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Case No: BK22P80201

Neutral Citation Number: [2024] EWFC 331 (B)

IN THE FAMILY COURT AT ALDERSHOT & FARNHAM

The Justice Centre
The Civic Centre
Wellington Avenue
Aldershot
GU11 1NY

Date: 12 November 2024

Before :

District Judge Gorman

Re N (A Child)

Between :

Father Applicant

- and -

Mother Respondent

Applicant in person
Ms Brackley (instructed by Moore Barlow) for the Respondent

Hearing date: 11-12 November 2024

Approved Judgment

This judgment was handed down remotely at 12pm on 12 November 2024 at a hearing and by release to the National Archives

District Judge Gorman:

1. The applicant is the father and the respondent is the mother of the child N who is now 7 years old.
2. The father made an application in C100 on 8 December 2022 when the parties were still living together, for s8 orders which included a Lives With order, a Spends Time With order, Prohibited Steps and Specific Issue orders.
3. Though the parties had separated in December 2021, they remained living under the same roof until August 2023.
4. The child and mother live in the former family home. The father at present lives around 2 hours away.
5. I refer to the parties as father and mother for ease of reference and understanding only because they share the same surname and no disrespect at all is intended by so doing.
6. This judgment was given extemporaneously following a hearing listed for two days over 11 and 12 November 2024.

PRELIMINARY MATTERS:

7. The court has the benefit of a rather large bundle of 558 pages. The bulk of this is police disclosure and Local Authority disclosure. I have to say I am grateful to the solicitors for

the respondent for preparing an otherwise compliant and easily navigable e-bundle. It really does make a difference.

8. The Local Authority have filed a s7 report dated 27 March 2024 and both the author of that report and her team manager have attended court to give evidence.
9. The mother has filed two statements, in accordance with the directions of the court, dated 7 February 2024 and 22 July 2024. The mother is in attendance, represented by her counsel Ms Brackley, instructed by her solicitors Moore Barlow.
10. The father has not filed any statement, despite being directed to do so on 8 January 2024, and again on 23 May 2024. As a result, the court is without any evidence from the father for this final hearing. He has attended in person, as a litigant in person, as he has been throughout this matter.
11. A Qualified Legal Representative (QLR) was directed to be appointed at the Dispute Resolution Appointment on 23 May 2024, so that the mother, who had made allegations against the father, could be cross examined at the final hearing by someone other than the father. Anticipating, as it is unfortunately commonly the case, that the court may run into difficulties in obtaining a QLR, additional provision was made for the father to produce a list of questions for the court to ask on his behalf at the final hearing.
12. Despite various reminders, it is said, from the mother's solicitors and despite three reminders from HMCTS in October and November, he filed no questions.
13. I asked the father why he had not filed a statement. He told the court that it was because it was not in his or N's best interests to do so. However when I asked him if that meant he agreed the evidence of the mother and the s7 report's recommendations and asked whether he intended to challenge what she said or sought, he said that he does still want direct contact to N and that he does not agree the recommendations.
14. I asked him why he had not sent the court a list of questions. He was not able to answer that question.
15. He appeared initially to struggle to understand what was being asked of him. After further explanation he clarified that he did understand but still offered no explanation as to why he had not prepared questions, other than he did not think it would be in N's best interests.

16. I therefore suggested that an appropriate and proportionate approach to this hearing might be to allow both the mother and the father to ask cross examination questions of the social workers and for the parents to simply give their submissions to the court as to what they say the court should do and where the evidence is to be found to support those submissions. For both, Ms Brackley would go first, so that the father could see how it was done.
17. Both parties agreed this approach.
18. I therefore gave the father some time to consider what challenges he wished to make in respect of the s7 report and for him to prepare the questions he wished to put to the social workers. I suggested 30 minutes and he asked for an hour, to which I agreed. I also noted that he had nothing with him in court and therefore asked the usher to check in with him during the break and if necessary to print a copy of the s7 report for him and to provide him with pen and paper to prepare the questions.
19. As a further update this morning, 12 November 2024, I received from the police confirmation that the police investigation relating to the mother's allegations, as well as confirmation from the father than investigations in County A and County B against two former partners, have been discontinued with no further action being taken. As I understand it, investigations regarding theft / shoplifting and regarding a forged signature leading to a charge being placed on the former family home, remain ongoing.
20. The court had also been sent, together with the confirmation regarding the police evidence, a letter from a mental health charity, written in support of the father's housing application and confirmation that he has only accessed "well-being walks" within the last 6 months. Because of this last, they confirm they are taking forward his volunteering application. The letter is undated and whilst confirming that the father had had low-level 1-1 mental health support, it does not say for how long, nor when that was and nor does it specify what that support was.

THE PARTIES' POSITIONS

21. The social workers confirmed to the court that they had seen the bundle before the court, that they had read the most recent statement from the mother and that their recommendations are unchanged.
22. The mother agrees the recommendations contained in the s7 report and seeks a final order in those terms today.

23. Before cross examination began, I swore all parties in and asked the father to update the court as to his present position with regard to what orders he seeks. He told the court that he seeks phone calls every other day, with video calls. He suggested the landline, or if she has a tablet, to use that for video calls. As to direct contact he said he wished to see N face to face, twice a week and / or at weekends.
24. He told the court that he lives in shared accommodation, but is being lined up for a flat, although there is no timescale on that. His position is that he could travel to N by train, collect her from school or home and return her home after a few hours.
25. He is not presently proposing overnight contact and he accepts that N should live with her mother.
26. He told the court that he has sent N 4 or 5 cards since the hearing in May and had asked for phone calls but those had been turned down.

THE LAW:

27. As the father is in person I set out in full what the court must consider when making such a decision.
28. The relevant law is found at section 1 of the Children Act 1989 which sets out the factors the court must take into account when considering orders sought under s8 of that act. Section 8 orders are the Child Arrangements orders and include Specific Issue and Prohibited Steps order.
29. The relevant section is:
 1. *Welfare of the child.*
 - (1) *When a court determines any question with respect to—*
 - (a) *the upbringing of a child; or*
 - (b) *the administration of a child's property or the application of any income arising from it,*
the child's welfare shall be the court's paramount consideration.
 - (2) *In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.*
 - (2A) *A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.*

- ...
- (3) *In the circumstances mentioned in subsection (4), a court shall have regard in particular to—*
- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
 - (b) his physical, emotional and educational needs;*
 - (c) the likely effect on him of any change in his circumstances;*
 - (d) his age, sex, background and any characteristics of his which the court considers relevant;*
 - (e) any harm which he has suffered or is at risk of suffering;*
 - (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;*
 - (g) the range of powers available to the court under this Act in the proceedings in question.*
- ...
- (5) *Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.*

30. I make it clear that in these proceedings, given the background, an order is required and a final order is required now because these proceedings have been in train for nearly 2 years.

THE PROCEDURAL AND OTHER BACKGROUND:

31. The parties married in 2014, having been together for some years, separated in 2021 but remained living in the same house until August 2023. The application before the court was issued in December 2022 but with little progress being able to be made whilst the parties remained under the same roof.
32. In July 2023, after the adjourned First Hearing Dispute Resolution Appointment, the father attempted to take his own life and was admitted to hospital. He was discharged from there to a family member's home and has not returned to the former family home.
33. The parties resolved their financial remedy issues thereafter by consent with, I understand, the parties agreeing that the mother would buy out the father's share in the property by way of a remortgage. The practicalities of that are yet to be resolved.
34. The next hearing took place on 8 January 2024 before me. I made extensive directions, including ordering a s7 report, information from the father, statements from both parties,

and made orders in respect of conditions for direct contact. I also ordered both parties to attend the Planning Together for Children course.

35. The s7 report was filed on 27 March 2024. Direct contact had come to an end shortly after the January hearing, the father having not been able to comply with the conditions for direct contact. These included evidencing tax and insurance for any vehicle in which N was to be driven, together with having a car seat.
36. Telephone contact petered out in February 2024.
37. The matter came before me for the Dispute Resolution Appointment (DRA) on 23 May 2024. I had a statement from the mother but the father had not complied with any of the directions to file information. He told me at that hearing that he couldn't 'do' telephone contact to N. He told me that he didn't provide anything because he didn't feel it necessary. He said he had had the s7 report read to him but all he got from it was that N scored him 10/10. He told the court he had been working with a mental health charity, from which work he had been signed off.
38. I have re-read my notes of that hearing. At that hearing I explained why the additional information was important and made a further series of directions, repeating earlier directions and adding a further direction for the father to file a letter from the mental health charity.
39. The father told the court that he was unable to adhere to the contact conditions for direct contact and, as a result, I made an order for indirect contact, to replace the orders previously made, for a card or letter once a month in line with the s7 report recommendations. That was made as an interim order pending final hearing.
40. The matter was then listed for final hearing in November.

THE ISSUES:

41. The court has to decide whether the child should spend time with the father on an indirect or direct basis and if so what form should that take and how and when and upon which conditions contact should progress.

THE MOTHER'S SUBMISSIONS:

42. Submissions on behalf of the mother are summarised as follows:

43. The mother accepts the recommendations of the s7 report with regard to contact. This final hearing was listed because at the DRA the father told the court he did not accept the recommendations.
44. The position statement filed on behalf of the mother sets out where the father has failed to comply with court directions and therefore what information is missing. I have already in my judgment touched on this in relation to the progress of this matter.
45. The mother says that the father has had many opportunities to provide information or involve himself in the proceedings regarding N but has not taken those opportunities, leaving the court and the mother in the dark. An example is his address – N has replied to his cards but he has not received them and it became apparent only upon receipt of the letter from his GP that the address he gave the mother at the last hearing is not his current address.
46. A further example is his GP letter. It was ordered in January 2024 to be provided by the father and was obtained by the mother who paid for it in October.
47. Further issues are the ongoing police investigations including the allegation of the mother's signature being forged in order to secure the father's debts against the family home despite the parties agreeing their financial remedies issues in respect – the issue of the charge only came to light upon the mother's attempting to transfer and remortgage the property in line with that agreement. This, it is said, goes directly to N's stability and security in her own home.
48. The mother told the court that despite her using the My Family Wizard app and ensuring that updates regarding N are on that app, it has never been accessed by the father. He has not engaged with it at all.
49. It is the mother's case that she wishes for there to be a good relationship between N and her father, but he has consistently refused to engage and to produce the information that would reassure her, the LA and the court that such contact would be safe.
50. It is her case that, without this information, the court should not make any orders which exceed the recommendations of the s7 report. She seeks an order in the terms recommended in that she seeks a Live With order as final order, and a Spends Time With order by way of indirect contact with the father once per month, by way of a small gift or card / letter, posted to N who should be encouraged to reply.
51. The other apps made by the father should be dismissed.

THE FATHER'S SUBMISSIONS

52. A brief summary of what the father told the court is as follows.
53. He does accept that he should have engaged more with regard to the court directions, but he told the court that having found peace he did not wish to disturb that.
54. He loves N deeply and she has been at the forefront of his mind when he has been working to pull himself back from the brink both mentally and financially. He is in temporary accommodation awaiting a flat, having moved off the streets. He would love to see her and have regular time with her both in person and via telephone or video calls. These latter he would like to be alternate days; direct contact he suggests weekly on a weekend day.
55. He is not, at this stage, seeking overnight stays and he accepts that N lives with her mother.
56. He volunteers for [REDACTED] and he was asked to volunteer for a mental health charity, after they helped him. He has worked really hard to pick himself up and is an inspiration to others who have found themselves in similar situations.
57. With regard to the allegations being investigated by the police, the allegations are not accepted by him and he told the court those investigations are nearly all discontinued. He described his lack of challenge to the evidence before this court as putting 'away his sticks and stones' and that he had done this to protect N, protect her mental health and to avoid further disturbance in her life. He did go on to indicate that he had earlier challenged social services but that until these proceedings concluded they 'wouldn't entertain me'. Of course he had the opportunity to challenge them during this hearing.
58. He told the court he did not know about the forged signature and apologised saying that the only way to survive then was to agree an IVA and whilst his mental health has been considered elsewhere, it wasn't in that particular scenario.

REVIEW OF EVIDENCE:

59. The mother's evidence was not challenged by the father and was contained in two witness statements.

60. She relies on police disclosure which, as of 17 July 2024 showed 3 pending prosecutions – two of which are discontinued and there is now a further investigation regarding the charge.
61. She relies on the medical disclosure she obtained on behalf of the father. This shows that there is, despite what he has said, no evidence of a diagnosis of dyslexia nor of any Autism Spectrum Disorder. It also shows that he has not contacted his GP since June 2024 when he was prescribed medication for anxiety and depression but the letter does not say for how long that medication was prescribed.
62. She relies on the reports from Hampshire Children’s Services, which show that they had been involved from October 2022 and October 2023 with N under various Child In Need plans, which ended after the father moved away from the family home and these plans oversaw contact which moved from supervised to unsupervised (although in reality supervised by the father’s sister who appeared to have been a positive and mediating influence). These records show N struggling with the separation whilst the parents remained under the same roof and obtaining help from the school via “I need to talk” cards and an emotional literacy support assistant(ELSA).
63. The evidence of the social worker was not challenged by the father either. I gave him an hour, at his request, to consider what challenges he wished to make or questions he wished to ask. Following that hour he told the court that he had tried to think of some but had not thought of any questions. I asked if he was sure, given that he had told the court he did not accept the recommendations and asked again whether there was nothing he sought to challenge or check.
64. He asked one question which was what support the Local Authority are giving N, to which the answer at present is none because her needs are being satisfactorily managed.
65. Some questions were put by mother’s counsel and I too asked a few questions of clarification. Those were to do with what the mother should expect to see from the father in terms of the mental health support over the course of three months as recommended – this was confirmed to be a letter or report from a mental health agency saying that he has been so supported; and that when this, together with consistency in letters / cards / gifts to N, and confirmation that police involvement has concluded, then telephone contact could be considered. I asked whether it was anticipated it would be for mother to be reassured and for it to be in her control as to contact moving on. The social worker told the court she could have re-framed it for evidence being presented to the court, but when I made the point that this is a final hearing, she confirmed that it would be for the mother.

66. The only evidence from the father is what has been told to the court during this hearing on oath and the email sent this morning.
67. There is no external evidence supporting his assertions regarding his diagnoses, his current mental health, or the support he has received in respect of his mental health.

ANALYSIS

68. I have set out what evidence is before the court.
69. The court's paramount concern is the welfare of the child, N.
70. My assessment of that evidence in line with the welfare checklist forms my analysis of the issues in this matter which are: what contact should N have with her father and should that be indirect or direct and, in either case, what form should that contact take and what if anything should happen before that can move on to the next stage.
71. I do not mention every item of evidence in my analysis but have taken the documents filed into account along with what I have heard during this hearing.
72. Before coming to that, I consider the father's participation in these proceedings and to what extent he has been excluded or may have excluded himself. He has told a previous GP practice that he is illiterate and cannot read or write but there is no supporting evidence of such a diagnosis. He has told this court that someone else read the s7 report to him; and that he had help for dyslexia at school so assumed that there was such a diagnosis. However he has contacted the mother's solicitors by email, he has messaged the mother and he has emailed the court during this hearing. He made notes in this hearing during submissions. He has been able to find others to help him read documents where necessary. I conclude from this that he has not been prevented from participating by reason of any difficulties with reading or writing.
73. The father has told others, including the s7 report author, that barriers are being put in the way of his contact with N. It is true that there are conditions imposed. They are there to ensure N's safety and are easily removed or surmounted. The mother did not impose them; the court did. But the court also told the father what he could do in order to reassure the mother and the court about his commitment to NSs safety. He has not done any of those things or provided any of that information.
74. N is closed to Children's Services, being deemed by them to be safe in the care of her mother who is able to act protectively. Her needs are being met and she has stability now

that the various aspects of her parents' separation are in the process of being finalised. The past two years have been difficult for all of the family. The father has had to make a new life elsewhere having been subject to bail conditions banning him from – he said – 4 counties. Those bail conditions may no longer be in place, although there is no complete confirmation yet provided to the court, but he remains in the process of rebuilding his life.

75. The father says that he has sent 4 or 5 cards to N since May this year. The mother says he has sent 4. Two in June for N's birthday (one of which was from a number of people known to the father but not to N) and two in August.
76. The mother says that the telephone contact petered out in February this year. The father told the court in May that he couldn't 'do' it. He has not explained why. The mother says that such contact usually left N confused and frustrated, reporting that the father asked questions repeatedly, leading to N asking why he would not listen to her.
77. The direct contact that had taken place in the latter part of 2023 came to an end because initially, despite the advice from Children's Services, the father was unable or unwilling to confirm that he had a separate bed for N when she stayed overnight. He also – and Children's Services have reiterated in this hearing that this is necessary – initially refused to provide an address.
78. When he did provide an address and sent a message confirming the provision of a car seat, he was then unable or unwilling to show the mother the actual car seat and the mother became very concerned when N later told her that she had still been in the car without a car seat. It is the mother's evidence that even after the hearing in January this year when the issue of a car seat was discussed in court before me, the father, despite giving reassurances in court, still took N in a car without a car seat. The direct contact was halted after it became clear that the father was unable or unwilling to comply with that condition.
79. Although the father does not propose to drive N at present, so that the car seat is not presently an issue, he has moved address without letting the mother know. As a consequence, where the mother says N has replied to his cards, the replies will have gone to the wrong address.
80. He had been ordered to provide a letter from a mental health charity, having told the court he'd been signed off from his work with them, but never has, until this morning. Therefore there is no updating information about his accessing any assistance in respect of his mental health. To the extent that I received a letter from a mental health charity

from the father this morning I have already set out its deficiencies and note that, had it been provided before now, those deficiencies could have been addressed before this hearing.

81. This lack of understanding about the reason for these measures or requests for information being in place remains a concern and a risk of harm to N if these requests are not met. They are for N's wellbeing and safety, they are not about the father. To the extent that they are barriers, or 'roadblocks' to use a phrase he has used in a message to the mother, they are or could have been very easily removed with very little effort on behalf of the father.
82. His narrative is confused and confusing. He will be the first to acknowledge that N's wellbeing and safety are a paramount concern. He is unable or unwilling to acknowledge that others may need some reassurance from him that he is able to manage identified risks. His refusal to do so is a concern. He refers to 'fighting' for N, which comes from a place of love. That he adores her is abundantly clear and it is a credit to him that he has, despite a lack of engagement in the mechanics of the proceedings themselves, still attended court hearings. But I do not accept that this failure to engage in the process, said to be his choice to help and protect N, has been at all helpful to N.
83. It is the mother's case that N wishes to have a relationship with him and that she, too, wants N to have a good relationship with him. It is N's wish, clearly set out in the comments she made which are recorded in the s7 report, and which echo the comments made to social workers during the Child In Need plans, that she wants a relationship with her father but she also wants to feel safe.
84. My reading of the documentation filed in this matter from all sources satisfies me that this is the case and that this mother is able and willing to promote that relationship. All that she asks is that it is safe.
85. In my judgment, the father lacks the insight or understanding to accept this, to put the parental issues behind him and he remains focussed inward rather than focussed on N's needs as opposed to his own. Though he may have come a long way in terms of his recovery from his mental health crisis last year, which is again a credit to him, he has yet to evidence that he has moved on sufficiently. The only person putting barriers in the way of his relationship with N is him.
86. The court's paramount concern is N's wellbeing and safety. In my judgment the father has been unable to satisfy the court that he understands the identified risks to N.

ORDERS:

87. The orders I make are as follows.
88. N will live with her mother as a final order.
89. There will be indirect contact by way of a monthly small gift, letter or card. Unless and until the father is able to demonstrate, as has been clearly set out in the recommendations from the social worker, that he is able to show by way of a letter or report: (i) that all the police investigations are concluded with no further action and (ii) that he has sought and obtained consistent, regular, support over the course of 3 months from a mental health agency and also to show that he has been able to send, regularly once per month, not in batches, a small gift or letter or card to N over the course of 3 months, contact will remain as ordered on 23 May 2024.
90. The father should provide his address so that N can write back to him.
91. The father should access (with help if need be) the My Family Wizard app so that he can engage with the information the mother has entered. That will help keep him up to date. He is encouraged to continue to exercise his parental responsibility by contacting the school for example for reports, updates regarding parents' evenings and so on. This will give him additional information so that he can keep his communications with N current.
92. The recommendations of the s7 report are that contact could then move on to telephone calls but I make no specific order in that regard.
93. The applications for Prohibited Steps and Specific Issue orders are dismissed for completeness, though never became a live issue in this matter.
94. The mother has permission to disclose this order to N's school as well as the order of 23 May 2024.
- ...
95. The father is encouraged to engage to allow matters to move forward for N's sake.
- ...
96. The parties have agreed that a suitably anonymised and redacted version of this judgment should be uploaded to the National Archives to help others who come to the family court to understand some of the practical issues faced.

