



Neutral Citation Number: [2021] EWHC 3839 (Fam)

Case No: ZC21P00105

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/08/2021

**Before:**  
**MRS JUSTICE THEIS**

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**Between:**

W	<b><u>Applicant</u></b>
- and -	
X	<b><u>1<sup>st</sup> Respondent</u></b>
- and -	
Y	<b><u>2<sup>nd</sup> Respondent</u></b>
- and -	
Z	
(Through his Children Guardian Lillian Odze)	<b><u>3<sup>rd</sup> Respondent</u></b>

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**Mr Andrew Powell** (instructed by **Laytons**) for the **Applicant**  
**Mr Richard Jones** (instructed **Direct Access**) for the **1<sup>st</sup> Respondent**  
**The 2<sup>nd</sup> Respondent Did Not Attend**  
**Miss Kathryn Cronin** (instructed by **Cafcass Legal**) for the **3<sup>rd</sup> Respondent**

Hearing dates: 29<sup>th</sup> & 30<sup>th</sup> July 2021  
Judgment: 13<sup>th</sup> August 2021  
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**Approved Judgment**

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MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of their 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.

## **Mrs Justice Theis DBE:**

### **Introduction**

1. This matter concerns applications relating to the future arrangements for the care of Z, born in 2020. Z was born in Georgia as a result of a surrogacy arrangement entered into in Georgia by X and W. The gestational surrogate is Y a Georgian national who remains living in Georgia. Z arrived in this jurisdiction with X soon after his birth.
2. These proceedings started with a joint application for a parental order made by X and W in January 2021. The court made standard directions on 25 March 2021 and the matter was listed for a final hearing on 15 July 2021. The relationship between X and W broke down in April 2021 and applications were made seeking a prohibited steps and child arrangements orders. W made a without notice application on 7 April, Poole J made holding orders and the matter came back inter-partes on 9 April. Since then the matter has returned back to court on a number of occasions to deal with issues that have arisen over the time Z spends with X and W and for case management directions, including joining Z as a party to these proceedings.
3. This fact finding hearing was listed to determine the relevant factual issues, to inform the court for the longer term welfare decisions that are to be dealt with at a hearing in November.
4. At this hearing on 29 and 30 July the court heard oral evidence from X and W, made directions for written submissions with this judgment to follow. The court is grateful to Mr Powell, Mr Jones and Miss Cronin for the detailed and cogent closing written submissions submitted by each of them.
5. Y has attended earlier hearings but did not attend the hearing on 29 and 30 July, although the court was informed she had been notified that it was taking place.

### **Relevant Background**

6. W has British citizenship and was born in England. X has dual US and Macedonian citizenship and was born in the US. The parties met in New York ('NYC') in 2015. At that time W was on two year secondment in NYC having prior to that and since then lived and worked in London. At that time X had employment in NYC.
7. They started seeing each other and on W's return to London began a long distance relationship and next spent time together for a week in Barcelona in April 2016. According to W he understood X was still in a relationship with someone else and there then followed a period when they stopped communicating.
8. In about late April/early May their relationship resumed. In May 2016 X was offered a job in Germany. The parties continue to see each other, albeit long distance as W was based in NYC and X in Germany.
9. In August 2016 they had a week's holiday in Barcelona.
10. W visited Germany in July 2017, and according to W they agreed to separate, remain friends and would see each other from time to time. X says the relationship ended in early 2018 as W wanted to pursue a relationship with someone else.

11. In mid 2018 X returned to NYC having accepted permanent employment due to start in August 2018. In summer 2018 W visited X in NYC.
12. In May 2019 W and X went on holiday together in Italy. During the holiday W and X talked about children and marriage.
13. In July 2019 W and X exchanged whatsapp messages about their future plans. W stated he wanted to be a father and raise children with X. X responded in agreement, saying he didn't mind moving to London but questioned whether London would be a good place to bring up children.
14. In July 2019 W and X go on holiday in Barcelona. It was during that holiday that they decided that X would move to London where they would raise a family, although W and X give differing accounts of the context of these discussions. They discussed getting married as X asserted that it would assist X to get a visa to work in the UK.
15. On 26 August 2019 X received an email message from a surrogacy agency based in the Ukraine setting out the procedure for a surrogacy based in the Ukraine. X forwarded the email to W the same day, although for some reason W did not see it until 15 October 2019. W responded querying whether same sex couples can proceed with such arrangements in that jurisdiction. X says they agreed around this time to proceed with another surrogacy agency based in Georgia.
16. In early September 2019 messages were exchanged between the parties where W informed X that his parents and family were concerned about the speed of the plans to get married and the proposed surrogacy. W confirmed that it had not changed the way he felt about X and in a message on 9 September 2019 W suggested they discuss matters when he is in NYC. They continue to exchange messages about the impact of what W has set out.
17. On 27 September 2019 W and X marry in NYC. W returned to London and X remained in NYC.
18. Between October and December 2019 W underwent semen analysis and sexual health screening in London. W sets out that in October 2019 he understood the position regarding the surrogacy arrangement was that they would have two children via surrogacy, with X having the genetic connection to the first and W to the second. X would fund the first child and W would sell his flat to purchase a family home.
19. On 25 October 2019 the surrogacy process was started with the agency in Georgia. X travelled to Georgia to sign the necessary paperwork and was introduced to Y. W and X jointly agreed the egg donor.
20. X went to Georgia in December 2019 to donate his sperm. Following the embryo transfer the pregnancy was confirmed along with the expected due date. .
21. X transferred \$62,000 to W and there were text exchanges between the parties at the time regarding the financial arrangements, including an acknowledgement by X that he will need to open a bank account here.
22. In April 2020 W informed his family that he and X were expecting a baby via surrogacy.

23. In May 2020 W states he was informed by an English solicitor that same sex surrogacy arrangements in Georgia were not permitted.
24. On 29 July 2020 X moved from NYC to London to live with W in the property purchased by W. X states he transferred his savings to W as a contribution to the property.
25. On 4, 24 and 30 August 2020 X alleges in a statement dated 11 May 2021 W was violent towards him. He alleges on 4 August 2020 W pushed him onto the bed and was strangling him. X claims he lost consciousness and wet himself. On 24 August X alleges W grabbed him from behind which led to him passing out and on 30 August X alleges W started to choke him following an argument and shouted at him referring to a historical violent sexual incident X had been involved in. All these incidents are denied by W.
26. Shortly afterwards W took X to the airport for X to fly to Georgia for Z's birth, X having obtained leave from the US embassy to do so. W was unable to travel to Georgia due to the Covid-19 restrictions, although X wanted him to go with him.
27. Z was born in Georgia in 2020 and was able to obtain a US passport. X sets out that the surrogacy arrangement cost him \$80,000, X is on Z's birth certificate as well as a third party, G, who X states was arranged through the surrogacy agency due to restrictions on same sex couples engaging in surrogacy arrangements in Georgia.
28. W sent X \$8,000 for nanny and other expenses. X was caring for Z with the assistance of a nanny whilst in Georgia.
29. A few weeks after the birth X and Z arrived in the UK.
30. In late November 2020 W alleges X hit him on the leg during an argument about money and X alleges there was an incident in December 2020, when W hit him while he was holding Z and W also tried to grab X's neck.
31. In January 2021 there was an issue between W and X about the use of steroid cream for Z which resulted in an argument between W and X.
32. On 18 January 2021 W and X jointly apply for a parental order in relation to Z, which was issued by the court on 21 January 2021.
33. In late January 2021 W alleges a disagreement between W and X and X alleges W is alienating X from Z.
34. In February 2021, X states there is a telephone call between X and Y, X informs Y he wishes to withdraw from the joint application for a parental order.
35. Later in February 2021 W alleges X smashed a plate as an act of aggression, X says it broke by accident.
36. A few days later W and X argue and the following day W sent X an email asking they try to communicate in a more reasonable way. There are cross allegations by W and X about the way they behaved and what they said to each other.

37. On 25 March 2021 the court made directions on the papers for the filing of evidence in the parental order application, listing a final hearing on 15 July.
38. In March 2021 X received a job offer based in Turkey and suggested W, X and Z move to Istanbul.
39. In late March 2021 W alleges X threatened to shame him on social media saying W had abused both X and Z, including an allegation that W had sexually abused Z by washing him for too long.
40. In April 2021 W transferred £47,000 to X's parents at X's request. This was the money X had transferred to W the previous year.
41. The following day W alleges X was abusive and threatening to him after he refused X's request to allow X to relocate to NYC with Z.
42. X speaks to the police a few days later and informs them he intends to leave the home.
43. At about the same time there was an argument and X left the home for a period with Z and then returned, packed his bags saying he was going to an Airbnb but refused to give W any details. X left the home with Z.
44. On 7 April 2021 W applied without notice for an order preventing X from removing Z from the jurisdiction. W made allegations of physical and psychological abuse against X and was concerned X intended to take Z out of the jurisdiction. Poole J made Z a ward of court, a passport, occupation and non molestation orders and listed the matter inter partes on 9 April 2021.
45. At the inter partes hearing on 9 April 2021 before Poole J X filed a statement in response. The passport order and other orders were discharged on the basis of cross undertakings and the passports being held by X's solicitor, Z remained a ward of court and directions were made regarding time Z spends with both W and X.
46. On 15 April 2021 I directed Z to be joined as a party, Cafcass to undertake safeguarding checks, directions for both parties to file statements and Z to spend time with W from Friday to Monday. The matter was listed for further directions on 12 May 2021, X to file a statement on 20 April and Y on 5 May 2021.
47. On 11 May 2021 X filed a third statement in which he made allegations of serious physical abuse against W, in particular the three incidents in August 2020. On the same date a position statement on behalf of Children's Guardian set out options regarding Z's immigration status as his visa expired on 21 May 2021.
48. At the hearing on 12 May 2021 directions were made for X to apply for Z's visitor's visa to be extended, X to take any steps to make enquires about amending the birth certificate to accurately record the name of Z's birth mother, statement in response by W, schedule of findings, W's time with Z to be supervised by an agreed third party, a PTR hearing on 17 June and the matter listed for two days on 29 and 30 July. A separate order was made for police disclosure.

49. On 21 May 2021 directions were sought and then discharged relating to the application regarding Z's immigration status when X's solicitors confirmed the application had been made.
50. In May 2021 Z suffered two fits whilst in X's care and was admitted to Kings College Hospital. W attended hospital to meet X and Z. W returned to the hospital the following morning and stayed overnight then with Z alone.
51. Two days later X became unwell whilst visiting Z and X agreed to Z being discharged from hospital into W's care. I made an order on the papers on 28 May 2021 directing Z was placed in W's interim care, with a further hearing directed on 8 June and the parties to file updating statements.
52. On 29 May 2021 X applied for a domestic violence concession visa without informing the court or the other parties.
53. On 3 June 2021 X applied for an occupation order. On 4 June W filed his third statement and on 7 June X his fourth statement.
54. On 8 June and 17 June I made further directions relating to the fact finding hearing on 29 and 30 July, directed a s 37 report, and the pattern for the division of Z's time between the parties resulted in him being with X from Monday to Friday and W from Friday to Monday.
55. On 23 July 2021 the s 37 report was filed. It did not consider the threshold for initiating public law proceedings was met and made recommendations for potential support for W and X.

### **The evidence**

56. In his written and oral evidence W set out the background to his relationship with X, how they had spent limited time together prior to July 2020. Although they had agreed during the trip to Italy in May 2019 to get married and have a family he suggested this was more at X's instigation. W said he did not inform his family of their plans and their reaction when he did was what caused him to suggest to X in the summer of 2019 they should wait.
57. W described feeling detached from the practical arrangements for the wedding, X took the lead on them and in the end their wedding was a relatively low key arrangement in NYC attended by some of their friends. He described that due to X's earlier experience of a serious sexual assault it was agreed their relationship was not an intimate one which he respected. In relation to the arrangements going forward he understood that it was agreed X would move to London, W would take the lead in finding suitable accommodation and X would take the lead and finance the first surrogacy arrangement.
58. X described his arrival in London in July 2020 as difficult; being in a new environment, leaving his own secure job and network of support. W was working full time and X had limited support here. X had transferred his entire savings to W in February 2020.
59. The messages exchanged between the parties soon after X's arrival demonstrate early tensions in the relationship.

60. According to X he was subjected to serious assaults from W in August 2020 and described his position in his third statement dated 11 May 2021 as follows ‘*..Suffice to say that they gave a devastating blow to my plans and left me in an extremely precarious state as I now worried with a new relationship that the person I had married was displaying a whole new personality in his territory with all my savings gone, with Z on the way and with me unemployed*’. In relation to the implications for Z he said as W’s violence can be ‘*impulsive and unpredictable and having been subject to his violence I know how quickly he can turn violent and loose total control*’, as a consequence it caused him to worry about ‘*every minute*’ Z spent in W’s care due to his fear about W’s inability to control his anger and his violent outbursts.
61. Due to the Covid-19 travel restrictions only X was able to travel to Georgia with permission from the US embassy. W was not able to travel there due to the travel restrictions, although X considered this could have been possible through W’s work and X said he would have wanted W to come with him.
62. Following X’s return here with Z in late 2020 both W and X describe the difficulties in their relationship from their respective perspectives. X describes how he sought to encourage Z to bond with W, as Z had spent his first two months solely in X’s care.
63. There remained tensions in the relationship between W and X and each describe arguments that took place, often in the presence of Z. The issue about the steroid cream in January 2021 is an example. Steroid cream had been prescribed for Z due to his eczema. X considered it should not be used until he had had the opportunity to find out more about it. He understood W agreed with that course but found the cream had been kept. There ensued an argument during which X demanded the police were called as a result of the GP’s actions in prescribing it and they should divorce. Whilst he accepted in his oral evidence this was an overreaction by him it provides a vivid illustration of the difficult and complex dynamics within W and X’s relationship.
64. According to W, X then squeezed the contents of the cream into the bin so it couldn’t be used. W described how Z still has signs of eczema and that the GP prescribed further steroid cream.

### **The allegations – the context**

65. W set out his allegations against X in his first statement which consist of a number of arguments between the parties, often in Z’s presence, with one occasion when W alleges X smacked Z hard on the bottom and two occasions when W alleges X hit him on the leg, the other occasions involved verbal abuse and threats. W says the context of his descriptions of X’s behaviour are supported by the message exchanges between the parties, which demonstrate how X can escalate things and W is generally seen as trying to calm things down. In his oral evidence he described X as impulsive, irrational, someone who ‘*moves the goal posts*’, intelligent, passionate and angry and someone ‘*who doesn’t put a brake on his emotions...is not a calm person who believes in planning*’. He said X found flaws in W’s personality, his insecurities and played on them.
66. W denies the allegations made against him, in particular the allegations that he sought to choke X on three separate occasions in August and early March. He says whilst there may have been arguments there were no physical assaults and he denied any loss of

control. The reference to an apology in one of the messages related to their arguments. He said the text exchanges on 5 August related to an argument about a window a few days earlier and he said the message exchanges about the bleach on 6 August demonstrate how things can escalate. In response to questions about the allegation of physical assault on 30 August he denied the allegation describing it as a '*monstrous allegation*' in the context when he was aware of X's background as a survivor of sexual violence. He says he did make a throttling gesture but this was in the context of them being out for a walk and X's suggestion that a friend of his comes to stay, W refused, an argument followed and the gesture was in the context of that argument as W said in his oral evidence '*to create some levity*'. He said the reference in the message the following day to not laying his hands on X is in that context.

67. In relation to the other allegations made by X he either denied them or said they had to be seen in the wider context of their difficult relationship.
68. In his evidence X described what he said are the differences in W's behaviour prior to his move to London in 2020 and afterwards. He said prior to the move to London W was warm, sensitive and fully understanding of X's history of sexual violence and understood why X was looking for an asexual relationship. He acknowledged there were some issues but felt these largely related to the fact they had not been in the same country. X considers W has suppressed anger which he has not processed or talked about and as a consequence he explodes.
69. On arrival here, whilst X said he felt confident the reality was different. He had to isolate for two weeks, there were the wider Covid restrictions in place which he found extremely difficult and he felt in a precarious state emotionally and financially. He said he had no family or friends here, no financial or other support which made him feel depressed and frightened. More recently he has had some counselling which he has found helpful.
70. X accepts he did not set out the serious allegations he makes about W's behaviour in August and early March until his third statement on 11 May. In his oral evidence he said the delay in doing so was because he realised the implications of what he described and did not want them involved in criminal proceedings. He said in May he realised he had to '*disclose everything*', although he was surprised by the response to the allegations from the Children's Guardian that W's time with Z would need to be supervised. Mr Powell pressed X in his oral evidence about his fears about W causing harm to Z and the decisions prior to May being made without knowledge of the more serious allegations, for example the period of time Z spent with W being increased by agreement between the parties from two to three nights on 15 April. X said he trusted the decision of the court but when it was pointed out the court made its decision without knowing of these allegations he responded '*I don't know*'. He then said he didn't think W would do anything whilst the proceedings are ongoing and that he didn't refer to these incidents in the messages at the time as he '*didn't want to trigger his [W's] anger*'. In his oral evidence he said he and W spoke about these incidents afterwards and that W shared with him that he had been the subject of and witnessed domestic abuse previously. That was not something he had set out in his written evidence.

## **Legal framework**



71. The legal framework is not in dispute. I agree the helpful summary set out in Mr Powell's submissions. His summary is largely built on the principles set out by Baker J, as he then was, in *Re JS (A Minor) [2012] EWHC 1370 (Fam)*. The relevant parts are as follows:

(a) The burden of proving the findings that the court is invited to make lies with the party which seeks the findings.

(b) The court must guard against the danger of reversing the burden of proof which remains with the party seeking the finding to the requisite standard.

(c) The standard of proof is the balance of probabilities (*Re B [2008] UKHL 35* paras 70 and 72), namely more likely than not. The law operates a binary system: a fact is either proven or it is not.

(d) Findings of fact must be based on evidence, not speculation (*Re A (A Child) (Fact-Finding hearing: Speculation) [2011] EWCA Civ 12*, per Munby LJ as he then was: "It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation.>").

(e) The court must take into account all of the evidence and furthermore consider each piece of evidence in the context of all the other evidence (*Re Z [2004] 2 FLR 838* at [33], Dame Butler-Sloss P: "Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.")

(f) The evidence of the parents and any other carers is of the utmost importance. It is essential that the Court forms a clear assessment of their credibility and reliability. The court is likely to place considerable weight on the evidence and impression it forms of them (*Re W and another (Non-accidental injury) [2003] FCR 346*).

(g) It is common for witnesses to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (*R v Lucas [1982] QB 720*).

72. In *F v M [2021] EWFC 4* Hayden J referred to the relevant parts of PD12J:

103. 'Coercive and controlling behaviour' is defined in the Family

Procedure Rules 2010 PD12J:

**"coercive behaviour"** means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

**"controlling behaviour"** means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting

their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;"

104. For completeness, domestic abuse is defined more broadly:

**"domestic abuse"** includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment".

### **Submissions**

73. In his submissions regarding the allegations made by X about W Mr Powell makes the general points about the delay in X making the more serious allegations in the context of what X said were the risks to Z, the lack of any corroborative evidence or reference to them in the text exchanges at the time, the inconsistency if they are true with other steps taken by X at the time (for example wanting W to come to Georgia in early September and returning back to London from Georgia rather than going elsewhere) which all point to them not being established to the required standard.
74. In relation to the other allegations made by X, Mr Powell says they need to be looked at in the context of the parties' relationship and the nature and tone of any contemporaneous messages.
75. Turning to the allegations made by W against X he submits they are supported by, and are consistent with, the tone and dynamics of the text messages between the parties. They generally show a picture of X making demands, being unwilling to compromise and W trying to placate the situation. The messages show that X is capable of impulsive action (for example the disposal of the speakers) and escalating matters out of proportion.
76. Mr Jones stresses the need to look at the context of the dynamics of the relationship between the parties, in particular X's position having given up everything to move here. This includes the impact on him of that step, his vulnerability and isolation moving to a new country, having no immediate support network, having to manage the difficulties arising from the Covid restrictions and, if he is right, finding out the relationship with W to be very different to the one he had experienced previously.
77. He submits the context of many of the messages between the parties involves a question of trust and should be seen in that context. This is the context in which the message exchanges relating to space in the home, the speakers, bleach and the steroid cream should be considered. X's explanation for not raising the more serious allegations until his statement in May is understandable in X's circumstances, and such a situation is not an unusual feature when considering allegations of domestic abuse. The delay does not undermine the veracity and details given by X of what took place on the three occasions in August and in early March.

78. Miss Cronin on behalf of the Children's Guardian takes no position on the findings sought by either party but draws the courts attention to features of the evidence that the court may want to consider and take into account.

### **Discussion and decision**

79. Despite the allegations made in this case relating to the behaviour of each to the other there is, from Z's point of view, a recognition by both parties of the role each have in Z's life. X recognises that W is Z's father, that Z would view both parties as being significant people in his life and X stated he was willing to discuss further with Y her position about consenting to the parental order. W in his evidence recognised X's relationship with Z and described how the decision to have a child and Z's arrival had awoken in him emotions that he could be a parent which he had spent many years considering was not a possibility.
80. Whatever the findings made about the allegations in this case a reality for Z is that he was born as a result of a joint surrogacy arrangement agreed between the parties to fulfil their wish to have a child. That is an arrangement that has lifelong consequences for Z in terms of the legal, emotional and psychological relationship with both parties. That decision by them comes with a responsibility on both of them to safeguard and promote Z's best interests.
81. Standing back and considering the evidence it is not surprising, putting the situation at its most neutral, that the parties experienced difficulties in their relationship. They had not previously lived together or spent extended time together, other than relatively short periods of up to a week or so. They did not cohabit until 10 months after they were married in circumstances where X moved to a country he had not lived in before, had no established connections or support, at a time of restrictions caused by the global health pandemic and in the context where their surrogate was 7 months pregnant in another jurisdiction. This combination of challenging circumstances will have undoubtedly contributed to difficulties in the parties' relationship; the reality is they had limited resources within their relationship upon which to draw on when they encountered any difficulties.
82. In addition to the issues outlined in the previous paragraph, in considering the allegations it is helpful also to look at and consider the context of the parties' relationship and the way they managed and navigated their difficulties. W accepted he was someone who placed great store on routine and order, this was not only in relation to Z but also in relation to the home and his possessions. X came from a different viewpoint, he did not have such attachment to possessions and accepted he challenged W about his viewpoint on such matters. It is also right to consider the language used by both parties which they accept maybe regarded as unusual in other contexts but in the community they were part of were commonly accepted terms. The issues I have to consider in this case is whilst it may be right there may be a context in which they are used; on occasion they may be as a term of endearment whereas in other situations they could be regarded as abusive or aggressive.
83. In considering the evidence it is also important for the court to have regard to the wide canvas of evidence.

84. There can be little doubt on the evidence that the relationship between the parties was characterised by many arguments and issues between them as they sought to navigate their relationship. At an early stage of their cohabitation there were what could be said to be forthright text exchanges about day to day issues. An example is the exchanges in early August 2020 relating to X finding bleach in the house. This was only a matter of days into their cohabitation and two days after what X has described was a very serious assault on him by W on 4 August.
85. X opened the message with a photo of the bleach bottle and a suggestion that W wanted to choke X, argue with him and for X not to trust W. W's responses seek to calm with references to 'chill' and then apologising. Within a matter of minutes X is texting in capital letters emphasising his allergy to bleach and that W can't be trusted. X responded '*No need for sorry. Im not going to accommodate you anymore, that's it. That's how this works.*' Shortly afterwards X responded in capitals '*I MEAN I DON'Z HAVE A CAT BECAUSE YOU HAVE ALERGIES AND YOUR ALERGIES HAVE TO BE TAKEN SERIOUSLY BECAUSE YOU'RE A WHITE PRIVILEGED PRICK WHOSE CONDITION CANT BE QUESTIONED OR DOUBTED I HAVE TO CHOKE THREE FUCKING TIMES IN THE APARTMENT AND YOU STILL CANT GET IT THROUGH*'. W replied further apologising and asking if he should get anything on the way home to which X responded '*they don't sell honesty at the supermarket, so no thanks*'. Earlier that day there were message exchanges about W's speakers. On 4 August X had messaged W to say they were dangerous, by the morning of 6 August X was messaging W asking about how to register for a GP and paediatrician stating it was the third time of him asking and raising the issue about the speakers. W responded saying he will bring the forms for the GP home that evening and put the speakers on ebay that evening. X responded within a few minutes to say '*Speakers are already gone*' that he had booked the local authority recycling and they had collected them. When asked by W that he thought he would be asked before '*you got rid of stuff*', X responded '*Yup. Nope, already did that. That's how is going to be like from now on, I wont bring up the same subject twice*'. When asked if he had got rid of anything else X responded '*Nope but I might if the breadmaker, jucicer and armchair are not out by Saturday, I guess im going to schedule another round*'.
86. At around the time of the second alleged assault in late August the message exchanges that morning include a message from X stating he is getting rid of items that had been given to them. W responded saying that he would look through the things later which prompted a response from X '*NO MORE JUNK, NO MORE CHEAP SHIT IN THE HOUSE, NO COMPRMISE. If you hear me, I wont have to scream!*' W asked him to wait until he got home to which X responded '*IM NOT BECOMING A REPOSITORY FOR PEOPLE'S SHIT LOADED WITH THEIR NASTY ENERGY*' further exchanges included W asking X to wait until W got home, not to speak like that in front of the children and X acknowledging he shouldn't have screamed but W needs to hear him.
87. X did consult a doctor in mid August 2020 but the record makes no reference to the alleged assault in early August 2020, none of the text exchanges make any reference to choking or a physical assault save for the message at the end of August, which W described as being in a different context. It was accepted by X that the references to choking in the bleach message exchanges was in the context of the allergic reaction to bleach. In messages exchanged at the end of August they focus on who did the washing up and the need to tidy away clothes, X responds as follows '*Don't tell me where to put*

*my verry few clothes when this apartment is stuffed in every corner with your shit. Also, if you ever bring doubt and question into the close bond and friendships I have, I am not going to tolerate it. Never attempt to choke me again either. You have no clue what it is like to be raped. I don't want to hear about how good you are all the time either. Don't push me. Im already in a very precarious state living in this dumphole and moving here. Be very careful. I know you very well.'* W responds *'I'm sorry you're so unhappy. I'm trying my best, And yes, I won't lay any hands on you like that. As for bond with your friends, I'd never intervene in that...'* Later that day there are messages when W asks how X is and X refers to packing (in the context of going to Georgia). In his oral evidence X said at around that time he was trying to get to Georgia, he begged W to come to Georgia and he was upset and angry that W was not coming. W explained in his evidence that he couldn't as the way suggested by X would involve his employers.

88. In considering the allegations made, the court also needs to consider X's evidence about the options available to him when he was in Georgia. He was asked about why he didn't consider returning to the US or going to his family in Macedonia. He was clear neither of those were options available to him and that he had no realistic choice but to return here.
89. X makes no further allegations until late December when he alleges W tried to hit him whilst he was holding Z and also tried to grab his neck. W denies this.
90. W's first alleged incident is in November 2020 when he refers to X calling Z an *'attention whore'* and a *'dumb fuck'* and alleged X smacked Z hard on the bottom. X accepts he used the term *'attention whore'* but as a term of endearment not aggression, he denies using the term *'dumb fuck'* and denies smacking Z hard on the bottom. W accepted that he did not raise the issue of the smack or the way X spoke to Z with anyone else, including Z's health visitor or GP.
91. W also alleges two incidents of physical abuse by W in the context of arguments between W and X. The first was in late November and it is accepted this was in the context of a discussion about money and arrangements for W to transfer the £47,000 back to X. There is a dispute about what was said although it is agreed that at some point W made reference to feeling like a sugar daddy, W says this caused X to fly across the room and slap W on the leg. X says he was on his knees begging W in relation to the money and he was shaking W's leg to get his attention.
92. X alleges W tried to hit him whilst he was holding Z and also tried to grab his neck in late December. W denies this and recalls them sharing a meal and taking pictures by the Christmas tree.
93. In mid January 2021 W alleges X became verbally aggressive in the context of the use of steroid cream. Mr Jones suggests this incident should be looked at, like the bleach incident, as a question of trust. The context appears to be that Z had been prescribed steroid cream for his eczema by his GP, X had concerns about using this cream on children under 12 months and wished to find out more about it. He thought they had agreed that it would not be used until he had done that. He found the cream in a cupboard and this caused an argument between W and X, when X demanded the police should be called, they should divorce and (according to W) threatened to kill W if he used it again. W further alleges X hit, punched and slapped his legs as part of this incident, which X denies, According to W this argument resulted in X squeezing the

contents of the tube into the bin. W said Z still continued to show signs of eczema and the GP prescribed more steroid cream. X accepted in his oral evidence he over-reacted, there was an argument and he was not really going to call the police and it was a question of trust. He denied acting in any violent or threatening way.

94. The allegations that followed the submission of the joint parental order application include allegations by W that in mid February 2021 X broke a plate that X knew had significance to W. W said this was part of X's view that W had what X called a '*commodity fetishism*' arising from his attachment to physical objects. W said this was done to humiliate and belittle W. X denies this event, he says the plate got broken as an accident.
95. A few days later W alleges X was verbally abusive and threatening to him in the context of another argument when X accused W of trying to get him deported. X responds that the threat of being deported was a frequent threat made to him by W, which W denied as it would risk his relationship with Z. X alleges it was W who tried to take Z out of his arms by force. Both W and X state the references to each other as '*bitch*' is not unusual, although they both say it depends on the context as to whether it is a term of affection or not.
96. X alleges that in early March 2021 W put his hands round his neck whilst he was in bed and repeatedly whispered 'shut up'. At about the same time W sent X a message referring to a song called 'pay your way in pain'. X said this supports his allegation. W denies the allegation and states it was sent as a way of describing their relationship after months of arguments.
97. In late March and early April 2021 W makes a number of allegations against X where he alleges X had threatened to make allegations about him on social media as he took too long washing Z or stared at him for too long. W also alleges that X tried to control and isolate W from his family and friends. X denies threatening to expose W on social media but does accept that he did discuss with W his concerns about the way W behaved towards Z. X accepts he asked W to remove the pictures of Z from W's telephone. X denied seeking to distance W from his family or friends and states that W has recorded their exchanges.
98. In early April 2021 X alleges that W threatened to revoke his visa and take Z away. It was in that context he sought the advice of the police. W says the evidence now demonstrates that X was taking his own steps, for example by contacting the police, and then when he left the home without giving a forwarding address W had no choice but to apply to the court.
99. As regards the allegations from W at the time of Z's admission to hospital in late May 2021, X denies saying he would withdraw the allegations he had made against W in his May statement, and X stated in the circumstances he was in there was little alternative other than to agree to Z being cared for by W. Finally, X denies any suggestion by W that he has sought to distance Z from him or W from his family. In his written and oral evidence he described how he felt guilty he had had the first two months with Z and when they came back here he encouraged W to spend time with Z.
100. Standing back to consider the allegations by both parties as set out in their written and oral evidence and the wider circumstances I have reached the following conclusions.

101. On any view it is clear that the nature of the relationship the parties had was insufficiently secure to withstand the many pressure it had to endure, some of which were self-imposed (the decision to get married and have children before their relationship was really established and so soon after they had started living together) and others they had no control over (Covid pandemic and resulting restrictions). In reality they didn't know each other very well, they had barely spent much time with each other and had had limited opportunity to establish their relationship on any kind of secure foundation and build emotional and other resources they could draw on. The difficulties in their relationship very soon surfaced and quickly their relationship became toxic with frequent arguments, repeated demands being made, particularly by X as demonstrated in the text exchanges. Most if not all of these arguments after November 2020 would have been in Z's presence.
102. X found the move to this country difficult, including the fact that it had involved limited change for W. It is unlikely W really understood the magnitude of the move for X and the effect of that on him.
103. X felt isolated and vulnerable and this brought out the more extreme behaviour by him which are illustrated by the text exchanges. He was demanding and unreasonable, could only view things from his perspective and quickly escalated matters out of all proportion which lead to many arguments between the parties. The exchanges relating to the bleach, the speaker and the evidence about the steroid cream are but three examples. In his oral evidence X at times accepted such behaviours and reactions were out of proportion, but it was difficult to gauge how deep that reflection really went.
104. Whilst it is right W sought to diffuse tension by apologising or suggesting solutions to ever increasing demands I have to consider whether that masked what X describes was the reality of W's behaviour when he lost control, in my judgment it doesn't. However W must bear responsibility for the situation the parties had got themselves into. Both W and X were being driven by their own different needs, rather than a genuine wish to be together and have a family. Their decision to marry, for X to move here and have children lacked any real depth of understanding of the implications and long term consequences of such important decisions. According to W it was presented as a fait accompli by X during the trip to Italy although he had the choice whether to accept it. There was resistance to W's request for more time and they were both involved in the surrogacy arrangement taking place.
105. Turning to the allegations made by each party I make the following findings.
106. In relation to the allegations made by W against X I find them all established to the required standard save for X smacking Z hard on the bottom in allegation 1, and physical assault in allegations 2 and 4. I do not find those parts of the allegations proved as there is no corroborative evidence of the physical assaults, W did not report the alleged assault on Z to anyone else and the alleged assaults on him are more likely to be as X described, as part of their argument rather than deliberate assaults. The language used and the way the parties expressed themselves is entirely consistent with the balance of the allegations made by W. In my judgment there were frequent arguments between the parties in the way summarised by W in the findings he seeks, often in the presence of Z and the language used in the context described was not as terms of endearment they were part of the fractured, volatile and increasingly toxic nature of the relationship between the parties. The arguments quickly escalated, as can be seen in the

text exchanges and whilst X may have been the more vocal of the two it is more likely than not that W contributed or behaved in a way that would, as W described in his evidence, make X go nuclear. In the same way as W considered X exploited his insecurities it is more likely than not W would know that certain reactions, responses or behaviours by him would escalate the situation. X could at times become very demanding and would often take a position which did not stand up to scrutiny, such the incident with the plate or W spending too long washing Z or looking at Z for too long which quickly became a threat by him to shame W on social media. X also behaved irrationally and impulsively as was evidenced by his behaviour at the hospital in May 2021. Whilst making all due allowance for the difficult position the parties were in bearing in mind Z and X's ill health I consider it more likely than not that X did say he would withdraw the allegations because he feared W was trying to take Z away from him and the discussions around the basis upon which X could return to the flat is not inconsistent with the way X has treated the allegations made by him against W and tie in with the findings I have made below.

107. In relation to the allegations made by X against W, I do not find the allegations made in relation to the three incidents of physical abuse in August 2020 and the one in early March 2021 are established to the required standard. This is for a number of reasons. Whilst fully recognising how difficult it can be for those who allege domestic abuse to reveal the full extent of what has taken place, in this case X's position does not stand up to scrutiny. On one view of his evidence he had serious fears for Z's safety in W's care as a result of these allegations; he said it kept him awake at night. However, he did not mention the incident to the doctor he sought advice from days after the first assault and accepted that prevented the doctor being able to treat him in the way X sought. X did not provide any details how he had informed his friends about these assaults at the time they took place, although he said he had told them. He makes no mention or reference to these assaults in the vocal and at times aggressive texts around the time of the alleged assaults. The texts display no apparent difficulty in X expressing himself in very forthright terms. He did not mention them to the police in early April or in his first two statements so the court was making welfare decisions ignorant of, on X's case, these important welfare considerations. In the context of the texts messages it is accepted the references to choking in early August relates to the bleach incident and on 31 August I am satisfied having considered the evidence as a whole the reference to choking is in the context described by W, when he made a choking gesture in the context of their discussions when out for a walk in late August about X's friend coming to stay. In addition, X said he was keen for W to come with him to Georgia in early September 2020 and when in Georgia did not consider any alternative options other than to return here. In addition X placed great stress on how he sought following the return from Georgia to encourage W to spend as much time as possible caring for Z. None of those actions are consistent with the account W now gives of the events in August of the alleged assaults and his fears for Z as a result. The same applies to the incident in late December I do not find that is established to the required standard, there is no corroboration and whilst X did refer to it in his first statement there is a lack of detail or other reference to it. As regards the allegation relating to mid February 2021 there was an argument that day which I have already found is likely to have taken place, it is more likely than not that Z would have been caught up in the argument and it is likely that W would have tried to forcibly remove Z from X as part of that incident. The allegation relating to early March 2021 I do not find established to the required standard, again there was a delay in raising it, it lacks detail or any corroboration. I



accept the account given by W for sending the text with the song title as that is consistent with the parties' relationship at that time and do not consider it supports the allegation made by X of the alleged assault the previous day. Turning to the final allegation made by X that W threatened to take Z away from him and revoke his visa I do find this allegation established. This was in the context of the final stages of the breakdown of the relationship when there was uncertainty about where X and Z were going and W feared they were going to go abroad. This was around the same time as X was making threats to expose W on social media and accusing him of child abuse. X accepts he told W to remove the photos of Z from his phone. This is but one example of X seeking to distance W from Z.

108. Having looked at the evidence as a whole I consider due to the complexity of their relationship and the dynamics at play there was probably some coercive and controlling behaviour by both W and X in relation to each other. W failed to fully appreciate the impact on X of the move here and the effect on him of the delays in being able to secure his own independence through being able to open his own bank account and have financial independence, secure work and build up his own social and support networks. The effect of those delays meant X arguably became more reliant on W and felt isolated as a result. X for his part was demanding and uncompromising in his behaviour and attitude from the start with the frequent use of threats and demands to seek what he wanted. He exploited W's sensitivities through his repeated abuse about their different position and attitudes in a way that undermined W. Having considered the evidence it was inevitable that the relationship between the parties would break down.
109. In summary, the findings the court makes are that allegations 1 – 11 are established with the removal from allegation 1 that X smacked Z and allegations 2 and 4 that X physically assaulted W. Allegations 12 – 15 and 17 are not established to the required standard, 16 and 18 are in the context I have set out above.
110. The parties should liaise and agree a schedule of findings.
111. Turning to consider X's application for an occupation order. X's current accommodation runs out in early October, although evidence is awaited to confirm this position. The welfare hearing is in mid November. It is clear arrangements will need to be found to provide for X and Z's accommodation. X seeks an order that will enable him and Z to live in the property currently occupied by W on the basis that it will provide some security and stability for Z until the court is in a position to make final welfare orders. W does not agree to that, he states he also has time with Z and that if he sought other accommodation it would be a further change for Z.
112. Both parties have relatively limited finances, details of which they gave during their evidence and both have provided some further information about since the hearing. X has some income but is limited by his commitments to caring for Z, W has a higher more secure income but has a number of commitments relating to the property, such as the mortgage. Both parties have considerable ongoing financial commitments relating to their legal costs.
113. In my judgment, whilst on the information the court has there may be strong arguments for X and Z returning to the property in London I have reached the conclusion on the information the court has, bearing in mind the background to this case in terms of the level of mistrust between the parties, such a course is not without its difficulties. I do

not accept that X moving back there will provide additional security and stability for Z as he has since April only seen W there. On X's proposals whilst Z would have the benefit of being in accommodation he is familiar with he would start to see W in different accommodation which would be another change for him, as well as being with X in accommodation he is used to seeing W in. In my judgment a solution needs to be found to either extend where X currently lives or, if that is not possible, for suitable alternative accommodation to be secured for X and Z for a period of at least 3 months, if not longer. This would cover the period when the court will be making a decision about the long term welfare needs of Z. Practical arrangements should be made for X's possessions to go to that accommodation. The parties should seek to reach agreement on the location and financing of such accommodation. In his written submissions W outlines the financial assistance he can provide and if necessary that may need to be increased, as he has the more secure financial resources. The critical need from Z's welfare perspective is for the parties to work together to agree practical arrangements that can be put in place sooner rather than later to ensure minimal disruption for Z.

114. Now that the court had made its findings there is now an opportunity for the parties to reflect on those findings and consider what steps they can each take to seek and access support to help manage the difficulties in their relationship and how those difficulties impact on Z. The way the parties have behaved in the past is very likely to have affected Z, he will have witnessed many difficult and vocal arguments between the parties as well as the uncertainty and instability through the changed arrangements relating to his care.
115. If the parties are serious about what they said about their respective roles in Z's life, this is the opportunity for them to demonstrate how they can separately and together take steps to prioritise Z's welfare needs over their own.