NEUTRAL CITATION NUMBER: [2023] EWFC 252 (B)

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 21ST TO 23RD NOVEMBER 2023 AND 27TH TO 29TH NOVEMBER 2023

BEFORE HER HONOUR JUDGE OWENS

F

And

M

The parties and representation:

The Applicant, F, represented by: Mr Brookes-Baker, Counsel

The First Respondent, M, represented by: Mr Jones, Counsel

The Second, Third and Fourth Respondents, represented through their Children's Guardian by: Mr Trueman, Solicitor

This judgment is being handed down in private on 29th November 2023. It consists of 26 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the children and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

Introduction

1. This is a fact-finding hearing to deal with allegations made in the context of Children Act proceedings. The parties are the two parents, M and F, and the proceedings concern their three children, A, B and C who are represented through a rule 16.4 Guardian.

Background

2. There is an extraordinarily high level of conflict in this case, illustrated by the fact that proceedings commenced in 2020 and have not yet been resolved, as well as the number of allegations made by each parent against the other, and the necessary appointment of a Guardian to protect the interests of the children. The parties have each produced 10 statements during these proceedings, and voluminous exhibits to those statements. Despite having the benefit of legal representation, they have been unable to produce a composite schedule of allegations. They have also failed to agree a chronology – as a result I have two versions of a chronology each stretching to multiple pages which, whilst perhaps illuminating as to what each parent regards as relevant, is not helpful to the court.
3. Given the allegations each parent has persisted in returning to during these proceedings, it is peculiar that each has sought strenuously initially to argue that no element of fact-finding was necessary and then, when the case had been listed for this fact-finding hearing, to submit that it should be a composite fact-finding and welfare hearing. Considering the provisions of PD12J, the seriousness of some of the allegations each pursued, which included allegations of alienating behaviours, and the fact that these could potentially have a fundamental impact on the welfare decisions in this case, this was not accepted by the Court. The Guardian would have been in serious difficulty in making a professional recommendation about welfare outcome until the factual matrix for these children has been resolved.

4. Similarly, although F applied in January 2023 for a psychologist to be instructed, this application was premature until the factual aspects of this case could be determined. It seemed from F's evidence to me during this hearing as if he somehow thought that a child psychologist (though the application was for a family assessment) would be able to investigate the factual disputes about why the children had not been going to school and the other allegations he makes against M. It is not, of course, the role of a court appointed expert (if one is deemed necessary) to do this and highlights the necessity of determining significant factual disputes before considering what evidence is required to inform the welfare stage of a case such as this.
5. My first involvement with this case was in February this year. Prior to this the proceedings had been allocated to a District Judge and had been listed for at least one abortive final hearing, with fact-finding having been deemed unnecessary though none of the orders addressing this detailed why that conclusion had been reached. It seems that the Children Act proceedings were delayed at least twice to await the outcome of the financial remedy proceedings at the request of the parties, somewhat at odds with the expectations of avoiding delay under both the Children Act and the Family Procedure Rules.
6. The first application before the Family Court in relation to this family was made by F for orders under the Children Act on 2nd December 2020. Two days later M applied for orders under the Family Law Act, which seem to have at one point to have been directed to be listed for a wholly separate final hearing in early 2021, despite having been heard at the same time as the Children Act proceedings and by the same judge.
7. Both parties have made numerous, repeated applications during these proceedings, sometimes without following the necessary administrative procedures. At least once a wholly new application on a form C100 was made which generated a new case number and risked separate files, administrative and judicial confusion, and unnecessary work when an application within the existing Children Act proceedings could have been made on a form C2. Both the court and the Guardian have expressed concern about the

frequency of applications within these proceedings. One of those applications was by F for a Prohibited Steps Order seeking to prevent M from taking the children abroad on holiday. F applied on the basis that he feared M would attempt to abduct the children to Malaysia, but this seemed to be based on his fears rather than any concrete evidence about this being a real risk and thus the application was refused.

8. The time estimate for this hearing has proved to be somewhat over-optimistic. A combination of the breadth of evidence involved, all witnesses having a tendency to give very long answers and at points to depart from the question actually asked, as well as both parents needing time to read everything when part of the written evidence was in issue, and two new allegations being added in relation to the children's nanny shortly before she was due to give evidence, led to an additional day having to be found at the expense of other cases listed before me.

9. The hearing has involved consideration of two bundles, a so-called 'core' bundle of evidence and a 'supplemental bundle', which together total some 874 pages. I have heard evidence from the social worker who completed a section 37 report at the direction of a District Judge in June this year, the children's nanny, F and M.

10. The breadth of the allegations is notable in terms of the scope of the type of allegations and the timeframes concerned. I noted earlier the parents completely failed to be able to agree a composite schedule. I expressed concern at various points since I started dealing with this case about the appropriateness of schedules in a case of this type in light of recent case law. I warned the parents that I may need to group types of allegations and to only focus upon those that are actually necessary to inform the welfare stage of these proceedings. It therefore follows that consideration may not be given to absolutely every single aspect of the allegations made to ensure that this case does not require a disproportionate amount of court time and that the overriding objective is complied with.

Parties' positions

11. F seeks findings which I will broadly summarise as follows:

    a) M has emotionally abused or exposed the children to the risk of emotional harm;

    b) M is coercive and controlling towards both F and the children;

    c) M has sought to influence the children against F;

    d) M has neglected the children's physical and emotional needs;

    e) M has physically abused the children.

12. M seeks findings which I will broadly summarise as follows:

    a) F is coercive and controlling towards M;

    b) F has neglected the educational and emotional needs of the children;

    c) F has sought to influence the children against M;

    d) F has made serious false allegations against M.

13. The Guardian is, of course, neutral in relation to any case being advanced at this Fact Finding Hearing.

Relevant legal considerations

14. Whoever makes an allegation has the burden of proving that it is true. They must do so to the civil standard, ie on balance of probabilities (***Miller v Ministry of Pensions [1947] 2 ALL ER 372***, and also considering ***Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35, [2008] 2 FLR 141***. An allegation will therefore be proved if the person making it establishes that it is more likely than not that it happened. The seriousness of the allegation or the seriousness of the consequences make no difference to the standard of proof to be applied in determining the facts. Findings of fact must be based on evidence and not on suspicion or speculation (***Re A (A child) (Fact finding hearing: Speculation) [2011] ECWA Civ 12***). Evidence is also not evaluated and assessed separately: "*A Judge in these difficult cases must have regard to the relevant of each*

piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof" (Butler Sloss P in ***Re T [2004] ECWA (Civ) 556***). The court looks at the *'broad canvas of the evidence'* and *"the range of facts which may properly be taken into account is infinite"* (***H and R (child sexual abuse: standard of proof) [1996] 1 FLR 80***). It is, however, not necessary to determine every subsidiary date-specific factual allegation (***K v K [2022] EWCA Civ 468).***

15. I have taken into consideration the principles outlined in ***Re H-N and others (children) (domestic abuse: finding of fact hearings) [2021] EWCA Civ 448*** with regard to domestic abuse allegations. **Practice Direction 12J Child Arrangements and Contact Order: Domestic Violence and Harm** is also relevant which provides key definitions of domestic abuse including coercive control.

16. A Court can take into account the demeanour of a witness or the way in which they gave evidence, but needs to be careful in approaching this, noting that in the case of emotive evidence a truthful witness may stumble and struggle whilst giving their evidence, whilst an untruthful witness may give their evidence in a composed manner. The Court may be assisted by internal consistency of evidence and considering how it fits with other parts of the evidence.

17. The principles outlined in ***R v Lucas [1981] QB 720*** may be relevant. Where it is alleged that a witness may be lying that there can be many reasons why someone may lie including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion or emotional pressure, and that just because a witness may lie about one aspect of their evidence it does not necessarily mean that they may be lying about other aspects.

18. I have also borne in mind that abusive behaviour has at its heart an imbalance of power in the relationship and that this is exploited by an abuser for their benefit. As is clear in case law such as Re H-N noted above, it is insidious in nature and requires sophisticated

analysis, including an awareness of the potential for abuse to be maintained even after the parents have separated and even where protective orders have been in force.

19. At the same time, a Court has to draw a distinction between abusive behaviour and poor behaviour which falls short of being domestically abusive. Hence the need for the Court to focus upon those findings which will have a material impact on child arrangements if proved.

20. The case of ***Re S (Parental Alienation: Cult) [2020] EWCA Civ 568*** is relevant given some of the issues in this case. As was noted in that case, it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent. That case emphasised the importance of early fact-finding and noted (drawing on comments by the President of the Family Division in 2018) *"that where behaviour is abusive, protective action must be considered whether or not the behaviour arises from a syndrome or diagnosed condition. It is nevertheless necessary to identify in broad terms what we are speaking about. For working purposes, the CAFCASS definition of alienation is sufficient: "When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent". To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive" (para 8).* I have also had regard to the decision by Sir Andrew McFarlane P in ***Re C ('Parental Alienation'; Instruction of Expert) [2023] EWHC 345 (Fam)*** which considered what needs to be established to enable a court to conclude that alienation behaviours (the preferred term) had occurred. Three elements need to be established:

    a) the child is refusing, resisting or reluctant to engage in, a relationship with a parent or carer;
    b) the refusal, resistance or reluctance is not consequent upon the actions of the non-resident parent towards the child or the resident parent; and

c) the resident parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's refusal, resistance, or reluctance to engage in a relationship with the other parent.

The burden of proving that there have been alienating behaviours falls on the parent alleging them. Behaviour of a child is not evidence of the behaviour of an adult, and the fact of a child's refusal to spend time with a parent does not automatically mean that the child has been exposed to alienating behaviours from the other parent. The fact that allegations of abuse may be found not to be true is also not necessarily sufficient to prove alienating behaviours since there can be a multitude of reasons why a court may not find allegations of abuse to be proved, hence the three required elements above need to be established.

21. Mr Brookes-Baker also pointed out in his closing submissions that section 4 of the Civil Evidence Act 1995 is relevant. I have also noted that Part 23 of the FPR applies in relation to any hearsay evidence.

Evidential summary

22. I have already noted that there is considerable documentary evidence contained in the bundle before the court. In addition to the numerous, lengthy statements provided by each party which are in section C, section D of the core bundle contains a Child and Family Assessment Report dated 27th December 2019 (D1-20), an Early Help Assessment Report dated 17th March 2022 (D25-36), and the section 37 Report mentioned earlier which is dated 30th June 2023 (D98-149). CAFCASS documents in section D comprise the initial safeguarding letter dated 11th March 2021 (D21-24), a section 7 report dated 21st March 2022 (D37-52), and three position statements on behalf of the Guardian dated 2nd May 2023 (D90-97B), 20th July 2023 (D149A-149B) and 15th October 2023 (D150-151). Section D also contains disclosure from the children's school (D63-89) and a letter from the school dated 28th February 2023 (D55-62), and two letters

from the parents' employers (D53 for F and D54 for M). A statement from the children's nanny, dated 12th October 2023 is at C180-194).

Analysis

23. I think it is important to start by noting that there are notable aspects of the facts in this case which are not in dispute. It is broadly accepted by the parties that their relationship broke down over a fairly protracted period of time and there were periods of attempted reconciliation. They agree that divorce was being contemplated in 2019. It is also accepted that, following the final decision to separate, they in fact remained living separately in the former matrimonial home with the children pending the sale of the property and resolution of the matrimonial finances. During these proceedings, they have also agreed arrangements for the children which amounted to a shared care arrangement. They also agree that the children have not spent time with their mother as was agreed under previous child arrangements orders, nor have the children attended school to a level that is a) required by law and b) required to meet the children's educational, social and developmental needs. It is also not in dispute that the trigger for both F and then M to make applications to the Family Court in swift succession was that M took the children with her out of the area without telling F and without permission to remove them from school. They also accept, to some extent, that they have had arguments with the children present. It is also not disputed that the family has already had significant involvement from social services, with at least one MASH referral, culminating in a section 37 report directed by the court. As section 37 of the Children Act 1989 makes clear, that report must have been directed by the court because of the potential for the children to be suffering or at risk of suffering significant harm thus necessitating the local authority considering whether or not to commence public law proceedings or to provide other support to this family.
24. Coercive control is alleged by each parent against the other, and each alleges that this has taken place over a number of years. As is not unusual in such cases, the evidence

of the parents is the only first hand evidence about this, and their credibility is thus vital in determining whether either has proved their allegations. M's written evidence about this is first chronologically, starting with her statement in support of her Family Law Act applications in 2020 (C1-C11). Each then filed a statement in the Children Act proceedings on 20th December 2020 (F C24-33), M C34-45). F filed a statement in response to the Family Law Act statement of M on 8th January 2021 (C12-23). As I have already noted, each has then filed numerous further statements, and I also have four versions of their schedules of allegations in section C as well.

25. Relevant to the allegations of coercive control is the fact that F accepts he has made some allegations against M which he has not sought to pursue. The most significant of these are that M attempted to poison him and he feared would stab him. I will examine these in more detail in a moment, but M alleges that F sought to control her financially, primarily by attempting to dispose of a rental property without her consent, trying to exclude her from the sale of the former matrimonial home and not providing her with an allowance to buy groceries for the family so she would have to rely upon him to buy food (C4). It does seem to be a feature of this case that each parent was focused on the matrimonial finances and the dispute around the resolution of those, perhaps to the detriment of the timely disposal of the Children Act proceedings. M does not dispute that she did have access to some significant savings, though she told me that she did not have enough to fund her own rental property and pay for legal representation, and this is why she remained in the former matrimonial home. It doesn't seem to be disputed that, as submitted by Mr Brookes-Baker, M did have sufficient funds to at least place a deposit on a rental property whilst still living in the former matrimonial home. I can entirely accept that even her level of savings would quickly be absorbed in paying for legal advice in both these proceedings and the financial remedy proceedings. However, it was notable that she did not say that she remained in the family home because she was in fear of F or because of coercive control, and specifically told me that the reason she stayed was driven by the advice she had from her family about what leaving may mean

for her in financial terms. She also seemed to accept that, despite saying in her statement at C2 that she would be homeless unless an Occupation Order was granted, this was not in fact the case. The Family Law Act proceedings were subsequently withdrawn. It is also of note that neither did F leave the matrimonial home despite his allegations of coercive control, though I am mindful of how decision making may be affected for anyone who is subjected to coercive control. Both parents could have sourced alternative accommodation from a purely financial perspective, though.

26. However, there is the curious feature of F's very serious allegations against M in relation to attempted poisoning and stabbing which he does not now pursue, but which M seeks to prove were false and made as part of his abuse of her. Objectively the evidence does show that F made the allegations and vacillated about what he was going to do about them even before the proceedings. His oral evidence about the poisoning allegation was startling, because he told me he believed this had happened despite not seeking a finding, something that is also in his written evidence where he stated that he was *"firmly of the view this did happen"* (C173). This allegation first surfaced in 2019, and F does not dispute that he not only accused M of this but contacted the police about it too, as well as accusing her of domestic abuse of him and mistreating the children (C14). He told me that he contacted the police about the suspected poisoning whilst he was on holiday, saying he asked them "what would need to be done to catch her". On his own account, he had suspected for several months that she was putting poison in his food. However, he did not provide any vomit sample, despite being advised to do this by the police and social services (who became involved as a result of MASH referral from the police - D3). What is really peculiar about his actions in relation to this is that he is a medical professional. Whilst he is not a toxicologist, it is simply not credible that an intelligent person in this day and age with his medical qualifications would not realise that a vomit sample would be a very simple way of providing valuable forensic evidence in relation to this allegation. He also seems to have provided contradictory evidence to this court and to police and social services about what substance he thought he was

being poisoned with (C14 ipecac; D3 *"F said he thinks he's being poisoned with plant bug killer or acetone"*), and yet he accused M in his written statement at C17 of being the one who confused which substance was allegedly involved. Overall he was not a credible or convincing witness about this, and it is concerning that he did not seem to grasp that making such a serious allegation, then not pursuing it but continuing to cast aspersions about it in the way that his written and oral evidence does is deeply concerning in terms of what this says about his view of M.

27. Another oddity in this case is the Spotify playlist that F accepts he named "I'm going to kill you" which M found at the end of November 2020 (C7). F's first written evidence about this is at C19 in which he says this was a name to attract attention and followers and was in fact suggested by a colleague. This is what he repeated in his oral evidence to me. It was clearly not a wholly private list as he claimed, because of his stated aim to attract attention and followers. Aside from the questionable wisdom of a medical professional having a playlist with this title under what appears to have been a username that fully identified him, at the very least it was not perhaps helpful to have this in the mix when going through a relationship breakdown, and is concerning in the context of his allegations about poisoning and stabbing.

28. The stabbing allegation seems to have been made in 2018 (C3, C43, C211 M's statements). F seems to have made reference to this in messages which M exhibited to her statement (supplemental bundle 205), and he also makes reference to having accused her of being a narcissist and having narcissistic personality disorder. He accepted in his oral evidence to me that he had made the latter accusations but gave a very confused and convoluted answer to questions from Mr Jones about this which seemed to somehow try to draw a distinction between calling her a narcissist, making some form of diagnosis, or what he had been led to believe was a diagnosis by someone else. I would note in passing that both parents seem to have had a tendency to attempt diagnoses of each other despite lacking any expertise in relation to this. For example, M accused F of having *"a bi-polar like disorder" (C8)* and that she believed he was

"mentally ill", though F has also accused her of being *"mentally unstable" (C11).* In this respect both are as bad as the other.

29. F also alleges that M isolated him from his friends and family, constantly undermined him and made derogatory comments about his parents, especially his mother. M accepts that she did call his mother a *"slut"* on one occasion and confirmed this in her oral evidence to me, as well as accepting that this would have been deeply distressing for F. F seems to have volunteered information about his family which cast them in a less than positive light at times based on the various messages in the supplemental bundle, and what he volunteered to the social worker writing the section 37 report. I fully accept that the exhibits are only part of the picture, as Mr Brookes-Baker submitted, and that there are aspects of the way in which the social worker dealt with her role in drawing conclusions in the section 37 report which strayed outside of her remit and expertise (to which I will return later). However, the fact of what F said to the social worker and how he said it was a credible and compelling aspect of the social worker's evidence and does chime with the evidence in the exhibits and what M says he told her at times. That does not in any way excuse M making derogatory remarks about his mother, but I am not persuaded by F's evidence that this was part of M attempting to isolate him from his family since he also seems to have at times portrayed a somewhat complicated view of his own about his own family. There is also absolutely no evidence from him that establishes he was prevented from accessing support from friends and family, in fact his evidence shows that at least one of his friends and his sister and brother-in-law remained in close contact with him.
30. The next aspect that I have considered is that of F's allegations that M has abused the children emotionally and physically. The physical abuse allegations in this case include *'waterboarding'* via allegations the nanny accepts she made to the school in June 2023 (D131). It has been a theme of F's evidence that he believes M is unduly strict with the children, linking this to his allegation that she is controlling and hence why I have turned to this now in my considerations.

31. I will start with the evidence of the nanny because, in my view of her, both her written evidence and oral evidence was concerning. Her written evidence went far beyond the scope of what should have been a factual evidential statement relevant to the fact-finding disputes. It set out a lot of detail of her background which was simply not required, and straying into a final section where she set out her opinions about what arrangements would be in the welfare interests of the children. Her oral evidence to me, allowing for the fact that she may well have been nervous, was notable in terms of the palpable animosity that she clears feels towards M and her alignment with F. She was not, on any reading of her evidence, an impartial witness. I did not find her credible in her allegations about M 'waterboarding' the children, specifically B. She was very clear that she was aware of what waterboarding is and that she was not using it in a metaphorical or exaggerated sense. The children were spoken to by the school and revealed absolutely nothing of any concern that would equate to them being waterboarded, apart from A mentioning that M had slapped her in the face with a dishcloth (D131). It seems from what the nanny initially told the school about B that she did not see what happened, that B was in the shower, and that *"B told F that mum sprayed him in the face with a shower and couldn't breathe" (D131).* She also accepted in her oral evidence to me that B first told her about this in 2021, yet the first mention of this seems to be to the school in June 2023.
32. An interesting aspect of the issues raised about the nanny by M and in fact by the evidence from the school is that they allege she has said negative things about M in front of the children on more than one occasion. The nanny disputed this in her oral evidence to me but did seem to accept that when she made the waterboarding allegations in June this was in school, after she had had difficulty getting B to go to school and that he may have been in sight of her. She disputed saying what the school recorded her saying on 14th November 2023 in front of B which records her apparently prompting B to explain that he did not want to go to school because he was due to be picked up by M and *"if I take you home, M will just come and get you so you might as well go to school" (email*

from school containing a SENCO recording dated 14th November 2023). I did not find the nanny credible about her denials in this respect. She told me that she had "not specifically said anything inappropriate about his mother to B before" or "specifically made negative comments about M in front of B" and that she "could not remember" saying anything to B along the lines recorded by the SENCO but did say to B that he should talk to her.

33. The nanny also accused M in her statement of *"constantly showering and washing the children" (C181)*, something which is also one of F's specific allegations against M, but when the nanny was questioned by Mr Jones about this it transpired this was daily showers and no more.

34. The nanny has also alleged that M has physically and verbally assaulted her. M accepts that on one occasion she told the nanny to "shut up" when she was trying to get the children dressed and out with the nanny attempting to intervene, and that she flicked water from a jug towards the nanny twice after asking the nanny to leave on 16th November 2021 (C183). The nanny accepted in her oral evidence when asked by Mr Jones about this that she had been asked to leave and had not gone, and that the water was flicked towards her to attempt to get her out. Despite alleging verbal and physical abuse by M towards her, the nanny also accepted that she has never made a complaint about this to the police. Oddly it also does not form any part of F's allegations against M. The nanny's own account to me in her written and oral evidence also demonstrated a fairly detailed knowledge of details of the financial proceedings which must have been shared with her by F and which seem to have added to her negative view of M.

35. The nanny also accepts that on at least two occasions she behaved in a way that one would not necessarily expect from a professional childcare provider, losing sight of C whilst leaving school and leaving him at home on his own without telling the only adult in the house (M at the time) that he was there (C184 and in oral evidence to me for both incidents). On her own account, when asked questions by Mr Trueman, she acknowledged that she had a very negative view of M. She also accepted when

questioned by Mr Jones that she told the children on 27th January 2023 that she did not let M into the house when M arrived to see the children, leaving it to the children to open the door "if they wanted to". She then told the children when M had left and that she "would do a note for F" asking them if they would speak to M if M came back. When she was asked why she had told the children about writing a note for F about this incident, her answer was "so that they know everybody was informed about what had happened". This was a deeply concerning answer from a professional childcare provider who had confirmed in her oral evidence to me that she was aware of the harmful impact upon the children of exposure to parental acrimony. It was also notable that she left the children to choose whether they opened the door to their mother, significant when one considers the observations of the social workers in their reports about the children appearing to be given choices about seeing their mother or going to school in a way that is not age appropriate. It is also concerning in the implied message this sends to the children that an adult who is charged with looking after them was not demonstrating that they could and should spend time with their mother. I am satisfied that the nanny has failed to prevent the children from exposure to her very negative views about M and has, at times, made negative comments about M in their sight and hearing, has failed to adequately promote the children's relationship with their mother, and failed ensure that they attend school regularly on the days that she is employed to look after them.

36. F has also alleged that M has neglected the health needs of the children, citing in particular an incident in February 2023 when C was on holiday with M and had to go to A&E because of an asthma attack. F has alleged that M failed to give C her prescribed steroid inhaler (C171) because she did not take it with her while they were away. This was during the half term holiday, and it is not disputed that C did have to go to A&E because of her asthma. M's evidence about this is at C130 and 134. It seems that this is not the only time that A had to be taken to A&E due to concerns about her asthma from the medical notes, and the two previous occasions were whilst A was with F. M's evidence about this seemed to be that she accepted she had not taken the inhaler with

her (it is not terribly clear from the medical notes if A was supposed to have both a preventer inhaler and an alleviator at this point as the only reference I can find to a preventer was as a 6 week trial at the end of September 2022). M's evidence about being in a rush in going away seemed to be her explanation about how she came to be without the inhaler, I think. Given that this is a child who had by this point already had two trips to A&E for asthma, it is of course concerning that she ended up there again, but it does seem to be due to an unfortunate combination of factors that A had an exacerbation (viral illness seems to be the common factor from her medical notes) and M had simply forgotten her preventer inhaler. In any event, M clearly took prompt and appropriate action to get A to hospital and A has not suffered any long term ill-effects.

37. F has also alleged that M insisted on C wearing a bib when younger and that this caused scarring to C's neck (C117, C164). The photograph that he produced to show this is, frankly, illegible (supplemental bundle 341). There is no medical evidence about this so-called scarring, nor any independent evidence, but it seems both parents agree that C had eczema. I'm not persuaded that M deliberately made C wear bibs in a way that she knew exacerbated A's eczema and which caused C scarring. F has not proved this allegation to the required standard.
38. I am not satisfied that there is a pattern of M failing to act in a way that safeguards the health of A.
39. School attendance is another aspect of this case which has an odd combination of largely agreed facts and significant dispute. The agreed facts are that the school attendance records for the children which appear in the supplemental bundle, especially the ones for this year, show that their attendance has simply plummeted. It is well below the expected minimum of 90% and has resulted in the school making a referral which in turn led to an Attendance Panel being convened on 27th June 2023 at which point B's attendance was only 50%. F's case has consistently been that the reason the children do not attend school is because they are unwilling to attend when they know they will be picked up by M and is nothing to do with his parenting or lack thereof. However, as he

accepted in his oral evidence to me, the children also fail to attend or are recorded as late on days when they are not due to spend time with M. Since F's case on this links to the allegations he makes about M being cruel and abusive to the children, and M's counter allegations that F has failed to do enough to promote the children's relationship with her and to attend school regularly, it makes sense to consider those next.

40. F's allegations about M being cruel and abusive to the children, aside from the physical abuse allegations which I have dealt with above, are essentially that M sets unduly rigid and controlling rules and routines for the children and punishes them unduly harshly if they fail to comply. His evidence about this includes copying a timetable and set of rules which M accepts she wrote out, with input from the children, and put up on the 'fridge in the former matrimonial home. It seems to have been an ongoing theme of the issues in this family which professionals have noted in the various documents in section D that F was alleging that M was unduly controlling and rigid in relation to the children. It also seems to have been accepted by both parents that they each have different approaches to parenting in that, in very broad summary, M would parent with more firm boundaries and F perhaps fewer. The parents also seem to have accepted that there was a period when the children had different routines at each parents' house, and this led to an agreement through the Team Around the Family at the end of 2022 and beginning of 2023 that bedtime routines needed to be the same in each household (D85).

41. F's own evidence about his boundaries for the children accepted that he has struggled to get the children to brush their teeth twice a day, has and still struggles to implement bedtimes, struggles to get the children to school (including when he uses the nanny) and, of course, has significant struggles with getting the children to the care of M as per the current child arrangements. He was asked about what practical steps he has taken in terms of getting the children to school, something that also came up when the social worker was giving me evidence. She asked where in the statements F had set out what he actually did to get the children to school. I have carefully read his statements, of course, and I cannot see anywhere that he sets out what he has actually done or tried in

relation to this. He says, and confirmed in his oral evidence to me, that he had sought advice from professionals, including the school and the Guardian, but did not articulate what that advice was nor what he has tried from that advice. He did set out in his statement at C29 what his daily routine was, but this was simply setting out what he did for their breakfast and packed lunches, that he has mostly cycled them to school and what he does at pick up including bringing snacks for them. There is nothing about timings, nothing about what he does to try to address the days when they are reluctant to go to school, and nothing at all to explain how this relates to his use of the nanny. The one thing that the Guardian had clearly recommended that F try earlier this year to encourage the children to go to school and spend time with their mother was for F to undertake as many of the handovers as possible. Curiously, this seems not to have been something that F has done on his own evidence – he and the nanny were clear that the nanny has in fact undertaken an increasing number of drop offs at school this year. He was also insistent that he has offered on numerous occasions to let M come over to try to persuade the children to go to school and/or see her. M accepted that since January she has gone to his house on 11 occasions to try to achieve this. What I find odd about this evidence from F is that this completely ignores why the Guardian thought it was important for him to do as many drop offs as possible, and that it seems to place the onus squarely on either the nanny or M to get the children where they need to be rather than F taking responsibility. This is significant in view of the issues about whether the children have been encouraged by him to have a relationship with their mother (leaving aside the harm allegations he makes against her for one moment). It is a theme that was noted several times in the papers by professionals from the local authority and the school that F seemed somewhat perplexed about what else he could do to make sure the children go to school and see their mother. He also told me that he still struggles to get the children to bed at times and, when it was put to him that A told the social worker that he went to bed and left them playing, accepted he did go upstairs at times when he couldn't get them to bed on time, had a lie down and then came back

later to resume the attempts to get them to bed. I'm not clear why he thought leaving them rather than simply sticking to the expectation that they must go to bed was appropriate, and clearly this has created an impression in the minds of the children that they are being left to play as they told the social worker and has undermined his parental authority in their eyes.

42. There is also the evidence about his text messages with A. I appreciate that, as Mr Brookes-Baker rightly pointed out, these are simply examples which may well be cherry-picked by the party producing them. Similarly, any of the exhibits produced by either parent are clearly only there because a) they think they support their own evidence and b) may not show the full picture. F told me in evidence when asked about some of the text messages in question that we did not have the 20 messages before or after. If he had evidence that countered the impression given by any of the messages that I do have, he has not produced it, and his oral evidence also did not provide much clarity about the wider contexts of some of these messages either. One exception to the latter was the text messages he accepts he sent to A on the occasion in March this year when she went missing for a period after M collected her from school (supplemental bundle 429). M accepted in her oral evidence to me that she should have notified F of what had happened sooner, and that F would have been, as he told me, distressed and worried not knowing what was going on after the incident was raised on the school WhatsApp group. F was asked by Mr Jones and in clarification by me what he meant by saying to A in this message *"you have been very brave"*. His explanation was that he had come home, found that a parcel had been moved by the door, coats were all over the hall and A's school papers were strewn around so he knew she had been there and there had been some sort of altercation. I'm still not clear what exactly he thought A had been brave about, given that it was equally likely that she had done something that was not praiseworthy as something that deserved praise for being brave when he did not know what she had done and why. His phraseology in the text about M is also illuminating, telling A that he had *"tried to phone but mummy will not answer her phone"*. As I have

noted, these are not the only messages produced which show him communicating with A in a way that is concerning as it implies negative views of M, seems to encourage A to focus on getting through the time she spends with M and come back to him, and does not attempt to correct any negative statements about M – for example, asking her outright if she will go to school and see her mother, that he is *"sooo sooo sorry to leave you"* in response to texts from A saying that she hates her mother and doesn't want to be with her (supplemental bundle 428). Some of the text messages also seem to show him also inappropriately telling A that *"he will fight for you and B and C all my life"* (supplemental bundle 419), and that he is *"totally helpless without the legal system support A. It is so very unfair that the three of you and I are not listened to. Perhaps things will change. I am trying my best to help the three of you by doing everything that I can both as a father and through the courts"* (supplemental bundle 418). I accept that those same text messages at times also show him making comments that are positive about the enjoyable time that the children will have with M, and that F also told me in his oral evidence that he tells them that they need to go to see their mother, spend time with her and they will have a lovely time. However, it was striking that he seemed completely unable to either accept or understand that even asking a question like *'will you go to school tomorrow and see your mother'* in the context of this case is just not appropriate. It implies that A has the choice about both and clearly links both potential things. At the very least, the messages that F seems to have given to A are confusing for her and giving her information about the court proceedings in a way that is just not in her welfare interests at her age. When coupled with the concerns noted by the professionals that he seems to give the children the choice of whether or not they go to school or see their mother (something the nanny also seems to have adopted), which is not an appropriate exercise of parental responsibility and also not age appropriate for the children, this satisfies me that F has not done as much as a good enough parent should do to get the children to school and to see their mother.

43. The allegations he makes of M being cruel and emotionally abusive to the children are clearly why he says he has breached the child arrangements order, as well as failed to secure their regular school attendance. Given that I was not persuaded by the evidence of the nanny about alleged physical harm, I have looked at the other aspects of F's allegations about this at this point. Time and again in his evidence he alleges that M imposes time limits for meals, sets a strict timetable for the children, and imposes punishments such as taking away devices and turning the power off if they fail to do as expected. He also alleges that she has made them undertake Kumon work when the school does not think this is helpful. In relation to the latter, M accepted in both her written and oral evidence that both parents had booked the children into Kumon classes as one point, and that she had attempted to continue with Kumon workbooks on a couple of occasions since then but had not pursued this recently. In the scheme of things, this alone would not be a major concern, but it does seem that at times M has struggled to accept the advice of professionals, as her acceptance that she thought the times agreed for bedtimes with the school needed to be changed almost immediately afterwards. I accept that, as she told me, if the children were too tired to get up promptly in the mornings that would suggest they need to go to bed earlier, and the delays caused by a major road closure in the city means a much earlier start on school days which also in turn means going to bed earlier. However, in my view the fact that these parents clearly cannot communicate constructively about even these sorts of issues means that this risks the children again being exposed to two different routines in each household.
44. In all other respects, the evidence of each of the parents about M's boundaries were that she has set times for meals with some flexibility, expects the children to eat within a time limit of around 1 hour to avoid them procrastinating unduly, limits their screen time for both devices and tv, and expects them to do their homework before they have their devices etc. F has also alleged that M has prevented the children from being able to have indirect contact with him when they are with M, but it seems as if that is partly due to M being out of signal at points when away. Limiting the children's screen time will also

play a part in limiting when they can choose to call F, but I don't think F is arguing that the children's screen time shouldn't be limited especially before bedtime. I am not persuaded that M has deliberately prevented the children from having indirect contact with F.

45. F also alleges that M has lost her temper with the children at times when they have not done as told, citing in particular an incident when M accepts that she snatched a book out of A's hand and the book was torn in the process. M accepted to the section 37 social worker that she could improve her parenting skills. Both parents have been advised by professionals to do this, the triple P parenting course being recommended in particular. M has also accepted that she has shown B photos of F holding C down when trying to refute F's allegations that she is abusing the children, and that this would have been deeply distressing for B. On the evidence before me, when considering the whole canvas of that evidence, on balance I am satisfied that neither parent has fully protected the children from their incredibly acrimonious conflict, and at times this has included M and F exposing the children to inappropriate information. I include within this category M's admission that she has continued to photograph F and the children at times despite there being an undertaking not to record them. I am satisfied that in doing this, and earlier when she accepts that she had covertly and overtly recorded F and the children this has been because of her prioritising her need to gather evidence against F over the welfare of the children. The allegations that she has been unduly harsh in imposing consequences for the children if they do not go to bed on time etc are not proved by F. At its highest his evidence seems to be that M has indeed got firmer boundaries than him, but what she does if the children don't do as expected is not objectively unreasonable let alone cruel. Withdrawal of privileges is a common parenting tool, whether that is taking away a device for a period of time, not allowing pudding if a child has not eaten their main course, or turning off the main lights to encourage a child to start to get ready for sleep. These are all things that many parents utilise without causing any harm to their children and which actively ensure that boundaries are real not

simply theoretical. The children may not like these techniques, but the answer to any criticism from the children is not, as F appears to have done at times, to criticise M but to consistently apply the same expectations when the children are with him. Given what appears to be a marked difference in parenting styles between these two parents, it is hardly surprising that the children have consistently said that they prefer to be with F as opposed to M. M herself said that F is the 'fun dad', which implies that she has been left in the role of the parent who imposes necessary boundaries. These children need parents who can meet somewhere in the middle and also, in the case of F, clearly and consistently give them explicit and implicit permission (the latter includes emotional permission) to have a full relationship with their mother.

46. In relation to F, I am satisfied that he has exposed the children to his and the nanny's negative views about M and has simply not done enough to promote the children's relationship with their mother or to get them to attend school regularly. In so doing, he has not prioritised the welfare interests of the children and this has happened over a worryingly long period so as to have a corrosive effect upon the children's relationship with their mother. Their educational needs have also been badly neglected as a result.

47. In relation to the allegations of coercive control made by each parent against the other, I am satisfied that each parent has, at times, behaved reprehensibly and that includes F making repeated false allegations against M including one of poisoning. However, I do not find that there is evidence of the sort of imbalance of power that is an essential element in coercive control. I have no doubt that each has at times caused each other considerable distress and has known just how to make the most hurtful allegations against the other – this is not at all uncommon in situations of family conflict. Each has tried at times to use the court process to the detriment of the other as well, each making applications that are not necessary at points (for example F applying for a Prohibited Steps Order and M applying just before this hearing for enforcement). They have equally denigrated the other and appear to accept that they have also done so to various friends and family members as well as professionals at times. F's approach is the more

concerning, though, because he seems to be more tenacious in persisting in his view that M poses a risk of harm to him and the children (as with the poisoning allegation and his evidence to me) whilst ostensibly telling me that he wants the children to spend time with their mother and then giving them the choice if they do so or not. If I can pick up this inherent contradiction in what he says and does, then I am sure his children are even more sensitive to the fact that whilst he may well tell them that they need to go to their mother and will enjoy their time with M, many of the other messages he sends them will be telling them the complete opposite.

48. I am not satisfied that either parent has deliberately sought to influence the children negatively against the other parent as each alleges. Despite their apparent intellectual ability indicated by their professional achievements, each struck me as at worst unwilling to grasp the implications of their actions rather than deliberately mounting a campaign. In the case of F this seems to be because he seems notably to mostly adopt a rather passive role and not be as proactive as he should be in ensuring that the children have a positive view of their mother and the time they spend with her. In the case of M, she seemed to fail to grasp how her actions in, for example, showing B things that were simply not in his welfare interest may be harmful. Each has exposed the children to a risk of harm by failing to protect the children from their adult conflict at times and this has in all probability formed part of the complex mix of issues for the children, and in F's case in failing to ensure that the children attend school regularly and have a full relationship with their mother.

49. In relation to M's allegations that F had breached the child arrangements order, it seems to be accepted by F that the children had not seen M as required by the order. The burden of proof initially falls on M to show beyond reasonable doubt that the order has been breached and clearly acceptance of the fact of breach satisfies this. The burden of proof then falls upon F to show, on balance of probability, that he had a reasonable excuse for failing to comply with the order. Given my findings above I am not satisfied that he does have a reasonable excuse. However, the facts of this case as a result of

my findings and the involvement of a Guardian for the children makes it inappropriate to simply proceed on the basis that the order has been breached and enforcement is required. The court has a discretion to consider that the wider welfare considerations of the children need to be resolved rather than impose penalty for breach at this stage. It is also potentially a case where the welfare aspects post-fact finding may mean that the court concludes the order in question needs to be varied in the welfare interests of the children. Enforcement is therefore suspended in accordance with section 11J(9) until further order in this case.

50. Finally, F was deeply critical of the section 37 report in this case. I have disregarded the aspects of that report in which the report writer appears to have strayed outside of her remit and expertise and focused instead upon the factual evidence of what she recorded each parent as saying, and what the children told her as well as what she observed of the children with each parent. In his oral evidence F criticised the social worker for drawing conclusions from the children's time with M based on this being a session of only 32 minutes. He seemed to be saying that this would not have been long enough for M to display the sorts of behaviours that he and the children were concerned about. What this overlooks is that short sessions of observation are not at all uncommon when a social worker is preparing such reports, and if the fears he had about M were justified it is highly unlikely that the children would have settled so quickly and so positively into spending time with their mother. In any event this is only one small part of the complex jigsaw of evidence that I have had to navigate in this case and my findings are based on the full written and oral evidence in this case.

Conclusions

51. In light of my findings, I would urge both parents to reflect and consider whether they can move away from their own conflict and support these children to go to school regularly and spend time with each of their parents. F will need to consider adjusting his

parenting, including setting and enforcing firmer boundaries for the children and promoting the children's relationship with M more proactively. He may also wish to consider the wisdom of continuing to rely upon a nanny who, on any interpretation, has contributed negatively to the problems with the children spending time with their mother and failed to ensure that the children get to school regularly. M will also need to consider the extent to which she can adapt her parenting to enable the children to have broadly consistent routines in each household. Both will also need to ensure that the children are not in any way exposed to their adult conflict in future.

29th November 2023