Re P (Children) [2008] EWCA Civ 1431

Case No: B4/2008/1421

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM LLANGEFNI COUNTY COURT

(HIS HONOUR JUDGE M FARMER QC)

Royal Courts of Justice

Strand, London, WC2A 2LL

12th November 2008

B e f o r e :

LORD JUSTICE WARD

LORD JUSTICE STANLEY BURNTON

and

SIR WILLIAM ALDOUS

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IN THE MATTER OF P (CHILDREN)

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THE APPELLANT APPEARED IN PERSON.

Miss G Lord (instructed by Edward Hughes) appeared on behalf of the Respondent Mother.

Mr G Jones (instructed by Elwyn Jones & Co) appeared on behalf of the Respondent Children.

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HTML VERSION OF JUDGMENT

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Lord Justice Ward:

This is a father's appeal against orders made by HHJ Farmer QC on 7 May 2008. The appeal is brought with the permission of Hughes LJ on limited grounds only, namely against that part of the order which would not allow any direct contact and secondly against the embargo on disclosing the identity of the school which the children attend.

HHJ Farmer's order of 7 May provided in the first paragraph that the father's application for residence in respect of the children, and secondly and similarly thereto, an application for a specific issue order in respect of the children's schooling be refused. There is to be no appeal against that part of the order, and those orders in paragraph 1 stand.

The second order was for mother to allow father indirect contact with the children on the following basis: a) Reasonable indirect contact by suitable gifts and appropriately worded cards, such material to be sent to the children at the maternal grandmother's address. b) Reasonable email contact subject to the father respecting GrP's wishes with regard to her own such contact, defined to include as a minimum of at least weekly frequency. c) The mother was to provide father with copies of the children's school reports and any other information provided to her in respect of the children's education, such reports to delete the identity of the school. d) Mother to provide photographs of the children for the father four times annually. Paragraph 3 of the order provided for the discharge of Kathryn Holmes as the Children's Guardian.

The children concerned, whose identity should be protected please so no publicity about them, are GrP, who was born on 13 October 1996, so she is 12 years old. JoP was born on 5 January 1998 and so he is ten, soon to be eleven. JuP was born on 13 September 1999: he is nine years, and GiP on 9 September 2001: she is seven years old. These are parties who had married in 1996 but separated in 2002 and, consequent upon the separation, began an inordinate number of applications to the court. We are told by the father he has been back to court 66 times and that is far too much.

The proceedings began in London. An important hearing took place before HHJ Karsten QC in September 2002. The judge was there concerned with making findings of fact in respect of the allegations of domestic violence. Domestic violence, of course, is a term that covers a multitude of sins. Some of it is hideous, some of it is less serious, and it is probably into the latter category that this case fits. Mr P, the father, simply cannot accept the findings made by Judge Karsten way back, as I have said, in September 2002 but I have to state to him as emphatically as I can that he has to accept those findings of fact because they were not appealed by him, and the court will not go back and re-hear those matters. They have to be accepted, and there is no possible complaint against HHJ Farmer for having correctly concluded that he had to approach this case on the basis of those findings. He set them out in his judgment at paragraph 2 and I do not intend to elaborate upon that.

I would emphasise, however, one finding made by HHJ Karsten, and that was that this was a father who can offer so much to his children. Be that as it may, the parties had to separate and problems over contact began.

In the chronology placed before this court, father lists the many occasions when he says no contact was allowed, contrary either to agreements or to orders of the court. Again it is part of the background which deserves mention but not detailed consideration.

It appears that by 2003 or thereabouts contact had virtually ceased. That resulted in Mr Recorder Tidbury inviting NYAS to represent the children and the officer there, a Jennifer Hall, brought about what the father there describes as the first ray of light in the whole case. What he was so pleased to see as the outcome of her intervention was that contact began again, and I draw to his attention the fact that contact there began by letter. As I put to him colloquially and I hope not offensively: "slowly, slowly, catchy monkey." There the letter led in time to the restoration of visiting contact at Kenwood and elsewhere in London and by October 2004 staying contact was being ordered by HHJ Pearl. And that staying contact, which I assume in the absence of anything to indicate the contrary, was very good contact, continued thereafter until the Christmas period in 2005. Unfortunately, on the handover of the children to return to their mother, who by then had established a home in Wales, there was an unseemly dispute between the mother and the father which resulted in the police being called to restore some peace, but not before the children had on any account been deeply upset by the altercation between mother and father. That was an issue HHJ Farmer dealt with. He recited the father's account of it in paragraph 7 of his judgment. He recited in paragraph 26 of his judgment the mother's version of the events. He concluded that:

"I accept her account of this incident and the effect of this incident on herself and her children."

There is no appeal against that finding because Hughes LJ would not permit it, and rightly so, because it seems to me it is an unchallengeable finding made by the judge. He heard both parties, and it is the unfortunate task of a judge who has one witness come in to the witness box and swear that the colour held up in front of him is white, then to hear the other side go into the witness box and the same piece of paper is held up before her and she swears that is black, and the judge has to choose whether it is white or black and sometimes may find it is actually grey. Here he accepted the wife's account, and it is beyond challenge in the Court of Appeal, for the father simply cannot show that the judge abused the great advantage he had of seeing and hearing the witnesses, judging their evidence, their demeanour and coming to a conclusion as he was duty bound to do. The Court of Appeal will not interfere absent the most compelling case that the judge had somehow egregiously come to the wrong conclusion.

That seminal event led again to a break in contact. But fortunately, with the help of CAFCASS, contact was resumed at a contact centre. The father then made his application, the date of which is not clear to us, because the application is not in our papers. It appears, from what I can infer from the order, to have been an application for the residence of the children to be transferred from mother to him. Whether the case was being put, and I suspect it might have been, upon the basis that this mother

had shown herself to be recalcitrant and so the only way in which to enforce orders of the court was to change the residence of the children, or whether the application was linked to the education issue, is not clear but it does not matter given the limited appeal which is before us. It seems that father was urging that the children should come and live with him, or that some of the children should come and live with him, in order that he, a teacher by profession, could prepare the children to enter Christ's Hospital School in Sussex, thereby removing them from the heat of battle and putting them on neutral ground. That application has been dismissed and there is no appeal permitted against it.

So HHJ Farmer had therefore to deal with the remaining dispute which aroused so much heat and intensity and passion, namely the dispute over contact. I regret to say that I have found the proceedings in the court below at times difficult to follow. We know that there was a two-day hearing on 22 and 23 March of 2007, which led to an order being made at page A54 of our bundle "that the applications made herein shall be adjourned part heard to April 18th 2007 at 2 pm" in the local county court. The father was given leave to file a document called "the Bridge Building document" within the court bundle, and it was recorded that the mother would continue to make the children available for contact save for Gr and Gi, depending on their wishes, at the local contact centre on the second and fourth Saturdays in every month from 2pm to 4pm.

On 18 April with counsel for the father, mother in person and counsel for the guardian attending upon the judge, father put in his seventh statement with notes for submission and bridge building and a chronology of missed contact. The court ordered that the mother be given permission to respond within seven days by way of written statement, that the guardian should within 14 days file a further report dealing with the criticisms of her conduct in that seventh statement, and the father should through his solicitors supply copies of material relied on in that seventh statement.

The fourth order was that the judgment in the case be listed by the court of its own motion within 14 days of the receipt of the material and information provided.

So the picture one has thus far is that at the conclusion of two days hearing on 22 and 23 March the judge reserved judgment, originally to hand down, one would have expected, on the next occasion, and here it is said to be handed down of the court's own motion. My concern is how the judge would be in a position to hand down a judgment without having considered, and given the parties the opportunity at a hearing, to address the further material which was being placed before him. On 6 June the father appears to have filed an eighth statement. One way of controlling this -- I was going to say "nonsense" but that may be a harsh word to condemn the father -- but the way to control the repeated filing of further evidence after the conclusion of a trial is simply to refuse to admit it, but the judge benignly -- and father should reflect upon that -- in his favour did not summarily refuse to admit

any fresh evidence after the conclusion of a trial but gave the mother the opportunity to object to that material going in. He ordered the father to file and serve an application for permission to adduce his eighth statement, the mother was permitted to instruct a solicitor to act upon her behalf; the mother and the children's guardian were to file and serve their own written responses to the father's application for permission; and the court's decision with regard to whether the eighth statement might be adduced pursuant to Family Proceedings Rule 4.17 was to be decided by the judge without further attendance of the parties being required. Any application by mother or the Children's Guardian for permission to file and serve supplemental evidence in response to the father's eighth statement was to be filed and served within seven days of the court's decision to grant permission.

On this occasion the applications were adjourned to the judge to be heard on 10 August with a time estimate of half a day. It was further recorded in that order of 6 June that the mother should continue to make the children available for contact at the contact centre as had been previously ordered and a further order, if it was an order, was made:

"The children's Guardian shall forward to the father copies of any school reports received by the children at the end of this academic year, such reports to be edited so that the identity of the school is omitted."

Quite how that order came to be made is a bit of a mystery. We have been told that it was not a matter that was disputed by counsel for the father. The father's complaint about his counsel is directed to the very fact that he or she did not object to this order being made. He did then and has always wished to know how his children are being educated, but that was the order made, if, as I say, it really has the status of an order.

On 10 August, again, we are not entirely clear what happened. The judge, we are told, announced that he had reached a decision in principle. He spelt out the lines along which he was thinking and indicated that he would hand down a written judgment giving reasons for those conclusions in due course. No order has been drawn in respect of that hearing as it should have been, and we have absolutely no explanation why it was not drawn. What we do have is a draft order, apparently drawn by the father's counsel but never bearing upon it the consent, even as a form of order, by counsel for the other parties, and as I said, that order was never sealed by the court. What appears to have been contemplated was that the father's application for residence would be dismissed; his application for the determination of the specific issue about education would be dismissed; that there should be indirect contact by way of telephone and e-mail between father and the children; the precise duration and times to be agreed or otherwise as ordered; and then the contact there contemplated, according to the judge, which may or may not accurately reflect what the judge had in mind, for we have no transcript of those proceedings, was for the mother to make the two boys, Jo and Ju, available for contact with their father, initially for two hours at the contact centre on alternate Saturdays, then

building up after a while to three hours on the alternate Saturdays, and rising to four hours on Saturday from October 2007. The idea seems to have been that the father would after again, building up slowly, slowly -- remember by now I hope the adage I have so inappropriately used more than once -- slowly, slowly, build up the contact until the father was in a position to remove the children from the contact centre and use it more as a place where collection and return could be harmoniously operated.

But that was never carried into effect because, as again one understands it, the children objected to that arrangement, and so on 22 August the matter was back before the court -- how and why I am unclear, perhaps at the instigation of the CAFCASS officer, again it does not much matter -- but then permission was given according to the order drawn that day for the mother to file and serve her statement dated 22 August and to file and serve the statement of the father. I do not know whether the order, as there drawn, reflects what was intended; again it does not matter. The guardian was to file and serve an addendum report setting out the children's wishes and the matter was to be listed for further directions on 26 September.

It was recorded that:

"a) the court had today intended to give judgment in support of the decision announced in principle on 10th August 2007;

b) the court considers further investigation of the childrens wishes and feelings is required in the light of the statement today filed by the mother; and

c) as a consequence of a) and b), the court is no longer able to deliver judgment as intended, on the basis that the further evidence may affect the decisions announced in principle."

On 26 September the matter was further adjourned to 15 October for a two-hour hearing, and the guardian was to be able to disclose notes that Jo had given her in relation to his wishes for the future. Unfortunately we have not seen them.

On 15 October the court ordered that mother and father "file and serve position statements only in response to the Guardian's Report of 26 September", those to be filed before 12 November and, save as there provided, "no other statements of evidence or affidavit may be filed and served without leave of the court". Quite right, I say. It was there recorded that in the interim pending the delivery of the

judgment the father was to be allowed indirect contact to the children at reasonable intervals, such correspondence to be delivered via the CAFCASS officer, Mrs Kathryn Holmes.

Then, again as I understand the position, the judge delivered a judgment dated 31 December, and although the matter came back before the court again in April he ruled, effectively, on 7 May in the terms I recited at the beginning of this judgment. So the slightly unusual position in which we find ourselves is that we are considering an appeal against an order made on 7 May with no judgment or transcript of what occurred on that day, but being invited -- and no-one objects to this -- to treat the judgment leading to those orders as the judgment that had been made some months previously on 31 December. It is all rather peculiar, and I will return to that in a moment.

Turning then to the judgment of 31 December, the judge carefully, and it must be said, fairly set out the history. He dealt with the father's strong belief, repeated passionately to us today, that the mother suffers a personality disorder. The judge refused to admit a letter from Dr Stuttaford, quite rightly in my judgment, for it was not a proper medical report, no permission had been given for him to produce it and procedurally it was totally wrong for him to have been involved in that way. In mitigation it seems to me that his involvement is much more as an old family friend than as an expert, though of course Dr Stuttaford has, as is well known, great medical qualifications. An attempt was made, until I stopped it, to call Dr Stuttaford today, but this court does not entertain fresh evidence in that way.

The judge did not accept the criticisms of the mother. On the contrary his findings in that regard were that she was a basically truthful witness: see paragraph 34 of his judgment. He did not regard her as suffering any mental disorder, but as a woman simply tired of the events of the past years and genuinely seeking a solution to them. The judge also held:

"The children look to her for cues, and she is, in my view, communicating to them consciously or unconsciously her reluctance to commit wholeheartedly to a resumption of contact. In my view she is tired with the current situation and I do not believe that she is deliberately prolonging it."

He was critical of her, saying:

"Her unilateral action in thwarting contact has not helped, and her insistence upon the involvement of the Domestic Violence Intervention Project may not be the panacea that she thinks it is."

Of the father the judge had expressed his views, and they were not entirely favourable to him. He was, however, impressed by Kathryn Holmes, the guardian in the case, and rejected the complaint that she was part of a conspiracy to diminish men or to suppress fathers. The judge was not prepared to find systematic alienation of the father by the mother.

Confronted thus with the sharp dilemma about contact, he properly had regard to the reports of the National Youth Advocacy Service, to which I have already paid tribute and to the reports of Kathryn Holmes. I turn to them. She reported on 19 March, at a time therefore shortly before the two-day hearing on 22 and 23 March. She expressed her views in these terms, at paragraph 15:

"In my opinion, it would be of benefit to the children if [Mr P] would agree to undertake counselling to address the issues that I believe he is struggling to terms with, such as the feelings of anger towards [Mrs P] in relation to the loss of his home, family etc. In my view, it would also be helpful if he would agree to address his underlying attitudes towards [Mrs P], although realistically at present I have reservations about his motivation to change. [Mr P] could access the services of organisations such as DVIP or [and it is important to emphasise 'or'] Relate. I will hopefully be able to provide the court with more information about the possible counselling services at the Hearing on 22 March 2007. I would recommend that if [Mr P] wishes to act in the long term best interests of the children that he does access such a service.

16. I am of the opinion that if [Mrs P] could be reassured that [Mr P] was at least beginning to consider the impact of his behaviour on her and ultimately the children she would be more supportive and encouraging of the children with regard to contact with their father."

That was apparently discussed during the hearing on 22 and 23rd, but neither party then appears to have been willing to move towards any form of therapy, counselling or mediation.

It is interesting to read the recommendations made urging the final resolution of this long outstanding and vexing question, and it was proposed that Jo and Ju should continue to have direct contact at the contact centre. She suggested that unsupervised contact was tried by Mr P meeting the children at the contact centre and taking them out for an hour before returning them to the contact centre for the second hour. Eventually the suggestion was accepted by the judge.

Following the children's refusal in August, she filed a further report dated 26 September. This is a report that the father should read carefully. He has it in his head, wrongly in the judge's view, and wrongly in my view, that this officer is hostile towards him. She has demonstrated no hostility

whatsoever, she has recommended contact and she has done her job, and there is no possible basis for the father's almost paranoid view that this is some conspiracy to do men down. She was charged with the responsibility of speaking to the children to ascertain why they were apparently reluctant to accept the contact she had recommended. Gr set out her reasons in paragraph 8, Jo in paragraph 10 and it would pay the father well to read what Jo was saying. This is a little boy, I remind myself, of then eight years old and he is telling this lady, who has -- and I am grateful for it --attended here today to show her professionalism:

"He was fed up with his father and fed up with the contact centre"

And perhaps who could blame him. He was worried that if no-one was supervising or watching father might get cross with him and hit him. Why that fear is there may be a matter of some debate, but that the boy does hold that view does appear clear from what he was telling the welfare officer. Jo does not like seeing his mother upset because it makes him sad. It is of course a typical response.

Paragraph 11:

"I was surprised by Jo's stated views as he has consistently said he wished to have contact with his father at the contact centre."

So here again Mrs Holmes is demonstrating her impartiality and her surprise. She met Jo again, and disturbingly paragraph 12 recites more of what the boy feels; and in these cases one cannot ignore what the children feel, for their feelings are real and govern their actions. How the feelings are implanted is another matter, but the judge has to take account of feelings of children because the Children Act requires him to do so insofar as their wishes and feelings are capable of having weight given their age and understanding.

The little boy then said:

"[Jo] told me it would be a big worry for him that his father might not bring him and [Ju] back if they had unsupervised contact with him. [Does this hark back to January 2006?, I ask rhetorically] He told me that even if the Judge made his father promise that he had to return them he did not think his father would listen. Jo repeated that he was also worried that his father would shout or hit him if he said

something his father did not like. He said if his father shouts or smacks him 'I curl up and get small and hide my face.'"

"I curl up I get small and hide my face", from the mouth of an eight- or nine-year-old, whatever he was. How sad that he should say if his father shouts or smacks him he curls up, so there are obvious problems in this family. He did say if the court had decided that contact should continue at the contact centre he might have continued seeing his father and certainly would not have panicked as much, an important observation. Ju thought contact was OK; Gi was the least emotionally affected by the parental dispute.

The recommendation of Mrs Holmes was a perfectly proper, and if I may say so, sensible one to make. She concluded that the children were worried if contact was unsupervised:

"b) They do not like their father being angry with them.

c) They do not like their mother being upset.

d) They do not want unsupervised and/or any direct contact with their father."

Thus she recommended that the judge had a difficult situation to deal with, for which there was no easy solution. And she spelt out the options for the court to consider. The first was contact for the two boys and possibly Gi, when she wishes, to continue for a lengthy period at the contact centre. It may be, she said, that "if Jo is reassured that contact is not going to progress to being unsupervised for some considerable period he will feel happier about having ongoing contact with his father". The other alternative was to be a lengthy period of indirect contact to allow dust to settle. She did observe that if the court believed the former option was the best, it would need to consider whether the father should be given access to the children's address and information about their schooling. This is a particularly pertinent issue if contact is to be re-established at the contact centre. The pressure on the children not to disclose their address and Mr P's wish to have information about their schooling has undoubtedly been problematical for them.

The final paragraph of her conclusion was this:

"Whilst both of these options would provide some emotional respite from ongoing Court proceedings for the children, neither of them addresses the underlying issues of the parental dispute that have been

present throughout these proceedings. It would in my view ultimately be in the best interests for [Mr P] to have counselling in relation to the issues outlined in the Welfare Report dated 15 March 2007 and for [Mrs P] to then have counselling to assist her in supporting contact."

So that was the report before the judge, and his conclusion was in a short paragraph 50 at the end of his judgment, in which he said this:

"…it seems to me that the issue of contact needs to be reconsidered. The current position, with the children all expressing reluctance to have unsupervised contact, is far from satisfactory. But I see no alternative to accepting the harsh reality of that situation. To expose the children, against their wishes, to a regime of direct contact would, in my judgment cause them enormous distress and potentially prejudice any development in the future towards direct contact from indirect contact. I see no reason why there should not be reasonable indirect contact on the basis posited in the order which I indicated I propose to make in August of 2007."

And then he added as the last sentence of his judgment:

"I agree with Mrs Holmes that it would be helpful if both parents were to engage in counselling, and would be willing to hear submissions about that issue if necessary, and to amend my order if necessary."

This appeal against that contact order faces the huge difficulty that confronts so many seeking to appeal an exercise of discretion, that the Court of Appeal does not interfere unless the judge has erred so far that he has exceeded the generous ambit within which there is room for reasonable disagreement. Mrs Holmes spelt out the two possible orders, each of them was a perfectly tenable solution to the case: go back to contact at the contact centre, make it plain that this is going to last for a long time and there is not going to be any change and things will settle; or reduce the tension further by establishing indirect contact; and the judge had to make a choice. I am bound to say that I came into this court believing that, having read the written submissions of counsel for the mother and counsel for the guardian, this was an exercise of discretion with which the Court of Appeal could not interfere. But as the hearing progressed I became more and more concerned that the true underlying issue has not been fully or properly dealt with in a way which enables me to be satisfied that the judge has grappled with all the alternatives that were open to him, the most obvious of which was fully to explore, with the help of the guardian and through examination and cross-examination of the parties, the extent to which they would be willing to subjugate their intense personal feelings, their passionate conviction that each of them is right, to admit the possibility that they may be wrong, to admit the possibility that change could come about and to demonstrate that by undertaking some form of counselling. I can understand that this proud, intelligent father is humiliated by the findings of domestic violence against him, is humiliated by the prospect of having to attend a domestic violence

course for anger management, but Mrs Holmes also recommended Relate, the marriage guidance service, and the good Dr Stuttaford with his innumerable connections and wide experience is, I have no doubt, well able to recommend to this father some course of anger management in which he can explain his feelings of anger and bitterness at this whole horrible six years of unhappiness, from the day the marriage broke down, his being removed from the home, the constant difficulties over the children. It is enough to make any ordinary man just a little bit angry, but that anger has to be contained, and sadly this father at the moment shows no capacity for containing that anger; hence the need for him to subject himself to what may be the humiliation of counselling and therapy, in order that he might begin to see how the other side view his behaviour and having some understanding of what the other side think of him is vitally important, and it enables changes to be made where reasonable changes are necessary.

So that was not fully explored at this hearing, nor was the mother, it seems, sufficiently challenged by her need to undergo some form of therapy and counselling, her need to participate in a programme of help which might go some little way to assuaging the father's implacable conviction that she is a woman with severe mental problems such as spill over to the detriment of his children.

In my judgment contact should not be stopped unless it is the last resort for the judge, and I have come to the conclusion that HHJ Farmer, who tried this case perfectly fairly, did not have the opportunity over a continuous space of hearing to grapple with the problems in order to be able to hear the evidence in full and rule upon it. It is in my judgment unsatisfactory that he should conclude by agreeing that counselling would be helpful and be willing to hear the submissions about it and amend his order if necessary. He should not have made the order until he had had those submissions and heard the case accordingly.

And so, a little reluctantly, I have concluded that the learned judge failed to bear in mind that important element of the case, the help that could be given through counselling and, in failing to take into account that relevant factor, the exercise of his discretion is flawed and this appeal should be allowed. I am not totally unhappy with that conclusion because time has marched on. The eldest child has not seen her father since the breakdown of contact and the awful altercation in January 2006, so that is nearly three years since she has had direct contact with her father.

Gi has not seen father since October 2006, two years ago, and the boys stopped seeing him in August of last year, well over a year ago, and it may be that the time is ripe in any event for there to be a reflection as to whether contact can properly be resumed. There is no restraint on the father applying,

he is intent on applying I have no doubt, and I think in fairness to the father it is better that we set this judgment aside so that the judge has a fresh opportunity to look at the case in the round and as a whole and then arrive at a judgment in that fresh way rather than dismiss the appeal and require the father to make a fresh application, with the inevitable disadvantages that that brings against him.

I would allow the appeal and direct that this matter be reheard. As for the schooling questions, namely, whether the father is to be barred from knowing where the children are at school, and whether he is entitled to communicate with the school and visit by prior arrangement, if the father did not demur through his counsel it does not behove him well to complain to his counsel about it but since those aspects of the mother are inextricably bound up, as the CAFCASS officer observed, with whether or not there should be a direct contact, that order (if there is one) should be set aside. If there is no order, the father is at liberty to apply in respect of these matters.

I would set aside the whole of paragraphs 2 and 3 of the judge's order including the order discharging Mrs Holmes, whose help in this case is going to continue. She looks aghast at the prospect, but nonetheless her help is going to be invaluable in this case and I hope that she and those who represent her will continue to play their invaluable part.

Meanwhile I would order that there be no direct contact pending the rehearing, but that the indirect contact be maintained. It appears that the email communications have not been very successful. It would be preferable in my view, taking up the suggestion of my Lord, Stanley Burnton LJ, if the children were given their individual e-mail addresses so that the father is able to communicate directly to them. As my Lord observed, there is then a record of those communications. If they are inappropriate the father will pay the price; if they are appropriate he will gain the benefit. If the children do not respond the court will draw whatever conclusions are appropriate from their failures. If gifts are not being passed on they should be, and I hope that the mother will accept this admonition from me that the order of the court that mother act as the conduit is to be obeyed, for the only other option is for the gifts to be sent directly to her home and she will not like that. She has a bit of a choice to make and a bit of encouragement to give if, about which we cannot be sure, the presents are not getting through.

So I would allow this appeal, discharge the judge's order, direct a retrial and I would meanwhile continue the indirect contact ordered by the judge until the conclusion of that rehearing.

Having heard the submissions of counsel, it seems to be common ground they would prefer another judge to hear it. I intend no discourtesy to Judge Farmer in saying that in those cirumstances that it looks better for the appearance of justice if someone else try it if possible. I am sure, truth be known, he will be totally delighted to pass it on to his colleagues.

Lord Justice Stanley Burnton:

I agree with all that my Lord has said.

Sir William Aldous:

I also agree.

Order: Appeal allowed