

## **Re GG (A Girl) & Anor [2024] EWFC 101 (B)**

HHJ Vincent declined to conclude a ‘finely balanced’ case where there had only been one brief instance of contact between the applicant mother and the children since 2019.

### **Background**

While the family lived in Country A in 2014, the mother left the children alone briefly. While she was gone, one of the children (GG) suffered life-changing injuries due to an accident. After the accident, the mother nursed GG in hospital and the *‘care that she gave to GG saved her life’*.

In 2017, the mother fled to a refuge with the children; the children were unhappy there and asked to return to the father’s care.

The parents’ relationship broke down completely in 2019 and the mother left the family home; since then, the children have spent time with her only once, briefly, at the park.

### **Findings**

It was found that the father perpetrated physical, emotional and psychological abuse and financial control of the mother during the relationship and that he sought to alienate the mother from the children during the parents’ relationship and post-separation.

The father’s allegations against the mother were for a large part not found proved and the mother’s description of the events surrounding GG’s accident was accepted, that the children were unsupervised in the home *‘and [the mother] is responsible for this. If she felt she had no option but to go out, she should have ensured there was another adult in the home to stay with the children’* (at [11]).

The children had suffered significant harm as a consequence of being left alone on that day but had not suffered harm or been at risk of the same as a consequence of the parenting they received from the mother thereafter.

### **Positions at the final hearing**

The mother’s position was that the children had been influenced by the father to reject the mother and that they were in an emotionally abusive situation. The mother sought the local authority’s involvement, either by way of a section 37 report or an invitation for them to attend court and for the court to be invited to make an interim care order.

The father’s position was that the proceedings should be brought to an end given the children’s clearly expressed wishes and feelings and that continuing the proceeding or further involving professionals would be harmful for the children.

The children's guardian's position aligned with that of the father and she (the guardian) was of the view that family therapy would be a better avenue for re-establishing the children's relationship with their mother than proceedings.

## **The law**

The relevant statutory and procedural provisions were the welfare checklist and the presumption of parental involvement under s.1(2A) Children Act 1989 as qualified by s.1(2B) as well as PD12J due to the findings of domestic abuse.

Additionally, the principles relating to parental contact in *Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521 were applied:

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
- The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration.'

The court was referred to *Re M* [2005] EWCA Civ 1090, '*Where, as in this case, the court had the picture that a parent was seeking, without good reason, to eliminate the other parent from the child's, or children's lives, the court should not stand by and take no positive action. Justice to the children and the deprived parent required the court to leave no stone unturned that might resolve the situation and prevent long-term harm to the children*'.

The court was also referred to *Re M (intractable contact dispute: interim care order)* [2003] EWHC 1024 (Fam), wherein Wall J (as he then was) said that the use of section 37 in appropriate circumstances could resolve an intractable contact dispute but said so '*with a series of strong health warnings*', as follows:

- In relation to ordering a s.37 report, the test is that the court may order an investigation where *'it appears to the court that it may be appropriate for a care or supervision order to be made'*.
- The action contemplated must be in the child/children's best interests and the consequences of removal must be thoroughly thought through; there must be a coherent care plan of which temporary or permanent removal from the residential parents' care is an integral part.
- The decision to order a section 37 report must be based on findings which have been made at a hearing.
- The court must spell out reasons for making the section 37 order, so the local authority understands the context for its investigation.
- The children should be separately represented.
- The section 37 report should be supported by professional or expert advice, which has concluded that the children are suffering significant harm and that local authority intervention is necessary. This advice could come from a psychologist, psychiatrist or Cafcass reporting officer or guardian.

### **Expert and professional input**

The expert, a consultant counselling psychologist, considered GG to be suffering from PTSD although there was no formal diagnosis.

The expert concluded that the younger child (BB) did not present as traumatised and was likely to be suppressing his emotions and recommended therapy to uncover his trauma, but the judge considered it unclear how he could be traumatised by a perception of being abused. The judge had found at the fact-finding that the mother did not abuse BB but this was not entertained as an explanation for BB's presentation.

The expert noted the findings of the court that the father had influenced the children negatively but found it impossible to say this had happened, *'considering [the children] are adamant that their narrative is based on their own memory'*.

The expert recommended the children should undergo a course of therapy through CAMHS, beginning with individual sessions before introducing the father into the sessions and then the mother.

There were issues with this, including the issues around the narrative given the therapy recommended would focus on the children's reported experiences rather than their relationship with the mother, *'I question how the narrative that the mother was not abusive towards the children will find its way into the therapeutic process where the mother is excluded from participating in it until the third stage, and the children's beliefs about their experiences are to be treated as fact'*.

Additionally, the court was not convinced the father would participate and he gave *'no sense at all of [therapy] being something he recognised as being in his children's interest'*.

The children did not wish to have therapy.

The guardian was said to have developed good relationships with the children and been a powerful voice for them but criticised for failing to grapple with the issues raised by PD12J in relation to the findings of domestic abuse and for minimising the extent of the findings against the father of parental alienation.

The guardian was also criticised for asking father the night before the hearing to bring GG to court while her application for GG to attend the hearing (which was refused) was considered; the mother and GG encountered each other in the public waiting area outside the court.

The guardian's position that proceedings should come to an end with the children to remain in the father's care and engage in therapy raised various concerns including that her view had been influenced by the moral blame she assigned to the mother for the accident, the guardian's view that domestic abuse was no longer a concern as the parents had separated and the guardian's failure to consider the continuation of that abuse in the way the father continued to denigrate the mother.

## **Outcome**

The welfare checklist was applied [76-121] and it was noted that the court would be ordering a section 37 report in circumstances where this was not supported by the guardian, contrary to the guidance of Wall J as summarised above.

Not only this, but the mother was not proposing that the children be removed from the father's care for the s.37 investigation to be undertaken and it was arguable that any investigation while the children were with the father would not achieve much, *'the question posed by Wall J about what a section 37 report would achieve and what the consequences of directing it might be for the children, does not produce a straightforward answer'*.

A section 37 report was ordered as the criteria for ordering such a report were met [122] and it allowed for some prospect of a solution. Given the criteria were met, the court considered it ought not be slow to call for such an investigation even if the prospect of a change of residence was not realistic.

It was noted that although the guardian did not support such an order, she did not suggest the evidence base for ordering it was not there and the expert report supported the conclusion that the children have suffered significant harm which requires some form of intervention.

Weighing the children's likely objections against the possibility of progress, the balance was found to fall in favour of pursuing that possibility.