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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2020] EWHC 3884 (Fam)



No. ZE19C00492

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 29 July 2020

Before:

THE HONOURABLE MRS JUSTICE THEIS DBE

(In Private)

B E T W E E N:

LA

Applicant

- and -

(1) Y

(2) X

Respondents

MR J. AGEROS (instructed by Legal Services, London Borough of Redbridge) appeared on behalf of the Applicant.

MISS K. GRIEVE (instructed by Miles & Partners LLP) appeared on behalf of the First Respondent.

MR R. BEDDOE (instructed by Gary Jacobs Solicitors) appeared on behalf of the Second Respondent.

MS C. LITTLE (Solicitor, Hanne & Co Solicitors LLP) appeared on behalf of the Children's Guardian.

J U D G M E N T

(v i a M i c r o s o f t T e a m s)

MRS JUSTICE THEIS DBE:

Introduction

- 1 I am giving this extempore judgment to set out the reasons for the orders the court is going to make.
- 2 This matter concerns the future care arrangements for five children aged between the ages of 1 and 17 years. The issues arise within care proceedings issued by the local authority in 2019 following the death of the children's mother in 2018. The father of the two eldest children, Mr X, is currently serving a life sentence for the murder of the mother following his conviction at a trial in 2019, with a minimum of thirty three years to serve. The father of the younger three children, Mr Y, cares for 3 of the children. One child was placed with foster carers in May 2019 pursuant to a section 20 agreement with Mr Y exercising the parental responsibility he was given as a result of the child arrangements order made by this court. The youngest child has been placed since birth with family friends, albeit with regular contact with his father Mr Y and the other children.
- 3 All of the children are represented in these proceedings through their children's guardian. There is an older child who is over 18 years of age.
- 4 This hearing was listed to consider two issues relating to the two oldest children. Firstly, to consider the application dated 12 February 2020 on behalf of the children to restrict the exercise by Mr X of his parental responsibility and to discharge him as a party to these proceedings. Then, secondly, the application made by the local authority dated 3 March 2020 to restrict the disclosure of documents to Mr X. In addition, an application on behalf of Mr X was issued on 28 July 2020, seeking a prohibited steps order preventing Mr Y from taking the children out of the jurisdiction. It is agreed by all parties that all issues should be dealt with today.
- 5 Mr X is represented at the hearing today, although he has not joined the hearing today by video link. His solicitors have been able to take instructions from him remotely and even though his statement is not signed by him, they are clear it accords with his instructions and Mr Beddoe, who represents Mr X today, has confirmed that his statement dated 28 July is written in his own words and was sent by him or on his behalf to his solicitors and then forwarded on to the parties.
- 6 Two further matters have arisen during this hearing. Firstly, the local authority sought, initially with the support of the children's guardian, an order under section 91(14), namely preventing Mr X from being able to make an application for a section 8 order in relation to the older children until they attain the age of 18 years of age without the leave of the court. So for the oldest child that will be for another year, and for the younger child that would be for a period of four years. That was an application discussed by the advocates at an advocates' meeting late yesterday afternoon. It was not an advocates' meeting that was attended by either Mr Beddoe or his instructing solicitors. The first Mr Beddoe heard about it was just prior to the hearing starting this morning.
- 7 Mr Beddoe has made submissions in relation to that application. The court gave him a short adjournment to be able to consider the position and whether there were any relevant authorities he should consider and draw to the court's attention. *Re N (Children)* [2019] EWCA Civ 903, is a decision of Peter Jackson LJ dealing with applications that are made for section 91(14), in particular, ones with relatively short notice. That judgment refers to the

earlier case in 2015 called *Re T (A Child) (Suspension of Contact)* [2015] EWCA Civ 719 [2016] 1 FLR 916.

- 8 In *Re N* sets out four important considerations that should be considered: firstly, that the respondent to any such application for an order should be fully aware that the court is seized of the application prior to the order being; secondly, that that party should understand the meaning and effect of the order; thirdly, that they should have a full understanding of the evidential basis that is found in the order that is being sought; and, fourthly, they are to have a proper opportunity to make representations.
- 9 Mr Beddoe accepts that the court has given him sufficient opportunity to be able to make the necessary representations but he fairly and correctly outlines to the court that Mr X has no knowledge in relation to this application. He is not aware of it and has not had any advice as to the meaning and effect of the order sought, and not been able to see (even if it is the same evidence in relation to the other related applications) any additional evidence that is relied upon in support of the application.
- 10 Having drawn the court's attention to that authority and those considerations, Mr Ageros on behalf of the local authority has reconsidered the local authority's position and has submitted that they no longer pursue such an order and that is supported by the children's guardian.
- 11 The other matter that arose during the hearing this morning was the need for a declaration under the inherent jurisdiction, in effect, declaring that the local authority is not bound by its duties and responsibilities under section 22 of the Children Act 1989, namely to consult parents, which would include Mr X, in relation to any decisions it takes regarding any children they have responsibility for. That is in a different category than the section 91(14) order because it is an issue that is raised in all the authorities that have been before the parties in the skeleton arguments filed earlier this year. Mr Beddoe realistically accepts that if the court is going to grant the application sought by the local authority and the children's guardian, then it would be an inevitable consequence that the court would consider making a declaration as sought by the local authority.

Relevant Background

- 12 Turning from those preliminary matters to consider the background to this case, it is unnecessary, for the purposes of this judgment, to provide other than a summary of the tragic background. Following the separation of the children's mother and Mr X, she formed a relationship with Mr Y and they had the three children that I have set out. Between 2012 and 2018, the older children had virtually no contact with their father Mr X. It was only in 2018 that he started making contact with the children and was found to be attending around the family home. It was as a result of those actions that Mr Y and the mother became concerned about his behaviour and his actions towards the children. Sadly, those concerns became a reality because whilst she was pregnant with her third child with Mr Y, Mr X entered the family home without warning and very seriously injured the mother with the use of a weapon when the family were present, including all of the children. Very sadly, the mother died from her injuries although her unborn child was saved.
- 13 It is an understatement to say that those events were deeply traumatic for these children, as described by them in their ABE interviews as part of the police investigation, as well as for Mr Y. These events will have lifelong consequences for each of these children and Mr Y in every respect of their lives going forward. They will each require long-term support for many years to come to help them manage the emotional and psychological consequences of this

enormous loss each of them has suffered and continue to suffer in such distressing and violent circumstances, which the criminal court has found was as a result of Mr X's actions.

- 14 In support of the applications this court is being asked to consider, the local authority and the children's guardian have filed skeleton arguments setting out the legal framework and the evidence relied upon which the court has read. Mr Y is neutral in relation to the applications made by the local authority and the children's guardian. Those applications are opposed by Mr X. No other party supports the application for a prohibited steps order made by Mr X and I should record that very careful directions were made by this court to deal and give Mr X the opportunity to be able to respond to the applications that were made by the local authority and the children's guardian. He was due to file documentation and the skeleton argument by 1 July. I accept that there are enormous logistical difficulties in his legal team being able to gain access to him but I note that the documentation that has come from him, albeit a day before the hearing, in fact, seeks positive orders as well as also responding to the matters raised by the local authority and the children's guardian.

Relevant Legal Framework

- 15 In terms of the legal framework the court is considering, there is no significant issue in relation to that. Each of the applications is governed by the children's welfare as being the court's paramount consideration, having regard to the welfare checklist set out in section 1(3) of the Children Act 1989. It is accepted by the parties the analysis by Ms Little in her skeleton argument that even if the applications made by the local authority and the children's guardian are granted, Mr X will retain his parental responsibility status in relation to the children as it is not possible for that to be revoked.
- 16 There are a number of cases that I have been referred to. I will only refer to them relatively briefly. Firstly, in the case of *B and C (Change of Names: Parental Responsibility: Evidence)* [2017] EWHC 3250 (Fam). At [40], Cobb J provides a useful summary of the principles drawn from the Court of Appeal case of *Re D (Withdrawal of Parental Responsibility)* [2014] EWCA Civ 315, [2015] 1 FLR 166 in relation to matters relating to parental responsibility. I need only refer to four matters there:
- “i) Parental responsibility ‘is an important status which is an incident of the family and private lives of the adults and child concerned and which is reflected in the way in which parents should exercise their responsibilities for their child. It should be rare for a father not to be afforded this status’ ...;
 - ii) Parental responsibility describes an adult's responsibility to secure the welfare of their child which is to be exercised for the benefit of the child not the adult...;
 - iii) When considering whether to limit or restrict parental responsibility, the court is considering a question with respect to the upbringing of a child, and the paramountcy principle in section 1 CA 1989 applies...;
 - iv) By section 1(4), there is no requirement upon the court to consider the factors set out in section 1(3) (the ‘welfare checklist’) but the court is not prevented from doing so and may find it helpful to use an analytical framework not least because welfare has to be considered and reasoned...;

- 17 Finally, I accept that any application to restrict or limit a parent’s parental responsibility, and, particularly in the circumstances of this case, where the orders are sought that include discharge of a party from a case the orders are draconian.
- 18 The second case is the case of *LA v XYZ (Restriction on Father’s Role in Proceedings)* [2019] EWHC 2166 (Fam) where this court considered similar applications made by a local authority where I set out the legal framework in relation to such applications at [30] - [40]. Those paragraphs set out that this court has a general power under the relevant provisions of the Family Procedure Rules 2010 (FPR), Part 12 and Part 4, to be able to manage the way that the proceedings are conducted.
- 19 I refer to the decision of Knowles J in *Re X and Y (Children)* [2018] EWHC 451 (Fam) at [27] whereby she set out her analysis in relation to the powers in Rule 4 FPR and how they should be exercised.
- 20 It is right also to note that these applications need to be considered against the Convention rights of Mr X and the children in this case as enshrined in domestic law under the Human Rights Act 1998. The issue in relation to not only their Article 6 rights but also their respective Article 8 rights.
- 21 I also need to bear in mind the observations that were made by Munby J (as he then was) in *Re B (Disclosure to other parties)* [2001] 2 FLR 1017 in relation to restrictions of disclosure of documents to other parties in proceedings. As he said, such applications require:
- “...the most anxious, rigorous, and vigilant scrutiny. It is for those who seek to restrain the disclosure of papers to a litigant to make good their claim and to demonstrate with precision exactly what documents or classes of documents require to be withheld. The burden on them is a heavy one.”
- 22 So, it is right to recognise and record the court needs to be extremely cautious and take great care in relation to orders similar to those sought in this case.
- 23 Turning to the legal principles in relation to the declaration sought regarding section 22 under the inherent jurisdiction. Firstly, the court would need to consider under section 100(3) whether it should give leave to the local authority to invoke the court’s inherent jurisdiction. A court can only grant leave under section 100(4) if it is satisfied, firstly, that the result the local authority wished to achieve could not be achieved through the making of any order of any kind that the Children Act 1989 can provide. Secondly, that there is a reasonable cause to believe that if the court’s inherent jurisdiction is not exercised with respect to the child, the child is likely to suffer significant harm.
- 24 In this case, what the local authority seeks is a declaration under the inherent jurisdiction that each of the older children’s welfare is inconsistent with any of the obligations set out under the Children Act 1989 to consult with, refer to, or inform Mr X in relation to any aspect of their progress, development, and/or well-being whilst they remain in the care of the local authority or subject to any support that is provided by them.
- 25 Section 22 of the Act and subsection (4) provides as follows:
- “(4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

- (a) the child;
- (b) his parents...”

- 26 Therefore, there is a statutory duty on the local authority to ascertain the wishes and feelings of Mr X in this case.
- 27 The breadth of the obligations under section 22 were outlined by Hayden J in *Re O* [2015] EWCA Civ 1169 at [27].
- 28 What is sought here is such a declaration, if the court grants the applications that are sought by the local authority and the children’s guardian. The local authority will undertake to issue a C66 form and will file a short statement confirming the evidence that it relies upon, which, in essence, is the evidence that is before the court already.

Discussion and decision

- 29 I am extremely grateful to all the parties for their helpful and effective written and oral submissions. Mr Beddoe on behalf of Mr X prays in aid of the following matters. He submits that there is an element of realism by Mr X in his statement that was filed with the court yesterday. He does not seek to be able to have contact with the children. He recognises that there are severe limitations on his ability to be able to exercise parental responsibility, recognises that he should only have limited documents and that they will need to be redacted. What he fears, as said by Mr Beddoe on his instructions, is that he does not want to be erased from the children’s lives. So, he submits, with those concessions made by him in his statement, it is not proportionate or commensurate with the children’s welfare needs for the orders sought by the local authority and the children’s guardian to be made.
- 30 The orders sought in this case are both draconian and rare. What the applications on behalf of the local authority and the children’s guardian seek to do is to remove Mr X from having any active involvement or status in relation to these children’s future lives, preventing him exercising any day to day parental responsibility for the children, limiting the disclosure of any documents there may be any existing obligation to make, and also discharging him as a party to these care proceedings supported by the declaration sought about section 22. By his application, Mr X seeks to restrict the way Mr Y exercises his parental responsibility in relation to his children by seeking an order to prevent their removal from the jurisdiction for any period of time. As Mr Beddoe says, he makes that application on the basis of his concerns in relation to the influence of Mr Y’s on the children, the impact it will have on them, and his particular concerns in relation to what the future plans are in relation to the children.
- 31 The orders preventing Mr X from having any involvement in their lives accord with the children’s wishes. They have informed their social worker and their children’s guardian that such continued involvement by him, even in a limited way, continues to cause them distress and the evidence demonstrates such involvement, or future involvement, risks the effectiveness of any support there is available to help them manage their difficult background circumstances. Their overwhelming welfare needs are to have security and stability in all aspects of their lives and for steps to be taken to help build the long-term emotional and therapeutic support that the evidence demonstrates they are going to require. To underpin that essential welfare need for each of these children, that requires them to have the knowledge that Mr X will not be informed or have any active part in any decision relating to their welfare needs. Each of these children have suffered significant harm, and continue to suffer such harm as a direct result of the actions of Mr X in killing their mother and the circumstances in which it happened, in particular, the children’s physical presence.

32 I am satisfied that in the unusual circumstances of this case, the court should grant the applications sought by the local authority and the children’s guardian, and dismiss the application by Mr X. I reach that conclusion for the following brief reasons. Firstly, these children have been deeply traumatised as a result of the actions of Mr X for which he has shown no recognition or insight about in either of the statements filed by him, that is either his handwritten statement in January 2020, or in the statement dated 28 July 2020. He has not apologised or accepted responsibility for his actions or shown any understanding for the very significant harm he has caused these children. On the contrary, in his statement, he seeks to provide a narrative and to justify his actions in relation to the mother.

33 His most recent statement provides a window into his views. At paragraph 4 of that statement, he states as follows:

“It is in the best interests of my children to be in an environment conducive to a healthy upbringing without the shackles of a dogmatic mores. I am concerned about the negative impact on the way that my children perceive and evaluate past events and henceforth their prospective future.”

34 At paragraph 12, he says as follows:

“I fear that my children are denied a simple and happy life.”

This is in a paragraph where he makes criticisms of Mr Y’s care.

35 At paragraph 14, he says as follows:

“My fatherly instinct is always to protect my children and ensure that they live in a safe environment.”

36 So, whilst it is right that he does make some reference to his regret for his actions in relation to what happened with their mother, it is quite clear that he shows absolutely no insight in relation to the enormous impact his actions have had on his children, and his statement continues to undermine Y’s role in providing care and stability for these children, thereby adopting a position which is entirely contrary to the evidence of the professionals about how he has cared for these children in these difficult circumstances. By Mr X’s continued involvement in these proceedings, there is a risk that his involvement will put that continued stability at risk.

37 Secondly, the children are clear in their wishes they do not want Mr X to have any further involvement in their lives, or to have any knowledge of their welfare needs and decisions made about their care. They are both of an age and level of maturity where their wishes should be given considerable weight by the court.

38 Thirdly, Mr X has realistically recognised that due to the length of his prison sentence, he is unable to exercise in any meaningful way his parental responsibility or have any contact with the children. However, that is only part of the balancing exercise the court needs to undertake. The court needs to look at the wider evidential canvas.

39 Fourthly, the children’s overwhelming welfare needs now and during their minority are for them each to be provided with the specialist support and care that they require. Any continued involvement in these proceedings by Mr X or exercise by him of his parental responsibility or disclosure of any documents from these proceedings puts the welfare needs of each of these children at very serious risk of future psychological and emotional harm. This is due to what

I consider to be the very high risk any such continued involvement by Mr X puts to their stability and security, which is such a critical part of their welfare needs now and in the future.

- 40 Fifthly, I have carefully balanced the respective Article 6 and Article 8 rights of both Mr X and each of the children but have reached the very clear conclusion that Mr X, through his actions in taking away the children's mother from them in the way that he did, forfeited consideration of his rights in relation to making any decisions about these children's future. His actions wholly disregarded the children's welfare needs and there is absolutely no sign that he has even begun to understand the enormous impact his actions have had on these children. He remains, as set out in his statement and the quotes I have given, focused entirely on his own needs and feelings. His most recent application seeking a prohibited steps order in relation to the children is illustrative of this. It is notable that in that long statement, there is virtually no reference, or recognition, as to how they may be feeling now, or what their wishes are.
- 41 Whilst I recognise that this is a rare and draconian combination of orders to seek, in my judgment, the circumstances in this case are so overwhelming in terms of the children's welfare needs that even balancing the position in relation to Mr X as I have set out, and taking into account what Mr Beddoe says the court should consider about Mr X's realistic understanding about his future role, I am satisfied that the welfare balance comes down firmly in favour of these orders being made.
- 42 I will give leave for the local authority under section 100(3) to invoke the inherent jurisdiction on its undertaking to issue a C66 form seeking such an order and I will make a declaration under section 100 of the inherent jurisdiction of the court to the effect that it is absolved from continuing with its obligations to consult Mr X regarding the children's care needs. I have already dealt in my opening remarks with the position in relation to the section 91(14) order.

CERTIFICATE

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