NC. [2019] EWHC 818 (Fam)

No. FD00P00001

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 12 February 2019

Before:

MR JUSTICE WILLIAMS

(**In Private)**

B E T W E E N :

P Applicant

- and -

O Respondent

THE APPLICANT appeared as Litigant in Person.

MR S. LYON (instructed by Thomson Snell & Passmore) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE WILLIAMS:

1 I have before me P, the father who appears in person. Also present is the mother (for want of a better expression at the moment) O, who is represented by Mr Lyon of counsel, along with his solicitor, Sarah Judd of Thomson Snell & Passmore.

2 This is a case which when it first entered my list and I looked at the case number (FD00P00001) I thought there must be some mistake because that case reference dates back to the year 2000, now some nineteen years ago. But, no, it was not. It related then to a girl called S, who was born on 18 April 1997 and so who is twenty-one now and will be twenty-two in April of this year. Litigation concerning her has been going on, on and off, in this country and in Australia for most of her life, I think, including her father being imprisoned in Australia for, I think, two charges of either making threats to kill or conspiracy to kill the mother.

3 But to cut to the application which is currently before me, in April 2015, Mr Justice Jonathan Baker (as he then was) made a Family Law Act non-molestation order which prohibited the father from communicating or making contact with the mother or S by letter, telephone, Skype, text message, e-mail, any means of electronic communication or through any social networking sites, including Facebook, save through the offices of Messrs Thomson Snell & Passmore, the applicant's solicitors. That was the fourth clause of a fairly standard non-molestation injunction under the Family Law Act, but what was unusual about it was that it was not time limited because of the highly exceptional circumstances that confronted Mr Justice Jonathan Baker then.

4 On 1 October of 2018, the father issued an application which was to vary the terms of the Family Law Act order and the draft orders which were originally sought back in October and which were sought when it first came before me in January of this year, were, in effect, to seek a request by this court or a direction by this court to the police service in Australia to identify the whereabouts of S and to serve on her the application; really with the intention of seeing whether S wished to communicate or contact the father. But that application, I think, was issued on 1 October *ex parte* and Mr Justice Jonathan Baker, in probably on one of his last acts as a High Court judge before his elevation to the Court of Appeal, directed that it be heard on notice and so it came before me in January of this year. But, at that stage, still the application had not been served on the respondent mother. So I gave directions on 22 January for the service of the application and for the filing of statements or position statements in response. It seemed to me, and I think the father agreed at the time, that really the thrust of his application for a variation was targeted on paragraph 1(d) of the non-molestation order of April 2015 because the orders he was seeking would provide for other means by which communication could be sent to and from S. So that is what I have been treating it as.

5 The situation as regards contact between the father and S is further complicated because Bexley Magistrates' Court, on 18 May 2016, in exercise of their criminal jurisdiction, made what is called a violent offender order which prevented the father or an agent acting on his behalf from contacting nine named individuals, but, significantly, the mother and S. That order came into force on 17 May 2016 and expires on 16 May 2021. It is in stricter terms than the non-molestation order made by this court because it precludes any contact being made at all. The violent offender order records that the father is a qualifying offender because he has been convicted of the incitement to murder of the mother; and, whilst awaiting sentence, further conspired with others again to have her killed; and has acted in such a way that there is reasonable cause to believe it is necessary for the order to be made

on the ground that the mother now lives in fear of her life and her family and friends have been subjected to threats; and she has now been placed under protective services to threats worldwide to protect her identity. So the order is then made in accordance with s.100 of the Criminal Justice and Immigration Act 2008.

6 As I pointed out in the course of exchanges with the father in January, any amendment to the Family Law Act order would not avail him of any advance in his position in relation to communication with his daughter because the violent offender order was in more stringent terms. Since then, the father has, I think, filed an application with Bexley Magistrates' Court, on possibly 4 February, in order to seek a variation of that order.

7 Following service of the application on the mother's solicitor's, they have filed a statement on behalf of the mother but also on behalf of S. Of most significance are the communications from S. One is dated 2 October 2018, which is clearly in response to a communication from Ms Judd arising out of the hearing which took place on 1 October, when Mr Justice Jonathan Baker made some, I think, disclosure orders or dealt with a disclosure application and also dealt with the *ex parte* application for variation of the non-molestation order. In that e-mail, which is redacted to remove various relevant details which I assume might tend to disclose her whereabouts, she says:

> "Dear Sarah,
>
> ...To summarise, I want nothing to do with the man who has dedicated his life to petrifying the most important person in the world to me. The proposition that he has any interest or capability to protect me is offensive and hurtful.
>
> Regards, S."

The father suggests that the last sentence is troubling because at court on 1 October no mention was made of him having an interest in or capability in protecting her and nor was that either the terminology or thrust of his application. Thus, he is concerned that there has been some miscommunication, I think, at best, or something more sinister, at worst.

8 Subsequently, S has written a further letter. I believe, although I have not gone into the precise chronology of it all, that there were further communications between the father and Thomson Snell & Passmore after 1 October hearing which related to his application to vary the non-molestation order and S sent a signed letter on 8 November 2018, saying:

> "Thank you for your letter and for assisting my mother and I to protect ourselves from the father for many years. In regards to the recent application made by the father [and that plainly must refer to the 1 October application to vary the non-molestation], "I can confirm that I do not wish to receive any contact of any form, shape or manner, whether direct or indirect, whether by electronic means or otherwise from him, and do not wish to have any dealings with him whatsoever at this time, nor do I wish to receive any form of communication or contact from any other person on his behalf other than through the solicitors Thomson Snell & Passmore. I can also confirm that, for the purposes of the father's current application to the court, I wish for you to advise the father that, for the purposes of that application, you are indeed instructed to deal with it on my behalf."

9 In advance of today, the father has filed further position statements in support of his application and has made submissions to me. The essential thrust of what he seeks is to promote at some point the possibility that he and S might communicate with each other and, in particular, to open up a possibility that, at some point, if S wishes to contact him, that

there is a means by which she can do so and a means by which she could do so without the intervention of the court or them being placed in breach of court orders.

10 The evidence, at the moment, in relation to communications from the father to S or from S to the father is contained in the e-mail and letter which I have just read and which are exhibited to the statement of Sarah Judd, who I think has been acting for the mother for many, many years. There is no reason at all to suppose that the contents of Ms Judd's statement or the documents exhibited to it are anything but genuine and that they express the true sentiments of S, communicated through a legitimate means to Ms Judd who has evidenced them to this court. So it seems to me that the evidence is clear that S's views are before the court and there is no reason at all for me to treat them as anything other than genuine and an expression of her true wishes.

11 If that is so and that she wishes to have no form of communication from the father or to the father at this time, there is no basis upon which to vary the order. She refers in her letter to "at this time", so she seems to have in contemplation, I suppose, a possibility that things might change for some reason. She also is very clear in her expression that the channel of communication which was provided for by the non-molestation order remains the only channel through which she would accept or make communication with the father. That being so, there seems to me to be no merit at all in any application to vary the terms of the order of April 2015.

12 From the statement of Ms Judd, I get the distinct impression, although I cannot lay my hands on the letter at the moment, that the contents of the e-mail from S of 2 October and the contents of letter of 8 November were communicated to the father in advance of the hearing before me on 22 January. If that is the case, I struggle to understand why the father has pursued the application any further, given the clear indication of her current wishes, but also

the clear indication that the ordered mechanism for communication remained acceptable to her.

13 The net result, though, in respect of the father's application of 1 October 2018 to vary the terms of paragraph 1(d) of the order of April 2015, is that I dismiss that application on the basis that the evidence before me plainly demonstrates that no variation to that is appropriate in the circumstances. Indeed, given the evidence, it would be wholly inappropriate to make any variation. Particularly, it would be inappropriate to seek to engage the police services in Australia in what would amount to an entirely sterile or redundant exercise when there is an existing and effective means of communicating with S. So I dismiss the application.

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