

IN THE FAMILY COURT

Date: 19th July 2024

Before :

HHJ CRONIN

Between :

M
- and -
F
-and-
C

Applicant

Respondent

Second
Respondent

Hugh Merry (instructed by **HM**) for the **Applicant Mother**
Glen Pritchard (instructed by **Watkins**) for the **Respondent Father**
Elizabeth Porteous (instructed by **NYAS**) for the **Child**

Hearing date: 19.7.24

JUDGMENT

HHJ CRONIN:

1. C was 17 years old on the 10th of March this year. These are private law Children Act proceedings which would normally have ended when he was 16. They began three years ago and initially concerned both C and his sister D. It has been agreed that both children will live with their mother, M. After some time in proceedings, in January 2024, the children's father, F, accepted that it was not right to pursue any orders for D, who was making it plain that she did not want to be the subject of orders and did not currently want to see her father. I made an order which was no order and which was intended to be permissive. D has not seen her father since then. The proceedings have continued, and I have extended them, in order to see if it was possible to bring about ordinary contact between C and his father. The court works on the basis that it will be in a child's interests to have each of his parents involved in his life. C has physical and communication limitations arising from cerebral palsy which have made supporting his relationship with his father difficult. In particular, he needs intimate personal care and he needs to be fed appropriately. His use of language is via a device known as a VOCA.

2. C was assessed by R, advanced social worker in the 16-25 disabilities team, on 18th June 2024, as having the capacity to make a decision as to whether or not he should to be accommodated in the relevant placement for the purpose of being given the relevant care. The questions which the court needed to answer are whether he has capacity to make decisions about spending time with his father and what are his wishes and feelings in relation to his spending time with his father. This is not the same as the decision about where he is to be accommodated and it is possibly more subtle. After his meeting with R, C passed on a message in these terms: "I've made a mistake mum dad (*he pressed the wrong button*) I want to see him but don't know

how.” He wanted this message to be passed on to his social worker, L, who came to court today and confirmed that this hearing is the last action under the Child in Need plan, so there will be no further involvement with any social services at this stage.

3. C has also spent time with Dr J, who was commissioned to provide psychological therapy. C has been resistant to meeting Dr J. He told Dr J on 9.4.24 that he wanted the same as D, which Dr J interpreted, and C agreed, meant that she is listened to and “does not have to go to his Dad’s.” Contact is more than going to a person’s home.
4. So I have a young man who from time to time expresses a clear wish to see his Father in person but whose physical limitations prevent him from making his own arrangements who depends on his main carer, his Mother, to listen to his requests and make his arrangements.
5. At court today, the parties reached a consensus that:
 - C does not want to be ordered to spend time with his father: this is not what a child arrangements order does and he should not have been given that idea: the order requires his mother to make him available for contact;
 - I should make an order requiring his mother to make him available for contact in accordance with his wishes and feelings: given his age and the information I have about his understanding this is entirely appropriate.
6. The parties all asked me to make a final order and I had indicated at the last hearing that it was time, if possible, to bring the proceedings to an end. C’s r 16.4 guardian, S, who is a NYAS caseworker, hopes that removing the pressure of the court and ending the occasional questioning of C as to his wishes will allow him to relax and request to be able to telephone his father or spend time with him.

7. C's father has filed a position statement telling me that the fortnightly video contact sessions have generally gone well, but that none of the direct contacts which had been ordered have taken place. F fears that M may not have communicated what the court intended: she took it on herself to tell C what the arrangements were before S could explain to him. The video calls were directed to take place in a relatively private space, the physiotherapy room in C's home, but this has not happened. The point was to give him privacy and to allow him to express himself without feeling that he needed to conform to anybody else's expectations.

8. C's mother says that she wants what is best for him and that she wants his wishes to be heard. She says he does not want to have pre-arranged time with his father and he does not want to be ordered to have contact with him. If this is the way she has described the court's order to C, she has made a mistake. She says now that C is at an age where he could make his own decisions, although this was not her position at a previous stage in proceedings when she said she did not think he had that capacity: she says that she does not think that his father is able to meet his needs, although what is proposed for contact is a short enough duration not to require intimate care and to involve very little in the way of food and drink.

9. There is no objective reason to prevent C having time with his father nor has there been during proceedings. M has made her attitude to the father clear across the court at every hearing: she is wholly negative about him. Reasons for contact not taking place have covered a range, such as poor health, and unwillingness, reportedly on C's side, but no sensible alternatives have been offered. It must be in the interests of a young person with the difficulties that C has to have a relationship with his family on

both sides and to be able to call on both his parents for help and support, but C has not had that opportunity.

10. I have not heard evidence in the end because the parties reached an agreement. I cannot judge either parent's motivation or commitment beyond accepting what Counsel say. Mother says that if C indicates that he wants to see his Father she will arrange it and she will ask him from time to time if he wants to see him. I have real doubts about whether this will happen but the order proposed is all that the Court can do.
11. The court has very limited powers in this situation. The object of the now extensive proceedings has been how to implement arrangements set by the Court and the concern has been about whether C's wishes and feelings have been heard, fairly communicated, and acted on.
12. It is not clear to me how any order can realistically be enforced, given that mother's caring responsibilities almost make her immune from orders for unpaid work, and C's particular circumstances make it unrealistic for the court to consider transferring his care to his father. She has not been seen to be supportive of contact in practice, whatever she says in court.
13. As things stand, C is unlikely to be a person who needs the assistance of the Court of Protection because it appears that he has capacity to express his wishes, although it is not so clear to me that he is expressing what he really wishes. He will not continue to be involved with children's services or enter into adult services unless, in the future, he has a need that is not being met.

14. The Court has to rely on both parents to exercise their parental responsibility sensibly to give C the best opportunity to develop his relationships with the extended families on both side and in particular his father so that he can develop his interests and activities to his best potential until he is 18 and then to support his relationships with his family and friends so that he can engage fully with the world outside his home. The order does no more than recognise his right to that relationship with his Father and his Mother's duty to support him in it. I make the order and conclude the proceedings and hope that there will now be progress in the form of visits with his Father for meals out or to watch football or just to chill out together.

15. At the parties' request I have written to C to set out the decision, as I wrote to D.

Tacey Cronin

19th July 2024