Case No: ZC17P00039

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21st February 2023

Before :

MRS JUSTICE ARBUTHNOT

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Between :

NADINE TAYLOR, MATTHEW O'CONNOR AND FATHERS FOR JUSTICE LTD	**Proposed Intervenors**
- and –	
BEN JONAS ALCOTT	**1st Respondent**
- and –	
KATY ELIZABETH ASHWORTH	**2nd Respondent**
- and –	
CHARLIE DANGER ALCOTT (A MINOR) (through his Children's Guardian, Ms Eileen Carr)	**3rd Respondent**

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Dr Michael Pelling (instructed by the **Proposed Intervenors** by Leave of the Court under the Legal Services Act 2007)
The 1st Respondent in person
Christopher Hames KC and Jane Campbell (instructed by **Goodman Ray**) for the **2nd Respondent**
Fiona Holloran and Anna White (instructed by **AFG Law**) for the **3rd Respondent**

Hearing date: 20th February 2023

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JUDGMENT

Mrs Justice Arbuthnot:

Background

1. The father is Australian whilst the mother is English and I am concerned with their son who was born on 10th October 2013 and is aged nine. The child lives with his mother and until last week the proceedings concerned his contact with his father. Last week the father decided to apply for a change of residence. This matter is listed this week for applications from the possible intervenors Fathers For Justice Ltd ("F4J"), Mr Matthew O'Connor and Miss Nadine Taylor. It is listed for a recusal application to be made by the father and subject to the decisions made about those applications it is listed for a three-day welfare hearing and for an argument in relation to the publication of the fact-finding judgment handed down on 13th April 2022.

The proceedings

2. These proceeding have a lengthy history which I will summarise briefly. An initial fact-finding hearing conducted in mid-July 2019 in relation to allegations **[REDACTED]** made by the mother against the father concluded on 15th August 2019 with the Judge at Manchester Family Court not making the findings the mother asked for.

3. At the fact-finding the Judge did not allow the mother to rely on a tranche of recent allegations **[REDACTED**] made against the father **[REDACTED**]. Shortly afterwards, the guardian attempted to obtain disclosure in relation to the new allegations **[REDACTED]** and a number of other allegations against the father **[REDACTED]**.

4. Much information eventually was provided **[REDACTED]**. On 30th July 2021 the original judge in Manchester re-opened his findings of fact. On 4th October 2021, the matter was transferred to the High Court and came up to me. I listed it for a fact-finding hearing.

5. The fact-finding before me took place between 14th to 18th February 2022, on 21st February 2022 and on 4th March 2022. I gave judgment on 13th April 2022. I made a number of findings against the father.

6. Throughout the lengthy proceedings, until November 2022 the father had been represented including by leading counsel Mr Setright KC. In November 2022, his legal representatives came off the record.

7. This occurred about two weeks before the welfare hearing was due to take place. On 27th November at the beginning of the welfare hearing, the father applied to adjourn the hearing. He wanted to be represented and it would not be fair if the court made him proceed. With some reluctance as I was concerned about further delay in resolving this case, I granted this adjournment. Mr Alcott has not obtained representation.

8. One of the father's witnesses at the fact-finding was Miss Taylor. Instigated by the father, F4J had had a campaign against the mother on the mistaken basis that she had been refusing the father's contact with the child. This campaign included a protest outside the BBC where the mother worked and an 'open letter' to her employers placed on their website. F4J accused her of child abuse.

9. The allegations made by the mother formed part of the fact finding. The evidence I had been provided with included extracts from the F4J website and letters they had written to the BBC.

10. Miss Taylor had been the campaign director of F4J at the relevant time working alongside her then husband, Mr O'Connor. She gave evidence about communication between the father, his sister and herself or Mr O'Connor. Her evidence was given in relation to this one aspect of the case which was relatively insignificant compared to the allegations of domestic abuse being made.

11. Unfortunately, it would appear that F4J, Mr O'Connor and Miss Taylor became convinced that I had made significant findings against them in the judgment. Yesterday I gave them the extracts from the Judgment where their names were mentioned.

12. On 8th February 2023 at a PTR that Mr O'Connor and Miss Taylor had been invited to attend but did not, I had heard submissions about the proposal I had made to the parties that F4J was to be provided with the extracts. The parties including the father were supportive of that step that the extracts should be provided to F4J before or at the beginning of the hearing on 20th February 2023.

13. Dr Pelling appeared yesterday for F4J, Mr O'Connor and Miss Taylor. The latter two were present in court.

14. On their behalf, Dr Pelling made the somewhat surprising submission that contrary to what I had assured him, I had not provided them with all the extracts from the judgment. I offered him the opportunity to go through the judgment using a search command to check for any other references to F4J, Mr O'Connor or Miss Taylor. Dr Pelling did not take up my suggestion.

15. F4J, Mr O'Connor and Miss Taylor also made allegations that for some reason, I had sent out personally a form with Miss Taylor's address on it to the parties when she had asked that her address remain confidential from the mother and her solicitor. This was raised with me in December 2022 and I took responsibility for the court's errors (it was an administrative mistake). It was unfortunate that Miss Taylor then assumed that I had sent out the form myself. I don't blame her for this as my acceptance of responsibility led to her thinking I was saying that I had sent the form out myself. A moment's thought might have informed her that Judges do not get involved in sending application forms out to parties.

16. Another matter that Miss Taylor refused to accept is that a number of her emails have been going into my clerk's junk box so it appeared that we were not responding to her applications.

17. Yesterday, I had a number of applications argued in front of me; the first was that I should grant rights of audience to Dr Pelling. The parties agreed and certainly I welcomed his assistance.

18. The second application was in relation to whether an application for the application for intervenor status to be heard in open court should itself be heard in open court and then whether the application for intervenor status should be heard in open court. The third was for the application for intervenor status to be heard in open court. The fourth argument was that I should give leave to F4J, Mr O'Connor and Miss Taylor to be intervenors in this case.

19. Dr Pelling in his elegant way argued that the hearings should be in open court as they did not concern Charlie's welfare. He relied on the case of *Scott v Scott* [1913] AC 417, a very well-known case which considers the importance and advantages of open justice including that of ensuring the judges' decisions are scrutinised. He did not give any particular reason why it should be in open court, other than it was either his explanation or perhaps that of Mr O'Connor's that F4J members were outside the courtroom getting bored.

20. His second argument was original as he admitted. He contended that Family Procedure Rule 27.10 was *ultra vires*. I set it out below. Dr Pelling said that the Family Procedure Rule Committee was not able to make a rule (Rule 27.10) that abrogated the Common Law right of family cases to be heard in open court. He said that he had researched the point thoroughly and had not been able to find a statute which allowed the FPR Committee to make such a far-reaching rule. Therefore, this Court should hear not only the applications in open court but hear the substantive welfare application in relation to the child I am concerned with in public too.

21. Of the parties to these proceedings which are clearly Children Act proceedings concerning Charlie, the father takes a neutral view of the applications for the matter to be heard in Open Court whilst the mother and the guardian opposed them.

22. Mr Hames KC for the mother relied on section 75 of the Courts Act 2003 which was the primary legislation which contrary to Dr Pelling's view gives the Rule Committee wide power to make rules about practice and procedure in proceedings in the family courts. They were set out in an accessible fair and efficient way and the rules were to be simple and simply expressed. Section 76 of the Courts Act 2003 allows the Rules Committee to modify any rules of evidence. The procedure set out in the FPR in relation to whether a court should sit in public or private was clear in Rule 27.10. Mr Hames also submitted that the Common law had changed since the days of *Scott v Scott*.

Discussion – sitting in Open Court

23. I have reminded myself of FPR 27.10 which says:
    "Hearings in private
    (1) Proceedings to which these rules apply will be held in private, except –
    (a) Where these rules or any other enactment provide otherwise;
    (b) Subject to any enactment, where the court directs otherwise
    (2) For the purposes of these rules, a reference to these proceedings held 'in private' means proceedings at which the general public have no right to be present".

24. There are the contrasting approaches to this rule. In *Luckwell v Limata* [2014] 2 FLR 168, [2014] EWHC 502 (Fam) Holman J whose courtroom 49 that we are in was his for 27 years and who was wise man, was of the opinion that the rules created no presumption in favour of family matters being heard in private whilst in *DL v SL (Financial Remedy Proceedings: Privacy)* [2016] 2 FLR 552 FD, [2015] EWHC 2621 (Fam) Mostyn J held the diametrically opposed view.

25. In my judgment the rule applies as I am dealing with Charlie's welfare and these are Children Proceedings. I do not consider I can sever an argument about whether the proceedings should be heard in open court or whether these applicants should be permitted to become intervenors and allow those arguments to happen in public.

26. I cannot conceive that it would be possible to hear these applications without mentioning the underlying proceedings. The skeleton argument produced by F4J, Mr O'Connor and Miss Taylor talks at length about what they call the findings of fact that the court has made and that they want set aside. This may have involved a lengthy consideration of detailed findings as they had alleged in their skeleton that F4J, Mr O'Connor and Miss Taylor were one of the main areas of focus of the court during the fact-finding hearing. They allege that I made an error of law in making findings directly and indirectly in respect of F4J. That by withholding the information about the "findings directly and indirectly" from F4J, Mr O'Connor and Miss Taylor I denied them their Article 6 and 8 rights.

27. I take the view that Mostyn J's approach is the right one. Rule 27.10 applies as I am dealing with Charlie's welfare and these are Children Proceedings. I do not consider I can sever an argument about whether the proceedings should be heard in open court or whether these applicants should be permitted to become intervenors and allow those arguments to happen in public. I have been given no reason by Dr Pelling why they should be.

28. Proceedings such as these should be held in private unless the rules or an enactment provide otherwise. Here there is no such rule or enactment. If I have a discretion, I do not exercise it in favour of sitting in open court. In these applications it is important not to be fettered by the inability to refer to

the welfare proceedings which are due, at the moment anyway, to start later this week.

29. As to Dr Pelling's second argument, Sections 75 and 76 of the Courts Act 2003 are clear. Family Procedure Rules may modify the rules of evidence as they apply to family proceedings (section 76 (3)). This is not restricted in any way. I bear in mind section 76 (2A) where it is said in terms the FPR may for the purposes of the law relating to contempt of court, authorise the publication in such circumstances as may be specified of information relating to family proceedings in private. It is quite clear that that subsection envisages hearings taking place in private.

30. I do not accept Dr Pelling's unusual argument that the FP Rules do not create rules that this court must follow. I do not grant the applications that the hearing in relation to intervenor status be heard in public.

Leave for intervenor status

31. The next application made by Dr Pelling was for F4J, Mr O'Connor and Miss Taylor to be given leave to have intervenor status. Dr Pelling did not at first address the two relevant cases where the question of intervenor status had been considered in family proceedings. With encouragement and once he had realised that if he did not consider the threshold set out in the cases he may not be successful in his argument, he did consider *Re W* [2016] EWCA Civ.1140, [2017] 1WLR 2415, [2017] 1FLR 1629 CA and *Re S* [1997] 1FLR 497 CA.

32. Dr Pelling remained coy as to why F4J, Mr O'Connor and Miss Taylor needed intervenor status. The two issues which remained live were the welfare hearing relating to the father's contact with the child and now the father's application that the child move to live with him. The second issue concerned the publication of the fact finding judgment, either anonymised or not. I explained to Dr Pelling that whatever my decision about the intervenor status, I would direct or invite F4J, Mr O'Connor and Miss Taylor to put in written submissions in relation to the publication of the judgment and its anonymization, if they wished to do so.

33. Dr Pelling in his submissions seemed to be saying that his application for intervenor status was aimed at intervening during the welfare hearing that is to follow. He seemed to say that once the references to F4J, Mr O'Connor and Miss Taylor were removed from the judgment that this might alter the balance of the evidence the father had to face. This seemed more of an argument for the father. This was not a reason to grant intervenor status to F4J when the court was going to consider what sort of contact was safe for the child and where the child was to live.

34. Having been provided with every extract where F4J, Mr O'Connor and Miss Taylor were mentioned, Dr Pelling turned his attack on an order made on 27th June 2022. This was a polite request sent to F4J saying the following:

> "1. UPON this court approving and positively supporting the removal of articles and documents placed on the internet by the organisation "Fathers For Justice" relating to the mother Katy Ashworth, the father Ben Alcott and the child Charlie Alcott, the court having found that these articles [were] intended to cause professional embarrassment to the mother and damage her reputation.
>
> 2. And it being recorded that the applicant father does not object to or oppose the court's respectful request to Fathers for Justice.
>
> The Court Respectfully Requests:
>
> 3.The organisation, 'Fathers for Justice' takes all reasonable steps within the power of the organisation to remove from the internet all information relating to the parties to these proceedings, Katy Ashworth, Ben Alcott and Charlie Alcott, specifically those articles attached and contained in the schedule to this order but not to be limited to the attached list".

35. The applications by F4J, Mr O'Connor and Miss Taylor for leave to be given to intervene were supported by the father but opposed by Mr Hames KC on behalf of the mother and Ms Holloran on behalf of the guardian. Both Mr Hames KC and Ms Holloran relied on the two authorities and said that the harm to F4J, Mr O'Connor and Miss Taylor was of a different degree to that found in *Re W* and *Re S*.

Discussion – Intervenor Status

36. It is well established that if findings of fact are likely to be made against persons who are not parties then that person has the right to fair treatment. This means joining them as an intervenor.

37. Any observations on Miss Taylor's evidence are set out in four paragraphs of the judgment. There are references to either her, Mr O'Connor or F4J in six boxes in a table which is in the judgment. There are one or two findings of fact about F4J which essentially find that the organisation was taking its cue from the father before taking their campaigns further.

38. In his argument, Dr Pelling questioned whether there were new findings made on 27th June 2022 when the order was made or whether the recital was a reference to part of the original conclusion set out in the schedule. He was assured that no further findings were made.

39. The references to professional embarrassment and damage to reputation in the order of 27th June 2022 were to be found in finding 8(iii) where it was alleged by the mother and proved that whilst the father had brought the mother's personal information to F4J, they sent a "public letter of complaint" to the BBC accusing the mother of being a child abuser. This letter was put on social media and F4J called for the mother's immediate suspension. This

letter and other documentation placed in the public domain were the subject of the respectful request made by the court.

40. F4J in its written argument relied on civil cases with none of the characteristics of this case which was heard in private and where no damaging findings were made about them.

41. I accept the arguments of Mr Hames KC and Ms Holloran that the relevant authorities are the two set out below.

42. In *Re W (A Child)* [2017] 1 FLR 1629 CA, the judge in the lower court made findings that a police officer and a social worker had conspired to produce evidence of sexual abuse irrespective of the truth of the matter. The Court of Appeal considered the potential effect of these findings on the careers of the officer and the social worker. The findings in that case were sufficiently serious to engage their Article 8 rights.

43. The Court of Appeal pointed out that these serious findings were not flagged up with the witnesses at all, they were significant, of a scandalous nature and came without any warning. The criticisms of the officer and the social worker surfaced for the first time in the judgement. This was unfair.

44. The second case was *Re S (Care: Residence: Intervenor)* [1997] 1 FLR 497 CA. That case too also had very different facts to the ones in this case. Allegations of sexual abuse were made against a third party, the new stepfather of the child. The question was should this person have been allowed to intervene. The answer was yes. The findings could potentially affect his future. As Butler Sloss LJ said at page 500 of the judgment about the allegations proved against him: "the consequences for Mr K are very serious. It may very dramatically affect his present marriage…. The findings of fact by a judge would follow on and he would be found by another local authority to be an unsuitable person with whom young children should be living. These are very serious findings made against him".

45. The principle from those cases is that where serious or significant findings are going to be made then the court should consider giving leave to a party to intervene. One of the matters the court should consider is whether there are serious consequences of the findings being made.

46. In this case, I do not accept F4J have any interest in the welfare proceedings in relation to the child and who the child lives with or has a particular type of contact with. The argument that if the findings were removed this would make the father's position a better one is not for F4J to make.

47. In relation to the publication or otherwise of the fact-finding judgment this will be considered at a later hearing. As I understand it, it was not being suggested that the findings concerning F4J, Mr O'Connor and Miss Taylor should be removed from the judgment. The position of F4J, Mr O'Connor and Miss Taylor was that they would not accept publication with

anonymisation or any form of redaction to the existing findings. The other parties meanwhile, had made it clear that they would not oppose anonymisation of these particular findings if that was the application made by F4J, Mr O'Connor and Miss Taylor. For the avoidance of doubt the father is vehemently opposed to publication being made in an unanonymised form.

48. I observe that there were no serious findings made against the proposed intervenors. None of the findings I have made will affect F4J's reputation or for that matter Mr O'Connor's. I have made no findings at all against Miss Taylor.

49. The difference between *Re S* and *Re W* and this case could not be clearer. To the extent that I made findings at all against F4J and Mr O'Connor these were that they were campaigning in their usual way. There is no significant effect on F4J or on Mr O'Connor of the description that they intended to cause the mother professional embarrassment or damage to her career. No such things happened here. There is no damage done to any reputation of theirs. There are very limited findings in the judgment and order and for the rest I make observations on Miss Taylor's evidence which are not critical of her at all. I noted too that it came to light later that the order of 27th June 2022 complained of by Mr O'Connor was tweeted by him. If any 'damage' has been done to F4J's reputation it can be entirely imputed to his behaviour in tweeting the order.

50. Although not argued in any detail by Dr Pelling, in their written submissions and when Mr O'Connor addressed me just before the lunch adjournment, he made it clear that he was angry about two matters. The first was that Ms Broadley the mother's solicitor had interviewed Mr O'Connor and Miss Taylor's son on unrelated family matters a few weeks before counsel instructed by her were cross-examining Miss Taylor in the fact-finding. The other matter Mr O'Connor was angry about was the order of 27th June 2022 which I have dealt with above. He said that the court was allowing the mother to avoid pursuing F4J for libel. The court was doing the mother's job for her. I am not quite sure I really understood the argument but as I have said above, it is F4J and Mr O'Connor who had tweeted the court order. There is limited weight to be given to a complaint by them that it damaged their reputation in those circumstances.

51. To the extent that F4J says that what happened was an unfair trial, I point out that the documentary evidence in the case had been sent to the mother's employer or had been placed on the internet by F4J and that Miss Taylor was questioned about these matters. It was Miss Taylor, the ex-campaign manager for F4J who suggested that F4J "with its own aims and motives took the campaign further than perhaps the father anticipated in the beginning" (box Jan 2017). I see no findings here of any significance when put in context of the aims of F4J and their public profile. I do not find they will be damaged by a recital in an order which they chose to tweet.

52. There was a suggestion in the written submissions from F4J that they may apply for a further finding of fact hearing to investigate the behaviour of Ms Broadley, the mother's solicitor. During argument, though, Dr Pelling did not pursue this course, but I was grateful to Mr Hames KC for the mother who referred me to *A County Council v DP, RS, BS (By the Children's Guardian)* [2005] EWHC 1593 (Fam), [2005] 2 FLR 1031. This set out the decisions a court would need to take when considering whether the court should resolve a disputed finding of fact.

53. Unsurprisingly, I should consider the interests of the child. The time that the investigation will take. The likely cost to public funds. The evidential result. The necessity or otherwise of the investigation. The relevance of the potential result of the investigation to the future care plans for the child. The impact of any fact-finding process upon the other parties. The prospect of a fair trial of the issue. The justice of the case. Was there a pressing need for such a hearing. The answer is no to the question of necessity or such an enquiry being in the best interests of the child.

54. I have not yet heard the father's application to recuse me and subject to anything he says I am currently of the view that no fact finding is necessary in relation to this separate matter which has no relevance to the welfare hearing or the question of the publication or otherwise of the judgment.

55. In conclusion neither the judgement nor the polite ungrammatical order will affect either Mr O'Connor or Miss Taylor's Article 8 rights or cause them difficulty. There is no breach of their Article 6 rights. There is no criticism of their aims and methods. What is stated was taken either from Miss Taylor's evidence or from the documentation that F4J had sent to the BBC or tweeted and put on their website.

56. F4J, Mr O'Connor and Miss Taylor's rights will be protected by them providing written submissions in relation to the publication or not of the judgment and arguing whether they want to anonymise their involvement with the father, or not.

57. I do not grant leave to F4J, Mr O'Connor or Miss Taylor to have intervenor status.

58. Finally, at 4.45pm yesterday, Dr Pelling in his final reply to the other parties' argument about whether they should be granted leave to have intervenor status, raised in oral argument for the first time that I should recuse myself in relation to the intervenor argument (and possibly the open court arguments) that had been going on most of the day.

59. I had given him 45 minutes with the extracts from the judgment at the beginning of the day. I appreciate he had been instructed late but I noted that F4J, Mr O'Connor and Miss Taylor had provided a written position statement and he would have had that in advance. He had had time to take instructions and decided what approach he would take.

60. He found it difficult to refute my suggestion that at that moment having heard Mr Hames KC's argument he felt the court's granting of leave for intervenor status was slipping away from him. He chose that moment to apply for my recusal. I told him it was far too late for that.

61. I observe that I had originally set aside half a day for all the arguments raised by F4J, Mr O'Connor and Miss Taylor but that I had then allowed a day. I was not going to allow the argument to start on a new point that should have been raised at the beginning of the day, if at all.

62. I made it clear, however, that I would hear the father's application for recusal this morning after giving this judgment.

63. Given my decisions set out above not to give leave for intervenor status I do not allow F4J, Mr O'Connor and Miss Taylor to have the transcripts of any of the hearings.