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Case No: CA-2024-001020
CA-2024-001020-A

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING AT BARNET

Her Honour Judge McKinnell

ZW22C50451

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/09/2024

Before :

LORD JUSTICE UNDERHILL

LADY JUSTICE MACUR

and

LORD JUSTICE SINGH

Between :

In the Matter of K-K (Children)

Appellant

Ms Howe KC & Ms Fisher (instructed by **BEU Solicitors**) for the **1st Appellant**
Mr Tughan KC & Ms Bovington (instructed by **Appleman Legal**) for the **2nd Appellant**
Mr Lamb KC & Ms Vindis (instructed by **London Borough of Enfield**) for the **1st Respondent**

Ms Youll (instructed by **Duncan Lewis Solicitors**) for the **2nd Respondent**
Mr Twomey KC & Ms Roberts (instructed by **Miles & Partners Solicitors**) for the **3rd to 5th Respondents**

Hearing dates : 2 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 10 September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Macur LJ :

Introduction:

1. NK and KK are the mother and stepfather of the child A (dob 26.4.10), and the First and Second Respondents respectively in ongoing care proceedings concerning A and her younger sibling and half siblings. In a judgment dated 15 April 2024, HHJ McKinnell (“the judge”) made findings of fact to the effect that KK had perpetrated sexual abuse against A and NK had failed to protect her from that sexual abuse or react appropriately to A’s allegations. KK appeals against the findings made against him with the leave of the single judge. NK made a late application for leave to appeal against the findings made against her. My Lord, Underhill LJ gave directions in writing regarding the filing of skeleton arguments and thereafter indicated at the outset of the hearing that the Court would, not least for practical reasons, consider the merits of her application during the hearing of the appeal. As it has transpired, it is impossible to divorce aspects of NK’s case from that of KK.
2. The fact-finding hearing took place over 13 days and 11 witnesses gave oral evidence, including KK and NK. No party sought for A, then aged nearly 14, to give oral evidence. At the conclusion of the hearing the judge produced a judgment in which she reasonably indicated:

“It is important that this judgment is read as a whole. I cannot refer to everything that I have read and heard but I have taken it all into account. Significance should not be attached to where I set something out in this judgment. I write this judgment having re-read the evidence and written submissions, having reflected on all the evidence and having had the opportunity to stand back and consider everything.”
3. The thrust of the appeal is that, in reaching her decision, the judge failed to adequately reflect the patent breach of established good practice in interviewing children by teachers, social workers and police officers who questioned A and their inadequate method of recording the allegations A made and in the context of the judge’s asserted failure properly to assess the credibility and reliability of A who had retracted the allegations on numerous occasions, and maintains that retraction to date. It is argued that in this latter respect the judge erroneously shifted the burden of proof to NK and KK.
4. Ms Howe KC and Ms Fisher for KK submit that we should set aside the findings and because there is a paucity of reliable evidence to support findings of sexual abuse, decline to remit the same for re-hearing.
5. Mr Tughan KC and Ms Bovington for NK profess “neutrality” in relation to the allegations of sexual abuse but submit that the judge failed to acknowledge the position of a mother whose 14-year-old daughter has repeatedly retracted the allegations of sexual abuse she has made against KK. If KK succeeds in this appeal, this will obviously impact upon the findings made against her.

6. Ms Youll for A, who was separately represented throughout the hearing below, supports NK and KK's appeals. A maintains her retractions and explanation for making false allegations and supports her parents since "she does not want her life or those she loves to be affected or shadowed by the court's findings that she is a victim of sexual abuse or that her mother failed to protect her in any way."
7. Mr Lamb KC and Ms Vindis for the Local Authority ("LA") defend the judgment and oppose the appeals, as does Mr Twomey KC and Ms Roberts for A's younger siblings and half siblings, by their Children's Guardian.

Background Facts:

8. Between 2017 and 2022 A (d.o.b. 26.4.2010) made, or repeated, a series of allegations of sexual abuse against KK, namely of showing her pornography, touching, and kissing her inappropriately, encouraging her to perform fellatio, and digitally penetrating her. Most of these allegations were first made when she was about 7 years old to NK. At that time, they were not reported outside the immediate family. (See paragraph [12] below)
9. On 18 January 2022, A, apparently encouraged by a school friend, repeated the allegations of what she said KK had done when she was aged between 6 and 9 to DL, her head of year, who logged the allegations on the school's safeguarding computer programme and made a referral to MASH (Multi-Agency Safeguarding Hub). DL summarised what A had said soon after she finished speaking to A. The allegations included KK showing A porn on his phone and encouraging her to commit fellatio. Police officers attended at the school the same day to talk to A. DC Ludwig, "talked and typed" a summary of what she said. A repeated the allegations she had made, and that KK had got into her bed and "sucked her neck". However, on 19 January 2022, in the only ABE (Achieving Best Evidence) interview conducted, A retracted her allegations and said that she had lied to gain attention. DC Ludwig frankly conceded, as was apparent on the video, that he did not adhere to best practice in questioning A. KK obviously does not complain about the outcome of the interview but cites this as evidence that the methodology of obtaining and recording details of A's allegations by teachers, social workers and police officers are likely to be equally remiss.
10. On 14 February 2022 A maintained and expanded upon the reasons for her retraction when spoken to by a social worker preparing a welfare report. The social services and police investigations were "closed".
11. In November 2022, a fellow student reported that A was confiding in them about sexual abuse committed by KK. On 15 November 2022, A attended school with a shaved head. She told teachers that NK had shaved her head as punishment for "lying", and that she had been sent to live with her grandmother. TC, a social worker visited A at school on 17 November 2022. TC made handwritten notes of what A said which she subsequently used to prepare her case notes. In those notes A is said to have alleged that KK had "molested" her, "had put fingers inside her vagina, he did not penetrate her but also made her watch porn". A could not remember how old she was when it started. She said she told her mother twice, and it stopped after the second time of telling. A did not say her sisters had been abused and was not

concerned about them. She said she had been pressured to withdraw the allegations previously made.

12. NK and KK were arrested the same day and subsequently interviewed. When interviewed NK revealed that A had made a previous complaint against KK of sexually inappropriate behaviour in about 2017.
13. NK said that in 2017 KK told her that A was “touching her brother inappropriately”. A had denied it, but NK had subsequently observed it herself. NK became “angry immediately” and demanded to know where A had learnt such behaviour. A said that she had learnt it from KK, who had kissed her and “touched me like that on my bum.” A told NK that KK had “showed me a video of it: of people doing it.” NK had delivered the children to her mother and set off to confront KK at work. However, A spoke to her grandmother who rang NK en route and said that KK did not do it but showed her a video of people kissing. NK spoke to KK about it, and he denied it.
14. NK and KK were excluded from the family home as part of their bail conditions and were to have no contact with the children for two weeks. The maternal aunt moved to live with A and the other children.
15. Care proceedings were issued on 28 November 2022. Sometime thereafter an exclusion order was issued in the family proceedings.
16. On 30 November 2022, the allegations were again retracted by A in discussions with a social worker. She repeated the retraction to police officers on 5 December 2022 and subsequently on several occasions to different social workers. A said she was under no pressure to withdraw the allegations. She gave varied reasons for lying about the sexual abuse allegations including dislike of her stepfather, a desire to see her biological father more often, and a wish for her parents to reunite. However, in a CRIS (Crime Reporting Information System) report prepared from contemporaneously typed notes of the discussion she held with A on 5 December 2022, PC Motei also noted “[A] did not realise the consequences would be so dire and she regrets her actions.”
17. On 7 February 2023, the police investigation was closed for want of evidence. NK was cautioned in respect of the assault by shaving A’s head.
18. On 22 February 2023, the LA filed an application to withdraw the proceedings, and on 21 March 2023 indicated it was “no longer seeking findings of the sexual abuse allegations. The ... family could be supported under a child protection plan...[which] would be sufficiently robust to safeguard the children for work and support to be undertaken with the family.” On 18 April 2023, the judge granted permission for the LA to withdraw this application.
19. In September 2023, the judge discharged the exclusion order which prevented NK returning to the family home to enable her reintroduction as carer for her children. On 10 October 2023 NK moved back to the home full time. The Interim Care Order was replaced by an Interim Supervision Order.

The findings made:

20. As against KK, the judge found that he sexually abused A causing significant harm in that:
- a. on various dates whilst the child was between 6 and 10 years of age, as reported by the child A to professionals on 18 January 2022 and 17 November 2022:
 - i. he showed the child A pornography on his mobile phone that was described to A by him as ‘where babies come from’;
 - ii. he inserted his finger and/or fingers into A’s vagina;
 - iii. he would join A in bed and ‘suck her neck’;
 - iv. on one occasion, he entered A’s room and asked her to ‘lick his dick’ which A did;
 - v. on one occasion, he entered A’s room and touched her bottom whilst she was in bed; and,
 - vi. on one occasion, in around 2017, he kissed the child A and/or showed her video of people kissing.
21. As against NK, the judge found that she failed to protect A from sexual abuse and/or failed to respond timeously, adequately or at all to allegations made by A to her that indicated she was the victim of KK’s sexual abuse in that:
- i. in or around 2019, A had told NK that KK had sexually abused her on occasion (on a date unknown but presumed to be around 2019), yet she failed to alert social services or the police of these allegations.
 - ii. on one occasion, in around 2017, NK was informed by A that KK had kissed her and/or showed her video of people kissing. NK did nothing save for asking the KK whether this had occurred.
 - iii. on or around 14 November 2022, NK shaved A’s head as ‘punishment for lying and for not apologising for the reports of sexual abuse against her stepfather’ and that A was ruining NK’s life and that she regretted A had been born.

Grounds of Appeal:

22. KK advances six grounds of appeal namely:
- 1: the judge wrongly concluded that there was sufficient evidence to support findings of sexual abuse.
 - 2: the judge failed to appropriately analyse and weigh the professional evidence on retraction and the child’s position on retraction throughout the proceedings.
 - 3: the judge failed to address inconsistencies and self-contradictory characterisations of A’s allegations.

- 4: the judge failed to adequately weigh evidence of A's behaviour that corroborated her reasons for making false allegations.
- 5: the judge inappropriately speculated that insignificant pressure was placed on A by NK.
- 6: the judge placed too much weight on the credibility of the parents in reaching her findings amounting to a reversal of the burden of proof.
23. NK did seek in her written application to advance four grounds of appeal but, in oral submissions only pursued two, namely:
1. The judge placed too much weight on the credibility of NK so as to essentially reverse the burden of proof.
 2. The judge wrongly found that NK failed to protect A in circumstances where A was retracting her allegations.

Fact-finding appeals:

24. Counsel for KK and NK acknowledge the force of Lewison LJ's judgment in *Fage UK Ltd & Anor v Chobani UK Ltd & Anor* [2014] EWCA Civ at [114] and [115]. They understand they face a significant hurdle in persuading this Court to overturn findings of fact made in the court below.
25. More recently in *Volpi & Anor v Volpi* [2022] EWCA Civ 464: Lewison LJ said:
- “[2] The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
- i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
 - ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
 - iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
 - iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for a judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

Discussion:

26. Bearing these principles in mind I turn to address the grounds of appeal.
27. Whilst the judge found it convenient to construct her judgment by summarising “the oral evidence (including some analysis)” of witnesses in the agreed order in which they gave evidence, I would regard the critical base of the judge’s inquiry to centre on the emergence and context of the first allegations made by A in or around 2017 arising from the evidence of NK and KK. I agree with Mr Twomey’s submission that the fact of what appears to have been a contemporaneous first allegation with alleged associated sexualised behaviour and NK’s self-reported reaction to it, is of crucial importance in considering the credibility and reliability of the records of later reported and repeated allegations and retractions made by A. Consequently, the evidence of NK and KK on this issue was pivotal.
28. Unusually, in the circumstances of this case, the evidence of the first allegation of inappropriate behaviour by KK towards A arose, almost as an afterthought, in NK’s police interview in November 2022. (See paragraphs [12] and [13] above.) Unsurprisingly, both KK and NK were cross-examined about contemporaneous events and discussions at that time.
29. The judge dealt in considerable detail with NK’s evidence in paragraphs [115] to [149] of her judgment and KK’s evidence in paragraphs [150] – [173]. She gave further analysis of their evidence in paragraphs [195] to [205] thereafter. She observed both NK and KK each giving evidence over the course of two days. There is no suggestion on behalf of either NK or KK that the judge’s summary of the relevant evidence misrepresents that which NK or KK said, or that it is taken out of context, save to the extent indicated in paragraph [33] below. Clearly, the judge performed a painstaking exercise of identifying the several inconsistencies, not only in NK’s and KK’s different accounts of the events in 2017/18 and thereafter in 2022 by reference to interview records and case notes, but also during the course of their examination in chief and cross-examination.
30. Consequently, in the case of NK she concluded:

“[149] Having had the opportunity to stand back and consider all the evidence, I do not accept that the Mother has given an entirely truthful account. I find that she knew more about the Stepfather’s actions than she admitted to. I find that she knew that A had alleged that the Stepfather had shown A his penis and asked her to lick it. The Mother clearly tried to keep the allegations within the family and even then not even telling her sister (the Maternal Aunt) the truth. I do not accept the

Mother's evidence that A is an attention seeking, lying child. In my judgment, the Mother's and the Stepfather's portrayal of A has been an attempt to deflect from the Stepfather's wrongdoing. A's retractions have to be seen in context, including the pressure that A was under after the Mother was arrested and separated from the children. My assessment of the Mother is that she clearly loves her children, very much wants the allegations to be untrue but was too quick to accept the Stepfather's explanations. She should have reported the allegations to professionals, not kept them within a limited number of people in the family. ... The Mother has been present in Court throughout the Fact Finding hearing. She has heard the Stepfather's evidence. She must now know that he has not been truthful. Their evidence is internally inconsistent. It is also inconsistent with each other."

31. The judge was entitled to make an adverse finding as to NK's credibility in the circumstances she describes. It was neither unreasonable nor irrational for her to have done so. Nor do I consider any of the inferences she identified to be unreasonable or irrational.
32. The judge gives potent reasons for finding that KK overplayed/exaggerated his language difficulties, but nevertheless took into account that "English is not [KK]'s first language."
33. KK had been cross-examined upon the contents of a statement he made on 23 March 2023, in which he stated:

"I can confirm that I do not require an interpreter in these proceedings or to have any of the documents translated. I have understood the court hearings and I am able to read the court papers. I have been brought up to speak English alongside my language, I was taught in English at school right up to when I left secondary education."

Having confirmed this statement as true at the start of the evidence, he denied it in cross-examination to account for his inconsistent accounts. The judge concluded:

"155. Having considered all the evidence and what I observed in Court throughout this fact finding hearing, I have no doubt that the Stepfather has overstated his language/communication issues. He has blamed inconsistencies in his evidence in Court and in his assessments on language/communication issues. He started the second day of his evidence by trying, unprompted, to go back over his evidence from the previous day and to explain it away as a misunderstanding on timeframes. However, his evidence the day before, using his own words, in his own language, which were interpreted by the interpreter, and which he did not correct (as he had on other occasions) referred to the days (not months or years) after the 2017/2018 Hatfield discussion with the Mother. His evidence could not have been clearer."

34. Ms Howe seeks to explain away the impromptu nature of KK's amendment to his evidence at the start of the second day on the basis that he had "struggled to identify when he first heard the allegation that he had made A lick his penis" on day 1 of his evidence and indicated he would "revert to the issue to try to clarify", but this is to miss an essential point. There were other significant details relating to his response to the contemporaneous allegations which KK, on the second day of his oral evidence, denied had formed part of the 2018 conversation by a composite correction that he was "giving the whole scenario between 2018-2022."
35. It is unsurprising that the judge found this a significant moment. She was entitled to infer that KK had contemplated the inference that could be drawn from that which on day 1 of him giving evidence he had said had been discussed with NK immediately following the 2017/18 allegations. As she observed: in paragraph [204] of her judgment:
- "204. When he first gave his evidence about the discussions he had with the Mother at home in the days (not months or years) after the Hatfield discussion, he could not have been clearer about the timeline. He described it using his own words in his own language, interpreted by the interpreter whom he did not correct and using his own timeframe. The words came from him. He had clearly thought about his evidence overnight and in my judgment that was why, unprompted, as soon as he resumed his evidence the next day, he sought to say that he was speaking about the years (not days) between 2018 and 2022. His evidence lacked credibility. He was clearly changing his story. I am certain that there was no language difficulty. The Stepfather was not being honest."
36. I am in no doubt that the judge was entitled to find KK's evidence
- "was inconsistent, lacked credibility and, on most issues, I did not believe him. Even allowing for the language difference and the stress of giving proceedings, I did not find him to be an honest or straightforward witness."
37. The judge's emphasis upon the evidence of NK and KK is not to shift the burden of proof, which remains on the LA throughout. However, the discharge of the burden of proof is not restricted to a consideration only of the evidence called by the party who bears the burden. The submissions on behalf of NK and KK that the judge shifted the burden of proof because she made a negative assessment of KK and NK's credibility (see paragraph [21(6)] and [22(1)] above) is fundamentally flawed. As indicated above, the evidence was a touchstone for the assessment of the evidence of A's later disclosures of these earlier incidents which the judge must and did consider.
38. In ground 3, KK challenges the substance of A's complaints as inconsistent and contradictory and the judge as "sidestepping all evidential difficulties". Ms Howe refers to the fact that A did not allege digital penetration until November 2022, at the same time that she is reported to have said that KK had not exposed himself to her or asked her to do anything to him, contrary to the initial complaint which included an allegation of fellatio; had suggested to friends that the abuse was ongoing and also

included her younger siblings, but then contradicted this; had alleged that the abuse occurred in different rooms; had felt unsafe in her bedroom and placed a chair against the door to prevent KK's access, but changed this to suggest that it was to stop her younger siblings intruding into her room and that KK only came in to retrieve his computer.

39. Ms Howe draws our attention to paragraph [218] of the judgment, in which the judge said that although she could not date each incident of sexual abuse she was "satisfied that they happened as A described to others." She describes this finding as "unsatisfactory and perverse" since A's allegations were self-contradictory. I would not regard the so-called inconsistencies to be either necessarily self-contradictory or fatal to the finding of sexual abuse of the nature first alleged by A in 2017/18 for the reasons discussed in paragraphs [2] to [9] above. The judge may have been imprecise in her choice of words in this respect, but it is but one sentence amidst a carefully structured critique of the evidence and is of no significance to her overall finding of sexual abuse and failure to protect.
40. I am not sure that the 'new' allegation of digital penetration, made by A to TC and to CL in November 2022 was in substitution for the allegation of exposure and fellatio. That is, the nature of the recording makes it unclear whether A was distinguishing between the occasions when she alleged she had been digitally penetrated which did not involve exposure or penile penetration or she was retracting the latter allegation. The judge apparently thought that A had been inconsistent in this regard and indicated that "I have taken this inconsistency into account", although she failed to explain how she had done so and with what effect.
41. The record made by the social worker, TC, in relation to her meeting with A in November 2022 and her independent recollection of her meetings with A and involvement in the case, was critically exposed on several fronts. The judge found that TC had not followed good practice in interviewing A, "the lack of understanding and effective training around questioning children was ...concerning", her notes did not record verbatim that which had been said by A, and TC misremembered certain aspects of her involvement in the case, namely that she did not speak with NK, albeit that she thought that her case notes had been 'cut and pasted' into a Record of Outcome of s 47 enquiries. Consequently, I would not have been surprised if the judge's appraisal of TC in paragraphs [89] to [96] of the judgment, summarised in paragraph [41] above, had led her to conclude that although she found TC to be "a truthful witness" she nevertheless felt TC's evidence to be an unreliable foundation upon which to make the finding of digital penetration. However, the judge was undoubtedly entitled to find that the evidence of CL (a teacher) did offer support for the substantive allegation recorded by TC.
42. On 11 November 2022 CL had recorded in the school safeguarding log that one of A's peers reported that KK "touched A in inappropriate places at night" and that she and DL (another teacher) had spoken to A about it, and A had denied it. CL recalled that A subsequently said that KK had "fingered her", albeit that she could not recall if this was on 17 November or whether she was present with TC when A made the allegation and made no independent recording of the same. The terminology of the allegation CL reported is undoubtedly congruent with that of a teenager as opposed to the vocabulary which the judge found TC had imported to finesse her notes. The judge appears to have a firm basis to find that CL was "an honest and truthful witness.

She struggled to remember some details, but her recollection of events was good overall.”

43. KK’s grounds 2, 4 and 5 challenge the judge’s assessment of A’s retractions, but I find nothing in the submissions that demonstrate that the judge reached an unreasonable or irrational decision. Regardless of A’s consistency in maintaining her wholesale retraction of the allegations since November 2022 to a number of different people, that A offered what certain witnesses regarded to be a “plausible and age-appropriate description” of why she had made allegations she now contended were false without them having any suspicion of adult coercion or undue influence, or that A was frustrated that her retractions were to no effect, the judge was justified in regarding the wider context in which the retractions had been made to be crucial to her analysis of the weight to be placed upon them.
44. Significantly, the judge’s findings regarding the mother’s reactions to the allegations in 2017/18 and then in January and November 2022, including shaving A’s head are unassailable.

In January 2022, the judge found that NK “was clearly trying to downplay the tensions and her anger in the home that night by saying that she was not angry with [KK] when she spoke to him that night. A was present in the house. In my judgment, it is likely that A was aware of [NK’s] anger. The next day, A retracted her allegations.”

45. In November 2022, NK in interview said that when A came back from school, having made the allegations on 14 November, she remonstrated with her and said, “I need space from you”. In paragraph 122 the judge said it was clear that NK was angry with A and wanted her out of the house. The Mother was not thinking about A’s feelings when she sent her to stay with her grandparents the next day after school. She did not speak to A when she was at the maternal grandparents’ home, even before the Mother was arrested. That silent treatment, (which I refer to below) would have been upsetting for A. The Mother’s account given to the police close in time to the incident records (in the Mother’s own words) that the Mother was so angry when she spoke to A on 14 November 2022 that she told A that what she was saying was not true, that she (the Mother) needed to stay away from A and that she (the Mother) needed space from A. The Mother told A that her allegations are “going to destroy somebody’s life.” A told CL that the mother had said to her that “A was ruining the Mother’s ... The Mother clearly felt that lives were being ruined by the allegations. I believe she did tell A that A was ruining the Mother’s life, as A reported to CL. All of this would have been very difficult for A.”
46. In paragraph 124 the judge made findings regarding the head shaving:

“A had already been told that she was being sent away. The Mother said: “I was mad at [A]. I told her for that I was going to cut off [her] hair as punishment for lying.” ... The Mother’s actions in shaving A’s head on 14 November 2022 undoubtedly caused A significant emotional harm. A went to

school from home the next day. She went home to her grandparents, not her mother, after school on 15 November 2022. A would have been in no doubt about the Mother's feelings of anger towards her. A had effectively been sent away. Whilst the Mother sought to portray that as A's decision, I find, more likely than not, that it was the Mother who decided that A should go and stay with the maternal grandparents. The Mother told the Court that she did not speak to A between A going to school on 15 November and the Mother being arrested on 17 November 2022. Whilst she said that she did not speak to A again until supervised contact, I did not believe the Mother. A told the school on 28 November 2022 that she spoke to the Mother. I accept that record as accurate and find that the Mother did speak to A over the weekend of 26/27 November 2022. A had no reason to lie about that. The Mother knows that that was in breach of her bail conditions. Two days later, on 30 November 2022, A once again retracted her allegations. A did not see the Mother until supervised contact started on 7 December 2022. I am in no doubt that A felt the pressure of having made allegations which then led to the Mother being arrested and the siblings being separated from their parents. A saw her mother again on 7 December 2022. She has maintained her retraction since 30 November 2022."

47. Ms Howe submits that the judge's findings that significant pressure, as indicated above, had been brought to bear upon A to retract were speculation, but this is to confuse speculation with the ability to draw common sense inferences from the evidence. The judge's findings on the external pressure, wittingly or unwittingly brought to bear upon A to retract are well articulated and comprehensible in the judgment.
48. NK's second ground of appeal is related to the retraction of the allegations but is unsustainable for the reasons in paragraphs [45] and [46] above. At paragraph [140] the judge deals with the point directly:

"The Mother's evidence that she believes A's retractions fails to take into account the circumstances surrounding A's retractions, including the Mother's response to those allegations. A has clearly felt responsible for, and guilty about, the Mother's absence from the family home. A has clearly missed her mother and wanted her home. A has clearly felt responsible for the family being separated and for her siblings separation from the Stepfather. A was humiliated and harmed by the Mother shaving her head as punishment for lying. Although A tried to make the most of it, it was clearly upsetting and caused A significant emotional harm. The other children were well aware of the punishment. In my judgment, there is a significant risk that the children will not report any wrongdoing out of fear of being punished, isolated or sent away as A was.

The Mother was either unable or unwilling to see the context surrounding A's retractions. The Mother did however accept that A knew that the Mother loved the Stepfather and that the Mother wanted him to be part of the family. When it was suggested to the Mother that if A wanted the Stepfather out of the home, the best way would be to make and maintain the allegations, not to retract them because that would have the opposite effect, the Mother agreed. When it was suggested that it did not make sense for A to make the allegations and then retract them, the Mother's response was "probably, I don't know." The Mother accepted that she was very angry with A after the police retraction interview on 19 January 2022. That anger was documented in the police disclosure [MB 360]. I did not believe the Mother when she said that she had not been angry with A the evening before or that "she did not tell A that she was attention seeking or a brat. Those were unusual words for a child of A's age to use to describe herself. It is part of the Mother's and the Stepfather's case that A has been attention seeking."

49. The judge recognised the deficiencies in the later investigations of A's allegations made known in 2022, in paragraph 207 of her judgment, indicating that:

"I have taken into account the fact that some of the primary evidence is lacking, with some of the social workers not being called to give evidence and some of the LA documents and record keeping being poor. I share the Guardian's concerns about the evidence gathering, and at times analysis, in this case. I have taken into account the fact that there is no record of the questions that A was asked by professionals (police, teachers, and social workers) at school in 2022. There was no ABE interview in November 2022 despite it being on the police's action list. Had the police conducted an ABE interview with A in the 12 days after she made the 17 November 2022 allegations, no doubt the police would have explored with A sensory/experiential information around the fingering allegation. Regrettably, the police did not visit A again until 5 December 2022, after A had withdrawn the allegations. There was no ABE interview as planned.

208. The ABE guidance has not been followed on a number of occasions when A was questioned."

50. Nevertheless, as Peter Jackson LJ said in *Re S (A Child) (Findings of Fact)* [2023] EWCA Civ 346 at paragraph [36] "the fact that the guidance has not been followed does not mean that findings of abuse cannot be made where the evidence as a whole justifies it." The judge assessed, and gave reasons why, she regarded, the evidence of DL, the teacher and DC Ludwig who first dealt with A's allegations in January 2022 to be reliable. Further, she was entitled to factor into the analysis NK's and KK's own evidence as to the original allegations, which corroborate the fact and nature of the majority of allegations repeated in 2022.

51. NK made no reference to A making allegations of digital penetration when she first disclosed KK's behaviour towards her, but as indicated in [39] to [41] above I reject the submission that the judge had an inadequate basis upon which to reach the findings of fact she made in this regard.

Conclusion:

52. Subject to my lords' agreement I would dismiss the appeal of KK and refuse NK permission to appeal.

Singh LJ:

53. I agree.

Underhill LJ:

54. I also agree.