

[2016 Gib LR 270]

IN THE MATTER OF E (No. 2)

SUPREME COURT (Butler, J.): December 2nd, 2016

Family Law—children—contact—young children living with father in Spain to have two hours’ contact with mother in Gibraltar per week—harmful for children to be denied contact with mother (and maternal family)—if father obstructs contact, children may be returned to Gibraltar

The applicant sought the enforcement of a contact order.

The applicant (“the mother”) and the respondent (“the father”) had two children, “J” and “E,” both of whom were Gibraltarian, British citizens. The mother lived in Gibraltar but was unable to care for the children. Pursuant to an agreement drawn up by the Care Agency, the children lived with the father and his partner in Spain but were to continue to be habitually resident in Gibraltar, to attend school here and to have contact with the mother. The father, however, enrolled the children in a school in Spain without consulting the mother.

The mother had very little contact with the children and the relationship between the mother and father was very poor. The mother applied for a contact order. The Supreme Court held that it had jurisdiction to hear the application and that it was not in the children’s best interests for it to be transferred to Spain (that decision is reported at 2016 Gib LR 211). The father clearly accepted the court’s jurisdiction. An interim order was made in April, providing for contact between the mother and the children. Contact resumed in April and May. In August, the court ordered that the mother should have weekly contact with the children for three hours. The father refused to comply with the order and denied that the court had jurisdiction. The mother brought the present application, initially seeking the possibility of a residence order in her favour. She did not pursue a residence order provided that contact with the children was resumed and maintained.

Held, ordering as follows:

The contact order would be varied to provide for two hours' contact with the mother per week, with a review in February 2017. The children's welfare was the paramount consideration. The court also had regard to the parents' rights and responsibilities under the Children Act and their right to respect for family life. The mother was not currently in a position to care for the children but she was in a position to have meaningful and beneficial contact with them. There was clear evidence that the children thoroughly enjoyed being with her and that contact with her and other members of their maternal family was a very positive experience for them. It would be harmful for the children to continue to be deprived of such contact. Stability was important for them and it was essential that the mother reliably attended for contact. The court was not prepared to make a residence order in favour of the father at this stage but recognized in the preamble to the order that the children lived with him. If all went well, it was unlikely that the court would order the return of the children to Gibraltar. If, however, the father and his partner continued to flout the contact order and the mother could demonstrate that she was in a position to resume care, it might be necessary to make a residence order in her favour or to order the return of the children to Gibraltar (paras. 36–44).

A. *Balestrino* for the applicant;

The respondent did not appear and was not represented.

1 **BUTLER, J.:** On September 20th, 2016, I handed down my ruling setting out my reasoned decision that this court is the court first seised with issues relating to the parties' children, referred to as "J" and "E," and continues to have exclusive jurisdiction to deal with the issues raised by the applicant mother in this application. I ordered that that ruling may be reported in anonymised form under the title "*In re E (a child—jurisdiction—prorogation)*" (see 2016 Gib LR 211). I direct that this ruling, which concerns the substantive issues raised by the mother's application, may be reported in anonymised form and referred to as "*In re E (No. 2)*." It should be read in conjunction with my previous ruling. The final hearing, at which I made a full order, took place on November 8th. I set out below my more detailed reasons for the order. This ruling will represent the starting point for any future hearings in this court concerning these children.

2 J and E are now aged six and four, having been born in June 2010 and October 2012 respectively. I have before me a bundle of documents which includes three affidavits sworn by the mother and two sworn by the respondent father, two court welfare reports, copies of previous orders made in the proceedings and other documents, all of which I have re-read in full. I have also heard oral evidence of the mother and of the social worker, Miss Louis, at the final hearing on November 8th, 2016.

3 I am entirely satisfied that the respondent had proper notice of the final hearing. He had until then been represented by Mr. Pitto, who properly attended court to inform me that the respondent was aware of the hearing but that he did not intend to appear and that he had dispensed with the services of Mr. Pitto (who therefore took no part in the hearing).

Background

4 The parties cohabited for about six years up to September 1st, 2014 at the mother's home in Gibraltar (the father claims that the period was about three years but, having heard the mother, I prefer her evidence on that point). The father left the home in circumstances which are disputed. The mother makes allegations of domestic violence and unfaithfulness on the part of the husband leading her to become particularly distressed and depressed at the time of the parties' separation. J was attending school in Gibraltar; E attended nursery. The father chose not to see the children or to be involved with them. I reject his suggestion that the mother had refused to allow him contact. Having heard and seen her, I do not believe that she would have done so. Indeed, I accept that she would have appreciated his assistance. If the father really wished to have contact at that stage and if the mother was as inadequate as he suggests, I see no reason why he would not have made an application for a contact or residence order during the period following the separation. By March 2015, the mother was finding it difficult to cope alone and requested assistance from the father, asking him to care for the children for a few days. The father did take the children but informed the Care Agency that the mother had "dumped the children on him." I accept that that is what he said and that it was a distortion of the true situation and insensitive in the extreme. He failed to attend court to support his version of events contained in his first affidavit and to be cross-examined on it but I have, in the interests of the children, tested the mother's evidence carefully and am satisfied that she is generally accurate in her recollection and evidence on this point. Her version is, however, not always entirely accurate. In particular, I find that her attendance for contact when the children were in Tangier View was not always consistent and regular.

5 In the event, the father within a few days took the children to the offices of the Social Services and left them there. It became apparent that the mother was too depressed to care for the children at that point. The children therefore remained in voluntary care at Tangier View, where the mother visited often to see them and to take them out (she is recorded as not having attended consistently). She says that the father hardly attended but he did attend sufficiently for the social workers to form a positive view of his ability to care for the children. The children remained at Tangier View until November 21st, 2015. In the meantime the mother attended for counselling.

6 By November 2015, the Agency took the view that the children should be returned to parental care. The mother continued to be unfit to undertake that care full time. The Agency therefore produced a draft agreement for the children to live with the father, having contact with the mother. The mother refused to sign the contract, fearing that the father would abduct the children permanently to live with him in Spain. She sought legal advice, following which she signed the agreement, believing that the Agency might otherwise seek a care order for the children. I am not sure that the mother understood the advice she was given since the Agency at that stage took the view that, subject to safeguards, the father was able and willing to care for the children and that there was therefore no basis for their remaining in care. Whatever her reasons for signing the agreement, I am satisfied that she did so voluntarily and that she accepted at that stage that she was not able herself to give them the care which they needed. The children were duly returned to the care of the father and have lived with him in Spain since then together with his partner, Miss Y.

7 The mother claims that Miss Y told her that she would not have contact unless she signed forms for the children to live in Spain and go to school there (contrary to the terms of the agreement drafted by the Agency and on the basis of which it was agreed that the children would go to live with the father). The agreement had provided clearly that the children were to continue to be habitually resident in Gibraltar and to attend school and have contact with the mother here and to preserve their rights to social benefits, including rights to access to the Gibraltar Health Authority, though they would be sleeping at the father's home in Spain (as do many who are unable to afford accommodation in Gibraltar but retain their centre of interests here).

8 Since then, the children have had hardly any contact with their mother, who feels that she has been tricked into losing her children and all contact with them. Contact took place for about one month until Social Services' involvement with it ceased in December 2015. At the beginning of the January 2016 school term, the mother's daughter from a previous relationship informed her that J had not started school in Gibraltar that term (again contrary to the agreement). The mother sought the advice of Social Services who, it appears, were unfortunately unwilling to assist. The mother complained to the Ombudsman. Ultimately it transpired that the father had enrolled the children at school in Spain without consulting or even informing the mother of his actions. He failed to respond to the mother's attempts to contact him.

9 The father worked in Gibraltar and may still be in employment here. His partner had been coming to Gibraltar to collect the children following contact. The children were deprived of contact not only with the mother but also with their half-sisters and their extended maternal family. Even when the mother's lawyer sought contact, the father would not agree to

contact in Gibraltar. The mother therefore filed a summons on March 21st, 2016 for residence and contact orders.

10 The agreement drafted by the Agency had provided for Tangier View to continue to have significant involvement. The father was to be the “main carer.” Miss Y was to be allowed a maximum of two hours’ sole care of the children but only if the father was called away for any reason. It also provided that, if a decrease in contact were proposed, it must be agreed first by the social worker or her team manager. This gave the mother some reassurance and also reinforces the view that the children were intended to retain their family and other links and interests and rights in Gibraltar, where the father probably continues even now to work and where the children were intended to continue to go to school. It was also recorded that if the father failed to return the children at the agreed time (for contact) the Agency would seek legal advice and make an application to the courts for a European Arrest Warrant, to be served with the Spanish court, which would then use legal powers to have the children returned to the care of the Agency in Gibraltar.

11 The agreement, dated November 17th, 2015, specifically provided that the children would be educated in Gibraltar. E was to attend nursery in Spain until she reached the age at which she could attend school in Gibraltar. Both children were registered in Gibraltar for health care purposes and it was agreed that only emergency health care would be sought for them in Spain. There would be extensive contact for the children with the mother and Miss Y would be involved with handovers at school and the border.

12 The father’s account differs materially from the mother’s. He points out that the mother has seven children and that she has always had problems with their care. Two were in their fathers’ care and the mother’s parents assisted with the others. He suggests that her parents assisted because of the mother’s mental health issues. The parties’ relationship, he says, was always tumultuous. There had been no contact for the children with him until mid-February 2015, when the mother left them at his workplace without notice. He claims that he sought the assistance of Social Services and the police, who offered none. He claims to have seen the children regularly when they were in voluntary care at Tangier View and that he changed his working hours and home to fit in with seeing the children. The time came when the Agency decided that it had to “resolve the case” before September 15th, 2015. The mother was in full agreement with the Agency’s draft and recognized that she could not care for the children. Contact with the mother took place in November 2015 but the mother failed to attend an Agency follow-up meeting on December 18th, 2015 and a meeting on December 23rd, 2015 to sign an agreement for the children’s enrolment with the council in La Linea. He claims that the mother called seeking contact and was told by Miss Y to contact the

Agency as to their recommendations but she failed to make further contact and chose not to have contact over the Christmas period. Miss Y, he says, was at the school gate for contact but the mother did not attend and the children were upset. He says further that J is at school in Spain (1) because she had lost her rights in Gibraltar, (2) retaining the Gibraltar school was for the purpose of contact with the mother, and (3) the mother had ceased contact from December 24th, 2015 until March 8th, 2016. The father and Miss Y, he claims, proposed contact immediately but it was cancelled by the mother. He claims the children have health care entitlement in Spain and Gibraltar.

13 The current situation is that the children sleep in Spain with the father and Miss Y. Information about their current welfare is limited, since the father and Miss Y have been failing to respond. Such information as the Agency has about the children's progress in school and otherwise comes from the father and Miss Y. There is no evidence, however, to suggest that they are not capable of providing adequate physical parenting for the children. The minutes of an undated CFA meeting record the view that the father had "a sharp parenting capacity and is able to place the children as his priority. The [mother] will be encouraged to seek professional help and put the needs of the children first." It is said that she has experienced years of trauma, separation and loss and it would take time for her to deal with those issues.

14 The father suggests (correctly) that the mother's failure to keep to agreed contact arrangements could be damaging for the children and cause strain. I observe that the information to support the assessment that "the children have now been placed with Dad for one month on a Child in Need Plan and this has been successful" again appears to have been limited and must have been largely obtained from the father and/or Miss Y. The father claims that the mother had been struggling to manage the children during those few contact sessions which she had attended and there is some support for that view in the meeting held on December 18th, 2015.

15 The mother did attend a review meeting on November 20th, 2015. The children had settled well with the mother at Tangier View. The mother was living with two of her other children, aged 19 and 7. Her home conditions appeared to be satisfactory. J was happy at school and had daily contact. The father's contact was recorded as being "ad hoc" as a result of his shifts. The plan was to return the children to the mother, ideally with support for her any day that she was feeling down, and then to assess her.

16 At a meeting dated December 18th, 2015, the Agency recorded that it had no role. With the benefit of hindsight, that view appears to have been somewhat premature. I think it unlikely that the mother, for no apparent reason, would have then immediately lost interest in contact with the

children and reject the father's case in that respect. Contact did, however, cease and was not resumed until after the mother's application was filed. The minutes of the December 18th meeting make it clear that the mother was "undergoing enormous levels of stress and anxiety due to the loss and separation from the children." She was "incapable of placing the children's needs first, which is a pattern professionals have observed and acknowledged over the years. Therefore Social Services are satisfied that [the father] and [Miss Y] have demonstrated parenting capacity and as there are no Child Protection concerns the case no longer requires the support of Social Services." It was also recorded that the mother had not attended the majority of contact sessions and was struggling to manage the behaviour of the children during contact. It was recommended that the sessions be reduced in length until the mother was strong enough to deal with the children and that the parents agree a contact plan which put the children's needs first. It was indeed recorded that the mother was to provide the children's birth certificates and health cards to the father and Miss Y but the mother had been unable to attend the meeting. The father and Miss Y were to meet in January regarding school arrangements for the children. The family preferred them to be educated in Gibraltar, though this would need approval from heads of service given the circumstances of the case.

17 The above history may not be entirely accurate and full but I am satisfied that it represents the situation generally. There are conflicts of account but on balance and in the light of subsequent developments it does seem to me that the mother's account is generally to be preferred. To the extent that the mother had failings, that was to be expected given the problems which it is accepted she had. She was very worried about the father's intentions and was coping with her two older children. The father's actions in removing J from school in Gibraltar were, as I am satisfied he must have known, extremely upsetting for the mother (and probably for J, at least initially). He knew that it was contrary to what he had clearly agreed. He knew the issues with which the mother was struggling. I am not impressed with his explanation for removing J from school in Gibraltar. It was precipitate, without consultation with or notice to the mother or Gibraltar Social Services, and an entirely unjustified breach of the agreed arrangement. The mother had shown commitment to the children whilst they were at Tangier View. I do not believe that the father genuinely thought she had abandoned interest in them. If his reasons were as he suggests, there is no reason why he should not have contacted her and Social Services before taking the action which he did. In my view, on the balance of probabilities, he took advantage of the situation to achieve circumstances in which he believed that he could exclude the mother from the children's lives. He regarded the difficulties which the mother had as a nuisance and failed to have any or sufficient regard to the importance for the children of maintaining contact with and

their relationship with the mother. That is clearly detrimental to their welfare. Whatever they may be saying expressly to him and to Miss Y, they will be missing their mother and finding it difficult to understand why they are not seeing her. Again, the father's subsequent conduct supports these conclusions.

18 The mother has made serious allegations of domestic violence against the father. I do not make any specific findings concerning those allegations, which were not concentrated upon at the hearing, but I do believe on balance that the father is likely to have been aggressive and unsympathetic to the mother, whose emotional problems were aggravated as a result of his behaviour. I do not intend to concentrate on that part of the history, mainly because the overwhelming need is for the parties to do everything possible to put the past behind them, to concentrate on the current and future needs of the children and to recognize their need for both parents to be involved in their upbringing and childhood, seeing both regularly and feeling the benefit of their care and love. I am not surprised that the mother feels let down by others, particularly since she had been told by Miss McMullen, social worker, at a review meeting after the children had gone into voluntary care in 2015 that—

“it would be ideal to slowly reintroduce the children back to their home with their mother and that in any day that [the mother] is feeling down that extra support is put in place through the carers with a view that [the mother] gets her mental health state stabilized and both parents agree to shared care of these children.”

By the end of 2015, however, the situation had altered because she remained unable to resume care of the children and the father, who had previously advised that he was unable to care for the children, was now in a position to do so. The mother's own problems had prevented her from showing adequate commitment to the children whilst they were in Tangier View, at least initially, and her contact with them had been “ad hoc.” The children's school attendance had been unsatisfactory when they were in the mother's care.

19 The matter first came before me on April 13th, 2016, when the father was professing a willingness to resume contact and denying any intention of excluding the mother from the children's lives. I ordered that interim contact take place initially on Wednesdays between 5 p.m. and 6 p.m., with collection and return at the border and a review with the intention of increasing that contact to two hours per week. It was a very modest contact order indeed but I had in mind that it was an interim measure and that the father was more likely to comply with that order (made by consent) than a more generous arrangement. It was also important to obtain a welfare report as to the mother's circumstances and the background before extending contact further.

20 In her welfare report dated May 28th, 2016, Miss Louis refers to an incident which took place at the border on April 20th. The parties have put forward very different versions of that incident. Having heard the mother give her oral evidence, I am satisfied that hers is to be preferred. She did not attempt to deny in her oral evidence that she had behaved inappropriately in shouting that the father was attempting to kidnap the children. The result was that the father was arrested and, since the mother was unable to look after the children, they were returned to Tangier View. The whole incident could have caused significant harm to them but they were so familiar with Tangier View (where they had developed good relationships with staff) that no serious harm was suffered by them. The contact sessions prior to that incident had been very positive for the children and the mother, though it was difficult within one hour to achieve much and it was somewhat unnatural. It included the children's half-sisters, the mother and the maternal grandparents, whom the children no longer see or have any contact with as a result of the father's continuing obstructiveness. Miss Louis was recommending an increase to two hours but the father would not agree. In her report she confirmed that "there was evidence of a warm attachment between the girls and their mother." Handovers had been handled by Social Services, who had formed the view that the sessions were very beneficial for the children. They have a large Gibraltar family and had had regular contact with their extended maternal family. They were particularly close to their half-sister, aged eight. I reject the excuses put forward by the father. Given that his refusal to countenance any contact for the children with the mother continues, the overwhelming likelihood is that he had decided following the border incident that there would be no further contact. He has been in serious breach, not only of court orders but also of the agreement pursuant to which the mother consented to the children leaving Gibraltar to live with him. Following the order of Ramagge Prescott, J., he claims to have gone on holiday and that he had forgotten to mention this to the judge or his lawyer. Again, I reject that excuse as patently false. On September 1st, his lawyer advised Miss Louis that the father was not recognizing the jurisdiction of this court and "may be" going to pursue the matter through court in Spain. In fact he had already commenced proceedings in Spain. Since then he has refused to attend any hearing here. On October 3rd, Miss Y contacted Miss Louis to say that they were "continuing as they were."

21 My findings in relation to the border incident on April 20th are as follows. The father had refused (without good cause) to increase contact beyond one hour per week, despite the recommendation of Social Services and the knowledge that the one hour per week had been very successful. The probability is that he had hoped that the mother would not show the consistency which she did (since that incident, and despite the orders made by myself and Ramagge Prescott, J., he has refused contact since the last week of May 2016 and has often failed to reply to his lawyer's

correspondence). On April 20th, the children had enjoyed a very successful contact session with the mother. It was upsetting for the mother and the children that they had to be returned after only one hour. At 6 p.m., the children did not wish to end contact and return to Spain. They were pulling back. The mother's father and L (her daughter) were present, as were the father, Miss Y and her cousin. He tried to force J to go with him. Miss Y asked why the children were crying and the mother reminded her that the children had not seen her for three months and said that one hour was not enough. The father argued with a passer-by who intervened to assist the mother and J. Miss Y was attempting to take E from the mother's father. A customs officer arrived who had to restrain the father, who was becoming violent. L was standing in tears and frightened. Miss Y's cousin approached the mother and tried to take J. The mother said something like "don't interfere, this is my child" and the cousin moved away. By this time customs officers and police had arrived. The customs officer argued with the stranger who had become involved. In the end, the mother shouted something like "help, help, a kidnap," as a result of which the police came. Customs officers pulled the parties apart. The mother told the police that she wanted to take the children to hospital to check whether J's arm had been injured. The father claimed that he had "custody." The mother explained that it was just an arrangement (which was true at that stage) and that she had not seen the children since December. The mother accepts that J was examined later and that no injury to her was found. I do not accept all that the mother says about the incident. It all happened very quickly and emotions were highly charged. The mother probably did pull E away from Miss Y. In short, it rapidly got out of hand and both sides were acting disgracefully in front of the children.

22 The result was that the children were returned to Tangier View, where they remained for about a week until they were returned to the father after his release without charge. The mother feels that she was "tricked" by Social Services and that she was told that the children would be in Tangier View, just for their safety, only for one night. I do not accept that she was tricked but do accept that that is how she feels. She points out that L has never been removed from her and says that Social Services have never been to her house to evaluate it. It was L's First Communion on the following day and the mother says she was assured that she could take J to it but the following day she was not allowed to take her.

23 After my first order, contact resumed in April and May, though the father insisted that Miss Y attend. It is clearly unsurprising that the father was angry at having been arrested and the children having been returned to Tangier View. He must, however, bear his share of responsibility for what happened.

24 His harmful conduct continued. He took proceedings in Spain, knowing that he had consented to this court dealing with the mother's

application. He obtained an order at a hearing on June 29th, 2016, having filed his application without notice in mid-May. It appears that he did not mention in those proceedings what had happened in this court in these proceedings. On August 9th, 2016, Ramagge Prescott, J. ordered that contact take place on Wednesdays from 3 p.m. to 6 p.m. with a review on September 22nd, 2016. He has deliberately flouted that order and argued that this court no longer has jurisdiction, despite having submitted to the jurisdiction of this court clearly and unambiguously. Instead he took them to Germany to visit his father without notice to the mother. Having failed in his attempt to avoid this court's orders, he has ignored them completely since then. He appears falsely to have claimed in the Spanish proceedings that the mother did not want contact, despite his knowledge of her consistent pursuit of her claim and that the limited contact ordered was beneficial to the children. It is inevitable, therefore, that the mother is now convinced that it has been the father's intention all along, as feared by her, to exclude her from his and the children's lives.

25 The father was born in Portugal and has extended family in Germany. Miss Y has family in La Linea. There had been police reports of domestic violence since 2010 but I cannot make any findings about that.

26 The mother now says that she is feeling much stronger. Unsurprisingly, she sought the return of the children to voluntary care for a 12-week residential assessment, with a view to their return to her care. She does not now pursue that application provided that the children resume and maintain good contact with her. I have considered carefully how sustained her commitment to contact will be and have balanced the risks which there clearly are. I am convinced that the mother loves the children and has much to offer them. It may be that there will be times when she finds it difficult to cope and will need assistance, from her family or others. A good father would understand the needs of his children to maintain their mother's involvement in their lives as they grow up and the long-term importance of ensuring that he does all he can to promote it. All the indications are that he is putting his own resentment and anger above the interests of his children in this regard. To use the border incident as an excuse for permanently depriving the children of all connection with the mother and their extensive maternal family would inevitably be damaging to them. I reject his (I find callous and insensitive) suggestion that the mother's real motive is that she wishes to claim benefits for the children in Gibraltar. It is time for him to put his own convenience, anger and bitterness aside in the interests of his children. I am sure that, were he to do this, the trust which the mother has now, with justification, completely lost in him will gradually return.

27 On June 28th, 2016, the mother was arrested in Spain for breach of the order obtained by the father in Spain, of which she had not received

notice and in which the father had failed to mention the continuing proceedings in this country.

28 I am concerned that the father may attempt to use as an excuse for flouting this order that he fears that the mother will fail to return the children following contact. I have therefore required the mother to give undertakings which should allay any such suggestions.

29 The mother has alleged that the father has drug and alcohol habits and has frequently been dismissed from jobs. She has also made allegations of physical and sexual abuse against the father which have been investigated without any support for them being found. I do not find it necessary, since the mother is no longer seeking a return of the children now to live in Gibraltar, to make findings about the other allegations, though it is clear to me that the relationship was tumultuous, that the mother was not easy to live with and that the father lacked patience and understanding in relation to her problems. Whilst he was living in Gibraltar, Social Services had no concerns about his ability to care adequately for the children. They had, however, also taken the view that he could be trusted to comply with the agreement reached between the parties with Social Services' assistance. Nor do I find it necessary to make findings about the mother's allegations that she was misled by Social Services as to what would happen if the father failed to adhere to the agreement or that the social worker Zoe Faulkner, from whom I have not heard, reneged on a previous indication to the mother that Social Services wanted three months to see whether the mother could cope with the children or proceeded without justification or medical evaluation to take the view that she had serious mental and emotional problems such that she could not care for the children. I do not accept the mother's assertion that anyone told her that Social Services would have power to secure the return of the children for the mother. That would be a distortion of the position and I do not believe that such a comment would have been made. It may be that something was said which the mother took as reassurance. It is true, of course, that the agreement could be "cancelled" in the sense that it did not have the force of a court order. The agreement did also record that the Agency would take legal advice about securing the children's return if it were not adhered to.

30 I do accept that contact took place in November 2015 but that it ceased once the four weeks or so of involvement of Social Services ceased. The mother saw the children on the occasion of the birthday of her other young daughter (L, with whom the children have a very good, loving relationship) on December 9th. She spoke only to Miss Y, who wanted the children registered in Spain. The mother declined. Miss Y wanted the mother to sign documents in La Linea. The mother did not trust Miss Y or the father to continue contact once such documents had been signed. Following that exchange, I accept that Miss Y told the mother that if she

wanted contact she would have to consult the social workers. I also accept that Miss Y thereafter refused to answer her telephone to the mother or to social workers.

31 Regrettably, the mother now has little trust in Social Services and none in the father or Miss Y. She is seeing a counsellor, arranged through the Citizens' Advice Bureau, in whom she has confidence. She manages well with L. Her adult son is also living with her. Her retired father and her mother help out sometimes. L attends school regularly and no concerns have been raised about her. The mother has arranged dancing and singing for her.

32 I have no doubt that the mother feels that everything is now stacked against her. Equally, I have no doubt that the father feels that nothing can be done to enforce any orders against him. He also continues to feel angry with the mother. I accept that the mother has caused some problems but her love for the children I do not doubt. The father and Miss Y now need to change their approach to contact for the children with the mother and to put their previous feelings aside. They should not expect perfection from the mother. It will be seriously damaging for the children if they are deprived of the advantages of contact with a large extended maternal family in Gibraltar. It is important for trust now to be developed on both sides for the sake of the children. It is all too convenient for the father and Miss Y to take the easy course and to decide that they are willing to deprive the children of their right to a relationship with the mother and her family in order to make life more easy for themselves. I do accept his point that it is harmful for the children if the mother is not consistent with contact. That is why I have ordered only limited contact at this stage. It appears that the April incident was the catalyst for subsequent cessation of contact but to use that to separate the children permanently from their maternal family is a disproportionate response. She had missed no contact sessions following my initial order and they were extremely positive but frustratingly short for the mother and the children.

33 During the course of counsel's submissions it transpired that the father of the mother's child, L, who lives with him in Spain, had also taken proceedings against the mother in Spain. A contact order was made a long time ago, as a result of which the mother fears that she may be arrested again if she enters Spain. This has further repercussions, since I am told that the mother cannot obtain legal assistance in Spain without attending in person to apply for it in Cadiz.

The law

34 My paramount consideration must be the welfare of the children. I must take into consideration all the circumstances of the case, including

those mentioned in the Children Act welfare checklist. I have considered the checklist in full but do not intend to deal with each item in this ruling.

35 Whilst the welfare of the children takes precedence, I must have regard to the rights and responsibilities of the parents under the Children Act and pursuant to their rights to respect for family life, to see their children and to be able to exercise their parental rights and responsibilities.

Conclusions

36 The mother is not currently in a position to care for the children but is in a position to have meaningful and beneficial contact with them.

37 The father's home has been seen by Social Services and appears adequate. There is no evidence to suggest that he and Miss Y are not caring for the children adequately, save in relation to encouraging and maintaining their relationship with the maternal side of their family.

38 It would be harmful for the children to continue to be deprived of contact with the mother and their maternal siblings, grandparents and other members of her family. As they grow up, the effects of that harm would be likely to become more apparent but they may well not be attributed by the father and Miss Y to lack of contact with the mother.

39 So far as the children's wishes and feelings are concerned, they are still very young and will not consciously be able to understand fully all of the matters to which others must have regard in deciding what is best for them. There is, however, clear evidence that they thoroughly enjoy being with their mother and that contact with her and other members of their maternal family is a very positive experience for them.

40 Stability is, of course, important for children of these ages. It is therefore essential that the mother continues to maintain consistency in her attendance for contact. She is not able to meet their needs as their primary carer. She needs to accept her limitations and to give the children the reassurance that she remains committed to them and continues to love them and want to spend time with them.

41 The father and Miss Y need to adjust their thinking and, for the sake of the children, to make allowances for the mother's very real problems and to give the children the essential advantage of contact, avoiding the damage which will be caused by depriving them of it.

42 I am not prepared to make a residence order as such at this stage, because to do so may well encourage the father and Miss Y to believe that no one can do anything to prevent them ignoring this court's orders. In order to give the father and Miss Y confidence, however, I have recognized in the preamble to the order that the children do live with them. I have also required the mother to give undertakings which should allay fears that she

will keep the children in Gibraltar following contact. The contact in any event will be supervised by Social Services. The mother has given those extensive undertakings knowing of the serious consequences of breach of them. In addition, any breach may well result in this court taking the view that contact should be suspended.

43 If all goes well, it is unlikely that this court will order the return of the children to Gibraltar. If the father and Miss Y continue to flout the order and the mother can show that she has recovered sufficiently to resume their care, it may be necessary to make a residence order in her favour or order the return of the children to Gibraltar, or to take any of the other measures which can be taken to deal with the situation. It would be a disaster for the children if the parents cannot both now start afresh and mend the situation for their sakes. It would be a treat for the children particularly for them to resume contact now, as Christmas approaches. In his latest affidavit the father claims that “whilst I would not want to deny the applicant of contact, she has thus far not given me any hope that you she will get any better nor that there will not be a repetition of what occurred on the 20th April 2016.” My order should allay those fears. It is not too late for the parties to work together. Neither should expect that there will never be further disagreements but they should be controlled enough to be able to resolve them and not to enter into arguments in the presence of the children. Each has a great deal to lose. Each has much to gain if a good working relationship can be established.

44 One hour proved too little. Two hours per week is still very modest but should allow for more positive sessions. It will not be increased save with the written agreement of both parties until the review hearing, which I have ordered should take place on February 13th, 2017 at 10 a.m. It is essential that both parties attend that hearing in order to discuss future progress for the children.

45 Miss Louis told me that communication with the father and Miss Y has been lost save for the brief conversation with Miss Y in which she said that they intended to leave things as they are. It appears that Mr. Pitto, whilst he was still representing the father, told Miss Louis that the mother could have contact in Spain but Miss Louis heard nothing further from the father or Miss Y to that effect. They would, of course, be aware of the mother’s fear of returning to Spain at this stage.

46 Miss Louis confirmed that the contact sessions observed by her were very positive and that one hour was insufficient. Despite this, the father had been unwilling to increase their length. The mother had displayed emotional control during the sessions, even though they were very stressful. The children were very distressed when dressed and ready to go but the mother retained control and prevented the children realizing how distressed she was. The children were asking when they could go to

Mummy's house. As Miss Louis walked down with them they generally calmed down and wanted to go back.

47 She told me that the information that the children are doing well with the father and at school comes only from him. She could not comment on the mother's ability to care for the children if they were returned to Gibraltar. There would need to be an assessment before any decision could be made for such a return. If they were not with the father they would return to care in the meantime (that, of course, would need to be pursuant to a court order unless the mother were to consent to voluntary care).

48 Everything, including my jurisdiction order and ruling, has, I am told, been sent to the father's lawyer in Spain. Notice of the Spanish proceedings was sent to the mother's previous address in Spain because the father gave no other address for her. That is why a warrant for her arrest was issued. He has said that the Spanish proceedings were stayed temporarily, it is thought pending my decisions. The father's lawyer has said that the Spanish court is now aware of the mother's address. She has not had any communication from that court.

49 I am concerned that the mother should, if possible, have representation in Spain (at least to ensure that the Spanish court is aware of what is happening in this court and of my orders and rulings). I have every respect for the courts in Spain and am sure that they comply with Council Regulation (EC) No. 2201/2203, will recognize that this court retains jurisdiction, and will give effect to the orders of this court if necessary. The courts on both sides of the border have the welfare of children as their paramount consideration in cases such as this and international cooperation is recognized in both jurisdictions as being of vital importance.

50 As for the Spanish proceedings relating to L, I have limited information and there is no application before me relating to her. It seems clear, however, that she is habitually resident here. It would be beneficial for the position concerning her to be regularized if possible.

51 I give permission for a copy of this ruling to be supplied to the court in Spain in which the father has made his application, if those proceedings are extant, but this ruling must not be published save in anonymised form.

Order accordingly.
