

## Private Law Children

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**A suspended lives with order will only be appropriate, where the court can confidently see how it would come into effect. A small, but nuanced recalibration of the test set out by Jackson J, as he was; in *Re M (Contact)* [2012] EWHC 1948 Fam.**

**[AB v TC & Anor \[2024\] EWFC 296](#) – involving St Mary's own, Kathryn Moran**

### Facts

A final order was made by lay magistrates in January 2022 in which they made a CAO lives-with order in favour of the mother with the father to have direct and indirect contact with the children. Arrangements quickly broke down following a referral to social services arising from allegation of physical abuse made by L. In May 2022, the mother filed an application to vary the final order to make provision for supervised contact between the father and L.

The matter was reallocated to a district judge on 9 August 2022, the final order suspended pending outcome of the police investigation and indirect contact ordered to continue. The police confirmed on 1 November 2022 that no further action would be taken and on 8 November 2022, the father filed an application requesting the Court reinstate his contact with L and for enforcement of any further orders. A clinical psychologist was appointed by the Court, M completed CBT and L completed play therapy.

On 18 January 2024, the children's Guardian urgently applied to Court after concerns were raised by an ICFA representative and a LA social worker undertaking a S.37 investigation, the application was consolidated into existing proceedings. On completion of the S.37 investigation, the LA concluded that threshold was not met for care or supervision orders and instead proposed a S.17 Child In Need Plan for L, the report for which was issued on 15 March 2024.

F and L had contact, initially supervised by ICFA, progressing to unsupervised but organised and supported by the LA. L underwent outside of court an autism spectrum disorder assessment and an initial assessment of mild autism was made. In advance of the final hearing, the LA were to file and serve the minutes of any Child in Need meetings and all documents and other case records relating to L.

On 21 April 2024, L alleged that the father had kicked and pushed her during contact. The Guardian referred matters to social care and L was interviewed on 23 April 2024 by members of the LA Social Care team who reported that L said she was scared of the father and did not wish to see him. Photographs of bruising were taken, and it was proposed by Social Care that contact should revert to supervised. That supervision ceased and contact reverted again to supported contact.

From 17 May 2024, parties filed narrative statements, further questions were asked and answered by the SJE, and an agreed safety plan was put in place. F continued to have contact with L, including staying contact.

## Judgment

At [p13], Hayden J emphasised the obligation on parents on separation to ensure that, in a different context from that which was planned, their child has a family life in the fullest and most meaningful sense. There is a responsibility on both parents to ensure their child has the best possible relationship with each of them, as is that child's right. Hayden J highlighted that intrinsic to that right, is that a child will achieve stability and security if they are able to move happily between two parents who remain committed to their welfare. The contrary scenario is a child who is at the centre of conflict which is harmful to them.

Hayden J noted at [p15] that there had been a 'sea change' in the father's relationship with L which was much improved at the time of final hearing. L had been having overnight contact with F and a holiday plan had been formulated and was 'dominated by L's own interests and enthusiasms' [ibid]. Whilst contact had improved, the father was worried that L's changing attitude was only evidence of M's 'capricious and alienating behaviours', the SJE psychologist reported that L may feel an obligation to report negative things about the father, the Guardian also posited that L may feel guilty for enjoying time with F. The LA social worker reported that whilst the change was unexplained, M had changed her attitude and approach to contact and has used her influence to enable L to enjoy contact with F.

F's counsel sought to persuade the court to make a suspended residence order indicating that if M returned to her general hostilities, a transfer of residence to F would occur. Hayden J distinguished from *Re M (Contact)* [2012] EWHC 1948 Fam in which Jackson J, as he was, considered circumstances in which there was no change in the mother's approach. On the matter of a conditional residence order, Hayden J noted that the test identified by Jackson J in *Re M* was that it would be appropriate where the court can confidently see how it would come into effect. Hayden J added that 'the court should **only** make such an order where it can confidently see how it would come into effect' [p27].

In the instant case, a suspended residence order would only have been required if M had continued on a course of non-compliance. That was not the case, on the contrary, M in this case had recognised she had come to the brink of a transfer of care [p28], the correct approach was to warn her as M

plainly had 'powerful incentives to promote contact' [p28]. It was therefore impossible to say, with any degree of certainty, how a suspended lives with order might come into effect, that uncertainty rendered the option inappropriate.

Counsel for F also sought to persuade the court to attach a Penal Notice to the orders for contact. Hayden J held that the compliance of M with the orders from March and May 2024 did not justify such a draconian measure.

## Practical Considerations

There is now a more nuanced test to approach an application for a suspended lives with order. It will **only** be considered appropriate, where the court can confidently see how it would come into effect.



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