In the High Court of Justice
King's Bench Division
Administrative Court

CO/2373/2022

In the matter of an application for judicial review

THE KING

on the application of

AB

Claimant

-and-

(1) Gloucestershire County Council
(2) Gloucester County Court
(3) Ministry of Justice
(4) Secretary of State for Health and Social Care

Defendant

Daniel Butler

Interested Party

Notification of the Judge's decision on the application for permission to apply for judicial review (CPR 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgements of Service filed by the Defendants

ORDER by Antony Dunne sitting as a Deputy High Court Judge

1. The application for permission to apply for judicial review is refused on all grounds in respect of all decisions challenged

2. The application is certified as totally without merit.

3. The costs of preparing the Acknowledgement of Service are to be paid by the Claimant to the Defendant, summarily assessed in the sum of £ 5410. The application for a costs capping order is refused.

4. Paragraph 3 above is a final costs order unless within 14 days of the date of this Order the Claimant files with the Court and serves on the Defendant a notice of objection setting out the reasons why he should not be required to pay costs (either as required by the costs order, or at all). If the Claimant files and serves notice of objection, the Defendant may, within 14 days of the date it is served, file and serve submissions in response. The Claimant may, within 7 days of the date on which the Defendant's response is served, file and serve

submissions in reply. Thereafter, a Judge will decide on the basis of the written representations referred to above, what order for costs, if any, should be made.

5. **Anonymity.** The following orders are made to preserve the anonymity AB the claimant, GH the interested party, and CD and EF, the children of the Claimant and Interested Party.

(a) The identity of the Claimant, CD, EF, GH or any other person or place (such as a school) named in these proceedings whose identity would risk disclosing the identity of the above persons, must not be disclosed.
(b) There shall be substituted for all purposes of this case, in place of references to the Claimant by name and whether orally or in writing, references to 'AB'.
(c) The Claimant, CD, EF, GH be described in all statements of case and other documents to be filed or served in the proceedings and in any judgment or order in the proceedings and in any report of the proceedings by the press or otherwise as 'AB', 'CD (a Child)' 'EF (a Child)' and GH respectively.
(d) That the address of the Claimant be removed in all statements of case and other documents to be filed or served in the proceedings.
(e) To the extent necessary to protect the identity of CD, EF or GH, any other references, whether to persons or places or otherwise, be adjusted appropriately, with permission to the parties to apply in default of agreement as to the manner of such adjustments.
(f) So far as the Claim Form (once issued), or any Judgment or Order, or any other document to which anyone might have access pursuant to CPR Rule 5.4 at any time does not comply with the above, the First Defendant's solicitor (the Claimant being unrepresented) has leave to file with the Court copies of such document adjusted so as to comply. Such copies are to be treated for all purposes as being in substitution for the relevant originals; and the originals are then to be retained by the Court in a sealed envelope marked: 'Not to be opened without the permission of a Master or another judge or deputy judge of the High Court'.
(g) A non-party may not, without the permission of a Master or another judge or deputy judge of the High Court, inspect or obtain a copy of the application for anonymity, the witness statements of any party or any statement of case or document on or from the court file unless it has been anonymised in accordance with this direction and there has been redacted any information which might identify CD, EF or GH; and any application for such permission (i.e. to inspect or obtain a non- anonymised version) must be made on notice to both parties in accordance with CPR r. 5.4C (6) and the Court will effect service; the file is to be retained by the Court and marked "Anonymised".
(h) Reporting restrictions apply as to the disclosing of any information that may lead to the subsequent identification of AB, CD, EF or GH; and the publication of the name and address of the Claimant or any of the above persons, any members of their 18 4 immediate family (including in particular siblings, parents and grandparents) or the name of and address CD's or EF's schools is prohibited.
(i) The provisions of this Order shall not apply to: 1 Communications

between the Court Funds Office and the anonymised party, her Deputy or litigation friend in relation to the payment of money into the Court Funds Office for the benefit of the anonymised party or the investment or treatment of payment out of such money. 2 Communications between the Court Funds Office and/or the anonymised Claimant, her Deputy or litigation friend and any financial institution concerned as to the receipt or investment of such money; or 3 Records kept by the Court Funds Office or the anonymised party, her Deputy or litigation friend or any such financial institution in relation to such money.
(j) The First Defendant shall serve this order on the Claimant; and this order shall apply as soon as it is made, notwithstanding the absence of a seal. 1
(k) Any non-party affected by this Order may apply on at least five working days' notice to all parties to have this Order set aside and/or varied.
(l) A copy of this order shall be published by the High Court, Queen's Bench Division, Administrative Court specifying that the Claimant shall be referred to as AB and the other persons as CD (a Child), DE (a Child) and GH.
(m) The Claimant may apply for this order to be set aside on five working days' notice to the First Defendant.

Reasons

1. This claim arises out of family proceedings involving the claimant, her former husband (the interested party) and their two children. For reasons set out in more detail below, there is no basis in this case for the Administrative Court exercising judicial review functions to interfere with the decisions made by judges in the Family and County Courts and this Court has no jurisdiction to judicially review the decision of the High Court under challenge.

A. The decisions challenged

2. The Claimant challenges the following decisions:

Decision 1 - Order of District Judge Webster 14th April 2021 in Gloucester Family Court making a child arrangements order.

Decision 2 – Order of HHJ Wildblood QC on 28th July 2021 refusing permission to appeal Decision 1 and certifying the application for permission as being totally without merit.

Decision 3 – Orders made by District Judge Campbell between 5th October 2021 and 10th May 2022. The Claimant specifically refers to two orders – 29th November 2021 (relating to a request for information from the interested party in connection with supervision of contact between the Claimant and her children) and 10th May 2022 (the Court does not have a copy of the order but is informed by the fourth Defendant that it relates to a further application to amend child contact arrangements). However, the Court has considered whether any of the orders made by DJ Campbell between 5th October 2021 and 10th May 2022 are amenable to judicial review.

Decision 4 – Order of HHJ Ralton dated 28th July 2021 in Gloucester County Court striking out the claimant's action against two social worker employees of the first defendant who were involved in the case which led to decisions 1 and 2.

Decision 5 – Order of Foxton J dated 29th March 2022 refusing permission to appeal Decision 4.

B Relief sought

3. The Claimant seeks:

(a) Orders quashing each of decisions 1 – 5;

(b) An Order reinstating orders of the Family and County Court made before decisions 1-5 and which were supplanted by them;

(c) A declaration that the Claimant is not a danger to her children;

(d) Damages for the impact of the family proceedings upon the Claimant and her children;

(e) Permission to allow misfeasance claims against Rowan Green and Lily Gale (the social workers subject of the proceedings which led to decisions 4 and 5), DJ Webster, DJ Campbell and HHJ Webster to proceed, unless the 1st-3rd Defendants assume vicarious liability for their actions;

(f) A declaration that the Claimant's and children's Article 3, 6, 8, 14 European Convention Rights have been infringed as well as the rights of the children under Article 12 of the UNCRC.

C Limitation period

4. It is therefore clear that the claimant's application in relation to the majority of decisions challenged is substantially out of time. However, I am invited by the first defendant to consider the merits of the application. In light of the nature of this claim I grant the Claimant permission to have her claim considered out of time.

D The relevant law

4. The Court of Appeal has given guidance (R (Sivasubramaniam v Wandsworth County Court [2002 EWCA Civ 1738) on the approach to be taken by the Administrative Court where a judicial review claim is brought challenging decisions of County Court judges in circumstances where appeal rights have been exhausted in the County Court, and where there are unexhausted County Court appeal rights.

5. In circumstances where a Claimant in the County Court has not previously exhausted their appeal rights, judges in the Administrative Court should refuse applications for judicial review on the basis that the claimant has had an alternative remedy other than judicial review.

6. In circumstances where a claimant has exhausted their appeal rights in County Court proceedings and has been refused permission to appeal by a Circuit Judge, the Court of Appeal stated that the statutory scheme of appeals allowing for applications to be made to Circuit Judges for permission to appeal the decisions of District Judges was a fair and proportionate one. The Court of Appeal stated (at paragraph 54 of the judgment) that following a refusal of permission to appeal by a Circuit Judge in the County Court:

"An application for judicial review is likely to be founded on the assertion by the litigant that the Circuit Judge was wrong to conclude that the attack on the decision of the District Judge was without merit. The attack is likely to be misconceived, as exemplified by the cases before us. We do not consider that Judges of the Administrative Court should be required to devote time to considering applications for permission to claim judicial review on grounds such as these. They should dismiss them summarily in the exercise of their discretion. The ground for so doing is that Parliament has put in place an adequate system for the reviewing the merits of decisions made by District Judges and it is not appropriate that there should be further review of these by the High Court."

7. This reasoning of the Court of Appeal in relation to the County Court system of appeals is also applicable to the system of appeals in the Family Court where first instance decisions and decisions on permission to appeal are made by District and Circuit Judges.

8. It therefore follows that:

(a) Permission to claim judicial review of a decision of a County Court should not be granted where the possibility of an appeal to a higher court pursuant to provisions of statute was open to the Claimant and was not pursued: and

(b) where a Circuit Judge has refused permission to appeal, permission to bring judicial review proceedings should be summarily refused.

9. Finally, where the High Court has refused permission to appeal the decision of a Circuit Judge in the Court of Appeal, the Administrative Court has no jurisdiction to judicially review decisions of the High Court

E Application to quash Decisions 1-5 - refusal of permission

10. Decision 1 was an order of DJ Webster making a child arrangements order. The application for the child arrangements order was made less than 6 months after the making of a previous child arrangements order on 30th July 2019 in respect of the same children. In light of the short time period between the making of the child arrangements order and the making of a fresh application DJ Webster made an order under section 91(14) of the Children Act 1989 requiring the Claimant seek the leave of the Court before making any further child arrangements applications. The claimant applied for permission to appeal the order of DJ Webster. The Claimant has exhausted her appeal rights in respect of this order and permission to apply for judicial review of this decision is therefore refused

11. Permission to appeal decision 1 was refused in decision 2 by HHJ Wildblood QC who certified the application as totally without merit. As set out above judicial review would subvert the statutory appeal scheme. Permission is therefore refused.

11. Decision 3 relates to decisions made by DJ Campbell in relation to the child contact arrangements which were the subject of decisions 1 and 2. They were not the subject of any application for permission to appeal in the Family Court. The Claimant did not exhaust her appeal rights in the Family Court and therefore judicial review is not the appropriate remedy.

12. Decision 4 was a decision of a Circuit Judge to strike out a claim in the County Court for damages against two social workers employed by the First Defendant who were involved in making assessments which were referred to in the child arrangements case which led to decision 1. It is clear from the carefully reasoned judgment of HHJ Ralton that the claim for damages against the two social workers was a collateral attack on the previous family proceedings which were the subject of decisions 1 and 2. In circumstances where one Court has reached a final decision in relation to an issue, in this case the child arrangements for the Claimant's children, it is impermissible to open up that issue in separate proceedings. This was clearly the claimant's intention in issuing the damages claim struck out by HHJ Ralton. An application for permission to appeal was made by the Claimant to the High Court. The Claimant has exhausted her appeal rights against this decision of the County Court and therefore a judicial review of decision 4 is impermissible.

13. Decision 5 was a decision of the High Court refusing permission to appeal decision 4 – this Court has no jurisdiction to review the decision. Permission is refused.

14. In her statement of grounds, the Claimant complains: (a) that the family proceedings are a disproportionate interference with her family life; (b) that the decisions in family proceedings are irrational in light of her daughter's wishes, the long term impact on her and her children's welfare and the failure to promote contact between the claimant and her children; (c) that there were many procedural improprieties in the family proceedings. I have considered these complaints but they are complaints about proceedings in the Family and County Courts and they do not affect my conclusion that this Court should not subvert the statutory scheme of appeals in County and Family Court proceedings by granting permission for judicial review of the decisions of the competent Family and County Courts.

15. I will now consider whether the other forms of relief sought by the Claimant have any prospects of success.

F Reinstating previous decisions

16. Because I have refused permission to review decisions 1-5, there is no basis for reinstituting the decisions of 30th July 2019 and 17th October 2019.

G A declaration that the Claimant is not a danger to her children

17. Questions of fact such as these are purely for the Family Court which considered the issue at the hearing leading to the child arrangements order of 30th July 2019 and the hearing leading to decision 1 and are not to be determined by the Administrative Court on an application for judicial review.

H Damages

18. The Claimant contends that she and her children are entitled to damages because they have been subjected to an "oppressive, lawless regime". Decisions 1-5 provide no evidence to support this claim.

I Misfeasance claims

19. Claims for misfeasance in public office are not made via an application for permission for judicial review. Permission is refused.

J Human rights breaches

20 As public authorities both the Family Court and the County Court have a duty under section 6 of the Human Rights Act to act compatibly with the Claimant's Convention rights. There is no evidence in this case that they have not done so.

K Reasons for certifying the claim as totally without merit

21. I make allowances for the fact that the claimant is unrepresented and that this claim arises as a result of her, understandable, desire to have more contact with her children. However, the claim for judicial review of final decisions of the Family, County and High Courts is wholly without merit and was bound to fail. I therefore certify this claim as being totally without merit.

L Civil Restraint Order

22. I have considered whether an extended civil restraint order should be made. An extended civil restraint order may be made in respect of a party who "has persistently issued claims or has made applications which are totally without merit" (PD 3C para.3.1). Proof of three unmeritorious claims or applications has been described as the bare minimum needed to constitute persistence (*Re Ludlam (A Bankrupt) [2009] EWHC 2067 (Ch)*). In this case only one two applications have been certified as totally without merit: the application to HHJ Wildblood QC on 28th July 2021 and this application for permission to apply for judicial review. I will not make an extended civil restraint order in this case for the following reasons:

(a) Only two applications made by the Claimant have been certified as being totally without merit. That is not determinative of the issue as: (a) the test is whether the Claimant has persistently made unmeritorious claims or has made applications which are totally without merit and (b) the Court of Appeal has stated that previous unmeritorious claims/applications do not have to have been certified to be considered unmeritorious. However, the lack of certification is a relevant factor, and the Claimant is now on notice that further claims may lead to an extended civil restraint order being imposed upon her;

(b) One of the previous totally without merit applications was in the Family Court which would not be covered by an extended civil restraint order, and there is already an order under section 91(14) of the Children Act 1989 in force requiring the Claimant seek the permission of the Court before making further applications for child arrangements orders.

23. However, if the Claimant makes a further unmeritorious application in the County Court or the High Court in relation to the proceedings relating to her children there will be a significant risk the Court will make an extended civil restraint order.

Costs Capping Order

24. The claimant applies for a costs capping order. Such an order will only be made if permission is granted and therefore the application is refused

CPR 54.12(7) APPLIES. THE CLAIMANT MAY NOT REQUEST THAT THE DECISION TO REFUSE PERMISSION TO APPLY FOR JUDICIAL REVIEW BE RECONSIDERED AT A HEARING.

Signed: Antony Dunne

The date of service of this order is calculated from the date in the section below

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For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant [and the Interested Party]
or the Claimant's, and the Defendant's [and the Interested Party's] solicitors

Date:21/09/2022

Solicitors: IN PERSON
Ref No.