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Case No: CA 2022 001095

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT GUILDFORD

Mr Justice Williams

[2023] EWFC 118

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/12/2023

Before:

LADY JUSTICE KING
LORD JUSTICE PHILLIPS
and
LORD JUSTICE LEWIS

G (Children) (Supervised Contact)

Ruth Kirby KC and Charlotte Baker (instructed by **JMW Solicitors LLP**) for the **Appellant**
Alex Verdán KC and Frankie Shama (instructed by **Penningtons Manches Cooper LLP**) for
the **Respondent**

Hearing date: 17 October 2023

Approved Judgment

This judgment was handed down remotely at 11.30am on 4 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice King:

1. This is an appeal by LKM ('the father') against an order made by Williams J ('the judge') dated 18 May 2023, whereby the judge made an order that the two children of the marriage, twins LLA and LLN, now rising nine years old would live with NPM ('the mother') and spend time ('contact') with the father. The order set out a complex programme whereby the father's contact, which had hitherto been supervised, would progress first to unsupervised contact for increasingly lengthy periods, and then onto overnight stays. The arrangements were dependent upon the father engaging in therapy with a psychiatrist who was also a qualified psychotherapist.
2. I granted permission to appeal on 24 August 2023 identifying the issue as being whether the judge had failed adequately to identify the type and likelihood of risk in the future and had (at the expense of other evidence) placed too much weight on the evidence of Dr Judith Freedman, the court appointed psychiatrist. It was arguable, I said in giving my reasons for granting permission, that as a consequence, the balance of the orders imposed a disproportionate requirement on the father to continue to engage in therapy for many months before his contact could further develop.
3. Having heard oral argument today, we informed the parties that the appeal would be dismissed. We did this so as to ensure that the programme of contact as ordered by the judge and which has now been progressing in accordance with that order for five months, could continue without any uncertainty as to whether or not it would be set aside by this court. The judge's lengthy and detailed judgment can be found at [2023] EWFC 118.

Background

4. The parties married in August 2010 and the children were born in late 2014. Four years later, in the middle of 2018 the parties separated for the first time. They reconciled after eleven months. The final separation came at the end of March 2021. From that time, all contact between the father and the children was supervised until the judge's order on 18 May 2023 which altered the arrangements to the extent that weekday contact after school became unsupervised.
5. Between 11-15 July 2022, the judge heard a bitterly fought fact-finding hearing in relation to the mother's allegations against the father. The judge's judgment, which has not been the subject of an appeal, can be found at [2022] EWHC 140 (Fam). His conclusions found at para.[63] were reached in the light of his extensive findings, albeit those findings were set out somewhat unconventionally by way of commentary in a chronology. He said at para.[63]:

"63. Thus overall, the conclusions I reach on the balance of probabilities are that:

- i) The nature of the relationship between the mother and the father was permeated by emotional abuse of the mother and children arising from the father's obsessive, anxious and rigid behaviour where his needs dominated the household. This extended into other areas of the father's behaviour towards the mother which included lack of respect for her personal

autonomy, misleading her over what he would do to remedy his personal failings at the time of the reconciliation, selfishness and insensitivity in their personal relations at times, and has continued with his unjustified denigration of her after the relationship ended. Financial control was not a significant feature of this; examples are more demonstrative of the father's lack of respect of the mother's feelings.

ii) The father behaved at times in a physically and emotionally abusive way towards the boys by his dictatorial behaviour, his shouting at them and his occasional use of excessive physical force as a result of him losing his temper with them.

iii) At least one incident (the mock kiss) where the father used physical force on the mother.

64. The father has much to reflect on. He is clearly capable of providing good parenting to the boys and loves them dearly. However, in my assessment he has a flaw in his character which until it is addressed means he poses a risk of losing his temper with them, of imposing unreasonable rules on them and poses a risk of emotional and physical harm (limited at present) outside the confines of supervised or supported contact. Until he addresses that flaw that risk seems likely to remain. Given he has said he would address it in the past and has not seen it through either because he never really accepted the full nature of the issues, or because he found it too hard or became demotivated, presents a challenge going forwards. How will a psychotherapist truly know if he is engaging or is paying lip-service?"

6. It follows that those findings provided the backdrop against which expert reports were commissioned and the subsequent welfare hearing took place.

The father's approach to the mother's allegations and the judge's findings of fact

7. In 2018 following the parent's initial separation, the father had sought help. In particular he saw a consultant psychiatrist, Dr Paul Oppedijk. In his report, Dr Oppedijk set out in detail the account the father had given to him about his difficulties which difficulties he accepted had contributed to the separation. This account was described by the judge as 'profoundly different' to that which he subsequently gave to the court. The father had told Dr Oppedijk that he had not enjoyed the role of parent while the boys were young and had delegated most of the parenting to the mother. This, the judge noted, contrasted with his oral evidence where he described himself as having been a very hands-on parent, sharing the care of the children and being very engaged and developing a strong bond with the twins.
8. The father also told Dr Oppedijk that he had felt resentful at coming home to an untidy house and would 'frantically clean' when he got back from work. In evidence he told the judge that he was 'unconcerned' with the state of the house and that his priority was to spend time with the boys although 'he might do some hoovering later'. The father had also told Dr Oppedijk that the mother having left him had acted as 'a wakeup call',

and that when he was feeling anxious and stressed it ‘exacerbated his obsessive traits’. The father subsequently denied there was any need on his part to change.

9. Dr Oppedijk found the father to have been candid and as showing insight and as ‘motivated to accept accountability for his need to change his personality’. Dr Oppedijk’s diagnosis was ‘obsessional character traits demonstrating anal retentive character traits manifested by obsession with time management and efficiency. He lacks emotional intelligence.’ Dr Oppedijk advised the father to undertake individual psychotherapy and marital counselling.

10. The judge over a number of paragraphs in the finding of fact judgment described the evidence given by the father. At para. [43] he summed it up as follows:

“Throughout his evidence he demonstrated an almost entire avoidance of responsibility for any significant event. Mostly problems were [NPM’s] fault, Dr Oppedijk had misquoted him, the boys, the accountant. Rarely was he able to accept responsibility for anything himself. Although he claimed to be insightful and to have been able to reflect on himself and what had happened, this was almost entirely missing from his evidence. He found it almost impossible to engage with how the mother might have felt, going so far at one stage as to say he couldn’t take account of her feelings. His limited concessions of poor behaviour in writing were subject to moderation in oral evidence. A smack became a tap. He had never hurt the children”.

11. On the father’s quality of evidence, the judge concluded at para. [45]:

“Ultimately the father emerged from the process of giving evidence as a poor witness. He was wholly subjective, evasive, dogmatic, inconsistent and dishonest at times. I’m afraid I find it very hard to rely on his evidence unless it is corroborated by other material”.

12. At the fact-finding hearing, the father had not accepted that what he told Dr Oppedijk was true, rather he told the court that he had told the psychiatrist what he thought that the mother had wanted to hear. The judge commented at para. [51] that:

“.....it seemed entirely lost on him that this was a gross deception of the fellow medical professional....but more importantly was a gross deception of the mother who had received the report assuming that it had indeed been a wakeup call for the father who was now acknowledging his problems and prepared to tackle them when in fact the father’s true position was that he did not acknowledge any underlying problem and thus any attempt to address it would be likely to flounder from the start. To do this to your wife seems to me to be the most gross breach of trust wholly manipulative, selfish and indeed perhaps narcissistic”.

13. The father maintained his position in relation to Dr Oppedijk's report before this Court. Further, Ms Kirby KC who represents the father, was adamant that the father does not accept any of the findings of fact which were made by the judge in relation to his behaviour towards the mother and the children in the period of time up to the separation in March 2021 (as summarised at para. [5] above).
14. It is worth noting at this stage that Ms Kirby sought to persuade the court that in May 2023 when the judge made the order that is now subject to appeal, he was dealing with what she termed 'historic allegations' and that the fact that there had been no further incidents of concern in relation to the children since that time was highly relevant and had been inadequately taken into account by the judge. Persuasively though that submission was made, it carries little weight given that between March 2021 and May of this year (2023) all contact the children have had with their father has been limited and supervised. The father's relationship with his children was not, it follows, being conducted within the stressful environment engendered through day to day living in a difficult relationship with very young children and against the backdrop of a demanding job as a medical consultant. That in no way undermines the undoubted fact that the father's contact with the children has been consistently reported by the contact supervisors as being of good quality and much enjoyed by the children who wish to see more of their father and to be allowed to stay with him overnight.
15. The point to be made is that in circumstances where the father wholly rejects the findings made by the judge, findings which dovetailed with the father's own contemporaneous account given to Dr Oppedijk, it cannot be said that the judge should have set aside the earlier concerns and findings which had been generated by life lived in a more normal day to day domestic environment than that conducted within the artificial constraints of supervised contact.
16. The question inevitably therefore was what risk, if any, did the father continue to present, and if so, what was the level of the risk and what form of contact could best mitigate any such risk whilst aiming, in the interests of the children, to seek to progress contact towards a more natural and extensive relationship between the father and the twins.

The welfare hearing

17. For the purposes of the welfare hearing, 2 experts were instructed:
 - i) Dr Judith Freedman is a psychiatrist and psychotherapist of over 30 years' experience in both clinical practice and in acting as a court appointed expert. Dr Freedman was jointly instructed by the parties and the remit of her instructions was limited to an assessment of the father's mental health, including whether he had any identifiable mental health personality or other disorders.
 - ii) Ms Elena Sandrini, an independent social worker, also jointly instructed, carried out a welfare report in relation to the family.
18. Both experts participated in an experts' meeting and gave oral evidence.
19. Dr Freedman met the father twice and the mother once. She had the benefit of the fact-finding judgment and she had been provided with and had read all the contact notes

covering the many months of supervised contact. Dr Freedman said, and the judge accepted, that the most important components in reaching her conclusions in her psychiatric assessment were the judgment and her interviews with the father and mother. All of the other information, she explained, was not as important as the information gained in interview and the judge's findings of fact.

20. Dr Freedman's expert opinion was that the father had 'narcissistic personality traits'. In her evidence she explained that this was not a mental illness and did not fall within the Diagnostic and Statistical Manual of Mental Disorders 5th edition (DSM-V) criteria for narcissistic personality disorder. Disturbed personality traits she said do however in themselves amount to a diagnosis.
21. Ms Kirby, as the judge put it in his judgment, launched an 'all-out attack on Dr Freedman's conclusions'. In particular, Ms Kirby focused on the criteria in DSM-V. DSM-V requires the features of narcissistic personality disorder to be 'pervasive, persistent and long standing'. Dr Freedman accepted that a personality trait must also meet those tests. Any conclusion, Ms Kirby submitted, that the father met the criteria was not consistent with the totality of the evidence. Further, she argued that Dr Freedman had failed to take into account all of the other evidence in the case, in particular the expert evidence of Ms Sandrini as to the quality of the father's relationship with the children.
22. Ms Kirby's case was that Dr Freedman had made an 'improper diagnosis' as the father's behaviour could not be characterised as 'pervasive and persistent' given that he had good and appropriate relationships with colleagues outside the home. Dr Freedman however had said that it was often the case that such traits did not manifest themselves in every area of an individual's life and in particular, they were likely to be seen in a dysfunctional way in intimate relationships which were not limited to sexual relationships, but rather those where an individual was at their most open, which could include partners or children. Dr Freedman reaches the conclusion that the father had 'narcissistic personality traits' because it impacted on his functioning within his relationship with the mother and children. She had also considered, if unaltered, the risk of recurrence of the father's significant difficulties in his life within the family and his susceptibility to treatment before she characterised his 'narcissistic personality traits' as a diagnosis.
23. The judge concluded at para. [21] that a fundamental difficulty with Ms Kirby's critique of Dr Freedman's methodology, evaluation and conclusions was that those conclusions were highly consistent 'not only with my own findings as to the father's behaviour during the marriage, but also with the father's own account of his personality and the conclusions of Dr Oppedijk, which I concluded in the fact-finding judgment represented a true account of the father at the time of those difficulties'.
24. The judge went on to say that Ms Kirby's criticism of Dr Freedman appeared to him to be too formulaic in its approach and had subjected the totality of her evidence to a narrow textual analysis. Looking at the totality of the evidence, he held that the existence of abnormal, disturbed traits in the father's personality were well founded. The judge then found that the best explanation of the father's abnormal or dysfunctional behaviours which had led to the abusive conduct he had found had taken place, was that there are aspects of his personality (traits) which, whilst they operate in normal parameters in many domains, can become dysfunctional. In particular, this occurs when

the father is anxious, or subjectively under stress or when his needs, for other reasons are somehow not being met. In this context, the judge at para.[23] expressed the view that focusing on labels is not of much assistance and tended to detract from the substance of the concern. He continued:

“.....focussing on the word narcissism generates a great deal of heat – asking why it is that the father’s trait of order and organisation becomes obsessive and dysfunctional; why he loses his ability to act with empathy and to take account of his wife or children’s feelings, and why he tends to become focussed on satisfying his needs to the near exclusion of theirs and to behave abusively (losing his temper and otherwise) when he is unable to, is, it seems to me, at the heart of what needs addressing.”

25. Asking whether the narcissistic personality traits fall within one or more of the DSM-V criteria for narcissistic personality disorder may, the judge said, be a useful guide from a clinical perspective. It also assisted him on how the father’s psychological functioning could be explained within the field of psychiatry or psychology. Nevertheless, he went on:

“...if it becomes an obstacle to understanding the behaviours and seeking to assess risk and effect change it is a distraction. I am satisfied that the underlying fact and conclusion of Dr Freedman is correct, within the framework of her report and which fits with the much bigger evidential picture which lies before me that the father has personality traits that can manifest themselves in some situations which are dysfunctional or disturbed.”

26. The judge did not, however, accept Dr Freedman’s evidence in its entirety. He noted that Dr Freedman had appeared to misunderstand his finding in the fact-finding judgment that the father had manipulated Dr Oppedijk and the mother.
27. Dr Freedman’s concluded evidence was that the existence of untreated personality traits meant that there were ongoing risks to the children if unsupervised contact took place. She spoke of the need for psychotherapy 2-3 times a week over 2 years. Through that vehicle the risk to the children could be reduced.
28. The judge having heard Dr Freedman’s evidence which was extensively tested in robust cross-examination then concluded at para. [30]:

“30. Notwithstanding that possibility (indeed actual limited change of which more below), finding as I do that the father does indeed have personality traits which are dysfunctional, certainly in the domain of intimate relationships in particular when anxious or stressed, the best way of addressing those and affecting the risks they carry would clearly be in psychotherapy with a psychiatrist. The role that anxiety, for instance, plays in personality traits become dysfunctional, and the high intelligence of the father and his medical background all point to the need for the psychotherapist to be at this level in order to

have the best chance of the therapeutic process delivering results. An effective therapeutic process is clearly the best way to address the ongoing risks which arise from those personality traits and their propensity to become dysfunctional and abusive.”

29. Ms Kirby renewed her attack on Dr Freedman’s diagnosis in written and oral submissions on appeal. In challenging the judge’s finding at para. [30], she said that the judge had been ‘improper’ in failing to put the quality of contact into the balance. She further submitted that as there was no evidence of the alleged dysfunctional personality traits outside of the marriage, they could not be described as pervasive and persistent, and Dr Freedman’s diagnosis was therefore wrong.

Conclusions as to Dr Freedman

30. In order to dislodge the judge’s finding in relation to this jointly instructed expert, whose analysis dovetailed with Dr Oppedijk’s earlier analysis, Ms Kirby would have to establish that the judge, in consideration of the evidence, was not entitled to accept two of Dr Freedman’s key conclusions. First, that the father had a diagnosis of narcissistic personality traits. Second, that these traits created a risk of future harm to the children.
31. The judge had Dr Freedman’s evidence that whilst she had read all the contact notes, her psychiatric assessment rested substantially upon the finding of fact judgment and her interviews with the father. Further, the judge was entitled to accept that the nature of personality traits of this type were such that they most often show their dysfunctional face in the context of intimate relationships. The judge undoubtedly took into account Dr Freedman’s unfortunate misunderstanding of his findings at the fact-finding hearing in relation to Dr Oppedijk’s report.
32. In those circumstances, notwithstanding Ms Kirby’s attempt to reargue the case in relation to Dr Freedman, I have no hesitation in concluding the judge was entitled to come to the conclusion that he did, as simply expressed in para. [30] of his judgment and set out at para.[26] above.
33. The judge also had the benefit of the evidence of the Independent Social Worker, Ms Sandrini. As already noted, the experts had taken part in a lengthy experts’ meeting. The position of the experts could not initially have been further apart; Dr Freedman looked to long-term supervised contact and Ms Sandrini to immediate secession of all supervision and some form of shared care arrangement to be implemented without delay. Dr Freedman and Ms Sandrini however, having discussed the issues from each of their respective points of view, agreed that supervised contact could become unsupervised after three months of therapy.
34. The distance between the experts narrowed significantly once Ms Sandrini understood that ‘narcissistic personality traits’ is in itself a diagnosis and that it is not necessary to have a full personality disorder before a person has personality difficulties which would benefit from psychotherapy. Ultimately in pulling together their conclusions, Dr Freedman and Ms Sandrini agreed that in an ideal world the case would be removed from the court structure and that the parties would therefore be assisted to progress contact with the assistance of an independent monitor. Ms Sandrini has acted as such an independent monitor for families in the past with some success. Whilst Dr Freedman

and Ms Sandrini did not entirely agree as to the extent of the risk the father presented to the children in the area of emotional and physical abuse, they were each agreed as to the importance of thinking about said risk.

35. The experts also agreed that it was important for the father to start psychotherapy with a qualified psychotherapist for, in the first instance, a three month period, although therapy should not be limited to that period. They also agreed that contact should be ordered against the background of this therapeutic need.
36. Ms Sandrini from her expert perspective, gave the judge what he described as ‘valuable information’ about the current situation in respect of the family, with insight into the father’s parenting of the boys and of his character together with a useful application of the welfare checklist. The judge however expressed reservations about her conclusions in relation to the critical issue of risk. He said:

“32. It emerged clearly from her evidence that Ms Sandrini’s assessment had been substantially predicated on the understanding that the father did not have a ‘diagnosis’, and that the fact-finding judgment was relevant more as historic record than of highly relevant to current concern. This seems to have been because in her own extensive enquiries Ms Sandrini had not read of or observed any behaviour of the father’s that gave rise to a current concern in her own mind. This however was in effect to set aside the consequences of the fact-finding conclusions and the report of Dr Freedman, as if they were part of the background rather than central to her assessment of any risk the father represented. As with Dr Freedman, Ms Sandrini considered risk more as a generic issue rather than looking in more detail at the contexts in which the risk would have to be evaluated. My conclusion from the totality of her evidence was that this was primarily driven by her conclusion that her assessment did not lead her to identify any risky behaviour of the father in her current assessment.”

37. In those circumstances, the judge found that Ms Sandrini’s view as to the future progress was substantially undermined by her approach to the findings of fact, the father’s response to them and her interpretation of Dr Freedman’s report.

Grounds of Appeal

38. The 5 grounds of appeal can be summarised as follows:
 - i) The judge ‘failed adequately to identify, other than in the most general terms the type of risk posed by the father and in any event the likelihood of that risk materialising and the likely consequences in the event it did materialise’.
 - ii) The judge was wrong to rely on the evidence of Dr Freedman to the extent that he did in the light of the serious flaws identified with Dr Freedman’s approach with respect of her understanding of the factual matrix and sources of material underlying her analysis together with her overarching methodology and clinical assessment.

- iii) The judge's focus at the fact-finding hearing on the father's demeanour during oral evidence and the judge's instinct that there is some aspect of his psychological functioning that is at play and that he has a flaw in his character led the judge into error at the welfare hearing. He relied on Dr Freedman's conclusions in part because he viewed them as being consistent with his own findings, but as Dr Freedman's clinical assessment and subsequent conclusions were so heavily reliant on the fact-finding judgment, that inevitably led to a circular and self-fulfilling approach.
- iv) The judge failed to attribute appropriate weight to a number of sources of evidence, in particular the holistic assessment of Ms Sandrini and the positive contact over the period of 19 months as described in 2 statements of Kevin Stroud, another Independent Social Worker.
- v) There is a disproportionate interference in the children and father's Article 8 Rights inconsistent with the children's overall welfare and best interests.

Risk

39. In my judgment, the judge had the issue of risk at the forefront of his mind and formed his own view having heard both Dr Freedman and Ms Sandrini. Early in his evaluation and against the backdrop of the welfare checklist, the judge held that whilst the father is a significant risk, it was not to the extent that Dr Freedman had identified. Turning his attention to section 1(3)(e) of the Children Act 1989: 'any harm which he has suffered or is at risk of suffering', the judge further elaborated and summarised his findings across two detailed paragraphs at [52]-[53]. His conclusions as to risk were:

- i) As a result of the father's emotionally and physically abusive behaviour, the children were at risk of suffering future harm if that behaviour were repeated.
- ii) How the risks might manifest themselves would depend on many factors including how much time the children spent with their father, the presence or not of supervision, the extent to which he had changed since 2021, and the extent to which he changes in future as the result of therapy or from the passage of time. Also, the risk assessment is influenced by the extent to which the children are vulnerable, the extent to which they can be supported to develop resilience and the ability of the mother and father to insulate them from hostility.
- iii) The risk the father poses in general terms has abated in some modest way since 2021, as he has done many courses on parenting and anger management, and he has had support and input from contact supervisors. The feedback would support a conclusion that the father is a better parent than he was.
- iv) Supervision has been so extensive and became so familiar that it is unlikely that the father's ability as a parent has all been a product of his awareness of being under observation. If the risks were very close to the surface, there would have been some observed dysfunction or abusive behaviour.
- v) The environment for supervision has helped, but given the absence of psychotherapy to address the underlying traits which can become dysfunctional, they will remain and will remain susceptible to being triggered in particular

times of stress, anxiety and challenge. Psychotherapy remains the best way of addressing those sources of risk.

- vi) The passage of time alone may demonstrate what the father had learned, but the risk inherent in ‘giving it a try’ by removing all supervision would be very considerable compared to a progression based on the secure foundations of the father addressing the behaviour in therapy.
40. Ms Kirby submits that the judge failed to go through the three-stage process of: i) identifying the risk; ii) determining how likely the risk was; and iii) identifying the consequences, if the risk materialised.
 41. In my judgment, each of those features were adequately identified and informed the judge’s conclusions as to the appropriate way to progress contact in the interests of the children.
 42. The judge conducted a conventional evaluation of the features set out in the checklist. Relevant to the judge’s conclusions was his finding that the father is capable of meeting the boys’ physical and educational needs, but that ‘he has a very significant flaw in his capability of meeting their emotional needs which arises from the underlying dysfunctional personality or character traits which underpinned his abusive behaviour to the mother and the boys’. The judge went on to say that the father loves his children, and when his disturbed personality or character traits lay dormant, he can be loving, supportive, fun and inculcate security and provide a good role model of a good, active and healthy lifestyle and much besides. However, where a trigger or combination of triggers leads to the eruption of a dysfunctional expression of a personality or character trait, he could remain abusive in a sense of a ‘risk of physical aggression and aggressive and frightening verbalisation to the children.’
 43. The judge was well aware of the children’s desire to stay overnight with their father, recording that they would welcome the removal of supervision on weekday afternoons, but he concluded that they would not yet be ready to spend significant periods of time living with their father and being away from their mother.

The judge’s order

44. It was against this analysis that the judge put together an order which anticipated phased progression away from supervised contact and on to unsupervised staying contact for the children with their father.
45. The judge concluded that the risk of dropping supervision of weekday contact forthwith was modest and the likely effect on the boys to be good overall. The judge felt however, that the risks in relation to full day contact were different and supervision needed to continue until the father had been in therapy for a six-month period. At that stage, daytime supervision could come to an end once the therapist confirmed that the father had been attending and was engaged. Absent such an engagement, the judge identified a period of nine months before weekend contact would become unsupervised in any event.
46. The judge identified the next, third, phase as being after a period of six months when, again with an adequate engagement with therapy, the contact could be extended to

overnight stays at the weekend for one night. The final stage would be three months thereafter, when the matter would be listed for review.

47. In the event that the father rejected the therapeutic route, the judge decided that a review would still be appropriate in order to see how the change to unsupervised contact at the nine month point had gone.
48. The judge rejected the father's position at the hearing by which he had sought to equalise, or even prioritise, his position with regards to care of the children over that of the mother. Permission to appeal against the making by the judge of a "lives with" order in favour of the mother was refused.

Discussion and Conclusion

49. In the general scheme of things this appeal has progressed quickly, the Appellant's Notice was filed on the 31 July 2023, permission to appeal was granted on 24 August 2023 and the full appeal was heard on 17 October 2023. The fact remains that five months have elapsed since the sealing of the order under appeal. The father has, to his great credit, proceeded on the basis that the order would be upheld. He has attended psychotherapy with an expert with the appropriate qualifications. Contact is therefore taking place three times each week unsupervised. The next stage according to the judge's order will be the move to staying contact one night each week after 26 weeks of attendance at psychotherapy. That date would have been imminent however, the psychotherapist took a significant period of time off work during the course of the summer. Overnight stays will be introduced on a date, if not agreed, to be determined by Williams J.
50. Mr Verdan KC, on behalf of the mother, not only submits that the judge did not fall into error, but also rightly observed that matters have moved on considerably since the making of the order challenged. The parties, who are not wealthy, have spent in the region of £1 million on the costs of these proceedings. It cannot, he submits, be in anyone's interest to do other than to continue the progress that has been made between the date of the order and today. If that is done, overnight contact is likely to start in accordance with the order early in the new year enabling the judge in May 2024, to review the overall situation and consider next steps.
51. Ms Kirby for her part says that the order was wrong and disproportionate and should be set aside in its entirety. She submits that there should be an entire re-hearing of the welfare proceedings with as yet an unidentified new expert, with the rehearing to be conducted by either a district judge or a circuit judge. With respect to Ms Kirby, I cannot see how such an outcome could benefit anyone, not least her lay client, the father, who whilst unfortunately is still unable or unwilling to acknowledge the serious findings made against him by the judge, has nevertheless worked extremely hard both by way of courses and in attending therapy, to reach a position where he can have a full and fulfilling relationship with his children. Having dismissed Ground 1 of the appeal which challenges the judge's analysis of risk, the balance of the remaining grounds of appeal represent, in my judgment, a global submission that the judge made orders which no judge properly directed could have reached and was against the weight of the evidence.
52. It may be that another judge might not have structured their order in quite such a way and may perhaps have sought to bring court proceedings to an end conditional upon

appropriate psychotherapy and with the assistance of an independent monitor. Mr Verdan, however, rightly reminded the court in his brief submissions that in any case of a highly charged welfare dispute there is no perfect solution and the court necessarily has a wide discretion. Mr Verdan submitted that in the context of a case where serious findings of abuse had been made and not been appealed, the judge had been fully entitled to devise a route map over a period of months charting a path between that recommended by each of the two experts.

53. Mr Verdan submits that the father seeks now to reargue the case focusing on the label of narcissistic personality traits, whilst the judge with the assistance of Dr Freedman's analysis and the Independent Social Worker's view of the family, rightly focused his conclusions on the father's behaviour and the potential risk to his children should his abusive behaviour towards his children once again manifest itself.
54. I agree with Mr Verdan. The judge rightly did not allow himself to be blinded by labels but focused on the behaviour or traits which had undoubtedly led to 'the emotional abuse of the mother and children arising from the father's obsessive, anxious and rigid behaviour where his needs dominated the household.' In the event, the structure put in place by the judge appears, so far, to be paying dividends. The father is now having the psychotherapy he undoubtedly needed and he has progressed to unsupervised contact three times each week with overnight stays to start if all goes well early in the new year.
55. It is for these reasons that we dismissed the appeal.

LORD JUSTICE PHILLIPS:

56. I agree.

LORD JUSTICE LEWIS:

57. I also agree.