

**IN THE FAMILY COURT
SITTING AT CHELMSFORD**

Priory Place
New London Road
Chelmsford
CM2 0PP

5th November 2014

Before:

HIS HONOUR JUDGE LOCHRANE

**IN THE MATTER OF THE CHILDREN ACT
1989
AND IN THE MATTER OF: W (CHILDREN)
W v G**

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**Counsel for the Mother: Miss Mika Pine
Counsel for the Father: Mr Grahame Richardson
Solicitor for the Child: Miss Stella Young**

HTML VERSION OF JUDGMENT

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JUDGMENT

HIS HONOUR JUDGE LOCHRANE:

1. This is listed as being the final hearing of a long running contact dispute, as we used to call it, between the father, Mark W, and the mother, Sharon G. The children

involved are C, who was born on 27th September 2010 and is now 4, and G, born on 17th April 2011, now aged 3.

2. The history of this matter is characterised in no small measure by concerns that have arisen from a comparatively early stage as to the mother's ability to promote contact between, first of all, C and his father and, subsequently, both of the children. As a result of concerns that arose earlier in the proceedings, I took the view that a guardian should be appointed for the children. CAFCASS obliged and the parties have had the benefit of the input of Miss Siziba the guardian, supported by her very experienced advocate, Miss Young, and I am considerably indebted to both of them, Miss Siziba in particular, for their input.
3. This is a case which is overshadowed in no small measure by a significant lack of communication between the relevant grown-ups. Mr Richardson, who represents the father, Mr W, has today attended with a position statement in which the father indicates that he wishes to revive a residence application, which has been, of course, on the cards for some time. Mr W's original application, I think, talked of a transfer of the children's residence and over the considerable number of months this matter has been before me the father has occasionally resurrected the idea. However, when the matter was last considered in September of this year, it was clear that the guardian's recommendation for a shared residence arrangement, a shared living arrangement, was one that was supported by the father. Of course, by that time a considerable amount of the water in this dispute had flowed under the bridge.
4. Mr Richardson, as I say, appears today representing Mr W and he is instructed to resurrect an application for a change of living arrangements for the children to live with their father and visit their mother. In those circumstances, Mr Richardson acknowledges that such an application has not been fully investigated in terms of its mechanics, at least by the guardian, and not addressed by either side in the specific context of such an application. Ultimately, what he seeks, I think, is an adjournment of this process in order that that application, he says, can be properly addressed.
5. The guardian's position, taken within her report and, as I understand it from her evidence today, a position she continues to hold, is that these proceedings need to be brought to a conclusion. That is in no small measure because, as it is clear to me, part of the lack of communication, the failure to communicate between these parents on a sensible basis, is founded in the fact that each has an eye to the continuing litigation, which clearly is not in the children's best interests.
6. Mr Richardson's application for the adjournment is founded, as I say, upon the father's intention to reignite an application for the children to live with him, which in turn is supported at the moment on the information contained in the applicant father's position statement. In reality, the vast majority of the issues which Mr Richardson, with typical skill, advanced on behalf of the father are historical, by which I mean they all certainly pre-existed the last hearing in September at which the father indicated that he supported the guardian's plans for the proposals for shared residence.
7. The issues that are new, in a sense, are raised in the position statement. They relate to some concerns about arrangements which were made for C's birthday party at the end of September; an issue in relation to the passport, which was raised apparently shortly

after the hearing on 19th September; and, additionally, the mother continuing to make inappropriate comments to the children and her refusal to refer to Mr W to the children as "dad." The latest of those issues arose around C's birthday, which was at the end of September, and it was not until yesterday or the day before that this position apparently was advanced on behalf of the father.

8. It seems to me that there is a considerable imperative for these proceedings to be brought to a conclusion as swiftly as possible. All the issues of any seriousness which Mr W has raised, and which I do not suggest for a second I regard as being unimportant, are historical and they predate both the guardian's report and the agreement by Mr W on the last occasion that he supported the guardian's recommendation, save for those, I think, relatively peripheral issues which are raised in the position statement. In my judgment nothing in the position statement justifies the significant change of position by the father from agreement in September to shared residence, to the relatively dramatic proposal to move the children to live with their father.
9. The other side of it, as I have already said, is it seems to me very clear that it is firmly in the children's welfare interests for these proceedings to be brought to a conclusion as swiftly as possible. In those circumstances, I have refused Mr Richardson's application for an adjournment of these proceedings. There does not seem to be any realistic prospect of Mr W persuading me on the current understanding of the arrangements, even allowing for the additional material he has produced or alleges at least, that it is in the welfare interests of these children at this time for residence to be changed on that dramatic level.
10. I have had the benefit of hearing from the guardian this morning, who has given evidence to the effect that she does not support the change of residence for the children to live with their father. She does not make that decision simply based on the fact that she has not had an opportunity to investigate the mechanics. Given all that she understands of the current set up, including those matters raised in the father's position statement, she does not feel it appropriate in the children's welfare interests for such a course to be taken. Accordingly, it seems to me there is no merit in prolonging this process any further for further investigation, whether by evidence from the parents or from the guardian, and for the father's residence application to be considered further.
11. As I have pointed out, of course, the fact that I do not consider it appropriate to consider the father's application for a change of residence for the children to live with him today does not mean that the situation may not change in the future. If the children's welfare interests, given the developing situation, demand that the matter be reconsidered, then, of course, it is open to the parties to make an application and the matter will be considered if at all possible by me.
12. Then I turn to the application itself, which is the father's application for contact and, effectively, shared residence supporting the guardian's proposals. The matter has a considerable history and I have listened carefully to everything that Miss Pine has had to say on behalf of the mother. There is no doubt whatsoever that the evidence points clearly to the fact that the mother has behaved pretty reprehensibly in the past. There is some compelling evidence to suggest that the mother has falsified evidence in

relation to the paternity of the younger child, G, in an attempt to deceive the court and, as I understand it, that is a matter under consideration by the criminal prosecution authorities. I do not know where that has got to; it may in due course be considered by me.

13. The position put by Miss Pine, I have no doubt on her instructions, is that the mother suggests that she has always supported contact between the father and the children. I have to say the evidence, sadly, does not support that contention. As I have said, it is clear that at one stage and for a significant period of G's life the mother not only actively deceived the father as to the existence of G, but subsequently attempted to deceive both the father and the court by producing information which ultimately was designed to deprive Mr W of a relationship with his child and, indeed, perhaps more importantly, to deprive that child of a relationship with his father. It is upon that basis that I say, if nothing else, the mother can be said to have behaved pretty reprehensibly in the past and the protestation made by counsel on her behalf that she has always supported contact is, I have to say, a little hollow.
14. In addition, it is my judgment, and I have been dealing with this case for some time, that the mother has been less than enthusiastic about the father's contact with either of the children. She has put in the way of the father developing contact with the children a number of not insurmountable, but small, hurdles designed to effect a process of trip and stumble in the otherwise important development of the father's contact with the children. This even to the extent whereby on the most recent occasion, despite the recommendations made by the guardian, the mother insisted that G be returned in the middle of the day for a nap, thereby, of course, clearly disrupting the process of contact. As the guardian pointed out in her evidence this morning, that is behaviour which is fundamentally unjustifiable. Nonetheless, it was all the mother was prepared to agree to on the basis that we could not have a contested hearing at that stage.
15. This now is a contested hearing and I have heard extremely helpful evidence from the guardian. It is agreed among the three parties that having heard that evidence it is not necessary for either of the parents to give evidence or to have their evidence tested. By agreement among the parties the matter has subsequently been dealt with on the basis of submissions, submissions from Mr Richardson for Mr W, from Miss Pine for Miss G and from Miss Young for the guardian.
16. As I have said, the root of this process is currently a fundamental failure of communication. I have significant sympathy with Mr W in his position. He has in my judgment an entirely justifiable concern that the mother will not conduct herself in accordance with the spirit of arrangements for the children to have proper contact and a proper relationship with their father. I understand his concerns and to a not insignificant extent I share his concerns. Nonetheless, we must be conscious of the fact that this is an on-going process and one in which Miss G has engaged, at least more recently. Through her counsel, she advances, at least, her current intention to be supportive of the children's relationship with their father. For the moment, at least, I accept from her the assertion that she will foster that relationship. In those circumstances, as I have said, it seems to me that the proposal for a change of the children's residence to live with their father and to visit their mother is at the very least premature.

17. I, however, entirely accept the recommendations of the guardian, supported as they are by Mr W to some extent, that this is a case that cries out for a shared care arrangement. It must be absolutely clear that these children are in the care of both of their parents and that for the purposes of any decision making neither parent is in the driving seat. That in no small measure is to safeguard Mr W's relationship with the children, but also so that we are clear, and the mother is entirely clear, that she is not in a position to call the shots. This is a consensual process and important decisions in the children's lives need to be made by discussion between the parties. Parental responsibility is called parental responsibility for a reason. The parties are responsible for these children and it is their responsibility to put aside their differences and communicate as far as possible in the children's welfare interests.
18. Despite my understanding that Mr W finds it difficult to communicate with Miss G (and I understand and acknowledge the reasons why he finds it difficult to communicate with Miss G) and, in turn, that there are significant concerns about Miss G's *bona fides* and ability in the future to put aside her issues in order to ensure that she and the father communicate, nonetheless, I have some hope, at least, that that situation will change and the parents will be able to communicate in the children's welfare interests. Understanding, however, that at the moment it is difficult, it is clear to me that the arrangements these children have for spending time with their respective parents need to be fairly closely defined in order to ensure that in the absence of agreement and discussion between the parties, which may not take place for some time, the children at least can relax into a routine which is ordered by the court.
19. I also make it plain that when I make the order, which I propose to make today, it will be on the basis that the parties may agree to vary the terms of the order between themselves. Nonetheless, it also needs to be extremely clear that in the absence of agreement (which is a process that involves discussion and arrival at a consensus and which does not involve the dictation by one party or the other of the way things are going to be) the court order will be obeyed. There will be a penal notice attached to the order directed at Miss G. That is to ensure that she is reminded on a regular basis of her obligation to abide by the terms of the court order, subject only to changes by agreement. Any applications obviously in relation to these children or breaches of the order will be reserved to me if at all possible in the future.
20. The mother, through Miss Pine, raises concerns about the progress of the children's relationship with their father on the basis that she puts forward that the children's best interests are served by considering the progress of contact at their pace. That, of course, is an entirely valid position to take. However, in this particular case, of course, it is set against the fact that the reason why G is not as far advanced with his contact as he might otherwise be is because the mother actively deceived Mr W about his parentage and obstructed the process whereby G might have started his relationship with his father at a rather earlier stage. Despite what the mother says through Miss Pine, I am comforted by the guardian's expert assessment of the relationship between the children and their father. I see absolutely nothing whatsoever in the descriptions that I have seen, and on the evidence of the guardian, which would contraindicate a swift development of the father's contact with both of these children to a sensible level whereby they can spend significant periods of time with the father, and enjoy both his company and, indeed, the company of his extended family and, to a

significant extent, share his life, which is their right. These are the children's rights in these respects and the parents have only the responsibility to ensure that the children have access to those rights.

21. The mother further makes various complaints about the father's ability to entertain the children or feed the children properly and various other things. I have made it plain in the course of argument that I do not propose to get into the detail of how anybody conducts his or her relationship with these children at that level. These are, again, manifestations of parental responsibility. The law requires parents to act responsibly in relation to their children. It is open to anybody with half a mind to understand what the general feeling is about nutrition or activities or whatever. Those are decisions made on the basis of available information by responsible parents on a daily basis and it is certainly none of my business, certainly at this level, to dictate to either party what those decisions should be.
22. In the event that either party has a concern about issues in relation to the children, it is, of course, important that they communicate. Clearly, these parents have difficulties doing that and I propose to require that there be a contact notebook in existence that will move with the children. In that book, the parents have the opportunity to express issues of concern to the children, not to the parents, but to the children. Therefore, in the event that one or other child has developed a rash or an allergy or has an event he needs to attend, then that information can be handed over. Of course, it is far better that the parents should be able to discuss these matters, but in the event that they cannot, that sort of information can be exchanged in the contact notebook. It is not, as I pointed out in the course of submissions, designed as a general chat forum for people to set out what it is the children have been up to and obliquely, as is frequently the case, to enter into criticism of the regime of the other. These are factual issues of importance to the children that have to be communicated in that way because the parents are incapable of communicating sensibly on any other level.
23. I turn then to the welfare checklist contained in the Children Act. It is clear in my judgment from the evidence that I have heard from the guardian and the evidence I have read in relation to the children's contact with their father that these children's wishes and feelings would be to have a proper relationship with both parents. The other side of it is that certainly the s.37 report and the information provided by the guardian indicate that, apart from the issues Miss G has for reasons which are unexplained with Mr W, she is otherwise perfectly capable of providing for these children, certainly on a physical and day-to-day emotional level. The children are still quite young, but their wishes and feelings would be for a proper relationship to be developed with both parents. Their needs are no more nor less than other children of their age and certainly, educationally, they appear to be being addressed appropriately. Physically, they are, as I understand it, in relatively robust good health. They have an emotional need for a proper relationship with both parents and there is at least some evidence to suggest that Miss G has in the past been obstructive of that in relation to the developing interests of their proper relationship with their father, Mr W. That, I hope, will change. Nonetheless, I accept that there is some issue, potentially, as to the proper addressing of those emotional needs on both sides.
24. In relation to any harm which they have suffered, in my judgment G certainly has suffered harm. He has been deprived of a proper relationship with his father for a

significant period in his life. It is both a significant period in terms of time, but also a significant period in terms of his development. He has not had access to his father at an important developmental part of his life and the mother is responsible for that. The children have had their mother obstructing, in my judgment, to some extent the development of their proper relationship with their father and to that extent, they have suffered some harm at her hands.

25. The evidence of the capability of both parents I have touched on already. The evidence clearly is on both sides that these children enjoy the company of each parent and each parent is on a day-to-day basis perfectly capable of providing for their needs. There is a significant question mark, certainly in the past, over the mother's capability of appropriately addressing their emotional needs in relation to their relationship with their father. It is to be hoped that both parties in the future will be able to demonstrate that they are capable of putting aside their differences to ensure that the children have a proper relationship on both sides, supported positively by each party. It has to be remembered that when a parent denigrates the other parent to the children, it is a comment upon what is half of each of those children. To suggest that somehow one parent is lesser or greater than the other is to indicate to the children that they have a deficient aspect of their own personality and that is psychologically harmful and it is in fact a measure of abuse. If it is the case, and I do not seek to know one way or the other, but if it is the case that the children are discouraged from talking about Mr W as "dad", that is a fundamentally rather pathetic and childish and damaging thing to do. They have a dad and they have a mum. They have one dad and they have one mum. They will only ever have one dad and one mum. It is entirely appropriate from the children's welfare point of view that that is a position that is firmly acknowledged and supported on both sides.
26. A slightly complicating feature in this process is that the children live with their half-sibling, Ruby, who is now 7. Ruby has contact with her own father, with the arrangements for which I am unfamiliar, but nonetheless the boys clearly have grown up with Ruby and they know Ruby as a sister with whom they live and I suspect the nuances of the respective parenting have not yet necessarily impinged significantly on their understanding. Furthermore, C at the moment attends nursery on a relatively extensive basis. However, that is not a statutory requirement, but in due course he will attend school which, of course, is a statutory requirement. I understand that his schooling will commence in September 2015, at which point the school holidays become a somewhat more fixed environment in which contact be organised.
27. As I have said, it is clear to me that this is a situation which requires an order. It is not in the children's interests, very firmly not in the children's interests, for there to be any delay in setting out a plan, which I hope will subsist, if necessary, for the rest of the children's minority should it be appropriate. Therefore, I propose to make an order which defines fairly closely what the living arrangements for these children should be on the basis, as I say, that it is important, I think, at least to accept that at the moment the auguries for discussion and sensible agreement between the parents are not good. I hope, of course, that that will change. However, from the children's welfare point of view it seems to me very clear that it is important that, if the parents cannot communicate on a sensible basis and agree, they are afforded the opportunity of enjoying the arrangements that can be put in place without the opportunity of the parents to bicker and disagree and thereby curtail them.

28. The guardian has suggested that the process of G moving towards overnight stays should follow four lengthier days of contact which takes place prior to C's weekend contact. C has now been staying two nights in a row with his father and there is a significant amount of travelling involved, which is a further complicating feature. There have been two extended days. They have been disrupted by the mother's unnecessary insistence on G having to return home for a nap. That will stop. The arrangements for the immediate future will be that there will be two further full days of contact with both of the boys without G being returned to his mother's home in the middle of the day. At the end of that day, as per the current arrangements, C and his father will then depart for a staying weekend. Once those two further days are done, the children will spend two nights, once a fortnight, with their father, their father collecting them at a time to be agreed on the Friday afternoon and returning them at a time to be agreed on the Sunday afternoon.
29. Over Christmas 2014, it is suggested by the father that he should have the children for a period prior to Christmas Day itself, the children returning to their mother for Christmas Day. It is suggested that that should be a period of four nights by the father. The guardian certainly contemplated that more than two nights would be acceptable and I see no reason whatsoever why it should not extend to a period of four nights by Christmas. Accordingly, the father will have the children living with him from a time to be agreed on Saturday, 20th December, through to a sensible time for their return in the afternoon of Wednesday, 24th December. At Christmas 2015 and alternate years thereafter, the children will spend approximately half the school Christmas holidays with their father, to include Christmas Day itself in 2015, 2017 etc.
30. I appreciate, of course, that this involves potentially the children not spending Christmas Day with their sister, Ruby. It is impossible to make an omelette without breaking eggs. I do not know what the arrangements are for Ruby to spend time with her father, but it may be that that can be accommodated within this process. However, the children before me are G and C and it seems to me that there is no justification for suggesting that in 2015 the children should not spend Christmas Day with their father, certainly there having been an opportunity for the parties, and particularly the mother, to prepare the children over a period of some 14 odd months. Therefore, from 2015 the children will spend half of the Christmas school holidays with their father and in 2015 and the alternate years thereafter that will include Christmas Day.
31. There will, as I have said, be four nights this Christmas up to the afternoon of Christmas Eve and I propose further to order that there should be five nights for a period in February, those five nights to be nominated by the father no later than the end of this month, November. Further, that there should then be seven nights over the Easter period, again those seven nights to be nominated by the father no later than the end of this month, November. Further still, that there should be three weeks over the summer school holidays.
32. The mother, through Miss Pine, suggests that a move from seven nights to three weeks is a precipitate move which should be mitigated and she suggests that there should be three separate weeks. To a certain extent, I am sympathetic with that as a process. It seems to me that it may be a leap for the children to move from seven nights to 21 nights in one jump. Therefore, so I propose that in the summer of 2015 the father should have a total of three weeks, there to be one chunk of two weeks and

at a separate time a chunk of one week and those weeks, again, will be nominated by the father by the end of November of this year. However, in the summer of 2016 and thereafter the father shall have the children living with him for approximately half of the school holidays, including half of the half terms on the usual basis that if the father's weekend falls at the beginning of the half term, it will extend through until the Wednesday; if it falls at the end of the half term, it will start on the Wednesday. There will, as I have said, be a penal notice attached directed at Miss G to ensure that she understands her obligation to comply with those arrangements.

33. In relation to telephone contact, I propose to order that where for any period which the children spend more than three nights living with whichever parent it is, arrangements should be made for a telephone call to be made at least once a week to the non-residential parent. That will involve a telephone arrangement for most weeks when the children are with their mother and for the extended holiday periods when the children are with their father. It will involve the parties ensuring that there is a telephone number at which the children can be reached and that there is a time at which the telephone calls can be made to ensure that the children are available and the telephone is going to be answered. That, I am afraid, is something they are going to have to organise between themselves.
34. The children's passports are to remain in the custody of the father. There will be an order that neither party will apply for a passport for the children without the consent of the other. Any passports in the children's names currently will be surrendered to the father and he will keep them. There is permission to either of the parties to take the children out of the jurisdiction for a period of no more than two weeks on any one occasion, but that should be confined to any country which is a signatory of the Hague Convention. The children are not to be removed to non-Hague Convention countries without the permission of the other party. The father in those circumstances will hand over the children's passports to the mother for the period when they are with her prior to any holiday arrangements of that kind and the passports will return to the father with the children thereafter. Any proposal by either parent to take the children abroad is conditional upon that parent informing the other no less than two months in advance of where he or she is intending to take the children, when he or she is intending to take the children and ensuring that the non-holidaying parent has full details of where the children will be staying and how to contact the other, should the need arise.
35. In relation to the children's birthdays, the order will provide for the non-residential parent, that is the parent with whom each child is not living on the day of his birthday, to have a period of two hours with the relevant child (probably both but that is a matter, I think, to be discussed) on his birthday and that is a matter that they are going to have to organise between themselves.
36. The mother will be responsible for organising the children's routine medical and dental appointments, but the father is to be kept informed in advance of all such appointments and also to be informed by the mother of the outcome of all such appointments, if necessary through the contact notebook.
37. Any school which it is proposed the children should attend will be the subject of agreement between the parties. The parents clearly need to discuss the appropriate

schools for the children and those proposals need to be canvassed in advance. It is not open to either parent simply to dictate to the other where the children will be attending school, but, certainly, for the moment, it must be anticipated that the children will attend a school in the vicinity of their mother's accommodation.

38. There will be a requirement that the mother does not move address without giving the father at least two months' notice of any proposal to move the children's residence in order that he has an opportunity, if necessary, to be heard on the subject.
39. It is open and it will remain open to the parties, as I have said, to change or vary any of these proposals by agreement between them, otherwise any proposed changes must be by application to the court. I will also order that there is a contact monitoring order to CAFCASS and that contact monitoring order will expire at the end of August next year. The rationale for that is it seems to me that it is important that there is some external monitoring of the process through to the completion of the first extended periods of summer holiday contact, which should be the end of August. By that stage, we will have had more or less a year of these arrangements and they will have had the benefit of some monitoring by CAFCASS in the meantime.