

Neutral Citation Number: [2016] EWHC 2607 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Case No: FD07P00104

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 26 July 2016

BEFORE:

MRS JUSTICE THEIS

BETWEEN:

K

Applicant

- and -

LBX First Respondent

and

L (by his Litigation Friend the Official Solicitor) Second Respondent

Digital Transcript of WordWave International Ltd trading as DTI
8th Floor, 165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 704 1424
Web: www.DTIGlobal.com Email: TTP@dtiglobal.eu
(Official Shorthand Writers to the Court)

K appeared in person
Mr Harrop-Griffiths appeared on behalf of LBX
Ms Davies appeared on behalf of the Official Solicitor

Judgment

MRS JUSTICE THEIS:

1. I have two applications before me. The first application is dated 26 February 2016 made by K, seeking, in effect, an order for direct contact with his son, L who was born in 1983, so he is now 32.

2. In essence, K says that this court should intervene because his son lacks capacity to be able to decide contact. More recently he has made an application to remove Miss O'Connell as a litigation friend for L. That application is dated 20 July and is set out in box 2.2 of that form, it is put on the following grounds. Firstly, that she has promised L that once he went to the placement he will be allowed to return back home. Secondly, that she has colluded with his aunt, and the local authority, to remove L and help prevent contact. Thirdly, that she has forced L to have contact with his aunt and fourthly, she has taken a number of steps, including instructing a non-independent social worker to fabricate an assessment that L has the capacity to decide not to see his father and brother again and not return back home.

3. I can deal with that application very shortly. I can see no basis for it, the grounds I have just outlined above have no foundation at all. This court investigated the circumstances in relation to L over an extended period between 2007 and 2013 with a number of contested hearings, where evidence was given and tested throughout those proceedings. K was represented by experienced counsel, who was able to explore all the matters set out and I am satisfied, certainly from the previous involvement of Miss O'Connell in these proceedings and the current involvement, there is no evidence to suggest that she has pressurised L, colluded with his aunt, forced L to have contact with his aunt and/or instructed any non-independent social worker to fabricate

evidence. That application is wholly without merit and should be dismissed at this early stage in the judgment.

4. I shall now deal with the application for contact. In essence, what is said is the basis for the application is that the inherent jurisdiction should be invoked. It was suggested to manage the aunt's contact with L, and L should partake directly in the proceedings. K submits there is an obligation on the court for P to participate in the proceedings. He submits there is no evidence that he has been encouraged to see his father and that the social worker and the Official Solicitor, through Miss O'Connell, are effectively making decisions for L. As a consequence, he says, his human rights and those of the family are being breached because there is no contact.
5. The application for contact is opposed by the local authority and the Official Solicitor. Mr Harrop-Griffiths, on behalf of LBX who have had long involvement with this family, sets out quite clearly that in my judgment dated 15 November 2013 (*LBX v K & others* [2013] EWHC 3230 (Fam)) I determined L had capacity to be able to make decisions about where he lives and who he has contact with. There has been no evidence of any change in that position, therefore there is no evidential basis why the court should investigate capacity again. As a result the Mental Capacity Act provisions are not invoked, because capacity is not in issue.
6. The inherent jurisdiction is only invoked if it is to protect vulnerable people, in particular where there has been pressures within the family. I determined in 2013 the inherent jurisdiction should remain in place to be able to protect L, but as Mr Harrop-Griffiths submits, there is no evidence before the court that L is under any pressure to

not have contact with his father and he relies in particular on the most recent evidential information from the visit by Miss O'Connell on 19th July. That position is supported by Miss Davies.

7. Turning briefly to the background, it is not an understatement to say that the situation this family find themselves in and the history of this litigation is extraordinarily sad. It is a case with a considerable history that is set out in a number of judgments by this court. There are seven in all, six of which have been given by me. Baker's J decision and detailed judgment on 31 March 2010 was followed by my six judgments since. They are all reported. The most recent on 15 November 2013, when I determined that L had capacity to be able to make decisions about where he lives and who he has contact with.
8. The case went to the Court of Appeal on K's appeal against a preliminary issue in 2012, when the appeal was dismissed. K sought permission to appeal the last determination I made in November 2013. That application was dismissed.
9. The circumstances are that from 2007, when these proceedings started, until 2011, L was living in his father's home and there were continuing issues about contact with his aunt. In 2011 as a result of orders made by this court, he was placed in supported accommodation called JH, and was there until 2013. From 2013 to 2014 he moved to different supported accommodation in VR and since 2014 he has had his own flat.
10. It is not necessary for the purposes of this extempore judgment to track through in detail the history in relation to the background to those decisions. They are set out in

the previous judgments and in the very brief outline I have given in relation to L's living arrangements. He has not had direct contact with his father since the early part of 2013, despite the encouragement by this court for him to be able to do so, and for father to be able to manage his expectations and his strongly held views to enable contact to take place.

11. By the order I made on 15 November 2013, I found that L had capacity to decide about residence and care and I made orders under the inherent jurisdiction regulating what contact there should be between L and his father, as I considered him to be a vulnerable adult, he needed orders being made to ensure he retained his capacity as set out at paragraphs 54 and 55 of my judgment given on 15 November 2013. In effect, there was a structure set out in that order with the expectation that there would be support to be able to continue considering whether L wished to have contact with his father, because at that time he did not wish to have direct contact. There were recitals in that order setting out the position in relation to L's care.

12. The application made by K in February of this year was supported by a detailed document dated 28 February. The vast majority of the contents of that document seek to go over ground that has been determined by the court during the various hearings that have taken place between 2007 and 2013. The thrust of what K says is that he cannot understand why L does not want to be able to have contact with him. He repeatedly said that he considers it unfair that L is having contact with his aunt and yet he is not having contact with his father. He considers that there has been no encouragement in relation to maintaining contact with him, adults are making decisions

for L and he does not accept the determination that I made in November 2013 that L has capacity.

13. Upon receipt of that application I made directions that there should be evidence filed by the local authority and on behalf of L to set out what his current wishes and feelings are. They have been helpfully summarised in paragraph 8 of the Official Solicitor's position statement and they can be summarised as follows. The statement dated 29 April 2016 by Miss Gilbert (a social worker who has had long-standing involvement with L) confirms that when she visited L on 4 January 2016, in fact in connection with a similar application being made by L's aunt, L stated categorically that he did not wish to see his father.
14. Again in connection with the proceedings concerning the aunt, Miss O'Connell's witness statement dated 3 February detailed her visit to L on 11 January and he stated in that context that he "Didn't want to go back to seeing my dad." Miss Gilbert conducted another home visit on 25 February of this year and again L repeated that he did not want contact.
15. In her report and statement Miss Gilbert sets out reports from Linda Barry and Sylvia Gordon on 7 April 2016 when L stated when discussing whether he wanted to share his support plan with his father that he did not.
16. In the most recent evidence the court has there is a detailed attendance note by Miss O'Connell attached to her witness statement dated 20 July, which sets out a verbatim account of her attendance at L's flat on 19 July. It is a conversation where she has

sought from various different viewpoints, to see whether L wishes to be able to see his father. For example, at the very beginning of that visit when she is shown round the flat, she notes that he has decorated the flat with posters and flags and pictures of his family, including his father and aunt, and she leads into a conversation about those photographs, asking about them and about his father and whether he would like to see them. He was clear in relation to any attempt to ask him whether he wanted to see his father that he did not want to see him. This was despite Miss O'Connell's entirely appropriate discussion with him, trying to see whether there are other ways that would encourage him to see his father, but L remained adamant that he did not wish to do so.

17. When asked about indirect contact he said that he would like to have a card from his father, but he said he did not want him to write stupid things on it, saying that's what he did before, with silly messages telling him to do bad things. Miss O'Connell asked, "So you would like your dad to send a card" and L responded, "Yes, he can do that, but not silly stuff, sensible. I would be glad to see what he write." He is clear in the contact that has been made with him on five or six occasions since January of this year, in differing circumstances to differing people, that his current wishes are that he does not want to have direct contact with his father for the reasons he has outlined to Miss O'Connell in the most recent visit on 19 July.
18. There is no evidence that L's capacity has changed. There is no evidence other than an assertion by K, who has never accepted this court's determination in relation to his capacity. Consequently this court proceeds on the basis that L retains capacity to be able to make decisions about where he lives and who he has contact with, which he has expressed very clearly to Miss O'Connell. He wishes to remain where he is. Regarding

who he wishes to have contact with, he was able, coherently and with a rational basis, to express his views as to who he wants to have contact with. The fact is that he is a 32 year old man with capacity and has expressed the views he has that he does not wish to have contact with his father.

19. In those circumstances it is difficult to see how this application can proceed any further. The reality is that this is a man with capacity who I am satisfied has been able to express his views. I can see no justification and no basis upon the court requiring L to attend court and be subject to questioning by his father as to why he does not want contact with his father. I can see no basis for that, not only in relation to the court's jurisdiction to be able to do that, but also because I consider such a course would be wholly unjustified in this case.
20. So, for those very brief reasons I am satisfied, in the light of the information that the court has, that this application for contact is totally without merit and has no prospect of success. I can see no basis upon which it can proceed. I will therefore dismiss the application. I hope there can be some discussion outside court about seeing whether L's wishes in relation to having a card or indirect contact from his father could be met. But it is not something that this court can make any orders about or impose.
21. I will therefore dismiss K's application. I accede to the sensible suggestion made on behalf of the local authority and the Official Solicitor, that the court order I am going to ask Mr Harrop-Griffiths, in consultation with Miss Davies, to submit, should record the basis upon which this application has been dismissed and to direct that if there are any

further applications made in relation to L by his father that they should be referred to me in the first instance to be able to make any directions.

22. The Official Solicitor has flagged up in their position statement that they were considering whether the court should make a civil restraint order, which would act as a filter so that K would not be able to make an application without first seeking the prior permission of the court. They haven't made such an application. They flagged up that they are considering it, they do not, in my judgment wisely, pursue that today. But if there are further applications that it appears to the court are without foundation and are totally without merit, then K needs to be aware that such an application is very likely to be made on behalf of the Official Solicitor.