



Neutral Citation Number: [2024] EWFC 208 (B)

Case No: NG23P00344

IN THE FAMILY COURT
SITTING IN NOTTINGHAM

Date: 1st August 2024

IN THE MATTER OF ENITAN (BORN 2019)

BETWEEN:

ENITAN'S FATHER

Applicant

-and-

ENITAN'S MOTHER

Respondent

Before:

Mr Recorder Adrian Jack

The Applicant Father in person
with **Heather Popley** of counsel as Qualified Legal Representative

The Respondent Mother represented by **Bede Porter** of counsel
instructed by **Sills & Betteridge LLP**, solicitors

Hearing dates: 26th and 27th June and 11th July 2024

Judgment date: 1st August 2024

Anonymised Judgment

This judgment was handed down by the Judge remotely by circulation to the father and the mother's representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10am on 1st August 2024.

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This judgment was delivered in proceedings held in private. The names of children and witnesses have been anonymised. The judge has given leave for a separate version of this 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 who is the subject of these proceedings and members of his 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.

Mr Recorder Adrian Jack

1. This is an application by the father received on 3rd May 2023 for contact with his son, who has turned five. On 24th April 2024, Her Honour Judge Mason CBE ordered that there be a findings of fact hearing over 26th and 27th June 2024. The case went part-heard until 11th July 2024, when the last evidence and submissions were heard.
2. The mother was represented by Mr Bede Porter of counsel. The father appeared in person, but because there were allegations of domestic abuse, Ms Heather Popley of counsel was appointed as Qualified Legal Representative for the father. She cross-examined the mother, the mother's mother (Frances) and the mother's eldest child (Gillian). I am grateful to her for her assistance.

The allegations of fact

3. The allegations of fact are as follows:
 - (1) Failure to protect/care— the Applicant failed to take Enitan's medical condition seriously. He has problems with his bowels and has to take Laxido twice daily, which was prescribed by his GP. There was an occasion when the Respondent was away from the Applicant and Enitan for one night, and when she returned, Enitan was very unwell and the Applicant informed the Respondent that he had forgotten to give him his medication. This resulted in Enitan being in extreme pain because of an excruciating tummy ache. On another occasion in November 2022, the respondent was away having surgery and the applicant failed to take Enitan to nursery on two days, being 28th November and 30th November 2022. There has also been an occasion when the Applicant has travelled Enitan in the car without a seatbelt on.
 - (2) Physical abuse— the Applicant would regularly use his slider to hit Enitan. Enitan would run off and the Applicant would pull him out and hit him again. He told the Respondent that this was allowed in his culture, and it was known as "flogging". On 5th November 2020, the Applicant pulled the Respondent's hair and hit her head off a door frame, which was witnessed by the Respondent's 15- year-old daughter. The Applicant was issued with a DVPN.
 - (3) Sexual abuse— in 2018, the Applicant raped the Respondent. The Respondent had refused sex and the Applicant laughed at her and said that he would rape her. The Respondent had sexual intercourse with the Applicant through fear of him carrying out this threat and she cried

throughout. The Applicant showed no affection during sexual intercourse and when the respondent would ask him to stop because she was bleeding or it was dry and she was finding it painful, he would simply tell her that she needed to spit on it.

- (4) Controlling and coercive behaviour— the Applicant was adamant that Enitan had to be circumcised. He threatened the Respondent and said that if she wouldn't get Enitan circumcised, he would end the relationship. When the parties were together, the Applicant tried to get the Respondent to do a statement saying that the Applicant had full custody of Enitan and that she only saw him every other weekend, because if she did that, it would send his Visa application down a different route and he wouldn't have to reapply every 2½ years. The Respondent refused to do this and the Applicant fell out with her because of that and stated that she was costing him money. The Respondent sees this as emotional blackmail. The applicant isolated the respondent from her family and friends and made her feel like she couldn't leave the house. If she did leave the house, he would message her immediately saying that he needed something from the shop urgently and made her take it back to him. If there were ever any family events, birthdays, days out etc, the Applicant would always cause an argument beforehand about something small, so as to ruin the day for the Respondent. If the Applicant and Respondent went to see the Respondent's family, he would remain in the car. On some occasions, they were there for the full day and the Applicant stayed in his vehicle the whole time as he did not want to spend time with the Respondent's family. If the Respondent said something that the Applicant did not like, he would give her the silent treatment and ignore her for days. He would even leave the property for days and weeks at a time and wouldn't answer calls from the Respondent. The Respondent felt like she was constantly on eggshells as she didn't want to upset him and didn't know what mood he was in. If the Respondent was tired, the Applicant would not let her sleep if he was awake. If she fell asleep, he would take pictures of her and send them to her for her to see when she woke up, even when she had asked him not to do this and he would consistently wake her from her sleep.
- (5) Emotional abuse— The Applicant would gaslight the Respondent and would constantly make her feel like she was in the wrong. He would move things around the house and then tell the Respondent that she was the one that moved it. He would make her feel like she was going crazy to the point that she questioned her own sanity. The Applicant would tell the Respondent that she needed to be clean and tidy around her genitals, but he would only do the same if he was going out clubbing with friends, which made the Respondent believe that the Applicant was cheating on her. The Applicant would call the Respondent “disgusting” and a “dirty bitch” if she did not have a shower and this would result in her sometimes having showers at 1am just to avoid being called that. The Applicant would insult the Respondent about her appearance, saying that she has got thin hair, spots and a moustache. The Applicant would message other women in the Respondent's eyesight, and when she questioned him, he would say that she is going crazy, was paranoid and jealous.

- (6) Financial abuse— The Applicant purchased a tablet for Enitan which was in his name but set the payments to come out of the Respondent's bank account. When the parties separated, it was agreed that the Applicant would pay the Respondent £150 PCM which was £100 for Enitan's care and £50 to pay for the tablet. The Applicant only paid the Respondent £150 once and then when he was arrested, he stopped paying which the respondent believes is as revenge. The Respondent has received a message, which she believes to be from the Applicant, harassing her for these payments to be made as well as other communications in this regard, which she believes the Applicant instructed to be sent.

The law and the evidence

4. I remind myself that the burden of proving an allegation of fact on the person seeking the finding, in this case, the mother. The mother must provide the fact alleged on balance of probabilities. English family law determines facts in a binary manner. If a fact is proven on balance of probabilities, it is treated as having occurred. If a fact is not proven on balance of probabilities it is treated as not having happened. In determining the facts, I must, however, take a holistic view of all the evidence before me.
5. In addition to the mother and the father, I heard four witnesses. On mother's part, I heard her own mother, Frances, and her eldest child, Gillian, who was also Enitan's half-sister. On father's part, I heard Harriett, who had been best friends with the mother for some nineteen years until the events which gave rise to the current proceedings arose, and Joseph, who was Harriett's life partner during much of the period with which we are concerned.
6. Frances was very clearly in the mother's camp when giving evidence. The two clearly had a very close relationship and had always been often in each other's company. She said that mother's mental health was badly affected during her time living with father and said that her daughter had been diagnosed with unstable personality disorder. There was no medical evidence to support this and Frances conceded that the diagnosis might be wrong. Frances was also involved in an astonishing incident around midnight of 18th/19th January 2020. The father had walked out on mother following an argument. Mother decided to cut up some of father's clothing in revenge. Frances assisted and can be seen in a photograph timed at 5 minutes past midnight holding up a cut-up shirt. She showed an aversion to father whilst in the witness box. Overall I view her evidence with caution.
7. Gillian was eighteen when she gave evidence. She had already left home to live with her partner. To some extent she was an independent witness. Father had been a step-father figure to her from the age of thirteen and in my view she showed no ill-will to him. She was not a perfect witness. For example, when she was thirteen she had taken money from father. In cross-examination it took the showing of some contemporaneous text messages to persuade her to admit this behaviour. Nonetheless, in my judgment she was a witness of truth.
8. Harriett, I found an impressive witness. She had been best friends with mother and had no reason to lie. It was only after mother and father split up and she learnt of mother's

allegations against father that she ceased to be mother's close friend. She was an independent witness and I accept her as a witness of truth.

9. Joseph was a friend of father and had also been a work colleague of his, so he was less independent than Harriett. I also found him a witness of truth, however, he had less relevant evidence to give.
10. For reasons which I shall discuss as I deal with the various individual matters below I found both father and mother unsatisfactory witnesses. I have taken an holistic view of the evidence when assessing all witnesses' credibility. The following, however, I have found of particular relevance in assessing the parties. So far as father is concerned, of particular consequence were his denial of having ever struck Enitan and his denial of mother hitting her head during the dispute of 5th November 2020. So far as mother is concerned, I found particularly significant her false assertion of rape and her false assertion that father had isolated her from her family.
11. I should add that there were clearly issues about father's immigration status at various time during the parties' relationship. I was not, however, given any clear evidence about this (for example, whether father was lawfully entitled to work and, if so, when) and in what respects his immigration status changed. Thus I have not made any determinations about the extent (if at all) to which father's immigration status impacted on any actions of the parties or any effect it might have on the parties' credibility.

The background

12. The parties met on a dating website in late 2017. At that time, the mother had come out of a long-term relationship with a man. There were three children of that relationship: Gillian, the eldest; Kevin in the middle; and Larry, who is disabled, the youngest. The parties moved in together within a short time of meeting. After some miscarriages, the mother became pregnant with Enitan.
13. It is common ground that the relationship was initially good. After Enitan's birth it is also common ground that there were changes in the relationship. The nature of and reasons for the change are hotly disputed. During this latter part of the relationship father would from time to time walk out after the parties had had disagreements. The parties separated definitively on Christmas Day 2022, albeit against mother's wishes, who wanted the relationship to continue.
14. Unusually, it is necessary to say something about the parties' respective physiques. The father is of above average height and is of muscular build. He is a regular gym attendee. The mother is of average height and is now of average weight. Thus, currently father is the more physically dominating person. However, this was not the position during most of the relationship. When they met, mother weighed between 24 and 25 stones. It is common ground that mother underwent gastric surgery. This led to an enormous weight loss, such that she had to undergo further surgery to tighten her skin. Mother said the two surgical operations were performed in February and November 2022. (Father, when giving evidence thought that it was somewhat earlier, but mother's and Frances's evidence on this was not challenged when they were cross-examined by Ms Popley, so I accept the 2022 dates.) There is evidence, which I shall consider, that the mother on at least some occasions could be extremely aggressive. I do, however, find as a fact that mother was not physically intimidated by father. I should add that it was

also common ground the operations were paid for, half by father, half by the maternal grandmother.

The proxy marriage

15. A matter on which evidence from both sides was given was an alleged proxy marriage between the parties. It is common ground that at some point in 2018 the parties went to London with the passports of mother's children to see father's immigration advisers. (Whether these advisers were solicitors or lay advisers is unclear.) Mother says that she signed various documents to help with father's visa application, but she did not know what the documents were. In her response to the father's case, she says that father's adviser (who she thought was a solicitor) asked her whether she would ever marry the father. She said: "Of course, at the time my answer was that I would marry him because at that point, the relationship was mostly positive; however, I had and still have absolutely no knowledge of any marriage having actually taken place."

16. Mother exhibits four documents in connection with the proxy marriage. The first is written on notepaper with the printed heading "Lagos Island Local Government" and is signed by the Court Registrar with a marriage registry stamp. It is dated 28th May 2018 and written "to whom it may concern". It says:

"Confirmation of traditional marriage under native law and custom between
[Enitan's father's name]
And
[Enitan's mother's name]
Now
We confirm that the above captioned persons married under the Native Law and Custom on the 28th day of May, 2018 at the Secretariat Lagos Island Local Government, Lagos State of Nigeria.
The bride's Father, [named as Enitan's father's father (*sic*)], moved an oral motion in the court on the 28th day of May, 2018 to this effect suitably supported by a 5 paragraph affidavit submitted to the court by himself.
The traditional marriage confirmed with the native Law and Custom of the Land.
Please be guided accordingly.
Given under our hands this 28th day of May, 2018.

17. The second is also written on Lagos Island Local Government notepaper and is described as a Form MGM-1 for registration of a native law and customs marriage. It is signed by a Mr [redacted], who describes himself on the form as the groom's uncle. He says that he is the "person who consented to the marriage". The third document is an affidavit dated 30th May 2018 of [redacted], who says he is the elder brother of the husband. He deposes that the father "got married to [Enitan's mother] on 28th of May, 2018 at Lagos Island under the native law and custom" and that "the marriage was conducted with the consent of both parents who were their proxies and necessary dowries duly paid." The fourth document is a certificate of marriage on the printed form for such certificates stamped by the Customary Court.

18. Somewhat to my surprise, it appears that English law in principle recognises the validity of such marriages. *Dicey, Morris & Collins on the Conflict of Laws* (16th Ed, 2023) at para 17-011 says:

“If the local law recognises marriages by proxy, such a union will be treated as valid in England, even if one of the parties is domiciled and resident in England, and the power of attorney authorising the proxy to act is executed in England. The transaction is not contrary to public policy, and ‘the method of giving consent, as distinct from the fact of consent, is essentially a matter for the *lex loci celebrationis* and does not raise a question of capacity or... essential validity.’ A proxy marriage is one in which at least one of the parties is absent from the country, or at least the place, where the marriage is celebrated”

The learned editors cite *Apt v Apt* [1948] P 83 at 88 and *Ponticelli v Ponticelli (otherwise Giglio)* [1958] P 204 for these propositions.

19. This is not to say that this particular marriage was valid. There are obvious errors in the documentation, like the assertion that the bride's father was [Enitan's father's father]. The five-paragraph affidavit apparently submitted by [Enitan's father's father] was not in evidence. Further there is no evidence that the bride's parents consented to the marriage. It was not suggested at the hearing before me that Frances consented to it, or even knew about it prior to its taking place, nor was there any evidence of the mother's father consenting. The power of attorney (or equivalent) which the mother presumably signed at the adviser's offices in England so that someone could act as her proxy at the marriage ceremony has not been produced. I have had no evidence of Nigerian law, even vestigial, about customary and native marriages in that country, or what the practical reality of such marriages is.
20. The background to the proxy marriage appears to have been the visa difficulties faced by the father. Neither side sought to establish what the true position as to father's immigration status was from time to time between father and the Home Office. He seems to have had work visas for at least some of the time, but at other times he did not. The mother goes so far as to suggest that father wanted a child with her solely in order to assist in his visa applications. There is certainly a suspicion that the proxy marriage was intended to provide support to father's visa applications. As is well-known, in order to clamp down on sham marriages, there are restrictions on the ability of those from outside the United Kingdom or Ireland marrying: see www.gov.uk/marriages-civil-partnerships/from-outside-the-uk-or-ireland (accessed 15th July 2024). Entering a proxy marriage would appear to be a possible means of side-stepping these restrictions.
21. Originally when I saw the papers in this matter, I thought that the entering into this proxy marriage affected only the father's credibility. I have now seen the parties and learnt that, at least in principle, a proxy marriage of the type alleged could be valid. It seems to me that the relevance of the proxy marriage is to the parties' knowledge of it. If mother did not know of the marriage, or consent to it, then that very badly damaged father's credibility, in that he was faking the whole business. On the other hand, if the mother did know of the marriage in advance and knowingly signed the documents necessary to give effect to it, then that affected her credibility, because it was she who was lying when she gave evidence that she knew nothing of the marriage.

22. Mother's account of knowing nothing about the proposed proxy marriage is supported by her mother, Frances, who says: "When all of the supporting documents [for the visa application] were returned, there was a marriage certificate and marriage documents stating that the parties were married. We were absolutely shocked beyond belief that these papers existed as the respondent has never mentioned marriage." However, in cross-examination by Ms Popley, Frances accepted that her daughter had bought a wedding ring to celebrate the marriage and that from time to time she referred to father as her husband. This implies that mother was happy to have the proxy marriage. It also tends to support father's case that the proxy marriage was agreed. Certainly it would be surprising if the immigration advisers had not discussed the matter with mother, since it was they presumably who had to prepare the documentation for signing in connection with the proxy marriage.
23. Harriett said that she herself had known in advance that they were going to have a proxy wedding. The parties had agreed to it before going to the immigration advisers. In consequence of the nature of the proxy wedding, there would be, she said, no party afterwards to celebrate the wedding.
24. Putting all these considerations together (and taking an holistic approach to all the evidence in the case), I find on balance of probabilities that the proxy marriage was entered with mother's full knowledge and consent. She wanted to be married to father. This was a means of achieving that end.

(2) Physical abuse of Enitan

25. Mother alleges that father "would regularly use his slider to hit Enitan". A slider is a form of slipper with open toes. The direct evidence of this comes from Gillian. In her oral evidence in chief, she said there were three occasions when she had seen this behaviour. The first occasion was when Enitan was about one and a half years old. Father hit the back of Enitan's leg with the slider, which left a mark. He went under a table to escape and father pulled him out. Gillian accepted that Enitan had been misbehaving. The second occasion was some weeks later. The third occasion was when Enitan was two years old. No marks were left on these occasions.
26. The father's case is a flat denial that he had ever struck Enitan. He denied that physical chastisement of children was part of Nigerian culture.
27. None of the witnesses other than Gillian and father could give direct evidence of the beatings. I have attached no weight to the opinions of these other witnesses as to what happened. On balance of probabilities I accept the account of Gillian that father struck Enitan three times with a slider.
28. This, however, is not sufficient to establish a case of physical *abuse* in respect of Enitan. In England a parent still has a right physically to chastise their child. It is true that professionals no longer generally consider this an appropriate form of discipline. The advice of Proverbs 13.24 ("He that spareth his rod hateth his son: but he that loveth him chasteneth him betimes.") is less and less accepted. Nonetheless, it is still the law that reasonable chastisement is lawful. As Cockburn CJ held in *R v Hopley* (1860) 2 F&F 202 at 206:

“By the law of England, a parent... may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable. If it be administered for the gratification of passion or of rage, or if it be immoderate and excessive in its nature or degree, or if it be protracted beyond the child's powers of endurance, or with an instrument unfitted for the purpose and calculated to produce danger to life or limb; in all such cases the punishment is excessive, the violence is unlawful, and if evil consequences to life or limb ensue, then the person inflicting it is answerable to the law, and if death ensues it will be manslaughter.”

29. This is subject to section 58 of the Children Act 2004, which abolishes reasonable chastisement as a defence if the punishment inflicts on the child grievous bodily harm or actual bodily harm (sections 18, 20 and 47 of the Offences Against the Person Act 1861), amounts to cruelty to a child under sixteen (section 1 of the Children and Young Persons Act 1933) or involves strangulation or suffocation (section 75A of the Serious Crime Act 2015). Actual bodily harm for these purposes “includes any hurt or injury calculated to interfere with the health or comfort of the victim; such hurt or injury need not be permanent, but must be more than merely transient or trifling”: see Archbold Criminal Pleading Evidence and Practice (2024 Ed) at para 19-249, citing *R v Donovan* [1934] 2 KB 498, as approved in *R v Brown* [1994] 1 AC 212 at 230 and 242. (The legal position in Wales is different. There the defence of reasonable chastisement has been wholly abolished: Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020.)
30. In the current case, there is no evidence the mark inflicted on Enitan in the first incident was anything other than a transient or trifling mark, so it does not amount to actual bodily harm. In my judgment the mother has not shown that any of the three incidents were anything other than reasonable chastisement.
31. This is not, however, necessarily the end of the matter. Mr Porter argued that the question of criminal liability was not determinative of the issue for me. In a case under Children Act 1989, the welfare of the child is always paramount. It was only where a parent was able to show some particular cultural norm permitting corporal punishment that the Court should consider physical chastisement to be in the best interests of the child. Here, he argued, father did not attempt to justify his hitting his son on the basis that this was in accordance with the Nigerian norms. (The father denied that physical punishment of children was normal and acceptable in Nigeria, but I do not necessarily accept his evidence on this.) Accordingly, Mr Porter argued, the Court should find that father had not acted in Enitan's best interests when he smacked him with the slider. Alternatively, this was a matter which CAFCASS should be asked to consider.
32. I accept of course that Enitan's welfare is paramount. It may well be that, if the Court had to determine whether Enitan should live with his mother or his father, the fact that he might be the subject of physical chastisement in the latter environment was a matter which would stand to be taken into account, possibly in a decisive way. However, the fact which I have to determine is whether father inflicted physical abuse on Enitan or not. If the chastisement was lawful, as I have found it to be, in my judgment it does not — and cannot — amount to physical abuse. Parliament has, as recently as 2004, decided that the infliction of reasonable physical chastisement on a child falls within

the wide bounds of acceptable parental practice. I cannot go behind Parliament's view on this.

33. Mr Porter did not cite *Re H-N* [2021] EWCA Civ 448, [2022] 1 WLR 2681, which at [61]ff explains that criminal law concepts are not generally relevant in a family law context. The issue here is not, however, primarily of criminal law — it is the acceptableness of father's spanking of Enitan. Parliament has determined that reasonable physical chastisement of children is an acceptable form of parental discipline. If the chastisement is reasonable, it follows that it cannot be abusive.
34. Accordingly I find that father did not physically abuse Enitan.

(2) Physical abuse of the mother

35. The finding of fact sought in relation to physical abuse of mother involves one incident on 5th November 2020. It is, however, important to see this incident in context. Both Frances and Gillian say that mother suffered from unstable personality disorder. There is no doubt that mother did periodically become extremely angry with father. The cause of this was frequently mother's perception that father was receiving messages from other women. Whether this was or was not the case, and whether her suspicions of his faithfulness were justified or not, were not matters explored in evidence. On one occasion, her jealousy resulted in her taking Enitan and Frances in her car in the early hours of the morning with the intention of waiting outside a nightclub some two hours' drive away to see whether father left with a woman or not. (In fact, after driving a significant distance she turned around and did not carry out the plan.)
36. Harriett, whose evidence on this I accept, said that she was absolutely petrified of mother and Frances when their tempers were up. Indeed mother in cross-examination accepted that Harriett knew about what she described as her "outbursts and irrational decisions".
37. On one occasion, father was in the shower. Mother was in the bedroom with a glass of wine. She saw that he had received a message from a friend of Harriett, called [redacted]. Father came into the room. Mother admitted in cross-examination that she had slammed her wineglass down, so that it smashed. Father says that she then held the broken glass to his throat. Larry, whose bedroom was opposite, reported this at school the following day. (The school noted this as being a broken bottle which mother held to father's neck, but nothing in my judgment turns on this.) The school reported the matter to social services, who investigated but did not take the matter further. Mother denied having held the glass to him, but I do not accept her denial. (She also says that father was going to hit her after she had broken the glass, but instead by accident hit Kevin who had come into the room, as father was moving his fist back to punch her. There is no evidence other than hers of this and I do not accept this improbable account of Kevin being struck either.)
38. It is against this background that the incident of 5th November 2020 occurred. There is a substantial degree of common ground. Father told mother he was going to Peterborough. This was in the middle of the national Covid lockdown. Mother was unhappy with his doing this. She initially tried to prevent him entering the house in order to collect his money, but he forced his way in. When he was upstairs, mother

locked the front door so he could not leave. Father telephoned the police. He then went downstairs. The father denied that he had assaulted mother.

39. Gillian's account of the incident was this:

"During lockdown, the Applicant said he had to go out to see some people. The Respondent explained that he couldn't go out due to the dangers it could cause to Enitan and Larry's health conditions however he said he was going anyway. The Applicant walked out of the front door so the Respondent told him he can stay in Peterborough because he is not putting the children in danger and so she shut the door. Seconds later the Applicant pushed down on the door handle very hard and slammed the door open and went upstairs to get his money. The Respondent told him he was not leaving. The Applicant called the police on the Respondent saying she won't let him out, so they dispatched a unit. The Applicant tried to get out the front door; however the Respondent locked the door and told him that he can stay and wait for the police and tell them why he rang, which made him very angry. He pushed the Respondent near the door way of the living room door and at this point he was in the living room and the Respondent was stood in the doorway. I took the keys out of the door so he could not get out as I knew the police were coming. The Applicant grabbed the Respondent's hair and hit her head off of the door to get past her. I screamed at the Applicant and told him not to touch the Respondent; he went and sat on the stairs. The Police arrived and one of them took the Respondent into the living room and another stood at the bottom of the stairs whilst the Applicant was sat on them. After hearing both sides to the story, the police asked the Applicant to leave the property and he said he was not leaving unless the Respondent got arrested. The police explained she would not be getting arrested so he refused to move. The police arrested the Applicant and escorted him out of the building. As he stood up from the stairs, he punched the banister, making it shake."

40. I accept this account of what occurred. However, it is important to note that mother hitting her head on the door (or door-frame: the police report at E6 suggests it was a cupboard) does not appear to be deliberate. The account mother gave to Harriett later was that father was trying to move her out of the way albeit roughly by grabbing her hair, which was how her head hit the side of the door-frame. There was no mark on her head. The hitting of her head occurred as he was trying to get out of the house. The mother had no business preventing him from leaving.
41. Accordingly, although I find this allegation of physical abuse proven, it falls at the low end of such abuse. Mother too has a share of the blame for this incident. The physical abuse was not controlling or coercive behaviour on the part of the father.
42. In this context, the comments of Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 [2018] 4 WLR 141 at para [61] apply:

"Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to 'domestic abuse', where 'coercive behaviour' is defined as behaviour that is 'used to harm, punish, or frighten the victim...'

and 'controlling behaviour' as behaviour 'designed to make a person subordinate...'"

(3) Sexual abuse of mother

43. The mother asserts that she was raped by father on one occasion in 2018. The father says that all the sex between them was consensual.
44. Mother discussed the incident with Harriett shortly after it happened. Harriett says that the mother did not say to her that she had been raped. Although mother said she had cried, mother accepted that she had eventually consented to the sex.
45. On 11th February 2023, mother was asked about the incident by the police. The officer's record says (C-104):

"I have then discussed with her whether she is the victim of a rape and whether this is to be investigated. She stated to me that she did not consider that she had been raped during their relationship and this is the same info she had told police previously. She did not wish to make any complaint of rape and she definitely did not wish for him to be contacted by police and accused of this and go to court about it. I have said I would do whatever was needed to support her wishes but she assured me she did not consider herself to be a victim of rape and did not wish this to be progressed."
46. Mother's evidence to me was that she had originally not thought father's behaviour amounted to rape. She said that until the police told her otherwise, her understanding was that in order to be raped she'd need to push father away and shout to the kids, whilst actively saying No. She had not shouted or screamed, so on her understanding of rape she was not raped. It was only when the police case officer explained that No means No, that she realised that she was a victim. Her understanding now (unlike at the time of the incident) was that No means No, so she had been raped.
47. It is now well-recognised, particularly in the criminal sphere, that various "rape myths" are prevalent. One of these myths is the erroneous view that a rape victim will shout and scream whilst being raped: see the Crown Court Compendium (June 2023) Part I section 20-01 (Sexual offences — the dangers of assumptions). Mr Porter submitted that this was relevant in accessing mother's evidence that (whereas she had not previously) she now understood that she had been raped. However, in my judgment this rape myth would not cause a rape victim herself not to believe she had been raped because she did not shout and scream. A rape victim will know that she did not consent.
48. I do not accept the mother's evidence that it was only after the police had explained the concept of rape that she realised she had been raped. She told Harriett that she had consented. Her statement to the police on 23rd February 2023 is completely consistent with what Harriett says she said.
49. I find the allegation of rape not proven.
50. The same applies to the more general and unspecific allegation of sexual abuse. The evidence is that the parties had a vigorous sex life. Indeed Harriett says that, if the

father showed inadequate keenness, mother would threaten jokingly that *she* would rape *him*. Again I do not find any allegations of sexual abuse proven.

51. For completeness, I should add that I am aware of Sir Andrew Macfarlane P's decision in *M v F* [2024] EWHC 723 (Fam) where at [13] he points out that consensual sex can (depending on the facts) nonetheless be abusive. This is not the way Mr Porter put mother's case and in any event I find as a fact that there was no sexual abuse.

(4) Circumcision

52. It is common ground that father wanted Enitan to be circumcised and mother did not. It was also not in dispute that in the Eastern Christian part of Nigeria from which father comes the culture is to circumcise all boys shortly after birth. In my judgment both parties' views were perfectly reasonable and valid.
53. The father's case was that in addition Enitan needed to be circumcised for medical reasons. Enitan had had medical problems, for example with a kinked urethra, but there is no medical evidence that circumcision was relevant to this. Father said that after mother disagreed with him about circumcision, he dropped his cultural wish for the operation. He raised the issue again when circumcision was medically indicated.
54. I do not accept that father persisted in wanting Enitan circumcised solely on medical grounds. However, neither do I accept that he went beyond trying to persuade mother to allow the operation. As a parent with his cultural background, it was in my judgment reasonable for him to raise the matter with mother and press it: it was an important matter both for him and for Enitan's cultural heritage. It is significant that he did not take Enitan to be circumcised. I find as a fact that he ultimately accepted mother's refusal to countenance the operation.
55. Mother has not proved in my judgment that father's behaviour in relation to circumcision was coercive or controlling.

(4) Other coercive and controlling behaviour

56. The other allegations of coercive or controlling behaviour are not in my judgment made out. Mother's allegation that father "isolated [her] from her family and friends and made her feel like she couldn't leave the house" is not true. Frances and Harriett came around very regularly, sometimes on an almost daily basis. Mother would go to play bingo on Wednesdays (although the frequency of the bingo-playing was in dispute). She was part of a family group chat which was conducted under the name [redacted]. I find as a fact that she was not isolated. As regards the more generalised allegations, these do not go beyond the type of things which occur when a relationship is breaking down.

(5) Emotional abuse

57. Likewise the allegations of emotional abuse do not in my judgment go beyond the ordinary incidents of a relationship in terminal decline. Mother thought that father was seeing other women and that no doubt contributed to the decline. Father accepted that he placed a high value on personal hygiene and showered himself twice a day. He denied that he ever called mother "dirty", but I prefer the evidence of Gillian that he

had occasionally said this. However, the allegation is not sufficient to establish a case of abuse.

(6) Financial abuse

58. There was no dispute that after an initial contribution of £150, father ceased to pay any maintenance for Enitan (or contribution to the tablet which had been purchased). Section 1(4) of the Domestic Abuse Act 2021 provides: “‘Economic abuse’ means any behaviour that has a substantial adverse effect on [the alleged victim’s] ability to (a) acquire, use or maintain money or other property, or (b) obtain goods or services.” Mr Porter in his closing submissions did not explain how this definition applied to the non-payment of £150 per month. Mother did not give evidence showing that the non-payment had a *substantial* adverse effect on her ability to manage her household finances. I do not find this allegation proven.

(1) Failure to protect and care for Enitan

59. It was common ground that Enitan had various medical problems. For example, on 22nd November 2022 there is a text-message conversation (C-41) between mother and Frances which says that Enitan is “absolutely full of gas and got a throat infection. He’s got keytones in his wee too which means his body is using its own fat reserved to live at the moment... Given him 2 different medications: 1 for the gas to get rid of it because [the doctor] said if his tummy gets any bigger and he gets any more constipated then his large intestine could be blocked and that’s very serious. Given antibiotics too.”
60. The allegation about father failing to give Enitan his drugs on one occasion is undated. It is common ground that Enitan had long standing bowel problems and had been given a drug, Movocol (also branded as Laxido), to cope with the pain. Movocol itself is a laxative. I have been shown no evidence about how often the doctor prescribing the drug directed that it should be taken. Often with laxatives it is a matter of reacting to constipation, but without any medical evidence of how it was directed that the Movocol be taken, it is impossible to say. Father says it was mother who sometimes overlooked giving Enitan his drugs.
61. In the light of the uncertainties, I do not find it proved that father, even on the one occasion alleged, failed to give Enitan his drugs.
62. Likewise it is not proven in my judgment that any absences from nursery were father’s fault. Enitan had, as is common ground, frequent illnesses.
63. As to the child-seat allegations, the father accepted that Enitan had a tendency to shrug the belt off his shoulders so he could move his arms. Whilst this is undesirable, there is little a father in the front seat can do, whilst driving a car, to stop a child in a car-seat in the back misbehaving in that way. Enitan kept the belt around his waist on, so he was still restrained.
64. The allegations of failure to protect or care for Enitan are not proven in my judgment.

Conclusion

65. Accordingly the findings of fact I make are:

- (1) Failure to protect and care for Enitan: not proven.
 - (2) (a) Physical abuse: there was no physical abuse of Enitan. There were three occasions on which father smacked him with a slider, but these constituted reasonable chastisement of a child by his father.

(b) There was one incident of physical abuse of mother on 5th November 2020. This was part of dispute between the parties for which mother shares the blame. In particular, she locked him in the house, so he could not leave. It was in course of his attempting to leave that he pulled her hair and she hit her head on what is variously described as a door, a door-frame or a cupboard. That was not intentional on father's part and mother sustained no significant injury. This single example of physical abuse against mother is proven, but is at the low end of the scale of such abuse and does not amount to controlling or coercive behaviour.
 - (3) Sexual abuse: not proven.
 - (4) Controlling and coercive behaviour: not proven.
 - (5) Emotional abuse: not proven.
 - (6) Financial abuse: not proven.
66. The Court will next have to consider the next steps. One issue may be introducing supervised contact, but the parties will need to make submissions on the way forward.