

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. FD08P00712/FD13P00051

Royal Courts of Justice

Thursday, 7th May, 2015

Before:

HER HONOUR JUDGE ROBERTSHAW
Sitting as a Judge of the High Court
(In Private)

B E T W E E N :

E

Applicant

- and -

E

Respondent

Re : A Child L

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THE APPLICANT appeared as a Litigant in Person.

MR. M. EDWARDS (instructed by Levison Meltzer Pigott) appeared on behalf of the Respondent.

APPROVED J U D G M E N T

HER HONOUR JUDGE ROBERTSHAW:

- 1 The mother in this matter seeks permission of the court to proceed with two applications concerning the parties son L, now 10 years: (1) an application to vary the child arrangements order of Parker J of 17 July 2013 (permission for this being required by virtue of an order under s91(14) of the Children Act 1989 having been made by consent on 17 July 2013 prohibiting both parents from making any application under s.8 of the Children Act 1989 without permission of the court) and (2) an application for permission to instruct an “alienation expert” , KW, pursuant to Part 25 of the Family Procedure Rules 2010.

2. This hearing was listed by Wood J on 5th March 2015 when he made directions for the filing of a formal application and statement by the mother. At the beginning of this hearing I asked the mother to clarify the applications she was seeking permission to make and what she was asking the court to do. Although she was seeking to vary the amount of time L spent with his father so that he would spend the majority of his time with her, the mother told me that whether or not this took place would be dependent upon the outcome of the report of the expert KW. The mother confirmed that if KW did not support a change, she would then want to know why and the reasons for the conclusions reached by her. KW is the mother’s expert of choice. She told me she had carried out considerable research concerning experts who can assist with parental

alienation cases and had already had a discussion with KW about L's circumstances. The mother believes that the father has and continues to alienate L from her ; that he is deliberately seeking to marginalise her and has already done so.

3. Through the position statement of 1st April 2015 of his Counsel, Mr Edwards, the father indicated his intention to apply today for an extension of the existing s.91(14) order. The mother did not have notice of this prior to receiving this position statement and there is no formal application before the court. I am mindful that the mother is a litigant in person and indicated at the outset of this hearing that this was not an application I would be determining today but that I would provide for the matter to be listed prior to the expiration of the current order in July 2015 if I was asked to do so. The father was content with this and has not pursued any application to extend the s91(14) order today.
4. L is now ten. He has been subject to proceedings and conflict between his parents over many years. The impact of these proceedings on L is evident and plain from the detailed judgments of Parker J of 26 March 2010 and 17 July 2013.
5. A particularly sad and troubling feature of this case is that L has not had any contact, direct or indirect, with his mother since February of this year (2015).

This is not because father has prevented or frustrated contact taking place. It is not because L does not wish to see his mother. It is because the mother's position is, starkly, this: she does not feel able either to speak with L or to see him unless and until the expert in alienation has become involved. She described her position to me as being "*a sacrifice she has to make because of the impact on her and L of the father*".

6. The father confirmed through Mr. Edwards that L sits by the telephone every Tuesday hoping that his mother will ring. L very much wishes to see his mother and is worried and concerned that she is angry with him. As Mr. Edwards submitted, only the mother can reassure L that she is not. When I sought clarification and confirmation from the mother as to whether, having heard that L wants to see her, is worried that she is angry with him and wants to speak with her, she would do so, her answer was sadly in the negative – she told me she will not see or speak with L. The mother is also not willing to receive any formal help or therapy unless this is through the alienation expert route, with the expert of her choosing.

7. The father's position today is this: previous offers that he has made to the mother through his solicitors for the whole family (mother, father and L) to attend family therapy with the Tavistock Clinic to help with the family situation paid for by him remain on offer. This is one route the father proposes

to enable some of the conflict that has existed for many years between him and the mother to be resolved or at least to enable them as parents to achieve some degree of amelioration for the benefit of L. This would also provide an opportunity to lead the family away from the court proceedings that have caused so much emotional turmoil no doubt for all for many years. This is not an offer the mother is willing or able to accept or follow up. She is resolute and determined in her position - it must be her alienation route or none at all.

8. The father opposes the applications brought by the mother for permission to pursue applications for the instruction of an alienation expert and for permission to make a child arrangements order. He says the evidence is overwhelmingly clear that the current situation and circumstances for L should be maintained.
9. However, the order of Parker J of 17 July is not working on the ground; the time she directed that L should spend with his mother is not taking place: not because the father is neither willing nor able to support this - indeed he is - but because the mother, as recorded above, is not willing or able to see or speak with L.
10. At my invitation the father clarified his position about this. He proposes that the order of 17 July is suspended with a preamble reflecting the reasons for this

and with the provision that as and when the mother feels able to resume contact with L the order can be reinstated.

Relevant background

11. I summarise the relevant matters arising from the extensive judgments of Parker J that assist me in the determination of the applications before me. I have read her judgments in full together with additional documentation. I have been provided with a refined trial bundle directing my attention to what are considered to be the salient and most relevant documents to enable me to consider the mother's applications. Pausing here, the mother was concerned at the beginning of this hearing that 15 documents had not been included in the trial bundle before me. She provided copies of these during this hearing for my consideration and it was immediately plain from the index of this further bundle that many of these documents had been before Parker J for the 2013 hearing. Other documents related to correspondence by email or letters between the parents or between the mother and the father's solicitor. The contents of these were referred to by the mother in any event in her submissions and in her extensive written representations and statements which I have read with care. I am confident that I have seen and read all documents and evidence necessary to enable me to determine the applications before me.

12. The first substantive judgment of Parker J was delivered on 26 March 2010 following a contested hearing against the background of a previous hearing before District Judge Malik. Parker J rejected the mother's allegations that the father was controlling and aggressive. She heard extensive evidence from Dr. Berelowitz and set out in some detail the mindset of the mother and her resolute determination to take her own route through her assessment by Dr. Berelowitz and how he struggled to gain a response on particular questions he sought to have answered:

Dr. Berelowitz said he was struck by the strength of the mother's feelings about just how harmful it is for L to spend time with his father and how dramatically L's health is apparently undermined by each of these occasions. Dr. Berelowitz said that he was confident that the mother's views in this regard were very strong and powerful and he cannot recall a previous interview with quite the flavour of these. He said, 'The stridency, the persistence, the unwillingness to allow discussion and also the one sidedness - that is to say, that the illness acquired at the father's home have sinister significance and that the illnesses acquired at the mother's home do not - for example all gave me cause for concern. At the same time, I was also concerned at the intensity of the father's feelings. L is certainly a child in whom there is considerable emotional investment'. [Judgment of Parker J : D15 para 30]

13. Dr. Berelowitz concluded that the mother was convinced that the father was an abuser and did not have L's interests at heart. He explained in his evidence to Parker J how he was struck by the mother's stridency and referred to the letter of 21 April. He found the mother's perception that the father was an abuser was unusual and worrying. Her behaviour in the interviews was very unusual. She was impervious to any discussion and was appalled at the suggestion that any view other than hers might be considered. Dr. Berelowitz emphasised that the mother would need professional help to support her and to help her change her view of the father. He said, "*She needs to be encouraged to see herself not as a victim*". L sees his mother as the vulnerable one and sees her as the victim. Dr Berelowitz did not think that the mother has deliberately indoctrinated L, although the mother and L had talked about what L was going to say to Dr. Berelowitz.

14. In 2010 Parker J described the father as highly intelligent and articulate with a calm and gentle manner. He was a father who exhibited a degree of frustration at the present situation, not in the sense of aggression or agitation or irritation, but more a sense of worried helplessness. Parker J had no sense of over-assertiveness or oppression. At paragraph 2 of her judgment Parker J found as follows:

I accept that the father is a loving and caring father. I accept that he has tried to do his best in difficult circumstances to maintain a relationship with [L] and that he is a truthful witness. I accept that he is not perfect and I accept that he has on occasions shown irritation with the mother in his dealings with her. I accept that he will do his best to put this right in the future. I do not accept that the father has been abusive to the mother and to [L] or that the father comes from an abusive background. I accept, as did District Judge Malik, that the father's motivations are not to get at the

mother, to stalk or to harass her or in any way to make things difficult with her, or to obstruct her getting on with her life as a now single woman. I accept that his motivation is all to do with maintaining his relationship with [L]

15. Parker J also made findings in respect of the mother:

Looking at her account objectively rather than being beguiled by the warm and engaging manner in which she gave her evidence, I am left with a profound sense of disquiet about her explanation as to what she said and how she behaved with Dr. Berelowitz. What she tells me does not in any way address Dr. Berelowitz's account of the firm and fixed and obdurate way in which she ploughed on with her own account and would not accept any discussion about the potential causes of L's behaviour, other than that contact has a detrimental effect on him.

16. Parker J was unconvinced about other aspects of the mother's evidence. She told Parker J that she had put the past behind her and that she no longer harboured any resentment to the father. She considered that things would be fine. Parker J found there was a dissonance between the mother's account to Dr Berelowitz and her account to her [Parker J] that was "extraordinarily marked". This led Parker J to say at para.48:

I am very concerned about the mother. I suspect that beneath her bright and engaging exterior she is still suffering a considerable amount of turmoil. I was particularly concerned about the terms and tone in which she described to me her plans if she is not permitted to relocate L to Eastbourne. She told me that she proposes to go without him. 'I have to do it' she said. 'In that case, our son [L] will have to remain in London

with his father and I will have to have contact during weekends and holidays'. She was quite matter of fact about it. This was very strange since she is clearly devoted to [L] There are resonance and echoes of that in the mother's current position in respect of her unwillingness or inability to have any direct or indirect contact with [L] at this time.

17. The litigation continued following Parker J's judgment of 26th March 2010 resulting in a further substantive hearing before her in 2013, resulting in the judgment at section D, beginning at p48 of 28 June 2013. The background leading to the need for that further substantive hearing is set out - and I do not repeat it - in that judgment.
18. It is important to reflect that Parker J had cause to revisit her assessment of both parents and she did so in her judgment of 28th June 2013. The father had become frustrated and irritated by the mother's behaviours and what had occurred. At para.19 Parker J said:

In my previous judgment I accepted Dr. Berelowitz's view that the father was much more benignly disposed to the mother than she to him and I was extremely critical, I hope in not too judgmental a fashion, of the mother's attitude and the way she expressed herself. When I started hearing this case and indeed hearing about some of these episodes on the two occasions when this matter came back before me for directions in March and in June of this year, I wondered whether I might have come to the conclusion that I had misjudged this mother. Having heard her again in evidence and making all allowances for the very difficult series of events with which she has had to contend however, I fear that she displays exactly the same characteristics as she did in 2010, but I now do not think that this is one-sided.

19. Parker J explained why that was the case. On 14 September of last year, the mother sent an email to the father in these terms:

[Y] You will have learned from [L] that I was obliged to work throughout the two months of the summer holiday with consequent impact on our extended contact together. I have thus addressed the situation and from next week I commence study for a postgraduate certificate of education. In consequence, for the academic year 2014/2015 only - i.e., the next 10 months only - I shall be unable to care for [L] during alternate weekends in term time. I am able to care for [L] during the extended contact periods – i.e., contact is not affected during half terms and other school holidays. Of course, after this academic year, I will revert to the full application of the terms of the court order. I have spoken to [L] who fully understands that we have to make this sacrifice for this one academic year so as to ensure a firm footing for our improved contact together during term time and school holidays in the future. Meanwhile, I repeat my request to you that when I collect [L] extended contact you provide him with sufficient appropriate clothing for his stay with me. Your response to this request has so far been in the negative. I would therefore remind you that you commenced receiving child maintenance for [L] August 2010 and you returned to your City job in August 2011. [signed by the mother]

20. The result of that email was that the mother ceased, of her own volition, having L in her care for alternate weekends. On 24 March, just a few days before L was due to spend an extended period of some four days with his mother, she sent a further email to the father suspending her contact.

I read from the main paragraph of the mother's email of 24th March about this:

[L] is emotionally damaged and my relationship with him all but destroyed. You now have information on the Family Separation Clinic. Once they have established the cause/causes of the problem and treatment routes are established, we can be guided as to how best contact and a healthy relationship can be restored. Until then, for [L's] sake and that of my relationship with him, contact will have to be suspended.

21. As I recorded at the beginning of this judgment, sadly, the mother has stuck to her guns about this and she has declined any opportunity to see or speak with L. One can only imagine the distress of this little boy, his feelings of rejection and his fear that his mother is angry with him. He is likely to be very confused as to why she will not speak to or see him. He is dismayed and upset about this.

23. It was plain from the mother's representations and submissions to me this morning, from her written material that she has placed before the court and from everything I have read that she is transfixed and obsessed with L having been alienated from her. She does not seem able or willing to accept that L wants to see her and is happy to see her. She is determined to pursue an avenue that will take this family down the route of parental alienation assessment and treatment. The mother told me she had made two previous approaches to other institutions to help her with this.

24. Looking back, there were signs from her discussions with Dr. Berelowitz of the mother taking this route. There were also similarities and a resonance with the

mother's presentation and submissions to me today and the analysis and findings of Parker J. Nothing has changed since in the attitude and feelings of the mother about the father. The mother seemed somewhat distracted during the hearing this morning. She did not appear, for example, to want to listen to representations being made by Mr. Edwards on behalf of the father and carried on perusing her own material, not following what was being said.

25. I did not observe the father to be anything other than courteous and respectful during this hearing. I saw no indication of the agitation noted by Parker J during the last hearing before her but I must be cautious about this - and I am. I place little weight on my own observations of these parties in the court before me. This has been a difficult hearing for the mother who is clearly under a great deal of stress. She is unrepresented, but her representations, which were lengthy, became almost a rant or mantra, particularly so towards the end of this hearing and I implore the mother to try and seek help for herself, whatever the outcome of this hearing or any other hearing.
26. The test for granting permission once a s91(14) order has been made is whether there is an arguable case. In determining this question I turn to the matters a court is bound to consider : L's welfare and interests are paramount and the court must consider the welfare checklist under s.1(3) of the Children Act 1989 but is not limited to the factors under s.1(3). Of particular significance in this

case are: (1) L's ascertainable wishes and feelings (considered in the light of his age and understanding) (2) his emotional needs: (2) the likely effect on L of any change in his circumstances: (3) his age and background and any characteristics which I consider relevant: (4) any harm which he has suffered or is at risk of suffering: (5) how capable each of his parents is of meeting his needs.

27. L's wishes and feelings are not entirely clear. He is doing very well at school. In fact, he could be said to be thriving at school, a place which he has seen and continues to see as a haven, having the support of teachers who are aware of the conflict within the family. He is happy with his father and he wants to see his mother. He is distressed at not having been able to speak with her and is emotionally upset and confused, thinking she is angry with him. But when Camden local authority carried out an assessment of him it was not entirely straightforward or easy to ascertain L's wishes and feelings because of the parental conflict. That is not surprising considering the background of this case.
28. What is clear is that L has been freed for the last two years of being directly involved in substantive proceedings: proceedings in which he had been the focus for many, many years.

29. I have already considered L's emotional needs in my previous observations. L needs to have as much stability and security as he can. He needs to have a good relationship with both parents. He needs to be freed from further conflict and to be freed from being drawn into further substantive court proceedings unnecessarily or being subject to unnecessary expert assessment.
30. At the time of the Camden assessment of 10 March 2014 L reported that he was happy with his current care arrangements and that he did not want these to change. He felt sad that his parents did not like each other and did not speak to each other. L was generally positive about both parents but reported that at times he felt pressured to say or do what his parents wanted. He was clearly a child who was caught in the middle of parental conflict with divided loyalties. At C8 of that same report, the assessor concluded:

It is my view [that is, the view of the author of the assessment] that [L's] emotional health is impacted by the parental relationship and for this to change his parents need to address the difficulties between them.

31. The report also reflected that it is unlikely that L's situation would improve unless his parents made a commitment to address the difficult dynamics between them and find a way to co-parent him with consistency. The team manager's comments include the following:

There are many positives within [L's] life. It is clear that in general his needs are promoted well by each parent. [L] is a bright child who is achieving well at school. He has friendships, opportunities to engage in after-school activities and he is loved and cared for by both his parents. It would appear that there has been long-standing conflict between both parents which appears to have impacted on [L]. It is particularly concerning that [L] has experienced bouts of vomiting which may have been stress induced. [p9]

32. The report highlighted that L would benefit from therapeutic input to assist him to manage and process his feelings around his parents' relationship. That intervention was not likely to be effective if the parents do not agree to start addressing their difficulties with one another.

33. There have been two substantive hearings concerning L to determine what is best for him, where he lives and the time he spends with each of his parents. Orders that were previously made have been endorsed. The previous CAFCASS officer reported how settled and well L was with spending the majority of time in his father's care. I was referred to particular passages addressing these matters in Parker J's judgment of July 2013 and I do not propose to repeat these in full, save to recognise and record that L remaining with his father for the majority of his time was considered very clearly to be in his best interests:

Miss Clark is firmly of the view that, apart from questions of contact, it would be extremely unwise and risky to disturb [L] present living arrangements. [L] is firmly wedded to his school, to his sense of security there, to his feeling that it is a haven to his friends and his understanding that he can stay there until 13, the end of his prep school age or it may be indeed later. [para 58]

And at paragraph 60 Parker J concluded:

For a number of reasons, I have no doubt that it is not in [L] interest to change his present primary base. The mother's attitude to the father is as entrenched and intractable as it ever was. The risk of creating a mirror image set of problems to the present ones, if I am to reflect this change, is immense. In fact, the depth of the mother's hostility to the father, however far recent events may justifiably have inflamed her feelings, is such that I think the situation would be very much worse. The mother will continue to be fixed, immovable, rigid and convinced of her own rightness. There is a serious risk of destroying the relationship with the father. [L] will suffer the loss of his father at least on a daily basis, his circle of friends, his routine and his school environment. The fact that the mother has found a school which I am sure is perfectly nice for [L] and has created a working life for herself as a self-employed educationalist, which is or could be compatible with [L's] life with her, does not address those problems.

34. Those findings, comments and observations of Parker J remain as valid today as they were in July 2013. Any harm which L has suffered or is at risk of suffering is plain from the evidence and from all of those professionals who have spoken of the emotional impact on him of the conflict between his

parents. It is likely that L would be at risk of that harm being compounded by any move at this stage to spending more time with his mother.

35. How capable each of his parents is: there have been previous findings - and there is no evidence before me today that would justify a court revisiting those findings - that the father is able to meet all of L's needs and meet them well. He is thriving effectively at school and his needs are being met spending the majority of time in his father's care.

36. There remain serious concerns about the mother. I am deeply concerned about her capacity to be able to prioritise L's wellbeing and emotional needs and to meet those needs. I am deeply troubled and concerned that she has rejected the opportunity for contact with him and has rejected an opportunity for family mediation through the highly respected and skilled resource with the Tavistock Clinic. I note that this was the position before Parker J. Parker J was so concerned that she reflected this towards the end of her judgment: *"I am not asked at the moment to suspend the mother's contact. If it comes to it, it may be that I will have to do this. I would not want to, but it might be the only way to remove [L] from the conflict"*.

37. Parker J acquitted the father of deliberately seeking to marginalise the mother .

Due to her conducted he regarded her as *"an irritant"*. The mother rejects this

finding and continues to advance her case that the father is deliberately seeking to marginalise her and has done so. She remains transfixed and sadly obsessed with the fact that the father is alienating L from her. There is not a shred of reliable evidence to support that position.

38. It is plain that the mother does not have an arguable case and there is no justification or merit at this stage for her to be given permission to pursue any further application to change the arrangements for L. Consequently her application for permission to pursue a child arrangements application is refused.
39. There being no substantive proceedings, it follows that the mother's application for permission to instruct an expert must also be refused. Even if she had been given permission to vary the existing order and seek a child arrangements order, her application for permission to instruct an alienation expert would still have failed. There is no reason or justification for the involvement of the alienation expert, KW, or any other alienation expert. It is not necessary. There is no gap in the evidence to justify such an expert being instructed.
40. In view of the mother's position that she is unwilling and unable to have L spend time with her or speak with her, there is no alternative sadly but for the

order of July 2013 to be suspended until such time as the mother feels able to take up that contact, which I very much hope she does. I encourage her to try to resume her relationship with L.

41. There will come a time when the father will need to consider whether or not L needs some help if the mother continues to refuse to have any contact with him and if she continues to refuse to speak with him. The father will need help to know how to respond to L and how to help him to understand the situation whereby his mother has, to all intents and purposes from his perspective, rejected him.

42. These are my reasons for my refusal of the mother's applications.
