RE S (CONTACT: CHILDREN'S VIEWS) [2002] EWHC 540 (Fam)

[2002] 1 FLR 1156

Family Division

His Honour Judge Tyrer (sitting as a judge of the High Court)

22 March 2002

Contact - Adolescent children - Identifying real views - Supporting contact - Respecting views of children

The father sought contact with his three children, a girl aged 16 and two boys, aged 14 and 12. The girl had not had significant contact with the father for 13 months and had expressed a wish to limit contact with him to telephone calls for the foreseeable future. The elder boy had not had contact with the father for 9 months and had expressed a wish to have only pre-planned one-to-one contact. The father was pursuing contact with the two older children notwithstanding a letter written at the time of the divorce petition in which the father's solicitor said that the father recognised that the two older children were old enough to make up their own minds about contact, and that he would not force them. Contact between the younger boy and the father had been maintained to a degree, although there had been some difficulties and there was evidence of illness associated with the contact visits. The father claimed that the children were suffering from parental alienation syndrome, and that the mother was influencing the children against him. The mother claimed that she did not oppose contact with the father, but that the children were opposed to it as a result of specific incidents during contact with the father. The view of the children and family reporter was that (1) there should be no order in respect of the girl, given her age, abilities and the detrimental impact of the proceedings, particularly bearing in mind her educational stage; (2) although contact once a month had initially been favoured, there should probably be no order as to the elder boy; and (3) there should be contact on alternate weekends, with overnight contact once a month in relation to the younger boy, with greater consideration of the boy's own wishes.

Held - making a declaration but no order as to the girl, making orders for contact by negotiation and agreement with the boys and ordering the father to pay 75% of the mother's costs - the mother was anxious and traumatised by the conflict, but she had not poisoned her children's minds against the father. The father did not listen to these young adolescents, who had understandably been upset by specific incidents. Children of this age were entitled to have their views respected. They should have been allowed to make decisions without the pressure of being asked to select between one parent and another. Compelling these children to have contact would be counter-productive. The alternative was preferable: to try persuasion, to give respect to their views, to acknowledge what they were saying, to listen to them and to provide opportunities for negotiation, in effect to treat them as young adults with minds of their own and opinions which were to be taken at face value without being criticised. If young people were to be brought up to respect the law, then the law must respect them and their wishes, even to the extent of allowing them to make mistakes. The court would declare that it believed contact to be in the children's best interests, and that the children should be given the opportunity for such contact. In respect of the girl there would be no order for such contact, which should be agreed between her and the adults concerned. In respect of the elder boy, the court would order that he make himself available for contact with his father by mutual agreement, on the basis that a reasonable level of contact was at least once a month. In respect of the younger boy, the order would be for a range of options to be offered, all pre-planned, with an agreed activity, and one to one. Although no order would be made under s 91(14) of the Children Act 1989 it should be obvious to both mother and father that these

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proceedings had been corrosive and damaging and that neither should come back to court. The father had been unreasonable to pursue his application, having received the children and family reporter's view of the children's views and feelings and having said in terms that he would accept the elder two children's views. Although he should not be ordered to pay the whole of the mother's costs, a costs order would be made against him for a significant part thereof.

Statutory provisions considered
Children Act 1989, ss 1, 8, 91(14)
European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

Cases referred to in judgment
G (Costs: Child Case), Re [1999] 2 FLR 250, CA
Gojkovic v Gojkovic (No 2) [1992] Fam 40, [1991] 3 WLR 621, [1991] 2 FLR 233, [1992] 1 All ER 267, CA
M v H (Costs: Residence Proceedings) [2000] 1 FLR 394, FD

Jonathan Tod for the applicant
Antonia Lyon for the respondent

Cur adv vult

HIS HONOUR JUDGE TYRER: In these proceedings a father is seeking contact with his three children. I have heard oral evidence over 2 days from both the father and the mother, the paternal grandmother, the children and the family reporter and I have read a bundle of documents, including statements and exhibits, that have been sent with submissions and skeleton arguments. I have considered all the material, both written and oral in coming to conclusions on what is a sad and difficult case.

The children for whom I am concerned and whose welfare is my paramount consideration are a girl and two boys. In chronological age the eldest is V, who was born on 12 February 1986 and is now 16 years and one month of age. Next is JO, born on 17 July 1987. He is therefore aged 14 years and some 8 months of age. Last is JA. JA was born on 18 March 1990. He was 12 on Monday of this week.

Their father is the applicant. Mr S was born on 14 March 1954. He is currently living in Italy. He comes to this country frequently and when he does so is based with his mother, the paternal grandmother, who lives in Hertfordshire.

The mother is the respondent. She is Mrs S and she was born on 23 November 1958. She is 43 years of age. All three children live with her. Since they are the legitimate children of their parents' marriage, by operation of law under the Children Act 1989, both mother and father have parental responsibility for them.

This is, in many ways, not merely a sad case but has elements of the tragic about it. I am dealing with three adolescent children caught in the middle of their parents' strife. It is plain, indeed it is not in dispute, that all three are being adversely affected by this strife and the effect is different for each of them.

A word about each child. V is the eldest and she is 16. She is a pupil of a High School in Buckinghamshire. Buckinghamshire is a selective education

county and although I was told V did not go through the selection system, because the family lived abroad until the marriage broke down, the fact is that she was deemed intelligent enough to be accepted to that school. It is a girls-only grammar school. She is in her second year of the key stage four element of the national curriculum. She is due to sit her GCSEs in June of this year and, according to her mother, her expectations are good.

All three children suffer from dyslexia in one manifestation of gravity or another. V, I am told, suffers from dyslexia to a degree. Notwithstanding that, she is expected on her mock exams and on her ability to attain eight A-starred GCSEs and one each in B and C grades for her two languages. Those are, by any stretch of the imagination, good expectations. It is imperative that she gets her best chance, whatever it is that she intends to do in the long term. She has interests both inside and outside school.

An indication of her current difficulties, as they manifest themselves in her as a result

of the pressures of this case, can be seen in a letter from Dr D at p 75C of the bundle. True it is that Dr D saw V once in October 2001 and not since, but she was tearful, upset, not sleeping, lacking in motivation to eat and was referred to a child guidance clinic in Buckinghamshire and has seen a general practitioner's counsellor at a general practice medical centre in a town in Buckinghamshire.

This town, I think I omitted to say, is where the family live in what, if I remember rightly, is the former matrimonial home.

The father's one wish (or one of his wishes should I more accurately say) is that if he is not permitted an order in relation to contact to V he would like a 2-hour session, supervised or unsupervised, for him to explain his position to her.

On his behalf, it was submitted to me that there would be no harm if it happened tomorrow. In the context of whether or not it should wait until after she had sat her GCSEs, I found the father's request and the submission in support of it amazing. Its potential to be utterly ruinous to this child at this stage of her life, in my judgment, is so obvious as to be beyond argument but it was within the argument.

The last significant contact that the father had with V was in February of last year, some 13 months ago.

In cross-examination, the father said to me that recently things between him and his daughter had been improving. There had been what he said were 'nice phone calls'. I have no doubt that if that is true – and I sincerely hope it is – it will be brought to an abrupt end if I allowed this submission to succeed. I am satisfied that any discussion would be one-sided and painful and would be the end of any reasonable prospect of a relationship between V and her father.

JO is the second child. He is academically behind his older sister by one year, therefore he is in his first year of key stage four and planning to take the main body of his GCSEs in 2003, save for one. He attends an all-boys grammar school in Buckinghamshire. He is due to sit mathematics at GCSE level this year, so that that GCSE can be under his belt as an early credit with a view to concentrating on wider issues next year. He too has outside interests beyond the classroom, which include skateboarding, the occasional visit to London with friends and he has been through a particular phase of his life from which he has emerged, it seems, unscathed.

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I was struck by a piece of evidence from his mother, namely that he is less biddable than V. His last significant contact with his father was in June of last year, now some 9 months ago.

The youngest is JA. Of the three, he is the most affected by dyslexia and, in the mother's view, dyspraxia. He goes to a school for those with educational needs. There JA needs and is given an amanuensis and a reader for his educative needs. Dyslexia is a disadvantage that produces difficulties in reading and difficulties in writing, particularly in spelling. JA's mother told me that his SATs (standard assessment tests) were satisfactory and that his capacity to read, all other things being equal, is that of an 11 year old.

He too has outside interests. There was evidence, which I accept, from the children and family reporter that JA finds support and confidence within his family setting, that is with his mother and his two elder siblings. I was struck by her description of how they helped him in focusing his mind on matters that he wished to discuss with the children and family reporter in a kindly, supportive and non-invasive way.

There are a number of issues in this case which underpin the decisions that I have to make. I take them in no particular order, although the first is probably the most important from the parties' point of view.

What I am asked to consider and to try and make findings about are what are these children's real views. Indeed, in so finding, who represents those views. There are three potential sources of representation: the father and the paternal grandmother; the mother; and the children and family reporter.

Central to that issue, what are the children's real views and who represents them, is

the basic issue in this case, as I see it at any rate. That is whether or not the mother is influencing these children against their father or, as the paternal grandmother voiced it, poisoning their minds against their father.

Depending upon those not unimportant aspects, I have to consider, since it is not, at any rate on paper, in issue how best to help each of these children individually and collectively to promote some relationship with their father. The father clearly wants it; the mother says that she does not oppose it.

It is, in my judgment, not irrelevant to speak out as to a non-issue. There is not and there never has been any issue about residence. These children live with their mother; their father is based in Italy. Therefore, they live with and have their base with their mother and the stability and security of that base is not to be overlooked.

There are within the papers two chronologies, one more objective than the other. The father's has tried to paint a number of particular issues from his point of view; the mother's is more objective, as I say.

A short chronology can suffice. These parties met and married in 1983. The children arrived in 1986, 1987 and 1990 respectively. It seems that the marriage began to fall apart some time in 1989 or 1990 with the father being filmed in a sexually explicit way with two prostitutes. Part or one of the entries in the papers suggests that that was found in or about 1990. Elsewhere there is a reference to it being found in 1997. It matters not which.

In or around 1998, the parties separated for the first time. The mother had discovered that the father was having some kind of a relationship with a woman in Cheshire. She overheard the father talking in a sexually overt way either to that woman or another in the summer of 1998 and it seems that V had overheard the same or a similar conversation at or about the same time.

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A reconciliation was attempted in 1999, which failed and the parties separated and have been apart for good, the father basing himself in Italy, the mother to the address in Buckinghamshire.

In May 2000 there was a decree of judicial separation. Ancillary relief proceedings were concluded in August 2000. In June 2001, a petition for divorce was issued, the fate of which I have not been able to find from the bundle and for my purposes it matters not.

Although I have some reservations about the necessity of considering factual issues in any depth, it is plain that both the mother and the father, particularly the father, place a great deal of store by the factual issues and their adjudication and I shall offer some findings. I shall do so in relation to the three children, because it seems to me that it is the effect of conduct on them that is relevant and not what particularly happened insofar as the parental involvement or otherwise is concerned.

So far as V is concerned, it does seem to me to be relevant and necessary to consider what happened on the skiing holiday in February 2000. It is common ground that she came home early from it. It is hotly disputed as to the reasons why. The father's case is that the mother pressurised her to come back and so she cut the holiday short and returned to her mother on that pressure. The mother's case is that, according to V, the father behaved inappropriately.

The father's evidence on the subject was that V was in tears on Sunday morning and on the Wednesday she said that she wanted to go home, she did not say why, and she was allowed to go. He denies the allegation that he says was raised suspiciously later, suspiciously in the time that it took for it to surface, that he had behaved inappropriately towards her, in effect suggesting a bed sharing. He says that there were three relevant bedrooms. One had a double bed and he occupied it. A second room, perhaps not a bedroom, had a pull-down bed which the two boys occupied. The third, a bedroom, had two single beds in it, one of which V occupied. He therefore says that there was neither the need nor the suggestion of inappropriate bed sharing, and hence he asserts that it is the mother's pressure that caused V to go home early, rather

than any behaviour of his.

The mother's evidence was to the effect that V was in tears during a telephone call. She persuaded her to stay on holiday. The reason why she persuaded or tried to persuade and partially succeeded in persuading V to stay on holiday was because she had made an arrangement with her boyfriend that they should go away together whilst the children or the relevant children were away.

When V insisted on coming home, the mother and her friend had to cancel their arrangements. The mother says that V had only agreed to go in the first place on the basis that she could return if she chose. She said she was unhappy and she chose to return early home and did so.

V gave an account to the children and family reporter which appears at p 118 of the bundle. In a word, she finds her father's desire for physical affection invasive and she repeated in a sentence or two, according to the report, the allegation that the father wanted her to share his bed.

It is perfectly plain to me that something happened there to upset her. All the accounts that I have heard otherwise about her suggest that she is a sensible young lady and a mature one. It seems to me that her explanation is the most probable explanation and not the assertion that she was under

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pressure from her mother. Indeed, it was to her mother's inconvenience that her daughter returned, bearing in mind her mother's plans.

The factual issues in relation to JO seem to me to come down to some determination as to what photographs or photo-images JO saw on a lap-top computer. It is true, as one reads the papers in the different places that the accounts that JO is reported to have given are to be found, that he has given slightly varying accounts. I take by way of example (because it was given to a neutral third party, namely to the general practitioner, Dr D) the recorded account at bundle p 75. According to Dr D's letter, JO attended Dr D's surgery on 29 March 2001 after a holiday and effectively it comes down to this. Whilst JO was playing on the lap-top computer, 'He found several pictures of his father in sexually compromising positions, including a picture of him with an erect penis'.

The father's evidence is that there are no such pictures of himself. Significantly, the father does not dispute that there was a picture of a male, naked from the waist down, on the computer in question. He accepts that JO said to him that he did believe it was his father. The father says that JO was just embarrassed. The father denies that the incident upset JO at all. He said in evidence to me, 'It has been used in such a way as to upset him'.

I bear in mind what I see in the letter from Dr D at the page reference given, namely that JO was off-hand with the doctor at first but then later contacted either the doctor or the surgery, in fact the letter makes it plain that it was the doctor, and asked for some counselling.

The paternal grandmother, the paternal grandmother, went so far as to say in cross-examination: 'I have heard what he says. I don't trust JO. I think he fears his mother and her wishes'. I found that particularly revealing.

The mother's evidence was that JO has made it plain that he knows that it is his father in that photo-image on the computer because his father has a mole on the upper abdomen at one side and that apparently was the identifying mark or blemish that caused JO to realise that it was indeed his father in the picture and not another person.

Quite apart from that upset, which would affect any 13- or 14-year-old child, JO was with a school friend, said the mother. The school friend saw it as well. The story got round the school. JO was not bullied, but it went round the school and doubtless he got teased about it.

This particular friend was JO's best friend. The family got to hear what the best friend and JO had seen and the best friend and JO effectively no longer were best friends

because the best friend dropped him. JO went to see the doctor, who offered him counselling, said the mother. JO thought about it, accepted it and has seen the counsellor twice.

To the children and family reporter at bundle p 199, JO, according to the children and family reporter, has been upset, scared and unsure what has been going on, but, as she put it, aware of his father's infidelities.

I entirely accept the mother's account of this. Rightly or wrongly (and that is the least important aspect of this unhappy episode), JO identified his father as being the person in the photo-image. Whether he was right or whether he was wrong in his identification is not the point. The point is that he has paid a dreadful price for believing that it was his father in the effect that such a sight would have engendered in him and in losing a friend and being mocked at school.

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To my mind, it is inconceivable that a boy of his age should not have found that to be truly devastating, not least in its effect as well as the shock of it.

There is also a relevant factual issue to consider in relation to JO in terms of the skiing holiday that took place in February 2001 as a whole. It is now plain that to a degree it was similar to skiing holidays that these children have been fortunate enough to enjoy on previous occasions and during happier times in that they were on this occasion (as in the past) one of a number of families who go together and share the facilities of the particular resort.

In February 2001, four families went together. One of them included a lady called S (I do not know her other name) and her children, whom I believe to be boys. The boys neither JO nor JA knew, nor did they know S.

The father, in his evidence-in-chief, said that he told the boys some 2 weeks ago that S and her boys were going to be in the party. What he omitted to tell them was that he was in some kind of a relationship with S in that he and she were boyfriend and girlfriend.

The father in his evidence accepted that one night he and S went off to a local hotel to spend the night together and he agreed that S and her children returned to Milan after the holiday.

There was all the recipe for potential trouble in the circumstances of the boys finding out that their father had in fact included someone with whom he was in an affectionate relationship.

The mother's evidence about this holiday was that she did not hear from the boys at all until JO phoned on a friend's mobile. She said that when the boys came home they were upset. JO said to her, 'You don't know what this week's been like', and JA cried. JO ran off up the street with the mother in pursuit. The complaint was that the boys did not know in advance what S's relationship with the father was. They found it out because, as one of them put it, they found the father 'physically fussy' with her and they did not like being left alone.

In cross-examination, the mother was asked about her views. She said that she would have preferred to have prepared the two boys for what was happening. She denied that she has any problem in itself with her former husband having a relationship with a woman, S or otherwise. She admitted that she herself had had a relationship or friendships with two boyfriends since she and her husband split up and therefore had no particular grievance nor objection to her husband or former husband having a relationship outside.

She said (and she used the word 'furious') that she was 'furious' at the way the thing had been handled, as she put it, 'at the way it has been done', 'the children were so hurt'.

To the children and family reporter, JO said that he wanted a one-to-one contact with his father and he wanted his contact to be pre-planned. It does not, in my view, take a genius to see cause and effect. Spelling it out if it is really necessary, why is it that JO wants one-to-one contact with his father and why is it that he wants to know what is

going to happen first, rather than finding out when the occasion arises?

It is common ground that the mother and father spoke on the telephone. It is common ground that the mother was so beside herself that she simply said, 'S, your whore' and slammed the phone down. She accepts that she was very angry. Listening and looking, I am in no way surprised. The father handled this badly and the boys obviously felt let down, if not betrayed, by the way that they had been put in an embarrassing position by the fact that he told

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them only a half truth at best as to who was going to be on the holiday and not the relevant part of the truth, namely his relationship with the lady in question.

There is another aspect, and that relates to an incident on 14 April of last year. I do not intend to say much about this. The accounts are totally different. What is the relevance of the incident insofar as it concerns me? The relevance of the incident is whether or not the father hit the mother. That is the only point of interest, it seems to me, that I derive in the context of the issues I have to sort out about contact as to what happened. The answer is that he did; I am satisfied he did. How he did it is immaterial. Whether it was a throw away with an arm or whether it was deliberate, it was immaterial.

The mother says that it was a hard blow and painful and she was in tears. She accepted, contrary to all the allegations that have been made, that the father was not physically abusive during the course of their marriage, but she was of the opinion (and I accept her opinion) that the father lost his temper. The point is that this was an incident that involved the children and it should not have occurred.

There are other matters that relate both to JO and to V and they relate to letters which have been written and which have been shown in the bundle to me and questioned about. I start with the letter at bundle p 84 dated 28 February 2001 which of course was immediately after the skiing debacle. That is a four paragraph letter, handwritten but typed up for my benefit, which effectively purported to lay down parameters for access, or contact as it now is.

I have no problems with this letter. I accept the circumstances in which it was written, immediately after the unfolding of what had happened on the skiing visit. It seems to me that whatever else the mother had to react to the distress of her sons by taking some sort of stance.

If I had no problem with the letter on p 84, it is not the same response to the letters that are typed on pp 87 and 88. The background to these letters is that they were written by the mother. They were then countersigned by the elder two children, as can be seen on p 87 for V and p 88 for JO. I am entirely satisfied that it was wholly inappropriate to invite the children to countersign such letters as this, even if they were broadly what the children themselves had said. I entirely agree with the children and family reporter in her observation in the bundle at p 129 that it contributed to the polarisation between the mother and the father.

There was a better way, and it should have been adopted. There is nothing to stop one parent writing to another; quite the reverse. But it should have been the mother's letter and not countersigned by the children. I accept that it would have had less impact than it undoubtedly had in the terms in which it was written, but I have no doubt whatever that that significantly raised the temperature and, worse, gave some ammunition to the view that the father holds and held that this is evidence that the mother has been influencing or poisoning the children against him. This was a piece of letter writing that directly involved the two elder children in their parents' battle and it should not have been a course of action that should have been countenanced.

The issues factually relating to JA are consequential rather than direct. The skiing trip in February 2001 was a skiing trip that he joined in. I have already recounted the evidence from the mother as to its effect when he got home. His awareness of the difficulties is obviously less acute than that of V and JO. But he is aware, it is plain that he is aware, of the difficulties of the overall picture, although in his case contact has

been maintained to a degree.

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It does appear that contact with him is better than it is with either V or JO and it is contact that needs to be preserved in his interests.

With that recognition, albeit only in part, of a vast array of factual matters that divide the parties, I need to look more globally at the arguments between the parents. I start with the father's case.

There are a number of things that I wrote down as to my immediate impressions of him as a witness. The degree of his anxiety was his strongest impression that he made upon me, followed closely by his obvious frustration. It is plain that his relationship with his children, particularly the older two, is withering. And it is plain that he is anxious and frustrated about it and about his perception of the injustices of it. He wants a framework for contact. He believes that the boys, JO and JA, would be relieved (a word that was frequently used) if I made an order for contact. He said that if I did not make an order that would be a disappointment to him. He would consider (he told me) that the court (that is me) had let him down. He told me that he wanted the court (that is me) to take responsibility for ensuring that some contact takes place and, indeed, that contact works.

He is a man of firm views and he believes in expressing them, if necessary at length. He is a man, in my judgment, who tends not to listen. He has clearly made his mind up and it is unlikely that he is going to be able to change it. It seems to me that he has a rigidity about his view and his outlook and that is an aspect of him that I have to accept and to deal with, because having once come to a conclusion about the rightness of his own views it is difficult for him to alter course.

I take what might be regarded in some quarters as an example to the contrary to explain what I mean. In his solicitor's letter written on 6 June 2001, which is about the time of the divorce petition and indeed about the time that this application was taken out, he said on p 2:

> 'Our client recognises that the two older children are of an age where they can make up their own mind about contact and he will not seek to force them to come.'

Because he is of the view that the children's minds have been poisoned against him, when the children and family reporter has said, in effect, in October of last year, in relation to both JO and, indeed, as to V, that the court should consider making no order, he has sadly been intent upon pursuing his application and seeking orders in the general way that I have described.

I have already referred to the fact that if I was to make no order in respect of V he would seek this face-to-face meeting for 2 hours with her so that she can be made aware from him as to what he has been doing and why.

His case in relation to V is that he believes she is being forced to choose. He makes the point that the allegation in relation to the February 2000 skiing holiday was not raised until the court proceedings got to Staines County Court and therefore it is a matter of her being pressurised. He did not appear to be able to consider that it might be a case of her having difficulty considering the effect of this in her own mind, let alone talking to anybody about it afterwards.

The fact is that if he were right about her being pressurised and poisoned against him by the mother or being forced to choose, that sits uneasily with his evidence that the conversations, at any rate recently, that he has had with her have been of a better quality. He puts down to maternal pressure an event that

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took place at Easter 2001 or thereabouts when he believed he had made an arrangement with V, only to turn up in pursuance of it and find that she had a different

idea. The possibility that two people were mistaken about the arrangement, the father wishing it and believing that V had acquiesced in it, does not appear to have entered the frame.

There is this aspect in relation to V, and that relates to the account, in or about February 2001, from the father and paternal grandmother in the paternal grandmother's house. The paternal grandmother said that she saw a lovely relationship between the father and V, who was giggling naturally with him. Indeed, she said on the Sunday there was a happy time when all three children came to lunch.

The difficulty it seems to me that is simply not being appreciated is that if these children are allowed to enjoy themselves in a non-pressurising way they are likely to respond. They are equally likely to react if they are put under pressure to do something without their maturity being borne in mind.

The father's case therefore is that V is having to choose and he wants to create space for her. I have no problem with either of those propositions. At the moment she is being made to choose and she needs to have space where she does not have to choose. I accept that she needs to be sent a clear message that contact has the potential to be beneficial for her. What is necessary is for her to be accepted as the young adult that she is and for her to be allowed to make her own decisions without being pressurised, I am afraid, by her father to make them in ways that he considers are in her best interests, happily happening to coincide with what he considers are his own. It is a question with a 16 year old of backing off, treating her as a 16 year old, and, once the pressure is off, allowing her to make what she will of the relationship that I entirely accept has potential for her.

JO's case is exactly the same.

The father movingly indicated to me that he would dearly like his son to come skiing with him. I am sure that, all other things being equal, skiing would be something that any child, JO included, would like to engage upon. The trouble is that his memories of it are so unhappy. He needs space. He needs to be accepted as the young adult that he is and he needs people and, in particular, his father to back off from him.

The father's case in relation to JA is that the court has succeeded. The father points to the court order of July of last year. The evidence that comes totally to me in relation to JA is that he is becoming, as the father put it, more watchful and, yet again, the father said in his evidence that he, JA, is being made to feel that he has to choose. It is a concern that this child, at his age and with his particular needs, is being placed in that position; and it is necessary for him to be given space and for people, particularly his father, to back off and give him that space.

The mother's case is, in essence, that she absolutely denies that she is against contact. She has told me that she wishes for the children to have contact but on their, rather than the father's, terms. She wants their wishes to be heard, considered and respected.

As the parent with whom these children live, she says that she does listen to her children. She denies that she interrogates them. The children and family reporter, in answering questions, certainly from me and doubtlessly from counsel, gave me a picture of a family atmosphere where these individuals were treated as individuals and allowed by the mother to express their own views.

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The problem here is that not only are the children under pressure but, as the mother told me, she feels under pressure as well. It is not difficult to see why. It is plain, fortunately, that she knew already, before having to listen to it in court, the views of her that are held by her former husband and by her former mother-in-law. She believes that her children are afraid of their paternal grandmother. She described the time when she first returned to this country with the children after the breakdown of her marriage, when she stayed with the paternal grandmother for a period of about 6 weeks. She described it as a difficult time. She told me that she has to bribe the children to see their paternal grandmother. I think she said it was £5 for a lunch.

She has good reason to be concerned, because I suspect that the children also know, at any rate in general terms, what the paternal grandmother thinks of her former daughter-in-law. When the paternal grandmother said that she thought that she had a good relationship with the children, the mother said she did not recognise the description. I can well understand the two totally different perceptions of the relationship and it adds to the pressure with the children caught in between.

What of the Children and Family Court Advisory and Support Service (CAFCASS) children and family reporter, FS? She has reported twice in the bundle at p 113 with an addendum report on specific matters at p 127. The reports are about the children. She makes the point, as is obvious, that the parental stances are stark. What the father told her is that he believed that the mother is opposed to a relationship between him and any of his children. He believes that the mother pressurises them to choose between herself and him; she has given them too much inappropriate information about the case; and it is added to the fact that the paternal grandmother believes that the mother has poisoned the children against the father and the father's side of the family.

The mother to the children and family reporter said that she had never prevented contact: the reverse. She had tried to encourage it. But she has her reservations, which come out of her perception of what her children tell her and what she considers in consequence are their needs. The mother told FS that she was concerned about overnight contact, about the venue of contact, about who would be attending contact and whether the children would be listened to by their father. According to FS, the mother said that she was basing herself on the children's own wishes.

Her evidence, split up into each of the children and bearing in mind that she gave her report in October of last year and that some 5 months have moved on since she did any work with the children, is based upon what she perceived and gleaned from what the children said to her.

She believes in relation to V that any order of the court would in fact be counter-productive. She said that if there was to be an order for a 2-hour meeting she believed that V would attend. She said that she would be happy to supervise it if the court required it, but she considered that V would be upset and distressed. Of course, one has to bear in mind (and I have borne in mind) the short-term effect that I see on V rather than the short-term effect that the father believes that it would have on V.

The children and family reporter reminded me (if I needed reminding) of the stage that V is at academically. She believes that V had been thinking about her opinions; she believes that V is upset at the court process; and she believes that V is upset because V's perception is that she is being made to choose.

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The children and family reporter's views on JO are also documented and were also the subject of some evidence. FS reported that JO wants a measure of personal responsibility. He does not want a set pattern. He wants to be able to see his father on a one-to-one basis. He wants to be able to pre-plan with his father what they do. Again, FS was of the opinion that JO had thought about his views before expressing them. I have also, of course, borne in mind the current state which post-dates FS's work with this family in the letters from the general practitioner insofar as they relate to JO on pp 75 and 75B and C. They, of course, as I repeat, are pieces of evidence, expert evidence if you like, but certainly untainted evidence, which bring JO's position up-to-date beyond the work that FS did with him or, indeed, the family.

In relation to JA, it is clear that FS found that JA gained confidence with his mother and his elder siblings around him. She told me how they were gentle with him, gentle in the sense of non-pressurised reminders to him of what he wanted to say and what he wanted to talk about. Subsequently, when one looks at bundle 75A, the letter from VP, the Buckinghamshire Mental Health NHS Trust at the Child & Family Consultation Clinic in Buckinghamshire on 75A, one sees what the problem is in relation to JA. That is that JA is making himself ill and complaining of physical ill-health in relation to contact and ahead of it. That is an aspect of which the mother spoke and to which I will

return later.

One of the issues upon which all of us asked FS is whether it was her perception that what was happening here was that the mother was putting pressure on the children and the expressions to her, FS, of their views was as a result of that pressure, or whether they were expressing their own carefully considered or considered views, that they were their own as a matter of their own free will. Her reply was that in her view and by her perception the mother is not intentionally pressurising the children. She accepted that the mother is anxious (as do I) and she accepted the possibility that the children are trying to appease her anxiety.

I found that FS's work was careful, it was well child-related, bearing in mind first the particular difficulties of these children, JA in particular, but their ages as well, which are well into the upper limits of the kind of age group of children, indeed the age of any individual child, where the court seeks still to intervene by making positive requirements.

I hope I can sum up the various views in relation to V and, indeed, JO and JA by looking shortly at what each party says in summary.

So far as V is concerned, the father complains that he has not really had contact with her for 13 months. His proposals are at B5 and 6 of the bundle. He seems to accept there should be no order save 2 hours supervised to explain himself. He seeks a number of undertakings. He told me at length, given the opportunity in cross-examination, what he wanted for each child. It was effectively a plea from the heart for the children to have a relationship with him and to understand his point of view.

The mother also supported the no-order principle. She objected to the requirement for a 2-hour meeting. V herself has said to the children and family reporter that she does not want direct contact and wishes to be free to telephone her father if she wishes to. The children and family reporter's view is that there should be no order to V based upon her age and her abilities and the impact of these proceedings, particularly bearing in mind her educational stage.

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The father's case in response for JO is that he effectively wants one weekend a month from about 16:30 pm on Saturday to 19:30 pm on Sunday with opportunities for skiing. Greater detail is set out in the bundle at B7.

The mother's case in effect is that there should be no order in the sense that there should be no enforced requirement for contact.

JO himself to the family and court reporter posed the question as to whether or not his father was actually interested in him. He did not want to be forced to see his father. He did not wish to stay over. He wanted a one-to-one contact period with his father which was pre-planned.

In her report, the children and family reporter seemed to be in favour of a once-a-month period of contact coinciding with JA when JA had a single day, but by the end of her evidence she had shifted to the no-order position with a question mark against it.

Understandably, it is JA that causes the most difficulty, not least because of his particular needs.

The father's case in the bundle at p 8 is that he wants alternate weekends from 10.30 am on a Saturday until 19:30 pm on a Sunday and he wishes for holidays, especially skiing. The detail is at the reference given.

The mother's case is that she will encourage but she will not force. The mother points to Dr D, the general practitioner, and the involvement there and wonders whether or not it would be better for JA to have contact with his father on more frequent occasions for shorter periods, perhaps weekly for 3–4 hours. The difficulty about that is a logistical one in that the father lives in Italy and there is a limit to his ability to come to this country for such contact.

When JA spoke to the children and family reporter, what he seemed to say to her (as I read it) is that he was content with the current level of contact: alternate weekends, staying once a month. He preferred, he said, that it was just him and not with S and

her children. It seemed to evolve from what he was saying that he would like alternate weekends, on the first of the alternates Saturdays only, on the second weekend Saturday and Sunday with a stay over. That seemed to be the recommendation in writing of the children and family reporter, but in her evidence, in the light of what she had seen, particularly in the letters subsequently, she was of the view that JA needed to be listened to too. She regarded the letters that I have seen, particularly from the general practitioner, as being concerning and that if JA is unwell, whether it is psychosomatic or otherwise, then his preferences and that aspect should be catered for. If he is seeking professionals (and he undoubtedly is) then they should be allowed to work for him alongside whatever contact was ordered.

By the end of her evidence as I discerned it, the children and family reporter was suggesting that if the second of the alternates was to stand, consideration ought to be given to the Saturday and the Sunday to be separate days without the necessity of an overnight stay if JA did not want it.

The problem here, as I endeavoured to outline at the beginning, is that there is now a fundamental divide in this family between the father on the one side and the mother on the other. Any common ground, it seems to me, has been in all probability squandered by what has happened over the last 2 days of painful evidence from both parents.

The paternal grandmother has made her position plain. She said it in terms. She believes that the mother has poisoned the children and that I should stop it. She said that the children were caught up in the middle.

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The father, I accept, feels frustrated. I accept that he is pushing hard for a relationship with his children. I am not entirely satisfied that he has yet grasped the fact that they are young adults who have moved on. There is no doubt that he is extremely anxious. I have already expressed the view that he talks a great deal and would do better listening a little bit more. I have no doubt that by pressing hard, as I am entirely satisfied he does, as and when the occasion presents itself, he is putting considerable pressure on the children. They have concerns about it, and they are resisting.

The mother to a degree supports them because she is their daily carer. In my judgment, the only thing that I need to say to the father is that, by going on at length as he does, the effect on young adolescents is that he is speaking, even hectoring them, but not listening to them. The more that he believes, as he does, and asserts that the mother is poisoning their minds, then the more upset, in my judgment, they are likely to become.

So far as the mother is concerned, this is a case of action and reaction being equal and opposite: the more that the father pushes the more she sees her role as shielding and protecting the children so that they can have space to make valid choices. The result is plain, at any rate in my mind, from seeing her: she is anxious and traumatised. The children see that she is anxious and traumatised because they live with her. They are sympathetic to her and they support her.

One of the many questions that was asked comes down to this. Is she telling me the truth? It was put to her many times by Mr Tod in cross-examination that things that she was saying were 'not in her statement'. The issue is, has she poisoned the children's minds?

I very rarely express myself as strongly as I am about to, but the proposition that this woman has poisoned her children's minds is, in my judgment, utter nonsense. I believe that she cares for her children and I believe that she finds herself in between a rock and a hard place. She has to deal with her children's daily anxiety and she has to deal with the external pressure that a combination of her former husband and former mother-in-law are bringing against her.

These children are not, in the end, children. V and JO in particular are young adults. They are ordinary teenagers and this kind of approach to them is invariably counter-

productive. They might obey, perhaps they will obey an order of the court, but with what result? What would be the quality of what is being asked of them by me to do if I order them to do it?

What is my view of the paternal grandmother? It is, as kindly as I can put it, that she is a formidable woman of the old school. She is hurt. She sees things from her point of view. She feels aggrieved, she feels misrepresented. She is a woman who believes in speaking her mind, if necessary with bluntness, and she says how she sees it. What came over to me very strongly from the witness-box is her impatience. It is clear that the children know what she thinks about their mother. They love their mother and they live with her. The proposition that they have to go and see a grandmother who has these views about their mother cannot conceivably be congenial to them.

The paternal grandmother says that she has avoided taking sides. She does not have to take sides. These children are not stupid. They know how she feels. They know that she believes that their mother is to blame. It hurts them and it adds to their pressure. She clearly cannot accept that. She could have been a healing influence, but the chance has passed her by.

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What can the court do? I have listened carefully to what both parents have said to me at length about what I should do. The court's rules are plain enough, and that is that the welfare of each child is the court's paramount consideration. There is a statutory checklist that the court is required to have in mind. There is the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and other such pieces of enactment that relate to the rights of children and the way that courts should approach them.

One of the most important elements in this case is to consider the ascertainable wishes and feelings of the particular child. But that is only part of it. The actual words are that I should have regard in particular to the ascertainable wishes of the child concerned, considered in the light of the child's age and understanding.

I accept that parental responsibility means that children have to do things that they otherwise might not find congenial. Children go and see the doctor, they go and see the dentist, they have injections. But, at the same time, children of this age with whom I am dealing are entitled to have respect for their views. They have expressed their views. The children and family reporter is of the opinion that they have thought about their views before expressing them. They are having to choose. They should not have to choose. They should be allowed to make decisions without pressure and without the pressure of being asked to effectively select between one parent and another.

These children have talents. I bear in mind their physical, emotional and educational needs. I bear in mind the particular child's age and sex and background. I bear in mind the harm that they are suffering because of the difficulties here.

What is the range of powers that I have? They are pretty formidable. I could use force. I could order them to do things, send them a piece of paper with the court's order upon it and direct them to do things, either directly or through their mother. What would be the effect of such orders, particularly on the elder two? I have no doubt that both V and JO would react with sullen resentment. They would feel that this judge, far away, has been told their views and they have not been listened to. It might create some satisfaction, vindication but it would be a pyrrhic victory indeed because, whatever they were ordered to do, if they did it they would do it with bad grace and with a counter-productive result.

The alternative is to try persuasion, to give respect to their views, to acknowledge what they are saying, to listen to them and to try and provide opportunities for negotiation. That means, in effect, that they have to be treated as young adults with minds of their own, minds that they are capable of making up for themselves and opinions that are to be taken at face value without being criticised.

During the course of the case I was asked if I would consider making a family assistance order. There are two reasons why I do not consider that course to be

justified. First, this is not exceptional: this is not one of those cases where young children are caught in the middle of the cross-fire. In my view, the problem is listening to the children's views that have been given to one professional from whom I have heard. The second reason is that a family assistance order is low on the priorities of any local authority, Buckinghamshire included, and it means no more than advising, assisting and befriending, and these children already have professionals at every level of their lives, education, through the child guidance clinics and so on, that

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another one would be counter-productive. It seems to me that they should be allowed to work with the people they have got rather than add to their burden by providing somebody else that they have to see and talk with.

What do I find finally therefore in terms of what I am going to say and direct about V? I am entirely satisfied that it is not in her interests to make an order. There are four reasons why I have come to that conclusion. First, it is clear that she does not want an order. Secondly, although she would obey it if I made it, she would do it out of duty or duress, depending upon one's point of view. Thirdly, if I made an order and V reacted against it and did not obey it, it would not be enforced by the father if it were broken. He made that plain. I do not consider that the court should make orders in the expectation that they are not going to be respected or obeyed. Into the national curriculum at the moment has come the concept of and the element of citizenship. It is not right for me to make orders that I do not expect to be obeyed with young adults and the need for respect for the law. Lastly, but by no means least, because there is a statutory provision which expressly deals with this matter, and that statutory provision says that it is plain that the court should not make an order unless it considers that it is better to make an order than not to make an order (Children Act 1989, s 1(5)). I do not consider it is better, quite the reverse. I think it would be counter-productive in the extreme if I was to make an order in respect of V.

If young people are to be brought up to respect the law, then it seems to me that the law must respect them and their wishes, even to the extent of allowing them, as occasionally they do, to make mistakes.

The order that I intend to make, I acknowledge, will read rather unusually. It will be to this effect: that—

(1) The court accepts and declares that it believes that contact, direct and indirect, between V and her father to be in her best interests.
(2) The court accepts that the mother will facilitate and will not stand in the way nor discourage any such contact.
(3) On the basis that the court considers a reasonable level for contact between the father and V is by agreement between themselves approximately monthly, V is to have the opportunity of staying and holiday contact to be agreed between themselves, namely the father, the mother and V herself.
(4) No order as to contact.

JO, as I said earlier, was described as less biddable, so the same points apply, but perhaps more forcibly. I intend to use the same kind of wording, with one subtle difference, the reason for which I will explain in a moment. The wording will be along these lines:

(1) The court accepts and declares that it believes that contact, direct and indirect, between JO and his father is in his best interests.
(2) The court accepts that the mother will facilitate and will not stand in his way nor discourage such contact.
(3) On the basis that the court considers that a reasonable level of contact is to be at least once a month to be arranged between themselves and that JO should have the opportunity of staying and holiday contact, particularly

skiing to be agreed between himself, his

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father and his mother. The court orders that JO will make himself available for contact with his father by mutual agreement.

That is a departure from the norm of the orders under s 8 and I express my reasoning for making that order in this way by looking at s 8(1). A contact order is defined as follows:

> '... a "contact order" means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other ...'

It is the latter part of that definition that I am using for the father and the child otherwise to have contact with each other, and I have given him the opportunity to make himself available for contact with his father by mutual arrangement.

Finally JA. He is the youngest and potentially the most vulnerable. He is clearly under stress and he is receiving some assistance from professionals. Ordinarily at his age, 12 years, he is within the age range that I would consider making an order for contact in respect of him. There are two problems. The first is his current attitude; the second is how best to word it in the light of the other orders that I have already described.

When she gave evidence, the mother said how on Wednesdays before contact JA becomes, as she put it, 'hyper, wound up and angry' and she has had him in a temper. He has kicked down a bedroom cupboard. She needs and has found the advantage of being well prepared: breakfast in bed on the contact morning, a bag previously prepared and a calm atmosphere. The mother has described that at the end of contact he is difficult when he comes back. It is therefore to be balanced into the frame what JA's current attitude is and how he is reacting to contact and to find, as I say, a form of wording to deal with these matters. First, to allow him some choice commensurate with his age. Secondly, to protect him from the pressures around him. Thirdly, to let the professionals help him and not by an order of the court to make the task for them and, indeed, for him more difficult.

The way I intend it to be phrased will be as follows:

(1) The mother will use her best endeavours to make JA available for contact with the father on alternate weekends.

(2) On the first of the alternates it will be Saturdays from 10:30–16:30 (bearing in mind the perceived need for shorter rather than longer periods).

(3) On the second weekend an option: Saturday 10:30–16:30 with the option of Sunday 10:30–16:30 or an overnight stay.

(4) The conditions of contact will be that, first, it will be JA and his father one-to-one, unless one of the other children is there. Secondly, the contact will be pre-planned and there will be an agreed activity.

(5) There will be an opportunity for holiday contact, including skiing, by agreement between JA, his mother and his father jointly.

There is one outstanding issue, and that is s 91(14) of the Children Act 1989. I said that I would listen to submissions and will, but I have of course thought about it overnight against the background to this question: is an order

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necessary? It seems to me that it should be obvious to both the mother and the father that these proceedings have been corrosive and damaging, not merely in the relationships that they have with each other but also the potential for the children, who

know that both parents are here.

Mediation has failed. The court and outside has offered mediation and it has, to a large degree, failed. If the parents themselves cannot deal with children of this age, then I question in the future whether the court will be any more advantageous a place to ventilate.

The message for this case in my judgment is not to come to court. The message for these parents in this case is to back off and give their children space. However difficult it is, however frustrating it is, it is necessary to be patient with them, particularly for their father to be patient with them and to respect their views, even if they are painful and to acknowledge that they are young adults with minds of their own and that they are stressed up to capacity and they need to be helped to get through it, out of it and past it. I will hear any further application on s 91(14), but I am not encouraging it.

[Editor's note: following a short adjournment, there was no further application on s 91 (14) but an application by the mother in respect of costs.]

I have been giving judgment this afternoon in private law proceedings relating to contact between a father and three children aged 16, 14 and two-thirds and just 12.

In essence, what I have ordered is that, with some preamble designed to be addressed to the children as much as the adults, to make no order in respect to V and JO and a limited order in respect to JA.

When I look at the children and family reporter's conclusions, the first two children's no order result follows her view. The order that I have for JA is less than the children and family reporter had obtained from JA himself last October because of the intervening difficulties to which reference has been made.

The essence of this case was that it was necessary, having embarked upon this inquiry, to make findings of fact because of one stark assertion in particular: the assertion of the father, supported by the paternal grandmother, that it has been the mother who has poisoned the children's minds against him and his family. I took the wholly exceptional course of describing that assertion as 'utter nonsense'. That is my finding on a view of the whole of the evidence, not least including listening to the principal protagonists.

I have found that notwithstanding these children are at the upper limit (save JA) of the ages at which the court would ordinarily make orders, because two of them are teenagers, that it has been necessary for me, in essence, to try and salvage something of a relationship between the father and his children, the elder two in particular, by encouraging him to back off and to treat them as the young adults that they are.

Now I have submissions as to who should pick up the bills. On the one side, I have the mother, who has run up a bill of approximately £30,000 and, by 15 March 2002, the father, who has run up a bill of just about half that. Neither bill is sufficiently detailed for me to be able to break it down in terms of reasonableness, still less proportionality, but I do not intend to tax either bill anyway.

The question is, where should the liability to discharge these not insubstantial burdens fall?

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During the course of my judgment, I referred to a letter dated 6 June of last year from the father's solicitors to the mother in which he said that he recognised that V and JO were of an age where they could make up their own mind about contact and he would not force them to contact. That is not the stance that he has adopted in this case here. For instance, seeking a requirement that V should spend up to a couple of hours with him, supervised or unsupervised by the child and family reporter, so that he can put his case or his side or his reasoning to her. I have dealt in the body of the judgment with what I thought of that.

I have made detailed findings of what I consider are the relevant factual matters that assisted me in finding out how this problem, this enormous stress these children are

under, has come to pass. The fact is that, insofar as it is a victory for the father (and I do not look at cases other than in terms of their victory for the children) it seems to me that the father's is a pyrrhic victory and I believe I actually said so.

If the father had considered the matter, as, as an intelligent man, he would have done last October, I ask myself what would a reasonable man have considered. It seems to me that there were perhaps three alternatives he could have considered: first, 'I accept what the children have said through the children and family reporter'; secondly, 'I reject what the children have said through the children and family reporter'; thirdly, 'I do not necessarily accept it, but if that is what the children are saying, why can I not accept it for now and see what happens?'

He chose another kind of middle way. His case suggests that the children and family reporter misread the position and my judgment is full of the consequences.

Specifically, I have found that the mother has not poisoned or turned the children away from their father and that, it seems to me, is the fundamental basis upon which this case has been decided, because it led, effectively, to the rest of the conclusions that I drew.

When the children and family reporter's report was received by the parties, inter-solicitor correspondence began almost at once, from the mother's to the father's, asking for a consent order. That went on from the back end of October to the middle of November.

In December, the parties tried conciliation with a Mr H, an Anglican vicar in Bedfordshire. All of it, one way or another, led to this 2-plus day hearing.

Those observations should, I think, be sufficient without anybody having to delve too deeply into the actual judgment itself to deal with this application for costs.

Costs are sought on two bases. First, financial, in that effectively there is a marked disparity of wealth. Perhaps the disparity of wealth has been used, in particular, that by not making an order for costs wholly or in part it might result with the mother being financially embarrassed by the costs of the proceedings to the extent that the children's welfare is prejudiced because there may be a risk that she may have to sell the home in which they are living. The reasoning behind that application is set out in *M v H (Costs: Residence Proceedings)* [2000] 1 FLR 394, in particular at 396 and 398.

As to that, there has been an agreement in the judicial separation proceedings. Now there is an application by the wife effectively to re-open that agreement by seeking further or other relief with a reactive application by the husband to re-open the whole agreement.

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The wife's asset is the house, which is in her sole name, with a gross value of approximately £480,000, an equity of £370,000 when the current mortgage plus an additional £20,000 that is being raised for legal fees are deducted from it. The mother has some TESSAs or ISAs. She is in receipt of some spousal maintenance and support for herself and the children, and JA's school fees are being paid.

The father's assets are put at just under £600,000. He has the potential of a salary of approximately £100,000 gross. At the moment he is out of work, having been made redundant. The redundancy sum I believe was £172,000 liquid in an account that either has been or is sought to be frozen. And he has other assets, including what were described as 'hot tips' for further employment. He was managing director of a company in Italy, where he lives.

It seems to me that in terms of capital and in terms of the creation of wealth through income he is in a substantially superior position to the mother, the wife, whom he supports financially.

As to the question of reasonableness, I do not consider that *M v H (Costs: Residence Proceedings)* [2000] 1 FLR 394 adds much to the, to my mind, better known case of *G (Costs: Child Case)* [1999] 2 FLR 250, decided by the Court of Appeal, the now President of the Family Division presiding. It is quoted, of course, in *M v H (Costs: Residence Proceedings)* [2000] 1 FLR 394.

Reading the headnote (the slight expansion is at 253 of the report) it says:

> '... although it was unusual to order costs in a family case, such an order could be made against a party who had behaved unreasonably in the litigation, but in this case there was no finding that the father had behaved unreasonably. The finding that the father's case was hopeless did not justify the costs order, for, although there would come a point at which pursuing a hopeless application became unreasonable, hopelessness and unreasonableness were not necessarily the same thing.'

Later on in the headnote it says:

> 'If a parent went beyond the limit of what was reasonable to pursue the application before the court it was appropriate to take the unusual step of ordering costs against that parent ...'

It has long been recognised, certainly by the case of *Gojkovic v Gojkovic (No 2)* [1992] Fam 40 that it is unusual to make orders for costs in children cases. That is because the view is taken that a parent should not be dissuaded or discouraged from bringing cases to the court concerning the upbringing and welfare of children by threats that costs might follow the event in the ordinary course of things. Therefore a degree of latitude has been given or, as the now President said in *G (Costs: Child Case)* [1999] 2 FLR 250, a degree of generosity, albeit she was talking about litigants in person.

In my judgment, this case became unreasonable in its pursuit when the father, through his solicitors, having said that he would listen to and respect the wishes of the elder children then went back on it. He has pursued specific orders for contact in respect of all three children: V, that he be allowed to see V for this meeting; JO, notwithstanding what was said in the letter, on the basis that he believed that JO would be relieved by the making of an order; and JA, that he did not accept JA's view and JA's expression of opinion.

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What a reasonable father would have said in these circumstances would have been to take the middle way that I ventured to suggest a moment ago. He might not have accepted what the children and family reporter had said. He might not have considered that the job done by the individual was particularly professional. But there was nothing. Rather the parties had to endure what both must have known and what indeed has transpired to be a corrosive 2 days where everybody's emotions have been displayed and, indeed, challenged, with the likely effect of having all this brought out in court before the full glare of the parties.

It is frequently said, usually against lawyers, that lawyers tend to forget that when they have finished their work it is the parties who have to live together with each other and make any order of the court (or non-order) work. In this case, it is the father, I am afraid, who is left with what he has got and has now got to hope that somehow goodwill is going to be restored after everything that has been said, heard and done.

I am less persuaded simply because I think that on a rough calculation of rival assets – it is difficult to be persuaded about a father actually using or abusing his financial clout against a mother, although I do see, and see clearly, that there is force in the proposition that there is a risk to the children's home if the mother was left to pay her bill. What that would do to any prospects of future contact I would rather not give voice to.

I propose to say that, in my judgment, it was unreasonable to pursue this application because, having received the children and family reporter's view of the children's views and feelings and having said in terms in June of last year that he would accept the elder two children's views, that he proceeded to this hearing rather than give the matter a try.

I have to do a balancing. I do not consider that this is a case where the father should be ordered to pay the whole of the mother's costs. That would be punitive rather than be balancing and proportionate, but it seems to me that an avoidable hearing would be properly compensated in a costs order if I order, as I do, Mr S to pay 75% of his wife's costs, such sum to be taxed by a costs judge in the usual way if it cannot, on detailed assessment, be agreed.

Orders accordingly.

Solicitors: *Pictons* for the applicant
Levison Meltzer Pigott for the respondent

PHILIPPA JOHNSON
Barrister