



Neutral Citation Number: [2024] EWHC 2579 (Fam)

Case No: FD23P00289

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/03/2024

Before :

MRS JUSTICE LIEVEN

Between :

YK (Father)

Applicant

and

TS (Mother)

Respondent

Ms Sally Barnett (instructed by Charles Strachan Solicitors) for the Applicant
Ms Rachael Rowley-Fox (instructed on a direct access basis) for the Respondent

Hearing dates: **12-14 March 2024**

Approved Judgment

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MRS JUSTICE LIEVEN

This is a transcript of an ex tempore judgment. 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Lieven DBE :

1. This case is the fact find hearing concerning the child A born mid December 2023, now 15 months old. The Applicant Father is YK and the Respondent Mother is TS.
2. The issues are who A lives with and how much time she spends with the other parent. A currently lives with the Father and his parents, the paternal grandparents. The Mother has supervised contact with A. The Father is a UK citizen. The Mother is Indian with indefinite leave to remain. A was born in the UK. Both parents are Indian by heritage.
3. On 7 June 2023 the Father made an urgent ex parte application under the inherent jurisdiction to prevent the Mother from removing A from the UK to India. The Father feared that the Mother would take A and not return. Therefore, orders were made to stop the Mother from travelling with A and they were served on the Mother on 9 June. A Prohibited Steps Order was also made to stop the Mother from removing A from the paternal family. After the orders were served, the Father and A went to live with the paternal grandparents.
4. The matter was then transferred to the court in Leicester. There have been a large number of hearings on case management issues and various issues around disclosure supervisions, records and so on. There is no need for me to set it all out.
5. The matter was first handled by Her Honour Judge Patel who tried to persuade the parties to agree a limited group of findings, this approach however was unsuccessful. She set the matter down for a 3-day fact find hearing which was then transferred to me for reasons of availability. Two schedules of allegations were made, one by each party, and these were accompanied by videos and recordings.
6. I note that both parties appear to routinely have recorded or videoed each other. The Father seems to have done this significantly more than the Mother. Recordings from earlier in the relationship were made by the Mother. It is safe to say that this is an intrusion into both of the parties' privacy rights. However, given that both parties were doing this, there is no need to make critical comments. It is also the case that these copious recordings have in this case, as seems increasingly common, provides irrefutable objective evidence of what was happening in the relationship between the parties.
7. In terms of my approach to the allegations of fact, I remind myself of the words in K v K [2022] EWCA Civ 468 at [65]; fact find hearings are not free-standing litigation, they are to protect a child from abuse, they are not an opportunity for parties to air their grievances or to speak on what went wrong in their relationship at court. They should identify how any alleged abusive behaviour may be relevant as to the further arrangement of contact with the children. The longer the case went on the more strongly these words resonated with me. This case is a classic example of the Court being drawn into an analysis of the reasons behind a failed relationship, rather than focusing on the needs of the child.
8. In relation to the schedules, it would be disproportionate for me to determine all the allegations. There have been allegations of physical and psychological violence in the relationship on both sides. There is no doubt that this relationship was toxic but it is

hard to say that most of that material is relevant to the risks to A and to contact moving forward.

9. I turn then to the family history. The Father is currently 45 and the Mother is 44. Both parties are in professional careers. The Mother works in software and has 19 years' experience in this field. The Father works in cyber security. Both parents originate from India. The Father's parents live in the UK. The Mother was granted indefinite leave to remain in 2022 after the Father sponsored her. The Father had had a previous marriage which ended in divorce after 2 or 3 years. The parties met virtually over a matrimonial dating website when the Mother was aged 37 and the Father was aged 38.
10. I note that this was the Mother's first relationship and marriage. Before the relationship began the Mother was living in India and Father was living in the UK. It was a semi-arranged marriage. I say this because the parties didn't know each other for very long at all before marriage. The parties seem to have looked to their parents for approval of the marriage. The Father states that he felt his first marriage was a mistake and looked for a quasi-arranged marriage. The parties married in India in September 2016.
11. The Mother came to the UK on a spousal visa in 2017. They first lived in Birmingham. The Father was working in Manchester during this time and travelled to Manchester 2 times a week for work. There is no doubt that the relationship suffered a great deal of strain from very early on. The parties had difficulty in conceiving a child naturally and they had 3 rounds of IVF. They explored surrogacy but for whatever reason that did not work. A was conceived after the third round of IVF. The Mother's father died in India in March 2021, during the time when the covid pandemic was very prevalent in India.
12. There was a period during this time where the parties lived with the paternal grandparents. No doubt this caused a strain on their relationship. There is evidence that there were disagreements and serious arguments between the parents dating back very early on in their relationship.
13. There are a large number of incidents that both parties rely on. Some of these have been recorded in videos or in phone recordings. I will only refer to the ones I deem as important. Just as an overview, the Mother in her oral evidence accepted there was a harmful pattern in the relationship and that she had at times been dramatic and threatened A's safety.
14. There are a few incidents in particular which are important to mention. On 6 October 2018 there is a recording of the Mother hitting herself with a shoe, there is dispute over what kind of shoe it was, but it was undoubtedly a shoe. On 18 November there was an argument, and the Mother can be seen hitting herself with a food can.
15. Shortly before A's birth when the Mother was 8 months pregnant, there was an incident between the parents. The maternal grandmother had come to the UK to stay in advance of A's birth. There isn't a recording of the incident itself, but there is of the aftermath in a conversation had between the maternal grandmother and the Mother. The Mother is clearly very upset, and it seems she had threatened the Father, hit herself and smacked her head on a surface. There is a dispute as to whether she

had a knife in her hand. The issue is that in one transcription the maternal grandmother says “you went for him with knife”, the Mother says this was an error in translation as the words for ‘knife’ and ‘shoe’ in Hindi are similar. It is impossible for me to discern the difference on a recording. A was born 2 weeks after this.

16. There is then a video of a disagreement between the parents, the Mother is seen slapping the Father very hard on face. I will come back to this below.
17. On 30 December, the Mother is upset and hits herself on her body whilst holding A. In another video, the Mother hits the Father and then herself. There is a video on 31 January 2023, the Mother again is upset and rolls on the floor crying. On 5 February there is an argument between the maternal grandmother and the Mother whereby the Mother threatens to kill A. In respect of all these videos, it is important to watch the video as well as just listen. There is absolutely nothing in any of the videos that show that the Mother’s intention is to kill or even physically hurt A. Rather, the Mother is seen as over dramatic at times, but it does not appear to me, having watched the videos more than once, that she is actually trying to harm A.
18. Critically, it has been agreed that a psychological assessment of the Mother is necessary. However I do not want a psychological assessor to read this judgment as suggesting that this is a mother who wanted to hurt the child, when in my view that was not the situation. The videos rather suggest emotional upset and attention seeking by the Mother.
19. There was a major dispute between parties on 6 February 2023. The Mother say she was pressured to move in with the paternal grandparents, the Father denies this. There are a series of videos across these days. On 5 February 2023 there is a video of the Mother putting A down on the bed next to the Father in a rough manner. Ms Barnett calls this throwing; Ms Rowley Fox says placing. I have seen this recording and the Mother is not throwing the child, but equally it is not the correct way to put down a young baby.
20. There is another video of the Mother hitting the Father in front of the maternal grandmother.
21. In mid March 2023 the maternal grandmother went back to India. On 21 April 2023 there is a video of the Mother holding A over the side of the bed. This video needs to be seen to be understood. I didn’t see the video as placing a threat to A but was rather irresponsible handling. On 1st May 2023 the Mother was very angry in the video, she is recorded as saying “I will throw her and kill her”.
22. On 1 May 2023, the Mother can be seen putting her hands around the throat of A but it is perfectly plain to see that the Mother has no intention of hurting A. This is irresponsible parenting of a small child.
23. Then there was a plan agreed between the parents for the Mother to go to India with A for a holiday. There is some dispute as to what was agreed. As far as I can tell, initially the Father agreed 2 or 3 months, then the OCI (an Indian identification card needed for travel) card didn’t arrive on time, so the date had to be cancelled. It seems the intention at this time was to rebook, however on 2 or 3 June 2023, the Father says he overheard phone calls between the Mother and her friend about the Mother

wishing to permanently stay in India. He was of the belief that if the Mother went to India she would retain A and not return. The Father says this triggered his application to the High Court for an order preventing her and A leaving the UK, which was granted.

24. From that point we get into the litigation history. I turn to the evidence. Both parties have written statements with long accounts of the relationship which I have no intention of summarising. I will set out my understanding of the oral evidence.
25. The Father gave evidence of himself as being wholly the victim in the relationship. In my opinion his evidence was highly avoidant and lacked insight into the Mother's position and her emotional struggles. He spoke about his first marriage having failed and that he felt he had made a mistake. For his second marriage he tried to go down a different route and had a semi-arranged marriage. His evidence was that he was a victim of very bad domestic abuse from the Mother and that he tried to cope with the Mother and wanted the marriage to work. He says that his focus was on the detrimental impact on A of the Mother's behaviour, but he remained committed to making the relationship work. He thought the Mother needed help. I note that he said he had been through great emotional stress and his evidence was wholly focused on himself. Despite all the videoing and the stated concern for A, as far as I could tell he did nothing to get the Mother the support she obviously needed.
26. He denied it had been his intention to alienate A from the Mother by seeking to limit the Mother's contact. In terms of conflict between the Mother and his family, he felt that the Mother was rude to his family and her conduct with his family had caused problems. Again, he showed no insight into the degree the Mother felt isolated in the UK
27. As I have set out above, I watched a number of videos of them arguing. The Father is frequently shouting at the Mother. It seems to me that the Father instigated most of the arguments. The Mother was upset, yet the father placed all blame on the Mother. He said the Mother has specifically chosen short clips to put him in a bad light, but what I have watched does not suggest that is the case. He does not take any responsibility for the breakdown of the relationship or having failed to support the Mother. He says the Mother was demanding, selfish and angry.
28. In one clip, the Father is very aggressive and the Mother seems to be upset and in-fear. It sounds as if the Father is twisting the Mother's wrist although I cannot be confident of that. The Father says he was nowhere near her, in my opinion this is a lie. It sounds as if he was holding onto her.
29. In April 2021 soon after the Mother's father had died, the Mother is upset and the Father seems to be incapable of supporting her. In the argument he is threatening to withhold his sperm from IVF, so that she could not get pregnant. He is undoubtedly the person who is being aggressive in that argument.
30. In relation to the application made to the High Court, he says he panicked. He says he had been advised it would be virtually impossible to retrieve A from India, if she was taken. My holistic assessment is that he was not deliberately lying about this, but he sees the narrative of him as victim of the entire relationship and everything that happened.

31. The Mother has made two statements and given oral evidence. In my view she showed more insight into the problems in the relationship than did the Father. She seemed genuinely remorseful for the harm she had caused A. However, like the Father, she entirely saw the break down from her viewpoint and herself as the victim. She says she dropped everything in India to come to the UK and that the Father had not supported her once she moved here. She denied any caste issues between herself and the father's family, but I suspect that she did see herself as being somewhat above his family and that may understandably have caused tensions.
32. She says that the Father failed to support her and that the incidents of self-harm were in order to get Father's attention. She said that all the issues with the Father were amplified for her by her father dying in 2021, Covid and then the three rounds of IVF. She says she felt isolated and as though she was just being used by the Father as a surrogate. She accepted that at times she had been dramatic to get the Father's attention.
33. She says she had repeatedly told the authorities about the abuse she was getting from the Father, although in my view the written evidence does not show this. The police were not told that the Father had been abusive when they went to the house in February 2023. She says that 6 February was an extremely stressful day for her and her mother as there had been an argument about the Father's parents moving in with them and about A going to nursery for 5 days per week. She says she felt alone in the UK and scared that the Father would start proceedings against her. She did say she had spoken to a friend of her aunt's about the abuse. However, I note from the email exchange that this was more about getting immigration advice than actually reporting abuse. I therefore accept that the Mother did not raise domestic abuse until these proceedings. However, I also accept that is not at all unusual for cases of domestic abuse.
34. The Mother accepts the incidents where she placed her hands roughly around A's throat and for inappropriately placing A on the bed/sofa. She says she was deeply upset and remorseful. I do not think she wished to harm the baby but that she did this to get attention.
35. The Mother gave birth via emergency C-section. I am not a doctor or psychologist, but it is obvious that the Mother was in a poor emotional state in the weeks after the birth, whether or not that amounts to diagnosable mental health problems.
36. On 2 December 2022 she says she hit the Father with a slipper and not a knife. This is unclear as there is a dispute as to the words in the recording. My sense is that the maternal grandmother would have been more outraged if she went after the Father with a knife, but I cannot be certain. On 30 December 2022, she accepts that she hit the Father hard across the face, there is no dispute about this.
37. She denies she had any plan to stay with A in India in June 2023. She says her job was in the UK and that she has a better life here than in India. It is impossible to be confident about the Mother's intentions at the time. However, I should make clear that I do not think the Father was unreasonable in making the application to the High Court for an order preventing the Mother from removing A from the jurisdiction.

38. On the law I need say very little. I note the leading Court of Appeal authority of *K v K* [2022] EWCA Civ 468 at [65]. I have to consider A's best interests and the principle in s.1(2A) that it normally in a child's best interests to know both parents.

Conclusions

39. This case was set down for a three-day fact-finding hearing. As the hearing progressed, I have become increasingly of the view that this is a paradigm case of why fact finding hearings in many private law cases with allegations of domestic abuse are neither proportionate nor necessary. Most of the hearing and the evidence went to the question of whose fault it was that the parents' relationship failed, rather than matters that were relevant to, let alone necessary to decide, in order to reach a decision about A's welfare going forward.
40. I strongly support the words of the Court of Appeal in *K v K*.
41. Both parties filed lengthy schedules of allegations against the other. Most of these allegations either were of limited or no relevance to the question of what orders I will ultimately make about the A's care, or related to incidents recorded on videos or audio, and thus were not open to disagreement about what actually happened. There was relevant evidence about the context of those incidents, but that would have been more efficiently and usefully dealt with in a final hearing about what was in A's best interests.
42. There were a number of allegations which did go to A's safety in the Mother's care. The first was the Mother roughly placing or throwing A onto the bed next to the Father. The second was when the Mother placed her hands round A's throat and caused her to cry. The third when she held A over the edge of the bed. Each of those is shown on video. The Mother has conceded each of those incidents. However, they have to be seen in the context of the relationship.
43. The Mother also concedes that she slapped the Father on two occasions.
44. The Mother makes allegations that the Father was violent to her on two occasions. There is no video evidence of these, but there is one recording, which I have alluded to above, where I think the Father did twist the Mother's wrist.
45. I therefore make findings of fact in relation to those incidents.
46. The Mother was at times highly emotional and overly dramatic, for example when she fell on the floor and was rolling around screaming.
47. I find that A was at times put at risk by the toxic relationship between the parents. They freely shouted at each other and were extremely emotional in front of A. It is now widely accepted that domestic abuse ("DA") is harmful to children, even very young children, even if they are not themselves injured.
48. However, in my view the responsibility for this harm to A falls on both the parents. The Father was aggressive and controlling of the Mother, insisting on occasions that she did what he wanted in terms of family events, and decisions around A. Applying the definitions in Practice Direction 12J, he was aggressive and intimidating to her,

and that is clearly demonstrated in a number of the videos where he is very bullying and intimidating in his manner.

49. However, in my view this behaviour, on both sides, needs to be seen in the context of a failed relationship, where neither party could meet the others emotional needs, rather than any actual intention to coerce or control.
50. It was a notable, but not uncommon, feature of the oral evidence that both parties see themselves as victims within the relationship, and the other party as the perpetrator of DA. There is some truth in both perspectives. The Mother was isolated in the UK, with no family (save when her mother visited) and few friends. This was her first relationship, in her mid-30s, and she probably had an overly idealistic view of how the relationship would work. She felt let down and unsupported by the Father and did not get on with his family.
51. She had the strain of a difficult relationship, the death of her father, three rounds of gruelling IVF, then being pregnant and having a difficult birth. She wanted the Father to love and support her through these challenges, and he failed to meet her expectations.
52. Her response was to become overly emotional, demanding and dramatic, in a quest for attention. At times she lost control and on at least two occasions she hit the Father.
53. The Father was undoubtedly hoping for a happy second marriage, after the failure of his first marriage. He probably also had unreal expectations. He was disappointed with the Mother and could not cope with her emotional outbursts and what he felt to be demanding behaviour.
54. His response was to become angry and intimidating and demand that she fitted in with his demands and his family. It was apparent from his demeanour in court that he feels hurt and let down, and fundamentally confused, because he has so little insight into his own behaviour and the impact on the Mother.
55. All of this is sad. But as the Master of the Rolls said in *K v K* it is not the job of the Family Court to analyse the responsibility for a failed relationship. Although I note that a large amount of judicial time, in this case as well as many others, is wasted doing precisely that.
56. The only real issue of relevance to me is whether the Mother poses any risk to A if A either lives with her or she has unsupervised contact. On the evidence before me, the Mother's loss of control and risky behaviour to A was a product of the stresses of the relationship. The parents have now separated, and the chances of that behaviour reoccurring are in my view small. I do not think any of those incidents suggests any intent by the Mother to harm A, and there was nothing she said in the witness box which led me to a view that she posed a risk to A. Indeed it was obvious that she greatly loves A, wishes to do her best by her, and has at least some insight into what went wrong in the past.
57. I reject Ms Barnett's suggestion that there is evidence of propensity to violence by the Mother because of an incident that occurred when she was 11 years old. That was 25 years ago.

58. However, given the incidents that have occurred, it is necessary and proportionate to order a psychological assessment of the Mother so that I can have the benefit of expert advice on whether the Mother poses any risk and whether it would benefit her to do any therapeutic work before having an unsupervised relationship with A.