

[2010] EWHC B19 (Fam)

CASE No. NU10C00043

Before:

His Honour Judge Clifford Bellamy
Sitting as a Deputy Judge of the High Court

Between:

WARWICKSHIRE COUNTY COUNCIL	Applicant
and	
TE	First Respondent
and	
SH	Second Respondent
and	
S (by his Children's Guardian, Ms J)	Third Respondent

Ms Lorna Meyer QC & Mr Guy Spollen (instructed by Moore & Tibbits) appeared on behalf of the First Respondent mother.

Ms Alison Ball QC & Mr Oliver Peirson (instructed by Morrisons) appeared on behalf of the Second Respondent father.

Ms June Rodgers (instructed by Penmans) appeared on behalf of the Third Respondent, the child by his Children's Guardian

HTML VERSION OF JUDGMENT

Crown Copyright ©

1. On 21 July 2010 a wholly deserving father left my court in tears having been driven to abandon his battle to implement an order which I had made on 4th January 2010 that his son, S, now aged 12, should move to live with him.^[1] The order of 21 July, made by consent, brings to an end litigation relating to S which has been before the court almost continuously since June 1999.
2. S was born on 5 March 1998. His mother is TE ('the mother'). His father is SH ('the father'). The parents, who are both professional people, had separated before S was born. The father had difficulty establishing contact with S. He issued his first application for contact on 28 June 1999. He succeeded in establishing contact. This eventually progressed to staying contact including holiday contact abroad. Unfortunately, in February 2006 contact broke down completely.
3. Over the next four years immense energy and resources were invested in trying to reinstate a meaningful relationship between father and son. Those efforts failed. That led to my order transferring residence from mother to father. My reasons for making that order are set out in a judgment reported as *Re S (Transfer of Residence)* [2010] 1 FLR 1785. I ordered that the transfer should take place on 8 January and gave directions as to how the transfer should be undertaken.

4. The mother appealed. On 21 January her application for permission to appeal was dismissed by the Court of Appeal - *Re S (A Child)* [2010] EWCA Civ 219. The Court of Appeal sent the case back to me to determine the handover arrangements. A hearing was arranged for 26 January.
5. On 26 January it had been my intention to set a new date for handover. That plan was derailed by the mother's admission to hospital with chest pains that morning. She was discharged from hospital later that same day. There followed a period of intense activity involving not only the parents but also a new guardian ad litem and solicitor for S and also, for the first time, the local authority, Warwickshire County Council.
6. At a hearing on 1 March I was told that S would rather go into local authority foster care than move to live with his father. I was not persuaded that that was the right approach. I ordered that the mother should take S to the father's home on 11 March. I made it plain that if that did not happen then I would engage the services of the Tipstaff to implement the transfer the next day. In my judgment (*Re S (A Child)* [2010] EWHC B2 Fam) I expressed my conclusions thus:

126. The reality is that the court has already made the determination that the only way of restoring S's relationship with his father and of overcoming the damage caused by his alienation is by him moving to live with his father. That decision has been upheld by the Court of Appeal. It is important not to lose sight of this. What we are now concerned with is making that order happen.

127. The preferable solution, plainly, would be for the mother herself to take S down to the father's home. If that cannot happen then the only alternatives are placement in foster care under an interim care order or enforced transfer by means of the Tipstaff. I have already expressed my dissatisfaction with the interim care plan. I am satisfied that it is seriously deficient. I have acknowledged that I could adjourn the hearing today to enable the local authority to reflect on this judgment and reconsider its care plan. I have decided not to do so. It is now six weeks since the Court of Appeal upheld my order of 4th January. Today is the eighth time the case has been before me since then. The agony of uncertainty for S must be unbearable. To delay a final decision any longer would, I am satisfied, be contrary to his best interests. Although I accept that there are risks involved in an enforced transfer, those risks have to be weighed against the potential for longer term gains. Although Mr Vater sought to persuade [me] that the decision is finely balanced, having reflected carefully on the evidence and submissions, I do not accept that that is so. I agree with Dr W that the time has come to grasp the nettle.

7. S appealed. On 17 March his appeal was allowed – *Re S (A Child)* [2010] EWCA Civ 325. Their Lordships were told, as I had been told, that S would rather go into local authority foster care than to live with his father. They regarded that as of particular importance. In giving the leading judgment, Thorpe LJ said

22. So, all that said, where do I stand on these submissions? I have reached the clear conclusion that the judge's choice has been demonstrated to be the wrong choice. I say that for the reasons that have been advanced by Mr Vater, his criticism of the foundation of Dr Weir's generalised advice; but also because I think that it is so important in the present case to hold on to anything that is less confrontational than the immediate. It is important that mother is supportive of [S]'s move to the identified foster home and it is important that [S] himself is much less resistant to that than to the arrival of the Tipstaff. It seems to me that this court has an opportunity, which it should take, to steer a middle path between immediate intervention by the judge's officer and the - rightly criticised - proposal of the local authority within its care plan.

23. Ordinarily speaking, the judge defers to the local authority in future management once a care order or an interim care order is made. We are not so circumscribed, because we can place a time limit on the interim care order and, under section 34 of the Children Act 1989, we can give very specific directions as to what contact there is to be to each parent during the duration of the interim care order.

24. So the practical conclusion that we have reached is that, first of all, the stepping-stone of foster parent placement should be of a 21-day duration, at the end of which, come what may, the transfer is to be completed. We have the advantage of a note

from the local authority's position, as stated on 23 February, when the solicitor for the authority said:

"If ... [S] fails to cooperate, and he needs to go to his father, we would stand back and allow the Tipstaff to do that. We have made it clear that we are prepared to use force to take him to foster carers."

So those statements indicate the local authority's clear commitment to the implementation of this order, using the Tipstaff if necessary.

25. So what is to happen in the interim? We conclude that [S] should move to the foster home after school tomorrow and that he should of course attend school the following day, leaving from and returning to the foster parent home. The father should have prolonged contact, together with the stepmother, on the following days, Saturday, 20 March and Sunday, 21 March. Dr Weir, in the attendance note of 23 February, emphasised the importance of the father's persistence at the initial stages. Nothing would be less helpful, in the view of Dr Weir, than the father to, as it were, withdraw, despairing and defeated, at the initial stage. Thereafter the school term continues until its completion on Friday week, 26 March, and that gives the ideal opportunity for the transfer to the father's home, to be effected on the first day of the school Easter holiday.

26. The mother's contact to [S], following the move to foster parents, will be limited to telephone communication by landline only, supervised, and of duration not more than five minutes. The mother must understand that her continuing communication with [S] during this transition has to be supportive of the transfer order. Any negativity, either expressed or implied, would call for the immediate cessation of this limited opportunity for her communication with [S].

8. I have been provided with a transcript of the argument in the Court of Appeal. Two key points arise from this. The first is that it is clear that their Lordships were fully committed to bringing about the transfer of residence which I had ordered on 4 January. The second is that their Lordships acknowledged that the transfer needed to be achieved quickly. The local authority's position before me had been that S should spend three months in foster care, during which time the local authority would work with S and his parents with a view to facilitating the transfer. The local authority's position in the Court of Appeal was that transfer should take place within the span of a 28 day interim care order:

Mrs Justice Baron: ...the thing is I don't think keeping this child on tenterhooks for three months is a sensible way forward in the light of, you know, years of litigation.

Mr Vater: Yes

Mrs Justice Baron: The problems that were concerning me were the peremptory step of using a Tipstaff against the evidence.

Mr Vater: Yes

Mrs Justice Baron: But that your Local Authority has got to move speedily as opposed to at leisure is a given.

Lord Justice Thorpe: Exactly. I mean, even if you show that the judge was wrong to select a three hour transition, with force and detention, it doesn't flow that the alternative, the acceptable alternative, is three months of doing heaven knows what. I mean, this has got to be – I speak for myself, but this has got to be – an accelerated process.

Mr Vater: Yes, my Lord.

Lord Justice Thorpe: And so I think we are where we are, and thank you for clarifying your position because –

Mr Vater: Well, my Lord, the final point I would make, of course, is this. The Local Authority has not had much time to assess the situation. The Local Authority has had no time to assess the situation from an independent professionally supervised environment with the child removed from the care of his mother; and the purpose of having an interim care order, even a four week interim order, is for there to be a further assessment.

Lady Justice Smith: But isn't there then a danger – and we have been asked about this – that what is really going to happen is you are going to try and unpick the residence order?

Mr Vater: My Lady, we are not going to try and unpick the residence order. The difference between us and Dr Weir and the judge is that we say that the residence order should be effected in a different way. We submit, on our assessment of this child so far, that the proposal that we make is the least harmful way and most likely to be the most successful way. That is the professional judgment of those who sit behind me.

9. The Court of Appeal ordered that there should be an interim care order in favour of the local authority until 7 April; that S should be transferred to an identified foster placement after school the next day, on 18 March; that reintroduction of father and son should take place by face to face contact beginning the following day, 19 March; that transfer of S to his father's care should be effected by 27 March; that the mother's contact should be restricted to indirect contact by telephone; and that the matter should be listed before me for further directions on 25 March.
10. On 21 July I approved an order consented to by all parties. So far as is material, that order provided that there should be a residence order in favour of the mother; that there should be a supervision order in favour of the local authority for one year, the local authority indicating that as presently minded it is likely to apply for an extension of that order; that the father shall have indirect contact only, by the provision of school reports and photographs, any other contact only to take place should S request it; and that pursuant to s.91(14) Children Act 1989 neither parent shall, without the permission of the court, make any further application in respect of S until he has reached the age of 16.
11. This has been an extraordinary case. The two Court of Appeal decisions attracted wide publicity. There has also been significant professional interest. Against that background I was persuaded that it would not be appropriate to end this case simply by the court approving an order agreed between the parties. In his position statement for the hearing on 21 July, Mr Vater, counsel for the local authority, made the point that the story did not end with the last hearing before the Court of Appeal. He submitted that 'before that decision or those preceding it are relied upon in other, similar cases, either by any experts for the purposes of research or lawyers in support of their cases, the full story should be recorded.' I agree. That is the purpose of this judgment.

The steps taken to implement the order of 4 January 2010

12. On 9 February there was a professionals' meeting at court. Those attending that meeting included the newly allocated social worker, Mrs K, the newly appointed guardian, Ms J and Dr Weir, the Child & Adolescent Psychiatrist who has been an expert witness in the case since January 2008. At that point, S had not been told about the order of 4 January. It was agreed at the professionals' meeting, and approved by the Court, that the mother would tell S about the order on 14 February, using an agreed script. It was also agreed that the handover would take place on a phased basis beginning with overnight contact from 19 to 20 February and on subsequent dates leading to full transfer on 4 April.
13. Contact on 19 February did not take place. S refused to co-operate. Mrs K and Ms J decided that all attempts to make that contact happen should be abandoned. The local authority decided to issue care proceedings. Those proceedings were issued on 22 February. The case was already listed for a directions hearing the next day. At court on 23 February the professionals had a telephone conference with Dr Weir at which he gave advice on how the transfer should be carried out. Notwithstanding that advice, there was no agreement about the way forward. The case was listed for a contested hearing on 1 March. Judgment was handed down on 3 March. A fuller narrative of the events from 4 January to 3 March is set out in that judgment.
14. Ms J visited S at home on 17 March to advise him of the order made by the Court of Appeal earlier that day. In her report of 25 April, Ms J says that S 'was visibly shocked and tearful, his grandparents were present and his grandmother was also visibly upset'. She goes on to say that S 'said that he would refuse to see his dad and then the Court would see that it was his view.'

15. S was placed in foster care the next day. The mother took S to Mrs K's office after school. The mother accompanied Mrs K and S to the foster placement and helped him to unpack and settle in his room. Mrs K says that as she and the mother got up to leave the foster carers' home 'S became quietly tearful and hugged his mother, holding her face and not wanting to let go of her'.
16. The first contact between S and his father took place the next day at the foster carers' home. Dr Weir had advised on how S may react and how his behaviour should be dealt with. Contact lasted from around 9.00 a.m. until noon. Throughout the contact S sat with his head in his lap and his hands over his ears. He would not engage with his father. Regular breaks were taken. During the breaks S told Mrs K and his foster mother that he did not want to see his father and that he would not go and live with him.
17. The next day contact took place at the home of father's sister-in-law. Mrs K transported S and remained for the whole of the session. S sat on the sofa with his head in his lap and his fingers in his ears. He refused to take off his coat and shoes. He refused all offers of refreshment. During the journey home S was initially quiet and cried silently. They stopped for a meal. It was clear that S was very hungry. Mrs S took him bowling. By then he was relaxed. S had a class he had to attend. Mrs K says that by the time they arrived at the class S 'was completely relaxed and happy'.
18. No contact was planned for 21 March. On 22 March Mrs K collected S from his foster home and took him to school. Mrs K says that on the journey to school 'S started to cry and told me that he missed his mother and that he hates his father for what he is doing to him...He said that the Judge is wrong and that he is not alienated'. Contact took place after school, at S's place of worship. The father and step-mother were both present. S said that he would not eat in their presence. He faced the wall and ignored them.
19. Contact took place again on 23 March. It took place at Mrs K's office. This time the father was accompanied by his parents, S's paternal grandparents. When S was brought into the room he immediately put his head in his lap and his fingers in his ears. He refused to engage.
20. By the 24 March, less than a week after S had been placed in care and after just four contact sessions, Mrs K had become concerned about the impact of contact on S. In her statement she says that she had shared with his guardian, Ms J, 'that in my view S was being put under unacceptable pressure and the demands on him were extreme. I was most concerned for his emotional and mental health'. The fifth session of contact took place that afternoon at Mrs K's office. The father and step-mother attended. So, too, did Ms J. Once again S adopted his usual position of putting his head in his lap and his fingers in his ears.
21. After this contact Mrs K explained to the father that she was 'deeply concerned' about S's mental state. She told him that she 'did not believe that any further good could come with S remaining in foster care' and that she would be saying to the court that she would recommend that contact be different and less frequent.
22. There was a further hearing the next day. The father agreed that S should return to his mother though under the auspices of the interim care order. Mrs K had arranged for the father and step-mother to see S at the foster home that afternoon. Initially S refused to come out of his bedroom. When he was finally persuaded to come out of his room the father explained to him that he 'could not see him so unhappy' and therefore 'wanted him to go back to live with his mother'. Mrs K says that 'S was extremely happy and went upstairs to collect his belongings and then said good bye to the carers'. When they arrived back at the mother's home, 'S hugged his mother and would not let her go. He was extremely happy to be home and to see his family'.
23. Notwithstanding the return to live with his mother, the local authority said that it was still committed to preparing S for the move to live with his father. This was explained to S. Mrs K prepared a schedule of future contact. The next contact took place on 31 March at Mrs K's office. Both parents were present. S sat in between his parents and put his head in his lap. He refused to engage.
24. On 4 April Mrs K and the guardian took S to his father's home for a contact visit. Also present were his two younger half-brothers. They tried to play with him. S refused to engage. He

refused to eat or drink. His mother subsequently reported that he was sick that evening and not able to go to school the next day.

25. Contact continued to take place. S continued to refuse to engage. On 21 April S met with his guardian, Ms J, his solicitor and his counsel. He told them that 'what had happened proved what he was saying about not wanting to live with his dad and showed it was nothing to do with his mum because she was encouraging him to see his dad.'
26. In her statement of 27 April, Mrs K makes the point that 'Throughout the transfer stepping stone process, S has carried out his expressed intentions of "nil by mouth" and non-engagement, despite significant persuasion, efforts and pressure by professionals, both parents and extended families...The Local Authority is clear that it is S who is refusing to engage and carry out his acts of self harm, as proof and evidence of his intentions if forced to move to live with his father...The Local Authority cannot take any further part in direct contact, which S is not willing to be part of...At this stage an effective and successful transition between the two homes cannot be made without causing S significant harm...' The guardian agreed.

The Centre for Separated Families

27. At the suggestion of the father, the local authority and the guardian agreed that assistance should be sought from Mrs Karen Woodall, Director of the Centre for Separated Families. Mrs Woodall has prepared three reports. I do not propose to review them in detail. A brief overview is sufficient. Mrs Woodall has not given oral evidence. I have no doubt that her advice would have been subjected to rigorous scrutiny and challenge had it been tested in court.
28. As a result of her initial involvement with S and his parents, Mrs Woodall says in her first report that she has 'no doubt that S is an alienated child, his presentation in his relationship with his father and his escalation of his determination to resist all efforts to engage him with his father are indicators of this'.
29. Mrs Woodall explained the approach she proposed to take:

'9.1 My proposal for continued work with this case is influenced by the multi model approach developed by Johnston, Walters and Friedlander in 2001. This is a multi faceted intervention that is inclusive of all the family members and matches the intervention to the nature of the problem.'
30. The initial stage of this approach involved intensive therapeutic work with the parents and S, to include weekly therapeutic contact sessions. Between 8 June and 1 July Mrs Woodall undertook a total of thirteen therapeutic sessions lasting almost 24 hours in total. S was involved in five of these sessions. In addition, Mrs Woodall facilitated three direct contact sessions between S and his father.
31. In her second report Mrs Woodall says that she detected small but, in her opinion, significant signs of progress. She reports that she had 'observed and facilitated contact between [the father] and S' and had 'observed that S does listen, does respond in body language and, during the last session was extremely tentatively, able to begin to discuss issues with his father using me as a bridge'. She noted that S 'is able to talk about when not if he reunites with his father'.
32. Mrs Woodall made the point that this approach to working with the family is 'an alternative treatment to that of a change of residence' and not one which can run alongside change of residence. She states that this approach requires a minimum of six to twelve months for successful implementation 'and should be reviewed by the Judge who is case managing at agreed intervals'. She was very clear that the father's wish to implement the order that S should move to live with him must be abandoned. Her proposed programme for the next three months involved further intensive work with the parents and S.

Dr Weir

33. Dr Weir did not agree with Mrs Woodall's proposed approach. Throughout the course of his evidence Dr Weir has held strongly to the view that serious cases of alienation are unlikely to be resolved by means of therapy. In his final report he says

'I do not share Ms Woodall's optimism that further therapeutic intervention will succeed...This is a serious and entrenched case of alienation...and it has been and remains my opinion that therapy is unlikely to succeed in overcoming S's resistance to any form of relationship with his father's family.'

34. At a professionals meeting on 23 February, Dr Weir responded to a series of questions seeking his views on how the transfer of residence might be achieved and on the consequent risks to S. One of the questions put to Dr Weir was whether a transfer of S into foster care (to which S himself had said he was agreeable) was preferable to a forced transfer directly to the care of his father. Dr Weir gave this response:

'The difficulty I have is that although the local authority is hoping reason will prevail and S will come round to accepting the inevitable, I think it is unlikely. The delay allows a period when attitudes can become entrenched, behaving badly, and further risk of harm occurring...at the end after the work and negotiation there will still be the same situation where we have to force him to live with his father. Even if he is willing to go into foster care, which is a good thing because it avoids a scene at the time, the bad thing is that we are not dealing immediately with what is ultimately necessary, that is, to make him to go live with his father.'

As I have already noted, the strategy S adopted during contact sessions – putting his head in his hands, putting his fingers in his ears and flatly refusing to engage – was carried through with great determination. His attitude became even more entrenched.

35. In his report of 25 May 2010, written in response to the by then failed attempts to persuade S to engage with his father, Dr Weir said

'There is little that I can add to my previously expressed views. The "stepping stones" method predictably failed and may have made matters worse...The continual delays and failed attempts at reintroducing contact make it more likely that S might successfully resist contact and/or transfer in the future, as he is now even more experienced at resisting the advice and encouragement of even more people in authority.'

36. Some of the steps recommended by Dr Weir are likely to appear highly counter-intuitive to a child care practitioner who is not experienced in dealing with alienated children. At the professionals' meeting on 23 February Dr Weir was asked how the reintroduction of contact should progress. He gave this advice:

Dr Weir: The [first] visit needs to be quite long to help the child get over it. If it ends quickly because of unpleasantness then it is setting up the next visit to fail. I am looking at the first visit being very long and to be kept going until S is prepared to answer his father and...look him in the eye ending in a change of attitude. It may take hours.

Q: What if he can't do that?

Dr Weir: It needs to go on as long as possible.

Q: What if S says he won't eat, drink, do school work etc? How long do you leave it?

Dr Weir: Indications from other cases are that threats are not persisted with. They may end in hours or 2/3 days and then things change...and it is OK.

Some child care professionals are likely to be deeply unhappy with such an approach and, out of concern about the risks to a very distressed child, unwilling to follow such an approach.

CAMHS

37. In April Mrs K referred S to the Child and Adolescent Mental Health Service ('CAMHS'). S has had one meeting with CAMHS. On 10 June he was seen by Mrs KA, a Consultant Child and Adolescent Psychotherapist, and Ms R, a senior nurse. They had been asked to prepare a mental state assessment. In a letter dated 17 June, Mrs KA and Ms S note that S described

'feelings of despair and hopelessness. He described feeling that his life does not feel as though it is worth living. In one particularly telling sentence he described to me the way in which he felt that the contact sessions ruin his life, he feels he can't cope with

the contact programme...he described his feeling that he could not see a future for himself...When asked to rate his mood, S said that today it was 1 or 2 out of 10 but that a lot of the time he felt that it was 0 out of 10, or even in minus figures...'

Mrs KA and Ms R go on to note that

'As the session unfolded it became clear that S was experiencing suicidal ideation. He expressed a view that he at times could not see any other way out of the situation other than to harm himself. He describes his mother as someone who used to be a source of comfort to him but since the court proceedings and the involvement of Social Services and the somewhat intensive contact arrangements have been put in place, she is no longer as emotionally available to comfort him.'

They conclude by saying that they are agreed

'that S is an extremely distressed and unhappy little boy who shows numerous clinical symptoms of a depressive illness...[If] the current external situation regarding court and contact remain unchanged there is a high risk that S will begin to act upon these ideas of self-harm. He is experiencing feelings of despair and hopelessness, worthlessness, and cannot see any hope for the future...All of these would point to an eligibility for a diagnosis of clinical depression. This depression is, in our opinion, a response to the very intensive programme of contact, along with the uncertainty around his long-term living arrangements...'

38. Mrs KA and Ms R advised that as S's depression is situational, medication would not be helpful. They go on to recommend that 'the current court and contact programme be shelved for a while to allow him some time to recover...'

The decision not to proceed

39. The father accepted promptly the recommendation of Mrs K that the placement in foster care was not working and that S should return to live with his mother. Although Mrs Woodall detected signs of progress as a result of the intensive therapeutic work she has undertaken to date, the father was less persuaded. He was not willing to accept Mrs Woodall's recommendation of further work over a six to twelve month period.
40. Some while after the second appeal Miss Ball QC, leading counsel for the father, advised the court that the father's wife was pregnant with their third child. At the pre-hearing review on 7 July I was told that the father's wife had miscarried. Following an advocates' meeting on 13 July I was informed by Miss Ball that the father no longer intended to seek the implementation of the residence order made on 4 January. In the circumstances, I have no doubt that that will have been a very painful decision for him to take. However, after all that has happened in the six months since my order of 4 January, I have no doubt that the decision was the right decision for S. I warmly commend the father for it.

The supervision order

41. The parents and the guardian agreed that S has suffered significant emotional harm as a result of the parents' failure to secure for him a full and normal relationship with his father and paternal family and as a result of the high level of parental tension and conflict since proceedings were first issued in June 1999. It was also agreed that the threshold for State intervention set by s.31(2) Children Act 1989 is therefore satisfied in this case and that it would be in the best interests of S's welfare for there to be a supervision order in favour of the local authority.

Reflections

42. In the light of the public and professional interest surrounding this case, and having been the judge with responsibility for this case for more than three years, I conclude this judgment with some reflections on some of the issues that have arisen.

The concept of alienation

43. In his first report Dr Weir gave this description of the concept of alienation:

'There are children who show an extraordinary degree of animosity towards a parent with whom they once had a loving relationship. Most of these children will show some or all of [a cluster of psychological responses]. Within an individual child (and

between children in the same family) the presence of the features can vary rapidly over time and place, but in their full manifestation are so surprising and unique as to be unforgettable. The proposed term 'Alienation' applies only to the cluster of psychological responses in the child with no need to presume a deliberate campaign of denigration by one parent. There is now research data supporting a multifactorial aetiology for 'Alienation' following parental separation, involving contributions from both parents and vulnerabilities within the child.'

44. In my judgment of 15 June 2009 I accepted both the concept of alienation and the fact that S is alienated from his father. For some weeks after the local authority became involved in this case it was unclear to me whether the local authority accepted either the concept of alienation or Dr Weir's assessment that S is alienated from his father. I note that in the Court of Appeal, counsel for the local authority described Dr Weir as 'an evangelist for the concept of alienation'.

45. Over the last few years warning has been given about the need to beware of the over-dogmatic expert. In the context of criminal trials, that point was made forcibly by the Court of Appeal (Criminal Division) in *R v Cannings* [2004] 1 All ER 725. The same point has since been made by the Court of Appeal (Civil Division) in the context of family proceedings. In *Re U (Serious Injury: Standard of Proof): Re B* [2004] 2 FLR 263, Dame Elizabeth Butler-Sloss P said that

'[23] The court must always be on guard against the over-dogmatic expert, the expert whose reputation or amour propre is at stake, or the expert who has developed a scientific prejudice.'

46. In the light of the considerable body of evidence I have heard and read in this case over the last three years, the research literature that has been produced and my experience of dealing with other high conflict cases involving different experts, I am satisfied that Dr Weir's evidence as to the concept of alienation as a feature of some high conflict parental disputes may today be regarded as being mainstream.

Dealing with a case involving an alienated child

47. What is less clear is the approach that should be taken in dealing with a case involving an alienated child. That has been the key issue in this case.

48. Since he became involved in these proceedings Dr Weir has produced copies of a number of research articles including several papers from the January 2010 edition of an American journal, the *Family Court Review*, which was devoted to this issue. Notwithstanding the papers relied upon, the reality is that the research base is small. There is no consensus in the research literature about this key issue. There is a clear and urgent need for further debate and research in this area.

49. One possibility that emerges from the research literature is that of transferring care of an alienated child from the resident parent to the non-resident parent. That is, ultimately, the step I decided to take in this case. In my judgment of 4 January I acknowledged the likely difficulties in implementing that order. Since January, three approaches to effecting transfer have been considered in this case: a 'stepping stone' approach involving a period in foster care en route to transfer of S into the care of his non-resident parent; a therapeutic approach; use of the Tipstaff.

Interim care order

50. In *Re M (Intractable Contact Dispute)* [2003] 2 FLR 636 Wall J. (as he then was) provides guidance on the use of the facility to make an interim care order under s.37 in a high conflict contact case. In that case the use of s.37 led directly from the placement of two children in foster care to successful transfer of residence of those children from mother to father. However, it is important not to forget the warning given by Wall J. He said

'[7] I am also conscious of the fact that there is a tendency in family law to see an outcome such as this as a panacea – a one-size-fits-all solution. I emphasise that this is not the case, indeed, this judgment comes with a series of strong health warnings.'

51. In that case the move into foster care occurred prior to any final determination of which parent the children should ultimately live with. In this case an interim care order was used as a means of enforcing an order transferring residence of S from one parent to the other – a

stepping stone from mother's care to father's care It was not a course recommended by Dr Weir. It was not successful. This case demonstrates the wisdom of Wall J's caution that such orders do not provide a 'one-size-fits-all solution'.

Therapy

52. Mrs Woodall relied upon research evidence, and in particular one of the papers published in the January 2010 edition of the Family Court Review to which I referred earlier, in support of her contention that therapy was the way to resolve the problem in this case.
53. Therapy had already been tried in this case. It began in August 2006 and was ongoing at the time of the first contested hearing before me in November 2007. The two therapists had been instructed in the hope that therapy would, in due course, lead to the restoration of direct contact between father and son. The therapists had no experience of working with families in high conflict cases or, more importantly, of working with alienated children. That therapy failed to achieve its objective.
54. There is no doubt that Mrs Woodall has the experience which the earlier therapists lacked. However, despite the intensive work she undertook in June the progress made was extremely modest. Mrs Woodall herself described the progress as 'tiny'. In the light of the report from CAHMS it is difficult to see how the court could have come to the conclusion that the intensive regime of further therapy proposed by Mrs Woodall would have been in the best interests of S's welfare.
55. Dr Weir's consistent advice has been that this case would not be resolved by therapy. As with the use of interim care orders under s.37, therapy is not a 'one-size-fits-all solution' to dealing with an alienated child in a high conflict case.

The use of the Tipstaff

56. In my judgment of 3 March I made it clear that if the mother did not deliver S to his father's house on 11 March then he should be collected by the Tipstaff the next day and taken by car the two hour journey to his father's home. I noted that S had been informed of the possibility of using the Tipstaff and of Mrs K's concerns about that approach. In a written statement Mrs K had said

'In the light of the issues raised, I am concerned that S, if forced to live with his father, will sabotage by self harm, either through not eating or trying to run away or jump out of his father's car.'
57. In her written submissions Miss Meyer QC, leading counsel for the mother, argued that the forced repatriation of S to his father's home by locking him in a car for two hours represented a breach of S's rights under Art 5. It is important to note that the Court of Appeal did not finally dispose of the Art 5 point. Thorpe LJ said this:

'However, I would make three observations on the submission. The first is that it is not necessary for us to rule on the point to dispose of the proceedings before us. The second is that the invocation of the article arises out of circumstances in which the Tipstaff, an officer of the court, was being asked to do no more than a transport job from one home to another. The degree of arrest and detention in that exercise, given the very specialist skills of the Tipstaff and experience of the Tipstaff, is highly questionable. The third point is that, in any event, it seems to me strongly arguable that the Tipstaff's intervention, even if forceful, is covered by the exception contained in paragraph (b) to the article.'

58. It was accepted in the Court of Appeal that there is no authority, and in particular no post-Human Rights Act authority, reviewing the power of the judge acting through the Tipstaff. There is still no authority. Art 5.1(b) may cover a situation where the Tipstaff is used to enforce the handing over of a young (i.e. non-Gillick competent) child when the parent with care refuses to comply with an order of the court. Whether the same can be said where the child concerned is a Gillick competent child remains an open question. In this case the question of whether S is Gillick competent was never determined by the Court.

The need for evidence from an appropriately experienced expert

59. The relatively small number of cases of alienation inevitably means that not every child care professional will have experience of dealing with a case involving an alienated child. In this

case, for example, in her final statement Mrs K very frankly conceded that 'despite my 21 years of experience in Social care, high conflict cases and child protection, prior to this case, I did not have any previous experience in alienation'. In making that point I do not in any way seek to undermine the sterling work she has undertaken in this case. Her dedication and commitment have been exemplary. However, I am bound to say that, for my part, I am in no doubt that in determining any high conflict case involving an alienated child it is essential that the court has the benefit of professional evidence from an expert who has personal experience of working with alienated children.

60. Having made that last point, I acknowledge that Dr Weir's advice on how to deal with S was clear but controversial. Mrs Woodall's approach was equally clear but equally controversial. The initial assessment by CAMHS raises concerns about both of those approaches. None of that evidence has been tested in court. So far as S is concerned, all that can be said with confidence is that the approach taken to implementing change of residence has failed. It has failed notwithstanding the high level of commitment and care brought to bear by Mrs K and by the guardian, Ms J. Whether any other approach would have been more successful it is impossible to know. At this stage, conjecture on that issue is as unwise as it is unprofitable.

Postscript

61. The final order was made on 21 July. S was informed later that evening. At my request, the guardian sent me an e-mail on 22 July to let me know how this meeting had gone. I set it out in full:

'Dear Judge

To inform you that myself and Mrs K met S last night and we had a meeting with father and [his wife]. The father read out his letter to S and we asked S to listen which he did. It was an extremely difficult meeting for father but he managed to read the letter and S did allow his father to touch him on his arm. S did not look at his father and had his head down for the whole time.

I spoke to S after his father had left and he was feeling numb but "good". He said to say thank you and said that this was not the end and he would think about seeing his father after his GCSE's.

I am sure he listened to his father and it was S who volunteered that this was not the end and he would see his father on his terms when he was ready.

Overall S managed the situation very well, but sadly we could hear his father sobbing as he left.

Regards...'

Note 1 I gratefully adopt the poignant descriptive words used by Munby J (as he then was) in a similar case, reported as Re D (Intractable Contact Dispute: Publicity) [\[2004\] 1 FLR 1226](#)