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PA cases to help with Applications for Contact

Introduction

This is a less risky strategy than applying for change of residence.

Most courts will give most absent parents contact, unless there are serious allegations against the TP. This, indeed, is why serious allegations are routinely made against absent parents, that range from allegations of mental instability and sexual promiscuity (standardly made against absent mothers) to allegations of physical or sexual abuse (usually made against fathers). They don't stop there. Allegations of rape, paedophilia and serial murder are not unknown and there is even one case at least where an allegation was made of cannibalism! Needless to say, by now we hope, all of these allegations are groundless and are eventually shown to be so. But in the meantime, you get no contact…

Courts are conservative. They like to go with the 'no order' principle, which, stated alternatively means 'if in doubt, do nowt'. If there is any doubt that you might be violent or something of that kind, some courts may, without any evidence, order no contact…for the moment…just to be on

the 'safe' side. But is it 'safe' to leave the child with a sadistic narcissist?!

The problem with PA cases is that *time is our enemy*. The longer the case goes on, the longer the child does not see you, the deeper the alienation gets. Alienators know this. Judges must know this too, as you will see from cases like re S, and re A. And yet many simply stand by and watch it happen...

Another reason to advocate this approach is our observation made elsewhere, that courts can order whatever they like, regardless of what the parties want, if another course of action is in the best interests of the child. In other words, you can apply for contact, convince the court that PA is present and the court may order a TRO (Transfer of Residence Order). Don't hold your breath on that one though...

The Case Law

Re T (A Child) [2002] EWCA Civ 1736

A case of a child, T, who was clearly alienated against his father.

The child's feelings switched from (according to his father) this: "The last time I had seen JW — that is 4th July — he had been hugging and kissing me and telling me how much he loved and missed me" to this "When I tried to speak to JW in the car park he told me I was a liar, was drunk all the time and that nobody liked me. He told me never to call him again."

The relationship between the father and the child was fine until the father and the mother fell out.

"...the judge failed to make a finding or sufficiently reasoned finding on alienation by the mother or to make it clear that he was not making such a finding"

The father was granted permission to appeal.

M (CHILDREN) [2005] EWCA Civ 1090

> *"This is an appeal which has caused the court considerable anxiety. It is another of the apparently intractable disputes over contact that, in this case, teenage children should have with the absent parent. In many ways the story is ultimately familiar, save that in this case the absent parent is the mother, not the father."*

The case involved two children aged 15 and 13.

The mother was accused of harming the children physically, and of being mentally unwell and unfit, as well as trying to 'abduct' one of the children, an accusation described as "a flagrant mischaracterisation of what took place" and "a monster misunderstanding all round, with extremely unfortunate consequences so far as these children are concerned".

These allegations weem only to have arisen when the father had undertaken a relationship with another woman – the "stepmother".

A welfare officer concluded "... I have no doubt that there has been no encouragement at all over the past two and a half years by the father and stepmother to see her [the mother] in a more positive light, rather than the reverse. The children were completely unaware that their mother had been sending them cards at regular intervals despite the father's avowal to the contrary."

The trial judge ordered that the M was to have indirect contact, quarterly. The children remained "implacably hostile" to the idea of contact with M. There was "no attempt on father's part to alter this extreme mind-set". Ward LJ observed

> *"Here it seems to me the judge has fallen into error. True it is that these are children whose views ordinarily carry great weight, but we have to bear in mind not only their age, but their understanding.*

> *Their understanding in this case is corrupted by the malignancy of the views, with which they have been force-fed over many years of their life, until so blinded by them that they cannot see the truth either of their mother's good qualities or of the good it will do them to have some contact with her"*

And

> *"There is, it seems to me, a further error in the judge's approach. He has acknowledged the harm these children are suffering and will continue to suffer and he has acknowledged (with the benefit of hindsight, true) the failings of the court properly to have dealt with that problem. I am afraid I am critical of that failure. I have recited the history and it does not bear much repetition, but having allowed two years of relief from mother's direct pressure, that period expired in October 2000, that was the time to be more robustly interventionist, to ensure that the court delivered what the father promised to deliver, but failed to deliver, namely a change in attitude"*

The court should leave no stone unturned in trying to restore the children's relationship with M – it should not stand by and do nothing. The M's appeal was allowed, and the matter was transferred to a High Court Judge.

G (A CHILD) [2006] EWCA Civ 348

The principle outlined in the previous case was again stressed here – no stone should be left unturned in trying to keep the relationship between a child and its parents.

The trial judge had rejected F's application for direct contact. CAFCASS had supported no contact because, when considering the stress of the proceedings on the child, "enough was enough". M had alleged that F had been

'harassing' her. A clear case of an alienated child denied contact with F. F appealed.

Appeal allowed, and a further assessment ordered.

Re P (Children) [2008] EWCA Civ 1431, [2009] 1 FLR 1056

The trial judge ordered no direct contact for F. He appealed. The children were aged 10 and 12. The trial judge was critical of M saying

> *"Her unilateral action in thwarting contact has not helped, and her insistence upon the involvement of the Domestic Violence Intervention Project may not be the panacea that she thinks it is."*

But the judge rejected F's assertion that M was systematically alienating the child. The social worker recommended therapy for both parents, an option that the trial judge did not consider adequately.

F's appeal was allowed and a retrial ordered.

Burgess v Stokes [2009] EWCA Civ 548

This was an appeal from M who has persistently disobeyed court orders and had been ordered to be committed to prison for contempt. F indicated that he did not wish to resist M's appeal, who had a baby of three moths of age, which she was breast-feeding. Although

> *"The days are long gone when mothers can assume that their role as carers of children protects them from being sentenced to immediate terms of imprisonment for clear, repeated and deliberate breaches of contact orders."*

The CA nevertheless allowed M's appeal.

IN THE MATTER OF D (Children) [2010] EWCA Civ 496

This case involved two boys aged 12 and 9. F had been found by a Circuit Judge to have sexually abused their half-sister, something F consistently denied. On this basis, M said that F should not be allowed to see his sons, and that this prohibition should extend to F's parents who M feared would facilitate further abuse.

Dr Hamish Cameron was the expert.

> *"The judge found on advice from perhaps the most distinguished experts in the country when it comes to child and adolescent psychiatry, one of them certainly Dr Hamish Cameron, and a first rate NYAS guardian, Mrs Val Proven, that the children were effectively living a lie. They were being forced by their mother's obsessional beliefs to satisfy her, to please her and to accept what she believed even though they did not believe it themselves. The consequence was that when Dr Cameron, who is a very moderate man, came to consider all the evidence he concluded, without hesitation, and he used the phrase and I have queried it because I was surprised that a man of Dr Cameron's moderation would use it, but when he had a conversation with Mrs Proven about the case on 31 October 2008 he used these words:*

> *"Dr Cameron and Mrs Proven consider that abandoning [T] to the pressures of his mother's belief system would run a real risk of distorting and warping his psychological development so profoundly that in his adult years, he could be emotionally crippled and unable to form trusting relationships with others."*

A psychiatrist of Dr Cameron's distinction does not say those words lightly and everyone in this court should listen to them carefully and reflect.

The trial judge ordered that the children live with the paternal grandparents, and M appealed.

The CA, (Wall LJ) said:

> *"The idea that these children should regard their grandparents as effectively ogres who are likely to facilitate and connive them being abused by their father is fanciful and absurd and I do not give it credence for one moment" and M "has inflicted on these children a belief system which, in the words of the consultant psychiatrist, might well involve them becoming emotional cripples."*

M denied permission to appeal, the children to remain with the paternal grandparents.

In the Matter of the L-W Children [2010] EWCA Civ 1253

The resident parent in this case was F. F appealed against enforcement orders made against him for failing to comply with court orders. The appeals were granted.

The trial judge had observed that this case involved PA. There were two children, a girl, 'E', aged 9 and M, a boy, 10. M lived with F and E with M.

The court had to rule on M having contact with her son, and E with her father. F was not cooperating with contact, and breached court orders six times and was sentenced to 28 days in prison for each infraction. F was obviously alienating M from his mother, and M was using inappropriately sophisticated language to express his feelings.

> *"The social worker, Mr Stevens then talked to M about the contact that was due to take place on 14 July 2010:*

> *"M told me he would not go to see his mother, at which time I reminded him the Court expects his father to ensure he does attend. M replied 'I don't care'. M told me he did not feel his mother was being 'co-operative'."*

> *Whatever view I might ultimately have come to in the absence of that report, its very worrying contents to my mind quite plainly tip the balance heavily against committal"*

Sedley LJ said this in allowing F's appeal:

> *"If, as happened here and must happen in a good many cases, the judge legitimately forms the view that it is the father who is obstructing contact by transmitting to the child his hostility towards the mother, the judge may well make a coercive order against the father. From that point the judicial die is cast: subject to accidents, failures of contact will be the father's fault, and punishment will if necessary follow. But this paradigm of fault omits something which may well be, or become, critical – the child's own feelings and attitude. Even if, as Judge Caddick strongly sensed, it was from the father that the boy had picked up not only his view of the mother but the vocabulary in which he was expressing it, by the time committal was on the agenda it was very plainly the boy's own refusal which was impeding contact."*

He goes on to say:

> *"There are at least two morals. One is that before deciding that a parent is the author*

> *of a child's resistance to contact and so can be made the subject of a coercive order, the court needs also to be sure that the parent, by one acceptable means or another, can still reverse the child's attitude. The other is that even then a court, despite the affront to its dignity, may have to be prepared, if it comes to the point of committal, to accept that the predictive premise on which it initially acted has turned out to be wrong: that, for example, the child has internalised the custodial parent's hostility, so that punishing the parent can no longer produce the intended outcome and may produce its opposite."*

This, then, is a case where all judges, at upper and lower levels, recognise the alienation of the child, but nevertheless refuse to punish the alienator.

D vs H 2011] EWHC 3521 (Fam)

A clear case of alienation, albeit less malignant perhaps than some. Hedley J observed:

> *"The second thing to say is that the child's undoubted superficial opposition to contact provides a convenient cloak at the present time behind which the mother can shelter her concerns about contact. I do not believe that she has deliberately manipulated E's views to those which that child now expresses but, on the other hand, I have no doubt whatever that she not only has strong views against contact but that she does not mind who knows those views. It is beyond question, in my judgment, that E has fully absorbed not just the views but the force with which they are held and that the mother's attitude and the mother's making clear to E that contact was in fact a matter for her choice amounts in practice to an implicit encouragement to resist contact.*

> *I do not think that those views are maliciously formed, nor do I believe that they are maliciously perpetrated, but I do believe that they are obstinately held and obstinately persisted in, irrespective of the impact that has on E herself. The mother's present views remain deeply entrenched but – and this is an important 'but' – I think it is probable that if the child were to be of the view that she, E, would like contact, the mother's opposition would not in fact go so far as to overrule the child's expressed wishes. I say that not just because that is what the mother said to me but because I suspect that is what has happened once before in this family, and it seems to me that is something that the court ought to take on board."*

Of the expert, Dr Berelowitz, the judge said this:

> 25. *"I had the advantage of hearing the evidence of Dr Berelowitz, a distinguished consultant child and adolescent psychiatrist who has considerable experience of the cases that come before this court. He had a number of observations to make which were of some importance. In particular, he heard of the child's opposition to contact but had two particular observations to make about that. First, the child had said on one occasion that she may never see her father again, and he detected more wistfulness than determination in that expression of view. Secondly, he said that he could find no objectively comprehensible reason for the child's opposition. The child had expressed as a ground the fact that the father had threatened on one occasion to 'knock mummy out'.*

According to Judge Harris' findings, the father had indeed done that in December of 2007. The difficulty with it being a comprehensible reason for objection is the reaction of the child in contact in April 2008, and Dr Berelowitz's view was not that this child was merely parroting other views but that he could, nevertheless, not discern any, as I say, objectively comprehensible reason for her opposition.

26. *The second set of views expressed by Dr Berelowitz which are of importance in this case was this. He said that although the experience of being caught up in conflict of this sort was always harmful to a child, and that E was no exception in that regard, nevertheless, there was not the evidence one might expect to find had significant emotional harm been inflicted on E by it, and, accordingly, this is not a case in which the court can or should resort to the assistance of the local authority. Moreover, said Dr Berelowitz, some further attempt to effect contact would not produce significant harm. It will, of course, be harmful but that the harm that might be suffered is a harm that would be more than offset by the advantages of a renewal of contact.*
27. *The third thing that Dr Berelowitz said of importance was this. He thought that it was too early to abandon the quest for contact because the benefits of contact, as he saw them, merited some further attempt being made in that direction. What he did say, however, was that he was not the right person to effect that, this was not the task of a child and adolescent psychiatrist but was the task of a psychologist, or, as the Guardian said, it was a pure social work task. I think that is a correct*

> *assessment and I acknowledge that Dr Berelowitz probably has nothing more to contribute at this stage to this case.*
> 28. *It has to be said, in fairness to the parties, that Dr Berelowitz's evidence did rather read as though he was saying that no attempt at all should be made to further contact in this case, but that was clearly not his intention, as became manifest at a very early stage of his oral evidence. He was asserting that he had nothing further to contribute, not that there was nothing further to be done."*

Of the Guardian, the judge commented as follows

> *"The Guardian's view is that the mother has throughout done all that she can to make contact difficult and that the way of addressing the position in which everybody now finds themselves is fundamentally an issue of social work rather than medicine. I accept that the reasons for these endless difficulties over contact, and everything associated with contact, are for the most part, though not quite exclusively, to be ascribed to the mother, but, as I indicated, that is not as a result of malice but is the result of an obstinate determination to see through what she thinks is right in this case"*

The Court ordered further professional guidance, and for the parties to consult and come up with a plan for contact. Not a helpful judgement at all, given the findings that M was being obstructive over contact.

W (Children) [2012] EWCA Civ 999

Two children, 6 and 9. F alienated, but M had concerns that were not without foundation about F's temper. But F had

addressed those issues and his demeanour improved markedly. F now gave evidence calmly and

> *"I found F's account to be an honest one, and his beliefs genuinely held".*

M broke down in the witness box and the judge found causes for concern in her evidence. McFarlane LJ comments:

> *"Finally I would refer to the pithy, but nonetheless correct, distillation of this approach in the judgment of Ward LJ in Re P (Children) [2008] EWCA Civ 1431, [2009] 1 FLR 1056 at paragraph 38 where it was said that "contact should not be stopped unless it is the last resort for the judge" and (paragraph 36) until "the judge has grappled with all the alternatives that were open to him".*

F's appeal was allowed. The judge had not ´grappled with all the alternatives that were open to her´ when refusing to order direct contact. A retrial was ordered before a different judge.

F (Children) [2015] EWCA Civ 1315

A case of an alienated M. F had alleged that she was having an affair with one of her step-children, but the trial judge indicated that

> *"There is almost literally no evidence to support that proposition ... [the father] has built a sand castle out of nothing, it seems to me."*

F did not engage with the court process. McFarlane LJ ruled:

> *"I am therefore entirely persuaded, albeit with a heavy heart, that this judicial process was wholly inadequate for the important issue before the court relating to E´s future contact with her mother. The appeal must succeed. The outcome must be that the case now needs rehearing before a different judge. Having made inquiries, for my part I would direct that the case be referred to be heard by the local designated family judge, His Honour Judge Peter Green, in either Peterborough or Cambridge."*

A Guardian was appointed because:

> *"There is a need for E to have a separate voice in these proceedings, other than a voice through her father."*

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