Case No: B4/2007/0337, B4/2007/0338, B4/2007/0339

Neutral Citation Number: [2007] EWCA Civ 380
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CAMBRIDGE COUNTY COURT
(HER HONOUR JUDGE PLUMSTEAD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 3rd April 2007

Before:

LORD JUSTICE WALL

IN THE MATTER OF N (Children)

IN THE MATTER OF F-N (a Child)

(DAR Transcript of
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THE APPELLANT APPEARED IN PERSON.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

Judgment

(As approved by the Court)

Lord Justice Wall:

1. In this case the judge made an order against publicity. I have not heard any argument about that but, for the time being at least, I propose, as this judgment is being given in public, to deal with the matter anonymously.

2. A mother, Miss W, appeals against various orders made by HHJ Plumstead sitting in the Cambridge County Court on 3 August 2006. There are three children concerned, whom I will identify by the initials FN, ON and SN; they are all boys. FN is 11 and will be 12 in June. SN is also 11 and will be 12 in July, and the third child, ON, was born on 19 May 2003 and therefore will be 4 in May. FN and ON are the natural children of the mother and the father, Mr N. SN was adopted by them. He was sadly orphaned. His parents were, I think, friends of the mother's and the couple adopted him; therefore, in law all three children are of course the children of the parents in this matter.

3. The order against which the mother appeals is complex, but the essence of it was that the judge refused all direct contact between the mother and the three children for a period of two years. She permitted indirect contact only. She also made a similar order in relation to the children's maternal grandmother, which is not the subject, as I understand it, of an appeal. She imposed an order under Section 91(14) of the Children Act 1989 which effectively prevents both the mother and grandmother from making any application in relation to the children before 31 July 2008; and she continued a number of orders relating to non-molestation which I do not think, for the moment at least, are at the heart of the case. As I indicated, she also made an order against publicity.

4. The judge herself recognised that the order she made was both highly unusual and indeed, in the mother's words in argument before me, draconian. It is sometimes said in these courts by litigants that the courts demonstrate bias in favour of mothers; "the gender bias", as it is so described. In my view this case is yet another example of the fallacy of that proposition. Here is a very strong order made against a mother refusing her permission to see her children for some two years and permitting only indirect contact. The question for this court is whether or not the judge properly exercised her discretion to make that decision.

5. A further point I need to make before going into the facts is again perhaps not always understood by litigants who come to this court, however intelligent they are and however well they argue their case (and indeed this case has been very well argued by Miss W). All this court can do is to look at what the judge did and to decide whether, in so doing, the judge made any error of law or whether or not the discretion which the judge exercised in the particular circumstances of the case was appropriately exercised. I prefer to put that in these terms: was there material upon which the judge could properly make the findings that she made and exercise the discretion that she exercised? If the answer to that question is yes, then that is the end of the matter because whether or not this court -- had it been sitting on its own -- would have formed a different view is neither here nor there. This court is not a judge of fact; it is for the judge in the court below to make assessments of credibility, to make findings of fact on the evidence and to examine the case carefully and to reach a conclusion. It is only if the exercise of

discretion by the judge in the court below is so flawed that this court can say it is plainly wrong that this court is entitled to interfere, otherwise it simply is not. That is always a difficulty for applicants in this court because inevitably where a case has gone over a series of days, as this case indeed did, where the judge has had the opportunity to read the evidence and to hear the parties and to assess them in the witness box, it is inevitable that a judge makes findings of fact and assessments of credibility, and as I say whether or not I would have done the same is for this purpose neither here nor there.

6. HHJ Plumstead, whom of course I am naming in the same way as I name the location in which the case was heard, is a very experienced family judge. She sat for many years as a District Judge in London before her promotion to the circuit bench. Her judgment is a long one; she self-depreciatingly describes it at one point as rambling. It runs to some 84 paragraphs over some 31 pages. Unfortunately, both Miss W and her mother felt unable to stay to the end of it and left and therefore and only heard part of it. Indeed, it appears that for the first two days of the hearing the mother was represented and for the second two she was not, although she had the assistance of a McKenzie friend. I should perhaps therefore at the outset say that in my view the mother has not been disadvantaged either below or in this court by the absence of legal representation, and indeed I made it very clear at the outset of her argument to me this morning that I would take no point on her being out of time. As she is a litigant in person, I am quite satisfied that she made every effort to appeal in time but was unable to do so.

7. So how did the judge reach this very, very unusual conclusion? She did so first of all by looking at the applications that were before her, looking at the history of the litigation and then going back to the beginning to make her findings of fact and her assessments of the parents. She deals with the births of the children. She deals with the adoption of SN. It is implicit not explicit, but she is critical of the local authority and its adoption agency for the superficiality of the report which enabled SN to be adopted at a time when plainly the marriage between the mother and the father was fragile, and indeed the mother makes the point against the father that, really, what is he doing criticising her when he was himself prepared to accept that they could safely adopt a child? The judge in that respect was reflecting the views of the consultant psychiatrist who was advising her, Dr Denehey, whom again I will name because she is outside the case and has no direct geographical contact with it. One of the criticisms the mother makes is of Dr Denehey whom she says was biased having been appointed by the local authority and she herself not having been given the opportunity to instruct her own expert.

8. That deals with the adoption of SN. It means that there are two boys in the household very much of the same age and one much younger boy, three boys in all. It is clear that in the early stages of the marriage the father was described by the judge as a workaholic. He is an American citizen. He relocated with the mother to England after their marriage. He got a job, I think, in the city of London. He obviously commuted between the parties' home and London. He was not around very much during the daytime to help with the care of the children. No doubt he was pretty tired at night as well, and so the mother had the burden of bringing up the children effectively in that respect on her own, and the judge

recognises that fact; but it is equally clear from her judgment that it was reasonably early on in the life of FN that he began to manifest a number of difficulties and FN was referred to a well-known consultant psychiatrist, Dr Harry Zeitlin. Dr Zeitlin picked up more, I think, that the symptoms which FN was displaying, this is according to the report as summarised by the judge, that the difficulties he was displaying were at least if not entirely very substantially originating from Miss W's own difficulties and anxieties, and indeed he makes the startling comment which the judge cites that:

> "Overall during the course of the session with FN his mother appeared to be in a more unusual mental state than the lad himself."

The doctor's overall conclusion was that really there was not very much wrong with the boy per se but that:

> "He appeared to try to view symptoms that he has heard of rather than experienced."

9. That is a feature which follows through in the evidence because it is quite clear, leaving aside as I do any question of the allegation that the mother was drinking to excess, that as the marriage broke down and as the parties separated there was an extreme antagonism between the parents which was equally plainly damaging to the children, but the judge's findings in relation to that antagonism were that it was in essence the mother who fuelled the children's antagonism to their father rather than the other way round. That of course is not how Miss W sees it, and in the well-drafted and the well-argued skeleton argument she put before me today, it was plain that she retains the view that she has effectively been set up by the father; that the father has behaved wholly inappropriately towards her; and that he is responsible for the position in which she currently finds herself and the circumstances which have prevented contact with the children, and indeed her overall capacity to care for them on her own.

10. The judge goes in some detail through the year 2004 where there were incidents between the mother and the father. The mother was prosecuted in the magistrates' court for an assault on the father and was given a conditional discharge, but the contact which the mother was then having with the children was in the eyes of the judge already at that stage problematic, because it was quite clear that, as the judge found it, the mother was inculcating in the children a hostility to their father, the obverse side of which was a natural wish to see a great deal of her, to stay with her and to be with her, and there were a number of allegations which the mother made against the father, all of which the judge records. Equally she records the investigations that took place by social services and by the police and in each case the allegation made by the mother was found to be unsubstantiated.

11. For example, in July 2004, in what the judge describes as "the first of many allegations", there was an allegation that the father was watching child pornography on his computer. The judge found that a police investigation followed and there was no evidence for the allegation. Equally, the mother alleged that the father was going to snatch the children and remove them from the jurisdiction. That again was found to be without foundation. There was a particularly unpleasant scene when the mother breached her bail conditions and

was temporarily remanded in custody and the maternal grandmother came to the home where the children were and berated the father in the children's presence because their mother was in prison. That was a matter which the judge was rightly critical about. There was also an incident on 4 October where, as a result of something the mother said to FN, he phoned 999 and alleged that his father was ill treating him. That of course resulted, as the judge found, in another police investigation which again found no substance. In essence, therefore, the position was that the children were expressing a very strong wish to be with their mother and to see her. At the same time they were expressing very strong sentiments about the way their father was allegedly treating them, but when they got back to their father's care on the whole, there was little difficulty and therefore the extreme allegations which they were making of being beaten and starved and so on were manifestly untrue.

12. But equally this had a knock-on effect in relation to their behaviour -- particularly that of FN at school, where he manifested very disturbed and very difficult behaviour and the judge found that in November for example, the mother had encouraged FN to make allegations against his father and that a friend of hers had telephoned the Child Protection Department and the police alleging that the father beat and starved the children. That again led to a full investigation, as the judge found, by social services, which did not conclude until January 2005 and once more exonerated the father. There are other allegations which the judge identifies.

13. Once again my function here is not to decide whether or not those allegations are true. My function is to decide whether there was material upon which the judge could properly make those findings and I have to say that there plainly was. I see no reason to doubt the judge's findings that there were allegations made by the mother against the father, indeed she repeats them in her submission to me today, and I equally see no reason to doubt the judge's finding that these were indeed duly investigated by both the police and the social services and found to be without any basis.

14. Contact therefore remained a problem and the judge records an incident on 23 March 2005 where once again the mother telephoned the police and alleged the children were being abused by their father and that the children were saying some dreadful things about him: that he was cruel to them, he beat them, he starved them, he locked them in their rooms. And it was the view of the supervising workers to the local authority, who by this stage had inevitably become involved given the mother's complaints, that they were actively being encouraged to make those allegations by their mother but that once out of her immediate purview they calmed down and were relatively normal in their father's care, certainly showing no sign of fear of him or concern about the way they alleged they were being treated.

15. If one stands back, as the judge did, for a moment or two and says well, is it really in the interests of children to be subjected to this form of emotional pressure if the allegations are unfounded, then the answer is plainly obvious. It was not in the interests of the children for their mother to be saying to them that their father was behaving badly to them and inducing a belief in them that what she was alleging and indeed what they were alleging was true and, as I say, this resulted, as the judge points out, in difficulties with FN. At school, he had been statemented, he

was showing emotional disturbance, he was misbehaving and clearly not fitting in at school and causing himself there very substantial difficulties, and indeed one of the points that the mother makes in argument today was that indeed FN was a very disturbed child and his disturbance was not taken sufficiently seriously by the school or indeed by any of the other authorities.

16. So how did the proceedings go on? Well, there was clearly an issue between the parents as to contact and indeed as to residence. These were private law proceedings under Part II of the Children Act. The children were not separately represented; I will come back to that because it is a point that the mother makes. There was no automatic representation for them as there would have been in care proceedings. The local authority was involved because of various reports which the judge sought from them and from the fact that they were supervising contact, and so what the judge did was to make an order that a consultant psychiatrist should be instructed by the local authority to advise the court on what should be done. This leads to a major complaint by the mother because she says, firstly, Dr Denehey the consultant concerned was not independent, she was biased because she was appointed by the local authority and, secondly, the mother herself was not given the opportunity to appoint her own psychiatrist or countervailing expert to enable her and her lawyers, she being then represented, to cross-examine Dr Denehey.

17. This is a very important and serious allegation and therefore I do have to look at it very seriously. Miss W helpfully provided for me a draft of the letter of instruction to Dr Denehey, which is dated June 2005 and appears to have been faxed to its recipient on 7 June of that year, in which Dr Denehey's instructions are set out; but what I think is equally important is that the letter very properly says that, whilst it is not a public law case, nonetheless Dr Denehey is to be reminded of her duties as an expert witness and they are set out fully in the letter. The overriding duty of an expert in family proceedings, which takes precedence over any obligation to the person by whom you are instructed, by whom you are paid, is to the court, not to the parties. The opinion must be independent of the party or parties instructing you. You must confine your opinion to matters material to the issues between the parties and in relation only to questions that are within your expertise. If a question is put to you which falls outside your expertise, you must say so. In expressing an opinion you are required to take into consideration all material facts, including any relevant facts arising from diverse cultural or religious contexts at the time your opinion is expressed; you are required to indicate the facts, literature or any other material which you have relied on to form an opinion; and you must indicate whether your opinion is provisional or qualified, and the reason for that qualification indicating what further information you require to give an opinion that is not qualified. So Dr Denehey at the very beginning was given a very stern warning by the local authority that she had to be independent and that her opinion had to be independent.

18. The judge, who as I say is an experienced family judge, also knew Dr Denehey who is a very experienced consultant psychiatrist, now of course long retired from the NHS and, in my view, although I have not had the advantage, because they are not in the bundle of documents, of reading Dr Denehey's reports, I can see

nothing in the documentation which demonstrates that she was in any way biased in favour of the father. To the contrary, it is quite clear that her first report was not only critical of both parents but specifically it recommended that there should be ongoing contact between the mother and the children and indeed recognised the force of the children's wish to see their mother. The difficulty was and as it transpired this was a predication made by Dr Denehey which was accurate, was that whilst the children needed a more settled lifestyle in which they could be assured, as Dr Denehey put it, of the "unconditional affection of their carers", the risk was that the mother would use the more limited periods of contact which she was having to concentrate her efforts to make the children hostile to their father. The judge recorded the argument put forward by Miss W that Dr Denehey was a 100 percent against her and 100 percent in favour of her former husband but the judge rejected that opinion. The report, she said:

> "... reads as being far from the case. She was critical of the father, critical of his over-delegation of parenting. His unavailability, emotionally to the children ,and she took up the nanny's criticism of the father, he was not fully supportive in setting boundaries and routines for the children."

19. So as the judge found the report was far from being uncritical as far as the father was concerned, but equally Dr Denehey expressed opinions about what she described as Miss W's "serious deficits in her capacity to parent" and she outlined them in some detail. She was quite clear that the mother loved her children but that she expressed her love by offering "unlimited infantile care" and by attempting always to be available, so preventing FN particularly from learning how to tolerate frustration or give him an opportunity to cope with his own anger and aggression in a constructive way. She had, the doctor found, limited understanding of her parenting role. She did not accept the need to offer effective discipline or control or to have any clear concept of the needs for this and how such measures should be communicated to the children clearly and enforced reliably with affection, and in addition to this of course the message she was giving to them of the father was that he was not a safe person for them to be with; that, as a result, the contact she was having with the children was not in fact benefiting them and that she needed assistance to help her create an appropriate relationship with the children. The result was a recommendation that both parents should attend parenting classes; both did and there is no doubt that the mother emerged from the class with what the judge I think either called flying colours or top marks.

20. Unfortunately, the lessons of the parenting class were not put into practice. The judge found that as far as the father was concerned there was an improvement; the children were given more reliable boundaries and were not allowed to rule the roost as they had been before. However, in paragraph 49 of her judgment the judge says this:

> "So far as Miss W is concerned the only test, of course, of what can happen with her has been the question of the contact and effectively what has happened is this, that she behaved exactly in the same way as before in contact. She allowed the children to run riot, she treated them in an infantile way, she encouraged them to make complaints against

their father both in contact and outside the context of contact and she shared with them in a wholly inappropriate way her personal distress as to what has happened and as a result these children have become more and more burdened with the troubles of their mother and less and less able in her company to be real children."

And the judge continued:

> "During her evidence, as far as Dr Denehey was concerned, she told me that she was concerned that even after her first report when she saw Miss W with the children and before her second report she was dismayed to see Miss W's repeated attempts to relate to FN not as if he were a ten year old boy but a five or six year old and to relate to ON, who is three and a bit, as if he were still a babe in arms."

She found that disquieting, as indeed did the judge.

21. So the result of that, which the judge described as regrettable, was that the court ordered a reduction in the contact effectively reducing it to the gaps in the school year; that is half term and holidays. But unfortunately, that did not have the appropriate effect. Indeed, as I indicated before, the concentration of the mother's contact into these periods simply made them more stressful for the children. On the other hand, the benefit to them was clear, because the judge quotes substantially from the school reports which shows how FN improved, how his attitude had developed, how he had become much more mature, how he had begun to integrate into the school and to be a much more normal child.

22. So the judge was then faced with the dilemma that the contact she had put in place was not having the effect she wanted it to have; it was continuing to cause the children harm and a decision had to be faced. The decision which had to be faced is summarised in the judgment, and I propose to read paragraph 55 because this is where the judge begins her analysis:

> "What Dr Denehey said and she confirmed this in her oral evidence and I found this deeply distressing to hear was that the boys had been placed in an intolerable situation of conflict of loyalties resulting in their suffering serious emotional harm. And she said the stress caused to the boys and confused messages given to them about what is acceptable is very damaging."

And a direct quote:

> "'One particular incident that comes to mind was only in 2005 was during an episode of contact. FN was playing was making really quite angry statements about his father when playing with play dough. Was very upset said he wanted to harm him and Miss W joined in stabbing with a fork the play dough as if she was stabbing, demonstrating make-believe stabbing Mr N. It is that confusion which of course to the children is very damaging. Regrettably, says Dr Denehey, the reduced contact sessions have, as forecast in her previous report, caused Miss W to seek other opportunities to seek contact with them and she

has used the contact session as arranged to further undermine the boys' emotional security'."

This is again a quotation from Dr Denehey:

> "'There is now no option but for there to be a termination of contact meetings at least until the two older boys are well established in secondary school. Any uncertainty and lack of consistency could cause further serious damage to the boys and could undermine their school placement'."

The judge then comments:

> "That is effectively Dr Denehey's opinion. It was formed in late May and was available on 2 June."

23. There was then a most, most regrettable incident on 26 May. FN had been playing football at a local village. The mother travelled to the village and took FN off in the car for a short period. As the judge comments he was not away long; however, during that period he was cross-questioned by his mother and she videoed the cross-questioning. She then returned him after a shortish period to the youth club. She was cross-examined about that and Dr Denehey commented in relation to it that she had never experienced a parent so bent on self-destruction in terms of the merits of her own case as to give Dr Denehey the document in question, that is, the transcript.

24. She had tried to persuade Dr Denehey that she had seen the light and was going to move forward but within a few days, a week or so at least, of saying that; she had relapsed. And that incident it seems to me was typical of a finding of fact which the judge was entitled to make. The evidence was plainly before her. There was, I think, no real dispute as to the facts. The mother had taken the boy away, she had got him into the car, and the judge found that the mother had persuaded him to say something which would be usable as evidence in the case but which was, as the judge found, untrue. And that, of course, the judge was entitled to find was extremely damaging to the children.

25. There was another equally regrettable incident on 30 May, when the mother dialled 999 at a contact hearing when the local authority social worker was due to take the children back to their father. She told the police that a woman was trying to bundle her children into a car. The police turned up, as the judge dramatically describes it, vehicles with blue lights flashing, sirens blazing and there was an appalling scene of confusion, as the judge puts it, in the street: the mother, insisting that the social support worker had no right to take the children away, the police being put in a very difficult position and having eventually to contact the father for him to produce the order of the court before the children were allowed to go. The judge comments:

> "I cannot imagine how distressing and confusing and upsetting such an incident could be for two near eleven year olds and a four year old, but it was deliberately engineered by the mother. Why did she engineer it?

> Because she had, what she said, 'she wanted the children's voice heard'."

And the judge comments in paragraph 61 of her judgment in these terms: ^^

> "It is clear on all the papers and it is absolutely correct that these children have been carefully listened by amongst others Dr Denehey. Their constant wish to see their mother has been recorded and emphasised to me."

I pause to interject: clearly the judge was very, very well aware that these children wanted to see their mother. But she then goes on:

> "What these two experts have said to me is that the actual experience of seeing their mother because of the way she behaves is so emotionally distressing for them that they have to be protected from it and I think it is a most sad decision to have to make that children cannot see a parent whom they love and a parent who they want to see because that parent insists on behaving in a way which is damaging distressing and undermining to them."

26. So I look back, I pause, I stand back and I say: well, on the evidence available to the judge, was she entitled to reach that conclusion? Did the evidence warrant it? And in my judgment the answer is plainly yes. She was entitled to make the findings of fact; she had the advice of Dr Denehey which backed them up, and she was entitled to reach the conclusion that she did. Therefore, she decided not that there should never be any further contact between the children and their mother but, as Dr Denehey put it, the children needed a break. They needed a break from the mother's behaviour during contact, they needed to be able to settle without the disruptive effect of constant denigration of their father from their mother; and that is the crucial conclusion the judge reached, and in my view she was entitled to reach it.

27. Various things had to follow. The first question of course was: how long should the break be? It was argued, on the mother's behalf at the hearing, that it should be limited to six months; the judge did not agree. The judge took the view that both older boys needed to be well settled at secondary school and, indeed, the younger child needed to be settled in primary school before contact could be reattempted. And so she fixed on a period of two years. That period was one which was given to her on advice from an expert (Dr Denehey). There was no reason for the judge to dissent from the expert's opinion, which was well founded and cogently argued and therefore, in her discretion accepting that period, it seems to me the judge was acting perfectly appropriately. And she imposed the same conditions in relation to the maternal grandmother, whom she sadly found simply did not have the objectivity to stand back and had so associated herself with the mother's position that there was no alternative but to take the same course. But the judge did not ban all contact. She made an order for indirect contact and took steps to ensure that the contact would be appropriate by making it go through the local authority. And finally the judge decided that there should be not only a moratorium of two years but that Miss W should not be able to come back to the court without first seeking its permission. So she made an order under

section 91(14) of the Children Act that neither the mother nor the maternal grandmother could apply for contact or any other form of Section 8 order for a period of two years without first showing the court that they had reasonable grounds for making such an application.

28. The judge regretted that by the time she expressed these last conclusions both the mother and the grandmother had left court. And that left the argument, which again I will come back to in a moment because it forms part of the notice of appeal, that the children should be separately represented. And as far as that was concerned, the judge took the view that since the decision had been made that there should be a two-year moratorium, there was simply no point at that stage in having the children separately represented. It had not been necessary for the purposes of the decision but the judge kept an open mind as to whether or not the children might well need separate representation as and when the two-year period expired and further attempts at contact were going to be made.

29. So it was not really until paragraph 76 of the judgment that the judge had reached these various conclusions and then, before she turned to Section 91(14), she said it would need time and understanding to understand the decision of the court. She directed that the judgment should be transcribed both so that the children could read it when they were older and so they could understand why the judge had made such a drastic decision at such a point in their lives. She hoped that they would indeed understand the decision and she remained of the hope that Miss W, despite everything that had happened, would be able to engage in a form of therapy which would enable her to have a more balanced view of the children's welfare and to desist from inculcating in them the detestation she plainly feels for her former husband.

30. As far as that is concerned, I have to say that the skeleton argument she put before me today does not give great hope, because she continues to express very strong feelings about her former husband and his conduct towards her. But when I come to look at the grounds of appeal which the judge has put in, I find that they all effectively relate to the exercise of discretion. The first ground is that the order was draconian; it eliminated from her from the children's lives and was out of proportion either for the facts of the case and/or alternative remedies which would respect Article 8 (rights of the mother).

31. The judge, as I indicated earlier, recognised that this was a draconian order. She made it with great reluctance. She did not make it at the first time of asking because she attempted to maintain contact between the children and their mother before making or being driven to make the final order to stop contact and moreover, she made it in the full knowledge that the mother loved her children and the children wanted to see her.

32. Therefore, one has to ask oneself: were the facts sufficiently extreme to warrant the order? And a moment's thought tells one I think, certainly tells me, reviewing the decision of an experienced family judge, that if one parent is deliberately inculcating into the children an untrue reaction to their father simply because the mother in this case believes those matters to be true, but if they are not true and they are being inculcated by the mother into the children, the children are undoubtedly going to suffer harm, and unless the mother can desist from that

course of conduct, the inevitable consequence is that contact will have to cease. There is no alternative in those circumstances. And this case, like so many, has got nothing to do with alienation of the children by the father. The only reason Miss W is not seeing her children is because she appears, on the evidence before the judge, to be incapable of giving them a balanced view of life, allowing them to be children and not infusing them with her own, I have to say on the evidence, distorted views of her former husband.

33. The second ground that she was denied a fair hearing because she was not represented in the latter part of the case is not pursued because it is quite clear as Miss W frankly told me she dispensed with the services of her lawyers on the advice of a third party and was represented at the hearing by a McKenzie friend. She accuses the local authority of being partial and not addressing the core issues. I simply do not find that from the evidence that I have read in the bundles of documents she has presented. The local authority was required on a number of occasions to investigate allegations made by the mother; they found them to be unfounded. There was no suggestion that in so doing they were biased against her or biased in favour of the father.

34. The local authority, surprisingly in a private law case, took an active part; but as I say there is no suggestion that they were biased in one favour or the other and indeed the instructions of Dr Denehey make it absolutely clear that they were seeking an objective professional opinion designed to help them with the case.

35. The mother then puts great weight on Article 8 of the Convention, perhaps forgetting that the children have Article 8 rights as well. And although she makes a number of points, with great respect to her none of them seems to me to have any force. They are very largely a repetition of what I have already said: namely, the children's expressed anxieties about their father, the absence of any proper investigation of their allegations, the fact that she was not able to call an expert on her own behalf, the absence of separate representation and which she elaborates into various different respects, including the need for children to be represented in such a acrimonious situation.

36. She then complains that the judge did not give sufficient weight to the children's wish to see their mother. I think I have already cited the passage from the judgement in which the judge makes it clear that she was fully aware of the children's wish to see their mother and plainly gave it very substantial weight, not least because on the first occasion she did not terminate contact and only did so on the second. She says the judge was not critical of the father as she should have been because of the father's employment of nannies and the judge herself recognised again, as I have already quoted from the judgment, that in this respect it was unfortunate, although the father had managed to secure the services of one particular nanny who had already stayed some twelve months, and I think was willing to stay for a further twelve. She complains that the authors of the various contact notes were not present to be cross-examined as they should have been and this was therefore unfair.

37. I simply do not know whether an application was made for the witnesses to attend for cross-examination, but I remind myself that I am dealing here with an experienced circuit judge and the findings made by the judge were very largely in

relation to incidents between the parents where there was, it seems to me, very little dispute as to the facts. It was the interpretation of the facts which mattered and therefore in my view the judge firstly does not appear to have given huge weight to the contact reports themselves but in any event has ample material on the incidents between the parents to make the findings that she did.

38. She then complains about the absence of proper investigation by the police. Once again, it seems to me that the police acted perfectly appropriately and, indeed, were summoned on a number of occasions quite inappropriately, notably the incident when the mother alleged that the care worker was abducting the children and phoned 999 to summon them. The mother is critical of the judge's alleged failure to take into account a number of factors affecting her personally, including the unhappy marriage; the eviction as she saw it from the former matrimonial home; the prosecution for the assault; the adoption of the third child and so on. These are all factors which feature in the judgment and which the judge plainly weighed, and I simply do not think it can be argued that the judge failed to take them into account. She plainly did.

39. The tenth allegation is failure; an allegation that the judge failed to address the welfare checklist and it is, of course, the case that we do not find in this long extempore judgment a line-by-line analysis of the welfare checklist or indeed any specific reference to it. But it is self-evident and very trite law that an experienced circuit judge does not have to go through the checklist religiously, line by line or word by word. It is sufficient if the judge's judgment taken as a whole demonstrates that she has the welfare checklist factors fully in mind and here, so far as the medium and long term are concerned, it has to be said that what the judge has given is a two-year moratorium, not a complete cessation, and if the contact between the mother and the children is to resume, as I would hope it would, it must be on the basis that the mother recognises the force of what the judge was saying and what Dr Denehey was saying and why the judge was driven to take the course that she did.

40. The final point relates to an allegation of fresh evidence or the need for the wish to introduce fresh evidence. This takes the form of a telephone bill, and what appears to have happened is that the father made an allegation that the mother was in breach of one of the non-molestation orders by telephoning him on a particular day. The mother produces the telephone bill which shows that on that day no call was made from her number to the father's address and therefore says this is an example of the father's behaviour towards her and an attempt to get her into trouble. The judge did not deal with this because she took the view although technically what was before her was an application to commit the mother for breach of the order based on the telephone call, it was not in the public interest for that to be further pursued and, indeed, the father agreed not to pursue it, as is apparent from the post-judgment discussion. And therefore, speaking for myself, I can see no basis upon which it can be said that if this evidence had been introduced and it had been proved that the mother had not telephoned the father on that day it would not, with the greatest of respect to the mother, have made any difference to the outcome. In any event the judge did not deal with it, did not think it sufficiently important to deal with in the circumstances or did not think it

appropriate to deal with it given the circumstances and the fact that she was already making serious orders against the mother.

41. The skeleton argument which the mother put in today, as I say, was carefully presented and she read through it and I followed her all the way through it. I have re-read it since she sat down and I have taken a couple of hours to refresh my memory in relation to the other documentation, as well as rereading this particular document. I do not think there is anything in it which adds to that which I have already said. It gives a certain amount of detail and it also makes a number of citations from different cases. And of course it is true that this court and any court leans over backwards to ensure the continuation of contact whoever happens to be the residential parent, whether it is the mother, as in the cases cited to me, or whether, as here, it is the father.

42. This court does not have any gender bias. We want to try and preserve contact if we possibly can. But parents do have to realise I think that the reason they sometimes do not see their children has nothing to do with the children themselves and everything to do with the parents themselves, and in this case the judge has plainly found that much as the mother loves her children and much as they love her, seeing her is harmful to them because she cannot conceal from them and does not wish to conceal from them the feelings which she has about their father, all of which appear, or most of which appear at least, to have no foundation. In reality, the judge's conclusion therefore was that contact was harmful to the children. But at the end of the day, the question the court always asks itself in relation to contact is if contact is in the interests of the children, not the parent, and if contact, as here as the judge has found, is positively harming the children then the judge is absolutely right to place a moratorium on it. She has done so for a period of two years. That was a discretionary exercise which on the material available seems to me to have been entirely proper, and in these circumstances it does not seem to me that an appeal against the judge's decision would have any reasonable prospects of success.

43. The applications for permission, which seem to take the form of three separate notices, all of which are in identical form, will therefore all be refused and the applications will be dismissed.

Order: Applications refused.