

M (Children) [2012] EWHC 1948 (Fam)

Judgment of Peter Jackson J regarding the imposition of a conditional residence order.

The father had applied for a transfer of residence in respect of his two sons, J aged 10 and B aged 8. The parents had separated in 2007 and at the time of the hearing the mother and children lived with the mother's new partner. The mother had two further children by different fathers, who also lived with her.

Following separation there were difficulties between the parties and in May 2010 the father applied for contact. At that stage, he was having contact each Sunday for the day. In July 2010 the father expanded his application to include residence, but contact ceased in August 2010 following an incident of apparent boisterous play involving the father and the boys at a swimming pool.

Although proceedings were ongoing thereafter, no further contact took place until April 2011. It became apparent that the mother was influencing the children to speak negatively of their father and that they were acting out of loyalty to the mother. At one point the mother renewed the boys' passports, substituting her own surname for the boys' paternal surname.

In due course a Guardian was appointed and in April 2011 some contact was successfully observed, with the children cuddling the father at the end. Unfortunately further contact could not be facilitated and a psychologist was consequently appointed. In August 2011, the mother removed the children from their home and school in Blackpool and moved to Devon without notice to anyone.

Thereafter, the mother disengaged with the court and committal proceedings ensued. At the committal hearing, which the mother attended, three periods of contact were ordered and took place successfully. However, thereafter the children were once again negative about the father. The existing Guardian recommended limited contact thereafter, but Peter Jackson J found her approach to be flawed, later replacing her with a different Guardian.

Difficulties continued and the father made a further formal application for residence. When the hearing came on the Guardian had no firm recommendation as to the way forward. His Lordship met with the children and arranged a meeting between the father and children at court, before hearing submissions for the parties.

In giving judgment Peter Jackson J found that the mother did not believe that the children needed a relationship with their father or the wider family and was not supporting contact. Furthermore, His Lordship was "convinced" that the children loved their father and wanted to be able to see him, but were being prevented from showing their feelings or acting on them. His Lordship weighed up the factors against changing residence, including the children's attachment to the mother and their siblings, their good progress at school and the risks that they might not settle with the father. However, on balance His Lordship concluded that the children's welfare would be better served by living with the father, unless contact could take place successfully. His Lordship took into account that it would be contrary to the children's interests to learn that the sort of manipulation they had been caught up in might succeed.

On balance, however, His Lordship felt that the mother should be given one more opportunity to facilitate contact. His Lordship therefore made an order for two periods of staying contact, providing that if the contact did not take place the children would thereafter live with the father and that the

mother would facilitate their handover. In the event that the mother failed to do so, an application for the recovery of the children should be made.

Summary by [Stephen Jarman](#), barrister, [1 Garden Court Family Law Chambers](#)

Neutral Citation Number: [2012] EWHC 1948 (Fam)

Case Number: MA11P00521

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

MANCHESTER DISTRICT REGISTRY

Manchester Civil Justice Centre

Date Of Judgment: 12 July 2012

Date of hearing: 5 July 2012

B e f o r e :

Mr Justice Peter Jackson

Between:

Re: M (Children)

Mr David Maddison (instructed by W H Darbyshire & Son) appeared for the Father

Mr Paul Gillott (instructed by Coodes Solicitors) represented the Mother

Mr Karl Berry (instructed by Crosse & Crosse) represented the Children

HTML VERSION OF JUDGMENT

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1. This is an application for a transfer of residence by the father of two boys: J (10) and B (8). It is opposed by the mother who has always been the boys' main carer. The children themselves are represented by a Children's Guardian, who has investigated but makes no firm recommendation.

2. For the reasons given below, I will make a further contact order providing for two periods of staying contact with the father during the forthcoming summer holidays, and an order that provides that if either of these contact periods does not take place, the children will move to live with their father.

3. This order will be the last attempt to allow the children to remain living with their mother while enjoying relationships with their father and wider family. The mother will now have a final chance to behave with parental responsibility.

4. The summer holiday lasts for 6/7 weeks, beginning on 20 July and ending on 5 September. The mother will make the boys available for contact with the father for two ten-day periods: 23 July to 2

August, and 22 August to 1 September. The handover is to take place at the midway point referred to in previous orders.

5. I direct that if the children do not go to stay with their father on each occasion, they shall with effect from the first date of each period live with the father and the mother shall immediately give up the children to the father. If she fails to do so, an application for the recovery of the children should immediately be made under s.34 Family Law Act 1986, to me if I am available.

6. The full text of the order appears at the foot of this judgment.

Background

7. Until about a year ago, the family lived in the Blackpool area. J was born in 2002 and B in 2004. In December 2006, the mother gave birth to her third son (W, now aged five) by a different father. In January 2007, the parents separated.

8. The mother has since formed a relationship with Mr A, a Turkish national with whom she lives. They have a son, A, born in April 2011 and now aged one. The family depends on state benefits, living in a three bed-room rented flat, with J and B sharing a room.

9. The mother's mother lives in Blackpool. The mother is estranged from her, but the father is on good terms with her. The mother's father, with whom she had until recently had little contact, lives in Devon.

10. The father works as a carer. Since 2007 he has been part of a team of six that cares for an 11-year-old boy who has cerebral palsy. The father's partner, Mrs W, is part of the same team. They live in a two-bedroom flat and are looking to buy a larger property.

11. The father's parents live in Blackpool, and his married brother, who has four young children, lives nearby.

The proceedings

12. Following the separation there were difficulties between the parents and between the mother and her own mother. The father considered that the mother was unnecessarily restricting his contact and in May 2010 he applied for a contact order. At that stage he was having weekly contact on a Sunday for the day. An order for reasonable contact was made, together with a prohibition on the children being removed from the jurisdiction and a direction for a s.7 report from CAFCASS.

13. Also in May 2010, the father made a referral to social services, expressing concern about harsh treatment of the children by Mr A. Social services carried out an initial assessment which did not substantiate the concerns. The mother was observed to have a warm, positive relationship with all three boys. J and B spoke warmly of Mr A, and also described their father, who they had not seen for several weeks, as 'nice', 'kind', and 'generous'. They said that he took them where they wanted to go and made them laugh. The social worker wrote that "It was very evident that they love their father and are looking forward to seeing him".

14. The mother had stopped contact with the maternal grandmother, and in July 2010, the grandmother was given permission to apply for contact. This application was later withdrawn in favour of the father's application.

15. In July 2010, the father expanded his application to seek a residence order. Some contact took place up to August 2010, when it was again stopped. The mother said that the children did not want to go after an incident at a swimming pool in which the children said that the father had tried to drown J, and B complained of being squeezed on another occasion. After investigation, the conclusion was that there may have been some incident of rough play, but nothing to cause real concern. The allegation, however, has remained important in the minds of the mother and the children.

16. There was then no contact between August 2010 and April 2011.

17. The CAFCASS report was filed in November 2010. It recorded J and B as saying that they wished Mr A was their real daddy, and referring to their father and members of his family by their first names. They said that their maternal grandmother was not their grandmother anymore "because she forces us to eat sweets and be silly".

18. The CAFCASS officer recorded this:

"B also said: '[F – the children used the father's first name] dragged us away and punched Mummy a few weeks after they got married. [F] wouldn't let Mummy drive in the car and forced us to walk in the rain to school.' I asked the boys if they remember this and they said no. I asked how they knew this and J told me: 'Mummy told me.' I asked when and he replied: 'Last week, I think.' He also added mummy had said: 'Remember, the CAFCASS lady is coming.' I asked J if he thought mummy wanted him to tell me about that and he said: 'Yes.'"

19. The boys wrote a letter to the judge saying that they hated their father because he tried to drown J and strangle B.

20. The CAFCASS officer reported that there was no evidence that the children were at risk from the father but that the children's views were deeply entrenched and they felt that there were two "teams" involved in the court process: they had chosen "mummy's team". She said: "I feel there is a strong possibility of their father and paternal family being completely eradicated from their lives but it will take a great deal of work to alter their views without the support of the mother." She recommended supervised contact in order to assess and promote contact and, because the mother was not promoting contact, the appointment of a Children's Guardian.

21. In December 2010, the CAFCASS officer was appointed as Guardian. At the beginning of 2011, the mother renewed the children's passports, substituting her own surname for the boys' paternal surname.

22. In February 2011, the Guardian filed a report expressing significant concern that the children were being coached into disliking their father and refusing to have contact with him. There was then a change of Guardian. In March 2011 the new Guardian filed a report in similar terms saying that there was no evidence that the children's real wishes were not to have contact with their father, as opposed to the wishes arising from the parental conflict. She recommended restarting contact weekly in a supervised setting, and in April 2011 this was ordered.

23. In April 2011, A was born.

24. On 11 April 2011, the Guardian supervised a contact session. At the beginning, the children were very reticent. J would not make eye contact and told his father he did not like him. B became tearful and told his father that he missed him and would like to see him more, and then gave his father a cuddle. The meeting then became more relaxed and by the end the children said they would like to see their father again. They became excited at the thought of doing some cooking at his flat and the occasion ended with the children cuddling their father and saying goodbye.

25. On 16 April 2011, a Sunday, the Guardian went to collect the children for a three hour visit to the father's home. They were tearful and refused to go. Contact was cancelled. The Guardian again expressed concern that the children were being coached and influenced. She recommended further attempts, and these were ordered. Once again, they did not take place, and on 27 May 2011, the District Judge directed a psychological report.

26. That report was completed on 26 August 2011. The psychologist made a school visit, two home visits and four contact observations. In a detailed report, she reported that the children have a strong, secure emotional bond with their mother and a positive bond with their siblings and with Mr A. Their relationship with their father was anxious-avoidant in J's case and anxious-ambivalent in B's. The children were doing well at school and thriving at home, which was a calm and caring family environment. The psychologist advised that the children should have "regular, timetabled consistent experiences of direct contact", supervised in the first instance. She also recommended therapeutic intervention for the children and parallel therapy for the parents.

27. In the last week of the summer holidays, at the end of August 2011 and within a few days of this recommendation, the mother and children disappeared. Without any warning to anyone, the mother drove with the children to Devon. Her departure was unplanned. They all slept in the car for at least three days before finding somewhere to rent. The father found out in early September when he contacted the school in Blackpool at the beginning of term to find out how they were getting on.

28. The matter was returned to court on 12 September 2011. The mother did not attend and refused to tell her solicitor where she was. The matter was referred to a Circuit Judge, who made orders designed to establish the children's whereabouts and ordered the mother to attend a hearing on 20 September. On that date the mother did not attend. She was ordered to attend a meeting with the Guardian and a further hearing on 3 October. The mother refused the Guardian access to the children on 30 September and failed to attend the hearing on 3 October. The father issued committal proceedings. An order was made that the mother should attend a hearing on 17 October or she would be arrested.

29. The committal proceedings came before me on 21 October. I reprimanded the mother for failing to obey the orders to attend court or make the children available to see the Guardian. By agreement a contact order was made that provided for three occasions of staying contact: 24-27 October in Blackpool, 19-20 November in Devon and 27 December to 3 January in Blackpool. I ordered a report on progress from the Guardian and a final hearing in February 2012.

30. The three contact occasions took place as ordered. I heard evidence about them in February and accepted the father's evidence that the children in general had a good time with him once they settled. The children were able to see their father and their paternal grandparents and maternal grandmother, as well as their uncle and cousins. There are photographs of the contact in the papers.

31. In January 2012, following the New Year contact, the Guardian visited the children in Devon. They were extremely negative about the contact and had written a number of letters saying how much they hated their father and did not want to see him. J wrote that his father is not in his family, that he wants him to be dead and wants Mr A to be his dad. In a letter to me, B asked "Why are you making me go?"

32. The Guardian filed a report in which she reported on the children's statements and the mother's account that she tried to encourage the boys to go for future contact, but they would not and were suffering emotionally. The Guardian found the children's feelings to be genuine and "based on a wealth of knowledge". J told her he had no emotion but hatred for his father and B said that his father was not a nice man.

33. The Guardian's recommendation at the hearing in February 2012 was that she would be concerned about the children having frequent direct contact. There was no evidence of benefit from the contact that had occurred. She advocated that contact should be twice a year for four hours, consisting of activities in the children's home area. The next occasion would therefore be around Easter 2012 and the next one after that around Christmas 2012.

34. Having heard evidence, I found that the Guardian's approach was profoundly flawed for reasons more fully given in a judgment delivered at the time. In it I said this:

"I acknowledge that Miss H is not an experienced CAFCASS officer, having joined the service in September 2010, but I am of the view that she has mistaken these children's best interests by falling into the following errors. Had she applied the welfare checklist to this case she would have seen that it is not just about the children's wishes and feelings and that it is not just about short term problems, but about medium to long-term issues. Had she analysed the children's wishes and feelings correctly she would have seen that they cannot be taken at face value. They are instead, in my view, a reflection of the children's loyalty to one parent, who happens to be, in this case, their mother. I find that Miss H takes no account of the losses and the effective estrangement of the children from their father arising from her proposals.

I further find that her analysis does not take account of the fact that if the children realise they can get their own way on this issue it is a terrible lesson to them for life in future. If you disrespect people, make up things about them and go on doing so you will, in the end, be in control of your situation. J and B ought not to be in control of their situation. Their views should be carefully considered, as I hope I have done, but I think that it would be directly contrary to their welfare to act upon the sorts of expressions of view that they have presented to adults. These children need guidance."

35. Of the children's wishes, I said:

"These wishes and feelings were conveyed both in writing and in conversation to the Guardian in what I regard as being most unsatisfactory circumstances. This case has, for a long time, been about the influence that these parents have on their children and how that limits the children's room for manoeuvre. Nevertheless, the guardian interviewed the mother in the presence of the children and the children in the presence of the mother and, as it happens, did not see the father at all, but spoke to him on the telephone."

36. I also rejected the Guardian's formulation that the mother should "continue to promote the contact and encourage the children to understand that their father loves and cares for them", when it was clear that nothing of this kind was in fact occurring.

37. I therefore departed from the Guardian's recommendation and made a final contact order providing for contact in Blackpool at holidays and half terms. The initial dates were 13-17 February and 11-16 April 2012. On 13 February, the children refused to go and on 22 February the father issued enforcement proceedings. On 22 March, I appointed a new Guardian, Mr M of Plymouth CAFCASS, and directed that the Easter contact visit should occur. It did not. On 11 April, the children were taken to a contact centre for handover with the Guardian being present. The children were hateful and insulting to their father and after about four hours attempts to persuade them were abandoned. On the way home the mother took the children to McDonalds "for a treat, because they had been through a lot", as she put it. The next day a further handover attempt was made, but the children fooled around in the back of the car and then ran away. The father described the children treating it as a game. He noted that the children had not been brought with any bags of clothes or other belongings for a five day visit.

38. Mr M filed a measured report on 23 April, recommending that the contact order remain in effect and be enforced. He advised that the parents attend PIP sessions and that counseling be considered.

39. The mother's response was to write a long letter of complaint to CAFCASS, saying that she was angry at the report, that something was "deep down wrong as to why the children do not want to go" and that any therapy should be with the father and children as "I am not the problem".

40. On 30 May 2012, having heard evidence from the parents and the Guardian, I made a further order. I suspended the February contact order and instead directed two further periods of contact, being 4-7 June and 23 July to 5 August. I told the mother that a change of residence might be considered if contact did not take place. I fixed a further hearing for 20 June (which might be vacated if contact had occurred earlier in the month) and a final hearing in October.

41. Once again contact did not occur. On Sunday 4 June, Mr M had kindly agreed to oversee the handover at a service station near to the mother's home. The father and grandfather were present. Despite Mr M's firm encouragement, the children (who had again been brought by the mother without any belongings) refused to get into the father's car and ran off. They were missing for about 50 minutes and were found by a local farmer, having placed themselves in some danger. The moment the mother got the children home, she wrote an angry letter of complaint to CAFCASS about Mr M, saying that "When the children are in my care I never want him near them again, they have lost all trust in him".

42. At this point, the father made a formal application for residence. Having heard evidence from the parties on 20 June, I gave directions for a hearing on 5 July. I directed Mr A to attend the hearing and the mother to bring the children to court to meet me.

Meeting with the children

43. Before the hearing, I met J and B. They are delightful boys, who were happy to talk about neutral topics but clammed up at any mention of their father. I asked them if they wanted me to answer the question "Why are you making me go?" and they said they did. I explained why it was important for

them to see everyone in their family. I told them that I would try to make the best decision for them about who they lived with and who they stayed with, and that I also had to make sure that my orders were obeyed.

44. I asked them to explain why they were not going to stay with their father. The boys recited a well-rehearsed list of grievances, familiar from the reports. When they stay, they do not like him:

- o Tickling them
- o Making them eat pork (they do not eat it at home)
- o Shouting
- o Pulling their bedcovers off
- o Making them take a cold bath, with no bubbles or soap
- o Stopping them playing Wii when they want to
- o Texting his partner
- o Leaving the TV on loud
- o Not keeping promises ("If you do this, I will give you...")
- o Shouting at their grandfather
- o Pushing and pulling them (and on one occasion "punching" them in the car when they had deliberately broken a DS game)
- o Telling them to call him "Dad"

45. J was emphatic that his father did not love them. I told him that I was sure this was not the case, that everyone loves them very much, and that they could see all the people that love them without being disloyal to anyone.

46. With some effort, the boys remembered some good things to do in Blackpool, such as the Illuminations, horse-riding and going on the Big One (J being adamant that B was too small to be allowed on). They wanted to live with their mother and not to see their father at all. At first they said that, even if an order was made, they would not go, but they then slightly relented and even agreed to see their father at court for a short meeting.

47. This meeting then took place. The Guardian recommended that the parents spoke to the children together to tell them that they both wanted them to have contact with their father. The mother was unwilling to do this alone with the father (which is understandable) but also refused to speak to the children in the presence of the Guardian, or the Guardian and the paternal grandfather, towards whom she is less antagonistic. Asked why, she said: "Because they are all liars."

48. The meeting then took place with the father and Guardian speaking to the children for about five minutes. The children did not acknowledge their father but he was able to tell them that he loved them and that he would take note of what they had said they didn't like about contact. The Guardian reported that the father did well, that the boys were listening intently, and that they showed signs of emotion.

49. I then heard submissions from the parties and reserved my decision.

The position of the parties

50. The father seeks a change of residence, arguing that the mother has had innumerable chances to comply with court orders and that her attitude shows that she will not do so in future. Failing that, he seeks a residence order to take effect if summer contact does not happen. He has filed evidence

about the practical arrangements he has made for the boys' care in terms of accommodation, daily care and schooling. The only arrangement that is outstanding is a school place for J in September at the preferred school, but there is a place at another nearby school, and the father is optimistic that this can be resolved.

51. The mother says that there should be a contact order for three occasions of contact this summer, amounting to a fortnight in all. She emphasises the strong bond between the boys and herself, their half-brothers and Mr A. She argues that the children would be harmed by a transfer of residence. The father is untested as a main carer, there is no school place for J, and there is no certainty that the children will settle.

52. The Guardian has filed a detailed report. Having carefully analysed the welfare checklist, he concludes:

"72. The children's ages and future needs require a decision around residence and contact to be made very soon, which must attempt to deal with their anxiety as well as promote their future development and stability.

73. At this time I find it difficult to make a recommendation as to whether a change of residence will be successful for the reasons I set out in this report. The evidence suggests that there are risks attached to this course of action, in a situation where the immediate responses of J and B are not likely to be positive, leading to a very unhappy situation. However, there is an unknown factor in that the boys might settle better than anticipated.

74. At the same time, it seems clear that contact is unlikely to occur if the situation remains as it is, as all reasonable efforts to promote and facilitate contact have proved unsuccessful.

75. The mother says that a further attempt to contact should take place. It might be that, if this does occur, then a prolonged period of contact in the school holidays with the father might provide evidence, which can be observed, as to how the boys are with him and might provide a more informed way forward on the question of residence.

53. The Guardian says that he is available to visit the children in Blackpool during the course of the summer.

Discussion

54. The welfare of J and of B, individually and together, is my paramount consideration. In such an apparently intractable case, careful analysis of the welfare checklist is essential.

55. At the outset, however, a central factual question must be resolved. Why do two children, who enjoyed seeing their father as recently as April 2011 and at New Year 2012, appear now to be so violently resistant to doing so again?

56. The mother says that she has done everything she can, bringing boys to handovers and telling them to go. She blames the father and the guardian for the failure of the recent attempts. She for her part has complied with the order by 'allowing' the children to see their father.

57. I do not accept any of this. I have had the opportunity to observe the mother's approach over

the past nine months. I find that she does not in truth want the children to have a good relationship with their family in Blackpool. I reach that conclusion for these reasons:

o In May 2010 the boys, then aged eight and six, were naturally and appropriately fond of their father, according to the social services report. When the children saw their father in April 2011, they soon showed their true feelings, and the same can be said about contact at the end of last year and over New Year 2012.

o Nothing that the father himself has done explains the children's stance. Their accounts of him squeezing or drowning them no doubt have their origin in boisterous play, but could not possibly have justified the mother stopping contact for eight months. Their litany of complaints about his behaviour during contact has the flavour of intelligent children casting around for justifications.

o I note that the mother also stopped contact between the boys and her own mother, whereupon they became very negative about their grandmother. In effect, the children do not see people that the mother does not like.

o The mother's true view of the father's importance is seen in her changing the names on the children's passports in early 2011.

o The same can be said for her abrupt removal of the children to Devon as soon as the psychologist's report arrived in August 2011. At a stroke, this placed a geographical distance of 300 miles between the children and their father. Given the very limited financial resources within the family, this is a huge practical obstacle. It also amounts to a psychological obstacle: the children are old enough to get the message that their mother would not take them to live in Devon if she thought that it was important for them to see their father and family in Blackpool.

o The fact that the mother did not tell anyone (the school, CAFCASS, the psychologist, the Court) let alone the father or any of the children's relations, shows the value she places on views other than her own.

o Following the move, the mother initially defied the Court. Committal proceedings were necessary in order to gain her attention, after which three contact periods took place. Although these went well, the mother was quick to say that the boys had not enjoyed themselves, and then to seize on the misguided recommendation of the former Guardian that there should be virtually no contact at all (8 hours a year in Devon).

o I have heard the mother give evidence a number of times. Her statements that she supports contact are unconvincing, and her attitude towards the father and others has become increasingly negative.

o I have no doubt that if the children thought their mother were serious about them going for contact, they would obey her. They are obedient boys: in refusing to go they are not in reality being disobedient, but obedient to what they know their mother expects of them.

58. I therefore reject the mother's case that she is trying her best to make the children go. Her real attitude is that the children do not need these relationships at all.

59. I now turn to consider prominent factors in the welfare checklist.

60. First, the options available to the Court are limited. Further delay is to be avoided. The proceedings have been going on for over two years, with all the disadvantages that continual litigation brings. The realistic alternatives now are to make a residence order to the father, immediate or conditional, or leave things as they are. In that case, the children will not see their father or extended family in the foreseeable future unless the children live with him or the mother changes her behaviour. A simple contact order has been tried repeatedly and will not be effective. The question is whether the mother will change her approach if a change of residence is inevitable and not just possible.

61. Next, the children's wishes and feelings. Here it is important to distinguish between real wishes and feelings on one hand, and statements that the children make, and think they mean, on the other. Having considered the matter carefully, I am convinced that these children love their father and want to be able to see him, but that they are being prevented from showing those feelings or acting on them.

62. I find that J very much takes the lead in stating the boys' position, with B, though articulate himself, taking his cue from J.

63. Another indicator of the nature of the boys' feelings comes from this observation by the Guardian:

"41. It is difficult to know precisely what the boys' thinking is, beyond what they express to professionals, and what effect it has had upon their functioning, because the other common indicators of unhappy children do not appear to be present. For instance, their behaviour at school and in the community appears to be acceptable, although their School notes that they are stressed after attempts to provide contact have been made. The boys are not displaying antisocial behaviour or medical or depressive conditions which might also indicate confusion. Overall, J and B display good communication and social skills and are able to interact in a pleasant and interesting way if the topic is not to do with contact with their father."

64. I have not heard evidence from Mr A, but there are no signs that he is effective in promoting the children's relationship with their father. The Guardian writes:

"50. ... his views and wishes do not appear to support ... J and B having contact with their father and it might also be that he significantly influences the mother's thinking about this issue. Whatever the reason, and despite the clear messages from the court proceedings, it appears very unlikely that there will be any change by either of these adults to promote contact more actively."

65. In relation to the children's needs, there are factors that strongly speak against a change of residence.

- o In all other respects, they have made very good progress in their mother's care. They have received good parenting and are a credit to their parents, and particularly to her.

- o They are securely attached to their mother, and to W and A, and have a good relationship with their stepfather Mr A, who they admire. The relationship between the boys and their younger half-brothers is very important to them and a change of residence not only means that they would see much less of them, but that their upbringings would inevitably diverge.

o A change of residence disrupts the pattern of care within the home that the children have been used to all their lives, despite several changes of address while in their mother's care.

o They are doing well at school, despite several changes of school.

o The children have at the moment persuaded themselves that they do not want to see their father, let alone live with him.

o Without the mother's support, the children would be very difficult to move and they may not settle with their father.

o Arrangements for contact with their mother and siblings would be difficult, at least at the outset.

66. A move would therefore bring real losses for the children, and risks, which could easily amount to harm if the transition was unsuccessful.

67. The headteacher of the children's current school reports very positively about the part played by the mother and Mr A. She writes that: "I strongly believe that the children under [the mother] are thriving very well. Any variation of this will be detrimental to the wellbeing of the children, in particular J, where the impact will be most felt immediately in terms of mental health. This is also affecting the other children in the family, resulting in the children's emotional needs not being addressed or met." I note these views, coming as they do from the specific perspective of the school.

68. Against these factors:

o A move is the only way of restoring the children's relationships with their father and wider family.

o There is no available therapeutic mechanism that can restore their relationship with their father, given the distances, the lack of funds and the mother's current attitude.

o The children's true feelings are, as I have found, being stifled.

o The father is, I find, capable of bringing up the children appropriately and meeting their needs. Although he is untested as a full-time carer, there is no reason to believe that he cannot take on that role successfully with the support network that he has, and the flexibility that his employment allows.

o I discount the suggestion that the children would come to harm in the father's care as a result of any acts or failures on his part.

o The father is likely to support the children's relationship with their mother to the extent that it is within his power to do so.

69. Balancing these factors, I look at the whole picture and at the short, medium and long-term consequences of each option.

70. The Guardian writes:

"69. ... If the father is able to stabilise the emotions and behaviour of J and B in a short period of time, then there is a good long-term chance of success. However, this is the unknown area and the evidence suggests that this may not be easy or occur as the father hopes it will do."

71. Addressing this "unknown area", I acknowledge that there are a number of ways in which a transfer of residence might run into difficulties. However, my conclusion is that it is more likely to succeed than to fail. I believe that once J and B realise that the Court is determined to see that its orders are carried out, and once they experience a return to familiar people and places, they will be relieved of the need to challenge and disrespect their father.

Decision

72. Weighing up matters, my conclusion is that it is unacceptable from the point of view of the boys' welfare in the short, medium and long term for them to be deprived of family relationships that are essential for their development as balanced young people, and as adults. Although leaving the children to grow up in relative isolation of their mother's home is the easier short-term solution, it does not provide the foundations that they need for a healthy, rounded future.

73. It is also, as I have already noted, bad for the children to be taught that the sort of manipulation that they have been caught up in succeeds. That would be a lesson in injustice. The Court has repeatedly concluded that it is in their interests to see their father and it is plainly wrong for them to learn that decisions of this kind can be ignored or defied, as is now happening.

74. Although the boys are of an age where their views have to be taken seriously, I am not deterred by what they say they want to happen. This is not to disrespect them, but to respect them by treating them as children who have no way of dealing with this sort of pressure. A true appreciation of their wishes and feelings points towards the restoration of their relationship with their father, not to its abandonment.

75. The most difficult aspect of the matter, in my view, is that a move would separate J and B on a day-to-day basis not only from their mother, but also from W and A. This would be a very great loss to all four children, but it is not a total loss as the Court will be as concerned to maintain the children's relationships with their mother and siblings in the future as it has been to maintain their relationships with their father and wider family in the past.

76. Taking everything into account, I consider that the father's application for a residence order should succeed. I will however allow the mother one final opportunity, and direct that the order will not come into effect if contact is now resumed. In the light of experience, I do not assume that she will take this opportunity, but for the children's sake I hope that she and Mr A decide to do so, and that they set about persuading the boys that they mean it.

77. A conditional residence order is in my view appropriate where the court can confidently foresee the circumstances in which it might come into effect. I therefore limit it to the period of the next eight weeks. Thereafter, and until the end of next year, the order will not automatically come into effect if there are failed contacts, but if there are, the father can restore his application before me for an early decision.

78. If the boys move to their father, arrangements will after a while be made for contact with their mother. What can be achieved will in large part depend on her level of co-operation.

79. As arranged, the Guardian will inform the parents and the children of the Court's decision. The children can be told that I have considered their position very carefully and have decided that they need to grow up knowing and seeing all the people in their family who love them, and that if this can only happen with them living with their father, then this is what is best for them.

80. I therefore make the following order:

1. The mother shall make the children available for staying contact with the father as follows (and subject to the following directions and conditions):

a. For ten days and nights from 23 July to 2 August 2012;

b. For ten days and nights from 22 August to 1 September 2012;

c. For five days and five nights every alternate school half-term holiday, commencing October 2012;

d. For one week in the school Christmas holidays, including New Year but not Christmas in even numbered years (beginning in 2012) and Christmas but not New Year in odd-numbered years (beginning in 2013);

e. For one week at Easter (to include Easter weekend in alternate years beginning with 2013);

f. For three weeks in the summer holiday, beginning in 2013. The three weeks shall be divided into two periods of two weeks and one week unless the parents agree in advance that it should be a single holiday;

g. The mother shall deliver the children to the father at [midway venue] at the beginning of contact and the father shall return the children to the mother at that location at the end of contact.

2. The mother shall allow reasonable indirect contact by telephone and in writing.

3. In the event that the children do not go to stay with the father for the periods referred to at paragraphs 1(a) and 1(b) above, the following orders shall apply:

a. There shall be a Residence Order providing that the children shall live with the father from the first date of the period in question.

b. The mother shall give up the children to the father on that date.

c. If the mother fails to give up the children, an application for the recovery of the children should immediately be made under s.34 Family Law Act 1986.

d. There shall be such contact between the children and the mother as may be agreed by the parents in consultation with the Children's Guardian or determined by the Court at the hearing currently fixed on 1 October 2012, with liberty to apply in the meantime.

e. There shall be no face to face contact within three weeks of the children moving to live with the father unless the Guardian otherwise advises.

4. In the event that paragraph 3 above does not apply but the children do not go to stay with the father on any other occasion referred to at paragraphs 1(c) to 1(f) above, the father is at liberty to restore his application for a residence order. If this does not arise before the end of 2013, the father's application for a residence order shall stand dismissed as at 31 December 2013.

5. The mother is prohibited until further order from:

a. Removing the children from England without the written consent of the father;

b. Causing or allowing the children to be known by any surname other than M for any purpose;

c. Applying of any passport or international travel document of the children without the written consent of the father;

d. While the children reside with her or have contact with her, changing the children's address from [address];

e. While the children live with her, changing the children's school from [school], except when they move to secondary school in the normal way.

6. If the children move to live with the father, the Children's Guardian shall inform the local CAFCASS team and the social services department of Blackpool City Council so that consideration is given to how support for the father and children can be accessed.

7. The Tipstaff shall retain the children's passports until further order.

8. The judgment given by the Court today may be discussed or disclosed by the Children's Guardian to the children's schools and to any other professional person who should be aware of its contents.

9. This Order replaces previous Orders in this matter.

10. Any future applications are reserved in the first instance to Mr Justice Peter Jackson, if available

11. No order for costs save detailed assessment of each party's publicly funded costs.

81. Orders for indirect contact have been unsuccessful in the past, merely giving the boys more opportunities to be rude to their father. However, in the new circumstances that now exist, indirect contact for the father will only arise if the mother has started to behave in a way that allows the children to continue to live with her.