

RE Z AND A (CONTACT: SUPERVISION ORDER)

Family Division

Charles J

17 April 2000

Contact – Supervision order – Mother influencing children’s views – Allegations of sexual abuse – Children suffering harm as result of mother’s conduct – Interim or final order – Care order possibility in future

The mother, who had been diagnosed as suffering from a personality disorder, strongly opposed contact between the father and the children. Both children, aged 11 and 7, had been enthusiastic about contact with the father earlier, but had gradually begun to express the view that the father was a dangerous and frightening person. The court rejected the mother’s allegations that the father had sexually abused the children, that he was a drug dealer, and that the children would not be safe with him, finding that the mother had regularly and deliberately influenced the children by making allegations which she knew to be false. The judge found that the threshold criteria had been satisfied in respect of both children; they were suffering and were likely to suffer significant harm because of the mother’s attitude to the father and her opposition to contact with the father. The court heard argument as to what public law orders should be made, and what the role of the local authority should be.

Held – making an interim supervision order – the children should remain with the mother on the basis that a package of therapy would be entered into as soon as possible with the aims of (i) promoting direct contact between the younger child and the father, and (ii) helping the older child, who was expressing far more hostility and was not yet ready to contemplate contact, to come to terms with the younger child’s contact. It was appropriate to make an interim supervision order, rather than a final order, to ensure that the local authority would bring the case back to court if the proposed package of therapy failed, with the result that the court, rather than the authority, would make the medium- to long-term decisions as to the future of these children. It was too soon to make a decision as to whether a care order should be made in respect of either child, but the making of a care order and the movement of one or both children to foster care could be options in the future. The proposed therapy would not work unless the mother could show real commitment to it, including pursuing the therapy even if the children were telling her that they did not wish to proceed.

Statutory provisions considered

Children Act 1989, ss 1, 31, 37–39

Case referred to in judgment

S (Contact: Application by Sibling), Re [1998] 2 FLR 897, sub nom *S (A Minor) (Adopted Child: Contact)*, *Re* [1999] 3 WLR 504, sub nom *S (Adopted Child: Contact by Sibling), Re* [1999] 1 All ER 10, FD

Robin Barda for the Official Solicitor

Vera Mayer for the father

Dennis Sharpe for the mother

Anthony Hand for the local authority

CHARLES J:

In November 1999 I gave a judgment in open court in this case. This judgment is also delivered in open court.

As appears from my November 1999 judgment this case concerns two children a boy 'Z' born on 30 May 1988 (who is therefore 11 approaching 12) and a girl 'A' born on 8 June 1992 (who is therefore 7 approaching 8).

This judgment should be read with my November 1999 judgment which sets out the relationship between the parties and the background history. That judgment also makes a number of findings.

As a result of and following that judgment the local authority have issued public law proceedings. I heard the public and private law proceedings together.

At the end of the hearing I announced the decision I had made and told the parties that I would give my reasons later. This judgment contains those reasons. The main decision was that I would make interim supervision orders in respect of both children on the basis that as soon as was possible a package of therapy by a team headed by a Dr SS and which was directed to promoting contact would be commenced.

The threshold criteria

In the November 1999 judgment I found that the threshold criteria set out in s 31 of the Children Act 1989 were satisfied in respect of both children (see pp 65 and 66). No party argued that I should revisit my findings as to the threshold criteria set out in the November 1999 judgment.

However, for the avoidance of doubt I repeat and confirm those findings in the public law proceedings. My reasons for those findings are set out in the November 1999 judgment.

I add that in my judgment my conclusions are reinforced by (i) the reports I have read in these proceedings written by Dr SS (a consultant child and adolescent psychiatrist who was instructed following the last hearing by the local authority), and JS (a child and adolescent psychotherapist who has been seeing Z since 1998 and has seen A on a few occasions), and (ii) the oral evidence I heard from Dr SS, JS, Mrs JT (a social worker who is the main author of the s 37 report and the proposals made by the local authority), the mother and the father.

In particular in my judgment the reports I have referred to show that the views the children are expressing in respect of the father and as to contact are to a very large extent based on (i) what the mother has told them and is telling them, (ii) her general attitude towards the father and his family, and (iii) what she says to others, and does, in the presence of the children.

My other findings in the November 1999 judgment

None of the evidence I have heard during this hearing has led me to consider that any of those findings should be changed. Indeed, in my judgment, generally the reports prepared for this hearing and the evidence I heard during it support those findings.

However, I have concluded that I ought to comment further on finding (F) having regard to the fact that Dr SS and Mrs JT have reported, or told me, that the mother appeared to them to be convinced that what she was saying about the father was true (see, for example, p 49 of Dr SS's report). This links to the points I made in the first two sentences of subpara (e) in respect of finding (F) (see p 58 of my November 1999 judgment).

I make these further comments with some reluctance because (i) understandably it has been submitted to me that that finding is one that the

mother has found upsetting, and the mother also gave evidence to this effect, and (ii) as mentioned at the end of finding (F) in the November 1999 judgment (pp 57–59) if my conclusion on the balance of probabilities as to the mother’s appreciation of the truth set out therein is wrong, this does not affect my conclusion that the children are suffering and are likely to suffer significant harm, and therefore in my judgment finding (F) should not be isolated, or regarded at this stage as a finding of central importance.

First, I would like to repeat and make clear that I still have considerable sympathy for the mother. Also I accept that when the mother is advancing her views on the father, contact and the statements and actions of the children she is often genuinely upset, distressed and on occasions distraught. Also it should be remembered that her views on the father are not confined to the allegations referred to in finding (F), namely that the father had abused the children, was a drug dealer and that the children would not be safe with the father. Further, I accept and wish to make it clear that my finding (F) is not a finding that the mother has, or does, or is likely to sit down with and talk to the children with the conscious purpose of seeking to influence their views against the father and his family by making the serious (and in my judgment false) allegations referred to in finding (F).

Rather, in my judgment, her influence is imparted by (a) her statements and expression of views to the children, and others in their presence, about and her general attitude towards the father, his family, these proceedings and people who visit her and the children in connection with the proceedings, and (b) her general reaction to events relating to the father.

Additionally, in my judgment, her influence is imparted by her implementation of her view which she expressed to me that the children should be allowed to express their own feelings and that they should be told the truth. As general statements I accept that these are propositions that would, and should, meet with general approval with the qualification that young children need guidance. In my judgment the problems and damaging influence of the mother relating to these views come from the manner in which she implements the approach described by those statements. As to this, she made clear in her oral evidence that the truth she is referring to is her version of events even though she accepts that people see events differently and behave differently with different people. Further, I have found that parts of that version are untrue and are known to the mother to be untrue (albeit that as I acknowledge herein and in my November 1999 judgment on occasions she may have believed that some of the allegations she has made were true and there is a continuum between mendacity and a situation in which a person becomes convinced that something which he originally knew to be untrue is true).

Also it appears from what Dr SS observed, and from what he was told by the mother in her conversations with the children, that the mother fails to implement the approach she advocates and the correct purpose and aim underlying that approach. Examples of this are included in Dr SS’s report when he reports:

‘She informed me the only way she managed to get Z to school in the past was to say that if he did not go he would have to go the father’s. She did not seem to recognise that by using the father in this way she was in fact confirming him as the baddy.

A bounced into the room and later told mum she was worried that the father might try to kill her. The mother reassured her that she would not let him. She did not suggest the father would not necessarily want to do such a thing.

The mother told me A had had a dream which A was reluctant to discuss with me. It concerned a cat that they had being taken away by the father in his car. The cat had escaped through the sunshine roof and returned safely to A. The meaning appeared to be fairly clear.’

The meaning of the dream referred to in the last citation links to allegations by the mother and assertions by the children that they are afraid that the father will kidnap the children or take them away. As to this the mother’s evidence was that the children were unaware of the father’s application for residence.

In my judgment the mother knows that there is no risk that the father would try to kill or kidnap either of the children. Indeed, she accepted in her evidence by reference to the second extract from Dr SS’s report cited above that often she would say that the father was not going to do that. But as the above examples show she does not always take that (or a similar) line with the children.

As to kidnapping, she was more equivocal and at one stage referred back to the father taking A to Australia which she said she did not want him to do. In my judgment even if one accepts what the mother says about that trip and thus as she describes them (i) the position and attitude of the mother and the father before A and the father went to Australia and when they returned, and (ii) the reasons for and content of the incident in B concerning A’s passport, they do not warrant credible assertions by the mother that she believes that the father might kidnap the children, or in any way remove them from her care unlawfully. As to these assertions, and the mother’s assertion that the father has always preferred A to Z, it is instructive to return to the mother’s statement prepared when the father was in Australia and her long letter written at the end of 1996 or early 1997.

However, I repeat that I accept that at times when making the allegations referred to in finding (F) the mother has believed that some of them are true (see subpara (e) at p 58 of my November 1999 judgment). In my judgment, this is particularly the case when she is distressed, or is not challenged or questioned about that conduct. But when what the mother says is compared with the history, uncontroversial events in that history, and thus with:

- (i) what she has said and done in the past, and
- (ii) the escalation of allegations and their timing,

these serious allegations which she makes, and has made, against the father become incredible and for the reasons given in my November 1999 judgment (see again the reasons for finding (F) and in particular subparas (e)(i)–(vi) at pp 58 and 59 thereof), the mother has regularly been aware that they were untrue when making them to, or in the presence of, the children.

Neither Dr SS or Mrs JT heard the mother give her evidence during the hearing in October 1999 when she was cross-examined as to the serious allegations she was making about the father. Also they would not carry the

detail of the history in their heads. It follows that in their discussions with the mother they would not be in a position to compare what she was saying with what she had said in the past, including her answers in cross-examination. In my judgment I have to consider their comments that the mother appeared to them to be convinced that what she was saying about the father was true. With this in mind and having done so their views have not caused me to conclude that I should alter finding (F).

Further in this context I mention that during her oral evidence the mother introduced new allegations against the father that had not been raised before and were in conflict with, or were not raised in, her earlier statements. It is unnecessary for me to go into the detail of these new allegations but for the reasons given in my November 1999 judgment when they are assessed against the history I do not accept that they are true.

Further points relating to the mother's oral evidence at this hearing

When giving her evidence, and initially in answer to a question whether she was concerned by the existence of the application for a residence order, the mother said that it was:

- (a) the fact that the father had parental responsibility for A and with it the ability to play or seek to play a part in her life, and
- (b) her assertion that the father had been abusive towards her (rather than the children) and had greatly upset her,

which lay at the heart of her opposition to him having any part in her life and thus the lives of the children.

This evidence is far closer to the earlier evidence of the mother and the long and emotional letter she wrote to the father in late 1996 or early 1997. In my judgment this evidence, coupled with that letter and the refusal by the mother shortly after it was written to allow contact, provides an insight into the real reason for the mother's attitude to the father and the parental family which links with her own upbringing and temperament. When she wrote that letter the mother was obviously very upset and during the course of her oral evidence at this hearing she told me in effect that as she had given the father chances to continue their relationship and he had upset her, her way of coping was to have nothing more to do with him and she thought he should leave her alone, or as she said walk away. In my judgment when looked at from the mother's point of view and having regard to her history, temperament and needs this is an understandable attitude but (and importantly) it does not have regard to the needs of the children.

I consider that a transcript of the evidence given to me by the mother during this hearing could assist those who are taking part in the package of therapy referred to below and I will therefore direct that a transcript of the evidence of the mother and, for completeness and balance, that of the father given during this hearing should be prepared at public expense and will direct that it (and the father's statement prepared for this hearing) may be disclosed to persons involved in providing that package of therapy.

The report and evidence of JS

I acknowledge that JS's report was prepared on a limited basis and that JS has problems in discussing the therapy she had been giving to Z (and to a far

more limited extent to A). These difficulties may be relevant to some of the points I make concerning JS's report and evidence and therefore those points should be read subject thereto.

It was also apparent on the evidence that the local authority had not properly raised, or discussed, with JS her role or potential role in the therapy package the local authority was recommending. This was surprising and unfortunate. Mrs JT gave evidence first and said that she had spoken to JS that morning and JS had told her that it would be acceptable for her to take part in the therapy package being recommended in respect of Z and A. When she gave her evidence JS did not take this view. Rather she stated and accepted that her role should be limited to continuing some work with Z alone and should be a limited one. In my judgment both the local authority and the Official Solicitor were remiss in not ensuring that the detail of the therapy package that they were both recommending at the start of the hearing had not been further considered, and their failure to do so and thus, for example, to put to JS what they thought she might do before the hearing commenced and she gave evidence was unfair to JS.

On the information before me and therefore subject to the difficulties and thus the qualification mentioned earlier in this judgment, I found JS's report and evidence troubling in two major respects.

First, as to the content of what Z was saying to her about the father which gives a picture of a very troubled young boy. Secondly, and importantly having regard to the therapy package being recommended by the local authority and the Official Solicitor, having read this report and heard JS give evidence I remained unclear as to what the aim and purpose of her work with Z had been and would be in the future. As to this JS stated that normally she would see a child on a more intensive basis and for a shorter period, and she displayed considerable hesitation in answering the question whether she was the appropriate person to have been seeing Z.

Further and although JS stated that she accepted the findings in the November 1999 judgment, her oral evidence demonstrated that (i) she had not stood back and assessed the mother's allegations or the source of the allegations made by, and the feelings of, the children having regard thereto or to the history set out therein, and (ii) she had accepted at face value what the children and the mother have told her and had not sought to question it in her own mind or discuss it with the children with a view to them looking at the issues relating to contact from a different perspective.

This seemed to be in marked contrast to the approach that JS told me she had taken in respect of Z's problems at school. As to those she appeared to have made a number of constructive suggestions which it seems have helped Z. This must have involved an objective assessment of what Z was telling her. In the absence of further explanation this was the type of approach I would have expected her to take in relation to all Z's problems and difficulties.

However, JS told me that she had not discussed contact issues with Z other than against the background of impending court proceedings (ie in 1998 and very recently) and as I understood it in such discussions all she has done is to listen to what Z has said. What he said to her in March 1999 is troubling in a number of respects. In my judgment some of it is obviously not the product of his memory or own analysis and thought process. For example, and most obviously in my judgment, Z as an 11-year-old dyslexic

boy who has real difficulty in reading would not himself have reached the conclusions expressed as to why he was saying his allegations would not be believed. This was continued when the mother gave her evidence and made effectively the same allegations as to why she was not believed by reference to the class of the people involved.

Having said that I accept the point made that neither child is saying that the mother is telling them things about the father and both are making assertions as to what they say they remember. But, in my judgment, this expression of views by Z which seems to have been treated by some as views he has formed himself is another example which confirms my conclusion that the source of many of Z's allegations and his very troubling assertions and expression of wishes relating to the father are the feelings and views of the mother which she has made known to the children.

I add that the oral evidence of JS:

- (a) concerning the frequency, timing and content of her conversations with Z as to his feelings relating to contact showed that she has not sought to discuss with him ways of dealing with those feelings and problems and effectively has done nothing to address them or help him with them, and
- (b) showed that JS has adopted a similar approach in respect of A's expressions of feelings relating to contact. She has seen A less often but JS told me (i) that A had told her that her daddy had told her that he did not like her mummy, and (ii) that A would be going to live with him, and (iii) that JS did not think it appropriate to question or challenge those assertions with A. I can understand why JS would be of the view that she should not challenge A directly but I do not understand why she has not questioned the accuracy of the allegations in her own mind. She did not seem to have taken the fundamental step of looking at the timetable of events set out in my November 1999 judgment and asking herself when the father could have said, or would have been likely to have said, these things to A. When I asked JS whether she had asked A when her daddy had said these things to her she replied that that would have been a good question to have asked but she had not done so.

The mother heard JS give her evidence and when the mother later gave her evidence in answer to questions from counsel for the Official Solicitor she said that A had said such things on return from contact at M and therefore, as I understood it, in 1998. The mother also added a new allegation that it was because the children were convinced that the father would come and get them that she kept them away from school (which was during the academic year of 1997/98 and in particular the summer term). I have no recollection of either of those allegations being made in evidence given before and when I raised this point with counsel none of them pointed me to any such evidence. If A had said this on return from contact at that time, or that had been the real reason (or one of the real reasons) for keeping the children away from school, it is very difficult to understand why such assertions were not included in the mother's earlier evidence. Their absence therefrom means that I do not accept this oral evidence given by the mother which also relates to questions I asked JS concerning what A had told JS.

In my judgment, on the information I have (and thus acknowledging the difficulties she has and with the qualification I have set out above) the work that JS has done with Z on a reasonably regular basis since 1998, and the few visits that A has had to see JS, have not been directed to and have effectively done nothing to address the significant harm that in my November 1999 judgment I found both children were suffering and are likely to suffer.

It follows that in my judgment it is very important that JS should have detailed discussions with other members of the team providing the package of therapy referred to below (and in particular with Dr SS) to define her role with Z and generally. I add that it seems to me that it is very important that each member of that team is aware of the roles and aims of the other members and of the package as a whole and its timetable.

Dr SS's report and oral evidence

He prepared a clear and helpful report in response to the instructions given, and the questions, put to him by the local authority.

He did not make a recommendation in his report or in his oral evidence. I shall not attempt to summarise his report. His oral evidence was in line with it. If Dr SS considers that this report should be disclosed to one or more of the members of the team providing the package of therapy referred to below, I give leave for such disclosure to be made.

Very briefly, his report shows that Z is stating that he does not wish to have contact with the father but that A is ambivalent in that, for example, she was happy at and appeared to enjoy the contact she had with the father in the presence of Dr SS. The report sets out what happened before, at and after that contact. This account is important and, in my judgment, indicates that there is a very real possibility that in the short, medium and long term A would enjoy and benefit from direct contact with the father.

In his report and in his oral evidence Dr SS realistically and understandably expressed doubts as to whether the mother would give a sufficient level of commitment to a package of therapy directed at promoting contact.

My approach to the issues before me

In both the public and private law proceedings the substantive orders that I have to consider are governed by s 1 of the Children Act 1989. So in respect of them the welfare of the children is my paramount consideration and I have to have regard to the welfare checklist. That welfare is also a relevant consideration in the procedural decisions I have made.

In this judgment I shall not go through the welfare checklist paragraph by paragraph. In this case a number of the issues could be dealt with under different headings of that list. I have, however, had the checklist in mind.

The issues in broad terms are whether I should make a supervision order or a care order and what, if any, further private law orders should I make.

In my judgment correctly, on this occasion no party submitted that this was a case in which it would be appropriate for me to make no order.

The position in respect of the two children is different. It was in my judgment correctly common ground that in making orders in respect of each child it is the welfare of the child that is the subject of the order that is my paramount consideration (see the authorities I mention and my conclusion in

Re S (Contact: Application by Sibling) [1998] 2 FLR 897, 915H, sub nom *Re S (A Minor) (Adopted Child: Contact)* [1999] 3 WLR 504, 520. But the effect any order would have on the other child is relevant because of the 'knock on' effect that would have on the subject child.

The issues

These narrowed during the course of the hearing.

First, this was because on the first day of the hearing the mother through her counsel indicated that she did not oppose the making of a supervision order in respect of both children on the basis that they remained with her and a programme of therapy as proposed by the local authority was carried out under the auspices of a supervision order. This meant that the mother's application that there should be only indirect contact, or no contact, was only pursued as a fallback position if I did not consider that this course which was recommended by the Official Solicitor and the local authority (but not Dr SS who as I have said made no recommendation) was in the best interests of each child.

Secondly, in respect of Z the father indicated that in the light of Dr SS's report he was not pursuing his application for residence. Also during the hearing in the light of that report and the report of JS (which was served in draft on the first day of the hearing and signed on the second day thereof) (i) the father confirmed this stance and sought leave to withdraw his application for residence in respect of Z, and (ii) he and the paternal grandmother indicated that they were not at present seeking an order for direct contact with Z on the basis that having regard to Dr SS's report, and that of JS, they were presently of the view that any such contact should not take place against Z's wishes and that progress towards direct contact between them and Z should be at Z's pace.

I accept the evidence of both the father and the paternal grandmother that they found these decisions relating to Z difficult and that they were very concerned about what the reports said about Z, his views, wishes and beliefs. I also accept that they were concerned that Z should know why they had decided to make these decisions and thus that they still loved him and would be there for him if and when he wanted them but that in view of, and out of respect for, his stated wishes the father was withdrawing his application for residence and they were not pursuing the applications for direct contact.

It was mooted that they should write to Z. Initially it was suggested that that letter should be given to JS to read and explain to Z but in view of her evidence this was abandoned and the local authority suggested that one of their social workers should read and explain such letters to Z. In my judgment it would be in the best interests of Z if as part of their indirect contact with Z the father and paternal grandmother wrote such letters and copies were given, read and explained to Z by a social worker unless, after the initial meeting of the team involved in the package of therapy referred to below, Dr SS advises that someone else should give Z this information and help. Additionally, in my judgment the members of that team and the mother should be told of the contents of those letters.

As to A the focus of the argument was on:

- (1) whether she should remain living with the mother (and therefore also Z) on the basis that as soon as possible a package of therapy would

be commenced which was directed at promoting direct contact between her and the father and which would from the outset, or a very early stage, involve direct contact between the father and A in the company of the relevant member or members of the team providing that package of therapy, or

- (2) whether I should make a residence order in favour of the father also supported by a package of therapy directed at that situation and thus at assisting all involved in dealing with the upset and distress that would occur on and after such a transfer, and contact between A the mother, and Z after such a transfer.

It was accepted by the father and the mother that on either basis I should also make a supervision order.

If I decided that A should remain with the mother on the basis set out above, the paternal grandmother accepted that her application for direct contact with A should not be dealt with on this occasion.

Additional potential issues were:

- (1) Should I make a care order in respect of Z or A?
- (2) If so, what should be the care plan in respect of the immediate future and the 'fallback' positions?
- (3) Should I make interim public law orders?

Different issues arise as to these possibilities in respect of Z and A.

Care orders

The local authority have never sought a care order. From the beginning of its involvement after my November 1999 judgment it has only sought a supervision order.

In my judgment from the beginning of that involvement, and thus before they received the report of Dr SS, the understandable preference or instinct of the local authority has been to seek a supervision order on the basis that both children remain with the mother.

As to possible 'fallbacks', in his oral evidence Dr SS said that he had considered whether a possibility was a move of one, or both, children to foster-parents but at that time he had rejected it. He however went on to say that he thought that he might have been wrong to do so; I agree with that sentiment.

In my judgment a possible final outcome is that a care order should be made in respect of one or both children. Whether such an order would best promote the welfare of one or both of the children would have to be considered having regard to the results of, and further information obtained from the package of therapy, that will shortly be put in place.

As to Z, now that the father has (in my judgment correctly in the light of Dr SS's report) decided not to pursue an application for a residence order and (again in my judgment correctly) it was common ground that in the short term Z should stay with the mother and a programme of therapy should be commenced, the issue of what public law order should be made in respect of Z needs to be considered having regard to the duration of a care order, as opposed to a supervision order, and the possible 'fallback' plans for Z if the proposed package of therapy fails, or has no significant success.

As to A an additional consideration in respect of the question whether a care order, or an interim care order, should be made is whether this would assist in promoting or in ensuring that direct contact took place between A and the father.

In her oral evidence Mrs JT, for reasons that I did not find impressive or convincing and which were based on the partnership that underlies the Children Act 1989, made it clear that the present stance of the local authority is that (i) it would not seek to enforce contact by exercising its parental responsibility conferred by a care order if that meant that A would have to be forcibly removed to attend contact, and (ii) it would not, or would be very unlikely to, decide to move A to live with the father as a 'fallback' if its proposed package of therapy to promote contact failed.

For different reasons I can understand the reluctance of the local authority to forcibly remove A for contact during the proposed package of therapy. This is because if this became necessary the package of therapy is likely to have failed, or be doomed to failure, and I accept that the relationship between the mother and the local authority is likely to be better if during the continuance of that package of therapy she does not have the concern that the local authority might remove one or both children by the exercise of its parental responsibility.

Also for different reasons I can understand the reluctance of the local authority to make a decision in exercise of its parental responsibility under a care order to move A to live with the father. In my judgment any such decision of the local authority should be made by, or be in accordance with a care plan approved by, the court after it has had the benefit of hearing expert evidence and argument based on the most up-to-date information. I also accept that it may be that a transfer of residence should be pursuant to a private law order.

In my judgment it follows that (a) an interim care order would not have any advantage over an interim supervision order, and (b) if as I have decided should occur the children should remain with the mother on the basis that a package of therapy is entered into as soon as possible it is too soon to make a decision as to whether a care order should be made in respect of either child. As to point (b) I add that this accords with the view of Dr SS in his oral evidence that because further information would become available during the proposed package of therapy (or the attempts to carry it out) whilst the children remained with the mother it was too early to make properly informed decisions as to what would best promote the medium- to long-term welfare of each child until that package of therapy had been carried out or attempted.

Different issues will arise dependent on the success or failure (or the degree of success or failure) of that package of therapy.

Interim or final supervision order

In my judgment to its credit the local authority propose a package of therapy whether or not A is moved at this stage. It follows that no issue arises as to whether I could or should order pursuant to s 38(6) of the Children Act 1989 that the package of therapy proposed be put in place.

Both the Official Solicitor and the local authority submitted that I should make a final supervision order on the basis that if the proposed package of therapy failed the local authority would bring the matter back to court. I

accept that there are points to be made in favour of that course which has the backup in respect of A that the father could also bring the matter back to court having regard to the progress or result of the package of therapy. The mother could also bring the matter back to court.

I have, however, concluded that I should make an interim supervision order in respect of both children. My main reasons for this are:

- (i) the delay in making a final order is planned and purposeful in the public law proceedings if those proceedings are looked at in isolation, and this point is strengthened when it is remembered that there are also private law proceedings in which the father is at present seeking a residence order in respect of A, and the mother is at present seeking a 'no contact' or limited contact order in respect of both children and the medium- to long-term future of one or both of the children may be covered by private law orders,
- (ii) point (i) is confirmed by the evidence of Dr SS that the proposed package of therapy (whatever its outcome) will produce further information and it is therefore too early to make properly informed final decisions,
- (iii) although I do not doubt that the local authority would bring the matter back to court under s 39 of the Children Act 1989 if it thought that the proposed package of therapy had failed, or it was otherwise appropriate to do so, the making of an interim supervision order makes it clear, and indeed ensures, that it is the court that will make the decisions in this case as to the medium- to long-term future of the children and avoids any problems as to the extent of the court's powers having regard to s 39(4), and
- (iv) if the proposed package of therapy fails, or only has limited success, the decisions the court will have to make as to the medium- to long- term future of the children will be difficult ones.

Additionally, and having regard to the possibility that the proposed package of therapy will fail, in my judgment the interests of the children require that a date for a final hearing is set now for the first week in October 1999 with a directions hearing in the first fortnight in September 1999. The reasons for this are that if the proposed package of therapy fails, or is doomed to failure, Dr SS's view was that it was likely that this would become apparent at an early stage, and if this occurs it is important having regard to the welfare of the children that further decisions are made as soon as possible.

If by September 1999 the package of therapy is progressing satisfactorily (and Dr SS's view will be the most significant view as to that) the October 1999 hearing date could be vacated and, if appropriate, replaced by another date.

The recommendation made by the local authorities and the Official Solicitor and preparation for any further contested hearing

The Official Solicitor has acted as the guardian ad litem of the children in both the public and private law proceedings before me. He has not put in any further reports since the November 1999 hearing. Further and notwithstanding a direction that he should do so he did not put in a statement

of position. At the start of the hearing counsel for the Official Solicitor told me that the Official Solicitor supported the recommendation of the local authority.

That recommendation was that A should stay with the mother and a package of therapy to promote contact should be put in place. This is what I have decided should happen.

However, it was apparent at a very early stage of the hearing that this recommendation had not by then been properly thought out, or through, by the local authority or the Official Solicitor. Although I accept that there was not much time for preparation for the hearing after the receipt of Dr SS's report I made some comments during the course of the hearing which reflected my concern as to the lack of such preparation.

As one would expect during the hearing, I have received considerable assistance from counsel for, and the representatives of, the Official Solicitor and the local authority both in and out of court as a result of which the proposed package of therapy was particularised and changes were made to the constitution of the team who were to perform it. In my judgment this work with the helpful co-operation of Dr SS converted the recommendation from an idea to a package or plan that could be implemented within an appropriate time-frame having regard to my findings that the children are suffering and are likely to suffer significant harm.

I add that in my judgment if these proceedings return to court for contested hearings it is important that care is taken in preparing for that hearing. In this context, in my judgment the Official Solicitor as the guardian ad litem of the children in both proceedings should carefully consider and report on the range of possibilities open to the court. This is so even if he agrees with the recommendation of the local authority. In particular, if at any such hearing the father is seeking a residence order in respect of A it will be important, and of assistance to the court and the parties, for the Official Solicitor to consider the practicalities of (and relating to) any such transfer, the help that can be provided to both sides of the family in respect of it (and its effects), and contact after it has taken place. For example, as to this the original suggestion made by the local authority that A's therapist and therapy should be based in D was in my view always likely to be impracticable if A was living with the father and this was recognised during the hearing. The need for this preparation and subsequent report exists whether or not the Official Solicitor recommends such a transfer or reserves his position on what would in his view best promote the welfare of the children to submissions at the hearing.

In my judgment a proper consideration of the welfare of these children demands thorough preparation for the hearings which should include a detailed consideration of the possible options open to the court and the practicalities of implementing each of them.

I repeat that in my judgment a possible option could be the making of a care order. As to this I have particularly in mind the possibility that the proposed package of therapy might not bring about any significant amelioration of the significant harm that I have found the children are suffering and are likely to suffer. If this happens (i) the possibility of moving one or both children to foster care raised by Dr SS should be considered (even if again it only leads to its reasoned rejection). The question whether a care order should be made on the basis that the care plan is that the relevant

child remains living with the mother should also be considered. As to this question, in the circumstances envisaged (ie that the proposed package of therapy has had no significant success) the mother would be likely to need help to ameliorate the significant harm and likelihood of significant harm I have found to exist and in the care of her children, and this need could be one that it is thought would last for a considerable period of time. Further, I comment that if the significant harm found to exist had included an element of physical harm or neglect flowing from problems relating to the mother's attitude towards the father, it seems to me that it is likely that a care order would have been considered as a possible order and I do not see why this should not also be so in this case.

The package of therapy on the basis that whilst it is carried out A remains with the mother

As I have mentioned this is a package of therapy the aim of which is to promote direct contact between the father and A and at the start of which, or very close to the start of which, A and the father will have what was described as direct therapeutic contact (ie contact with and supervised by a member or members of the team providing the therapy) with a view to moving on to further supervised and then unsupervised contact.

So far as Z is concerned, the father and the paternal grandmother have recognised that having regard to the views and wishes being expressed by Z direct contact between either of them and Z is inappropriate at present and any direct contact should be at Z's pace. In his case the proposed package of therapy is therefore directed to providing him with help and support (i) to understand why A is having contact with the father and to deal with the fact that she is, (ii) in respect of his general approach and attitude to the father, and (iii) in respect of the mother's attitude towards the father and his family.

This package and the help it provides has not been available before. It will be an intense one. All involved recognise that it will not be easy. In my judgment the local authority deserve praise for their commitment of resources to this package and the other parties should be grateful to them for this.

Dr SS will be in charge of the team and will work with both parents, and as I understand it will also see the children as he considers appropriate.

The mother will continue to see Ms L, a therapist who she has been seeing for some time. I have heard little about the purpose and aims of this therapy. In my judgment it would probably be helpful if Dr SS and Ms L met to determine what (if any) information should be passed between Ms L and the therapeutic team and what (if anything) Ms L can divulge as to the purpose and aim of her work with the mother. As to this it is important to remember that anything Ms L tells that team should be disclosed on the basis that it can also be disclosed to the court and thus to all the parties in the private and public law proceedings. The same point applies to information provided by JS.

Z will continue to work with JS and an E O'M, or possibly a different community psychiatric nurse recommended by Dr SS, whose work will be directed to the aims of the therapeutic package whereas JS will continue other work with Z. As I have said in my judgment JS should discuss in detail the aim and purpose of her work with Z with Dr SS.

A will work with E O'M (or possibly another community psychiatric nurse).

A new social worker MH will work with the parents and the children as part of the team under the overall leadership of Dr SS.

A meeting of the team will take place as soon as possible and as soon as possible after that the local authority will draw up a timetable and agenda of work to include the direct therapeutic contact between A and the father. Once the therapy package has started there will be meetings of the team every 4–6 weeks, all members of the team must tell Dr SS if in their view the mother is not co-operating in the therapy or the therapy is not working for any reason whatsoever. If Dr SS reaches the conclusion that the therapy has broken down he will tell the local authority who will in that event convene a planning meeting to decide what to do next and list the matter before me for directions. That hearing for directions will either be on the date in September 1999 I have set for directions or if that is not appropriate (eg because it is some time off or has passed) as soon as is practicable.

All parties are to have liberty to apply during the course of the package of therapy.

The local authority will provide appropriate assistance with transport for the mother and the children. In respect of the times that A is to have direct contact with the father this will include the attendance of an appropriate person to accompany A to and from the contact. Those persons should be prepared (if it becomes necessary) to encourage and persuade A to attend. An important part of the commitment of the mother to the package of therapy is that so long as the team consider that direct contact between A and the father is appropriate she joins in that encouragement and persuasion as she did when Dr SS collected A. Also it is part of the mother's commitment that she also tries to give such encouragement and persuasion before and after such contact takes place and as a minimum if she does not actively provide such encouragement and persuasion she is not by words or conduct to discourage A from attending such contact. It is appreciated that this will not be easy for the mother particularly if, as is possible, A tells her that she has not enjoyed the contact and does not want to go. However, it is part of the mother's commitment to the package of therapy. In this respect and generally the mother should remember that it is clear from Dr SS's report that whether or not A has told the mother that she enjoyed her recent direct contact with the father, or parts of it, she was not at all upset during that contact and appeared to enjoy it and derive some benefit from it.

The interim supervision orders will contain conditions to give effect to the package of therapy. The mother and the father have agreed to those conditions. The mother did so through her counsel, and from what he told me I am satisfied that he, and his instructing solicitors, were in a position to give that consent on her behalf and would repeat and confirm to the mother the nature and effect of those conditions in the context of the package of therapy described above. The father gave his consent when giving his evidence and through his counsel. I accept that the father will support, and commit to, the package of therapy.

The decision to adopt the particularised recommendation of the local authority and the Official Solicitor

A crucial point in respect of this decision is the commitment of the mother to the proposed package of therapy. Without a sufficient level of commitment in practice from the mother as Dr SS said the proposed package of therapy

would be sterile. Dr SS was doubtful as to whether the mother would in practice give a sufficient level of commitment. Notwithstanding these doubts, he said he was an optimist and thought that the package of therapy remained a realistic possibility. He rated its chances of success at less than 50% but as significant. At one point he said that success was in his view achievable rather than failure being inevitable.

Both the Official Solicitor and the local authority recommended that the package of therapy I have described above should be attempted. In my judgment those recommendations had more weight at the end of the hearing than at the beginning because by the end they were based on a properly thought out package of therapy and had regard to the views of the mother following Dr SS's report. Those views were provided initially on the first day of the hearing by counsel and later by the mother when giving evidence.

Dr SS said in his oral evidence (and therefore on the information then available which included the statement by counsel as to the mother's position but not her evidence) that although it was difficult to say:

- (a) in pure terms of the chances of success he rated a move of A to the father as having the best chance of success, but
- (b) in his opinion the package of therapy he had indicated as a possibility, and which he thought had a chance of success, would produce the best result if it was successful.

This is a paraphrase of a part of his evidence that was directed to the promotion of the medium- to long-term welfare and emotional development of A.

At a different point in his evidence he said that if the package of therapy was tried and failed (or I add did not have significant success) he thought that this would not make a move of A to the father much more difficult. The possibility that a failure of the package of therapy might have this effect was an understandable concern of the father given the apparently entrenched views of Z.

Although Dr SS did not hear the mother's evidence which contains the most up-to-date assertions of her position, after she had given that evidence he has been in active discussion with the local authority as to the package of therapy proposed and plainly still supports it and thus considers that it has a realistic chance of success.

In his submissions counsel for the mother put the chances that the mother would in practice demonstrate a sufficient level of commitment to the proposed package of therapy to give it a realistic chance of success rather low. He said that there was a glimmer of hope. I found this troubling because in my view such a low level of hope would not warrant embarking on the proposed package of therapy which involves a considerable commitment of time and resources. Further, I naturally appreciate and acknowledge that counsel for the mother has acted for her over a long period and thus that his submission may not have had been based solely on the evidence. But having said that I can also well understand, given the history of this case, why counsel for the mother would not wish to overstate the chances that she would in practice show a sufficient level of commitment to the proposed package of therapy.

Having heard, and on the basis of, the mother's oral evidence I have

concluded that the chances that the mother will be able to give a sufficient level of practical and day-to-day commitment to the proposed package of therapy to give it a realistic chance of significant success are sufficiently high to warrant it being put in place and attempted. I am therefore more optimistic as to such chances than the expression used by counsel for the mother indicates. I recognise that there is a real risk that the mother might not give such a commitment and that because of that the proposed package of therapy will fail or have no significant success. I hope that my optimism and that of Dr SS that this will not occur is not misplaced.

The main factors that have caused me to reach this conclusion in respect of the mother's level of commitment are as follows:

- (a) she had clearly read and understood my November 1999 judgment and Dr SS's report and had thought about them and discussed them,
- (b) as I have mentioned her evidence included evidence that showed that her antipathy to the father is based, or largely based, on her needs rather than those of the children and this was a shift from the last hearing (albeit that much of that hearing was directed to allegations concerning the father's conduct towards the children), and this evidence might provide a platform, or gateway, for an appreciation by the mother of the needs of the children in respect of contact with, and their knowledge and understanding of the father, and that those needs are different to and exist independently of her own needs and views relating thereto,
- (c) in my judgment the mother understood the need for her to give a sufficient level of commitment on a practical day-to-day basis to the proposed package of therapy and that (i) simply saying that she would do so and playing 'lip service' to the package would not be good enough, and (ii) if it transpires that she does not give a sufficient level of commitment this could lead to results she does not want and believes would not be in the best interests of the children,
- (d) the mother loves the children,
- (e) her understanding of the purposes of the proposed package of therapy meant that her agreement to enter into it was very different to her agreement to work with people at the Children's Centre that she put forward at the end of the last hearing because this suggestion had no defined purpose and did not seem to me to be directed at promoting contact,
- (f) in her evidence the mother (i) dealt with a point that I, and others, have raised in the past relating to the possibility that her attitude to contact could cause damage to her relationship with A in the future on the basis that A would blame her for depriving her of contact, and (ii) gave evidence linked to her own history, and lack of a father-figure, that she recognised that A needed to know who her father was. In my judgment this was a shift from her position since the last hearing which showed some appreciation of A's needs. However, I accept that a troubling feature of this part of her evidence was that it could have been construed as indicating that she was entering into the package of therapy with a view only to being able to say that everything had been tried to enable A to have contact with the father and it was not her fault that this did not occur. In my judgment that

would not be a sufficient level of commitment by the mother and if that is the mother's reasoning and approach it is fatally flawed because it would not be likely to lead to the mother being able to prevent, or reduce the chances of, A blaming her for lack of contact with the father. Having raised that note of caution, in my judgment the positive aspect of this evidence was that it demonstrated an understanding of A's needs by reference to A as an individual with separate needs to her mother as well as by reference to the mother's history and thus it potentially provided a platform, or gateway, to an understanding by the mother that A's needs in respect of her relationship with, and knowledge of, her father will not be properly satisfied in the medium to long term by simply knowing who her father is and some indirect contact, and

- (g) I add that the points made above based on the mother's evidence before me also might provide a platform, or gateway, to an appreciation by the mother of the following points, namely: (i) that the experts who have advised in this case before I made my findings in my November 1999 judgment (who thus advised on the basis that some or all of the allegations made by the mother as to the father's abusive behaviour towards her and the children are or might be true, or have a valid foundation) concluded (as did the Court of Appeal) that the welfare of the children would best be promoted by them having direct contact with the father, and (ii) that this means that even if all her allegations had been found to be true none the less the experts and the court would have, or would have been likely to have, concluded that the best interests of the children would be promoted by them having direct contact with the father.

In my judgment the welfare of both children is best promoted by an attempt being made to implement the proposed package of therapy on the basis that the children remain living with the mother and interim supervision orders are made. My main reasons for that conclusion are:

- (1) My conclusions set out above relating to the commitment of the mother and the father to the proposed package of therapy.
- (2) Dr SS's views, which I accept, that this course has a realistic chance of success and his continued support of it after the mother gave evidence (although he did not hear that evidence).
- (3) Dr SS's evidence, which I accept, that if this course is taken, and:
 - (a) it succeeds (or has a significant measure of success), it would best promote the welfare of the children, or
 - (b) it fails (or has no significant measure of success), it is unlikely to make a move of A to the father more difficult and is likely to provide further valuable information as to the decisions and orders that would then have to be made to best promote the medium- to long-term welfare of the children.
- (4) The reasons I have already given for choosing to make interim supervision orders.

A further word

Again this is directed to the mother and the father and in particular to the mother.

As I mentioned during the hearing, the orders made having regard to the results of the proposed package of therapy, or further information derived therefrom, may not match what they respectively most want at present. As they are now very aware, those orders will be based on the conclusions reached by the court as to what will best promote the medium- to long-term welfare of the children.

The package of therapy provides an opportunity to progress towards the starting-point referred to in my November 1999 judgment under the heading 'A final word' and thus to the starting-point that it was considered would best promote the welfare of the children.

The mother should try to realise that the views of the experts instructed in this case and of the court differ from the views she expresses as to what would best promote the welfare of the children and as I have mentioned in my view this would be, or would be likely to be, the case even if the court had concluded that what she was saying about the father was true.

My sympathies for the mother remain and I repeat that I have not made my findings with a view to criticising or punishing her. I accept that she needs help. The package of therapy provides her, the father and the children with help, which has not been available before. As I mentioned during the hearing in my view the mother deserves that help, I hope that she will benefit from it. I would add that the father also has my sympathies and in my view he also deserves that help and I hope that he too will benefit from it. Those views and hopes do not found the decision I have reached which is based on my views as to what will best promote the medium- to long-term welfare of the children.

As was common ground before me, if the package of therapy proposed is to work for the benefit of the children she loves, the mother has to demonstrate and give a sufficient level of commitment to it which will (amongst other things) mean that she is likely to have to pursue it and take part in it during periods that the children are telling her that they are against it and do not want contact with the father.

My orders

These are:

- (1) I make interim supervision orders in respect of both children on the basis that they can be renewed by consent and have the conditions attached to them that are set out in the document provided to me by counsel for the local authority.
- (2) I direct that the public and private law proceedings be set down for further hearing in Bournemouth with a time estimate of 5 days commencing on 2 October 2000.
- (3) I direct that there be a directions hearing before me on 5 September 2000 at 10 am at the Royal Courts of Justice and that by 4.30 pm on 4 September 2000 each of the parties (including the Official Solicitor) are to lodge with my clerk at the Royal Courts of Justice a written statement of their respective positions.
- (4) The local authority and all the parties (including the Official

Solicitor) are to be at liberty to apply generally (and preferably to me).

- (5) The fortnightly indirect contact that both the father and the paternal grandmother have with the children is to continue.
- (6) Subject to further order of the court in the meantime, the applications of (a) the father for a residence order and direct contact with A, (b) the paternal grandmother for contact with A, (c) the father and paternal grandmother for indirect contact with Z, (d) the mother for 'no contact' or limited contact, and (e) the public law proceedings are adjourned to the directions hearing and further hearing referred to in paras (2) and (3).
- (7) The applications of the father and the paternal grandmother for direct contact with Z are adjourned with liberty to them to restore those applications.
- (8) The father is given liberty to withdraw his application for a residence order in respect of Z.
- (9) I direct that transcripts be prepared at public expense of the oral evidence of the mother and father at this hearing.
- (10) I give the leave to disclose those transcripts, the father's statement prepared and served for this hearing and Dr SS's report referred to above.

Orders accordingly.

Solicitors: *Official Solicitor*
Dawson Cornwell for the father
Beverley Golden for the mother
local authority solicitor

PHILIPPA JOHNSON
Barrister

