

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

~P McC~ (Contact: Change of Name)

STEPHENS J

Anonymisation and background to this judgment.

[1] On Thursday 18 November 2010 I gave an ex tempore judgment. I have anonymised and made amendments to the transcript of that judgment. I now make the transcript as anonymised and amended available to the parties.

[2] Nothing should be published which would identify the child or any member of his extended family. I make it clear that any breach of this order is a contempt of court for which a number of penalties are available.

[3] The parties are requested to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether it requires any further anonymisation prior to publication. If the Office is not so informed within that timescale then it will be submitted to the Library for publication in its present form.

Introduction

[4] This case concerns ~P McC~ a boy who is aged 10.

[5] ~P McC's~ mother, ~A McC~, lives and works in Northern Ireland and is of the Roman Catholic faith. ~P McC~ resides with his mother.

[6] ~P McC's~ father, ~X W~, is a British citizen who was born in a Middle Eastern country which I shall anonymise by referring to it as country ~D~. He has lived and worked in the United Kingdom for a substantial number of

years and he currently lives and works in England. He moved to England at the age of 17. He is now 51. He is of the Muslim faith.

[7] ~X W~ brought this application seeking an order that his contact with ~P McC~ should be unsupervised and also for the restoration of ~P McC's~ names as on his birth certificate. The names on ~P McC's~ birth certificate incorporated two additional forenames. I shall refer to first additional forename by the initial ~S~ and the second by the initial ~Z~. The first additional forename is a name widely used throughout the United Kingdom. There is a Christian religious reference in the name though in modern society overwhelmingly that is not the perceived reason for its use but rather it is seen as a western secular name. The second additional forename was the name of a number of early pre Muslim great historic leaders of that region of the Middle East closely associated with the area now known as country ~D~. I shall refer to that forename by the initial ~Z~. The surname on his birth certificate was a hyphenated double barrel surname incorporating both the surnames of ~P McC's~ parents. I shall refer to the original surname by the initials ~McC-W~.

[8] As can be seen in this judgment I refer to:-

- (a) The child by the initials ~P McC~.
- (b) The mother by the initials ~A McC~.
- (c) The father by the initials ~X W~.
- (d) The child's names on his birth certificate as ~PSZ McC-W~.
- (e) The Middle Eastern country as country ~D~.

[9] An agreement was entered into between the parties on 18 November 2010. That agreement resolved the question of contact and restoration of ~P McC's~ names. It has been signed by the parties. It is supported by undertakings given by ~X W~ and both of the parties are to be commended for entering into that agreement. I set out the terms of the agreement which were as follows.

1. They agree that the arrangements set out below are in ~P McC's~ best interests and that they will use their best endeavours to ensure that they will conduct themselves in a manner which will promote ~P McC's~ well being and happiness.
2. ~P McC~ shall have contact once per month on the first Monday of the month with the applicant father. The contact shall be supervised by an adult, the identity of which shall be agreed between the parties. Initially that adult will be an employee from a child care organisation. The contact will be from after school for a maximum of 3 hours, and will be dependent on the time at which the child care organisation

worker can remain to supervise the contact. On a day in which ~P McC~ is not at school the contact will commence at 2pm. If any change is being proposed to Mondays being the usual day for contact, at least one month's notice shall be given to the other party and to the supervisor.

3. The parties agree that the social worker shall inform the supervisor as to the nature of the supervision required and that the official Solicitor shall, for the time being, be the nominated person to whom the child care organisation shall report.
4. All or any part of the contact shall be unsupervised if ~P McC~ expressly wishes for it to be unsupervised. The parties agree that they will respect ~P McC's~ wishes in respect of future contact and shall not place any pressure on him in this regard.
5. The Applicant father shall send one email to the Respondent mother on the last Wednesday of each month simply to confirm his attendance at contact. The only other email communication should be restricted to any circumstance in which the Applicant father is unable to attend contact, or the Respondent mother needs to change the contact day for illness of ~P McC~ or other emergency.
6. The application by the Applicant father to re-instate ~P McC's~ names on his original birth certificate shall be withdrawn. The Applicant father agrees that he will not issue any further such application and will respect ~P McC's~ wishes in regard to his name.
7. The parties agree to undergo mediation and have agreed the areas for the mediation as per the attached document.

[10] My only concerns as to the future was as to whether problems would occur again as they have in the past in relation to agreements between the parties. There is an extensive history of the parties entering into agreements and those agreements running into difficulties. For that reason I explored the underlying remaining issues between the parties to see whether if I resolved those issues there was a better chance of this agreement working in the future. It was for that reason that I have heard evidence in relation to an allegation that has been made by ~X W~ that ~A McC~ has acted in the past in a racist basis and that she is a racist either consciously or sub consciously.

[11] For her part ~A McC~ denies that allegation and considers it to be a personal attack on her. She contends that it undermines her ability to care for ~P McC~ in that it undermines on a constant basis her self esteem. It

potentially poisons the relationship between herself and ~P McC~ if that sort of allegation is made in front of ~P McC~ by ~X W~.

[12] I consider this allegation to be an important matter which has in the past and will in the future prevent implementation of agreements for the benefit of ~P McC~. It needs to be resolved. Experience has shown that the approach of ignoring the underlying tensions between the parties has not been successful. If the allegation is correct then ~A McC~ needs to gain insight, to avail of instruction in relation to racial awareness and to correct her approach. If it is incorrect then ~X W~ needs to gain insight and to desist.

[13] I start the judgment by stating that there are some extremely good points in this case. It is all too easy to concentrate on the bad aspects of it. ~X W~ is extremely hard working. He has provided for ~P McC~ . He has shown consistently by giving presents to ~P McC~ over a number of years his love and affection for him. ~A McC~ for her part has looked after ~P McC~ for many years. ~P McC~ is doing extremely well and she is doing a good job. So these are the positives.

Representation

[14] ~X W~ was litigant in person. Ms Alison McDowell appeared on behalf of ~A McC~ and Mr McGuigan was instructed by the Official Solicitor on behalf of ~P McC~.

~P McC~

[15] The accounts of ~P McC~ are that he is a pleasure to be with and has been brought up very well. The earlier social work reports described him as being lovingly cared for and a delightful enjoyable boy. At that stage he was not suffering significant emotional harm. He is presently inquisitive, forthcoming and articulate. He has age appropriate sensitivities but I find to a somewhat greater degree than many of his peer groups. The present assessment of ~P McC~ is that he is growing up and developing well in the circumstances though there are some issues beginning to emerge about his emotional well-being.

[16] I may explain at this stage that there are a number of reasons why I have to give consideration to ~P McC~ and to his unique character. The allegation made by ~X W~ against ~A McC~ that she is a racist is in effect an allegation that she is influencing ~P McC~ not to have a relationship with his father and that she is racially motivated either in whole or in part. That she is influencing ~P McC~ because of her concerns about race. That ~P McC~ is not expressing his own genuine wishes and his own genuine fears. Rather that he has been manipulated into that position either consciously or subconsciously by ~A McC~. It is necessary to consider ~P McC's~ attitude.

For instance ~A McC~ explains that ~P McC~ did not wish ~X W~ to attend sports days and did not wish ~X W~ to attend ~P McC's~ first communion. In order to get to grips with that I have to determine whether that is the doing of ~A McC~ and the doing of her on the basis of racial discrimination or whether it is ~P McC's~ own response to the position he finds himself in.

[17] I find that ~P McC~ is fully aware of his mixed cultural background though there is an imbalance of cultural influence given that he lives with his mother and his father lives in England. I am satisfied that ~P McC~ has not been manipulated by ~A McC~. The wishes and feelings that he expresses are his own.

[18] I consider that the endless disputes between his parents have caused emotional harm to ~P McC~ but that at present that harm is not significant. ~P McC~ will shortly be entering adolescence and the potential for significant emotional harm is now substantially greater.

[19] I consider that this case presents as a last opportunity for ~P McC's~ parents to work together. If the disputes continue he will continue to suffer emotional harm and that harm may be significant. Every day he is learning about a dysfunctional relationship between his parents. There is no stability and this model will now and has an even greater capacity in the future to adversely affect his intimate adult relationships. He needs his parents to be civil to each other and there is a real risk that he will pull away from his father in the long term. The lack of a proper relationship with his father will be to ~P McC's~ considerable detriment.

[20] ~P McC~ recounted to the Consultant Clinical Psychologist that he was nervous but happy before contact with his father. Nervous because he does not know what mood his father will be in that day. Happy to see his father. He stated that when his father was in a bad mood his eyes were darker and over the years he has seen him in good moods and bad moods so he knows. ~P McC~ recounts that sometimes ~X W~ hurts ~P McC's~ family feelings. For instance ~X W~ has said to him "your family is shit". ~P McC~ is anxious before and during contact with his father. He does not like the manner in which ~X W~ questions him and this often makes him feel bad and not good enough for his father.

[21] Social Services have observed ~X W~ as being quite strict during contact and his conversation low in empathy and emotional content. The social worker refers to a definition of emotional abuse as including -

"parents and carers who persistently criticise, shame, rebuke, threaten, ridicule, humiliate, put down and induce fear and anxiety and who are

never satisfied with a child's behaviour and performance."

The social worker states and I accept that some aspects of that are relevant to ~P McC~ who displays anxiety about his father's mood and is very aware of pleasing him.

[22] ~P McC~ has fears and anxieties as to contact with his father. I find that his fears and anxiety are his own. They have not been produced by ~A McC~ but rather are his reaction to the character and personality of ~X W~. As a result of those fears and anxiety ~P McC~ wants to have some trusted adult around while he is having contact with his father. I would add that ~P McC~ has a very clear understanding of his father. To the question how things might be better ~P McC~ responded in an age appropriate language that they would be better if his father "calmed down", "acted his age" and "stopped messing around". He expressed the fear however that his father would not change.

[23] In relation to the issue as to whether or not there are justifiable reasons why ~P McC~ has concerns about contact with his father and whether those concerns might lead him to a view in relation to whether or not he wished ~X W~ to attend sports day or to attend communion I consider that there are ample reasons for ~P McC~ to form that view and to have those concerns.

The proceedings

[24] There have been years of proceedings in this case covering two distinct periods. The first period of litigation commenced in the Family Proceedings Court on 1 April 2004 and lasted until 3 November 2005 when an order was made in that court that ~X W~ was to have contact with ~P McC~ on alternate Saturdays from 10 am to 3 pm and that an agreed adult will be present during the contact. ~X W~ castigates the terms of that order which involves supervision of contact. He had the opportunity to, but chose not to, appeal.

[25] The next period of litigation commenced on 7 January 2009. The proceedings were transferred to the Family Care Centre on 7 September 2009 and to the High Court in March 2010. I reviewed the case on a number of occasions setting a hearing date. At all the reviews before me ~X W~ and ~A McC~ presented with an agreed way forward and to an agreed timescale. ~X W~ now states that unacceptable delay has occurred.

[26] In arriving at those agreements at review hearings assistance was given to both parties by Mr McGuigan who has considerable expertise, experience and insight. Such assistance has been a feature of this litigation. Over the years there has been assistance given to the parents by social

workers, the legal professionals involved and through case management reviews and hearings at all judicial tiers. There have been frequent agreements between the parents subsequent to which difficulties rapidly emerged in relation to implementation. What should have been and should still be simple and straightforward has turned into a nightmare of aggression and hatred.

Proceedings in this Division

[27] The matter was listed for hearing before me on 16 September 2010 and on the opening of the case it was clear that the social worker and the retained child psychologist were of the view that ~X W's~ contact with ~P McC~ should move to an unsupervised basis. The only disagreement in relation to issue of contact was how and over what timescale this could be achieved given ~P McC's~ anxieties and fears. The case proceeded to a hearing in relation to those issues as to contact and in relation to the question as to the restoration of ~P McC's~ names on his birth certificate. One would have thought that the issues in relation to contact were of short compass particularly bearing in mind all the expert assistance available to the parents. At that stage ~P McC's~ wishes and feelings had not been obtained in relation to any change of his name. I gave directions that they should be.

[28] The evidence that I initially heard on 16 and 17 September 2010 was from ~X W~ and a child psychologist. The social worker, who had been involved in supervising contact, was also present in court waiting to give evidence but available to assist the parties. As the evidence progressed further definition was being brought to the issues and one would have expected both parents who were in court to be considering ways to reach agreement. On the second day of the hearing the parties entered into the following agreement:-

“Action Plan for Contact

The following are the steps that need to be taken by the parties to move contact to a more natural and unsupervised plan of contact. It requires the full co-operation and commitment to the parties to the steps outlined.

1. ~X W~ will undertake a short piece of work with the social worker in respect of communication with ~P McC~. This is likely to be two sessions. ~X W~ commits to be open and receptive to the suggestions made and will carry out the suggestions during contact with ~P McC~.

2. The parties agree to an immediate referral for a course of mediation without any pre-conditions. The parties will engage fully with the mediation service to improve their relationship and to improve their communication generally and specifically in respect of ~P McC~.
3. ~P McC~ shall meet with the child psychologist with a view to the child psychologist providing ~P McC~ with assistance in advance of the reduction of supervision of contact.
4. Following the completion of the work between ~X W~ and the social worker, and the meeting between ~P McC~ and the child psychologist, the process of reduction of supervision shall commence at the next schedule contact.
 - (a) The scheduled contact shall be of four hours duration and the social worker shall be present during the four hours. ~A McC~ shall not be present during the contact.
 - (b) The social worker shall commence a process of withdrawal of supervision of the contact. This process will be incremental. The social worker will make all the decisions about the timing and duration of any periods of unsupervised contact.
 - (c) ~X W~ agrees to allow the social worker to be solely responsible for any decisions in this regard and shall not voice any opinion or make any comment in regard to this during the contact. Any discussion between ~X W~ and the social worker in regard to contact should take place before or after contact.
5. ~X W~ shall communicate with ~A McC~ by e-mail on Wednesday before contact has taken place the time and venue for contact.”

[29] Having reached that agreement, which was supported by the Official Solicitor, all the parties applied to adjourn the case. They sought a review date, rather than a further hearing date on 3 December 2010 to ensure that the agreement was working in practice. They wished to leave the question of name change to mediation or further discussion. Prior to adjourning the case I heard some evidence from the social worker. I then acceded to their application.

[30] Approximately two weeks later on 2 October 2010, ~X W~ sent an e-mail to the court, the Official Solicitor, and to the solicitors for ~A McC~ stating that he had suffered years of abuse, racism and corruption and that he would have no choice but to withdraw as a father unless four things took place at the next review hearing on 3 December including the restoration of ~P McC's~ name. He accused the court of racial discrimination.

[31] Further difficulties were rapidly to emerge on 17 September 2010. ~X W~ had agreed to communicate by email with ~A McC~ on the Wednesday prior to contact the time and venue for the contact. The agreement provided that he was fully committed to that and all the other terms. On Wednesday 6 October 2010 he did not e mail ~A McC~ with "the time and venue for the contact." On Thursday 7 October 2010 at 3.22 pm ~X W~ sent an e-mail to ~A McC~ enquiring as to whether ~P McC~ wished to play football at the contact which was due to take place on the Saturday. The e-mail was a day late and did not specify the "time and venue for the contact". ~A McC~ was aware that the time and venue of the contact had been agreed at the last contact and was therefore happy to proceed on the basis that it would take place at that time and venue. Her computer had broken and it was on the Friday that she used a friend's computer to check her e mail account. She was then aware of the e mail that ~X W~ had sent. She replied to the effect that they should not alter the previously arranged time and venue.

[32] On Friday 8 October 2010 ~X W~ sent to amongst others the Office of Care and Protection a series of e-mails asserting that ~A McC~ despite an agreement signed in court had refused to confirm the arrangements for Saturday 9 October 2010. None of the e-mails were balanced or restrained. He omitted to mention that he had failed to comply with the agreement in that he had failed to send an e mail on the Wednesday.

[33] On Saturday 9 October 2010 ~X W~ travelled to Northern Ireland and went to the location which he had chosen whilst ~P McC~ was taken to the location which had been specified at the end of the last contact session. ~X W~ refuses to carry a mobile phone asserting that a suggestion that he should do so "was invading his space and going too far." Contact did not take place.

All this was blamed by ~X W~ upon everyone else with the continued assertions of racism and that Northern Ireland was “an infinitely racist state.”

[34] I listed the case for review on Tuesday 12 October 2010 at which stage I indicated that I was no longer prepared to accede to the parties’ application to adjourn the final hearing of the issues. I put the parties on notice that I was considering imposing a non molestation order in view of the content of the e-mails that ~X W~ had sent and copied to the solicitor for ~A McC~, the Official Solicitor, and the social worker. I directed ~X W~ to file a statement setting out his account of what had gone wrong with the arrangements for contact on Saturday 9 October 2010. He has failed to comply with that direction despite it being repeated on a number of occasions. I listed the case for final determination on 17 November 2010.

Legal Principles

[35] Most of the principles are not necessary to set out because there has been an agreement between the parties which is clearly in the best interests of ~P McC~. The only principles which I need to set out are in relation to the question of non molestation. In determining the question as to whether I should impose a non molestation order I have regard to the precise terms of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 and will apply the principles set out in my judgments in *Re Alwyn (Non-Molestation proceedings by a child)*, [2009] NI Fam 22 [2010] 1 FLR 1363, *Re Arthur (Non-molestation Proceedings by a Child)* [2009] NI Fam. 19, and *R H and Others v IH* [2009] NI Fam. 17. I repeat what I said in *Re Alwyn (Non-Molestation proceedings by a child)*:-

“Molestation is an umbrella term which covers a wide range of behaviour. There is no statutory definition of molestation. The absence of a statutory definition reflects the concern that the court should have the broadest discretion to interpret its meaning in the light of contemporary experience, see *Re Glennon’s application for judicial review* [2002] NI 327. The concept of molestation is well established and recognised by the courts. Molestation includes, but is wider than violence. It encompasses any form of serious pestering or harassment and applies to any conduct which could properly be regarded as such a degree of harassment as to call for the intervention of the court.”

By virtue of Article 20 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 the circumstances in which a court may make a non-

molestation order include those where in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no application has been made.

The basis of the allegation of racial discrimination against ~A McC~

[36] I turn to consider the basis upon which ~X W~ alleges that there has been racial discrimination by ~A McC~ and the basis upon which it is alleged that she is a racist either consciously or sub consciously. I agree and accept that racism can be at a subliminal level. I agree and accept that racism can be proved by the cumulative effect of a whole series of issues. The issues which I have to consider in isolation and also in combination are as follows:-

- (a) The issue of the change of ~P McC's~ name.
- (b) The alleged failure by ~A McC~ to allow ~P McC~ to be picked up at school by ~X W~ either on his own or in her company.
- (c) Raising the risk of child abduction.
- (d) Investigating the laws of country ~D~ in relation to the rights of a mother in that country.
- (e) Whether ~A McC~ did not wish ~X W~ to attend ~P McC's~ sports days.
- (f) Whether ~A McC~ did not wish ~X W~ to attend ~P McC's~ first communion.
- (g) Whether ~A McC~ racially insulted ~X W~ by racial slurs such as "You are a ..." (I have deleted the highly offensive term alleged to have been used so that there is no confusion in relation to anonymisation).
- (h) Whether ~P McC~ has either consciously or sub consciously been excluded from friendship with people who are not Caucasians.

Assessment of the ~P McC~, ~A McC~ and ~X W~

[37] In order to deal with those allegations I not only have to form an assessment of ~P McC~ and how he reacts to his father but I also have to form an assessment of ~X W~ and ~A McC~.

[38] I start this part of my judgment with two examples of text messages sent by ~X W~ to ~A McC~ together with an indication of the conclusion that I have arrived at in relation to ~X W~. The texts are as follows:

"U r low class you cannot help if you were borne
(sic) low class uneducated illeterate (sic) family of

thugs you will always be only an ignorant inadequate thug”

and

“My true feeling towards you and your family is that you are criminal thugs”.

[39] I accept the evidence of ~A McC~ that at various dates ~X W~ has verbally abused her in the presence of ~P McC~ by saying things such as:-

- (a) “You are a racist black-hating bitch”.
- (b) “You are a psycho, you need psychiatric treatment”.
- (c) “You are from a low class background and your family are thugs”.
- (d) “You are stupid, you are fat, you are ugly”.
- (e) “You are an unfit mother”.

I also accept that ~X W~ has said in front of ~P McC~ when he got angry that he wants a paternity test implying that ~P McC~ may not be his son and that ~A McC~ may have been dishonest deceiving both him and ~P McC~.

[40] These texts have been sent and ~X W~ has abused ~A McC~ despite undertaking to her on 3 May 2005 to speak in an appropriate manner at all times, to behave in an appropriate, non-aggressive manner at all times and to treat her with respect. The abuse is now primarily directed at the court and the social workers. However implicit in that abuse is the continued assertion by ~X W~ that ~A McC~ is a racist. That is also the explicit allegation made by ~X W~ in court.

[41] I find that the tone and content of these and other text messages together with similar verbal comments to ~A McC~, many of which were made in the presence of ~P McC~, accurately reflect the attitude of ~X W~ towards his previous partner, his son’s mother his son’s primary carer. There is no regard or respect towards her. I consider that ~X W~ is volatile and an emotionally dangerous and draining individual. A person with whom an adult would have great difficulty in co-operating and on occasions a truly forbidding figure to a child. He presents as a person in relation to whom one has the sure and certain knowledge that his reaction to any inappropriate use of language towards him, no matter how trivial or accidental would lack all proportion. He is quick to define all adverse decisions, whether of the courts, the social workers or the child’s mother along the lines of race proclaiming that he has been subjected to racial discrimination. For the reasons that I will articulate I consider that there is no substance to his assertions of racial discrimination which I reject. However by way of contrast he is ready to

denigrate groups of people for instance those attending ~A McC's~ local Roman Catholic Church as "ignorant boring people".

[42] I also consider ~X W~ to be untruthful. I have formed this assessment on the basis of his demeanour in the witness box and also by virtue of the answers that he proffered. An example of what I consider to be an untruthful answer relates to an application which ~X W~ brought on 29 October 2004 for an order that ~P McC~ be known by the surname ~ McC-W~ with which he was registered at birth. In the event ~X W~ did not pursue this application and it was dismissed. When asked why he did not then pursue it but rather allowed years to pass before bringing his present application he questioned whether he ever brought the application in 2004 and then proffered as an explanation that he was unaware of it as he was then legally represented. Neither of those answers is in the least consistent with ~X W's~ character. He knew all about the application in 2004 and was untruthful in his answer.

[43] Other striking features in relation to ~X W's~ oral evidence or in relation to the evidence of the Clinical Psychologist were:-

- (a) His lack of ability to describe in evidence to me ~P McC's~ character and the potential effect that restoration of ~P McC's~ names would have on him. The restoration of ~P McC's~ names was constantly defined in racial and cultural terms by ~X W~ without any regard for ~P McC's~ unique identity. I have no doubt that ~X W~ would seek to explain his lack of capacity to describe his son's character on the basis that he has been prevented by racists from having a proper relationship with his son. I reject any such explanation. The social workers, who I appreciate are trained experts, have had no difficulty in describing ~P McC's~ character but they have had less contact with him than has ~X W~. ~X W~ defines everything by reference to large social issues rather than concentrating on his son whose unique character escapes him. That inability in evidence to consider the effect on ~P McC~ was tempered today as ~X W~ was able to arrive at an appropriate outcome in relation to the application to restore the names on ~P McC's~ birth certificate. So I emphasise again that ~X W~ is capable of good and is capable of making a very valuable contribution towards ~P McC~ and towards ~P McC's~ upbringing.
- (b) ~X W's~ lack of any volunteered appreciation of the achievements of ~A McC~ in bringing up ~P McC~. The court heard nothing to that effect from ~X W~ in

evidence on 16 and 17 September 2010 and I conclude that ~P McC~ hears nothing or almost nothing to that effect from his father. Indeed he hears the reverse on occasions.

- (c) ~X W~ refused when giving evidence to assure ~A McC~ that he would not run her down in front of ~P McC~ because he perceived this to be unnecessary asserting that he had never done it. He also refused to give an undertaking to ~A McC~ that he would not communicate in derogatory terms in the future because he considered that to be unnecessary and also he refused to give an undertaking to ~A McC~ that he would not ring or contact her on a repetitive basis so as to cause a nuisance. Again I emphasise that ~X W~ has now altered his position in that regard and for that he is to be commended.
- (d) ~X W~ derides as completely inadequate and superficial ~A McC's~ attempts at educating ~P McC~ as to the culture of country ~D~.
- (e) ~X W~ presents as a victim and as self righteous. He concentrates on his own needs rather than ~P McC's~.
- (f) His manner of presentation to the Clinical Psychologist was to lecture him on psychological issues and he continually pointed a wagging finger towards his face. He had to be asked to desist from this intimidating habit on at least two occasions.
- (g) ~X W~ has a career which is demanding and responsible. I consider that ~X W~ had and has a desire to excel in his particular field. This in turn required a considerable commitment of time and effort on his part. I also find that pressure of his work commitments continues to the present. He perceives himself as being and I find that he is, always doing something. An illustration of the effect of this on his contact with ~P McC~ is that this year he was offered alternative dates for contact in July and August. However he did not take up that offer explaining to me that if he had took up the offer it would have required him to stay overnight in Northern Ireland. On further enquiry it was obvious that his reluctance to stay overnight in Northern Ireland was not to do with the cost involved which were within his means but rather

that his work commitments were of such a nature that he could not afford the additional time.

[44] I have given consideration to the reasons for the abusive attitude on behalf of ~X W~. For instance is it a response to similar abuse from ~A McC~, is it a response to her attempting to exclude ~X W~ from ~P McC's~ life, is it a reflection of emotional turmoil on the part of ~X W~ or is he a deeply embittered individual intent on causing hurt and upset? Is he a person who positively delights in the upset that he causes? Does he wish to inflict the emotional and financial cost of litigation on ~A McC~ irrespective of its outcome? I reject any suggestion that ~A McC~ has done anything to justify ~X W's~ attitude. She is not nor does she claim to be a paradigm of virtue. However she has endured years of dealing with ~X W~ an intelligent and most difficult adult and she has done this in the interests of her son. There are many others who could not or would not tolerate what she has had to endure and for that she deserves considerable credit. In relation to ~X W~ and for present purposes it is sufficient to conclude that he has a deeply flawed personality which prevents consistency and co-operation. I consider that ~X W~ either knowingly or unwittingly uses derision, abuse and emotional violence towards ~A McC~ irrespective of the effect on ~P McC~. He has little if any consideration for or empathy with others. His abuse of ~A McC~ indirectly causes harm to ~P McC~ by undermining his mother. It is deprecated. ~X W~ has been advised during review hearings in what, with benefit of hindsight, were too gentle terms that it was to stop. This has had no effect. So in forthright terms I make it clear to him that he is to desist.

[45] I would also add again that just as ~A McC~ is not a paradigm of virtue ~X W~ has great capacity for good. I will repeat again that he is hard working, he has consistently provided financial support for ~P McC~, he wishes to see his son growing up as a well rounded individual with a good education. He is scrupulous to provide ~P McC~ with presents as a sign of his love and affection. He has the capacity to and does on occasions positively engage with ~P McC~.

[46] My assessment of ~A McC~ is that her evidence was accurate and reliable. I also consider her to be a forthright open and honest witness. In relation to any conflict of evidence between ~X W~ and ~A McC~ I prefer the evidence of ~A McC~. As I have stated she is not a paradigm of virtue. She regrets and has insight into some of the decisions that she took in the past. For instance she changed the names of ~P McC~ without reference to ~X W~. Her explanation was that this was at a time when he was showing no genuine interest in his son. By taking that course she was removing reference to ~P McC's~ cultural identity and his association with his father and his paternal extended family. She acknowledges rightly that in retrospect this was a mistake and I would add a serious mistake. It has also had affects on undermining the trust and confidence that should have existed between

herself and ~X W~. I would also add that ~A McC~ has in the past had concerns over the overly effusive number of presents given by ~X W~ to ~P McC~. She raised her concerns with ~X W~ but to no effect. Subsequently she sold one of ~X W's~ presents to ~P McC~ on eBay. Again that was a mistake and a serious mistake.

Conclusions in respect of ~X W's~ allegations

[47] I turn now to consider one of the allegations made and that is relation to the risk of child abduction. On 1 April 2004 ~A McC~ commenced an application for a residence order in respect of ~P McC~ and also sought a defined contact order. She asserted that she was fearful that ~X W~ might take ~P McC~ away to country ~D~ and she wished to secure her position with a residence order. The reasons for her fears as to abduction have been expressed in a number of documents and are based on a number of factors.

- (a) ~X W~ had informed her that he had secured a position in country ~D~.
- (b) X W~ had spoken to her of the importance of his mother, who lives in country ~D~ meeting ~P McC~ and that he wanted to take ~P McC~ to meet his family in country ~D~.
- (c) ~A McC~ had asked ~X W~ to confirm that he did not hold a passport for ~P McC~ and he refused to give that confirmation.
- (d) ~X W~ had recently taken to going back to country ~D~.
- (e) ~X W~ was untruthful and he could not be relied upon.
- (f) ~A McC~ was deeply suspicious of ~X W~ and his motives when at an earlier stage he had very little interest in ~P McC~.
- (g) ~X W's~ extended family remained in country ~D~.
- (h) ~X W~ has an affinity towards and a deep affection for the culture of country ~D~.

[48] In order to address the potential consequences if ~P McC~ was taken to country ~D~ ~A McC~ contacted Reunite to determine the legal position in that country. She was informed that once a child is two years old the father has all custodial rights to the child and that a non-Muslim mother has no rights at all. It was perfectly appropriate for ~A McC~ to obtain advise as to

the laws of country ~D~ to determine the legal consequence if ~P McC~ was taken to that country and not voluntarily returned. Any court that did not enquire as to or take into account the laws in a country to which there was a risk of abduction would be failing to make a proper assessment of the consequences if the risk materialised. Despite this ~X W~ castigates ~A McC's~ enquiry as to the laws of country ~D~ as racist and accused the solicitor who made that information available to the court of "unprofessional and blatantly racist conduct."

[49] ~A McC's~ concerns as to the risks of abduction I find were not groundless and those concerns were also to be seen in the context that she had known ~X W~ for a relatively limited period of time. All of those concerns in relation to ~P McC~ being abducted to country ~D~ needed to be addressed by ~X W~ in an open and frank manner giving reassurance to his son's primary carer.

[50] The first social work report in this case is undated but it must have been prepared after 7 September 2004 (2/4/79). In it the social worker recorded ~A McC's~ fears that ~P McC~ would be taken to country ~D~ and that she would never see him again. The social worker also recorded that ~A McC~ wished direct contact to be supervised but did not wish to be present at contact nor any family members or friends because ~X W~ made jibes and comments and could be manipulative and overbearing. She suggested contact in a contact centre. ~X W's~ response to ~A McC's~ fears of abduction were that her statements were racist and paranoid and that he cannot do anything about views that "were deeply embedded in the society" (2/4/82). There was no attempt by ~X W~ to engage with the social worker in relation to the risk of abduction, to reassure or to demonstrate that ~A McC's~ fears were misplaced. Instead he chose to denounce his perception of society's attitudes to his cultural background. In his statement dated 11 October 2004 (2/3/46/25 et seq) ~X W~ dealt with the risk of abduction in more measured terms. At this stage he was legally represented. However I consider that his responses to the social worker are a more accurate reflection of his attitude to this issue.

[51] I consider that ~X W~ bears a heavy responsibility for not dealing with the risk of abduction in a prompt responsible, open and pleasant manner suggesting and providing safeguards to meet any short or long term concerns thereby providing reassurance and building confidence.

[52] I also make it clear that I record that the issue of abduction was dealt with at a hearing in the Family Proceedings Court in 2004 and played no part in the decision in November 2005 for the supervision of contact. I exonerate ~A McC~ from any racial discrimination either on this ground on its own or in combination. She raised her genuine concerns and appropriately investigated the laws of country ~D~.

[53] I will now deal with the question of the change of name. I consider as I have said this to have been a serious mistake by ~A McC~. It had the effect of undermining confidence between herself and ~X W~. It removed the contact of ~P McC~ with his paternal family and with his cultural identity. Having said that I do not consider that that was done on any racial basis. I accept ~A McC's~ evidence that she was not motivated by malice. That she was not motivated on racial grounds and I reject the suggestion either alone or in combination with the other allegations that she was a racist in adopting that approach.

[54] I turn to consider the question as to whether or not ~A McC~ has been preventing ~P McC~ from having a proper relationship with his father by excluding ~X W~ from school sports days and from other social events. I do not consider that this is correct. I consider that there is plenty of justification for the proposition that ~P McC~ himself has personal concerns about his contact with ~X W~ and I reject that proposition for the reasons that I have already explained.

[55] I also accept ~A McC's~ evidence in relation to the fact that she has never indulged in racial slurs of ~X W~.

[56] I also accept ~A McC's~ evidence that ~P McC~ has school friends who are not Caucasian and I also accept her evidence that she does not wish to exclude ~P McC~ from contact with people who are not Caucasian.

[57] I conclude by saying that I reject the allegation that ~A McC~ has been a racist in the past.

Non molestation order

[58] ~X W~ has given undertakings to this court in relation to his future conduct. Those undertakings do not cover slurs against ~A McC~ in the future that she is a racist. They should do. I gave an opportunity for ~X W~ to give a further undertaking to the court but he refused to do so and accordingly I made a non molestation order for a period of 6 months against him. ~X W~ shall not call or imply in any manner whatsoever that ~A McC~ is a racist or that her behaviour or actions amount to racism. This order shall expire on the 19th of May 2011.

Other orders

[59] I shall make other orders in accordance with the agreement that has been entered into between ~X W~ and ~A McC~

Finally

[60] I will now add this final note and that is that ~X W~ has turned what should be a co-operative venture in parenting a child into years of abuse and conflict. ~P McC~ has been harmed and ~X W~ bears a heavy responsibility for that harm. Whether further harm is caused and whether that harm will be significant, depends on whether there will be a fundamental shift in attitude by ~X W~. To date he has proved incapable of change. It is his responsibility to make that change for the benefit of his son.

[61] The risks to ~P McC~ should be guarded against by setting clear boundaries. Those boundaries should be rigorously adhered to by ~X W~ and if he fails to adhere to them then there should be the potential for the imposition of suitable punishment.