/0037. He submitted some further written submissions in response to my case management directions dated 27 February 2018. Insofar as I can discern a ground of appeal, it is that HHJ Tolson QC was covering up alleged crimes committed by social workers from the local

authority. Much in the additional submissions repeated what was said in the submissions submitted with the Appellant's Notice and concerned itself with his elder daughter, S who was a child in care. He accused the authors of the 2017 social work reports about his time with N of lying.

27. I have seen correspondence which suggests that there was some confusion about which court was the appropriate venue for this application for permission to appeal. In those circumstances, I am satisfied that I should extend the time for the filing of this application to 20 February 2018 and that the father should not be penalised by any unintentional institutional confusion.

28. However, I am not persuaded that the father's submissions reveal any substantive or persuasive ground of appeal. There was no evidence to support the assertion that HHJ Tolson QC was engaged in a cover up of the crimes submitted by social workers from the local authority. The judge's reasoning in the transcript of judgment was entirely clear and it is apparent from the judgment and the documents (including previous court orders) I have seen, that the judge's desire to investigate how direct contact might be promoted between N and her father was consistent with both good practice and case law. Despite his best endeavours, those efforts came to nothing as he explained in his judgment. Nevertheless, the judge was able to continue indirect contact and maintain that valuable connection between N and her father.

29. Looking at everything in the round and given that there is no procedural or other irregularity, I refuse permission to appeal. I also certify this application as being totally without merit, adopting the reasoning I set out in paragraph 23 above. I make an order that the father may not request my decision be reconsidered at a hearing.

Application 2018/0039

30. This application was filed out of time on 20 February 2018. The order being appealed is, at first sight, a case management order dated 9 October 2017 made by HHJ Tolson QC. If that is right, the application for permission to appeal should have been filed within 7 days of the order being made as provided for in rule 30.4(3) of the Rules. The Appellant's Notice made no application for an extension of time. However, the judge's order also made a child arrangements order suspending direct contact between N and her father pending further investigation by the social workers. Given that aspect of the order, I have decided that the order was not purely a case management order since it altered, albeit on an interim basis, the arrangement for N to spend time with her father. In accordance with rule 30.4(2)(b) of the Family Procedure Rules 2010, the father would have had 21 days after the date of the judge's decision to make his application for permission to appeal. Thus, in my view, his application for permission to appeal should have been made by 30 October 2017.

31. By written submissions sent in response to my case management directions dated 27 February 2018, the father explained he had appealed out of time because HHJ Tolson QC was not allowing him to appeal on time. The father believed the judge was covering up crimes committed by the mother and social workers from the local authority. The written submissions then proceeded to refer to a variety of "*crimes*" committed by the mother and the social workers which the father asserted the judge was covering up. No persuasive evidence to support these assertions was provided. I have treated these submissions as the father's application for an extension of time and

an application for relief following his failure to file his Appellant's Notice in time (that is, by 30 October 2017).

32. I note that the judge's order dated 9 October 2017 listed the matter for a final hearing on 8 January 2018.

33. Though I have the power to extend time for the filing of the Appellant's Notice by virtue of rule 4.1(3)(a) of the Rules, I have decided not to do so having considered all the circumstances and the matters set out in rule 4.6(1) of the Rules. Rule 4.6(1) permits the court to consider a variety of matters when deciding when to allow relief for a failure to comply with the Rules. These include: the interests of the administration of justice; whether the application for relief has been made promptly; whether the failure to comply was intentional; whether there is good explanation for the failure; the extent to which the party in default had complied with other rules, court orders and the like; whether the failure to comply was caused by the party or the party's legal representative; whether the hearing date can still be met if relief is granted; the effect which failure to comply has had on each party; and the effect which granting relief would have on each party or a child whose interests the court considers relevant. In coming to my decision on this issue, I have also had regard to the overriding objective as enshrined in rule 1(1) and 1(2) of the Rules and to a decision by the Court of Appeal in Re H (children) [2015] EWCA Civ 583. That decision guides me to consider the underlying merits of the father's application alongside the matters listed in rule 4.6(1)

34. The interests of the administration of justice requires permission to appeal to be sought quickly because certainty of court orders in difficult children cases such as this is highly desirable. This application was filed nearly four months after the time for appealing had expired. No good reason supported by evidence has been given for either the delay or the failure to seek relief. The final hearing has long passed and so it is debateable whether this application has any sensible purpose. Whilst the effect on the mother and N might be extremely limited given that this is a permission application, I do not regard that as a point in favour of extending time given the other factors to which I have referred. There was no underlying merit to the father's application for the reasons set out in paragraph 36 below.

35. Having refused to grant relief, I strike out the whole of the Appellant's Notice in accordance with rule 30.10 of the Rules because the reasons for doing so are compelling. Put simply, this application for permission to appeal was pursued well outside the time limit for doing so without good reason in circumstances where the welfare of the child concerned together with the interests of the administration of justice required finality of orders. The grounds of appeal/submissions once more asserted rather than evidenced the allegation that the judge was in an elaborate conspiracy with social workers to cover up crimes committed by the mother and were couched in almost the same terms as those, for example, in applications 2018/0037 and 2018/0038.

36. Having struck out the Appellant's Notice, I have also determined that the Appellant's Notice is totally without merit. My reasons for so concluding are the same as those set out in paragraph 23 above. The father may not pursue the striking out of this application at an oral hearing.

Application 2018/0040

37. This application was filed out of time on 20 February 2018. The order being appealed was made by HHJ Tolson QC on 12 December 2016 when he dismissed the father's application to discharge an injunction made to prevent the father having contact with his elder daughter. The Appellant's Notice once more provided no explanation for the delay in making the application for permission. When directed to provide an explanation, the same reasons were advanced as had been advanced in application 2018/0039, namely that HHJ Tolson QC would not allow timely appeals as he was engaged in a cover-up.

38. I have adopted the same approach to this application as I did to application 2018/0039. I have had regard to all the matters set out in paragraph 34 above and have decided not to extend the time for making this application for permission. All the factors set out in paragraph 35 apply to this application save that I note that S, the father's elder daughter was directly affected by the injunctive relief. The delay in this case was even greater – nearly 13 months since HHJ Tolson QC made his decision. I regard it as a significant factor in all the circumstances of this case.

39. It follows that I have decided to strike out the whole of the Appellant's Notice. The argument for doing so is compelling given the length of the delay without good reason coupled with the need for finality. I note that the grounds of appeal/submissions were once more in the same terms as those in applications 2018/0037, 2018/0038 and 2018/0039. They fail to demonstrate merit for the reasons I have previously explained.

40. Having struck out the Appellant's Notice, I have also determined that this application is also totally without merit and my reasons are as set out in paragraph 23 above. I simply cannot conceive that oral argument and/or proper presentation would reveal an arguable ground of appeal. The father may not pursue the striking out of this application at an oral hearing.

Application 2018/0041

41. This application was filed out of time on 20 February 2018. The order being appealed was made by HHJ Tolson QC on 28 June 2016 when, amongst other matters, he made an order excluding the father from a property and made a prohibited steps order preventing the father removing either of his daughters from the jurisdiction until further order. The judge also dismissed the father's application for a child arrangements order with respect to N. The Appellant's Notice once more failed to provide any explanation for the delay in seeking permission to appeal. When directed to provide an explanation, the same reasons were advanced as had, for example, been advanced in applications 2018/0039 and 2018/0040, namely that HHJ Tolson QC would not allow timely appeals as he was engaged in a cover-up.

42. Once more, I have adopted the same approach to this application as I did to applications 2018/0039 and 2018/0040. I have had regard to all the matters set out in paragraph 34 above and have decided not to extend the time for making this application for permission. All the factors set out in paragraph 35 apply to this application. The delay in this case was even greater than the delay of about 13 months

in application 2018/0040 – some 18 months since HHJ Tolson QC made his decision. I regard it as a significant factor in all the circumstances of this case.

43. It follows that I have also decided to strike out the whole of the Appellant's Notice. The argument for doing so is compelling given the length of the delay without good reason coupled with the need for finality. I note that the grounds of appeal/submissions are once more in the same terms as those in applications 2018/0037, 2018/0038, 2018/0039 and 2018/0040 and lack merit for all the reasons previously explained.

44. Having struck out the Appellant's Notice, I have also determined that this application is totally without merit and my reasons are as set out in paragraph 23 above. I simply cannot conceive that oral argument and/or proper presentation would reveal an arguable ground of appeal. The father may not pursue the striking out of this application at an oral hearing.

Application 2018/0053

45. This application was filed in time on 6 March 2018. The order being appealed was that made by HHJ Tolson QC on 21 February 2018 when he dismissed an application by the father as being totally without merit. That application was determined by the judge on the papers without any attendance by the father. The order recorded the judge's decision that the application was totally without merit and should be dismissed.

46. By a directions order dated 12 March 2018, I invited HHJ Tolson QC to expand upon his reasons for making the order. He did so by email the following day and his reasoning was sent to the father so that he might respond in accordance with my directions. The father filed a further document in response on 28 March 2018.

47. The father's application before HHJ Tolson QC sought a specific issue order that the mother stop hitting their daughters and stop telling lies after she had assaulted their daughters. HHJ Tolson observed that the accompanying documents added many complaints about the social workers involved. The reasons given by HHJ Tolson QC for refusing the father's application were that (a) the application raised a complaint which had already been litigated and was found to be unsubstantiated; (b) the application was incoherent; (c) the relief sought would not address the father's complaints in any event; (d) the father was a wholly unboundaried litigant obsessed with one particular issue. It would be disruptive and thus not in the younger daughter's interests to serve the mother with the father's application, the judge observing that the older daughter was no longer a minor.

48. I have considered the written submissions filed with the Appellant's Notice and those dated 28 March 2018 since the Notice did not identify any grounds of appeal. I observe that the content of both documents repeats in identical terms the same submissions made in the father's other applications for permission to appeal which are the subject of this ruling. In this application, he added to the allegations made in those earlier documents by alleging that his younger daughter was being given drugs *"…to break her heart about me because they don't want my child [] to love me…*". The suppliers of those drugs were alleged to be her mother and local authority social workers. The father went on to assert that HHJ Tolson QC had destroyed applications

he had made and was, in broad terms, working with the social workers and the mother to defeat or disregard the father's concerns about his daughters. This was because the judge was covering up acts of "*terror*" from 28 June 2016 until the present day. No evidence in support of those allegations was provided apart from a variety of dated and often incomplete documents which, on any basis, did not disclose a firm foundation for the serious wrong-doing alleged against HHJ Tolson QC. I have thus disregarded these submissions made by the father.

49. Doing the best I can to extract from the lengthy and muddled submissions what might constitute a valid ground of appeal, it appears that the father's complaint was that the procedure adopted by HHJ Tolson QC in determining the father's application on 21 February 2018 was an unfair one. This was because the application was determined on the papers and because there was no transcript of judgment. The father sought an urgent hearing of his application for permission and invited me to make an order removing both his daughters from either the care of the local authority or from the mother.

50. I have decided that there is nothing in the father's complaint about an unfair determination by HHJ Tolson QC. The reasons for refusal were based on HHJ Tolson QC's knowledge of the history of these proceedings and on his scrutiny of the particulars of the application made by the father. Determination of the application on paper was a proportionate step to take, bearing in mind the overriding objective set out in rule 1.1 of the Rules and the welfare issues involved. Rule 1.4 of the Rules requires the court to further the overriding objective by actively managing cases and, as rule 1.4 (2)(c) stipulates, active case management includes deciding promptly which issues need full investigation and hearing and which do not and the procedure to be followed in court. The notion that each and every application requires a hearing before it can be determined is one wholly at odds with the need to allocate scarce judicial and other resources appropriately in a family justice system which finds itself under increasing strain. How HHJ Tolson QC determined this application - lacking merit for the reasons identified by him - was entirely in keeping with not only the welfare issues involved but also with the family court's obligation to manage its cases in accordance with the overriding objective and to control each stage of the litigation process.

51. The father suggested that the lack of a transcript of judgment was part and parcel of the unfair process which he submitted HHJ Tolson QC had followed. I reject that submission. If an application is determined on the papers, it follows that there will not be a transcript of judgment. There is no need for a judge to give a judgment which is recorded and then for example, if permission to appeal is sought, is then transcribed at significant public expense. The absence of a transcript in this case is irrelevant. What is required of the judge determining an application on paper is that the order should detail precisely what the judge has decided and that the court file should contain written reasons for the judge's decision. These may be brief or comparatively lengthy depending on the nature of the application and the welfare issues involved. The judge's reasons should (a) enable the parties to understand why they have won or lost and (b) enable an appellate court to decide whether or not the judgment is sustainable. Here, HHJ Tolson QC provided clear and unambiguous reasons for his decision at my request in accordance with long established appellate practice. Furthermore, there was

nothing in the judge's reasoning or in the manner by which he came to his conclusions which is susceptible to successful challenge on appeal.

52. I dismiss this application for permission to appeal. In accordance with the principles set out in paragraph 23 above, I have once again considered the merits of the father's application and concluded that it was bound to fail and is thus totally without merit. In my view, it is most improbable that oral argument at a hearing would persuade an appellate court that there is a real prospect of an appeal from the judge's order succeeding. I order that the father may not request my decision be reconsidered at an oral hearing.

Application 2018/0085

53. This application was made in time and in respect of an order made on 9 May 2018 by HHJ Tolson QC. The father's application to HHJ Tolson QC was dated 2 May 2018 on form C100 and, as the recital to the order noted, was ostensibly for a child arrangements order, a prohibited steps order and a specific issue order. The application then went on to specify that it was an application for the mother to give oral evidence. HHJ Tolson QC dismissed the application on the papers and recorded that it was totally without merit. His reasons for so doing were recorded on the face of the order. They read as follows:

"1. This is another in a long series of applications by [the father] (whose financial circumstances entitle him to remission of fees) obsessing on the idea that the mother has abused the children. It was long ago determined that there is no substance in the allegations.

2. [The father] has no order in his favour providing for contact/time with either child as a result of his actions and their wishes.

3. No rational basis for the orders sought is made out in the application and all relevant matters have been litigated in the recent past in any event."

54. The Appellant's Notice set out briefly the reasons for the application. The father said he was appealing because the judge had not had a court hearing involving all the parties. He accused the judge of covering up "*crimes*" committed by the mother and social workers. He said he had asked HHJ Tolson QC not to deal with the applications he made but the judge continued to do so "*to take revenge on me and my children*". The written submissions filed with the Notice contained submissions almost identical to those made in all the other permission applications covered by this judgment. The new material in the submissions comprised allegations that the mother and social workers had sent his younger daughter on the streets to steal and deal drugs with her older sister. Additionally, the father alleged that the mother had prostituted their elder daughter from the age of 14. He stated that he was making this application to protect his younger daughter who he alleged was being used as a human shield to cover the mother's and the social workers' crimes – "*they don't want my child [N] to be with me to give witness evidence against them at the court because the child [N] she have been to the police station and she have made crimes report that her mother have been assaulted her. And my child [N] she suffering because she don't see me from 31 March 2017 until now because judge Tolson qc he support them to kill our life which I believe judge Tolson qc he violence the law in this country…*"

55. Further written submissions dated 13 June 2018 were filed (which included submissions dated 30 May 2018 and 21 May 2018). These made further allegations against HHJ Tolson QC in a similar vein to those set out above. They also contained lists of alleged criminal offences committed by the mother against the children and against the father as well. In support, the father supplied a large number of documents which he asked me to consider. Much of this material was supplied in connection with some of the other applications for permission to appeal dealt with in this judgment. It was dated, incomplete and of marginal relevance given matters as they stand in 2018. This was particularly so given that HHJ Tolson QC investigated matters thoroughly within care proceedings concerning the elder daughter, S, and also determined private law proceedings with respect to N. Those decisions have not been the subject of any successful appeal and so it would be wholly inappropriate for me to go behind those decisions and the facts supporting them in the manner which the father seeks.

56. For the avoidance of doubt, there is not a shred of evidence to substantiate the new allegations made by the father against the mother or the social workers.

57. Once more the father suggested that HHJ Tolson adopted an unfair procedure to determine his application. I reject that submission for the reasons set out in paragraph 51 which apply equally to this application. Furthermore, the father suggested that HHJ Tolson QC should not have determined any further applications relating to his daughters because he was motivated by revenge. I reject that assertion which is unsupported by any convincing evidence. Beneath the father's submission lay the suggestion that judicial continuity had run its course because either the judge had come to decisions adverse to the father or because he was no longer able to approach this case with an open mind. I reject either suggestion in this case. The fact that a judge makes a decision which one party does not like does not mean that he is biased or motivated by some improper emotion. In addition, a succession of adverse decisions against one party does not mean that a judge can no longer approach matters with an open mind. These were intractable private law proceedings where judicial continuity has been held to be particularly important [see paragraph 12 of D v H [2011] EWHC 3521 (Fam)]. Nothing in what I have read in the voluminous documents submitted by the father in connection with these applications suggests that HHJ Tolson QC was incapable of approaching each and every application with an open mind and with the children's welfare at the forefront of his mind.

58. The reasons given by HHJ Tolson QC were brief and to the point. He had the benefit of long acquaintance with the facts of this case and with the father's litigation behaviour. His reasons met what is required of a judge determining an application on paper as I have set out in paragraph 46 above.

59. I refuse this application for permission to appeal and certify it as being totally without merit. It was simply bound to fail and it is improbable in my view that oral argument would persuade an appellate court to grant permission. I order that the father is not permitted to request reconsideration at an oral hearing.

Civil Restraint Order

60. Rule 4.8 of the Rules gives the court power to make civil restraint orders and Practice Direction 4B sets out (a) the circumstances in which the court has the power to make a civil restraint order against a party to proceedings; (b) the procedure where a party

applies for a civil restraint order against another party; and (c) the consequences of the court making a civil restraint order. The Introduction to Practice Direction 4B records that Rules 4.3(7), 4.4(5) and 18.13 provide that where a statement of case or application is struck our or dismissed and is totally without merit, the court must specify that fact and the court must consider whether to make a civil restraint order. Rule 30.11(5) makes similar provision where the appeal court refuses an application for permission to appeal, strikes out an appellant's notice or dismisses an appeal. These powers are separate from and do not replace the powers given to the court by section 91(14) of the Children Act 1989.

61. The purpose underlying the making of civil restraint orders is summarised in the following terms by Leggat J (as he then was) in Nowak v The Nursing and Midwifery Council [2013] EWHC 1932 (QB):

"58. As explained by the Court of Appeal in the leading case of Bhamjee v Fosdick [2004] 1 WLR 88, the rationale for the regime of civil restraint orders is that a litigant who makes claims or applications which have absolutely no merit harms the administration of justice by wasting the limited time and resources of the courts. Such claims and applications consume public funds and divert the courts from dealing with cases which have real merit. Litigants who repeatedly make hopeless claims or applications impose costs on others for no good purpose and usually at little or no cost to themselves. Typically, such litigants have time on their hands and no means of paying any of the costs of litigation – so they are entitled to remission of court fees and the prospect of an order for costs against them is no deterrent. In these circumstances there is a strong public interest in protecting the court system from abuse by imposing an additional restraint on their use of the court's resources.

59. It is important to note that a civil restraint order does not prohibit access to the courts. It merely requires a person who has repeatedly made wholly unmeritorious claims or applications to have any new claim or application which falls within the scope of the order reviewed by a judge at the outset to determine whether it should be permitted to proceed. The purpose of a civil restraint order is simply to protect the court's process from abuse, and not to shut out claims or applications which are properly arguable."

62. I observe that the Rules require the court, in certain circumstances, to consider whether it should make a civil restraint order without an application being made by the other party/parties to the proceedings. Neither the Rules nor the Practice Direction make specific provision for an applicant to be notified in advance that the court may make a civil restraint order of its own motion. However, Rule 4.3 permits the court to exercise its powers of its own initiative (except where an enactment provides otherwise) and rule 4.3(2)(a) provides that the court may give any person likely to be affected by the making of an order an opportunity to make representations. Finally, rule 4.3(4) allows the court to make an order of its own initiative without hearing from the parties or giving them an opportunity to make representations. If an order is made pursuant to rule 4.3(4), the party affected has the right to apply to set aside, vary or stay the order and must be informed of that right in the order itself. I consider that Rule 4.3 applies to circumstances where the court has a duty to consider the making of a civil restraint order.

63. Whilst it might be assumed that represented applicants should know they run a risk that the court will make a civil restraint order if they submit an application which is then either dismissed or struck out as being totally without merit, litigants in person are often, though not always, unfamiliar with the detail of the Rules and, specifically, with the sanctions which the court might deploy when faced with unmeritorious applications. In The Queen on the application of Ranbir Kumar v Secretary of State for Constitutional Affairs [2006] EWCA Civ 990 paragraphs 71, 74 and 75, the Court of Appeal stated that a civil restraint order should usually be made on notice to the person affected so that the person had sufficient time to prepare his defence. This was not to say that a court must always adjourn the consideration of a civil restraint order pursuant to the duty now imposed on it whenever it strikes out or dismisses a case as being totally without merit. If the facts were clear and simple enough, it may be appropriate for the court to proceed to make the order immediately. However, where the history of the previous litigation was quite complicated, the applicant was entitled to have more time to prepare and resist such an order [paragraph 75]. Further, in Connah v Plymouth Hospitals Trust [2006] EWCA Civ 1616 the Court of Appeal suggested that a civil restraint order made of the court's own motion without hearing the parties or giving them an opportunity to make representations was an exceptional course to take and one taken only where the situation really warranted it [paragraph 21]. Though both those authorities concerned the application of the relevant Civil Procedure Rules, I consider they provide authoritative guidance for the approach to be taken when applying almost identical Rules within a family law context.

64. In the light of the above, I considered that the history of the previous litigation was complicated and that a civil restraint order should not be made without obtaining representations from the father. I thus issued directions on 31 July 2018 in all seven applications for permission to appeal which invited written submissions from the father as to whether the court should make any of the three types of civil restraint order available under the Rules. My directions order (a) noted the history of lengthy litigation concerning the child; (b) drew the father's attention to rule 30.11(5) which requires the court to consider the imposition of a civil restraint order in circumstances where an application for permission to appeal is refused and that application is considered to be totally without merit; (c) indicated that the court had come to no conclusion about the merits of the applications for permission to appeal but considered that, for the sake of completeness, the father should address whether the court should make either a limited, an extended or a general civil restraint order with respect to future applications concerning the child of the parties; (d) drew the father's attention to Practice Direction 4B of the Rules; and (e) directed that the father file a short skeleton argument addressing whether the court should make a civil restraint order against him with respect to future applications concerning the child of the parties. I received written submissions in response dated 13 August 2018 together with a statement signed by the father dated 10 August 2018.

65. The father's submissions asserted that he believed he had the right to make a fresh application every time that incidents occurred involving his children from 2013 to date. His motivation was to "*rescue*" his children from the mother and from social workers and he wished to continue to make applications until "*I have brought those above people to justice*". His submissions contained allegations that HHJ Tolson QC was taking revenge on him by dismissing his applications as being totally without merit and that HHJ Tolson QC was covering up for the local authority who had

denied him contact with S from 2013 to date. He also asserted that social workers were "*terror people against Muslims*". He said a civil restraint order would not be appropriate because all his applications had merit and, if the facts of the case were properly considered and he was satisfied that his children were safe and he was able to care for them, he would not then need to make any further applications. He sought orders revoking every order made by HHJ Tolson QC; an order that S be returned to his care; an order that social workers stay away from himself and his children; an order that the mother stop assaulting N and an order that N live with him. He made it perfectly clear that he would continue to make applications until justice – as he saw it – was done.

66. The court has available to it three types of civil restraint order: a limited civil restraint order; an extended civil restraint order and a general civil restraint order. A limited civil restraint order may be made where a party has made two or more applications which are totally without merit. Such an order has the effect of restraining a party from making any further applications in the proceedings in which the order is made without first obtaining the permission of the judge named in the order. An extended civil restraint order may be made where a party has persistently issued claims or made applications which are totally without merit. Unless the court otherwise orders, the party against whom such an order is made is restrained from making applications in any court "*concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order was made without first obtaining the permission of the judge identified in the order*" [Practice Direction 4B, paragraph 3.2(a)]. Three unmeritorious claims or applications have been described as the bare minimum needed to constitute persistence [In the matter of Ludlum (a bankrupt) [2009] EWHC 2067 (Ch)]. Finally, the court may make a general civil restraint order where a party persists in making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate [Practice Direction 4B, paragraph 4.1]. A party subject to a general civil restraint order will be prohibited from making any application in any court without first obtaining the permission of a judge identified in the order.

67. These seven applications for permission to appeal were all totally without merit and three of the seven were struck out. I am obliged by rule 30.11(5) to consider whether I should make a civil restraint order where an application for permission to appeal is refused or an appellant's notice is struck out. It is plain that the threshold for making an extended civil restraint order has been met given the number of applications I have determined to be totally without merit. Further, I clearly have the jurisdiction to make any of the civil restraint orders available [see Family Court (Composition and Distribution of Business) Rules 2014, Tables 2 and 3].

68. The making of a civil restraint order is a matter for my discretion, informed by case law and applying the overriding objective in the Rules. I acknowledge that such orders are not commonly made in the context of children proceedings given the availability of section 91(14) orders to restrain applications in such proceedings. Nevertheless, they are available to the court in certain circumstances and, in my view, are a useful means of protecting the family justice system from the abuse identified in the case of Nowak [see paragraph 62 above]. I have clarified with the Family Court that the father is presently not subject to either an order pursuant to section 91(14) of the Children Act 1989 or to any form of civil restraint order.

69. After very careful reflection, I have decided that I should impose an extended civil restraint order on the father. My reasons for doing so are as follows. First, the repeated applications made to the Family Court coupled with multiple applications for permission to appeal almost every decision made by HHJ Tolson since June 2016 have consumed an inappropriate share of the court's resources. These applications were wholly without merit in that, for example, they sought to relitigate matters which had been determined long before or sought relief which was simply incapable of being granted. They were prolix and often incoherent, requiring a significant investment of judicial time so that they might be understood and managed. They have also consumed valuable administrative time, both at Circuit Judge and at appellate level. The financial cost of managing and dealing with the father's repeated applications is substantial. I note there has also been some confusion engendered by applications apparently sent to different courts and a lack of clarity about which court was the appropriate venue for applications for permission to appeal orders made by HHJ Tolson QC. The making of a civil restraint order would manage future applications made by the father at first instance and at appellate level in a manner which is proportionate to the nature, complexity and importance of the issues raised by the father when set alongside the welfare issues pertaining to N. It would also provide clarity about the procedure to be followed and the appropriate court to which the father is to make his application in the first instance. That will, in my view, ensure that any application is dealt with expeditiously and fairly.

70. An extended civil restraint order has a more draconian effect than a limited civil restraint order and I find it is the appropriate order to make in this case. It does not merely restrain the father in the children proceedings concerning N but also restrains the issue of applications in other proceedings which may loosely be said to be related to those proceedings. I note that, in this case, the father has sought to appeal the making of an order excluding him from a property lived in by the mother and N. He is thus a litigant who issues and makes applications in more than one set of proceedings which concern his daughters and their mother.

71. Though the primary purpose of civil restraint orders is to manage the court's resources fairly and justly for all litigants and to protect the court system from abuse, the welfare issues present in this case provide further justification for the making of such an order. It is sadly apparent that the father sought to involve his daughters and the mother in fresh proceedings each and every time he made an application to HHJ Tolson QC. I have already referred to the father's desire to punish the mother in his pursuit of what he deems to be "*justice*". I am satisfied that any involvement of the mother and N in future applications made by the father pursuant to the extended civil restraint order should be in the control of the court rather than of the father. The material before me suggests that both the mother and N are likely to be worried and anxious if not distressed about further proceedings if they are given information about them prior to any judicial decision as to the merits of any application made by the father. To avoid that, I have decided that paragraph 3.4 of Practice Direction 4B shall not apply in this case and that no notice of any application made by the father for permission pursuant to the extended civil restraint order shall be given to the mother or to S or N without the court's specific approval.

72. Finally, I am satisfied that the extended civil restraint order should be made for two years. The history reveals multiple unmeritorious applications before HHJ Tolson QC

and to this court. Moreover, the father is intent on pursuing his fight for "*justice*" and, given those matters, the maximum period of two years is appropriate [Practice Direction 4B, paragraph 3.9(a)]. The father will be restrained from making applications and any application he wishes to pursue which involves, relates to or touches on the subject matter of all of these proceedings will be made, in the first instance, to me at the Royal Courts of Justice. In accordance with Practice Direction 4B, an application for permission will be made in writing to me on no more than 4 sheets of A4 paper and will be determined on the papers without a hearing. It will need to set out clearly the nature and the reasons for making the application.

Conclusion

73. Throughout my perusal of these applications for permission to appeal, I have been struck by the father's protestations that he merely seeks "*justice*" for himself and for his daughters. Whilst I have no doubt at all that he feels deeply about the breakdown of his family, his conduct in the children and family litigation has done him no favours and has eventually alienated him from his daughters, such that neither wishes to have any direct contact with him. The further pursuit of legal remedies to punish the mother and those he holds responsible for the breakdown of his family will not repair those relationships. The father would be well advised to focus in future on how he might positively play a role – however limited – in the lives of his daughters.

74. That is my decision.