



Neutral Citation Number: [2024] EWHC 2802 (Fam)

Case No: FD24F00108

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24 October 2024

**Before :**

**Mr Justice Trowell**

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**Between :**

**F** **Applicant**

**- and -**

**J** **First Respondent**

**- and -**

**B** **Second Respondent**

**- and -**

**L** **Third Respondent**  
**(via his Cafcass rule 16.4 Guardian, Allison Baker)**

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**Andrew Powell** (instructed by **Ellis Jones Solicitors**) for the **Applicant**  
**Mehvish Chaudhry** (instructed by **Mills & Reeve**) for the **First and Second Respondent**  
**Siobhan F. Kelly** (instructed by **Cafcass Legal**) for the **Third Respondent**

Hearing dates: 15 to 18 October 2024  
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## **Judgment Approved by the court for handing down**

### **Mr Justice Trowell:**

1. This is an application by F for child arrangements orders and a Parental Responsibility order in relation to L. The matter was before me for 4 days starting on the 15<sup>th</sup> October 2024. Closing submissions concluded at 1pm on the 18<sup>th</sup> October 2024. This judgment is sent in draft on the 21<sup>st</sup> October 2024 and will be formally handed down on the 24<sup>th</sup> October 2024 after receipt of typographical style corrections.
2. The applicant is L's biological father. I shall refer to him as F. He is represented by Andrew Powell and instructs Ellis Jones Solicitors.
3. The first and second respondents are J (L's biological and legal mother), her wife B (who has parental responsibility for L by virtue of a stepparent parental responsibility agreement which was signed on the 29 November 2023 and registered by the Central Family Court on the 19 December 2023). I shall refer to them as J and B. They have been represented by Mehvish Chaudhry, instructed by Mills and Reeve.
4. The third respondent is L by his Guardian, Allison Baker. She has been represented by Siobhan F Kelly, instructed by Cafcass Legal. L himself is some 11 months old.
5. There are two significant issues in the case:
  - a. Should F have Parental Responsibility for L;
  - b. What contact should F have with L.
6. F wants Parental Responsibility and asks for contact which will, build up to 4 days and nights each fortnight, being alternate weekends for 3 days and alternate Wednesdays. Further he seeks holiday contact.
7. All the respondents say no to Parental Responsibility. At the start of the case all were saying contact should be limited to once each 8 weeks, building up to a day, be it 6 or 8 hours. The Guardian revised her position in her oral evidence so that at the conclusion of the case it was as follows:

- a. At first, at a frequency of every 8 weeks, contact for 1 hour, then 2 hours, then 3 hours, then 4 hours.
  - b. Then after 10 or 12 months (so the 5<sup>th</sup> or 6<sup>th</sup> session) shifting the frequency to every 4 weeks.
  - c. Then, when L becomes 3 ½, the duration should extend to 6 to 8 hours.
  - d. She described this as a base line and thought there should be further and other contact as can be agreed.
8. That the order should include such further and other contact as can be agreed was not contentious.
9. It was advanced by F and agreed by all the other parties that J and B should have the benefit of a ‘lives with order.’
10. Concessions were made during the course of the hearing and clarified in closing that J and B would agree to specific issue orders requiring them to notify F promptly of:
- a. Any settled intention to move L out of the jurisdiction;
  - b. Any settled intention to cause L’s name to be changed;
  - c. Any settled intention to cause L to be adopted;
  - d. Any significant issue as to L’s health;
  - e. Any legal proceedings involving L.
11. There is a minor issue as to indirect contact: F would like every 2 weeks, save where there is direct contact, and J and B offer only on a 4 week basis, and only if contact is every 8 weeks.

### ***Summary History***

12. I make clear that I do not in this part of my judgment intend to go through each and every point of evidence that I have heard relating to the history of the parties’ relationship and interactions, or all the exchanges with King’s Fertility Clinic. It is my intention to give a summary of the history, as I find it to be, relevant to the decisions I need to make.

13. J and F were longstanding friends. They met as teenagers when both had an interest in the theatre. They became friends and the friendship became closer when they realised that they were both gay. It is common ground that even as teenagers they had a discussion that they may have a child together when they grew up. That is something which F recollects as more serious than J.
14. By 2018 they had both been to college in London and embarked on careers. J was in a relationship with a woman called T and approached F to be an anonymous sperm donor. He declined because he wanted to be a parent, rather than just a donor. By October 2020 she reapproached him this time to be an active father.
15. In fact, the forms demonstrate that J and T were to be the legal parents of any child born, and F featured on the relevant forms only as a 'known donor'. It is however agreed that he was to play a part in the life of any child.
16. The relationship between J and T broke down in 2021. The fertility treatment of J continued. Rather than replace T as second parent on the relevant form, with F, J became the sole legal parent. This was to do with pressing on with the process. J turned 40 in 2021 and not only is conception more difficult with age, but a change in legal parent would have triggered a one year cooling off period. There is agreement that both parties intended that F was going to be playing a significant part in any child's life conceived as a result of the treatment.
17. In 2022 J formed a new relationship with B. As their relationship became firmer the steps to enable J to conceive continued. She had a myomectomy in October 2022. J and B moved in together in January 2023. There were some discussions between all three – F, J and B - about coparenting any child born. In March 2023, a successful embryo transfer took place.
18. There were then discussions as to drawing up a legal agreement governing the parenting, but these did not result in a settled agreement. Indeed, after instructing a direct access barrister, Matthew O'Grady, the parties realised they had different views and attended mediation and counselling in an attempt to reach agreement.
19. I have been shown a contemporaneous email, dated 31 August 2023, written by B, which sets out her notes of an agreement discussed between the parties at one such mediation session. It is notable that the email records that they will 'share the care of the child', but that the care will need to be fluid, 'may not be equal' but they will

endeavour to make it ‘balanced’. Those notes were not ratified by F or indeed J, as representing a concluded agreement.

20. F, J and B rented a property together in April 2023. F was working abroad at the time and so only moved in when he returned in May 2023. The plan behind this home was that it would be where the child would live, and implicitly the child would live with all of them, subject to F working abroad some of the time.
21. Very sadly F, J and B fell out about the terms of their co-parenting. F felt outnumbered by J and B, and he resented B being treated as his equal when (a) she had no biological relationship with the child and (b) she was a late arrival to the arrangement.
22. J knew full well that F wanted to be more than a sperm donor, namely a father, and felt overwhelmed, I find, by the conflicted situation in which she now found herself - recognising on the one hand that F thought he was entering into an agreement to be an active father but on the other hand needing to resist the arguments by which he tried to assert himself, push for more than she was prepared to yield, and, diminish B’s role.
23. In October 2023 F obtained a drafted legal parenting agreement from solicitors acting for him alone which spelt out that ultimately decisions were to be made by him and J, albeit they would listen to B. This was unacceptable to J and B.
24. That month J and B married. F attended the wedding.
25. On the 7 November 2023 they asked F to move out of their house. He did on the 13 November 2023 returning to recover his possessions on the 25 November 2023.
26. On the 10 November 2023 L was born.
27. Some contact took place between L and F thereafter, but it was not comfortable given the situation between the adults. On the 10 January 2024 F received a solicitor’s letter from J and B’s solicitor saying that contact was being paused and that B now had parental responsibility by way of a court ratified step-parental agreement.

### ***Proceedings***

28. By the end of January 2024, and in response to the letter from J and B’s solicitor, F had issued an application for a declaration of parentage (since withdrawn) and an application for a child arrangements order.

29. I will not record each turn of the proceedings but do note:

- a. That F needed permission to bring his application for a child arrangements order. He has twice been refused permission to bring a 'lives with order' and so I am only considering a 'spends time with' or other contact order, and a Parental Responsibility Order.
- b. The Guardian proposed some interim contact. J and B resisted that on the basis that they could not cope with it. Dr Pettle was instructed to report on a 'global assessment' basis of all three adults and L. She did, and as a consequence of her expert opinion and a subsequent hearing 4 sessions of contact were arranged with a duration increasing from 30 minutes to 45 minutes. These took place in B's presence. Two of these were observed by the Guardian.

### ***The Evidence***

30. Dr Pettle was the first witness to give evidence. She is a consultant clinical psychologist. Her written evidence made clear that she had thought that J and B had a strong and supportive marriage. She was clear they were not experiencing psychological difficulties and that they were unlikely to suffer a deterioration in their mental health with some 'limited' contact between F and L.
31. Dr Pettle explained orally that her report (dated 3 July 2024) was before the interim contact had taken place. She had not been asked to prepare an addendum report, which she had expected. If she had, she would have considered what 'limited' contact there should be and reflected on the impact of the contact that had taken place.
32. She set out, from the witness box, that she thought the recommendation of Allison Baker, the Guardian, of contact once every 8 weeks was wrong. L is too young to retain an idea of F after 8 weeks, so much of each contact session would be an introduction, again and again. She proposed instead that contact should be every 4 weeks. As to the duration of contact, she suggested an hour initially, after 3 or 4 sessions increasing to 2 hours and, then half a day by the time L was 3 to 3 ½ years old. (That was a reduction in duration to that otherwise proposed. It was put forward as a counter weight to the increase in frequency.) She was not prepared to make recommendations after that on the basis that the circumstances would need to be considered at the time.

33. She did make clear that she thought J, in particular, would find this difficult in the short term, but she considered her sufficiently robust to adjust. She did acknowledge it was a risk.
34. Dr Pettle pointed out repeatedly that what the three adults need to do is mend their relationship. She said this was a tragic case: three adults, all with much to offer L, but who had fallen out rather than worked together. She urged therapeutic input as the way of moving things forward.
35. F was the second witness to give evidence. It was difficult not to be sympathetic to his position. It was clear that he believed that he had an agreement with a long-term friend that he was going to become a father, with all that that entails. This would have been a fulfilment of a lifelong hope. He was upset and angry that hope was now being dashed.
36. He did have some insight, upon questioning, into how the problem that he was now in had arisen: that he had been defensive of what he perceived as his rights when, as he saw it, B muscled in, and then J and B pushed back, such that there was a step by step escalation until the breakdown of their relationship occurred.
37. F did not accept that given where we are now, and given the evidence from Dr Pettle and the Guardian, we could not move (albeit over time) to 4 nights out of 14 arrangement. He focussed instead on what he might have to offer as a father. He did not think that there would be a risk to L of endless arguments between him and J and B. His hope was vested in the redemptive effect of therapy to restore harmony, and implicitly cause J and B to recognise properly (as he saw it) his role in L's life.
38. F did impress me as someone who has a lot to offer his child. He did however also strike me as someone overly concerned about his rights, and the wrong that had been done to him, rather than how he was going to manage a relationship with J and B for the benefit of L.
39. J was the third witness. She resisted strongly the idea of Dr Pettle that contact should be once a month rather than once every two months. She said she had a fear that F was trying to take L from her and that fear, whether rational or not, would be present with her without relief if the contact was once a month. That fear, she related, would be damaging to L. The 4 nights out of 14 she considered completely unworkable and akin to a shared care order.

40. She was pressed in cross examination about the many occasions when she had appeared to give positive messages about F's involvement in the pregnancy. She replied that this was because she was trying to make their relationship, and the plans to bring up L together, work and so made concessions. She said this differed from F's approach, in that he would continue to push until he felt that he had the appropriate paternal position, as he considered it to be, regardless of the impact of that on her and B. I found her evidence on this to be convincing.
41. Ms Kelly, following on from questions put by Mr Powell, put to J questions as to whether she had in a statement dealing with the impact of proposed interim contact, over-egged the impact on her of the proceedings by claiming that they had caused her to sell her property sooner than anticipated and return to work sooner than she had wanted. She gave a fair answer in relation to the property – conceding that it was misleading but in strict context accurate – but was unable to deal with the return-to-work point. She did concede that this was exaggeration on her part.
42. It is appropriate that I take notice of this in circumstances where what stands between Dr Pettle's recommended outcome (and as it turned out the Guardian's recommended outcome) and J and B's position, is their assessment of how much contact they can cope with.
43. B gave evidence on the morning of the third day. She was initially a nervous witness but calmed down. She had two overlapping concerns: (1) the welfare of J and (2) the welfare of L. It was her case that J could not cope with any increase in the frequency of contact between L and F from every 8 weeks. J gets wound up in advance and after contact sessions. She needs the time, B thought, to calm down. Eight weeks provided this; four weeks would not. L suffers when J is distressed, B related.
44. B was the person responsible for taking L to contact and providing continuity of handover.
45. I find B is a beneficial counterweight to J. She, genuinely, tries to keep J calm when she becomes stressed. B accepted that she thought J was mistaken in her belief that F wanted to take L away, but she wanted me to know that even though mistaken the emotions that J feels are real, debilitating to her, and damaging to L.
46. B was cross examined about the circumstances surrounding her obtaining parental responsibility without it being mentioned to F, either in advance or at all until the



solicitor's letter of the 10<sup>th</sup> of January 2024.

47. She accepted that in retrospect F could see this as part of a concealed plan. She insisted however that she did not think that F would be upset by her having parental responsibility because he, even in his draft of his parenting agreement (as I was shown in re-examination), had proposed she should have parental responsibility.
48. I, broadly, accept that she had good reason to think that F would not object. I find however that the reason she did not raise it with F either in advance or before the solicitor's letter was that she was concerned about his reaction, and she wanted to avoid a difficult conversation. The concealment, I agree, was not because she was planning to steal an advantage. Nonetheless, this undisclosed step will have had a part in worsening relationships.
49. Allison Baker, the Guardian, was an impressive and thoughtful witness. I set out in full below paragraphs 33 and 35 of her report, which I consider sum up the issues central to this case:

*33. I have considered the likely welfare benefit and the welfare detriment implicit in each of the parties' respective, incompatible positions. This is not a harm-neutral exercise. J and B have stressed that for L's sake, to a large extent they are currently coping on a surface level, which belies the deep distress and turbulence they are experiencing and if I have understood them correctly, they feel their coping exterior has been misinterpreted and served against them. They struggled with my early recommendation in support of interim arrangements, with Dr Pettle's assessment findings and as outlined earlier in this report, they continue to struggle with the prospect of arrangements not taking place in line with their proposals. I consider that there is a real risk that their ability to parent L to the best of their ability may be compromised if they are required to make him available for the extensive periods of time proposed by F, which would be to L's detriment. I consider (with mind to Dr Pettle's conclusions) that that risk is likely to reduce if the burden on them of promoting direct arrangements is reduced through a lower frequency of spending time visits.*

...

*35. My considered opinion is that spending time arrangements between L and F should continue to take place, but not at the frequency either he or J and B propose.*

*[Note here that at the time the report was written the proposal from J and B was for less contact. They increased what they proposed on receipt of the report, to align with the report.] I recognise that all three parties will find my position emotionally difficult and upsetting. In holding my position, I necessarily seek to prioritise L's immediate-to-longer term welfare needs. These include him having the opportunity to develop a relationship with F during his minority, as distinct from such opportunity being pushed into the distant future; but also mitigating the risk that, requiring J and B to promote arrangements will compromise their ability to parent L to the best of their ability.*

50. Ms Baker was questioned orally about the criticism of her position by Dr Pettle. She frankly conceded that Dr Pettle was right when she talked about L's ability to remember F, and how 8 weeks was too long between contact and that her first thought had been to recommend 4 weeks rather than 8 weeks between contact for that reason. She had not so recommended, however, because she feared there was a risk that J, in particular, would not be able to cope.
51. She conceded that she was being cautious, which of course mirrors the position of Dr Pettle who was concerned that she was taking a risk. Ms Baker considered that it was sensible to build the structure of contact on firm ground (the rock of caution) rather than sandy ground (the risk of not coping) and so she still considered that at first the frequency of contact should be as she recommended in her report. She did however shift her position orally in that she reflected on Dr Pettle's observations, the needs and capacity of L, and a balancing of caution and risk, to urge on me the increase in frequency as set out above.
52. She was pressed as to what weight the court should attach to the fear of J when that fear did not appear reasonable. Her firm answer was whether the fear was reasonable or not the court had to work on the basis that it was real and ignoring it could lead to disaster.
53. She was pressed as to why she was making proposals now for change in contact frequency in the future. She accepted that she could not foresee the circumstances that might prevail in the future. Nonetheless, she stuck with her revised position.

54. She was questioned as to whether this was just ‘identity contact’. She did not accept that. She was questioned as to whether this was just her suggestion because of the legal status of the father and the fact that he was a known sperm donor, rather than a traditional father. She said this was her proposal in the best interests of L but made clear it did take all the circumstances of the case into account.
55. When pressed as to whether I should prefer her recommendation or Dr Pettle’s she initially said she deferred to Dr Pettle on how well J and B could cope, but on thinking matters through she thought her view was to be preferred because she had seen J and B after the interim contact. Indeed, it was this meeting which had caused her to change her view from contact once every four weeks to contact once every eight weeks.
56. She was firm in her rejection of F’s contact proposal and his request for Parental Responsibility.

*Arguments and analysis.*

57. It is agreed that all the decisions I need to make are to be made in accordance with the welfare check list. It is agreed that in relation to any Parental Responsibility order that would be made pursuant to s.12(2A) of the Children Act and I should therefore be further mindful of the contact order that I make. Further, I was referred to three factors isolated in the case of *Re H (Parental Responsibility)* [1988] 1 FLR 855:
- a. Degree of commitment shown by the applicant to the child
  - b. Degree of attachment to the child
  - c. Reasons for the application.
58. There is some dispute as to the weight that I should attach to the clear intention of all parties before L was born to share his care. Mr Powell emphasises it; Ms Chaudhry says, in effect, that all such plans are written on water, and I must consider the circumstances that now prevail. Ms Kelly largely confines her submissions to the facts and L’s best interests rather than conceptual matters but it is clear that the Guardian’s approach is to consider L’s best interests bearing the earlier agreements in mind, at the very least as indicating F’s commitment.

59. I shall not rehearse the cases to which I have been referred on this point. The difference does not matter to my determination here because it is agreed by all that L should know that F is his father, that F wanted a child and F wants to be involved in his life.
60. There were two other points made in closing which require separate noting:
- a. Ms Chaudhry made the point that though J said in evidence that her fear was F would take L away from her, J is also concerned that negotiations over the details of contact, and more generally any debate in relation to L's upbringing, will be disruptive. When considering the order I shall make I do bear that in mind.
  - b. F does not abandon his argument for 4/14 days and nights contact. Mr Powell rightly recognises that this will not prevail in the face of the evidence of Dr Pettle and Ms Baker that J and B will not be able to cope with it. He tells me that F pursues this argument so that he can say to L and to himself that he tried. I do bear in mind that F has conceded that there should be a 'lives with' order to J and B, but I do ask F to consider going forward that gesture-based litigation will not help J relax about his intentions in relation to L. He is likelier to spend more time with L if J is calm about contact.
61. The real argument in this case is whether contact should occur every 4 weeks, as Dr Pettle contends or every 8 weeks as J and B contend or, as the Guardian eventually settled on starting at every 8 weeks and moving to every 4 weeks over time.
62. In this context the relevant factual point for me to consider is whether J and B are 'over-egging' their case as to a lack of resilience. I then have to consider whether I prefer the expert evidence of Dr Pettle or Ms Baker. I then need to consider whether I have good reason to depart from their recommendations.
63. Taking these points in turn:
- a. There is reason to believe that there is a bit of 'over-egging' in relation to J's account of her return to work referred to above. That 'over-egging' occurred in a statement in which she set out how stressed she was in relation to the interim contact application. It is not however anywhere near enough to cause Ms

Baker to change her professional view as to J's resilience. I consider that it is not sufficient to alter my view either.

- b. For the reasons set out by Ms Baker (and implicit in Dr Pettle's reference to an addendum report), namely that she had the opportunity to consider J and B's state of mind after the interim contact had occurred, I prefer Ms Baker's recommendation to that of Dr Pettle.
- c. Mr Powell urges on me that if contact is to be of any use for L it must be once every 4 weeks – otherwise L will simply forget F. Ms Chaudhry urges on me that contact should remain at every 8 weeks because otherwise I am assuming that J and B's resilience will increase when there is no inevitability that it will. Mr Powell's argument fails because I need to balance L's memory with J and B's resilience. Ms Chaudhry's argument fails because I am balancing changing risks: Ms Baker is well within the scope of her professional expertise to predict that after a period of time and after repetition of contact the stress associated with contact will reduce.

64. So it is that I conclude that it is appropriate for me to make an order in relation to 'spends time with' orders in accordance with Ms Baker's final recommendation. I come to this conclusion having reminded myself of section 1 of the Children Act. I do not consider it necessary to set out each item in turn. The critical consideration here is a balance between the benefit to L of knowing and developing a relationship with his biological father and the risk to L of his care by J and B deteriorating because of the impact on them of the contact.

65. There are two bits of fine tuning I need to do. First to determine whether the increase in frequency occurs after 10 months (5 sessions) or 12 months (6 sessions). On balance I conclude on the side of caution – 12 months (6 sessions). I do this because I prefer the rock of caution to the sand of risk on this narrow point, as well as because 48 weeks as 6 sessions will in fact be is probably going to be about 11 calendar months – pretty close to midrange. The second is to consider whether contact should increase to 6 or 8 hours when L is 3 ½. I am going to rule the first extended session is 6 hours and thereafter it is *up to* 8 hours making clear that I want F to have the option of the longer period but to not insist upon it unnecessarily.

66. Turning then to parental responsibility, it is necessary for me to bear in mind the level of contact that I have ordered, and all the points I have set out above. I note that the amount of contact is not large here, although it will be increasing. I note that specific issue orders are offered to keep F informed as to what is happening to L. I note that J's fears are that (1) F will take L away from her, and (2) that there will be constant negotiations or arguments with F. I see that Ms Baker has considered that I should not grant F parental responsibility for that reason. I conclude on the facts of this case, in particular where J needs to feel secure, and notice is being offered of significant developments in L's life, it would not be in L's interest to grant F parental responsibility. That runs the risk of de-stabilising J. I do make clear that I want the notice clauses to be made as orders rather than undertakings.
67. As to indirect contact, I will take that quickly. I accept that every two weeks is unnecessarily disruptive. I consider that J and B's proposal of indirect contact after 4 weeks when contact is every 8 weeks is appropriate.

### *Conclusion*

68. I am going to leave counsel to draft the order and will be happy to rule on disputed wording on paper.
69. I do however want to say a few words to the parties. As I said at the conclusion of the oral hearing, and as Ms Kelly submitted, this case is not a tragedy. This case is the happy birth of a healthy baby. The parties have fallen out very badly about their roles in looking after him, but it is obvious that all of them rejoice in L and all of them have much to give him.
70. F is not getting the full 'Dad experience' that he wanted. He is however going to get some 'Dad experience' that had his life not taken this turn he would not have got.
71. J has been blessed by a healthy baby. She will have to relax about letting L go to F for contact visits not simply because I am ordering contact but because F has, as she knows, many positive qualities which should be part of L's life.
72. B, I accept will have some hard work to do to keep L's family functioning. I am grateful to her for what she has done, but my gratitude will be next to nothing in comparison with what L will owe her. If L is like most children he will never express

his gratitude (or not till he is middle aged), but she will have the knowledge that she has done a good thing.

73. I ask the parties to remember that this contact order is meant to be a base line. I hope that there will be such further and other contact as can be agreed. You must all know that what is best for L will change over time. What you can each manage will change over time. Whether you reach agreement by mediation, therapy, or traditional English repression of past problems, does not bother me. What does bother me is that this litigious start to L's life should be over. He is special to all of you. Make your relationships work so he benefits.

**Mr Justice Trowell**

**21 October 2024**