

TB v DB [2013] EWHC 2275 (Fam)

Welfare hearing following fact-finding and concerning residence and contact in respect of a 5 year old child. Shared residence order discharged and replaced with a sole residence order in respect of the father with contact orders in favour of the mother.

This judgment was given on the day after [judgment in a fact-finding hearing in the same case](#). That judgment had ruled against the mother on all of the facts that she sought to have found in relation to the father's behaviour towards her and his failure to protect the parties' five year-old son from sexual abuse at the hands of the father's brother.

The matter now came before Michael Keehan QC for consideration of welfare issues and whether the court endorsed the current shared residence order that existed between the parties. That order involved the child spending the majority of his time with his mother and having regular overnight contact with the father.

The father now sought that the court should discharge the shared residence order and make a sole residence order in his favour. He was supported in this position by the Guardian.

The judge confirmed, for the avoidance of doubt, that in addition to the findings in his judgment on the previous day, he also found false any allegations that the father was an alcoholic or had a drinking problem. He stated that he considered that the mother made these false allegations as part of a concerted campaign against the father and in order to thwart contact.

The judge bore in mind authorities on transferring residence and noted that the child's best interests were his paramount consideration. He agreed that if the shared residence order could be made to work that would be in the child's best interests, and that changing his residence carried risks: that he would not understand why he does not live with his mother, that he would not settle at his new school, that he might not make new friends, and that he might be unsettled by the new arrangements. He bore in mind that the Guardian considered the child was at an age and of a character where he could adapt without any medium or long-term harm.

He considered that his findings of the day before were extremely serious, and that if such matters were repeated, they would cause serious emotional and psychological harm to the child. He considered it would be improper to follow a proposal on behalf of the mother to prohibit her ability to make referrals regarding child protection, but in any case considered that he had little confidence that his findings would alter the mother's attitude or conduct in the future.

He was satisfied that the risks involved in making a sole residence order to the father were outweighed completely by the risks to the child if the current arrangements were maintained. He had no confidence that similar allegations would not be made in future.

He therefore made a sole residence order to the father, discharging the current shared residence order, and making a contact order to the mother.

Summary by **Gillon Cameron**, barrister, **14 Gray's Inn Square**

This judgment is being handed down in private on 26th April 2013. It consists of 5 pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Case No: FD 09 P 02249

Neutral Citation Number: **[2013] EWHC 2275 (Fam)**

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: Friday, 26th April 2013

Before:

MR. MICHAEL KEEHAN QC

Between:

TB Applicant

- and -

DB Respondent

Digital Transcription of *Marten Walsh Cherer Ltd.*,
1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP
Telephone: 020 7067 2900 Fax: 020 7831 6864 DX: 410 LDE
Email: info@martenwalshcherer.com
Website: www.martenwalshcherer.com

MS. RHIANNON LLOYD (instructed by **Messrs. Rowberry Morris Solicitors**) for the **Applicant**
MS. LOUISE BROWN (instructed by **Messrs. Johal & Co.**) for the **Respondent**
MR. ROBERT LITTLEWOOD (instructed by **The Co-operative Legal Services**) for the **Guardian ad Litem**

Judgment

MR. MICHAEL KEEHAN QC:

1. Once again I shall direct that a transcript of this judgment is obtained at the joint expense of the parties.

2. In this matter I am concerned with one child, D, who was born on the 25th August 2007 and is therefore five years of age. His father, the applicant, is TB and his mother, the respondent, is DB. This judgment should be read with the fact-finding judgment that I delivered yesterday, April 25th 2013.

3. This matter is now before me for consideration of the welfare issues and whether the court endorses the current shared residence order whereby D spends the majority of his time living with his mother in St. Ives in Cambridgeshire and enjoys regular contact with his father or whether the court should discharge that shared residence order and make a sole residence order in the favour of the father with orders providing for contact to the mother. The father submits the court should take the latter course. In that he is supported by the Children's Guardian, Ms. Beth Coulthard. The mother urges the court to take the former course and to confirm the shared residence order made in January of last year by District Judge Aitken.

4. In my judgment yesterday I made very clear findings that allegations that the mother made against the father and his brother, SB, over the course of many years were false and untrue. For the avoidance of any doubt, those allegations which alleged the father was an alcoholic or had a drinking problem or presented a serious risk of abducting D, I also find to be false. I also found that allegations that the paternal uncle, SB, had sexually abused or in any way acted inappropriately towards D or that the father had exposed his son to the risk of abuse and had failed to protect him, were also false.

5. I have to consider what future arrangements will be in the child's best interests against the background of those findings and also the further finding that I made that in making those false allegations the mother did so contrary to D's best interests and, as I found, as part of her concerted campaign against the father and to thwart contact between the child and the father.

6. Counsel at the Bar have very helpfully supplied the court with copies of three authorities on the issue of reversing and transferring of residence. I have read those and take them into account. When considering the issues in this matter I, of course, bear in mind at all times that my paramount interest is D's welfare best interest pursuant to section 1(1) of the Children Act 1989. In considering what order I should make I also have well in mind all of those matters and factors set out in the welfare checklist of section 1(3) of the 1989 Act. Further, I take account and bear in mind the Article 8 rights of the parents and of the child but have regard to where there is a tension between the Article 8 rights of a parent on the one hand and a child on the other, the rights of the child prevail: *Yousef v. The Netherlands* [2007] 1 FLR 210.

7. I entirely agree with the submissions made by Ms. Brown on behalf of the mother that if the shared residence order could be made to work and in fact worked on the ground, that would be in D's best interests. It would mean that he would remain living for the majority of his time with his mother. It would mean that he could remain at his current school in C, maintain his current friendships with friends at school whilst, of course, enjoying regular contact with his father and his paternal family and friends that he has made local to the father's home. It must be right that changing those arrangements and ordering sole residence to the father, thus reversing in terms D's usual living arrangements, carries some risk: a risk that he does not understand why he does not live with his mother; a risk that he will not settle at the new school close to the father's home; a risk that he may not make new friends; a risk that he may be unsettled by these new arrangements.

8. In considering those risks I have very much at the front of my mind the parents' description of D as a bright, intelligent, jolly, cheerful child who enjoys warm and close and loving relationships with his mother but also, and importantly, with his father. I have regard to the evidence and recommendation of the Children's Guardian. She has considered all of those risks. She considers that D is of an age and of a character where he can change school and adapt without any medium or long-term harm. She is satisfied that he will be able to settle at his father's home which he knows well and she has no doubt that he will make new friends in the course of time. It is her clear and strong recommendation, in light of the findings that I made, that sole residence should be granted to the father.

9. It is submitted on behalf of the mother that the court should take into account that to date the mother has not sought to alienate the child from his father, has not spoken inappropriately or negatively to the child about the father and it is submitted on her behalf that she has not breached court orders. It is submitted, to counter that, by Ms. Lloyd on behalf of the father that indeed the mother has, on a number of occasions, particularly last year, breached court orders. If I just put that to one side for a moment, the matters I found yesterday against the mother, particularly involving as extensively as she did D in some of the most serious allegations that can be made against a father and against a family member (which I found to be part of a sustained campaign against the father enjoying a full and unbroken relationship with his child) are extremely serious findings. If they were to be repeated in whatever form in the future they would undoubtedly and increasingly cause serious emotional and psychological harm to the child.

10. Ms. Brown urges me to set around the current shared residence order a scheme of prohibitory orders that would limit and prevent the mother's ability to share information or to communicate allegations in the future to outside agencies. First, I have very real doubts as to the propriety of making orders preventing referrals being made in matters relating to child protection. Secondly, but more importantly, and in light of the findings I made yesterday, I simply do not believe that there is any set of orders that the court could make that this mother would not seek to circumvent. The extent and the lengths she went to, to pursue these false allegations was, in my judgment, quite extraordinary. It is submitted on behalf of the mother that though she has found it difficult, she accepts the court's findings. I accept that that is the case but I regret I have little confidence that it will alter her attitudes or conduct in the future.

11. Whilst I accept that the discharging of the shared residence order and the making of a sole residence order in favour of the father carries some risks to the child, I am completely satisfied that those risks are completely outweighed by the risks to D if the current arrangements are maintained. I also accept the evidence and recommendation of the Children's Guardian that if change is to be made it is better it is made now, when D is relatively young, rather than it being forced upon the court to make such an order in the years to come.

12. I regret that I have no confidence at all that if the shared residence order remained in force there would not be some event, some action or some allegation that would be made by the mother that would bring this matter back to this court. And, in the meantime, once again, the relationship between D and his father will have been disrupted. The mother, last year, told D, to try and explain why he was not seeing his father, that his father was too busy. I cannot imagine what went through that little boy's mind to be told that his loving and devoted father was too busy to see him. It may be the effect upon him was not long lasting. I have no doubt though that the older he gets, those sorts of disruptions and those sorts of explanations are going undoubtedly to have a very profound

and damaging effect on this child.

13. Accordingly, I am in absolutely no doubt whatsoever that the course that I should take in the best interests of D is to discharge the shared residence order and to make a sole residence order in respect of the father with contact orders in favour of the mother.

14. Ms. Lloyd, what I propose to do now is to rise for a few moments. I do not suppose you have had the opportunity to discuss your proposed draft with Ms. Brown?

MS. LLOYD: Not very much, no.

JUDGE KEEHAN: No, no, I perfectly understand that.

No doubt, Ms. Brown, you would welcome the opportunity to discuss that with your client in light of

MS. BROWN: My Lord, I do anticipate that there are going to be a couple of points that we will require your Lordship's assistance with that will not be agreed, probably as to handover, the venue during the holidays and as to the amount of input the mother should have in choosing the new school in F. Those are going to be issues that at the moment are outstanding. We will endeavour ---

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JUDGE KEEHAN: I can help you with that third matter now. The answer is it will be the father who chooses the school.

MS. BROWN: My Lord, I am grateful for the indication.

JUDGE KEEHAN: May I also put you on notice that I have remembered that I asked for an explanation as to why it was thought three days were sufficient.

(Discussion followed)

(Short adjournment)

(Further discussion re order)