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Case No: FD22P00623

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2023

Before :

MRS JUSTICE JUDD

Between :

| | |
|-------------------------------------|---|
| A | <u>Applicant</u> |
| - and - | |
| J | <u>1st Respondent</u> |
| -and- | |
| H | <u>2nd Respondent</u> |
| (through their children's guardian) | |
| -and- | |
| C | <u>3rd Respondent</u> |
| (through their children's guardian) | |

Naomi Wiseman (instructed by **Dawson Cornwell**) for the **Applicant**
Jacqueline McIntosh (instructed by **Lonsdale and Mayall**) for the **1st Respondent**
Mai-Ling Savage (instructed by **Cafcass Legal**) for the **2nd and 3rd Respondents**

Hearing dates: 17th-19th July 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 31st July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE JUDD

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 children 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 Judd :

1. This is an application in relation to two children, H who was born in 2012 and C who was born in 2018. The parents of the children are A and J. Both the parents are currently living in England although the mother (A) only arrived here in May of this year.

Background

2. The father is now in his early 50's and the mother some 15 years younger. They met and married in Y Country in 2009. Although the father has family there, he was brought up here and is a British citizen. During the course of their marriage the parents lived separately. The mother, H and then C lived in Y Country and the father here although he visited Y Country (which is in South Asia) from time to time. In 2012 the father married a second wife, AA. He brought her to live with him in England, and they have two children.
3. Passports were issued for the mother and children in 2019. In December 2021 the father applied for visas for the children which were issued in January 2022. In February the father flew here with the children. He took them to live with his second wife and children.
4. In September 2022 the mother issued wardship proceedings alleging the children had been wrongfully separated from her. She said that the father had told her that she could follow the children to the UK within three months but that this had not happened. In her application the mother said that she was concerned about the welfare of the children because the father had previously been violent to her in front of them. Locations orders were made by Francis J on 21st September and the matter was first heard on notice by Microsoft Teams on 3rd October. At that stage the father was unrepresented. In the recitals to the order the father was said to have made submissions that he was not in a position to sponsor the mother to come to this country and that she was involved with another male. He also said that the mother was fully aware of the whereabouts of the children. The children were joined as parties and a guardian appointed.
5. In February 2023 the father was ordered to contribute to the mother's air fare to this country following a contested hearing. In March 2023 there was an incident in the father's home whereby there was (putting it neutrally) an altercation between the father and his second wife which led to her fleeing the home and making a complaint to the police. The incident took place in front of the children.
6. A few days after this there was another incident where the children were said to have been left in Tesco's in the local town by the father, leading to Children's Services becoming involved and instigating a section 47 investigation.
7. The mother arrived in the UK in May 2023 and went to live with members of her family who are living here. The children went to have overnight contact with her and during the course of that visit H told the mother that she did not want to return. An urgent hearing took place in June and there was no order for the children to return to the father. They have remained with their mother ever since.

The issues

8. The date for this hearing was set down in an order of Cohen J on 17th January. It was recorded on the face of that order that the issues to be decided were (i) the circumstances in which the children were brought by the father from Y Country to the UK; (ii) with which parent and in which country they should reside and (iii) contact arrangements for the non-resident parent.
9. A great deal has happened since 17th January without any further elaboration of the issues to be decided at this hearing. The parties have filed statements which deal with the circumstances of the children's arrival in the UK, and also as to the incidents in March 2023. Social services and police records have been disclosed but no schedule of findings sought was ordered or prepared until Ms Wiseman submitted one at the beginning of this hearing. None of the counsel before me at this hearing had been instructed in any of the hearings this year. Nonetheless as these are wardship rather than pure Children Act proceedings the parties have had representation pretty much throughout.
10. Whilst I appreciate why Ms Wiseman produced a schedule of findings as she did I consider it came too late and it would be better to deal with the issues in accordance with the order of 17th January. It was plainly envisaged that the court would consider the question as to whether the father stranded the mother in Y Country without the children. As part of the welfare assessment that must be carried out to decide where the children should live and what contact they should have with the non-resident parent it has been clear from the beginning that it would be necessary for the court to consider matters such as any harm that the children have suffered or might be at risk of suffering, and the capabilities of each of the parents. The incident of alleged domestic abuse witnessed by the children on 12th March 2023 is obviously relevant to this, as is the behaviour and attitudes of the parents to each other and the children. The documents in the bundle reflect the expectation that the court would be considering all these matters.
11. The mother's case was that the father led her to believe that the plan was for her and the children to come and live with him in this country. She thought that he had applied for a visa for her as well. When it became apparent that she was not going to be able to accompany them she was led to believe she would be able to follow shortly afterwards. She said she had no idea the father had taken another wife, nor that this wife was living with him in England with two more children. It was only when the children were here that she became aware of the situation and that he had no intention of sponsoring her to come here. The mother said that the father had been physically and verbally abusive to her during the course of their marriage and she was concerned about the welfare of the children. She asks the court to make orders that the children live with her and have contact with their father in accordance with the recommendations of the Guardian.
12. The father's case was that the children came over to live here with the agreement of the mother. He said that she was well aware that he had another wife and that in those circumstances it would not be possible for him to sponsor her to come to this country. He said that he had intended to take the children to Y Country from time to time, for

example during the summer holidays. He denied all violence to the mother and said that she was dishonest and had affairs. Her care of the children was inadequate and she and her family had encouraged the children to make false allegations against him and AA. He said that the children would have a better life with him and that the children's views as expressed to the Guardian were a product of the mother's influence.

13. The father accepted that there was an argument between himself and AA on 12th March that had become physical, but presented it as something for which they were jointly responsible.

The hearing

14. I read all the documents in the bundle, as well as the position statements on behalf of all the parties and local authorities. I heard oral evidence from the social worker from the area where the mother is living and the social worker from the area where the father is living, the mother, father, and Guardian. After a discussion about special measures at the start of the case it was agreed that each party would be able to give evidence without being observed by the other party. During the mother's evidence the father sat behind a screen, and the converse applied when he gave his evidence. Fortunately the parties were all represented so that the mother was cross examined by counsel, Ms McIntosh. I wish to commend her for the way in which she presented the father's case, asking searching and probing questions in a courteous manner and making well-presented submissions. I am also very grateful to Ms Wiseman and Ms Savage for their skill and assistance to the court.

The law

15. The law in this areas is not controversial and can be briefly summarised. The burden of proof is on the person or party making the allegation. The standard of proof is the balance of probabilities. Findings of fact must be based on evidence and not speculation or suspicion. The court must take into account all of the evidence in a case, and furthermore consider each piece of evidence in the context of all the other evidence. It must not be assessed in separate compartments.
16. The evidence of the parties is of vital importance, and will weigh heavily in the balance. I bear in mind that people do not always tell the truth about things in court, especially in cases where they are frightened or distressed, or ashamed of conduct which is not relevant to the allegations. Sometimes people lie out of misplaced loyalty, to bolster a true case or for no reason that anyone can discern. The fact that someone has lied about some matters does not mean that they have lied about others. A lie should never be considered as direct proof of guilt. Additionally, individuals may have faulty recollections or confusion at times of stress. The effects of delay and giving repeated accounts is something to be considered.
17. As to decisions about child arrangements the child's welfare is the court's paramount consideration, taking into account all the matters set out in the welfare checklist in s1(3) Children Act 1989. Section 2A provides that the court should presume, unless the contrary is shown that the involvement of a parent in the life of the child concerned with further their welfare. The provisions of Article 8 of the ECHR apply, so that there should be no interference with the private and family lives of any of the

parties save as is necessary and proportionate to protect the rights and freedoms of others.

The evidence of the parents

18. The mother was assisted by an interpreter. She spoke very quietly indeed, and it was difficult, if not impossible for the father to hear the words she was speaking although they were interpreted into English which he could hear and understand. Once the mother settled into things she appeared to find things a little easier but there can be no doubt she found the process of giving evidence very difficult. The courtroom is large and unfamiliar. She has not been in this country for long. She was giving evidence contradicting the father in a number of respects.
19. The mother never wavered from her case that she had not agreed that the children could be taken to England and brought up there by the father and his second wife without her. She consistently said that she did not know the father had a second wife until the children went to England. She denied having any affairs and maintained that the father had been verbally abusive to her in front of the children. She also said that he had been physically abusive to her.
20. On the other hand the mother's evidence as to some of the details of the journey to England was confused and in some respects, inconsistent. In her oral evidence she said that on the day that the children were brought to England she had accompanied them in the car fully expecting to come with them. She said she had packed luggage but it had been forgotten at home. There was no mention of this in her written evidence which gave a detailed account of how upset the children were to be travelling to England without her and of her reassuring them she would be following within about three months. When asked questions about this she was unable to explain the contradictions inherent in these accounts, and indeed her account of events became more confusing still. Her evidence about the time at which she became aware of the existence of the father's second wife was also somewhat inconsistent, at one point suggesting it was the day after they arrived and at another point later. Some of the evidence about her video contact with the children was also muddled.
21. The father presented as confident. His English was good and his manner courteous. There could be no disguising, however, the contempt in which he held the mother which was apparent through all his written and oral evidence. He was adamant that there had never been an agreement for her to come to England as well as the children. In his written evidence he said that the primary reason the children were brought over to England by him was because the mother was not fulfilling the children's needs to have an adequate education in her care. He said that the mother had lied to him about the children's education, that she did not understand how important it was, that her family was dishonest, that she was dishonest and had affairs, and that she had health issues which severely impacted her ability to look after the children. He said in one statement that 'I wish to make it clear that it was I, their father, who made visa applications for them to come here after seeing their neglect from their mother. I am the one who insisted they would have a better life in the UK and I was the one who provided the best opportunities available to them'.

22. He made repeated references to the mother's affairs when giving his oral evidence and said at one point that what she had done was 'really dirty'. He admitted saying to the Guardian and social worker that the mother was a prostitute but denied their evidence that he had said it in front of the children. He admitted saying to the Guardian that the mother was a disease to society. He said at one point that he had needed to use the word prostitute to express the whole situation of the mother's character. In his written evidence he gave a detailed account of the mother's family begging him not to divorce her after her affairs which led to him relenting although he made it clear in the context of this that he was going to take another wife.
23. The father dismissed a number of allegations that had been made against him by the mother, by his second wife and by H. The mother, he said, was simply dishonest.
24. The father was also asked about the effect on the children of leaving their mother's care and coming to England. He said that there had been no effect on C at all, and that H had missed her mother a little bit. He ascribed most if not all the things that H had said, including how much she was missing her mother, to the mother and her relatives' influence and manipulation.

The circumstances in which the children were brought to the UK

25. As I have set out above, the parents' evidence about everything, including this issue was completely polarised.
26. The fact that there were applications for passports for the mother as well as the children in 2019 supports the mother's case that she was being led to believe from an early stage that she would be coming to England. I do not accept the father's evidence that the mother's passport was obtained only for identity purposes. Also, a close look at the father's written evidence shows that he repeatedly asserts that the decision was taken for the children to come here because the mother's care of them was inadequate. This does not sound like something that was mutually agreed, and is equally as implausible as the account the father gives of her agreeing to his marrying again and taking his second wife to England instead of her.
27. Most importantly the arrangement for the children to come to live in England without her was wholly to the mother's disadvantage and took no account of the effect on the children of the sudden loss to them of their primary carer. It is conceivable that the mother might have been prepared to sacrifice her own relationship with the children if she had thought they would have a better life in England but I do not accept she would have waved away the emotional effect on the children so readily. Finally, the notion that she agreed to the children coming to live here without her does not sit easily with the application that she has made to this court. The father's case that she has only made this application in order to obtain residence here is unsupported by the evidence.
28. What is more when he came to this country the father did nothing to assist the mother to come over here even though he knew she wished to do so to see the children. His claim was that he could not afford to pay for the airfare. He went as far as to contest the application for him to provide financial support and then to apply to set aside the order that was made. This was at a time when H was expressing her distress at being separated from her mother to professionals. In February of this year the Guardian

observed video contact and saw H sobbing at the end of the call. If the father could not afford the mother's air fare to come to England it calls into question his evidence that he intended to take the children to Y Country for their summer holidays and some half terms.

29. Despite the fact that some of the mother's evidence was muddled and inconsistent, especially in relation to the day on which the children travelled I am clear that she did not consent to the children being brought over to live in this country without her. She expected to travel with them and when it became apparent that she could not, she was led to believe that she would be able to join them within a few weeks or months. These events were plainly very distressing to her as she tried to recount what had happened in the witness box. She had no experience of international travel and so things that might appear obvious to those who are used to airports and flying are not those who do not. She does not read or understand English and this would have hampered her in her understanding of what visas had been applied for and received. The visas were granted not long before the children left and she must have found everything going on around her at the time utterly confusing. In my judgment this is the reason that some of her evidence was inconsistent and not because she was not telling the truth overall.
30. I find that the father acted unilaterally in bringing the children to this country and that before he did so he deliberately and falsely led the mother to believe that she would be joining them in England. The children, particularly H, also believed this. The father had no intention of ever bringing the mother here, indeed he could not as he had already sponsored his second wife to come.
31. Ms Wiseman for the mother points out in her position statement that since October 2017 Transnational Marriage Abandonment has been a recognised form of domestic abuse included in PD12J FPR 2010. There is no doubt in my mind that this is so. The father's conduct was cruel and abusive to the mother, and it was also emotionally abusive to the children. He deprived them of the parent who had looked after them since they were born. It is of great concern that the father seems to have so little understanding of the effect of his behaviour on others. I acknowledge that at first the children appeared to settle well in this country and at school, but it was not long before H was displaying significant problems. Whether or not all her allegations against her stepmother were true and accurate, as opposed to an expression of how difficult she was finding things, is difficult to know, but her state of mind and genuine distress at being separated from her mother was absolutely clear from the Guardian's observations. That C did not display such obvious emotion is not a sign that he was not affected; indeed the Guardian noted how detached he seemed to be. He is very different now.

The incident of 12th March

32. AA made two statements to the police about what she said happened on 12th March. The first was given to the police on the date of the incident. She said that the father had been physically abusive to her several times. She said that this included when he was giving her driving lessons and she made a mistake. She said that on another occasion he had put his hands around her neck, and once had cut her head when he threw a mobile phone at her. On 12th March she said that the father had become angry because she had been away at a birthday party with her children and she had not been

at home to feed H and C. She said she did not like to argue with him because she feared being hit. She said that the father hit her from behind and called her a prostitute. She said that he followed her into the hall and punched and hit her all over her arms. At this point the children were on the stairs and could see. The father followed her again into the sitting room and grabbed the back of her head and starting hitting her with something that she assumed was the remote control. She screamed and then realised that she was bleeding from the back of her head. There are photographs of this injury. She then went to seek the help of a neighbour and the police were called. She said at the end of her statement that she could not take being hit any more. She kept thinking the father would change but he never apologised and she was frightened of him and was worried about the children seeing his violence. In her second statement dated 30th March she confirmed that her original statement was true but that she wished to retract it on the basis that the father had said he would not behave in that way again and she wished to save the marriage.

33. Also in the police records is an account of a conversation between a police officer and H on 12th March (the record of the conversation compiled by the officer is timed at 00.14 on 13th March). H is said to have told the officer that she saw her mum on the floor and that her dad had his hands around her throat. There is an obvious mistake here in that AA is not H's mother. I note that the record gives an account of the other children telling the officer that they saw daddy hitting mummy and that they had shouted asking him to stop. The children said they had seen previous assaults. Of note too is that H also told the police officer that it was a happy home, which shows that she was able to give accounts of things that were positive as well as negative.
34. The father said that AA gave the account she did to the police because she was angry with him and had been influenced by her brother. He denied causing the cut to the back of her head and said that he had no idea how it had come about. In his statement he said that all he had done was to pull AA's arm in protest at the way she had spoken to H, and then pushed her away when she grabbed his throat. When asked to comment on the account given by his daughter of what she had seen on 12th March, namely that AA was on the floor with her father's hands around her throat and that she had tried to pull her father away and get him to stop, he said she was influenced by her mother (who at that point was still in Y country). He denied being unable to control his temper but said he got 'slightly bad-tempered' when people lie and fabricate stories. He said he 'put up his hands' to having arguments.
35. Apart from the father's account, all the evidence I have as to this incident is hearsay. AA herself has not given evidence to the court, nor have any of the children whose evidence is contained in running records rather than a statement or ABE interview. Any court when considering such evidence must tread carefully. I have photographs of AA's injuries and note that they are consistent with the detailed account that she gave to the police. The father did not deny that the injury existed and must have happened when he was present in the house with her but had no explanation to give as to how she could have suffered it. The children were spoken to very soon after the incident and H in particular gave an account of what had happened which involved the father being violent to AA and frightening them. This evidence is also supportive of and consistent with other accounts.
36. There is no record of AA saying that she has been untruthful or inaccurate in her account although she told social workers that they both contributed to the argument.

Even when she asked to withdraw her complaint on 30th March she maintained that it was the truth. Given that she was living with the father at the time of the incident and has since reconciled with him I find it difficult to see what motive she would have had for inventing the account against the father. His suggestion that she was angry with him and influenced by others does not ring true and is very much the same explanation he has given for allegations that others have levelled against him.

37. In all the circumstances I find that the father did assault AA on 12th March, causing her injury and that this was witnessed by the children, frightening them and causing great distress.
38. Although he conceded that he had not behaved well on 12th March by arguing in front of the children this was very superficial and he certainly did not display any remorse that I was able to detect despite what AA said in her statement of 30th March.

Child arrangements

39. I now come to consider where the children should live and what time they should spend with the other parent. I note the very strong and persuasive evidence from the Guardian that the children wish to remain living with their mother whether this is in England or Y country. When H was living with her father and AA she repeatedly spoke to professionals about how much she was missing her mother and the Guardian's account of her sobbing at the end of video contact with her mother in February was very striking. C, who did not display much emotion when he was living with his father is now expressing clear views. The wishes and feelings of these children deserve to be given respect and weight in the light of their respective ages and the level of understanding that goes with it. I do not accept the father's case that they are the product of influence from the family, even if he is right about what he says the mother and others have said in their telephone conversations and may repeat at home. The point is that the children's views are genuine and entirely understandable in the light of their experiences. If they were to be returned to their father it would cause them great distress, and would not meet their emotional needs. The father says that the area he lives in is a more prosperous area than where the mother and children are, but this means little in the context of the children's overall welfare. They have suffered a great deal of disruption in the last 16 months and require a period of stability.
40. The children are at risk of suffering harm from their father. His behaviour to them in removing from the care of their mother was calculated and emotionally abusive. In his words and actions he appears to lack empathy for the children or their mother to whom he has demonstrated contempt and cruelty. The incident of 12th March shows that he is capable of violence which appeared to erupt from an argument over something relatively trivial. I also note that the children were taken into police protection in March when they were the sole care of the father because he apparently left them unattended in a supermarket. I know he disputes what is said about this and that he only left them there for a few minutes but there is no doubt that the children were very distressed by what happened.
41. The father does not appear to show any remorse for the incident of 12th March, and he appears to deflect blame onto others. In those circumstances there is a risk of the children witnessing further violence if they are in his care. Added to this they are at

risk of suffering harm from the father denigrating their mother in front of them as he has done in the presence of both the Guardian and the social worker. Such an attitude from a father to the mother of his children is corrosive, damaging and undermining.

42. At the same time as saying that he finds it difficult when other people do not tell the truth, the father's accounts in respect of numerous events differs very considerably from those who are around him. In the confines of the courtroom it was not difficult to see when the father's version of events was distorted but if the children were exposed to his way of thinking without a filter I think it could be very confusing for them. The father is not an easy man to challenge.
43. There have been concerns about the maternal family with whom the children are living which are set out in the Guardian's report. These include inappropriate chastisement, cannabis use and some domestic violence (which led to one of the children in that family being taken into police protection). The case was closed three years ago and there has been no local authority involvement since. The home in which the children are living is overcrowded but clean and reasonably well-organised.
44. The children have been seen in the company of their mother by both the Guardian and the social worker. They are both confident of the mother's ability to care for the children. The Guardian noted warmth and mutual affection between them all.
45. Taking into account all that I have heard and read I am in no doubt that it is in the children's best interests to live with their mother. At present their home is in England and there is no plan to take them back to Y Country albeit the children wish to live with her wherever that is. The father suggests that AA is now happy for the children to come back but he has not provided any direct evidence of this (her original statement for the court was made before the incident in March) and what the father says contradicts what AA said to the social worker.
46. I agree with the Guardian's recommendations not only as to residence but also as to contact as set out in paragraphs 61 to 63 of her report, which I consider to hold good on the basis of the facts that I have found, my own observations, and her assessment of the children. The video contact is currently monitored by a family member and this should continue to be the case. Children's Services in the area where the mother and children are living have expressed a willingness to pay for four periods of supervised contact and suggest that any further periods will have to be paid for by the father, if he can afford it.
47. Making an order which restricts the father's face to face contact with his children in this way is undoubtedly draconian. This is especially so when he is unlikely to have the funds to pay for supervised contact once the first four visits have taken place, meaning that it is possible may cease altogether unless an alternative can be found. Added to this, the children are living in an environment where there is some hostility to the father even if it is understandable why that is so. I am, however, fully persuaded that the children's best interests require them to be safeguarded from the harm that their father poses to them at the moment and that the order is necessary and proportionate. I am conscious that the children are different and that C is much younger than his sister but their needs are the same in this regard and the harm to them of not seeing their father face to face for the time being is outweighed by risk of harm if they do. The lack of empathy seen here combined with a propensity to be

emotionally and physically abusive is a worrying combination which should be taken seriously (as I know it is) by all those who work with the family, especially if the other parent is vulnerable and can be put under pressure. Work undoubtedly needs to be done with the whole family to reduce risk but this work has hardly started. I hope that the father's social worker will be able to work with him to enable him to move forwards to attend a suitable domestic abuse programme but am not able to say whether or not that will be possible. It will be a matter for the professionals working with the family and the parents themselves to manage the situation going forward, but my suggestion would be that before any unsupervised contact takes place there should be a further risk assessment carried out by someone who is not actively working with the father, whether that is a social worker or a psychologist.

48. I am conscious that this judgment will not make easy reading for the father for I have been highly critical of him. It is important that I make clear that I know he loves his children and wants the best for them as he sees things. I know from statements he has provided and other professional observations that he can interact very well with them. If he is able to engage with the work and to develop a better understanding of his children's needs and to reflect and change his past behaviour it will not only be to the advantage of his children but it will bring him great satisfaction too. I urge him to do this not only for the mother and children in this case, but AA and the children they have together.
49. I will ask counsel to draw up an order for me to approve. I will make a Family Assistance Order pursuant to section 16 naming the parties (assuming they agree) and the children. The local Children's Services have agreed to make an officer available.
50. As a postscript I think it is worth observing that the international dimension to this case meant that the proceedings were commenced under the inherent jurisdiction and the children made wards of court. One of the consequences of this was that both parties have been represented from an early stage. Also, the children were joined as parties. This might have happened in ordinary private law proceedings but not so quickly. The work of the Guardian in this case has been of the highest quality, and the focus in her investigation and reports as to the impact and welfare of the children, along with the assessments from the two local authorities has been extremely helpful in dealing with all the issues together rather than by having fact finding hearing followed by assessments and welfare later. In my judgment the work outside the case and the resources devoted to it has led to the court process itself being shorter. Whilst with the benefit of hindsight the developments in the case should have led to an earlier focus on the provisions of PD12J, PD3AA and the drafting of a proposed schedule of findings, this did not undermine the overall advantage of the case being managed and conducted in this way.