

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of her family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Neutral citation: [2023] EWFC 230 (B)
Case No: WV19P01522

**IN THE FAMILY COURT AT WOLVERHAMPTON SITTING AT WALSALL
COUNTY COURT**

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF H

Date: 11th August 2023

Before :

District Judge Moan

Between

N

_ And -

K

The Applicant Father appeared in person but assisted by McKenzie Friend
Ms Priscilla Chana

The Respondent Mother was represented by Mrs M Chaggar (instructed by
Lalli and Co solicitors) and supported by Mrs R Gakhal from Black Country
Womens Association.

Hearing dates: 10th and 11th August 2023

JUDGMENT (no 1)

Introduction

1. This case concerns a very young lady called H. Her date of birth is 26th November 2018 which means that she will be five years old in November of this year. Her father is N and her mother is the K. I will refer to them as mother and father throughout this judgment, no disrespect is intended.
2. Father applied for child arrangements order on 9th December 2019 and an application for parental responsibility on 14th January 2022. Parents separated around March 2018 and their child was born in November of that year. Father has not spent any time with H since February 2019.
3. The issue of allegations of domestic abuse was highlighted at an early stage in proceedings in the safeguarding letter dated 15th January 2020. Cafcass confirmed via police checks that father had convictions, some of which were in a domestic setting. In addition, children's services were aware of harassment in 2019 and breaches of a restraining order in mother's favour; and mother said in her interview that she was subjected to domestic abuse during and after her relationship with the father. She said that the majority of this was coercive control but that on one occasion he attempted to force her to have sexual intercourse with him. She described some other incidents to the Cafcass officer during that interview which are recorded in the safeguarding letter.
4. I also had the benefit of a section 7 report from Cafcass officer Baljit Kaur dated 1st April 2020. Both parties participated fully in the preparation of that report, and in addition to the differing accounts as to their relationship, mother was concerned that father did not know about or how to manage the child's additional health needs and suspected that his motivation for his application was to continue to abuse on mother and not to have a committed relationship with his child. Father was not kept informed about the child's needs and considered that he was ostracised from being involved. Father was not named on the birth certificate.
5. The court had previously indicated that the court needs to make a determination about disputed acts of domestic abuse to inform risk and the child arrangements. This is my first involvement in the case, but I am aware that there have been a number of attempts to hold a finding of fact hearing previously. Participation directions have already been made, although this case started before the provisions of the Domestic Abuse Act 2021 were implemented to allow the appointment of a qualified legal representative; so father submitted his questions to mother in writing that I asked on his behalf, as well as quite a lot of other questions I asked putting father's case as outlined in his statement to the mother.

Domestic abuse allegations

6. Mother has made six allegations of domestic abuse against father. At a previous hearing, the Court directed that only four of those allegations needed to be tested. The allegations and responses are listed in a schedule and fully detailed in narrative statements and can be summarised as follows:

Allegation one -verbal and threatening abuse throughout their relationship between 2014 and 2019. The father denied being abusive and submitted it was the mother who was verbally and physically aggressive to him.

Allegation three - In 2016 the father attempted to rape the mother and admitted this in a text message. This is denied by father who said that text messages had been fabricated or edited by the mother.

Allegation four - In 2015 the father raped the mother shortly after she suffered a miscarriage. He was regularly aggressive at her flat. His behaviour was impacted by excessive alcohol consumption. The father denied raping the mother. He accepts attending her flat regularly but was not extremely aggressive. He denied the allegation about his excessive alcohol consumption.

Allegation five - in February 2015 the father was extremely intimidating and aggressive towards the mother. This was denied by father.

7. I will not be considering any allegations about the use of cocaine, excessive alcohol consumption or father's commitment and investment as a parent. None of those issues come within the revised definition of domestic abuse pursuant to PD12J. This hearing is solely to determine allegations of domestic abuse. Any safeguarding concerns regarding drug or alcohol use can be tested, and the position now as to substance misuse is more relevant than that many years ago.
8. Mother made statements dated 18th May 2021 and 6th July 2022 in support of her allegations. Exhibited to her statements were a large number of text messages that she claimed were sent between herself and father. There was a statement from mother's daughter, TA, which she signed and adopted as her evidence at the hearing. I was asked to consider an earlier letter TA made in December 2020 as part of father's cross-examination. The father provided a statement in response dated 9th May 2021 and a further statement dated 1st September 2022.
9. Letters have been exhibited from witnesses to each party's statements. These letters were not in the form of a written statement (i.e. with a statement of truth) and they did not attend to be cross-examined. I

indicated at the outset that I had not read those documents as they were not in a proper format and after having an opportunity to address me on the issue of admission, neither party sought for those letters to be admitted

10. I also had the benefit of some objective evidence. Father was convicted of harassing mother in 2019 which led to a restraining order prohibiting father from contacting mother. There was a previous conviction going back to 2004 when father had committed a domestic assault on a different partner.
11. I note that the mother referred to father receiving an indefinite restraining order. This appeared not to be the case to me. Her statement dated 5th December 2019 clearly referred to an end date of 2021 and it would be unlikely for the Court to impose a lifetime order noting the allegations that led to that conviction. The police disclosure given to Cafcass for their safeguarding report clearly refers to a three-year order. The order exhibited was made on 14th October 2019 until further order which may indicate that it was an interim order which appeared to be consistent with the police information that an order was made on 22nd November 2019. The date of conviction and the date of sentence are recorded separately on the PNC. Whilst not important for me, the parties did not agree about the end date of that order, and I suggested that they clarify this with the police.
12. The police disclosure revealed a log of a report made by GB on 28th April 2019. I am aware that the father and GB had a romantic relationship. That call related to an allegation that father had returned to her home heavily intoxicated and was swearing at GB making her feel uncomfortable. That complaint was closed because an agreement had been made for father to return GB's keys.
13. Mother made a complaint to the police on 11th June 2019 regarding harassment. Mother gave statements to the police in 2019 detailing constant phone calls and messages from father, phone calls from unknown numbers from father and father visiting mother's address or driving his van near her home. In October 2019, a restraining order was made which prohibited father from contacting her. She made further statements confirming that there were alleged breaches of the restraining order. There was no record of any proceedings for breaching the restraining order. The safeguarding report suggested that father was wanted by the police for this alleged offence. Neither party had any updating information about the alleged breaches and the police disclosure was silent about them.
14. The police disclosure confirmed that mother reported the father in April 2021 for allegations of domestic abuse and (attempted) rape. She was interviewed by the police on 9th July 2021. She gave an account of name-calling and his accusations of her being drunk. She never met

his family and he accused her mother of being a drunk. She recounted details of the incident at the public house where she was pushed to get out of the pub and father hit something to the side of her as they left. She described on another occasion being pinned against the living room door. When asked the question as to whether he physically assaulted her; her response was “no, there was the attempted rape”. She said she did not see that incident as that until she prepared the schedule of allegations. She went on to describe the incident which is allegation three. She said that she cried after that incident and felt very dirty. She said that that kind of thing would happen quite a lot; she would wake up and father was having sex with her from behind. She also described allegation four and how she was not ready to have sexual intercourse after her miscarriage and that father said if she didn't do it then, she would never be ready. She said she cried throughout and was telling him “no”. The relationship ended around March 2018 which was after mother discovered that she was pregnant.

15. The text messages that were exhibited by the mother from the father include acknowledgements that he had a temper, had been hurtful and that he was sorry. He was threatening at times stating that he wanted to rip her head off and that he was going to make sure he could really hurt her. He called her names and told her to kill herself and die. He accepted that his behaviour was worse when he was drunk. The chronology of those messages was not always clear or the context of the conversations. She told him that she did not want to have sexual intercourse with him the previous night in one message but his response to that was not clearly exhibited in the bundle.
16. **Allegation one** - verbal and threatening abuse throughout their relationship between 2014 and 2019. The father denied being abusive and submitted that it was the mother who was verbally and physically aggressive to him.
17. Mother gave a number of examples of abusive behaviour throughout her written evidence and text messages which exhibited abusive and derogatory language, as well as apologies for his behaviour towards her.
18. Father said in his written evidence that he did not subject mother to verbal and threatening abuse. He said he was never aggressive and that she was agitated when he spent longer periods of time with her. He believed the text messages had been edited and that she did not have a Nokia phone. He said that she would send a lot of text messages and that he was not much of a texter. He accused mother of drinking a lot of alcohol particularly on a Sunday evening.
19. In her second statement, mother produced a photograph dated 10th April 2015 showing mobile phone that she described as a Nokia on the bed beside her.

20. **Allegation three** - In 2016 the father attempted to rape the mother and admitted this in a text message. This was denied by father who said that text messages had been fabricated or edited by the mother.
21. In her written statement, mother said that she recalled waking up in 2014 and father was having sex with her. He had told her that she had taken her own underwear off but she realised later this was not the case stating that father had taken advantage of her whilst asleep. Text messages exhibited confirmed that father accepted he should not have said some things and that he was angry, although there is no clarity about what father accepted that he should not have said to mother. I could not find a clear admission from father by text that he had sexual intercourse with mother knowing or believing that she did not consent.
22. She recalled the second incident in 2016 or 2017 where father tried to tip her bed over causing a mark on the wall. Father pushed her onto the bed, she told him to stop but he was pulling at her underwear. She pulled her legs to her chest and managed to push him away.
23. In his written evidence, father said he did not rape the mother or try to have sex with her when she did not want to. He said that she would get into bed drunk and tried to have sex with him. She was aggressive and unhappy if she did not get her own way. He said the mark on the wall had been there for a long time and was not caused by tipping anything over. He accused the mother of being aggressive, accusing another man (Mr P) of raping her previously and cutting off the tip of his (Mr P's) finger.
24. **Allegation four** - In 2015 the father raped the mother shortly after she suffered a miscarriage. He was regularly aggressive at her flat. His behaviour was impacted by excessive alcohol consumption. The father denied raping the mother. He accepted attending her flat regularly but was not extremely aggressive. He denied the allegation about his excessive alcohol consumption.
25. In her written statement mother said that she had a miscarriage in 2015 and was not ready to have sexual intercourse. She said that father lay on top of her and she asked him to get off. He said no and if he did not do this now that she would never be ready. Father held her arms down and had sex with her. She said that she cried throughout and that he later confirmed that he knew that she was not ready. Mother said that father was unable to have regard for her exhibiting text messages where he referred to her killing her baby after her miscarriage.
26. Mother gave three examples of father's aggressive behaviour in her written statement –
- (i) Father came to her property in an aggressive mood and pushed her to the floor. Father started to smash her mobile bar that was

part of her business. She asked him to stop but he continued and thought it was funny.

- (ii) In October 2015 father's behaviour was witnessed by mother's daughter, TA. Father was arguing with mother and lost his temper pushing mother onto the coffee table. Mother was scared because he was standing over her and she feared being hit. Her daughter came in, told father to stop and leave.
- (iii) On another occasion she did not allow father to enter the block of flats where she lived. Father became angry and caused severe damage to the main external communal door.

27. In his written statement, father said the mother suffered a miscarriage in 2015 and he received a voicemail from mother stating she was not going to have his little bastard. Father said it was untrue that he had pushed the respondent to the floor or onto a coffee table and accused the mother of throwing things at him and being aggressive. Father made additional allegations against mother in his written evidence to the effect that he was called to collect mother from a friend's house and found her on top of a work friend fighting. Fighting continued in the back of the taxi and mother slammed the door in his face when they arrived at her home. The door hit his foot and head breaking a pane of glass in the door. He said the mother had mental health issues that had been exacerbated by drugtaking.

28. Mother denied being admitted for her mental health problems, he used to accuse her of having mental health problems and he called her mad.

29. **Allegation five** - in February 2015 the father was extremely intimidating and aggressive towards the mother. This was denied by father.

The incidents in her written statements were -

- (i) When she met a friend in February 2015, the father turned up drunk and was abusive to her such that a stranger stood between them. She said father was very aggressive.
- (ii) Between 2016-7, mother met father at a pub and he pushed her as they left. He and stopped her from leaving by blocking her. He became aggressive and punched a plant pot to her right.
- (iii) She was out with her friends and father turned up. He kicked over a table full of drinks causing a scene and making other's fearful of his behaviour.

30. Father said in his written evidence of a that (i) did not happen. Father said that he was aware that mother had a lot of flareups, arguments and disturbances in pubs over the years. He accepted that the second incident was one that he recalled although it did not happen as mother suggested. He said that mother turned up drunk and loud and the landlord insisted that they left. He did not punch a plant pot because there weren't any plant pots. He denied turning over a table but said

there was an incident where a mutual friend did throw a table enraged several years ago.

Assessment of the evidence

31. I am aware from the objective evidence that father had previously assaulted an ex-partner and that he had been convicted of harassment against mother. Father sought to dispute the police evidence in the section 7 report, and he was adamant to me that he had not been convicted of assaulting his ex-partner; he admitted he had been convicted of assaulting a police officer. Noting the police disclosure, it was clear that he had been convicted on 3rd February 2004 of two charges namely common assault and assaulting a police officer and those incidents are a matter of court record. Cafcass had more information from the police than simply the fact of a conviction as it was reported in the safeguarding letter that father had held a knife to his ex-partner's head causing a small cut.
32. Father had been aware of the submission that he had been convicted of common assault in 2004 against an ex-partner upon receipt of the safeguarding letter in early 2020 and this was further discussed between father and the Cafcass officer as part of his interview for the section 7 report. He was advised that he would need to challenge the police records but he has not sought to do so. As a matter of record, he was convicted of assault in domestic circumstances in 2004.
33. The text messages revealed instances of father's abusive behaviour, apologies for his poor behaviour and just plain nasty messaging. Father denied sending some of those messages, particularly those that cast an unfavourable light upon him. The mother confirmed that she had possession of three different mobile phones over the period, she still had two of them but one of the phones had been sold. She said that father had also changed his number in that period and he had two phone numbers. She said she had provided all the messages to her solicitors.
34. The text messages had been exhibited to mother's statements dated 6th January 2021, 18th May 2021 and 6th July 2022 which allowed time for father to produce a full log of the messages he says were exchanged between him or mother or seek a subject access request to mother's phone company if he considered that messages had been edited or sent by someone else. He referred in his closing statement to me that the police had evidence that the messages had not been sent but that evidence had not been presented to me during this hearing. I am aware that there has been a recent change to WhatsApp

messaging which allows messages to be edited but that is a recent development, the messages are marked as edited and it was agreed that the messages in question were text messages. Despite the huge delay in getting to this fact-finding hearing which involved several aborted hearings, I had no objective evidence to support his contention that the messages were not sent by him.

35. There were some striking similarities with the texts that mother said had been sent by father. The spelling was poor, there was indiscriminate or regular use of capital letters and abbreviated words. Multiple consecutive full stops were used. That was not evident from mother's messages. I did not find father's explanation that the messages were edited or sent by someone else to be plausible. Of particular note, father wrote the following messages –

"I am really sorry. I only say things in anger. I don't mean any of it... I feel totally crap about everything."

"I'm sorry. I did not stop to think how you were feeling. The anger just took over and I can't stop. I am sorry. Please forgive me for what I said."

"I lost my temper yesterday and I am sorry I did. Everyday I am boiling over."

"I don't ever want to talk to you like that ever!."

"I am sorry for being nasty. I just cant help it."

"You will never really know how sorry I am for everything I've done to you."

"No matter what you believe I didn't go out to hurt anybody."

"I wish I had not been so cruel and nasty to you. I got so used to falling out that I thought I couldn't hurt you."

"My behaviour with you when I've had too much to drink is more vile than I could ever imagine. I don't know how I could be like that with you. You are right to hate me for that."

"I wish I had not done what I did in anger."

"You are right I am a prick and I need to grow up."

"You hate me on drugs and pissed up because you don't know how I will behave."

"I wish I could keep my temper around you."

"Blame me... I just want to say I'm sorry for being nasty."

36. Those messages confirmed that father had indeed behaved badly towards the mother as he accepted the same. He had anger issues that were exacerbated by drugs and/or alcohol.
37. As well as the calling her a cunt, a piece of shit, a whore and told to fuck off, father messaged –
- “I just want to rip your head off.”*
- “I am going to make sure I can really hurt you if that’s possible.”*
- “Kill yourself. Go fucking die.”*
38. He taunted her about killing her baby following her miscarriage in 2015 and gaslit her about other women and using cocaine.
39. Mother said that father told her that it was always her fault. This was reflected in the way father presented and presented his case. Whilst at times father accepted his responsibility, he was very quick in his messages, his statements and his oral evidence to blame mother. He wrote in his messages that she wound him up and made him talk shit. In his statements he accused her of being drunk, taking drugs, being admitted due to her mental health and being aggressive. He regularly referenced blaming mother in his oral evidence.
40. In combination, the objective evidence alone pointed to a pattern of behaviour that father would become difficult or controlling when things did not go his way. There was a theme that excessive alcohol consumption was often involved. He appeared to accept in his messages that he became much worse than he could imagine when drunk. He readily became abusive and sought to excuse his behaviour for want of his self-control.
41. I heard oral evidence from mother, mother’s daughter TA and from father. I found mother to be a plausible, credible and consistent witness. Her evidence was tested and her evidence remained firm despite challenge. She gave a plausible account of how the bed was picked up at the side causing the finial to mark the bedroom wall. The mark on the wall as shown in the photograph was consistent with the finial being scraped as the bed was lifted at the side. The mark had an arc consistent with the bed being lifted up and over at the side. She had independently supported her evidence with text messages, police disclosure and calling her daughter to give evidence. Her account was internally and externally consistent. I found little to conclude that she had embellished her evidence.
42. She had spoken about the attempted rape from the onset of these proceedings. It was latterly that she referred to the actual rape, this was not mentioned to Cafcass in the safeguarding or section 7 report interviews. Mother had already said that she had not regarded the

attempted rape allegation as rape until she started to put together the schedule of allegations.

43. TA was an observer to some aspects of the relationship between mother and father. She had seen the change in her mother's confidence and demeanour, and had observed controlling, abusive and dismissive behaviour from father to her mother. Her evidence was clear as it was compelling.
44. Father presented as very controlling in court and unable or unwilling to listen. He gave bare denials to incriminating evidence without presenting any cogent evidence of his own. He talked over me as I asked him questions and would not listen to what he was being asked. He presented as a person wishing to control the narrative. I have no doubt that when under the influence of alcohol or drugs, that these traits would be enhanced and he would become even more difficult to deal with. I was aware from the conviction that father was a man who has been prone to poor behaviour including to police officers just doing their job. There was no doubt in my mind from the sheer scale of the messages professing apologies that father had regularly behaved badly towards this mother.
45. Father was quite contradictory at times. He told me initially he did not know if he was ever in a relationship with the mother and referring to a one-night stand but then professed his deep and sincere love for her. Clearly, they were romantically linked for four years. He did not accept responsibility for his actions in his evidence but in his closing written statement, he expressed remorse for his past.
46. Father simply could not stop himself from blaming mother which mirrored the messages and mother's account of father stating that it was all her fault. He said that she procured the miscarriage on purpose albeit all parties agreed that there were series of appointments at the hospital and advice that the foetus was unlikely to be viable. These were traits of emotional abuse, narcissism and gaslighting behaviour, all of which are consistent with allegations of coercive and controlling behaviour.

Findings

47. In assessing the evidence, the standard of proof is the balance of probabilities namely more probable than not. After hearing from the witnesses and considering the documentary evidence, I make the following findings:

Allegation one -verbal and threatening abuse throughout their relationship between 2014 and 2019.

Allegation five - in February 2015 the father was extremely intimidating and aggressive towards the mother.

And part of allegation four - His behaviour was impacted by excessive alcohol consumption.

I had no doubt that these allegations were true. The messages and convictions gave an insight into how father behaved. I did not accept father's evidence about his or mother's behaviour. His behaviour was observed in part by TA and it was likely that this behaviour continued to an extent when they were out in public, at pubs or with friends. That is not to say that father always behaves in this way but there were several examples of this as part of the evidence.

48. I remind myself and others that criminal terminology such as rape should not be used in family fact finding hearings too strictly as confirmed in the case of **Re H-N and Others (children) (domestic abuse: finding of fact hearings) EWCA Civ 448**. There are nuances within criminal law that are not a consideration for me. My role is to determine what behaviour took place.

Allegation three - In 2016 the father attempted to rape the mother.

Allegation four - In 2015 the father raped the mother shortly after she suffered a miscarriage. He was regularly aggressive at her flat.

These allegations were more difficult to make findings about, not least because there was no objective evidence about those allegations and the legal concepts of rape involve complex questions about consent and belief. However, I was satisfied on the evidence that in 2016 mother had put her legs to her chest to prevent father having sexual intercourse with her and that she had pushed father off her. I was also satisfied that in 2015 that she had previously intimated to father that she was not ready for sexual intercourse after her miscarriage and that father had sought to hasten her willingness to engage in intimacy. Her body language and actions were that of a woman who was very upset about having sexual intercourse. Father believed that she should have been ready and so continued to have sexual intercourse with her despite her outward presentation and previous indication of not being ready.

Case management

49. As already indicated, these findings will be sent to Cafcass who are requested to prepare a section 7 report. My findings are the baseline for the previously disputed allegations of domestic abuse. I will also order hair strand testing for six months (or for as long a period that hair samples will allow up to six months) regarding father's alcohol and cocaine use. I have already outlined to father that he must not cut or dye his hair and a failure to engage fully in hair strand testing will result in a deemed finding that he chronically uses alcohol and has a

significant cocaine problem. I warn him that such a finding in default will heavily weigh upon the recommendations made by Cafcass. The cost of the hair strand testing will be borne equally by the parties and is essential to the just resolution of father's application. I ask mother's solicitors to assist with finding an approved tester and ascertaining a quotation for the testing. That test must be done by the end of August 2023, (i.e. father must provide his hair samples to the tester within that timeframe).

50. Cafcass are also asked to explore anger management work and domestic abuse work for father. It is clear to me that father has a problem with regulating his temper and behaviour and he has been domestically abusive to two partners. I strongly suggest to father that he complies with any recommendation ahead of the next hearing as far as possible.

51. I understand that there is an informal agreement around indirect contact with gifts and photos exchanged through the mother's solicitors and that will continue until the next hearing which will be a Dispute Resolution Hearing before me. Mother has been asked to source some updated medical information about the child's medical needs and to ensure that the Court, father and Cafcass have access to that information.

52. Naturally the application for parental responsibility will be determined at the same time as the spend time with application. There being no application by father for a live with order, I make such an order in favour of mother today.

53. This case has already been before the Courts for 3.5 years. I recognise that the pandemic will have enhanced that delay. The matter must not be delayed any further and all parties must co-operate with the directions given today at the first time of asking as there is unlikely to be a further opportunity noting the lengthy history in this case.