

RE T (WARDSHIP: REVIEW OF POLICE PROTECTION DECISION) (NO 1)

Family Division

McFarlane J

27 November 2007

Contact – Interim contact – Wardship proceedings delayed because of confidential information from police of threat posed by paternal family to mother – Police protection – Threat that protection would be withdrawn if contact ordered

The child, who had been abducted at the age of 6 months by the father and taken to India for 2 years, had been made a ward of court. A few months after the father returned to England with the child, the child was recovered from the paternal home and placed in the mother's care; the father was arrested, and charged with the criminal offence of child abduction. The father applied for contact with the child, as did the paternal grandparents. Before any decision had been made concerning contact, the police informed the family court that there was credible intelligence suggesting that the father and the paternal grandfather had taken out a contract to have the mother murdered; as a result, the mother and child had been taken into police protection. The contact applications were significantly delayed as a result of the police intervention, because the court had to decide how much of the confidential information about the alleged contract to murder the mother could be disclosed to the paternal family, in the face of police opposition to any disclosure. In the meantime, the father and the paternal grandparents, who had not seen the child for about a year, applied for interim contact, specifically supervised contact once a fortnight, until the final hearing, which was due to take place in 6 months' time. The mother, who had encouraged the child to remember the father, was willing to promote this degree of contact, provided the court considered the arrangements were safe. However, the police position was that if interim contact with the father were established, the officers involved would apply internally to have the current level of police protection withdrawn, on the basis that the risk to the mother would then be unmanageable, in particular because of the risk that the child would say something during contact that would enable the paternal family to track down the mother. The guardian's position was that, as a matter of principle, the child, now 4, would benefit from substantial supervised contact with the father and the paternal grandparents but that, given the undoubted hostility of the paternal family to the mother, no direct contact was justified if the price to be paid for it was removal of the current level of protection.

Held – ordering interim direct supervised contact once every 3 weeks; the case to come back to court if the police decided that as a result of the order police protection would be withdrawn –

(1) It was for the court to decide upon the right course in terms of contact for its ward, having the ward's welfare as its paramount consideration. Thereafter the court's decision and judgment was to be disclosed to the police, and the police would be invited to consider whether or not they would intend to withdraw protective arrangements. Were they to decide to do so, the matter would be referred back to the court for the court to reconsider the contact decision in the light of the police decision (see para [20]).

(2) Some interim direct contact should take place unless such contact would be sufficient to lead the police to withdraw the current protection measures. While significant police resources would be involved in arranging any contact, the risk of re-establishing direct contact was justified, taking into account that: the re-establishment of direct contact was very much in the child's best interests, save for

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the potential risk to the mother's safety; detailed arrangements for supervised contact had been agreed with the aim of reducing that risk; and the paternal family was aware of the consequences of any breach of the proposed contact regime. The chances of the child giving the father relevant information was low, and the consequences of any revelation could be managed by providing the police with a tape of each contact session soon after it took place (see paras [21]–[26]).

Teertha Gupta for the mother

Alison Ball QC and *Elizabeth Wilson* for the father

Lucy Theis QC and *Joanna Youll* for the grandparents

Susan Freeborn for the guardian

Perrin Gibbons for the metropolitan police

Judith Farbey appeared as special advocate for the father

Marina Wheeler appeared as special advocate for the grandparents

MCFARLANE J:

[1] These wardship proceedings relate to a young boy, T, who was born on 8 January 2004 and so he is fast approaching his 4th birthday. T's short life has not been without significant and traumatic incident. The bare facts are that when he was at the age of only 6 months in July 2004 he was abducted by his father and for a period of over 2 years lived in the care of his father and paternal grandparents mainly, as I understand it, in India but for part of the time in this jurisdiction. That state of affairs came to an end on 20 October 2006 when T, who had been made a ward of court and subject to various orders to trace him and locate him, was found at the paternal family home.

[2] The father was arrested. T was placed then in his mother's care and he has remained in her care since that time. The paternal family, including the father, have not had contact to T since that time. The father was charged with the criminal offence of abduction. He was remanded in custody and eventually pleaded guilty at Crown Court in April 2007. He received a term of 12 months' imprisonment but the long period on remand led to his release on 20 April 2007.

[3] By that time the wardship proceedings had become complicated by information disclosed initially to the guardian and the court alone from the Metropolitan Police. The effect of the information was that the police had received (in their view) credible information to the effect that the father and the paternal grandfather had been involved in taking out a contract for the murder of the mother.

[4] Since the disclosure of that information which was, so far as I was concerned at a hearing in February of this year, the case has been focused upon how that material can be disclosed in part or at all to the paternal family and in considering what arrangements can, against that background, be made for contact. Throughout the period the father and the paternal grandparents who, of course, became very close to T during the 2 years that he was in their care, have earnestly sought contact with him. Orders for some limited forms of indirect contact have been made but the reality is that those orders have not been particularly effective and only very minimal contact has been achieved even by indirect methods.

[5] This is not the place in which to chronicle in any detail the disclosure process. There is to be a fact-finding hearing in April of next year listed at the moment for 7 days before me, but the parties now take the view that that hearing should be extended to 10 days and that the court should set up a

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shadow judge, as it were, who could take on the hearing of the case if the disclosure issues again become complicated and if my ability to try the fact-finding issue is seen to be compromised by the additional material, such as it is, that I have had sight of over the course of recent months. I can report that the court will today by order extend the time estimate to 2 weeks starting on the Monday of the first week. The Clerk of the Rules has identified another judge, Hogg J, who I think has not been privy to any of these confidential matters, who could take on the case when the matter is reviewed again in the early part of next year.

[6] What I do wish to record is that the process of disclosure has led to the revealing to the father and the grandparents of a very substantial amount of the material that had hitherto been confidential. The court has been greatly assisted by the appointment of two special advocates, Miss Farbey and Miss Wheeler who, with conspicuous care and skill, have assisted the process as has counsel for the Metropolitan Police. It is also right to record that in the end the court has not been called upon to decide any disputed issue of disclosure. All has been dealt with by discussion and agreement between the police and the special advocates. That this process has taken nearly a year is enormously regrettable, to put it mildly, particularly as it has resulted in much of the police information being disclosed by them by agreement at the end of the process, despite the police's firm stance at the beginning that none of it was to be disclosed. In due course, at the end of the fact-finding judgment, I would wish to look at the procedure that we have undertaken here and describe it in the judgment in the hope that that part of the judgment at least can be made public for use in other proceedings where these rather difficult issues arise.

[7] The issue before the court today is that of interim contact between the father and the paternal grandparents and T between now and the fact-finding hearing in 6 months' time. The position of the parties is that the father and the grandparents, as I have said, earnestly seek contact and would wish to have, as a matter of principle, as much and as flexible contact as they can. However, realism is brought to bear in the submissions that are made. It is accepted that given the character of the allegations that have been made, and given the fact that the mother and T are living in circumstances which remain confidential to the father and his family, and are subject to some degree of protection from the police, it is not possible for unsupervised contact to take place. I will come on to the practicalities in due course, but in the light of those circumstances and the practicalities, the father and grandparents seek supervisory contact once a fortnight. It is not plain at the moment whether they would seek for all three of them to come to every visit or whether the father would have some contacts on his own.

[8] The mother is willing, and indeed keen, to promote this limited degree of contact. Despite the highly negative stance that the father and his parents have seemingly taken to her from the early days of the marriage, and certainly continue to maintain, she nevertheless, is willing to take part in whatever contact arrangements the court considers safe. That she is able to put forward that stance, is of credit to her and shows that she at least is able to function in a child focused manner.

[9] The children's guardian who has investigated the matter, as a matter of principle and ignoring for these purposes the police involvement in the

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arrangements for the mother's current accommodation, takes the view that, as a matter of principle, contact should be started with T. She says that the level of contact should be two visits a week to the father and a further visit to the paternal grandparents making three supervised contact events each week. Alternatively, and in more general terms she says if that is not practically possible she considers that as much contact as possible should be arranged.

[10] The police, who are not party to the proceedings, but have been privy to them, and are necessary players in any contact decision given their current involvement with the mother, take a different stance. They put forward the position that as a matter of practicality the level of resources that would be needed to facilitate contact is high and whilst those resources could be made available, that in effect would limit the number of contacts that could take place. Secondly, and of more importance, the police position is, in effect, that it is impossible to contemplate any form of direct contact between this 4-year-old child and his father or grandparents without having in mind the possibility that he may either inadvertently or because of questions asked of him disclose relevant information about the location of the home in which he lives with the mother. The police, therefore, take the view at present that the officers involved would have to apply to withdraw the total protection package that the mother currently has and that that application would be likely to be granted by their senior officers, thereby changing the status and degree of protection that the mother has, whatever that may be, to a far more ordinary and low level. That, therefore, is in its brief terms the position before the court. I have to make a decision about interim contact and I do so by having the welfare of T as my paramount consideration. I also bear in mind that all involved in the proceedings, father, grandparents, mother and guardian, are in favour of some degree of supervised contact taking place.

[11] The position of the guardian in her most recent report is set out in particular in the section headed assessment from para [85] onwards. She pays tribute to the mother's position in favour of contact and she comes to her view as the guardian in part because she has concluded that T continues to have feelings and thoughts about his father and the paternal family, partly because the mother has continued to keep the father alive in the child's mind through pictures and conversations at home. The guardian also believes that T would certainly enjoy seeing his father and the paternal family.

[12] The guardian goes, however, to describe in the body of her report the negative feelings which the father and the grandparents have about the mother. In this regard she echoes what is said in the independent social work assessment of SC dated 19 November 2007. This aspect of the case will obviously be a matter for any later decision making about contact at the hearings next year, but this court has been struck by the very strong feeling of negativity shown by the father and the grandparents towards the mother and the apparent lack of insight and understanding that they have into her actions and the effect that the negative feelings that they have may in turn have on T who, despite what they apparently feel about the mother, is close to his mother and settled in her care. The guardian, therefore, at para 97, having drawn attention to the strength of these feelings, says this:

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‘In all, in my opinion, there is a risk of T suffering emotional harm due to him becoming aware of the continuing criticism that the paternal family make of his mother.’

Finally, as I have said, the guardian’s position in principle is that she supports supervised contact at this stage, but she expressly comes to that view without forming any opinion as to whether that would be safe. In closing submissions, as Miss Freeborn on behalf of the guardian spelled matters out, that if in the end the police conclude that they should withdraw the current level of protection for the mother then the guardian would change her stance and would conclude that direct contact was not at that stage then justified if the price to be paid for it was the removal of the current level of protection.

[13] In looking at the interim contact decision, I am conscious of the fact that I am regulating contact for a period of 6 months and that there has already been over a year when no contact has taken place which followed on a period of intense contact between T and the paternal family. He in his life has moved from feast to famine in relation to the contact that he has had with his mother and his father. Not seeing his mother for 2 years from the age of 6 months and spending all the time with the father and grandparents and then in a moment switching to no contact with the paternal members of the family and 24 hour contact with his mother. There is a need to begin to strike a more normal balance in his life and there is a need in principle to set up direct contact given the fact that as regards his own safety and welfare there is no criticism of the father and the grandparents’ ability to meet him and spend time with him in a beneficial way and given the positive memories he seems to have of the paternal family.

[14] In looking at the interim contact issue, the court has to bear in mind that in April at the fact-finding hearing, radically different outcomes may be achieved depending on the facts that are found. If the very serious allegations faced by the father are made out against him to the requisite standard then it may be very difficult to contemplate long-term contact between him and T either because of the protection arrangements for the mother or, as a matter of principle, because of what has been found. At the other end of spectrum if there is no credence to be given to the allegations and they are not proved, then the argument in favour of much more normal contact will no doubt be made with force and is likely to be accepted by the court as a matter of principle. So, on one view, there is a danger of setting up too much contact between T and the father in this interim period only to have it then reduced again as a result of the fact-finding hearing. Alternatively, enough contact has to be built up at this stage so that it in turn can be developed and expanded if contact is to move forward after April. A balance has to be struck in that regard. The purpose is to reopen the relationship between child and father and grandparents and keep that alive unless it is unsafe to do so, or, and I return to the matter I drew attention to a short time ago, if the father and grandparents say or do anything in the contact that might be emotionally harmful to T, the contact may have to be reviewed again in the light of that.

[15] The main difficulty, of course, arises from the police position. I propose to read out the position that was put to the court by counsel for the police on instructions yesterday. It is this:

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‘The police indicate that if interim direct contact is ordered today the first option is that the mother would be invited to live without T, in which case her current protection arrangements would continue. If she declines, an application to withdraw the mother and T from the current protection arrangements will be made. The probability is that she will no longer be given the assistance of the specialist protective arrangement officers. The likelihood is that she will be left with little or no more than the assistance given in general to vulnerable members of the public. For example, a note might be placed on the police computer system as to how to respond in an emergency situation as can occur in cases where domestic violence is an issue.’

[16] Having heard that statement of position, the court was assisted by evidence from one of the officers directly involved in the case, a sergeant whose name, with my permission, was withheld from the parties and from the court. He explained that if direct contact was required then the police view is they could not manage the risk to the mother. The risk would arise from the possibility of young T disclosing relevant information that might enable the father and his family to identify the location at which the mother is living.

[17] The decision to take the stance described in the police position statement had been taken by the sergeant who gave evidence and his immediate senior, a detective inspector. The decision has not been referred to any more senior level. The sergeant confirmed that within The Metropolitan Police Service there is a channel of communication to something called a ‘gold group’ which is a meeting chaired by an officer at commander level. Following this hearing if direct contact were ordered, the officers in the case would make their application to withdraw protective measures and that would go initially to a detective superintendent but then probably to a gold group meeting. That meeting would take account of matters including any judgment given by this court, but it would in the end make a decision based upon its assessment of the risk involved.

[18] The approach of the officer was the subject of some cross-examination and, understandably, from the perspective of the police, the approach was, in his words, that the police cannot discount the risk of T disclosing information and they have to look at the worst case scenario of disclosure. They look at that and conclude that it is not possible to guard against the eventuality of disclosure. On the matter of practicalities, the sergeant said that there were obviously serious resource difficulties in transporting the mother and/or T to any contact arrangements, but the police would assist with resources despite the serious implications that they would have.

[19] Another worry is that no matter how complex the arrangements may be, it was not possible totally to avoid the risk of some form of counter-surveillance or surveillance measures being undertaken by the father or associates in following T’s progress through the system and locating the mother’s home. The officer did, however, accept that in a document placed before the court at G247 of the bundle counsel for the police at a earlier hearing had said ‘there is no information concerning any criminal associates or activities linking the family to contract killers’.

[20] Having heard the evidence of the police and understanding their position, I formed the clear view that it was for this court to decide upon the

right course in terms of contact for its ward, T, having his welfare as the court's paramount consideration. Thereafter, the court's decision and judgment would be disclosed to the police and the police would be invited at gold group level to consider whether or not they would intend to withdraw protective arrangements. Were they to decide to do so the matter would be referred back to the court for the court to reconsider the contact decision in the light of the decision taken by the police. That is the course that I think all parties accepted was the right one to follow and is, therefore, the structure that I have in mind when giving this judgment today.

[21] So far as the police objections are concerned, and taking the practicalities first, I readily accept that the resources involved in arranging any contact would be significant and would impact upon the police's ability to use those resources for other cases or indeed for the mother in other respects. Therefore, there is a need for me to, as it were, look to the husband the resources available by not setting the target for contact too high, but I am grateful for and accept the sergeant's evidence that they are not saying that the practicalities make the task impossible.

[22] I am also assisted by the submissions of Miss Alison Ball, QC on behalf of the father where at 6 of her position statement she sets out some nine points that could be included in any arrangements for contact and given that this judgment is to be disclosed I rehearse them word for word now:

- (1) The mother and T are taken to an undisclosed location in the vicinity of the contact centre.
- (2) They are collected from there by a worker from the centre or guardian or suitable third party and taken to the centre.
- (3) Father and grandparents arrive after a defined period.
- (4) Contact takes place supervised with an interpreter present.
- (5) Mother and T leave.
- (6) Father and grandparents leave after a defined period.
- (7) The father would undertake or agree to be made subject to an order not to question or in any way touch on the subject of the location of his home or school etc.
- (8) Contact would be supervised.
- (9) The father would be prepared to undertake or be made subject to any order which the court considers necessary to protect the confidentiality of the mother and T's present circumstances or to make the contact a happy occasion for T.

In addition to that, during submissions we have canvassed the additional safeguard of having the contact sessions recorded either by a video recording or audio recording so that soon after the event the police can know (with the aid, no doubt, of an interpreter) exactly what has been said.

[23] Against that background, and accepting, as I do, that any contact would take place with the sort of detailed arrangements that Miss Ball has in mind, and also accepting that the contact would take place at one or other of two units, both highly experienced and sophisticated contact centres, I look to the question of whether contact should take place. In doing so I respect the police position and acknowledge that they have a greater knowledge of the set up currently in place in relation to the mother and of protection strategies in

general. The police position is very largely predicated upon the question of what a 4 year old may or may not say.

[24] Save for this risk, the re-establishment of contact is otherwise very much in T's best interests, pending a final hearing.

[25] A further factor is that, as I accept, the father and the grandparents are well aware of the consequences that would follow from any breach by them of the contact regime. The stakes are high; any breach could lead to a long, and possibly indefinite, period of no contact with the boy that they love.

[26] I take the view that, on the knowledge that I have, the risk is justified. Whilst the possibility that T may give relevant information exists, I regard the chances of him doing so and being able to do so in any clear or relevant way as low. Also were he to do so the consequences are likely to be capable of management if, as I have described, the police have access to a tape of the visit soon after it takes place so that, if any leakage of information has taken place, it will be possible for the police to take action and manage the situation promptly thereafter and before any use can be made of the information actually to trace the mother's location. On that basis, I, therefore, take the view that some interim direct contact should take place, unless that fact is sufficient to lead the police to withdraw the current protection measures. If they do come to that view the case will have to be returned to court for further consideration.

[27] As to the frequency of contact, the proposal of the guardian, with respect to her, in my view, is wholly unrealistic. It is not possible to contemplate the police having sufficient resources to provide three contact visits, six journeys one way or the other every week for the next 6 months. Doing the best I can, I consider contact at the rhythm of once every 3 weeks to be the right level and proportionate having regard to the need for it to take place and to take place fairly regularly but also having regard to the protection situation of the mother. It will be for the father and the grandparents initially to discuss how they want to use those visits. On some of them I suspect the father will go alone, but from the court's perspective there is no difficulty in the grandparents attending most of the visits with the father.

[28] As I say, if the police, having considered all matters, take the view that in the light of that decision they must withdraw protection measures before any contact takes place I require the case to come back to court. It is likely that the court will share the guardian's view that the price to be paid is too high in those circumstances, but I do not rule out coming to a different decision and certainly would wish to hear any submissions that the father, the mother and the grandparents may wish to make at that time. A possible alternative plan has been canvassed, and it is right that the police, who will see this judgment, know of it so that they may express any views. The alternative is for there to be some communication between T and his paternal family over a remote video-link into which is built a time delay so that what is said either to the child or, more importantly, by the child goes past interpreters and police editors, as it were, before it is transmitted to the father so that there is the opportunity to stop the transmission before any potentially damaging material is sent down the line. Again, I would welcome any observations by senior police officers in that regard if the court is going to be asked to consider that alternative. That, therefore, is my decision.

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Order accordingly.

Solicitors: *Dawson Cornwell* for the mother
JRB Jones for the father
IBB for the grandparents

PHILIPPA JOHNSON
Law Reporter