

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION

Case No: WR18P00256

1st Mezzanine,  
Queen's Building  
The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday, 1<sup>st</sup> August 2019

Before:  
THE HONOURABLE MR JUSTICE KEEHAN

In the matter of C3 and C4 (Child Arrangements)  
B E T W E E N:

FW

and

WU

and

C3 and C4

THE APPLICANT appeared In Person  
MISS C PAPAZIAN appeared on behalf of the First Respondent  
MR M MAYNARD appeared on behalf of the Children through the Guardian

JUDGMENT  
(Approved)

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.*

MR JUSTICE KEEHAN:

1. In these proceedings I am concerned with two children, C3 who is eight nearly nine, and C4 who is six nearly seven. Their mother is WU and their father is FW.
2. I have before me three applications, one an application by the father for permission to bring a Child Arrangements application before the court in respect of C3 and C4, an application by the mother for an extension of the s.91(14) order made by District Judge Khan on 27 July 2016 and an extension or making of a new non-molestation order on the same terms as made by District Judge Khan in July 2016.
3. In considering these applications, I have very well in mind that my paramount consideration is the welfare best interests of C3 and C4, s.1(1) of the Children Act 1989. I have taken into account also those matters set out in the welfare checklist, s.1(3) of the 1989 Act. Furthermore, I have had regard to Article 6 and Article 8 rights of the children and parents, reminding myself that where there is a tension between the Article 8 rights of a child on the one hand, and the parents on the other, the rights of the child prevail: *Yousef v Netherlands* [2003] 2 FLR 210.
4. This hearing follows immediately on from a three-day hearing in a related case concerning FW's other child, C1, whose mother is MT. I gave judgment in that case this morning, and the judgment in that case, under case number GL18P002676, should be read with this judgment.
5. In that judgment I set out the history of this litigation and of the litigation concerning C1. I set out in detail the evidence I have heard over the course of the last three days from a psychologist who assessed the father, Miss Long, from the mother in the other case, from the father and from the Children's Guardian, who is the Children's Guardian in both cases.
6. In that related case, I came to the view that the father rightly was diagnosed by Miss Long as suffering from a narcissistic personality disorder; but even if that were wrong, the father's thinking is concrete in the extreme and he will not truck any opposition to his view of the world. You either agree with him or you are against him and he will vent his anger and his fury on those who do not agree with him.
7. He frequently during the course of the previous hearing, gave the excuse that he became angry and uncontrollable and intimidating and coercive, not his words, when he felt frustrated by the litigation, or the circumstances he faced in his attempts to have contact

with all of his children. When frustrated his temper boils over and he is currently unable to control it.

8. He told me himself, in evidence, that when he lost his patience, you have to question his judgement. I came to the conclusion on the totality of the evidence that I heard in that case that the father posed a risk to the mother and directly and indirectly to C1, his child, and to C2, the mother's older son from a previous relationship.
9. The sadness that I expressed in that case and I express here also, is that in many ways the father has fine qualities as a father, and I do not doubt for one moment that he deeply loves all of his children including C3 and C4. However, such are the defects in his personality and his character that he poses a risk of undertaking aggressive and intimidatory conduct which would cause serious emotional and psychological harm to WU, as I found it did to MT, and that would indirectly cause emotional and psychological harm to the children in WU's care, namely C3 and C4.
10. There have not been any untoward incidents concerning FW and the children, or the mother since District Judge Khan's order of July 2016, aside from the father's contact with the school. However, were such contact to take place, it would cause untold emotional and psychological harm to C3 and C4. On the balance, between there being contact resumed, which has not taken place now for some six years, of any sort between C3 and C4, and the harm that they would suffer from continuing not to have a relationship with their father, the balance falls decisively on there not being contact with him at this time.
11. Accordingly when I come to consider the father's application for permission, I note that it was granted by His Honour Judge Plunkett without giving an opportunity for submissions from the mother or from the Guardian on 28 August 2018; that order for permission to make a Child Arrangements Order application was overturned on appeal by Cobb J on 21 February of this year, and the matter was remitted to me for re-hearing.
12. In light of the findings that I made in the judgment in the related case, I am entirely satisfied that there has been no relevant or effective change in the circumstances of the father or of the mother or of the children since the s.91(14) order was originally made. I can see no grounds upon which the father could persuade me that he should have permission to make a Child Arrangements Order application.
13. I am fortified in coming to that conclusion when I consider, having regard to his conduct in the other case, that in making an application, part of his motivation would be to intimidate, and cause upset to WU. Accordingly, the father's application for permission to make a

Child Arrangements Order application is refused.

14. I should have added that although the father had attended the hearing over the past three days in the other case, he did not attend court today (a) to hear the judgment being given in that case nor (b) to participate in this hearing. He communicated with the parties and the court via an email in which he set out some short, written submissions in support of his application for permission and setting out his objection to the mother's applications. I have had regard to all of those matters when making my decisions in this case.
15. I am asked on behalf of the mother to extend the s.91(14) for a period of five years. The Guardian, while supporting the principle of there being a s.91(14) order, leaves the duration of that order to me.
16. Miss Papazian says that it should be as long as possible to afford respite from the litigation process for WU and for the children.
17. When matters were at their peak, in July 2016, and I consider he was right to do so, District Judge Khan made the order for three years. As I have already mentioned, aside from making contact from time to time with the school, the father has, as I understand it, not sought to contact the mother nor the children, although he has continued his regular use of litigation. I consider the welfare of the mother, and thereby the welfare of the children, require further respite from the father's litigation conduct. Were he to litigate in an unregulated manner it would cause harm to WU and thereby harm to C3 and C4.
18. Accordingly, bearing in mind the principles set out in the Court of Appeal's judgment in *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573, I am wholly satisfied that it is necessary to make the draconian provision of a s.91(14) order, preventing the father from making any application in respect of C3 or C4.
19. The issue then is one of duration and I consider a period of five years to be too long. In the other case, I considered a period of two years to be the minimum that would be imposed. The applicant, as a father, does have many positive qualities. In determining the duration of the order I take account of the advice I was given by Miss Long, both in her report and in her oral evidence in the other case, that there is a real question mark over whether the father would engage with any relevant therapy and whether any such therapy would be efficacious in resolving the father's either his narcissistic personality disorder or his very concrete way of thinking and reacting to the world when it does not agree with him.
20. In all of the circumstances of this case, I think a period of two years is an appropriate one to give him the chance to make the change that he needs to make, not only for the benefit of

himself, but ultimately for the benefit of his children. For the avoidance of any doubt, the order under s.91(14) is not conditional upon the father undertaking therapy or making changes to the way in which he functions.

21. The mother also seeks an extension or the renewal of the non-molestation order; here I regret I have a difficulty. His past conduct towards WU has been truly appalling. His conduct before District Judge Khan was extraordinary and appalling. However, since July 2016, there have been no further incidents; which, with my knowledge of FW, is in some ways quite remarkable. Therefore, aside from litigation, he has not attempted to contact the mother, or the children, he has not threatened or pestered the mother, but he has contacted the school.
22. On balance, I am satisfied that he does so because he wants to find out about how his children are faring. I note he disclosed to Miss Long back in February that he was considering creating a website for the boys to access when they are older, There is no evidence, however, that the father has created such a website and there is no evidence that this would be a public access website. Accordingly I do not consider it to be an act of harassment or molestation or intimidation, or intended to be, of the mother.
23. Therefore, the only ground upon which I could properly consider now making a non-molestation order, was the father's conduct of litigation and repeated applications. Insofar as I am aware, there is no authority to support the principle that a non-molestation injunction can be made to prevent a parent commencing litigation: that is solely the purpose and objective of s.91(14). Accordingly, I see as matters, there is no legal basis for now making a non-molestation order and I decline to do so, and the application is dismissed.
24. The final matter I need to deal with in this judgment is the application made on behalf of the mother for costs. I am rightly reminded that, in family proceedings, an application for costs ought only to be made if the conduct in the litigation of the party against whom costs is sought has acted unreasonably or reprehensibly.
25. Focussing solely on the father's conduct of this litigation concerning C3 and C4, I consider myself to be in some difficulty in characterising the father's litigation conduct to be unreasonable or reprehensible when his initial application for permission to make a Child Arrangements Order application was successful and allowed by His Honour Judge Plunkett. The mother then appealed against that decision and that was ultimately decided in February of this year by Cobb J.
26. Accordingly, I am not satisfied that the father's litigation conduct could be characterised

properly as unreasonable and reprehensible as opposed to being unwise. Therefore, the application for costs is refused.

**End of Judgment**

Transcript from a recording by Ubiquis  
291-299 Borough High Street, London SE1 1JG  
Tel: 020 7269 0370  
[legal@ubiquis.com](mailto:legal@ubiquis.com)