**[2024] EWFC 221 (B)**

**IN THE FAMILY COURT SITTING AT HUDDERSFIELD**

**Date: 7 August 2024**

**Before:**

**DISTRICT JUDGE AKERS**

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**BETWEEN:**

**Z**

**Applicant**

**-and-**

**Z**

**Respondent**

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**Miss Chaplin, Counsel, for the Applicant.**

**Mr Sproston, Counsel, for the Respondent.**

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**APPROVED JUDGMENT FOLLOWING HEARING 15 JULY 2024**

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**District Judge Akers:**

## INTRODUCTION

1. This judgment concerns my findings of fact and a subsequent welfare decision. The fact find relates to a schedule of allegations made by the Respondent mother, ('the mother') in relation to an application by the Applicant father ('the father') for a child arrangements order in respect of their children to whom I shall refer in this judgment as Child A and Child B.

2. The mother is asking the Court to make findings about the father's conduct towards Child A. She says that the Court should then consider any findings it makes in the context of the necessary welfare decision required as part of the father's application. The Court has considered Family Procedure Rule Practice Direction 12J ('FPR PD 12J') throughout.

3. Both parties have been represented most ably by counsel to whom I am grateful for their submissions and for the sensitive way in which they cross examined the parties and the social worker.

4. During this case I have had the unique opportunity of hearing and observing the way in which evidence has been given by the parties in person.

5. If in this judgment I do not specifically refer to any particular aspect of the evidence or the parties' respective submissions, it does not mean that such has not been considered when reaching my decision. I have read the entire trial bundle and listened with care to the parties' questions and submissions.

## THE BACKGROUND

6. These proceedings concern the father's application of 3 May 2023 to enforce a final order made by the Family Court on 18 August 2022. The father's application states that the mother ceased the contact ordered by the court citing allegations that he had bitten Child A's cheek. The children have spent no time with their father since 2 February 2023.

7. The order of 18 August 2022 provided for the children to live with the mother and for a stepped contact arrangement between them and the father. For the first three months of the order contact was unsupervised and took place for an increasing amount of time during the daytime. After this initial three-month period the contact would then progress to include one night of overnight contact, and after another three months this would then extend to include an additional night's contact. Finally, whilst neither a part of the order nor the recitals to the same, the Section 7 report completed in respect of those proceedings made clear that after three months of the children spending time with him during overnight contact, then he should apply to the Court for a further order in respect of him taking them on holiday to his home country of Turkey.

8. It is a matter of fact that of the five allegations before me to determine within these proceedings the first three were alleged to have taken place either before or during the previous set of proceedings, the alleged facts have not changed – the circumstances of the same were known to both CAFCASS and to the Court and nevertheless it was determined that an unsupervised spends time with order, in respect of the father, remained in the best welfare interests of the children.

9. The findings that I am asked to make, inclusive of the father's responses to the same, are included in a scott-schedule in the trial bundle at pages 82 and 83. Whilst the schedule is indicative of the findings sought, I shall nevertheless make such findings as I consider appropriate, having considered all the evidence and information placed before me. A copy of the findings which I have made are within this judgment.

10. The central question that I have to resolve is whether between 13 December 2020 and 30 January 2023 the father caused emotional and physical harm to Child A, or whether the mother has laid a trail of false allegations in an attempt to prevent contact and to put distance between the father and the children.

## THE HEARING

11. The Court was able to hear evidence from each of the parties in addition to that of Miss Bragg – a social worker with Kirklees Childrens Services and the author of the Section 7 report and addendum to the same. Procedural fairness was ensured throughout.

## LEGAL PRINCIPLES

12. Whilst this is technically an application to enforce, it is common ground between the parties that I am effectively being asked to determine the issue of child arrangements afresh. The

father is not actively inviting me to consider penalising the mother for her alleged breaches of the Court's earlier order.

13. Accordingly, my judgment will proceed on the basis that this is an application for a child arrangements order and therefore, in determining the facts in this case, I have consistently held in mind the following legal principles.

14. The issue I must decide is whether the father has behaved in the manner alleged by the mother in the disputed schedule. In doing so, I will assess the evidence in the bundle before me and the direct oral evidence of the parties and make findings in accordance with both the civil standard and burden of proof applicable in all Children Act proceedings.

15. In determining the welfare issue, I must consider the applicable provisions of the Children Act 1989 ("the act") and in particular section 1 of the same and the welfare checklist contained within section 1(3). I make clear that when a court determines any question with respect to the upbringing of a child, the child's welfare shall be its paramount consideration.

16. Section 1(2A) of the act confirms that there is a presumption that the involvement of a parent in the life of a child will further the child's welfare unless the contrary is shown. It is important to remember that "involvement" means "involvement of some kind, either direct or indirect, but not any particular division of the child's time". Section 1(2) confirms that delay is likely to be harmful to a child and I keep this very firmly in mind.

17. I must also bear in mind the Human Rights Act 1998, including under Article 8 the right to respect for private and family life, for all parties not just the applicant and respondent, and Article 6, the right to a fair trial.
18. Standard and burden of proof

19. The burden of proving the facts pleaded rests with the person making the allegation, i.e., the mother.

20. The standard to which the mother must satisfy the Court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be considered when weighing the probabilities and deciding whether, on balance, the event occurred. Within this context, there is no room for a finding by the Court that something might have happened. The Court may decide that it did or that it did not – see *Re B*[1] where at [2], Lord Hoffman said:

> *'In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it*

[1] [2008] UKHL 35

> *did. But generally speaking, a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof.'*

21. The legal concept of proof on the balance of probabilities must be applied with 'common sense' (*The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd*[2]).

22. Findings of fact must be based on evidence not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z*[3]).

23. When assessing whether the mother has satisfactorily discharged her burden, the Court engages in a comprehensive evaluation of what has been referred to as 'the broad canvas' of the available evidence. This assessment encompasses a wide array of considerations, including the Court's appraisal of the witnesses' credibility and the reasonable inferences that may be drawn from the evidentiary material. The Court's role, therefore, entails a holistic examination of the evidence, culminating in findings predicated upon the balance of probabilities. In this framework, it is imperative for the Court to scrutinize each individual piece of evidence within the broader context of all other evidentiary elements (*Re T*[4]).

24. The evidence of the parties is of utmost importance, and it is essential that the Court forms a clear assessment of their credibility and reliability. The Court is likely to place considerable reliability and weight on the evidence and impression it forms of them *(see Gestmin SGPS SA v Credit Suise (UK) Ltd Anor*[5] at *[15]* to *[21]* and *Lancashire County Council v M and F*[6]).

25. In the case *of Re B-M (children: findings of fact)*[7] Peter Jackson LJ dealt with a number of issues of recollection, demeanour and credibility and the following points have relevance: Firstly, he suggested there was a distinct difficulty in *'harvesting obiter dicta expressed in one context and seeking to transplant them in the context of another'* (at para 23). This was a move away from following the guidance of Leggatt J in *Gestmin and SS (Sri Lanka) v SSHD*[8]. That guidance made the assertion that it is usually unreliable and often dangerous to draw a conclusion from a witness's demeanour as to the likelihood that the witness is telling the truth. Jackson LJ (at paragraphs 24 and 25) noted these cases were from very different contexts:

> *'Further, and as noted by this court in Kogan v Martin*[9] *at [88- 89] Gestmin is not to be taken as laying down any general principle for the assessment of evidence. Rather, as Kogan states, it is one of a line of distinguished judicial observations that emphasise the fallibility of*

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[2] [1985] 1 WLR 948
[3] [2005] EWHC 31 (Fam)
[4] [2004] 2 FLR 838 at [33]
[5] [2013] EWHC 3560 (Comm)
[6] [2014] EWHC 3 (Fam)
[7] [2021] EWCA Civ 1371
[8] [2018] EWCA Civ 1391
[9] [2019] EWCA Civ 1645

*human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed. The discussion in Gestmin is expressly addressed to commercial cases, where documentary evidence will often be the first port of call, ahead of unaided memory.*

*No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence. Indeed, in family cases, where the question is not only 'what happened in the past?' but also 'what may happen in the future?', a witness's demeanour may offer important information to the court about what sort of a person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable.'*

26. As such witness demeanour is not to be taken in isolation but is an important part of assessing credibility where there are other cross checks of that assessment including but not limited to other known facts, previous accounts and the overall probability of events.

27. How do we deal with inconsistencies in testimony? Lady Justice King in *Re A*[10] (at paragraphs 40 and 41) explored this stating:

*'I do not seek in any way to undermine the importance of oral evidence in family cases, or the long-held view that judges at first instance have a significant advantage over the judges on appeal in having seen and heard the witnesses give evidence and be subjected to cross-examination (Piglowska v Piglowski[11]). As Baker J said in in Gloucestershire CC v RH and others at [42], it is essential that the judge forms a view as to the credibility of each of the witnesses, to which end oral evidence will be of great importance in enabling the court to discover what occurred, and in assessing the reliability of the witness.*

*The court must, however, be mindful of the fallibility of memory and the pressures of giving evidence. The relative significance of oral and contemporaneous evidence will vary from case to case. What is important, as was highlighted in Kogan, is that the court assesses all the evidence in a manner suited to the case before it and does not inappropriately elevate one kind of evidence over another.'*

28. Jackson LJ (at paragraph 28) returned to the issue of fallibility of recollection later in *Re B-M:*

*'Of course, in the present case, the issue concerned an alleged course of conduct spread across years. I do not accept that the Judge should have been driven by the dicta in the cases cited by the Appellants to exclude the impressions created by the manner in which B and C gave their*

[10] [2020] EWCA Civ 1230
[11] [1999] WL 477307, [1999] 2 FLR 763 at 784

> *evidence. In family cases at least, that would not only be unrealistic but, as I have said, may deprive a judge of valuable insights. There will be cases where the manner in which evidence is given about such personal matters will properly assume prominence. As Munby LJ said in* Re A (A Child) (No. 2)[12] *said at [104] in a passage described by the Judge as of considerable assistance in the present case: 'Any judge who has had to conduct a fact-finding hearing such as this is likely to have had experience of a witness - as here a woman deposing to serious domestic violence and grave sexual abuse - whose evidence, although shot through with unreliability as to details, with gross exaggeration and even with lies, is nonetheless compelling and convincing as to the central core… Yet through all the lies, as experience teaches, one may nonetheless be left with a powerful conviction that on the essentials the witness is telling the truth, perhaps because of the way in which she gives her evidence, perhaps because of a number of small points which, although trivial in themselves, nonetheless suddenly illuminate the underlying realities.'*

29. Drawing these themes together the following merge:

    i. It is imperative for a judge to form a considered assessment regarding the credibility of each witness in family fact-finding proceedings.
    ii. In this context, oral evidence holds significant relevance in establishing the reliability of witnesses.
    iii. Except in exceptional circumstances, this evaluation should not stand in isolation; it must involve supplementary verification processes, including but not limited to corroborating facts, previous statements, and an overall assessment of the event's likelihood.
    iv. While obiter from distinct cases may not directly influence the assessment of demeanour, they do serve to illustrate the potential for human recollection's fallibility and emphasize the necessity of appropriately situating witness evidence alongside contemporaneous written records and unquestionably reliable information.
    v. Acknowledging the inherent limitations in human memory and the stress associated with giving evidence is crucial.
    vi. The evaluation of oral testimony should be viewed as an integral part of the broader body of evidence, with no one element being elevated above the others.
    vii. It is pertinent to recognize that evidence may contain inaccuracies regarding specific details, including exaggerations and falsehoods, yet still possess a compelling core of central substance.

30. This exposition of the law in domestic abuse family fact finds is in danger of becoming difficult to handle. It is interesting to see the simple explanation given in the June 2022 'Crown Court Compendium'[13] where a suggested direction to the jury in cases of sexual assault reads as follows:

> *'Example 4: Inconsistent accounts When you consider this allegation, you must not assume that the evidence W gave in court is untrue because W said something different to another person.*

[12] [2011] EWCA Civ. 12
[13] available at www.judiciary.uk/guidance-and-resources/crown-court-compendium

> *You heard that when W gave a statement to/was interviewed by the police W said { insert}. But when giving evidence in court W said { insert} .*
>
> *[Either] It is agreed that these two accounts are inconsistent. You have to consider why they are inconsistent.*
>
> *[Or] You need to compare these two accounts. If you find they are inconsistent, you will have to consider why they are inconsistent. Just because W has not given a consistent account does not necessarily mean that W's evidence is untrue. Experience has shown that inconsistencies in accounts can happen whether a person is telling the truth or not. This is because if someone has a traumatic experience such as the kind alleged in this case, their memory may be affected in different ways. It may affect that person's ability to take in and later recall the experience. Also, some people may go over an event afterwards in their minds many times and their memory may become clearer or can develop over time. But other people may try to avoid thinking about an event at all, and they may then have difficulty in recalling the event accurately. Your assessment of this factor will be influenced by your conclusions as to the facts of this case. You must form a view of what happened in this case based on all the evidence you have heard.'*

31. This summary albeit from a different context is helpful in explain the fact find process in a simpler way.

***Lies***

32. I remind myself that it is not uncommon for witnesses in cases of this nature to tell lies during assessments and hearings. The Court must be careful to remember that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, or distress. Just because a witness has lied about some matters does not mean that they have lied about everything (see *R v Lucas*[14]*)*. I also bear in mind that memories can fade or change over time, especially for events that were traumatic or distressing at the time.

33. In considering the evidence, I will also give myself a revised Lucas direction. This means that I will only take into account any lies found to have been told if there is no good or established reason for the person to have lied. I will also take into account the decision of the Court of Appeal in R*e H-C*[15], where McFarlane LJ (as he then was) said at paragraph 100:

> *'One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the 'lie' is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is 'capable of amounting to a corroboration.' In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of* R *v Middleton*[16]*. 'In my view there should be no distinction between the approach taken by the criminal Court*

[14] [1981] QB 720)
[15] [2016] EWCA Civ 136
[16] [2001] Crim.L.R. 251

*on the issue of lies to that adopted in the family Court. Judges should, therefore, take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt'*.

34. I readily acknowledge that the mere discovery of falsehood on the part of a party or witness before this Court does not inherently substantiate the primary case brought against them. Furthermore, I must keep in mind that a party is not under an obligatory burden to substantiate the veracity of an alternative case presented by means of a defensive stance. It is essential to note that the inability of a party to establish the alternative case on the balance of probabilities does not, in and of itself, serve as proof for the opposing party's case (*Re X (No 3)*[17]).

35. It is right to say that in this case the mother was witness to none of the five allegations that are before the Court to determine. She relies entirely upon what she has been told by Child A and what the child has reported to the police, her school and to the Local Authority.

36. At the outset of this hearing Miss Chaplin provided the Court with a helpful note on the law relevant to a case such as this. In particular she drew my attention to the following jurisprudence.

37. In *Re A (A Child)*[18], the President of the Family Division (as he then was) Sir James Munby said**:**

*"The local authority, if its case is challenged on some factual point, must adduce proper evidence to establish what it seeks to prove. Much material to be found in local authority case records or social work chronologies is hearsay, often second- or third-hand hearsay. Hearsay evidence is, of course, admissible in family proceedings. But, and as the present case so vividly demonstrates, a local authority which is unwilling or unable to produce the witnesses who can speak of such matters first-hand, may find itself in great, or indeed insuperable, difficulties if a parent not merely puts the matter in issue but goes into the witness-box to deny it."*

38. In *Re P*[19]**,** the law in relation to hearsay evidence was summarised as follows:

*It is very important to bear in mind at all times that the court is required to treat hearsay evidence anxiously and consider carefully the extent to which it can properly be relied upon (see* R *v B County Council ex parte P*[20]*)*

*In circumstances where, in this case, the allegations are comprised of hearsay evidence from children concerning (at least in respect of the children) events which are alleged to have occurred some years prior to the allegations being made, I also remind myself that a court considering the hearsay evidence of a child must consider not only what the child has said, but also the circumstances in which it was said (*R *v B County Council, ex parte P*[21]*)*

[17] [2013] EWHC 3651 Fam and Re Y (No 3) [2016] EWHC 503 Fam
[18] [2015] EWFC 11
[19] [2019] EWFC 27
[20] [1991] 1 WLR 221
[21] Ibid

*… I am satisfied that this court can take judicial notice of the following matters (some omitted):*

i. *Children, and especially young children, are suggestible.*
ii. *Memory is prone to error and easily influenced by the environment in which recall is invited.*
iii. *Memories can be confabulated from imagined experiences, it is possible to induce false memories and children can speak sincerely and emotionally about events that did not in fact occur.*
iv. *Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, threats, negative stereotyping and encouragement, reward or praise.*
v. *Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of the interlocutor.*
vi. *Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.*
vii. *Within this context, the way, and the stage at which a child is asked questions / interviewed will have a profound effect on the accuracy of the child's testimony.*

**The Evidence**

39. All of the evidence in this case is generated from the reporting of Child A, whether that was to her mother, her school, the police or the local authority. I have to keep in mind that the relationship between the parties is acrimonious. The mother's evidence to me was that she had previously said that she had not wanted the father to have any contact with the children and that she had felt pressured to accept this by the Court on the last occasion.

40. It is the father's case that the timings in this case are of crucial importance and ought to be determinative of my findings. The children last had contact with their father on 30 January 2023 and that would have been the final contact session, as per the Court's previous order, before the amount of time that they spent with him was due to be extended. Further, the father says that what compounds matters all the more is that CAFCASS had previously expressed a view that the children would have needed to have had overnight contact with him over a period of three months before he could then seek either the mother's agreement, or a court order, permitting him to take them on holiday to Turkey. In her evidence to me the mother said that she did not want the father to take the children to Turkey because she was worried about whether he would return them.

41. It was suggested to the mother by father's counsel that it cannot be coincidence that allegations four and five are suddenly made at around about this same time when the effect of the same, if proven, might have been to significantly reduce the time and circumstances in which the children were with their father and whether or not he would be able to take them to Turkey with him.

42. In *Re B-B (Domestic Abuse: Fact-Finding)*[22] Mr Justice Cobb confirmed that in private law cases, the court needs to be vigilant to the possibility one or other parent may be seeking to gain an advantage in the battle against the other. It is also correct however that I need to consider carefully the fact that the mother told me that she had wanted there to be contact between the

[22] [2022] 2 FLR 725

children and the father even after allegations one and two had been made to her, and that it was only once allegation three was said to have occurred that she then wanted contact to cease.

*Evidence of Miss Bragg – Social Worker*

43. Before I turn to address my findings in respect of the allegations, I think it important that I reflect upon the evidence I heard from Miss Bragg, a social worker from Kirklees Children's Services. Her involvement in this case commenced with the earlier ordering of a Section 7 report.

44. In her preparations prior to reporting, she told me that she visited the children at their home on three occasions and had spent more than 3-hours in their company. In respect of Child A her evidence was that she had displayed some anxiousness over the prospect of seeing her father but also that she loved him, missed him and wanted to see him. She accepted that Child A was sometimes confused and conflicted about her father and her desire to see him.

45. Miss Bragg told me that she had met the mother and had never picked up any signs of parental alienation and also that she had picked up no signs from either child that they had created fantasies or were making things up. She was clear that she did not think Child A was being influenced or not permitted to say things about her father.

46. Her evidence was that it was important for the children's identity that they have both of their parents in their lives, so long as this was done safely, and that for them to experience any loss in respect of their father would be emotionally harmful to them. She said that she felt this particularly important for the children's sense of cultural inheritance given their father's Turkish nationality.

47. Miss Bragg's professional opinion was that regardless of findings being made or not, that contact between the children and their father should remain supervised. She was clear that she could in no way support a no contact scenario and that in her view the best person to supervise contact would be the maternal grandmother. When it was put to her that the maternal grandmother had made clear that she was not prepared to supervise contact she told me that the same should be supervised professionally and that perhaps the grandmother could facilitate contact in some other way.

48. Her opinion was that a contact of expectations should be drawn up between the Court and the parents that emphasised the importance of the parents not discussing the allegations or the Court process with the children.

**49.** Miss Chaplin cross examined Miss Bragg on the point that if findings are not made, then the Court cannot function on the basis that the allegations still present a risk. She accepted this and told me that the reason that she believed contact needed to remain supervised was because the paternal relationship had to be built back slowly. Father's counsel suggested to her that the Court could order a stepped approach to contact that was initially supervised but which

progressed to facilitated and then finally to overnight – Miss Bragg accepted this and suggested a template for such a progression which I shall return to in more detail when I undertake my welfare analysis later in this judgment.

## The Allegations

### *Allegation 1 – The father intentionally locked Child A out of the car*

50. The allegation is that the father had taken the children to a beauty spot near their home one evening. The location is semi-rural and a high point in the topography of the local landscape. Consequently it was both windy and dark, the incident is alleged to have occurred in mid-December 2020, so it was also cold.

51. The mother alleges that Child A, who was six years old at the time, had been misbehaving and in an attempt to discipline her the father had locked her out of the car at this location causing her to become extremely frightened. I heard evidence that Child A had been so affected by this event that the mother had sought medical attention for her, and a course of therapy was arranged and undertaken.

52. As with all of the allegations in this case the evidence in respect of allegation one is hearsay and comes entirely from Child A. The father was able to do nothing other than deny the incident during his cross-examination by mother's counsel who persisted in asking the father how many times he had taken the children to this particular location at the time that allegation was said to have occurred.

53. In her evidence the mother accepted that this incident was said to take place about six months into the previous proceedings and that the Court at that time had been aware of this but nevertheless considered that it remained in the children's best welfare interests to have contact, including unsupervised overnight contact, with their father. The mother told me that because Child A's behaviour had deteriorated after this allegation was said to have occurred, she had taken her to see the family doctor and that she discussed this incident in Child A's presence with them. It was put to her that it might have looked to Child A like the mother was blaming the father for her behaviour, she denied this and told me that she just wanted to get whatever help was available for her daughter. Father's counsel made the point in closing that mother's actions in discussing this incident with the doctor in Child A's presence compounded the narrative that there was something wrong in her relationship with her father.

54. Counsel for the mother invited me to find that whilst this allegation did rely exclusively upon hearsay evidence from a child, the Court could find reassurance in the fact that Child A had repeated the allegations in the same way time and time again to various professionals who have had involvement in this case.

***55.*** On balance I am not satisfied that the mother has proven this allegation on the balance of probabilities. I am acutely conscious of the suggestibility of young children and the ease with

which false memories can, albeit unintentionally, be induced in them. In my judgment the mother's case in respect of this allegation is materially contaminated by her acceptance that she discussed the incident in the presence of the child whilst consulting the family GP.

***Allegation 2 – The father shaved a line into Child A's eyebrow***

56. This allegation requires little consideration by the Court given that it is accepted as having occurred by the father. The context in which it occurred is that the father, a trained barber, was trimming Child B's hair in the presence of Child A who in turn asked her father to cut her hair. The father refused and explained to her that he could not do this because he was a barber and could not cut girl's hair. He told me that Child A had become upset at this and in an attempt to placate her he offered to shave a line into her eyebrow in the same way that he had in his own eyebrow – something that I was told was a fashion statement.

57. The father told me that Child A readily welcomed this albeit that the mother's case is that it was done against Child A's will and that regardless of her request for the same the father should have exercised considerably better parental judgment and at least consulted the mother before unilaterally shaving their daughter's eyebrow.

58. I cannot find that this event took place either with or without the request of the child due to the limited evidence. In any event however such a finding would be unnecessary given the father's acceptance that he did do this to his daughter and that with the benefit of hindsight it had been the wrong thing for him to do and that he should have exercised better parental judgment.

***Allegation 3 – The father slapped Child A in the face three times and called her "a stupid cow"***

59. It is alleged by the mother that whilst the father was having unsupervised daytime contact with the children, he had taken them to a playground and Child A was playing on the swings. As she swung back and forth, she almost struck him in the face, and it is the mother's case that the father was so angry at this near miss that he slapped her in the face three times and called her "a stupid cow". This event was said to have occurred when she was 4-years of age.

60. The father denies the allegation entirely and during his evidence he went so far as to accuse his daughter of telling lies. It was put to him however during cross examination that Child A's account was corroborated by virtue of relatively contemporaneous reporting of the event to her mother, the police and her school.

61. Again, for the reasons I have already articulated, I have to approach the hearsay evidence of Child A's reporting with some caution, but it is fair to say that contemporaneous reporting of an event would lend reliability to a recollection of events. However, whilst the mother was being cross examined in respect of this allegation an extract from the school records of the time was put to her in which it is clear that the mother had discussed with Child A the fact that she had told her solicitor about this incident and that she would not be seeing her daddy ever again.

62. Father's counsel asked the mother how Child A would have known what a solicitor was, in answer to which the mother accepted that she may have said something to her about it. She was asked whether she thought it was appropriate that her daughter knew about the previous Children Act litigation, ongoing at the time this allegation is said to have occurred, and she answered that it was not. It was further put to her that Child A had a very clear understanding that her mother and father did not get along to which she answered, "from that record, yes that is correct", and that this would have reinforced a negative opinion in Child A's mind about her father. The mother did not accept this.

63. Against the backdrop of this evidence Father's counsel later submitted to the Court that the fact that Child A had repeated this allegation to several sources lent no strength to the complaint itself. She reminded me that the mother can hardly be said to be neutral and of what was said in *Re P (2019)* that young children are suggestible, and it is possible for them to accept false memories as reality.

64. I was also invited to consider the inherent probability of this allegation being correct. Child A had no visible marks on her face at any point after she was allegedly slapped not once but three times by her father in anger. She had been returned to her mother's care within a matter of hours only of this daytime contact having ceased so there would have been no time for any injury to dissipate.

65. Again, I remind myself that the mother makes this allegation and must prove the same to me on the balance of probabilities – having reviewed the evidence in respect of this allegation most carefully, I cannot be satisfied that the mother has discharged her evidential burden.

***Allegations 4 and 5 – The father bites Child A's cheek leaving a mark***

66. These allegations are said to have occurred within a few weeks of each other. The mother asserts that on these two separate occasions the father bit his daughter on the cheek, the first instance leaving a visible mark and on both occasions the child being caused pain and upset as a consequence.

67. It was put to the father that having been challenged by the mother about this he had told her that this "was the Turkish way" and that he would continue to do this to his daughter – he denied this. It was also once again put to him that Child A's accusations were corroborated by her contemporaneous reporting of the incidents to multiple sources.

68. In respect of allegation 4 this was said to have occurred during the father's weekend contact with the children, following which he would drop them off at school on the following Monday morning. The mother's evidence was that she noticed a mark on her daughter's face once she had got home with her after school had finished that Monday afternoon. The mother told me that the mark was obvious to her but was unable to explain why, despite being so obvious, she had not noticed the same immediately upon collecting her daughter from school, or why the

teaching staff had not noticed and reported this as a safeguarding issue, something that they were trained to be on alert for.

69. I was shown a photograph of Child A's face taken at the time which does indeed show, what appears to be a, healing, break in the skin of her cheek. Further, mother's counsel suggested to the father that this break was about the same size and dimension as an adult's front tooth. The reality of the situation however is that there is no medical evidence to positively state that this was caused by a bite and nor is there any evidence that the mother actively sought medical attention for her daughter either.

70. When cross examined by father's counsel the mother told me that it was Child A who had informed her that her father had bitten her cheek again when questioned by her about where the mark had come from. She was unable to provide a convincing answer however to why in her witness statement she in fact states that it was her who first asked her daughter whether her father had bitten her.

71. The mother had to accept that on her statement account it was she who was the first to mention anything about a bite to her daughter although she refused to accept the suggestion that she had in fact set the expectation for her daughter that her father had bitten her.

72. The mother also told me that despite these allegations being made to her by Child A, she did not immediately suspend contact between her and her father and what is more that she advised her daughter to just tell her father that she did not like him doing this to her and that she should tell him to stop.

73. The father denied biting his daughter's face, whether intentionally or otherwise, but accepted that maybe when playing with her he could sometimes be too rough and that his beard was coarse and could be scratchy. Further, it was accepted by the mother when she reported the incidents to the police that she had told them that the father rubbed his beard on Child A's face during play and she further accepted the proposition from counsel that this would be an explanation for any visible marks.

74. There is no initial police reporting in the immediate aftermath of these allegations being said to have been made to the mother by Child A, nor was there any immediate reporting to the social services. Further, contact between the children and their father was not suspended by the mother. I find it hard to accept that a genuinely concerned mother, who clearly loves her children dearly, would not immediately have taken any one of these steps if not all of them.

75. In my judgment I cannot find that the mother has discharged her burden of proof in respect of allegations 4 or 5. There is simply insufficient meaningful evidence to support either of them and I find it difficult to reconcile the mother's evidence to me at one point that she wanted the father to stop "abusing" his daughter with her acceptance that initially she left it to Child A, then only seven years of age, to challenge her father in respect of this "abuse" herself. I find that it is too great of a coincidence that these, most serious of, allegations are said to have occurred right at the time that the children's contact with their father was about to move from

one overnight a week to two which would then have built up to him making an application to take them on holiday to Turkey, something the mother told me she was concerned about him doing.

**76.** For the avoidance of any doubt I make clear that I have taken into account Child A's police interview in which these "biting" allegations are discussed and whilst the summary of the same is of a confident complaint, the substance of the transcript itself reveals Child A repeatedly answering questions with "I don't know" or "I can't remember" and, on at least two occasions, having leading question put to her by the interviewing police officer when she is asked what the red mark on her cheek was from and how it came to be there.

**Summary of Findings**

77. For all the reasons I have expressed I dismiss all of the mother allegations with the exception of allegation 2 which I find occurred as per the father's explanation of the same.

**Welfare Decision**

78. Having made the above findings, it is now necessary for me to consider the welfare aspect of the father's application to the Court.

79. I keep firmly in mind the Children Act 1989 ("the Act") and particularly Section 1 of the same and what is referred to as *the welfare checklist*. It is essential when a court is determining any question in respect of the upbringing of a child that the child's welfare is the paramount consideration of the court. Further, pursuant to Section 1(2A) of the Act, there is a presumption that the involvement of a parent in a child's life will advance their welfare unless the contrary is shown.

80. I am also mindful of the Human Rights Act 2015 and of the parties' (including the children's) right to a private and family life and the father and mother's right to a fair trial.

81. In this case the father wishes for the children to spend time with him in a similar way to that which was previously ordered by the Family Court which ultimately provided for the children to have unsupervised overnight contact with their father.

82. I have already addressed the evidence given by the social worker Miss Bragg. She told me that in her opinion, even if findings were not made, contact should remain initially supervised, not because of a risk of harm to the children from the father, but rather to enable the building back of trust and a relationship between him and the children. Miss Bragg recommended that in this scenario a stepped approach be implemented with no less than three sessions of supervised contact of ninety minutes each over a three-week period, this should then progress to two sessions of contact facilitated by an agreed third party who would drop the children off with the father, and later collect them, but who would again remain contactable and in the local area.

Following this she told me that there should be weekly unsupervised contact which should then return to overnight contact.

83. I have mentioned the welfare checklist, and it is now incumbent on me to apply the same to the children in this case:

i. **the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding)**

Both children are young, but they are not so young that they cannot express their wishes and feelings. They clearly love both of their parents and in respect of their father they want to see him and spend time with him. Child A has expressed this wish clearly and whilst Child B (who is younger) had not made such an express wish it is the opinion of Miss Bragg that if he were able to offer his views, he would want to have a safe relationship with both of his parents.

Clearly neither child should not be caught in the acrimony or ill feeling that their parents have towards each other, and it is deeply inappropriate that either parent should discuss proceedings before the Family Court with them or within their presence when they might overhear the same.

ii. **The children's physical and emotional needs**

Fortunately, both children are well looked after and are in good health. Neither have any specific needs that require additional attention. Their physical and emotional needs can be met by either parent. They will each clearly benefit from having a relationship with their father and, with his guidance and support, exploring and understanding the Turkish side of their cultural heritage.

iii. **The likely effect on the children of any change in circumstances**

There is no substantial change in circumstance envisaged for either child in the order sought by their father. Indeed, prior to the previously ordered contact being suspended the children were coping well and were enjoying the time that they spent with their father. They each need stability and the certainty of regular settled arrangements with their parents.

iv. **The children's age, sex, background and any characteristics of theirs which the court considers relevant**

Both children are young, Child B particularly so, but neither of them has any particular characteristics that differ from any other young children of their age. Their father is Turkish and through him they have a Turkish family. It is their right to be able to explore and engage with this side of their cultural identity.

**v. any harm which the children have suffered or are at risk of suffering**

Miss Bragg in her section 7 report states that there are no safeguarding concerns in this case and in coming to this judgment I have dismissed the mother's allegations, with the exception of allegation two which was an error of judgment on the part of the father for which he is remorseful. Neither child can be said to be suffering harm or at risk of suffering harm.

**vi. how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs**

Both portents are capable of meeting the children's needs. They live with their mother and there is no suggestion that such a position is going to change. Historically the father has demonstrated that he can meet their needs during the time that they spend with him. The mother must understand however that meeting her children's needs also includes promoting contact between them and their father.

**vii. the range of powers available to the court under this Act in the proceedings in question**

The Children Act gives the court a range of options in respect of which order to make. The father asks for an order that the children spend time with him, and I have already detailed the stepped arrangement for this suggested by Miss Bragg. The Court has to consider making no order at all of course but I am satisfied in this case that the welfare of the children demands the making of a child arrangements order that clearly sets out the contact position.

**<u>Order</u>**

84. I make a child arrangements order with spending time arrangements. With immediate effect the children must spend time with their father for ninety minutes each week, this contact shall be supervised, as recommended in the section 7 report and, given that the maternal grandmother is no longer prepared to supervise contact, such supervision shall be professional with the cost of the same being met by the father. The parties shall identify a time and date each week for the supervised contact to take place.

85. The supervised contact shall take place on three consecutive weeks after which contact will progress to them spending ninety minutes with their father each week for two consecutive weeks. This contact will be unsupervised, but it will be facilitated by a third party, to be agreed by the parents, who will drop the children off and collect them from a location to be agreed by the parties. This location may include the father's property.

86. After two consecutive weeks of facilitated contact the children shall spend unsupervised time with their father for ninety minutes each week. It is for the parties to agree a time and regular date each week for the same to take place.

87. Unsupervised contact will continue in this way for four weeks after which the same will progress to overnight contact at the father's home. The overnight contact will be from 10am on a Sunday morning to school on the following Monday on an alternate week basis. In the week when overnight contact is not taking place the father shall collect the children from school on a Wednesday and they shall remain with him until 6pm when the mother will collect them.

88. After two months of the children enjoying overnight contact with their father as described above the same shall increase to two nights – from 10am Sunday to Tuesday morning dropping off at school. Again, this shall be on an alternating week basis and in the week when overnight contact is not taking place the children shall continue to spend time with their father from school on a Wednesday until 6pm but also from school on a Friday until 6pm.

89. There shall be any additional contact between the children and their father as the parties may agree and the mother shall be expected, when reasonable so to do, to facilitate any request by the children to spend time with their father outside of these arrangements.

90. I invite Counsel to draw an order for my approval that reflects the above.

**District Judge Akers**

**7 August 2024**