Neutral Citation Number: [2017] EWHC 1212 (Fam)

Case No: WD16P00931

IN THE HIGH COURT OF JUSTICE

**FAMILY DIVISION**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 19/05/2017

**Before**:

THE HONOURABLE MR JUSTICE MACDONALD

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**Between:**

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| --- | --- | --- |
|  | **L** | Applicant |
|  | **- and –** |  |
|  | **L** | First Respondent |
|  | **-and-** |  |
|  | **N**  **(Through her Children’s Guardian)** | Second Respondent |

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**The Applicant appeared in person**

**Ms Hannah Markham QC** (instructed by**Messrs Raydens**) for the **First Respondent**

**Ms Jane Rayson** (instructed by **CAFCASS**) for the **Second Respondent**

Hearing dates: 17 and 19 May 2017

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Judgment Approved

**Mr Justice MacDonald:**

INTRODUCTION

1. In this difficult case I am concerned with the welfare of N, born in 2003 and now aged 14. N is an extremely bright, articulate and socially skilled young person who, unfortunately, labours under the twin burdens of *anorexia nervosa* and a severe depressive illness. She is currently held for treatment under s 3 of the Mental Health Act 1983 and has been so since 9 June 2016. N’s interests are represented in these proceedings by her Children’s Guardian. Ms Jane Rayson appears on behalf of N.
2. The parents have been engaged in litigation in respect of N on and off over the course of a number of years. The current application before the court dated 1 August 2016 is that of the father, A, for a series of orders under the Children Act 1989. Specifically, the father now seeks a child arrangements order providing that N live with him and spend time with the mother following N’s discharge from hospital. The father also sought to persuade the court at this hearing to make orders dealing with N’s education. The father represents himself in these proceedings.
3. The mother is B. In the best traditions of the Bar, the mother is represented *pro bono* by Ms Hannah Markham QC. The mother has not attended this hearing, or indeed any of the hearings in this case save for the first hearing before Mr Justice Cobb on 7 October 2016. Ms Markham informed the court that at the previous hearing in this matter Cobb J made clear that the mother should be in attendance at this final hearing. The mother exhibits to her final statement a letter from her GP stating the opinion that it is “*unrealisti*c” to expect the mother to attend court in circumstances where she is unable to leave the house and spends much of her time bedbound. Within this context, Ms Markham has not been able to take up to date instructions from the mother. In the circumstances, Ms Markham, rightly, felt constrained to making brief closing submissions on the mother’s behalf based on the mother’s most recent instructions. The mother has not made a formal application that her attendance be excused. No application was made to adjourn this final hearing and, in circumstances where there is no prospect of the mother being fit enough to attend court for the foreseeable future, there was no principled basis for such an application.
4. Within this context, the primary question for this court has been whether it is better for N to make a child arrangements order now than to make no order at all in circumstances where there is no date set currently for her discharge and, in consequence, any order made will not come into effect for an as yet unspecified period.
5. The father contends that the court should make a child arrangements order providing for N to live with him upon discharge and for her to spend time with her mother subject to this being in N’s best interests. He relies on the evidence of the consultant child and adolescent psychiatrist who has, up until recently, been responsible for N’s treatment that an order is required to provide N with the certainty she needs to begin to overcome her illness and on evidence that the mother is not currently capable of fully meeting N’s needs nor will be for the foreseeable future.
6. The mother contends that the court should not make any orders in circumstances where it is simply not possible to say what will be in N’s best interests at an as yet undetermined future date. In any event, the mother submits that to make an order that N live with her father now would result in her having no incentive to get better and, indeed, an incentive to stay unwell in order to avoid an outcome to which she objects, N having stated that she wishes to live with her mother and not her father. The mother also raised the possibility that N will simply vote with her feet if an order is made contrary to her wishes. Finally, the mother also asserts that N, at 14 years old, may have capacity to decide where she lives but that this has not been adequately investigated.
7. The Children’s Guardian supports the making of child arrangements order at this stage providing for N to live with her father upon discharge and for her to spend time with her mother subject to this being in N’s best interests. As I have stated, N has made clear that she wishes to live with her mother. The views of the Children’s Guardian and N thus diverge. Ms Rayson confirmed that her legal team do not consider that N is able, having regard to her understanding, to give instructions on her own behalf.
8. On 16 November 2016, the parents agreed to accept the jurisdiction of the English court and agreed that N would be told about these proceedings following the advice of medical professionals.

BACKGROUND AND EVIDENCE

1. The father was born in 1956 and is now aged 61. The mother was born in 1966 and is now aged 50. The parents have four children. N’s three elder brothers live with the father and his wife at present. The parents separated when N was three years old. In 2008 a residence order was made in favour of the father and a contact order in favour of the mother. The father subsequently re-married when N was aged six. N gradually began spending more time with the mother and by January 2014 was having no contact with her father.
2. In January 2014, the mother applied for permission to permanently remove N from the jurisdiction of England and Wales with a view to relocating to another Member State of the European Union. The mother’s application was opposed by the father and was not supported by the CAFCASS Family Court Adviser.
3. This court has before it a copy of the CAFCASS report for those proceedings, dated 13 June 2014. The report identified that N was in a position of responsibility in her mother’s household during periods when the mother was unwell and incapacitated. The CAFCASS report concluded that the mother’s presentation may be difficult for an eleven-year-old child to interpret, leading to feelings of insecurity. Within this context, the Family Court Adviser was concerned that, in addition to the normal difficulties of settling into a new location, N would have the additional pressure of being, in effect, in sole charge of her mother. The Family Court Adviser concluded:

“I am concerned that the potentially challenging episodes of change including relocating to a different country where English is not the first language, changing schools, leaving her friends and family (in particular her father and brothers) and living in isolation with her mother who is ill whilst N is progressing into adolescence may have a negative impact on her wellbeing (Newman and Blackburn 2002).”

1. Within this context, the Family Court Adviser recommended that the mother’s application for permission to remove N permanently from the jurisdiction be refused on grounds that it was not in her best interests in terms of her emotional wellbeing to relocate with her mother in the context of such uncertainty. However, following a contested two-day hearing on 3 and 4 July 2014, His Honour Judge Wright granted the mother permission to remove N from the jurisdiction permanently.
2. Matters in the Member State to which the mother relocated with N did not go well and on 21 May 2016 N returned to England suffering from *anorexia nervosa* and a severe depressive illness. The mother and N moved abroad in the summer of 2014. Evidence from the unit in which N is currently being treated suggests that thereafter N took ownership of running the household in the face of her mother’s illness. N has told her treating doctors in this country that she was also the victim of significant bullying at school in the form of verbal abuse and bullying on social media. On N’s account the onset of dietary restriction began in 2014. N asserts that she had her head placed in the toilet in the Autumn of 2015 and that from Christmas 2015 she was unable to attend school due to panic attacks and severe anxiety. N states that she was home tutored from January 2016.
3. In March 2016 N’s condition deteriorated significantly. Her dietary restriction became more severe and she was exercising over four consecutive 10-minute work outs between six and eight times per day. N declined hospital admission in the Member State to which the mother relocated despite ongoing weight loss and significant concern regarding her physical health. As I have noted, on 21 May 2016 mother brought N to England hoping to access what she believed would be better health care provision for N in this jurisdiction. On the day following their arrival in England the mother took N to the local hospital, from where she was transferred to a specialist unit dealing with anorexia and treated for severe weight loss. At this time, N had ceased eating altogether and was just drinking herbal tea. N has remained in that unit to date. On 9 June 2016 N was detained under s 2 of the Mental Health Act 1983 for a period of assessment. On 5 July 2016 N was detained for treatment under s 3 of the Mental Health Act 1983 and remains subject to that statutory restriction. N’s treating medical team have recommended that N be transferred to a specialist eating disorder clinic. However, the timescales for this transfer are yet to be confirmed in the absence of available beds. The CAFCASS Safeguarding letter records that the unit in which N is being treated currently has expressed safeguarding concerns regarding the mother being obstructive in respect of the care pathway for N and has been derogatory about the treatment N receives at the unit, which has had a negative impact on N.
4. It is plain on the face of the papers, and she concedes, that the mother has considerable physical and emotional difficulties of her own. Dr H makes clear that the mother has described to him significant medical issues. Indeed, the mother stated to Dr H that “*currently physically and psychologically she is not well enough to manage N’s care at home*”. Whilst the mother disputes that this is in fact the position, in her first statement, dated 2 December 2016, the Mother concedes that her illness has resulted in periods where she does not have direct contact with N, although she maintains daily telephone contact. In her third statement, dated 1 March 2017 the mother states that her health is “*currently very poor*” and within this context the mother concedes that “*physically I am arguably not the best person to care for N*” whilst at the same time asserting she is confident that she would be able to so and is the best person to support N emotionally. In her fourth statement dated 15 May 2017 the mother confirms that it has been difficult for her to visit N in hospital due to her mobility issues and that her visits have been limited in recent months.
5. Indeed, at several points in the papers, including the statements of the mother, she confirms that she is effectively housebound and, as I have observed, the letter from her GP dated 12 May 2017 confirms that she is bedbound for much of the time. During a CPA review 22 March 2017, the mother told Ms A that she is not getting any support and does not know how to access this, although the mother contends that an imminent improvement in her financial position (consequent upon the sale of her property in abroad) will allow her to fund private treatment for her conditions with a view to recovering from the same. The mother told the Guardian that she is “*massively affected*” by stress, that her own family have disowned her and that she has very little emotional support within the context of knowing she is a “*highly emotional*” person. In her evidence the mother tacitly acknowledges the impact of her condition on N, stating in her first statement in these proceedings in December 2012 that “*She is a bright girl, who knows me well and is clearly aware that I am struggling and am hugely stressed*”.
6. The court has had the benefit of a statement and oral evidence from the hospital social worker, Ms A. Ms A’s statement deals with certain safeguarding concerns with respect to the mother identified in the period leading up to Christmas time 2016. Those concerns centred on the mother’s emotional and physical wellbeing.
7. Ms A relates that on 28 June 2016 during a pre-admission assessment of N, the mother responded to a question concerning what the mother would do if unable to care for N by saying she would “*kill herself and N*”. She immediately retracted this comment when it was challenged. The mother accepts that she made this comment but contends that it has been taken out of context and, in any event, was said nearly a year ago. The mother asserts in her written evidence that the statement was meant as a “*dark joke*”.
8. Ms A further records that on 14 November 2016 the Pain Clinic at the mother’s local hospital raised concerns about the mother’s “*addiction to opiates*” and observed her to be unkempt and looking intoxicated. The mother confirms in her written evidence that she attended the clinic dressed in her pyjamas and dressing gown and that she had taken a lot of painkillers. The mother accepts that she presented “*in a very poor state*”. The mother concedes that a referral was made to the Crisis Team. The mother further concedes that “*it is correct that I am technically addicted to synthetic morphine*” but contends that this dependency does not make her “*high*”.
9. On 5 December 2016, it was reported that the ambulance service had been summoned to the mother’s home in response to a possible overdose by the mother. A referral was made to social care due to the mother’s presentation and the state of the home environment. The mother contends that the ambulance was called due to “*what was believed to be a minor ischemic stroke*”. The mother however also states that she had taken more than her usual dosage of medication and that when she explained this to the paramedics they thought it was possible that she had taken too much medication. The mother also accepts that her home was not “*in a particularly good state*”. The mother states that her pain had prevented her from keeping herself or the house “*in their usual condition*”.
10. Ms A relates that these matters increased professional concern regarding the mother having unsupervised contact with N in circumstances where the mother was herself ill both mentally and physically. Ms A makes clear that she has not seen the mother since October 2016 and is not able to provide updating evidence in respect of safeguarding. Whilst Ms A offered to visit the mother on 22 March 2017 to identity any support required by the mother and to assist her to access services, the mother cancelled that meeting.
11. The court also has before it a statement from Ms M, the ward manager at the unit in which N is receiving treatment. Ms M reports that the mother has not attended family therapy and has visited N only twice since January 2017. By contrast, Ms M records that the father visits N twice per week and once at the weekend. He attends N’s CPA meetings (held every four to six weeks) and, in the circumstances, has regular face to face contact with staff to discuss N’s care, progress and challenging behaviours. The father also attends family therapy on a weekly basis and will meet with the nursing team before and after each session. Following each session, he will also meet with N for a visit. Ms M considers that the father and the step-mother appeared to manage well in meeting N’s everyday needs when N was on leave from the unit over the Christmas period. The MDT Summary and Risk Assessment forms contain some positive comments with respect to the interaction between N, her father and her step-mother during their visits.
12. Ms M confirms that the mother has weekly Skype calls with N. Ms M reports that the mother stated to N over Skype on 6 April 2017 that “*if it wasn’t for you I wouldn’t be here, we must hang on to each other*”. Whilst disputing this was what was said, the mother concedes she said the words “*we must hang on to each other*”. The mother also denies Ms M’s assertion that she said to N “*living with me would not be the right thing*”, contending that she was speaking about contact “*if the Court decided that living with me would not be the right thing*”. She also denies, contrary to Ms M’s evidence, having expressed the view to Ms M on 19 April 2017 that due to her own physical and emotional difficulties she is probably not the best parent to have N living with her full time and that it would be better for N to live with her father and visit her mother.
13. Ms M relates that N has talked to staff about needing to be discharged so that she can look after her mother and attend to her care, including working to help fund her mother’s medication. Nursing staff have observed that N has spoken of feeling guilty about being in hospital and letting her mother down. The Guardian is clear that young people who find themselves cast in the role of young carer for a parent bear a heavy load and that it would appear that N was unable to bear such a heavy responsibility.
14. With respect to N’s wishes and feelings and her current position, Ms M records the following:

“N has expressed concerns about the forthcoming court case and its outcomes. When asked what she was worried about she replied that she would have to live with her father. When asked why, she said she remembered that when she was very young “*he used to get angry*”. When asked if he was still very angry she said “*no, he’s different now*”. She went on to say that she needed to be with her mother to look after her and try to help her get her medication (CBD) as her mother could not afford it. When asked how much it cost, N informed me it was about £100 per bottle and lasts about a week.

N appears to be very torn between her parents and her loyalties to them. Staff have witnessed N with her step-mother and they appear to have a very close and loving relationship. N has also expressed to staff that she has a good relationship with her step-mother. However, when N speaks to her mother about her step-mother N will make derogatory remarks about her and accuses her step-mother of not being helpful and also being “*triggering*” towards her illness.

N is very close to both biological parents and loves them both immensely, but this is made hard for her as they appear to be unable to parent together due to their own continued feelings of animosity towards each other, as well as some quite differing opinions on parenting styles.

It is important that the courts reach a resolution as quickly as possible to enable N to be surer of how her future will look and for the Team to support her through those changes.”

1. The Children’s Guardian has filed a report dated 15 May 2017. The Guardian relates that N was very vocal about living with her mother and enthusiastic about the school the mother has proposed. N stated she wanted to see her father. On 19 April 2017 N told the Guardian that she had been speaking to her mother who had told her that they “*need to come to terms with the fact that we might not win the case*”. Within this context, N sought to persuade the Guardian that her mother was recovering and stated that “*without my mum I am nothing*”, that she wanted to die and could not bear being away from her mother. In respect of her father, N said that “*they are starting to get on better…I’m kind of scared if I have to live with him, I’m going to get really angry for not living with my mum and that’s a reason to dislike him*”. Staff informed the Guardian that N presented as happy when her father and step-mother visit her and presents as more subdued when her mother visits her. With respect to N’s wishes and feelings, the Guardian concludes as follows:

“The wishes and feelings of an intelligent articulate young woman such as N would usually hold much weight. But the responsibility on this child’s shoulders already must feel immense and in my view unbearable and her wishes and feelings must be considered by the court in that light. N needs to be freed from the chain of responsibility that pulls her down and gets in the way of getting better. Decisions need to be made for her.”

1. The Children’s Guardian recommends that there be a child arrangements order that N lives with her father upon discharge and that the time N spends with her mother be considered prior to her discharge in consultation between her parents supported by the professionals working with N.

THE MEDICAL EVIDENCE

1. The court has the benefit of having before it three reports from Dr H. Dr H is a consultant in child and adolescent psychiatry. Until late April of this year he was responsible for N’s care. Dr H confirms that N has a diagnosis of *anorexia nervosa* and a severe depressive disorder. N also self-harms as a means of managing distress and painful emotions. Dr H reports that there is no expressed suicidal ideation but that N has made occasional expressions of a wish to die. N has said that she finds it almost impossible to eat and cannot imagine eating again in the future. She has said it is very difficult to tolerate her current weight. She has experienced auditory hallucinations and is on a regime of medication.
2. In his first report, dated 20 January 2017, Dr H describes a difficult period of in-patient care, with fluctuating compliance from full compliance to fully non-compliant. Within this context Dr H describes limited progress, assaults on staff during and after naso-gastric feeding, two of which have been reported to the Police, and ongoing severe resistance to feeding. Dr H reports an ongoing need for naso-gastric feeding, to which N is not consenting. As a result, a referral to a Paediatric Intensive Care Unit (PICU) bed has been made but there are currently no suitable PICU beds available (and it may be some months before this changes). As at the date of his first report, Dr H states that N was refusing all treatment related to food but was consenting to medication. N would attend CBT based individual psychotherapy on a weekly basis but with limited engagement. Attempts have been made at family therapy but have not been successful in involving the mother, a session on 20 January 2017 being cancelled at the mother’s request. The father has attended for family sessions on a weekly or fortnightly basis in 2017.
3. By way of a report dated 30 January 2017 prepared for a Mental Health Act review, Dr H concludes that N should remain subject to Section 3 of the Mental Health Act 1983 in circumstances where a return home would lead her to restrict her diet severely or totally and that, without compulsion, she would immediately be placed at an unacceptably high risk.
4. In his final updating reported dated 21 April 2017 Dr H states that there have been significant fluctuations in N’s presentation. Whilst she has responded well to adjustments to her regime of medication, on 26 March 2017 she absconded from the unit and made her way to a local house, saying she wished to spend more time with her mother. On 11 April 2017 N tied a ligature around her neck following a naso-gastric feed. She has been on continuous observation since this incident. From 13 April 2017, she refused all medication, resulting in worsening resistance and violence towards staff. Dr H’s hypothesises is that this deterioration may have been driven by anxiety about this hearing. However, on 21 April 2017 there was a sudden improvement in N’s behaviour when she had an un-resisted naso-gastric feed. Whilst N has continued to decline individual therapy, N has continued to attend family sessions with her father and, more recently, her brothers and has started to talk more openly about her feelings towards family members. Within this context, Dr H reports an *overall* improvement in N’s engagement with family work.
5. As to a prognosis for N, Dr H opines that N is likely to struggle with issues of eating and weight well into her adolescence. He considers that it will take six to eight months to achieve a workable discharge from hospital once the route of discharge is established. Dr H considers that N is likely to require a high level of support from CAMHS and social care throughout her teenage years given the severity of her anorexia.
6. With respect to the question of the “route of discharge”, Dr H considers that N is aware of the difference of opinion between her parents as to where she should live upon discharge and considers this a source of distress for her. He considers that the optimal outcome for N would be for her parents to reach a consensus, although he acknowledges this as unlikely. In his first report Dr H concludes that “*With clarity about her future plan, and additional work on her engagement in treatment she has the ability to make a good recovery*”. He considers that clarity about where she resides will help her focus on her recovery and aid forward planning for treatment and discharge, Dr H opining that “*this is likely to have the effect of ‘unsticking’ her from her current position of refusal*”. Dr H considers that the current situation of disagreement and lack of clarity is unhelpful.
7. During his oral evidence Dr H reiterated that the benefit of an order being made by the court at this stage as to with which parent N should reside following her discharge from hospital is a degree of certainty for N. Dr H said that such an order would allow N to “*get on with*” her recovery. Dr H considers that N feels a responsibility to influence the decisions that are the subject of dispute between her parents (a responsibility that does not belong to her and is developmentally inappropriate) and that an order would allow N to move forward without feeling the need to “*campaign*” for a particular outcome of the dispute between her parents, which at present Dr H considers deflects her from recovery. In her oral evidence Ms A also reiterated the need for N to have certainty moving forward.
8. Irrespective of the route of discharge (i.e. into the care of her mother or into the care of her father), Dr H is clear that discharge will be at a point when N has improved very significantly from her current presentation and that her discharge will require careful and well-coordinated multi-agency working.
9. With respect to N’s wishes and feelings, in his first report Dr H reports that N presents as an extremely bright, articulate and socially skilled young person who is clearly able to reflect on her difficulties but is reluctant to describe the more difficult elements of her experience. In his first report, Dr H states that N described a wish to be discharged and to live with mother. She could not however describe how she would be able to maintain her safety and health were this to happen.
10. During his oral evidence with respect to N’s wishes and feelings, Dr H stated that he was certain that N’s stated wish to live with her mother reflected her wishes. He further stated that, in circumstances where N is “*weight restored*”, the cognitive rigidity that can accompany her condition is not currently a key feature of N’s presentation (although I note that Ms M considered that, as at 10 May 2017, N “*is seriously affected by her anorectic cognition*”). Within this context, Dr H stated that when considering N’s expressed wishes and feelings it is important to recall that N is 14 years of age, that she feels torn between her parents and loyal to both of them, that she is extremely worried about her mother and that, in the circumstances, N has a number of pressures acting on her within the context of which pressures her wishes and feelings are expressed. Dr H considers that were the court to make an order that does not reflect N’s wishes and feelings there may be some short to medium term deterioration but that N would thereafter improve.
11. Finally, with respect to the issue of contact between N and her mother following any discharge, Dr H considers that this would turn on the mother’s own state of health and her ability to meet N’s needs. He considered that there would need to be a dynamic process of assessment that considered how well N was and how well the mother was at that point. He emphasised again that the question of contact must *not* be N’s responsibility and that it is very important that any order provides clarity.

THE LAW

1. The law that the court must apply in determining the issues before it is well settled and is set out in s 1 of the Children Act 1989:

“**1 Welfare of the child**

(1)  When a court determines any question with respect to –

(a) the upbringing of a child; or

(b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(2A) A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.

(2B) In subsection (2A) “involvement” means involvement of some kind, either direct or indirect, but not any particular division of a child's time.

(3)  In the circumstances mentioned in subsection (4), a court shall have regard in particular to –

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

(4)  The circumstances are that –

(a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge a special guardianship order or an order under Part IV.

(5) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

(6) In subsection (2A) “parent” means parent of the child concerned; and, for the purposes of that subsection, a parent of the child concerned –

(a) is within this paragraph if that parent can be involved in the child's life in a way that does not put the child at risk of suffering harm; and

(b) is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child's life would put the child at risk of suffering harm whatever the form of the involvement.

(7) The circumstances referred to are that the court is considering whether to make an order under section 4(1)(c) or (2A) or 4ZA(1)(c) or (5) (parental responsibility of parent other than mother).”

1. This case requires in particular, careful consideration of the stipulation in s 1(5) of the 1989 Act that the court must ask itself whether to make an order is better for the child than making no order at all and the stipulation in s 1(3)(a) of the 1989 Act that the court must have regard to the wishes and feelings of the child having regard to their age and understanding.
2. With respect to the first stipulation, s 1(5) of the Children Act 1989 does not create a presumption one way or the other, but simply requires the court to ask itself the question, “will it be better for the child to make the order than making no order at all” (*Re G (Children)* [2006] 1 FLR 771). Within this context, an order may be justified in order that a child can feel a greater sense of security about the arrangements that exist (*B v B (A Minor)(Residence Order)* [1992] 2 FLR 327).
3. With respect to the second stipulation, the wishes and feelings of a mature child do not carry any presumption of precedence over any of other the other factors in the welfare checklist (*Re P-J* [2014] 2 FLR 27). The child’s preference is only one factor in the case and the court is not bound to follow it. The weight to be attached to the child’s wishes and feelings will depend on the particular circumstances of each case. In particular, having regard to the words of section 1(3)(a), it is important in every case that the question of the weight to be given to the child’s wishes and feelings is evaluated by reference to the child’s ‘age and understanding’.
4. Within this context, on the face of it the older the child the more influential will be his or her views in the decision-making process. However, in the end the decision is that of the court and not of the child (*Re P (Minors)(Wardship: Care and Control)* [1992] 2 FCR 681). Where adherence to the wishes of an older child may seriously compromise their long-term welfare, the court may override those views (*Re A (Intractable Contact Dispute: Human Rights Violations)* [2014] 1 FLR 1185). Once again, it is important to recall in this context that N’s best interests are the court’s paramount consideration.
5. Finally, and of importance in this case, pursuant to s 11(7) of the Children Act 1989 a child arrangements order may contain directions about how it is to be carried into effect and may impose conditions which must be complied with by any person in whose favour the order is made, who is a parent of the child concerned, who is not a parent but who has parental responsibility for the child or with whom the child is living, to whom the conditions are expressed to apply. The court is also able to make such incidental, supplemental or consequential provision as the court sees fit. It is important to note however that the court has no power to impose obligations on persons who are not listed in s 11(7) of the Act, for example CAFCASS or a local authority (*Leeds County Council v C* [1993] 1 FLR 269). Nor may the court use directions or conditions under s 11(7) to achieve a result which may not be achieved under the substantive s 8 order (*Re D (Residence: Imposition of Conditions)* [1996] 2 FLR 281).
6. Within this context, it is important to recall that one objective of the Children Act 1989 is to create a statutory framework which provides flexible, tailor made orders for individual cases. Thus, a child arrangements order can be made which provides for a child to live with a parent subject to a satisfactory phased return, or rehabilitation programme set out as detailed directions and conditions pursuant to s 11(7) of the Act (*Re A (Suspended Residence Order)* [2010] 1 FLR 1679). Within this context, with respect to contact, the court has a wide and comprehensive power to make orders to ensure that direct or indirect contact takes place (*Re O (A Minor)(Contact: Imposition of Conditions)* [1995] 2 FLR 124).

DISCUSSION

1. Having considered the evidence and submissions very carefully, I am satisfied that it is in N’s best interests to make a child arrangements order that provides that, upon her discharge, she live with her father and, subject to the satisfaction of certain conditions, spends time with her mother. My reasons for so deciding are as follows.
2. I have paid very careful regard to N’s expressed wish to live with her mother upon discharge. N is 14 years old and is an extremely bright and articulate young person who has expressed strong feelings about what she wants. However, against this I have to balance the fact that N plainly feels a great deal of responsibility for her mother’s health and wellbeing. It is significant in my judgment that her wish to live with her mother is consistently expressed by reference to wanting to ensure her mother’s wellbeing, even to the extent of going out to work to fund her mother’s medication. Within this context, and having regard to her comments to nursing staff that she feels guilty about being in hospital and letting her mother down, I am satisfied that N’s wishes and feelings must be viewed through the prism of the developmentally inappropriate weight of responsibility she feels for her mother’s health and wellbeing. In addition, whilst Dr H states that the cognitive rigidity that can accompany her condition is not currently a *key* feature of N’s presentation (my emphasis), I must also pay some regard to the fact that N expresses her wishes in the context of her very serious illness.
3. I have also had regard to the fact that, whilst N has expressed a wish to live with her mother, and has expressed reservations about living with her father, there is clear evidence of N being willing, on occasion, to attend family sessions with her father and, more recently, her brothers and to talk more openly about her feelings towards family members, being willing to spend time with her father and her step-mother, and of her engaging positively with them (indeed, the father contends that there was an occasion in April 2016 when N expressed a wish to live with her father). N describes a close relationship with her step-mother and, albeit sporadically, an improving relationship with her father, assisted by family therapy.
4. Within this context, whilst I accept Dr H’s evidence that, in the short to medium term, an order that does not accord with N’s wishes may have a detrimental impact on her emotional equilibrium, I am not able to accept the mother’s contention that the result of such an order will be an enduring intent on the part of N to remain ill. I am reinforced in this view by the fact that an order that makes clear into whose care N will be placed when she is discharged will allow those helping her to work with N towards that end based on a firm foundation. Within this context, whilst it is the case that an order that she reside with her father will result, eventually, in a change to N’s circumstances to that which subsisted at the time of her admission to hospital, there will have been time to work with N to assist her to come to terms with that change.
5. Within the foregoing context, whilst I have taken account of N’s wishes and feelings with respect to where she will live following her discharge from hospital, I am satisfied that those wishes and feelings cannot be determinative in this case and, indeed, must in the circumstances of this case give way to more powerful welfare considerations. I should also make clear that I am satisfied, having regard to the matters set out above, that there is no proper basis for doubting the conclusion of N’s legal team that she is not able, having regard to her understanding, to give instructions to her solicitor in her own right.
6. I am satisfied on the evidence before the court, and particular on the evidence of Dr H, that N has an urgent need for certainty in the living arrangements that will pertain upon her discharge from hospital. I accept the evidence of Dr H that without the question of where she is to live at that point being determined at this stage the issue will continue to detract from the possibility of N’s recovery. In circumstances where N feels so responsible for her mother’s wellbeing, to leave this issue outstanding would, I am satisfied, result in N continuing to feel a responsibility to influence the decisions that are the subject of dispute between her parents. An order at this point in time will allow N to move forward without feeling the need to “*campaign*” for a particular outcome of the dispute between her parents, which at present Dr H considers deflects her from recovery. Indeed, I am satisfied that the magnetic welfare factor in this case is the need for N to have as much certainty about her future living arrangements as possible as a foundation for those working with her to assist her towards recovery. I am satisfied that N needs to have all responsibility for the decision of where she is to live upon her discharge removed from her. This means taking that decision at this stage notwithstanding that it may be some months before any order made by the court comes into effect. Within this context, whilst the order will not become immediately effective, and will be subject to her discharge, there is a clear and principled welfare justification for making such an order at this point in time.
7. In determining that an order settling N’s living arrangements upon discharge should be made at this stage, and that that order should be made in favour of the father rather than the mother, I have also had regard to the fact that, on the evidence currently available, N will be particularly vulnerable when she is discharged. I am satisfied that it is crucial that those caring for N upon her discharge can comprehensively meet her physical and emotional needs in circumstances where not to meet those needs would expose N a risk of suffering harm in the form of restricting her diet severely or totally. Within this context, a comparative examination of the capability of each parent of meeting the N’s needs, as required by s 1(3)(f) of the Act, is crucial.
8. Having regard to the totality of the evidence before the court, I am satisfied that the mother is not at present in a position to meet the needs of N as a full-time carer. The reality is that on the evidence before the court the mother is not at present capable of fully meeting her own needs. She faces significant challenges with respect to her mobility, her mental equilibrium and her reliance on opiate painkillers. It is plain that her conditions are exacerbated by stress and that, by her own admission, the mother is a highly emotional person with little emotional support to assist her to navigate her own difficulties.
9. Within this context, I have significant concerns regarding the mother’s capacity to meet N’s emotional needs given her own emotional vulnerability. Whilst I have not had the benefit of hearing from her, the mother’s statements reveal a stark and repeated habit of using N’s difficulties as a means of eliciting sympathy for her own plight. This self-centred approach is entirely inconsistent with N’s need for unconditional emotional support and presents a very real hazard to a child who has already taken on a wholly inappropriate level of responsibility for her mother’s physical and emotional wellbeing. That hazard is increased further by the mother’s concession that she is without any form of support network. There is a high risk in these circumstances that N would simply become the emotional support the mother currently lacks. To her credit, at times the mother has shown, in conversations with Ms M, some insight into the limitations on her capacity to meet N’s needs.
10. I accept that the mother’s position may improve over time. However, two points must be made in this respect. First, the mother’s difficulties are relatively longstanding and their progression has, to date, been one of worsening symptoms and an increasing inability to cope. As matters stand, I am clear that for the foreseeable future the difficulties that the mother has that militate against her meeting N’s needs will remain and that N would have significant caring responsibility for her mother if discharged into her care. This would not be in her best interests at a time when her own wellbeing is fragile and in need of support to avoid the risk of harm that I have set out above. Second, for the reasons I have already given, I am satisfied that N’s welfare demands that a decision on where she is to live upon discharge be made now.
11. By contrast, the evidence before the court demonstrates that the father has sought to engage with the hospital, has visited N regularly and attended meetings, appears realistic in his understanding of what caring for N on discharge would entail and that he would have capacity following psycho-education to meet her needs. Importantly, N has a good relationship with her step-mother, who appears to have been able to act as a calming influence on the frictions that have arisen. In the circumstances, I am satisfied that the father (with the support of his wife) has greater physical and emotional capacity to meet N’s needs than the mother, given the mother’s manifest and complex difficulties. That is not to say that the father and the stepmother will not need significant support to meet N’s needs and will need, in particular, to undertake psycho-education to assist them to do so.
12. With respect to the range of powers available to this court, as set out above, pursuant to s 11(7) of the Children Act 1989, and subject to certain limitations, the court is able to attach to a child arrangements order directions about how it is to be carried into effect and conditions which must be complied with. The court is also able to make such incidental, supplemental or consequential provision as the court sees fit. Within this context, with respect to the terms of the child arrangements order that govern N’s living arrangements, I am satisfied that it is in N’s best interests, and appropriate to make an order stipulating that N shall live with her father upon subject to her being discharged from hospital.
13. The terms of the child arrangements order that govern the time that the mother spends with N following her discharge present more of a challenge. Whilst I am satisfied for the reasons I have given that it is proper at this stage to conclude definitively that it is in N’s best interests to live with her father upon discharge, the nature and extent of the time she should spend with her mother upon discharge is not yet capable of similar categoric definition. However, it is plain on the evidence as it currently stands that it will be in N’s best interests to spend time with her mother upon discharge. It is likewise plain on the face of the evidence that the nature and extent of that contact will need to be dependent upon the mother’s own health and her ability to meet N’s needs during contact. Finally, I am satisfied that it would not be appropriate, for the reasons I have already given, to leave completely open the question of the time N spends with her mother upon discharge by adjourning the question of contact. In these circumstances, I am satisfied that it is in N’s best interests to make an order at this point that provides that N will spend time with her mother upon discharge subject to directions and/or conditions pursuant to s 11(7) of the Children Act 1989 to ensure that the nature and extent of such contact is the subject of consultation between the parents and the professionals working with N at the time, to ensure that the mother is mentally and physically well enough to meet N’s needs and to ensure that the mother has had the requisite psycho-education needed to address N’s dietary needs. I will hear further submissions from each of the parties as to the precise nature and ambit of the directions and/or conditions.
14. Finally, for the reasons I gave at the conclusion of the evidence and submissions, it would not be appropriate at this stage to make an order stipulating which school N should attend following her discharge. Whilst I am satisfied that N has a clear need at this point in time for certainty in respect of her living arrangements for the reasons I have given, her future educational needs are not capable of similar definition at this time. In the circumstances, it would not be appropriate for the court to endorse particular school by way of a specific issue order before what may well be complex educational needs requiring specific resources have been fully realised. In the circumstances, I decline to make any order in relation to N’s schooling.

CONCLUSION

1. I accept that it is a relatively unusual course for the court to make a child arrangements order that is, in effect, anticipatory in nature and where circumstances could change ahead of the order’s implementation. However, and for the reasons I have given, I am satisfied that in this very unusual case there is a principled welfare basis for making such orders in circumstances where the making of the same is central to N’s recovery and, hence, to her best interests, which best interests are this court’s paramount consideration.
2. In conclusion, I make a child arrangements order that N shall live with her father upon discharge and spend time with her mother subject to the directions and/or conditions set out in the child arrangements order. As I have stated, I will hear further submissions from each of the parties as to the proper nature and ambit of those directions and/or conditions and will invite the parties to agree a draft order for approval by the court.
3. That is my judgment.