

Neutral Citation Number: [2024] EWFC 335 (B)

Case No: ZW23C50362

IN THE FAMILY COURT AT WEST LONDON

Gloucester House,
4 Dukes Green Avenue,
London
TW14 0LR

Date: 8 November 2024

Before :

HIS HONOUR JUDGE WILLANS

Between :

THE LONDON BOROUGH OF RICHMOND Applicant

- and -

- (1) SALLY
- (2) BOB
- (3) SIMON

JANE & PETER (through their children's guardian)

Respondents

Jamie De Burgos (instructed by **SLLP Law**) for the **Applicant**
Damien Stuart (instructed by **Lovell Chohan Solicitors**) for the **First Respondent Mother**
Jean-Paul Sinclair (instructed by **Mackenzie & Co Solicitors**) for the **Second Respondent Father**
Hillary Pollock (instructed by **Hecht Montgomery Solicitors**) for the **Third Respondent Father**
Sandra Fisher (instructed by **Beu Solicitors**) for the **Fourth and Fifth Respondent Children**

Hearing dates: 6-8 November 2024

JUDGMENT

The names used in this judgment are not the names of the individuals involved and have been adapted to preserve anonymity

Introduction

1. In this final hearing the key issue to determine is as to whether the two children, who I will refer to as Jane (**the Fourth Respondent**) and Peter (**the Fifth Respondent**), should live with their mother, Sally (**the First Respondent**) or, with Sally's mother, Felicity. If they live with Felicity then there is an issue as to the time they will spend with Sally and the time Jane will spend with her father, Bob (**the Second Respondent**). Finally, there is an issue for consideration as to the structure of information sharing with Peter's father, Simon (**the Third Respondent**).
2. All parties accept if the children cannot live with Sally, then they should live with Felicity. The local authority say the children should live with Felicity. The other parties disagree and support the children staying with Sally.
3. I have had significant involvement in the life of Jane and Peter over the last three years or so. (i) Previous proceedings commenced in October 2021 and in August 2022 I held a fact finding hearing in which I made findings against Simon summarised at the end of the associated judgment as including: partner abuse (of Sally and another); neglect by Simon of an older daughter non-subject to these proceedings (Olivia), and; physical and verbal abuse of Olivia. I was asked to, but did not, make findings of sexual abuse of Olivia by Simon. In September 2024 at a criminal re-trial Simon was convicted of sexually abusing Olivia in terms which I understand mirror, or largely mirror, the allegations previously placed before me. At a first trial he had been convicted of child neglect of a manner which I believe fits within my earlier findings. He is now awaiting sentence but the indications are that he will face a custodial sentence in excess of 10 years. (ii) At a subsequent welfare hearing in December 2022 I approved the continuing placement of both children with Sally under a 12-month Supervision Order. (iii) The current proceedings commenced in September 2023 with the local authority seeking to extend the supervision order. In February 2024 the local authority issued a new application for a care order with respect to the children. This became the lead application. There has been very substantial judicial continuity throughout the proceedings.
4. At this final hearing I heard evidence from the allocated social worker, a contact worker, each of the parents and the guardian. Simon was produced throughout by video-link from custody. All others attended Court in person. I keep this evidence in mind as I do the documents in the bundles placed before me and the various written and oral submissions made by counsel for each party.

Legal Principles

5. Jane and Peter's welfare is my paramount consideration. It is my duty to act in their welfare interests. I am guided in considering their interests by all the circumstances of the case and the specific matters set out in section 1(3) Children Act 1989.
6. The local authority seeks findings set out in a threshold document and in default of placement with Felicity would want a supervision order supporting any placement with Sally (all parties agree to this in default). As such the local authority have to prove the crossing of the threshold: section 31 Children Act 1989. That the threshold is crossed is not in dispute.
7. The heart of this debate before me is as to what the Court should do on the basis of the threshold being crossed. The issue is whether the children's welfare supports a placement with their grandmother or remaining with their mother. This requires a balancing exercise to be conducted and an analysis of the various positives and negative of each option to inform the welfare conclusions. In this regard there is no presumption in favour of Sally as a biological parent. Tied in with this question is recognition of the fact that any order will amount to an interference in the family life of the various individuals including the children and that such interference has to be justified to be authorised.
8. I am required to determine factual issues in dispute relating to the nature and extent of an ongoing relationship between Sally and Simon after the previous proceedings. I will approach this on the basis the local authority have to prove the allegations made with there being no duty on either of Sally or Simon to disprove what is said (although their response is very important). The local authority will prove the allegation if the evidence persuades me, it is more likely than not what is said to have happened did happen. It will then become a fact in the proceedings. In considering these issue I have regard to all the evidence and particularly that of Simon and Sally. If I find either have lied to me then I should approach that finding with care before concluding they cannot be trusted generally. I would need to assess the motivations behind any lie before giving wider application.

Background

9. I do not intend to provide a detailed background to the case. The prior background can be found as set out in my fact-finding hearing judgment which is available to the parties. I will within this judgment cover the essential factual disputes which concern the local authority and underly this application.
10. I will also avoid a detailed procedural summary. The procedural history of this case can be found in section B of the Bundle.

Resolution of Factual Matters

11. The issue investigated within this hearing related to the extent to which, and if established the reasons why, Simon and Sally have remained in direct contact following the last proceedings. The outcome of the last proceedings was that Simon posed a risk of emotional harm to the children were they to once again witness domestic abuse of Sally within their home. This was complicated by Simon's struggle with drink and drugs and the impact this had on his impulsivity and ability to

regulate his emotions and actions when impacted by the same. On the basis of the findings with respect to Olivia one could not be confident the children themselves would not suffer direct harm from Simon. As a result of the previous findings contact was to be supervised between the Peter and Simon.

12. Notwithstanding the above, the local authority developed a growing concern that Simon was having unauthorised direct contact with both children. Further to this they have developed a concern as to whether the parental relationship had resumed. The key elements that found this concern are as follows:

- An incident in January 2023 when Sally called the police when criminal damage was caused to her property. Simon was arrested in relative proximity to the property
- Telephone disclosure through to October 2023 which suggested a very high level of call and text messaging between the two
- A report of the parents being seen together in late May 2023
- An occasion on which the social worker received a call from Simon and it appeared Peter may have been in his company (whilst not at the contact centre)
- Reports from Olivia of social media posts which suggested to her Simon was in contact with the children
- Evidence of the parents travelling to Spain in early June 2023 on the same plane
- Simon not engaging in a process of contact risk assessment with the suggestion this reflected the fact he was having contact in any event.

13. Sally accepted she had been in contact with Simon and should not have done so. But she limited this to occasional calls and messages which were restricted to simply updating him as to Peter's progress and matters of that sort. She denied the relationship had continued or resumed. She disputed being with him when allegedly sighted in May 2023. She did not know whether he had caused the criminal damage to her home in January 2023 but noted he was arrested close by. As regards the Spain trip she gave an account of Simon's sister being due to travel as part of a 'girls trip' with her and other friends but she had then pulled out and sold her plane ticket to her brother. But this was as far as the matter went, Simon had not been involved in the holiday. As regards the telephone calls these arose in circumstances in which an ex-partner of Simon's (who is also a friend of Sally's) had use or ownership of the phone in question and had been the participant in the messaging which caused concern. Simon's account was in essentially similar terms. In relation to the incident when he called the social worker, he claimed he was with a friend who had a child also called Peter and that is the child he was speaking to. Both the local authority and guardian probed this evidence and were evidentially suspicious as to the reality of the events in question. The guardian put her level of suspicion as being 8-10 out of 10.

14. Having considered the evidence, I have reached the following conclusions on the balance of probabilities:

- I am in little doubt the parents' relationship extended beyond that accepted by the parents. In particular I accept the evidence from the contact worker of seeing the parents together at the end of May 2023. Whilst I have regard to the dangers arising with respect to identification evidence (see *R v Turnbull* [1977] QB 224) I consider this is a reliable and correct identification having regard to in particular:
 - The familiarity the worker had with the parents through her work at the centre
 - The opportunity and time she had to view the parents as the car in which she rode passed them at slow speed
 - The relative proximity of the parents to her with her being in the passenger seat of the car and the family on the pavement to her near side
 - The absence of any environmental factors that might diminish the quality of the identification
 - The immediate conclusion she reached
 - The absence of any elements of surrounding drama or fright that might cast unreliability on the identification
 - The narrative of the account, of recognising the family group and observing them as she slowly passed by.

I have reflected on the parental evidence but I favour the evidence of the contact worker without equivocation. I acknowledge Sally provides evidence of her whereabouts at a point in time on that day. But that is by no means inconsistent with also being seen as alleged. I also draw on my other findings (the findings are inevitably to an extent cross-supporting although I have considered each individually) of Sally continuing to be in communication with Simon. In such circumstances it begs the question why she would not permit him to have this form of contact.

- I am equally persuaded that the burden of messaging found in the telephone disclosure represents parental contact not messaging between Sally and the third party. I did not find the evidence relating to the friend credible in the light of the very extensive nature of the messaging or the timing of many of the messages (late into the night). I have regard to the disclosure of similar messaging within the fact-finding process and there is a strong similarity in play. Having regard to the timing of the messaging I am in little doubt this reflects a relationship beyond that described by the parents. I do not consider it to be consistent with the occasional updates suggested. It is far beyond that and in my judgment likely reflects more emotional adult communications. I neither can nor need to reach a conclusion as to the content of the messaging but I am in no doubt it is adult in quality.

- As regards the Spain trip I do in some regards accept Sally's evidence as to the circumstances in which this arose. But I consider it likely she was relaxed about the change in plan and Simon travelling on the same flight given the generalised openness to contact suggested by my findings above. But I do not find they were effectively on holiday together. I note Bob's evidence of speaking to Jane whilst on holiday and picking up no signs of Simon's presence. I do bear in mind there is some evidence of Jane withholding information.
 - I find it likely Simon was in company with Peter when he appears to have potentially misdialled the social worker and was heard to refer to Peter. I found the account of this being a different child incredible in the light of my broad findings.
 - I do not consider the reports from Olivia take the case any further given my essential finding including ongoing contact and likely attendance of Simon at the property (see above)
 - I find it likely Simon was at the property in January 2023. I make no finding as to actual criminal damage as I have limited evidence for doing so. But it is likely there was some disharmony which led to the police call. I am suspicious as to this being a repeat the type of events found within my earlier findings but I make no specific finding.
 - I am highly suspicious the parents did resume an intimate relationship during this period but I only find that their relationship continued to have an emotional adult element. Whether it once again became sexual does not materially impact on the resolution of this case.
15. In essence I do not accept the parental evidence. It is not helpful to Sally that she has plainly misled the professionals and attempted to hide the reality of what was happening, even on her own case. She has appeared before me at hearings during these proceedings, when the question of removal of the children was under consideration¹, and either lied or consciously withheld information from me. I am in no doubt she has done this as she feared losing her children. I find her lies have been motivated by this fear.
16. These are the findings I make. I make no further findings and none are required. This is the real issue in the case. The risk arising from the above is plain and obvious in the light of my relatively recent fact-finding conclusions. It is agreed Simon has continued to struggle with alcohol issues. This was not a situation in which it was wise or appropriate to permit him to come into uncontrolled contact with the children.
17. I am in no doubt this has all happened because Sally has continued a deep emotional attachment to Simon. The sense is of the two being enmeshed. In her evidence she showed insight as to her vulnerability (with which I agree) and the basis for this being previous abandonment. She was open in her evidence as to her vulnerability to Simon's emotions and responsive to her sense of his needs. In the fact finding it was clear she minimised the risk to herself from domestic violence and there was a

¹ There was a removal hearing in late June 2024 based on much of the above which post-dated the Spain trip in which Sally allowed this fact to pass without mention

sense in which she felt she could make this work and repair the situation, that she could perhaps change Simon. I appreciate few relationships are one-dimensional and it is likely for all the justified criticisms of Simon that there would have been points in time when the relationship was positive. It is likely a combination of this and Sally's own vulnerabilities have caused her to poorly calibrate the balance that should be struck between the risk of harm and the benefits of continuing. My previous judgments should have been a wakeup call for her. During this hearing Simon expressed himself in very clear and positive terms as to her qualities as a mother. I watched her with care at that point and could see this was hard for her to hear. I agree with her that change for her is a 'work in process'. My concern is that she has lowered defences so far as Simon is concerned and whereas I do not suggest he actively seeks to exploit this, it seems likely his presentational manner to her has this impact. He has the tendency to present as something of a victim and a person who is suffering and I consider this is something Sally struggles to walk away from.

18. I have considered the most recently updated report from DV Act (supplied prior to submissions) and agree with the fundamental conclusions therein of ongoing risk and the need for work to be undertaken.
19. It is therefore right for me to note my full understanding as to the local authority's concerns and the worries they have in accepting Sally's explanations. Frankly, she only has herself to blame for this. I agree in this regard with the guardian. I do though accept it is a great shame that more substantial work has not been undertaken with her to develop a resilience against these risks. I would be interested at this time to be able to evaluate how such works might change her understanding and resilience, but I do not have this evidence because it has not been obtained.
20. But there has been a material change of circumstances that simply cannot be overlooked. Simon has now been convicted and will in all likelihood be incarcerated for a substantial period of time. Should I agree with the local authority in their fear that these risks are likely to be transferred onto a new abusive relationship or with the guardian who sees this as a fortunate opportunity for Sally to now make the changes needed of her? I will return to this below.

Welfare Analysis

21. Jane is aged 7 and has expressed a clear wish to stay with her mother. She is too young to have a mature understanding of the issues in the case and this must be taken into account. However, she has had a very disrupted childhood and it is very easy to understand her craving for a settled period of consistent care. Peter is too young to express meaningful views although the evidence is clear that he is very attached to his mother. I understand the children to have a strong relationship with Felicity and there is no doubt this would likely be their second option. I do not intend to diminish Bob's role in Jane's wishes but he cannot offer a home for both children and I am confident the sibling relationship is of firm importance to both children. He was child focused in accepting this reality.
22. These children have a central need for a stable home environment with a care giver who is available. This needs to be an environment which is not undermined by crisis and problematic drama. Jane in particular has had a very disrupted childhood and I heard compelling evidence from the guardian as to the troubling impact this has had

upon her. But I also heard clear evidence of a remarkable turnaround in her presentation which suggests Sally is doing a good job at home.

23. I accept the evidence that further destabilisation at this stage has the potential to be very damaging for the children. The local authority propose a change of home and carer, a new school for Jane (although this will occur in any event), and a reduction in contact with both parents which matters stabilise. Taken together these would have a significant negative impact on the children. I heard as to Jane having her own bedroom for the first time and the impact on her of now being removed from her Sally's care. I have noted the previous challenged in her presentation and I have regard to the risk that further change may now upset this progress. Peter has known nothing other than his mother as his carer and it is difficult to foresee quite how he will make sense of such a change. In my assessment for this to be justified there would need to be a clear and present risk of harm.
24. I have regard to the children's ages and the concerning chronology both in this and the previous proceedings. These are important characteristics.
25. Risk of harm is central to this case. I accept this case is not a case of pure situational abuse (i.e. only arising out of the Simon-Sally relationship). There is evidence of previous abuse and Sally's vulnerability extends beyond this relationship. Yet a significant focus in this case is Sally and Simon's enmeshed relationship. I agree with the guardian when she speaks of Olivia intervening in this case to provide a lifeline for Sally to make change. I agree this is a real opportunity that can and must be taken. I appreciate that in approaching this question there is a worry over transparency on the part of Sally. There can be no doubt that Simon's likely lengthy incarceration places this analysis in a very different context. Whilst I am not entirely persuaded Sally has fully digested the implications of Simon's conviction, I accept her evidence to me that this conviction is one which genuinely disturbs her and will likely impact on the way in which she views Simon. It is important for me to bear in mind that my findings set out above all arose in circumstances following my contrary finding. Sally was then entitled to proceed on the basis Simon did not abuse Olivia, she now knows he did. I judge this in addition to his sentence has the ability to materially reset the calibration of risk in this case
26. As to capacity of the parents. I acknowledge Bob is providing an important and positive role in relation to Jane and to an extent indirectly for Peter. He is very secondary to this judgment but I should and do not overlook the potential role he has in supporting the future passage of care for the children. In the case of Sally, it is accepted that she provides the children with good care. The improvements in Jane's presentation are testament to this. I also recognise her willingness to seek to make change. I acknowledge the evidence of the guardian in this regard. In my assessment she presents as an intelligent person who genuinely wants the best for her children and can provide this for them if not distracted. She appears to be interested in work to improve herself and I have little doubt she will fully engage. She did so in previous assessments and has sought out the Freedom Programme herself. I also accept she is driven to make changes and I am impressed by the efforts she has made off her own back in this regard. She deserves credit for this. I can see no reason as to why she would not be able to improve her insight and resilience to abusive relationships with appropriate support and time. Given his circumstances and his case I need make no detailed comment in respect of Simon under this heading.

27. Considering the range of orders and the placement decision I am in no doubt some form of order is required. The question for me is as to whether the ongoing concerns are at sufficient level to require the children to move into their grandmother's care or whether to the contrary, they can be safely cared for by their mother. I am in no doubt the latter would require the support of a supervision order. In this regard I have the support of all the parties. The alternative planning of the local authority is for a new local authority 'X' to take on the supervision plan. I have been informed they have agreed to the same. The central element of the plan is around the provisions of the domestic violence work with continuing oversight to safeguard against Sally slipping back.

Conclusion

28. I agree Sally remains at risk of further entering into an abusive relationship. This is notwithstanding the fact that Simon is no longer available. But I do consider the risk is of a different magnitude to that were Simon still actively in the community. Such a risk will remain at a more than negligible level until such time as Sally completes appropriate domestic violence work.
29. I do not subscribe to the notion Sally must now be celibate. This is an unrealistic suggestion. The key for this case is her ability to consider and enter such relationship from an informed position and mindful of signs which might cause a concern as to potential abuse. There are of course many partners who will not pose this risk. My concern is that Sally is vulnerable to individuals who pose a risk not that she is inherently attracted to them as a result of this characteristic. As a result, this is not a case in which Sally leaves proceedings believing the judicial view is that any relationship is (not might be) a risky relationship and that she would avoid entering any relationship as a result. I fear that state of mind would increase the risk of concealment and with it increase the chance of repetition. Rather, I would hope she actions what she told me in evidence. She would not jump into a relationship and would first use the resources available (Claire and Sarah's law) to understand whether such an individual has a known risky history. There is no reason why she should fear notifying the local authority in such a case. If the individual has a clean bill of health, then she might proceed with the normal caution all people take when testing a new relationship. However, if the individual has issues of note then she is informed and can step away before she becomes entwined. She has told me she will act in this way and frankly if her children remain with her, they deserve nothing less.
30. I consider the undoubted risks in this case cannot determine the outcome in isolation. I must balance against this risk the counter risk to the children of removal from the care of their mother. I assess it as being very likely the children will suffer significant emotional harm arising out of the same notwithstanding the positives Felicity can bring. It concerns me that Jane has only recently obtained some stability and appears to be looking forward to the next stage of her life with Sally. It concerns me that the children will find it very hard to make sense of their removal in such circumstances. The evidence of the guardian in this regard was impressive and highly persuasive.
31. I am therefore balancing a likely significant risk against a lower and possible level of risk. I must also have regard to the potential to mitigate or ameliorate the second risk by providing support to Sally through appropriate domestic violence work. I am

of course engaged in a proportionality exercise if I am to justify removal as suggested. I have no doubt the children will receive good and loving care whether with Sally or Felicity. But will they suffer more if they are removed and to an extent unwarranted by the actual current risks present when seen in the light of the opportunity to ameliorate the same by active work which I judge Sally will engage in given the chance?

32. In my assessment the balance comes down in favour of non-removal. In my judgment the right answer for these children and the one that best accords with their welfare interests is to remain in the care of their mother under a supervision order and with the surrounding support that Felicity, Bob and other family members can offer. This needs to have support of the orders the Court can make and a written agreement with clear expectation. Whilst this does not remove all risk it is the right answer.
33. The expert evidence from DV Act recommends Sally engage in a bespoke piece of DV work. The guardian supports this wholeheartedly and explained why a generic piece of support as is currently offered by the Freedom Programme – whilst worthy in its own right – falls short of what is needed. I agree entirely with this view. **I do not want to see these children before me again and I consider it would be failure of the highest order were that to occur through a shortsighted failure to now provide a piece of work that might successfully remove the very risks the local authority fears.** As I noted the costs of the same are not far from the costs of a new set of proceedings and far below the costs arising were proceedings to repeat. This local authority must immediately apply its mind to this judgment. I appreciate the supervision plan will now pass to authority X, there must be a supervision order for 12 months, but I fear unless this is grappled with by this local authority nothing but the Freedom Programme will occur. As I suggested I want confirmation from the local authority that this is their revised plan of action or alternatively a clear letter explaining why they differ from my opinion (and that of the guardian). This letter must come from a senior manager within the team and must be copied to the parties and held on the file. If this is not done and the worst occurs then they will no doubt be asked to account for their failures. I would want this letter within 14 days.
34. There are further supplementary orders and points as follows:
 - I intend to extend a non-molestation order until 4pm on 8 November 2032. The terms of the order will be amended to covering the contact provisions only as found in the last order [§§1 and 4 of that order]
 - I intend to continue the prohibited steps order against Sally on both a direct and indirect basis. This will continue for the same period as above. Any contact must be consistent with professional guidance and a likely risk assessment.
 - I accept an undertaking from sally not to personally communicate with Simon. I will suggest this be for the same period.
 - Each of the above should be disclosed to the prison at which Simon is accommodated and should travel with him as part of his file. The prison should be cognisant of these restrictions.

- I leave contact between Jane and Bob to be a matter of flexible agreement between the parents.
35. I turn my mind to the relationship between Simon and Peter. Simon does not seek face to face indirect contact or direct contact. He seeks the opportunity to send a limited amount of indirect contact each year and a regular update as to Peter's welfare. The concern I share is that contact has the potential to undermine work being undertaken by Sally and once again lower her defences. For these reasons I take a cautious approach to contact. I am assisted by Simon's concessions in this regular and I give him credit for the same. In my judgment the balance must favour security for the children above all else. Anything which undermines their placement must be avoided. In my judgment this contact comes close to but is not the same as the identity contact found following a placement order and adoption. In my assessment the balance is as follows:
- i) I consider Simon should receive a welfare update on an annual basis.
 - ii) In addition, she should be able to send 3 cards/short letters each year at Christmas, Peter's birthday and around the time of the Summer holiday.

In my assessment the management of this will in the first instance be the responsibility of authority X. I consider it will be an important part of the supervision order to plot a strategy for how this will be managed post supervision order. It may be the resources available for letter box contact can be used to facilitate the same. I do not want to draw sally into direct communication with Simon and would hope a structure can be set to avoid this going forward.

36. For the avoidance of doubt if, as I urge, a bespoke piece of DV work is commissioned then the documents contained within these proceedings and particularly my judgments, the previous DV assessments and the guardian's analysis should be shared with organisation. I also consider there is merit in sharing the contents of this judgment with Felicity but will hear any views to the contrary.
37. I will proceed to hand this judgment down and will address any corrections or requests for clarification. This judgment will be published and I attach an anonymised version. Any comments on this will be considered.

His Honour Judge Willans