

Neutral Citation Number: [2013] EWHC 2963 (Fam)

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

Thursday, 1<sup>st</sup> August 2013

Before:

MR. JUSTICE RODERIC WOOD

(In private)

B E T W E E N :

A        Applicant  
- and -  
D        Respondent

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MR. H. KHAN (instructed by Dawson Cornwell) appeared on behalf of the Applicant.

THE RESPONDENT did not appear and was not represented.

MR. J. FORD (of CAFCASS Legal) appeared on behalf of the Guardian.

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**J U D G M E N T** (Approved)

MR. JUSTICE RODERIC WOOD:

## JUDGMENT

### THE APPLICATIONS

1 The mother of A, a boy born on 13<sup>th</sup> January 2009 and therefore four years and seven months of age, seeks by applications dated 13<sup>th</sup> March 2013:

- (i) a residence order pursuant to the provisions of section 8 of the Children Act 1898 (hereinafter referred to as “the Act”)
- (ii) an order permitting her to change both the forenames and family name of A; and
- (iii) an order revoking A’s father’s parental responsibility.

2 A’s father does not oppose these applications. He was directed to attend the hearing before Mrs. Justice Theis on 6<sup>th</sup> June this year, and declined to do so. He sent an email and a fax to the court. Her order read as follows:

- (i) “After receiving the application for a residence order, name change, and to remove responsibility for my son [whom he then names] I am writing to advise that I will not be attending court or objecting to the requests by the mother. Although I do not agree or believe to be true a lot of the statements that have been included in a number of the reports, I am unable to find a family solicitor that can represent me, as legal aid is not available in these type of cases (sic) so, due to my circumstances, I will not be attending court at this time”.

And:

- (ii) “I wish to waive my right to attending the court hearing at the above court on the date and time shown. I don’t want to go because I have no argument with the mother about my son [whom he then names]. I will be sending a letter signed and dated so she can have parental responsibility” (sic).

These missives were rightly regarded as not being a full consent, and so the father has been the subject of a number of approaches, either by Mr. Ford of the CAFCASS High Court team, or the court itself, in order to try and arrange for his production here today to give his views on the subjects I am invited to determine. But he has, I am informed by the Security and Prison Services, refused to attend and declined to leave the prison in which he is currently incarcerated. I am quite satisfied he has had proper notice of this hearing. The detail of the attempts and more to contact him are set out at the head of a draft order prepared by Mr. Carr, counsel who appears for the mother.

- 3 A has a guardian in these proceedings, Mr. John Power of the CAFCASS High Court team, appointed by my order of 20<sup>th</sup> May of this year. He has filed a full and typically carefully considered and balanced report. He supports the making of these three orders.

## **THE BACKGROUND**

- 4 A's father is rising 32. His mother is 29. They were not married. The father acquired parental responsibility for his son, A, by operation of law when the mother registered the father on the birth certificate.
  
- 5 Both parents have other children. The details of the father's other child are not known. The mother's older son is R, now six. He lives with his mother and A at a confidential address. The father is currently in prison, as I have earlier indicated, for reasons which will appear in more detail below. His other child plays no part in the mother's, R's, or A's life, and never has.
  
- 6 The relationship between the mother and father was, at least in the very early stages, reasonably good, though the mother's account (not accepted in full by the father although he does not seek to litigate the factual background) describes a swift deterioration, with the father becoming increasingly controlling and, at times, violent.
  
- 7 The first prosecuted common assault by him upon her occurred in 2009, as a result of which he received a two-year community penalty, a fine and an order to attend a domestic violence awareness course. If he did so, he did not learn anything from it, for in December 2011 the mother was subjected to a prolonged and vicious assault. She describes amongst other acts being stabbed, punched, kicked, dragged by her

hair, strangled to the point where she feared she would die, and being the victim of a sustained and degrading assault. A part of that assault was witnessed by the children. She has suffered a perforated eardrum and many soft tissue injuries. He threatened to kill her and to have the house shot at with the children in it if she went to the police. The full detail of this horror is spelt out in her two statements of 7<sup>th</sup> March and 25<sup>th</sup> June of this year. It would be gratuitous to continue with this recital of her degradation at his hands. In his post-arrest police interview under caution, though he baulks at some of the allegations made by her, he makes a series of admissions sufficient to ground the charges referred to below on any view.

8 In subsequent days following on from that assault on 23<sup>rd</sup> December of 2011, her home - which she had fled, taking the children with her following her report of these matters to the police - was burgled. A police car placed outside it for the protection of the family was set afire, as was her brother's car and that of her brother-in-law. It is probable that the father was behind these acts, even if he did not perpetrate them himself.

9 On 28<sup>th</sup> December 2011 he was arrested, interviewed under caution, charged, and in due course appeared at the Crown Court, where he was sentenced on 26th June of last year to two years' immediate imprisonment for causing grievous bodily harm with intent; three years' imprisonment for false imprisonment of the mother; and other lesser periods for non-related crimes. This was not his first brush with

the courts. To give some flavour of his criminal past, one has only to look at the list of his previous convictions provided to me in the police disclosure. I can summarise it quickly. Between 1997 and 2012 he has run up a daunting number of convictions, 10 offences against the person, three offences against property, six offences of theft and kindred, one public disorder offence, 14 offences relating to police courts and prisons, seven drug offences, one firearms/shotguns/offensive weapon charge, and miscellaneous others, amounting in all to a further 21.

- 10 The mother has been prescribed citalopram for her anxiety. She has received some private counselling from her GP. She has been referred to her local mental health team for a form of therapy referred to as “EMDR” - eye movement desensitisation and reprocessing – a form of therapy that I am told by Mr. Power is often prescribed for soldiers returning from the horrors of Afghanistan. She has been diagnosed as suffering from post traumatic stress disorder. The sort of event which triggers her post traumatic stress disorder attacks is described fully in her statements. It would be unkind to repeat it, as a shocking reminder of her travails.
- 11 What of A? He, too, has special needs. To give a flavour of his particular difficulties, I shall read from the mother’s statement of 25<sup>th</sup> June, where at paragraphs 34-35 she says this:

“34 A also often suffers from nightmares. A has always suffered with high anxiety. He currently has one-to-one sessions at nursery. He is due to go to school in September. He often shows highly distressed behaviour. He head-butts hard surfaces and self harms. Due to A’s problems, he really

struggles to adapt to change. As he is due to begin school in September, he is currently going to school every day to familiarise himself with the school building. We are in the process of collating a scrapbook including pictures and words, otherwise over the summer holidays he will forget about everything he has learned about the school and September would be extremely difficult for him.

35 The experts believe that A may be suffering from pathological demand avoidance syndrome. However, A cannot be formally diagnosed with this condition until he is six years old. [I need not go into the reasons why that cannot be done, I interpolate]. “I attach as an exhibit hereto, a redacted copy assessment prepared by the council addressing A’s special educational needs”.

I do not need, for the purposes of this judgment, to go further into that condition, if indeed it is ever diagnosed.

Mr. Power also says this, in a paragraph of his report of 30<sup>th</sup> July:

“I have had sight of his assessment of special educational needs, which identifies highly distressed behaviour, short attention and concentration spans, which find him at times in his own world, as ‘if he’s gone off somewhere in his mind’. He is also described as being impulsive, non-reactive to pain, unable to manage change, particularly transitions, anxious, he ritualises behaviour towards food. He has obsessions and an unawareness of boundaries as well as speech and language delays. ‘He remains distinctly far behind his peers, and has communication challenges, for example being more attuned to visual clues than auditory’”.

12 A has been the subject of many assessments over the years. At one stage it was thought he was autistic. The short point, whatever his diagnosis, is that he presents very serious management problems both at school and at home. He above all has a need for continuity and stability.

13 The mother and her two children now live at a confidential address. She has, sadly, like other women in her position, had to take advice about her security from the police. It is the assessment of the police that when the father is released from prison, possibly as early as September this year, that the mother, if ever found by him, would face a real risk to her life and limb. It is an important feature of the case on any view, and has particular relevance to the two issues of change of name so that A and, of course, R and the mother herself, are not traceable, for A's full names are particularly distinctive, and the question of how in practice in these circumstances the father could exercise parental responsibility should he continue to hold it.

14 The mother sets out her reasons for seeking the orders referred to in paragraph 1 above in paragraphs 41-43 of her recent statement. In particular, of the father's holding of parental responsibility she says this, at paragraph.43:

“After everything the father has done, he has shown he has no regard for the children or their safety. He has put people's lives at risk”.

I agree with that assessment.

## **THE LAW**

- 15 Before considering these issues further, it is useful to say something of the law. In all three applications, section 1(1) (the welfare principle) and section 1(3) (the welfare checklist) of the Act are applicable. I so direct myself.
- 16 As to an application for a change of name, the leading authority is still *Re W, Re A, Re B (Change of name)* [1999] 2 FLR 930 et sequentia, in which Lady Elizabeth Butler-Sloss (as she then was) set out in paragraph 9 the factors which a court should consider. I do not need to repeat them here. I apply them as appropriate to this child.
- 17 As to stripping the father of his parental responsibility, there are two identified authorities. The first is a decision of Mr. Justice Singer (as he then was) *Re P (Terminating parental responsibility)* [1995] 3 FCR 753 et sequentia. The second is a decision of Mr. Justice Baker of much more recent vintage, *CW v SG* [2013] EWHC 854 (Fam) in which he adopted the approach of Mr. Justice Singer in the earlier authority. Neither of those authorities, of course, is binding upon me though I find, having considered them with care, that they are persuasive. For my part, I do not depart from the approach of each of those two judges, the latter in any event agreeing with the former as to the correct principles to be adopted. (See paragraph 23 of Mr. Justice Baker's judgment). He also went on, in paragraph 59 of his case to say this:

“As in *Re P*, I find that if the father did not have parental responsibility it is inconceivable it would now be granted to him, and that this is a factor

I should take into account when considering this application to terminate his parental responsibility. Furthermore, like Mr. Justice Singer in *Re P*, I find that in this case there is no element of the bundle of responsibilities that make up parental responsibility which this father could, in present or foreseeable circumstances, exercise in a way which would be beneficial for D”.

I respectfully agree with those observations and that approach, and find it an appropriate summation and applicable to the facts of the case I am determining.

## **THE GUARDIAN’S ASSESSMENT**

18 I agree with Mr. Power that A’s wishes and feelings need not be obtained given his age and level of understanding, as well as his own particular difficulties referred to above. However, it does not take a seer to establish that A would in all likelihood wish to be part of a loving and familiar family, and would appreciate the continuity of arrangements for his care by his mother in the company of his half brother, as supplemented by the highly trained professionals with whom he comes into contact by virtue of his conditions. I note, however, that Mr. Power has recommended that life story work will be needed as A grows older, so that he can make some sense of his past and of his heritage, his mother being described as “white UK”, and his father as “Afro-Caribbean dual heritage”. His mother is already aware of this future need and impressed Mr. Power with her commitment to such a difficult task.

- 19 In paragraphs 11 and 12 above, I set out some of the difficulties A faces. I agree with Mr. Power's assessment, where he refers to the father's (woeful – my interpolation) lack of engagement with A; that he has on the evidence I have seen never met the child's needs and, I find, is most unlikely ever to do so in the future.
- 20 What of any change in A's circumstances? His current arrangements meet his need for stability and security. I cannot on this history see any circumstances where it would be appropriate, bearing in mind the risks inherent in him knowing where A is (let alone making informed decisions about his son which would require a hitherto unachieved level of interest and involvement) for there to be either any challenge to the recently hard-won stability or any exercise of parental responsibility by the father.
- 21 Mr. Power puts it thus in a typically graphic section of his report:

“The assessment of A's special educational needs under the heading 'Relevant home and school factors' notes deterioration in his behaviour if he has visited family over the weekend. The reintroduction of his father into his life, who is, from the police evidence, a violent unpredictable man bereft of boundaries himself, could only engender a profoundly deleterious change in A's carefully calibrated circumstances wherein consistency not chaos is of the essence”.

I agree with that forthright critique. If such small changes of routine bring about such changes for A, what effect would a further dislocation have on him if his father were to find out their address? Mr. Power's word “calamitous” in this context is the correct one.

22 It is by now all too evident that the father, even assuming in his favour that he had the necessary skills to raise his child in anything approaching a positive way, has chosen not to exercise those skills at all, even when in the community and capable of so doing. I see no likely Damascene conversion in the offing.

23 Despite the savage difficulties the mother has faced, she has managed with much difficulty and little familial support, to ensure that whatever her own personal dilemmas, including but not exclusively post traumatic stress disorder of a high level, she has provided for each child as his individual situation requires.

## **DISCUSSION AND CONCLUSIONS**

24 As is evident from what has gone before, the underlying facts of this case militate in favour of granting the mother the relief she seeks, applying, as I do the necessary legal principles.

25 As to the exercise of parental responsibility, I echo even on these wholly different facts from those in *Re P*, and *CW v SG*, the words of Mr. Justice Singer adopted by Mr. Justice Baker and set out in paragraph 10 above.

- 26 The mother has effortlessly traversed the high threshold required to lead me to terminate the father's parental responsibility, and has done so fulfilling the necessary burden of proof and standard of proof.
- 27 To leave the father as a joint holder of parental responsibility would lead to the mother having perforce to have dealings with the father which would, on any objective view of the evidence, be intolerable to her, and which would more probably than not lead to a profound instability for her, with the inevitable consequences for the deterioration in the arrangements for the children as she sought to combat the seriously undermining effects upon her of such an intrusion. This finding rests significantly but not exclusively on the mother's evidence, which I accept, that this father is interested in controlling her above all else and, frankly, not in A at all. Even though he has evinced no real interest in A, his capacity to create mischief by deploying his parental responsibility if he retained it would remain. I cannot risk this comparatively new-found security being jeopardise.
- 28 I have already referred to some passages of the evidence which establish existing harm to A caused by his father's behaviour towards the mother, of which he would at some level have experienced. The harmful consequences of the father's behaviour, both to the mother's confidence in herself to meet A's needs and her physical and psychological state, all of which will have impacted on her care of A to some extent or another cannot be repeated. Anything proportionate which

reduces the chance of revealing to the father A's and thus her whereabouts is to be avoided. A change of name from his currently unusual ones will help achieve that end, although the "biographical integrity" as Mr. Power put it, of A needs to be in some way respected where possible, I find the welfare balance tips firmly in favour of name change to protect the integrity of his home and the mother's care of him.

29 This view is underpinned by contemplation of the previous lack of commitment shown by the father, for example, as to contact, as to attending professional assessments required to examine and assist A, the father attending nought out of 23, all that as opposed to simply holding the title by virtue of birth registration.

30 As to whether or not to make a residence order, I recognise that in one real sense it is not required, there being no alternative as between the parents, and the state in the form of the local authority, quite rightly seeing no reason to intervene under part IV of the Act. Thus consideration of section 1(5) (the no order principle) comes into play.

31 But I have been persuaded that it is appropriate to make a residence order here for the following reasons:

- (i) it recognises the reality of past, present and likely future care arrangements;

(ii) it will give the mother a sense of security as to this court's approval of her arrangements. As Mr. Power says, "Her application for residence is underwritten by her bravery and her quite extraordinary determination and capacity to meet the needs of two very different children". I respectfully agree with every one of those words.

That is my judgment.

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