



Neutral Citation Number: [2025] EWCA Civ 60

Case No: CA-2024-002690

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT CANTERBURY
Her Honour Judge Sarah Davies
ME23C50310

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 January 2025

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE WARBY
and
LORD JUSTICE SNOWDEN

L-G (Children: Risk Assessment)

Sharan Bhachu (instructed by **Patrick Law Partnership LLP**) for the **Appellant Mother**
Fay Baker and **Sophia Stapleton** (instructed by **Medway Council Legal Services**) for the
Respondent Local Authority
Garfield Braithwaite (instructed by **Arkins Hope Solicitors**) for the **Respondent Father of O**
The **Respondent Father of Y** was not present or represented on the appeal
Abida Huda (instructed by the **Ewings and Co. Solicitors**) for the **Respondent Children by**
their Children’s Guardian

Hearing date : 23 January 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 31 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Peter Jackson:

Introduction

1. This appeal concerns O (a girl aged 5) and Y (a boy aged 1). Until the order under appeal, they had always lived with their mother. She provided excellent care and the children were thriving. After her parents separated, O spent regular time with her father by agreement. However, Y's father Mr F is, in the judge's words, a violent and cruel man, who would be likely to harm any child in his care. He and the mother began their relationship in December 2022, though they did not live together. When Y was born, the local authority applied for a supervision order to protect the children from Mr F. An interim supervision order was made and the mother gave undertakings that Mr F's contact with Y should be limited and supervised. A month before the trial, the mother said that she had separated from Mr F, but the judge, Her Honour Judge Sarah Davies, believed that, if social services were not involved, they would resume their relationship.
2. The mother was willing to agree to any protective orders. She asserted that she had fully complied with her undertakings, and advocated an adjournment to further test her compliance. However, the judge accepted the case put by the local authority, the Children's Guardian and O's father, that the risk from Mr F was too great. She ordered that O should move to live with her father under a child arrangements order, and that Y's maternal grandfather should become his special guardian. The order, despite the mother's request for a stay, was put into effect immediately. The result is that Y has for the past two months been with his grandfather, who lives close to the mother in Town 1, where Mr F also lives. O is with her father and his partner and their other children in Town 2, about 10 miles away.
3. The order provides for the mother to have very significant contact with both children, amounting in practical terms to almost a third of O's time and unlimited time with Y (contact being in the discretion of the grandfather who considers that Y should be living with his mother). The children would see each other when their time with their mother coincided. The local authority and the Guardian recommended that the mother's contact should be supervised by the grandfather or by another approved family member. A recital to the order records that the court endorsed this, but no order for supervision was made. Mr F's contact with Y was similarly referred to only in a recital, which contemplated fortnightly contact supervised by the grandfather. No supervision order in favour of the local authority was made.

My conclusion

4. This was a single-issue case. But for the risk from Mr F, every welfare factor strongly favoured confirmation of the existing arrangements. The correct outcome therefore depended critically on the assessment of that specific risk. As to that, my conclusion is that the judge's assessment was incomplete to such an extent that the proceedings must be remitted for a fresh decision. In the meantime, the pre-existing arrangements will be restored. The outcome of the rehearing will be a matter for the Family Court, and I shall say no more than is necessary to explain my reasoning.

Background

5. The mother and O's father separated in 2022 after a two-year relationship. He began a relationship with his current partner, who had a child, and they now have a child of their own. There were some difficulties in their relationship in the summer of 2024, but the judge found that these did not prevent O being placed with them.
6. The mother began a relationship with Mr F in December 2022 and Y was born in the autumn of 2023. Mr F, who has a significant criminal history, has four older children, now aged between 5 and 16, from a lengthy previous relationship that involved cohabitation. Care proceedings were taken in relation to those children in November 2022 and they were removed under interim orders. In February 2024, the judge made findings of fact after a lengthy hearing. These included that Mr F had assaulted and threatened the three older children with a weapon and that their mother knew and failed to prevent it. Other findings of violence were made, alongside findings of verbal abuse, excessive alcohol consumption by Mr F, neglect, and poor school attendance. The proceedings ended with a welfare judgment in October 2024, by which none of the children were placed in the care of either parent and the youngest child was made the subject of a placement order. I refused applications for permission to appeal from the findings of fact and from the final orders. Mr F has been charged with offences arising from his treatment of the four children, and I will therefore give no further details of the judge's findings.
7. The judge's engagement with the proceedings about O and Y therefore overlapped with proceedings in which she had made very significant findings about Mr F and his abusive behaviour towards his previous partner and their older children. The final hearing in the present proceedings began within four weeks of the end of the earlier proceedings.

The hearing before the judge

8. The five-day final hearing ended on Friday 22 November 2024. Evidence was given by an independent social worker who assessed the mother and Mr F, the children's social worker, the mother, Mr F, O's father and his partner, the grandfather and the Guardian. At the outset of the hearing the Guardian had not supported removal and separation of the children, but her final position (contained in an addendum report after hearing the evidence) was that, while it was a very finely balanced case, she ultimately did not support the children remaining with the mother on the basis that her evidence was not clear enough about separation from Mr F. Written submissions were filed by the parties on Monday 25 November and the judge gave an oral judgment remotely on the afternoon of Friday 29 November. As a result of the refusal of a stay, the children went to the grandfather that evening and O went to her father the following Monday. She has spent some weeks in a new school before and since Christmas.
9. On Sunday 1 December, the judge sent a written judgment to the parties. This differed somewhat from the oral judgment, which had contemplated shared parental care for O. The local authority then sought clarification of aspects of the judgment concerning contact, while O's father raised several issues, including about the absence of a supervision order and the decision not to adjourn. The only clarification contained in the final version of the judgment concerned the decision on adjournment. The mother did not seek clarification, taking the view that her remedy lay in an appeal.

10. The judgment extends to 92 paragraphs. Having set out the background and surveyed the evidence she had read and heard, the judge gave herself a correct legal self-direction. Her analysis and conclusions occupy the final twenty paragraphs, from which I will cite extensively (with some redaction) to enable the arguments to be understood:

“75. On behalf of the mother it is submitted that she had obeyed the undertaking not to allow Mr F to have unsupervised contact and she has now separated. The issue I have is that when she told O’s father that she was cross that she was being stopped from continuing a relationship with him and Mr F has said that Social Services are stopping them being together. From what I saw of both giving evidence to me I am not satisfied that they have effectively emotionally separated, and I think if Social Services were not involved, they would resume their relationship. As an example, although the mother sat behind a screen next to O’s father who had requested special measures, I noted that the mother sat in the same room as Mr F’s mother and Mr F outside court. Whilst I accept that O may be confused about when she saw them kissing and cuddling the way their body language was towards each other it could have been perfectly possible. Whilst I accept that Mr F has not harmed the current children, Mr F’s mother was sufficiently worried about Mr F that she told the mother that Mr F was in the high street and the mother chose to warn O’s father to get off the bus early to avoid him because they were worried about there being trouble between him and O’s father. This was after the incident at court with Mr F and his sons who were abusive and shouting at O’s father. O was with her father at the time of the bus incident, and he decided to keep her with him as he was so concerned.

76. Whilst I commend Mr F for stopping drinking, he does not acknowledge any of the findings and considered that I am totally wrong. The mother does not or will not really acknowledge that he is a risk. He blamed everyone else for the predicament that he is in. I find that the consequences of the risk are very severe if he remained with the mother because of the very serious findings. ...

79. In respect of the grandfather’s evidence, I found that he was a straightforward witness and I felt it was necessary that he either read my judgment or read the findings as it seemed to me that it is difficult to appreciate the risks that I found from Mr F unless you have notice of them. He did offer to stay at the mother’s home under a safety plan put forward effectively by the mother for two or three days a week. ...

81. In respect of O, there are three options, her remaining with her mother, placement with her father and placement with the maternal grandfather. The advantages of placement with her mother, are that she is thriving in her care, she is happy and loved. It is likely O would want to remain with her mother or at least see her regularly. The disadvantages are that there is a very real risk from Mr F and whilst he has not hurt these children, I do find that there is a very serious

risk from him which the mother does not appreciate. There have been continuous issues about Mr F and worries that O is still continuing to have contact with him.

82. I had considered the mother's plan that her father stays with her two or three times a week. I don't think the first option would work because I don't think I can effectively police the mother's life and then what happens the rest of the week? The disadvantages are that the grandfather said he would be on a sofa bed, and this doesn't look sustainable long term. ...

85. In considering the risk of harm to O I have found that Mr F is a violent and cruel man. I have assessed his risk to children and found he is a significant risk. I also found that he [assaulted] his children and his previous partner, he was abusive and called his daughter names such as fat cunt and ugly. I do find that there are considerable risks to O. I also find that it is likely to arise as Mr F simply doesn't accept any of my findings and the mother although she says she understands the risks simply doesn't accept he is a risk. My findings in the older children's case have been upheld by the Court of Appeal and Mr F is to stand trial [redacted].

86. In considering what could mitigate the risks I have tried to think what would do so. I don't think the grandfather staying would help for the reasons I have given, and it is clear to me that the mother would have been very happy taking both children on holiday with Mr F and his family. In fact, she left the children behind in order to do so when I refused her permission to take them as I was worried about what would happen abroad out of sight of O's father and the Local Authority. Whilst the Local Authority have assessed the paternal grandmother as being able to supervise contact as she doesn't accept any of the risks, I would question that decision.

87. The only thing to mitigate the risk could be if O lived with both her father and her mother and when she spent time with her mother then the grandfather could stay for that time with a prohibited steps order that O was not to be brought into contact with Mr F. There is no reason for this contact to happen in any event.

88. There is no "together and apart" assessment of the children which I think should have been completed and I accept both children would miss each other. However, this is complicated by the fact that O also has another half-sibling with her father with whom she has a relationship too. This could be mitigated by frequent contact.

89. Whilst this is a finely balanced case, I have found very serious risks from Mr F which I find the mother simply does not accept. I do think that O should live with her father and mother to mitigate the risk from Mr F and to ensure parity for the parents. I understand that both parents live some way from the other and I did consider a shared care type order, but I worried about O getting to school from each

home. On that basis I do find that O should live with her father with more of the holidays with her mother so that Y and O can have time together. This would include alternate weekends with each parent and perhaps from Friday evening to Monday morning with the mother if she can get O to school on the Monday morning with perhaps an additional evening a week on the week, she is not seeing her mother. During the holidays I think she should spend longer with her mother for O to have time with Y. Perhaps four weeks in the summer and slightly more than half the holidays? The other arrangements have been agreed by O's father and the mother and I commend them for the way they have worked together for O.

90. In respect of Y the advantages of him living with his mother are that he has an established bond, he is thriving. The disadvantages of him living with his mother are the very real risks his father Mr F poses. I have considered the likelihood of those risks for O which I adopt for Y. Because the mother does not accept the risks and neither does Mr F, I do think there is a likelihood Mr F would be violent. The mitigating factors of the grandfather staying for some of the week, do not reassure me that the mother and Mr F would remain separate if there were not court proceedings. On that basis I am left with the sad conclusion that it would be too risky to leave Y with his mother. I do think he should be placed with his grandfather with contact to his mother. I do think it is likely that his mother will spend considerable time with her father with Y. Y should spend the same weekends with O and the extra time in the holiday at the grandfather's home or with the mother if the grandfather can stay. I understand that all the checks for the Special Guardianship Order have come back clear. I make a Special Guardianship Order for Y to live with his grandfather. I also order that Mr F is to have supervised contact only on a fortnightly basis.

91. The mother seeks an adjournment to test out her separation from Mr F. I am mindful this case has already taken a year and the mother's decision to separate was taken at the very last minute. I am not convinced it is a true separation in that both the mother and Mr F still accept they love each other. Any adjournment would have to be planned and purposeful. Care proceedings have to end at some point. These have taken double the time they are meant to. I can not see this would be a good reason to adjourn the case. It would also then be likely to take many months to come back before me such is the listing in this court. This is not in accordance with the overriding objective.

92. This has been a difficult and sad case. I have spent a lot of time thinking about the best options for each child and thinking about the risks from Mr F. This judgment should be read together with the fact-finding judgment in respect of the other children which will explain the factual basis for the reasons that I have come to the sad conclusion that neither child can remain in their mother's care."

11. In relation to O, the judge ordered that she live with her father with contact with her mother in termtime on alternate weekends, to and from school, and during the holidays. As part of a different order, it was recorded that:

“9. The local authority recommends that the mother’s contact with O takes place either at the maternal grandfather’s home or supervised by the maternal grandfather, or another maternal family member approved by the local authority...

10. The court also indicated that there should be an additional evening during the week spent by O with her mother and that the time spent with the mother during the school holidays should be slightly more than half the holidays, perhaps four weeks.”

12. For Y, the judge made a special guardianship order to the maternal grandfather. In the separate order, this was recorded:

“8. The court notes that for Y the arrangements for contact shall be under the discretion of the special guardian. The local authority recommends the following initial arrangements, supported by the Guardian and endorsed by the court:

- a. Mr F to have contact with Y, fortnightly, supervised. The local authority recommends that this is by the maternal grandfather or any family member approved by the local authority. The local authority does not currently recommend that Y’s contact is supervised by the paternal grandmother.
- b. The mother has regular overnight contact with Y at the maternal grandfather’s home, including on weekends when Y is in the mother’s care to ensure that there is sibling contact. The court indicated that Y’s contact could also take place at the mother’s home if the maternal grandfather is staying.”

The appeal

13. An application for permission to appeal and a stay were made to this court on 4 December, but the application for a stay was not pressed as the children had by then moved. The grounds of appeal and skeleton argument were not filed until 9 December, and on 19 December, I granted permission to appeal. We are grateful to the represented parties for their efforts to ensure that the appeal could be heard promptly.
14. By the time of the hearing, the grounds of appeal had been trimmed by Ms Bhachu to contend that there had been (1) a failure to make a proper risk assessment, (2) a failure to make key findings of fact, and (3) procedural error in relying on incorrect information.
15. Ground 3 can be swiftly dealt with. It arises from the judge’s remarks at paragraph 75 about the seating arrangements outside court. Before us, none of the parties recognised that account, and it was not something that was raised during the trial. Clearly, the judge should have given the parties the opportunity to deal with this issue if she was

going to rely upon it, but it does not necessarily follow that her overall decision was wrong or unfair. Given my view on the other grounds, it is unnecessary to say more.

16. Ground 2 centrally concerns the mother's case that she had complied with her undertaking to keep the children away from Mr F during the year of the proceedings. For the local authority, Ms Baker told us that it had not sought a finding that the mother had breached her promise, and she accepted that the judgment did not make a finding on this issue. I agree with Ms Bhachu that a clear finding was necessary to underpin the risk assessment. It was unsatisfactory for the judge to refer to aspects of the evidence at paragraphs 75 and 81 but then to leave the matter undecided. What she described as 'worries' were no basis for an adverse decision. If the mother had obeyed the court's directions, that should have been factored into the risk assessment. There needed to be clarity about whether, as well as lacking insight, she was untrustworthy. This ground of appeal is of more substance, but it is not advanced on its own, and it is enough to treat it as providing support for ground 1, to which I now turn.
17. The risk of harm, important as it is, is one of a number of factors in the welfare checklist and it has to be carefully assessed, particularly where it may be decisive. In a case where the outcome was considered by the judge and all the professionals to be finely balanced, a solid risk assessment was critical. The respondents broadly argue that the judge had the advantage of assessing the mother in evidence and that the judgment as a whole covers all the necessary ground. I cannot accept this. It is clear that the judge thought carefully about her decision, but the conclusion that the mother does not share her assessment of Mr F as a dangerous man could not on its own be determinative. That was particularly so as this was a difficult welfare outcome for these children, under which they are separated from each other but have high levels of contact with their mother under uncertain and possibly disadvantageous arrangements for supervision for the indefinite future.
18. The judge referred to *Re F (A Child: Placement Order: Proportionality)* [2018] EWCA Civ 2761, [2018] All ER (D) 94 (Dec), in which I proposed that in assessing a risk of future harm, the court should ask itself a series of questions:
 - (1) What is the type of harm that may arise?
 - (2) What is the likelihood of it arising?
 - (3) What would be the severity of the consequences for the child if it arose?
 - (4) Can the chances of harm happening be reduced or the consequences be mitigated?
19. These broad questions need to be tailored to the facts of the individual case. Here, it is indisputable that Mr F is capable of causing serious harm to any child in his care. If he was in a position to live with or spend significant time with O or Y, the likelihood of harm would be high. But further questions also needed to be asked:
 - (1) What are the settings and circumstances in which Mr F would have a realistic opportunity of harming these children?
 - (2) What is the likelihood of those settings and circumstances arising and remaining undetected?

- (3) If the mother is incapable of being instinctively protective, can the likelihood or consequences of harm be reduced by protective measures such as:
- obligations imposed on the mother by the court
 - the vigilance of O's father
 - the vigilance of the children's grandfather
 - the statutory powers of the local authority acting under a supervision order?
20. Although the judge referred to the grandfather as potentially protective at paragraphs 82 and 86, she did so on the unstated premise that only one-to-one supervision would be adequate to counteract the risk from Mr F. This doubtless reflected her assessment of him in the case about his older children. But the harm suffered by those children arose in a different factual scenario from the situation in which O and Y were living. It occurred in a long-standing home setting, dominated by Mr F. That was not O and Y's situation and, as indicated above, the judge made no clear findings about whether the mother had complied with her obligations over the last year to keep them away from unauthorised contact with Mr F. In argument, Ms Baker described Mr F as posing a slow and creeping risk to O and Y. That may or may not be right, but it was a central matter for the court to consider.
21. The finding that the mother would not be protective on her own could not be (and has not been) challenged on appeal, but the assessment of risk did not turn on her oral evidence alone. The court needed to go on to consider the likely real-world consequences of her lack of insight. The mother and the local authority had provided lists of protective measures that could be put in place. The judge did not address these or explain why they would be ineffective. The absence of a supervision order also appears incongruous with her overall approach.
22. It is of course possible that the further questions I have posed, and any others considered to be relevant, might have been answered in a way that justified the removal of the children from their mother, though further thought would then have to be given to making the resulting arrangements coherent. But the questions had to be asked, and until they were answered it could not reliably be known where the children's welfare interests lay. I would therefore allow the appeal and remit the local authority's application for a supervision order for rehearing by a judge to be nominated by the Family Presiding Judge.
23. We have received short written submissions on the appropriate arrangements for the children pending the rehearing. It is not clear why the application for a stay was refused on 29 November as there was no urgency in disturbing the children's settled situation. There was an apparently strong case for granting a short stay to allow for an urgent application to this court in accordance with the principles set out in *Re A (A Child) (Residence Order)* [2007] EWCA Civ 899, [2007] All ER (D) 156 (Jun) at [27] and *Re N (Children: Interim Order / Stay)* [2020] EWCA Civ 1070, [2020] 4 WLR 119, [2021] 1 FLR 640 at [36-37].
24. Now that further time has passed, the respondents argue that the children should not be returned. They rely on the confusion it may cause them, and on the impact on O of

having to revert to her original school, where a place remains available. They point out that there is a risk of the children having to be moved away from the mother again, depending on the outcome of the rehearing.

25. This situation could have been avoided, but as matters stand I am in no doubt that the right course is for the children to return to their mother, both as a matter of welfare and of justice. Any short term disruption is likely to be limited in comparison to the disruption already caused. For a child of O's age, a return to her familiar school is not a major issue. Further, the court will be better able to assess the reality of the children's situation, and the risks inherent in it, if they are actually in their mother's care. There will be an interim supervision order and the parties should agree interim arrangements along the previous lines to keep Mr F away from the children, except for supervised contact with Y. The mother will understand the likely consequences of any breach.
26. Although we are allowing this appeal, I fully recognise the heavy pressure under which the judge was working. Having had the advantage of reading her substantial judgments, I pay tribute to the care with which she conducted these two difficult sets of proceedings.

Lord Justice Warby:

27. I agree.

Lord Justice Snowden:

28. I also agree.
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