

Neutral citation number: [2022] EWFC 94

Dated 3 August 2022

In the Family Court sitting in Chester

In the matter of the Children Act 1989

And in the matter of “A”, a child

Before Her Honour Judge Hesford Sitting in Private

BETWEEN:

B

Mother

and

C

Father

and

“A”, via her Children’s Guardian Nazin Haq

Child

The Applicant represented herself

The Respondent represented himself

The child was represented by Ms Edmunds of Counsel

JUDGMENT FOLLOWING FINDING OF FACT HEARING 28 JULY 2022

INTRODUCTION

1. This judgment concerns my findings of fact on a Schedule of Allegations made by the Applicant mother, (“the mother”) in relation to her Application for a child arrangements order in respect of “A”, born on [.....]. “A”’s father is [.....]. “A” and her mother live in [.....]; the father lives in [.....]

2. When required to do so, I shall refer to the parents as “father” and “mother”. Similarly, I will refer to “A” by name or as “the child” as appropriate.
3. Mother seeks findings in respect of conduct by father demonstrated towards her. She says these should be considered by CAFCASS when advising the Court when considering any arrangements and steps required for “A” to spend additional time with her father. PD 12J has been considered by the court throughout. CAFCASS have undertaken safeguarding checks and in a section 7 report dated 10.02.02 they made various recommendations; however it became apparent that there was a complete breakdown and accordingly a Child’s Guardian was appointed under Section 16(4) Children Act. Thereafter a finding of fact hearing was ordered.
4. Neither the mother nor the father were represented at this hearing, although they have previously been represented on occasions. “A” was represented by Ms Edmunds of Counsel.

BACKGROUND

5. The parties are not, nor have they ever been married to each other. They had a significant relationship which ended shortly before “A”’s birth in [.....]. “A” is the only child of the relationship. The father has parental responsibility.
6. Proceedings were commenced on [.....] 2021 when the mother applied for a Prohibited Steps Order, later applying for a Non-Molestation Order. The father applied for contact on [.....] 2021.
7. Contact presently takes place remotely, facilitated by the maternal grandmother.
8. The findings that I am asked to make are included in a Schedule in the trial bundle. These include the father’s responses. Whilst the Schedule is indicative

of the findings sought, I shall nevertheless make such findings as I consider appropriate, having considered all the evidence and information placed before me. A copy of the findings which I have made are within this judgment.

9. The central question I have to resolve in relation to that is whether the mother is a victim of domestic abuse, with the child being exposed to that abuse, or whether the mother has laid a trail of false and/or exaggerated allegations or exaggerated/faked or acted her responses to the messages to prevent contact and to put distance between the father and her and "A".

THE HEARING

10. The matter was conducted as a remote "Microsoft Teams" hearing at the request of the mother and with the agreement of the father and guardian. The evidence lasted for most of the day. Procedural fairness was ensured throughout, despite the nature of the hearing and allegations and the lack of legal representation for the parents.
11. Section 63 of the Domestic Abuse Act 2021, which came into force on 1 October 2021, requires amendment of the Family Procedure Rules to ensure that, where a person is, or is at risk of being, a victim of domestic abuse carried out by another party, or relative of another party or witness, it is to be assumed that the quality of their evidence and, where they are a party, their participation in the proceedings, are likely to be diminished by reason of vulnerability.
12. Para 3A has as a result been added to FPR PD12J, referring to provision in PD3A to victims of domestic abuse giving evidence and making clear that, in that context, it is not necessary for the court to make findings of fact in relation to domestic abuse before assuming that a party or witness is, or is at risk of being, a victim of domestic abuse carried out by another party, a relative of another party or witness.

13. The upshot of this is that where the court has yet to decide allegations of domestic abuse it must treat the person making them as a vulnerable person for the purposes of FPR 3A and PD3AA and must consider the question of participation directions (whether or not requested). The purpose is to ensure effective participation and ability to give best evidence.
14. Allegations of abuse have been made by the mother against the father.
15. The following measures were put in place for the hearing:
 - a) Attendance by Microsoft Teams;
 - b) The cross examination was undertaken by the court on behalf of the mother and father with them preparing questions before the hearing and having opportunity during the hearing to prepare additional questions, all pursuant to S.31G (6) of the Matrimonial and Family Proceedings Act 1984. The court also asked additional questions which were pertinent to the matters in dispute and not covered by the parent's own questions. The court did not ask such questions as were repetitive or irrelevant to the fact-finding stage of these proceedings. Both parties were allowed the opportunity to make opening and closing comments.
 - c) The child was represented by counsel at the hearing and counsel asked appropriate questions of both parents throughout.
16. Before the hearing commenced, I explained to the parents the purpose of the hearing and its relevance of the hearing to future arrangements for "A" and set out how the hearing would proceed. I also explained the relevant law and checked that both parties understood.
17. I addressed the Schedule of Findings document directly with them and noted that some of the "sub sections" of the allegations were not strictly allegations at all, but rather statements of facts, which were not actually relevant for making findings – for example it is fact that the mother contacted a domestic abuse charity and informed the police of her concerns about the father but this is evidence to support her main allegation (or corroboration) rather than an allegation itself; making a finding that mother contacted a domestic abuse

charity, for example, was not evidence of father's culpability but instead corroboration and evidence of mother's actions. I also indicated that I would not be in a position to make any findings in relation to allegation 4.4 ("Applicant received calls from unknown numbers...") as there was no independent evidence that this was father.

18. Finally I indicated that allegation 5 would not proceed. It was not relevant to contact issues and whilst the incident and involvement of the police was not disputed, the allegation turned on the police's own use of the phrase "wanted offender" which the respondent disputed as being accurate. I note that he was not convicted of any offence relating to the mother and the phrase maybe should have merely referred to the father being wanted for questioning by the police as a result of the mother's allegations.

19. I was supplied with voluminous documents from both mother and father setting out their questions for the other in accordance with the Ground Rules. Upon reading these and preparing for the hearing it was clear to me that the vast majority of questions related to either alleged behaviour/disputes which were not relevant to the findings sought or to potential future welfare issues. I asked only the relevant questions and explained my reasons for doing so.

20. I accept that the way in which I had to put the questions to mother and father on behalf of each other was less than ideal, particularly given the nature of the allegations and the fact that that I had scripts to follow. I added some questions of my own for clarification where necessary and was also assisted by counsel for "A".

21. I have had the unique opportunity of hearing and observing the way in which evidence has been given by the mother and the father in person.

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

THE LEGAL PRINCIPLES

23. In determining the facts in this case, I have adopted and borne firmly in mind the following legal principles:

The issue that I have to decide is whether the father mother has behaved in the manner alleged by the mother as set out in the disputed Schedule of Findings. In doing so, I assess the evidence in the bundle before me, direct oral evidence of the mother and father and make findings in accordance with the civil standard and burden of proof which is applicable in all Children Act proceedings.

24. The burden of proving the facts pleaded rests with the person making the allegation

25. The standard to which the mother must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not – see *Re B* [2008] UKHL 35 where at [2], Lord Hoffman said “In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But generally speaking a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof.”

26. The legal concept of proof on the balance of probabilities must be applied with "common sense" (*The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948).

27. Findings of fact must be based on evidence not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).
28. In determining whether the mother has discharged the burden upon it the court looks at what has been described as 'the broad canvas' of the evidence before it. The court takes account of a wide range of matters including its assessment of the credibility of the witnesses and inferences that can be properly drawn from the evidence. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence (*Re T* [2004] 2 FLR 838 at [33]).
29. The evidence of the parties is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them (see *Gestmin SGPS SA v Credit Suisse (UK) Ltd Anor* [2013] EWHC 3560 (Comm) at [15] to [21] and *Lancashire County Council v M and F* [2014] EWHC 3 (Fam)).
30. I remind myself that it is not uncommon for witnesses in cases of this sort to tell lies during assessments and in the course of 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, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720). I also bear in mind that memories can fade or change with the passage of time particularly in respect of events which were traumatic or distressing at the time.
31. When considering the evidence I additionally give myself a revised Lucas direction, namely, I should only take account of any lies found to have been told

if there is no good reason or other established reason for the person to have lied. I also take into account the decision of the Court of Appeal in *Re H-C* [2016] EWCA Civ 136 where McFarlane LJ (as he then was) said at para.100:

'One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the 'lie' is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is 'capable of amounting to a corroboration.' In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of *R v Middleton* [2001] Crim.L.R. 251. 'In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should, therefore, take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt.'

32. I entirely accept that the mere fact of a lie being told does not prove the primary case against the party or the witness should they have been found to have lied to the court. I also bear in mind that there is no obligation on a party to prove the truth of an alternative case put forward by way of defence and the failure by the party to establish the alternative case on the balance of probabilities does not of itself prove the other party's case, *Re X (No 3)* [2013] EWHC 3651 Fam and *Re Y (No 3)* [2016] EWHC 503 Fam".

33. I also remind myself of Practice Direction 12J and the presumption that any such incident of domestic violence must be harmful to the child, directly or indirectly.

PD12J Paragraph 4: Domestic abuse is harmful to children, and/or puts children at risk of harm, including where they are victims of domestic abuse for example by witnessing one of their parents being violent or abusive to the other parent, or living in a home in which domestic abuse is perpetrated (even if the

child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with and being victims of domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents.

34. I now set out the relevant definitions of domestic abuse here from PD12J and the Domestic Abuse Act 2021:

“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.

“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”

35. I have also taken into account the overriding objective and the President's guidance in his road map and of course the recent senior courts cases concerning domestic abuse.

36. Save for the limited police evidence, there is no relevant independent or third party witness evidence. The father filed a number of character references but they were not relevant for this hearing; they did not have personal knowledge of the facts. There were no witnesses called by either party to give evidence. Corroboration often has a vital part to play in these cases and where there is

none, it often comes down to one person's word against the other which can make it very difficult to make findings, even where the court may prefer one party's evidence over the other due to the manner in which they presented themselves and the consistency of their evidence. That, however, may not be enough to legally justify findings being made in the absence of any other evidence.

37. In this case, however, we do have very considerable corroborative evidence in the form of copies of text messages and some phone messages (transcribed and live). It is important to record that the veracity and existence of all of the messages was not disputed by the father. He accepted sending them, the contents are accurate and he accepted making the phone calls. He disputed their intention, meaning and effect.

38. It is mother's case that father has behaved abusively towards her and has harassed her and that he poses an unassessed risk to both "A" and herself.

39. It is father's case that mother is making damaging and false allegations against him with the aim of frustrating his application and preventing any meaningful relationship between "A" and her father.

THE EVIDENCE

40. Much depends upon how I perceive the parties' own live evidence, taking what help I can from the corroboration offered by the text messages etc.

41. Before I deal now with my assessment of the mother and father's evidence, I consider that it would be useful to summarise the parties positions as ascertained from the oral and written evidence in relation to the allegations in very straightforward terms. I will of course address them individually in due course.

42. In a nutshell, the mother's case is that she has been subjected to a campaign of abuse and harassment by the father in the form of offensive text messages sent on an extremely frequent basis (hundreds) and additionally numerous phone calls. These followed the breakdown in the father's contact arrangements for "A". She states that she has been threatened, intimidated, made to feel anxious and that the messages are frequently abusive and offensive. The father's behaviour has caused her such concern that she consulted the police and a domestic abuse charity.
43. Father's response was not to deny sending the messages or making the phone calls (although he may dispute the precise number of text messages). He fully accepts sending them and making calls. He initially, in both his responses to the schedule and his oral evidence, denied that the messages were either abusive or harassing or that they were meant to be intimidating. They were sent, he explained, as a direct result of the mother's own behaviour in denying him contact with "A" when he was emotionally distraught.
44. In short, therefore, the issues which I need to address in this matter relate partially to whether the father is correct in believing that he was justified in sending the messages (as he considers himself so justified as "retaliation") and to whether they were offensive and indeed had a negative effect on the mother. He denied harassment and accused the mother of lying, acting and exaggerating.
45. I read the schedule of allegations and the replies out to both mother and father, in turn and in sections before their evidence and asked them to address the issues in the schedule and comment, together with questions being asked.

MOTHER'S EVIDENCE

46. Mother gave her evidence, under affirmation in a natural, calm and quite precise manner. She was very open and showed a very good recall of events. She was able to express herself clearly. She was, throughout, spontaneous in her responses to questions put to her and consistent in her replies. I found her to

be an impressive witness and there were no occasions where she was shown to have either lied or contradicted her evidence. Her oral evidence was consistent with her written evidence and the undisputed evidence of the text messages. It was clear from her evidence and her demeanour that she has been distressed as a result of the behaviour of the father in sending the text messages and making the phone calls and that she found them to be abusive, offensive and harassing. She stated that had asked him to stop on several occasions but he persisted. It was constant and abusive for days at a time, up to 50 messages a day, relentless and it made her very anxious. For one message trail she counted 353 messages. Father disputed that precise number but offered no alternative. In reality whether there was 300/350 makes no difference. The mother was worried the father was going to turn up at her house or nursery. It was, she said, a very difficult time with days of constant abuse whilst trying to look after her daughter; it took its toll upon her. It was, she said, daily abuse, every time she looked at her phone and eventually she contacted the police.

47. She set out in her statements and in her evidence the things father has said to her in the messages. Given that father vacillated as to whether the messages were harassing or offensive (more of this later), it is important that I should set out some examples here, these are specific messages highlighted by the mother in her draft questions to the father and as such, they will be amongst those which have affected her the most.

- *“Knew you weren’t going to turn up anyway coward bitter horrible cunt fuck you this is war now”*
- *“this is all you can do to me its all you got you sad little weak spineless jellyfish”*
- *“job :dead : social life : dead : self-worth : dead inside : dead”*
- *“and that’s why I hate you to the core”*
- *“I’m going to make sure that they all know what your doing I’m gna message your people tell them how your moving and expose all your business to them”*

- *“selfish cunt”*
- *“so you can wait and I’m going to love the look on your face when I start appearing places you are”*
- *“If you fuck ten man I don’t care”*
- *“you are sick what I have planned u will wish you had never done this”*

48. There were many more messages in similar vein, I do not need to set them all out here. They are included in the bundle and are accepted by father as having been sent by him. It is difficult to consider such messages in any context in which they are not offensive and harassing and likely to cause distress. They also clearly fall within the definition of coercive behaviour as referred to in paragraph 35 above.

49. There were also additional messages / calls by father to the mother’s mother and father and from father’s sister to the mother. The mother believed that father had arranged for his sister and a friend to harass her but accepted that there was no evidence to prove this.

50. When father asked her, in his additional questions, to “identify what form of abuse specifically that you suffered” she replied: harassment, threats, threats to “A”’s wellbeing, family, privacy, social life and discussing the matter with nursery.

51. On behalf of the father I put this question of his to the mother:

“Do you understand that I was only messaging you to have contact with “A” nothing else? She replied that she did not accept that, it was completely untrue; why call her things?... he was aggressive in tone, called her the worst names, said he would turn up and follow her; it was nothing to do with contact and never about “A”.

52. The father’s final question was basically to accuse her of lying. She denied this and simply referred to the evidence of all of the messages.

FATHER’S EVIDENCE

53. Father also gave his evidence under affirmation. His oral evidence and presentation was strikingly different from that of the mother. He showed considerable frustration during his evidence and was very emotional at times, cold and laughing at other times. His evidence was also inconsistent and often changed during the time he was giving evidence, when questioned or challenged. He was not a very credible witness. I do not believe that he has actually told lies, but he has a high and self-justified perception of himself and his behaviour which suggests a lack of understanding and empathy. He was frequently evasive in his answers, deflecting blame, answering his own questions rather than those asked and minimising his behaviour. Throughout all of his evidence he repeatedly placed the blame for the way he behaved upon the mother's refusal to meet him/agree to contact, even when accepting that he had behaved badly. It is important that I address some examples of this.

54. I asked the father if he accepted that the allegation that the text messages were abusive or harassing. He initially replied that he did not but accepted that they were rude and insulting, but that they were only as a result of his frustration at what the mother had done in preventing him from seeing "A". He then stated that yes, he accepted that she would find it offensive and harassing but that he would still do it again. He did regret saying some of the things but did not have much guilt "because she knew what she was doing." It was her fault and was caused by his anger, frustration and hurt.

55. Later in his evidence he stated that he accepted that the messages were abusive and demeaning but not threatening. They were a grief reaction. He was frustrated that nothing was coming back to him from the mother. He considered that the mother's behaviour to him was revenge for him messing up and hurting her in the relationship.

56. He accepted continually messaging her, that it was driving him insane, inducing so much stress, the mother's behaviour contributed... When asked why he would do it again, he replied that it was due to his love for his first child. Maybe he would be more tactful and less insulting but he would keep calling her "a million times" until I know. It consumed him. His behaviour was based on her

refusal, but he offered an apology and said that he accepted that he was partly to blame. He then again stated that he did not regret his behaviour and that the mother was simply acting.

57. He accepted being angry with the maternal grandmother over her calling "A" a "tinker" which he felt had been said with racial overtones. He accepted the transcript of the 3 minute phone message he left on 15.3.22 as being accurate. The father specifically says that it was not a threat, but instead was fact, a phrase he used often in his evidence in an attempt to support what in reality is his own very strongly and seemingly unshakeable opinions – which he holds as being absolutely correct and factual. It is difficult to perceive how when someone says "*I am coming for you*" it is not a threat of some kind. The message also seems to contain a veiled threat concerning "A" "*one day when this is all comes to light I'm telling you right now "A" not going like non of you lot trust me mark my words*" This could suggest that the father intends to discuss these matters directly with "A" in the future in an attempt make her dislike her maternal family. That would be devastating for her.

58. I will set out the message in its entirety.

- *I'm just letting you know after all this stuff is over with "A" I'm takin all of you lot to court for all of your lies you can record this, you can tell anyone who you want this is not abuse this is just pure facts I'm takin you to court [.....] trust me even if it's a civil matter I've got a barrister on speed dial it's going to cost me nothing so I hope you lot get yourselves ready and all the ramifications of your actions will all come to light now trust me cos I'm not having any of this. It's just evil everything that you're doing and your thinking that you're doing me your doing "A" that's who your doing so get yourselves ready after all this is done I'm taking all of you cos you think you can lie to the police and try and get me in trouble like I'm stupid this is the thing that you need to understand I am not stupid and I am prepared I am not going to give up about seeing "A". That's one thing you lot need to get into your heads try everything you want I am not going to give up and one day when this is all comes to light I'm telling you right now "A" not going like non of you lot trust me*

mark my words when I say this so you can pretend to play the victim oh abuse bla bla bla it's you lot who have been doing it to me mate for the last 3 years I've got information and everything so carry on with your little evil selves and doing what you're thinking that your're doing me you're doing yourselves and you're doing "A" everyone knows now CAFCAS knows the JUDGE knows we all know so carry on treading water thinking you're smart doing making up stuff you can go back and tell them that I've sent this message I don't actually care do you understand what I am saying I don't care everything you have done to me I am still here aren't I I'm still standing so carry on with what you're doing I'm telling you all of you are going to get picked apart very slowly in relation to this trust me no ones giving up we're just getting warmed up so prepare yourself like I said I hope you lot have got deep pockets cos we'll be going back and forth to court till huh till you literally get ill I'm telling you that right now. You're not going to be able to handle it you're not going to be able to handle it you can't even handle you can't even handle the little bit of stress right now so you ain't going to handle the storm which is going to be coming and that's not in any way a threat it's facts of court telling you and especially that little weasel [.....] he's been sitting there hiding behind everyone else huh trust me you [.....] I'm coming for you and when you have to explain yourself in court yes about your racism all of this nonsense every you got to think about everything that you lot have done lies all it I'm still here I'm not in jail am I so you can record this take it to whoever you want I don't care my main concern is wanting to see "A" and this is what you lot can't take cos you can't do anything you can't offer her nothing what's [.....] got to offer a mixed race girl what actually what've they got to offer nothing dead so I'm telling you right now huh you lot are done out here trust me when I say this yes trust me when I say this you lot are finished.

59. He is firmly convinced that the mother's family are racist. He accepted referring to the maternal grandfather as a "nazi cunt" which he said was not abusive at all since it was true and fact.

60. It was a recurring theme throughout his evidence that on the occasions when he actually accepted that his behaviour had been inappropriate, he then sought to deflect the blame from him or justify his behaviour by adding “but...” and then proceeding to blame the mother for not meeting him and allowing contact.
61. When he was asked if he accepted that his behaviour may have caused mother distress he replied “probably a bit... but me too as I couldn’t see “A”. She brought it on herself... she only needed to speak to me.” When asked what he thought “A” would make of him calling her mother a “cunt” he accepted that she wouldn’t like it, but it was done out of frustration... maybe he should have been more tactful... yes insulting her was horrible. He accepted that “A” would be upset if she knew he made her mother anxious, but he was fed up. He shouldn’t have done it and probably wouldn’t do it again. He’d call the police instead as he has parental responsibility. In the same breath he said that he was at the end of his tether and fed up but that he was in control of his emotions. In his closing statement he said that it was hard for him to control his emotions. He referred to completing therapy, but details and relevance are unknown – as are the facts which he told the therapist.
62. He was asked by “A”’s counsel to accept that he had sent a significant amount of fairly horrific and abusive messages in a short time. He attempted to deflect the question but then replied “*if that’s how they want to see it... at times they were abusive*”. He simply could not accept and respect that the mother did not want to communicate with him, insisting that if she had agreed to meet with him, for dinner, it could all have been sorted out and that she should have set something up. When it was put to him by counsel for “A” “it’s your way or no way?” he replied that he was a very empathetic person, it was not on his terms at all, he just wanted to see his daughter and co-parent.
63. He also stated that he took responsibility for his actions but that he tried to get mother to talk for over a year and he would not feel guilty for what he had done and would not tiptoe around her.

64. He denied asking others to harass the mother. He admitted calling the mother's place of work and said that he did not regret what he said, it was "what he had to do". He was concerned that his passion for "A" was being misconstrued as aggression.
65. The father's evidence and his perception of his own behaviour changed so much during his evidence that it is difficult to know what he genuinely believes and accepts. He was wholly inconsistent. At times he showed remorse and apologised, but then almost immediately accused the mother of lying, exaggerating and acting. He stated in one breath that he would do the same again, next time he would not and in his closing statement he said again he would still send a lot of messages but not insults. It is very clear to me that the father does not accept that his behaviour has caused the mother the level of abuse which she is clear that she feels she has suffered at his hands. He stated that he understood the meaning of "Domestic Abuse" but then denied, on many occasions, that his behaviour had been abusive at all. Whether this was simply him not being entirely honest, or is a lack of understanding of the true meaning of abuse, or a complete lack of understanding of the effect of his behaviour upon the mother, "A" and her family, or indeed deliberate or thoughtless minimisation of his behaviour I do not know. I suspect neither does the father as he was simply unable to decide whether to accept the allegations that the behaviour was abusive and impactful or even to maintain any acceptance/denial of his behaviour in his evidence.
66. In my judgment the father has evidenced no empathy to the mother or indeed "A". Throughout his evidence he continued to vacillate from apologising, to accusing the mother of acting, of lying and to blame her for how he behaved towards her. The repeated insistence that all of this could have been avoided if the mother had met with him and that she had caused it all ("brought it on herself") shows to me that he does not understand the true meaning and extent of domestic abuse and its effect despite his protestations to the contrary. On several occasions he insisted that he had not been physically violent – that is not disputed. Abuse, however, takes many forms and here it has been a sustained course of action against the mother. I remind myself of the definition:

“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.”

67. In my judgment the father has committed domestic abuse against the mother with a pattern of coercive, abusive, offensive and threatening behaviour comprising of both psychological and emotional abuse. What is of considerable concern to the court is that having accepted that he behaved badly on occasions, the father then stated that he would do so again. He has no understanding of how his actions have affected both the mother and “A” to date and how they would continue to be affected in the future and until he truly accepts and understands how his behaviour has affected the mother, she will remain at risk of further abuse, as will “A” in her care. The father appears to accept only that some of the insults and words he used were wrong but not the frequency of calls/texts which were made. He needs to cease blaming the mother to justify his own actions and fully take responsibility. He needs to provide evidence of change and understanding, not merely half-hearted apologies, half admissions / part acceptances and deflection.

THE FINDINGS OF THE COURT

68. I shall now turn to the specific allegations. My assessment of the evidence is also taken into account in coming to these following conclusions and findings.

69. Allegation 1: January 2020 - February 2020

1. Respondent sent abusive communications to the applicant and harassed her
2. & 3 are supportive/corroborative items

The mother’s written evidence is found in her statements and in the attachments, being the actual text messages etc. The mother’s evidence has

reached the necessary standard of proof to enable me to make the findings sought. I am satisfied that the mother has discharged the burden of proof in respect of this allegation. Father admits sending these and that the contents are accurate. Occasionally in his evidence he accepted that they were abusive. He did not accept that they were harassing. I am in a position to make this finding and I do so. I wholly accept that the communications were abusive for the reasons stated above and due to the sheer number and contents they most certainly are to be considered as harassing. Father's attempts to justify his behaviour are rejected. The messages were extremely unpleasant, abusive, occasionally threatening and deeply insulting to the mother. They are also indicative of coercive and controlling behaviour.

70. Allegation 2: 16/5/21 - 30/5/21

1. Respondent harassed the Applicant bombarding her with approx. 353 text messages and telephoned her up to 20 times at a time before the Applicant blocked the Respondent's telephone number
2. Is a supportive/corroborative item

The mother's written evidence is found in her statements and in the attachments, being the actual text messages etc. The mother's evidence has reached the necessary standard of proof to enable me to make the findings sought. I am satisfied that the mother has discharged the burden of proof in respect of this allegation. The father admits sending these (though not the exact number) and that the contents are accurate. Father did not accept that this was harassment. I disagree. I am in a position to make this finding and I do so. I wholly accept that the communications are considered as harassing. Father's attempts to justify his behaviour are rejected. The messages were extremely unpleasant, abusive, occasionally threatening and deeply insulting to the mother. They are also indicative of coercive and controlling behaviour.

71. Allegation 3: 16/5/21 - 28/6/21

1. Respondent threatened and intimidated the Applicant causing distress. Respondent messaged the applicant stating he would attend her home, "start appearing places" she was "I'm not going to go away" "ever" and

“...if you ignore me don’t get upset about what happened”. Respondent sent a photo of “A”’s nursery with the captions “take it this is “A” [sic] nursery” “I’ll be going to the nursery”

2. Is a supportive/corroborative item

The mother’s written evidence is found in her statements and in the attachments, being the actual text messages etc. The mother’s evidence has reached the necessary standard of proof to enable me to make the findings sought. I am satisfied that the mother has discharged the burden of proof in respect of this allegation. Father admits sending these and that the contents are accurate. Father did not accept that they were threatening or intimidating or that the mother was caused distress by them. I disagree. I am in a position to make this finding and I do so. I wholly accept that the communications are considered as harassing, threatening and intimidating and that they caused the mother distress. I fully accept her evidence. The messages were extremely unpleasant, abusive, occasionally threatening and deeply insulting to the mother. They are also indicative of coercive and controlling behaviour.

72. Allegation 4: May 2021 – 13/7/2021

1. Respondent harassed the Applicant via third parties despite the Applicant clearly communicating to the Respondent that she did not want to communicate with him
2. Respondent contacted the Applicant’s place of work insisting she come out of lessons to speak with him and wanting to know her breaktimes
3. Respondent contacted the Applicant’s father leaving abusive messages pertaining to the Applicant and her family
4. Applicant received calls from unknown numbers following her blocking the Respondent’s number

In relation to allegations 1 and 4, the father denies these and I have no corroborating evidence either way. I do not have sufficient evidence to make these findings to the burden of proof required. They are not proven.

In relation to allegations 2 and 3, these are proven. The mother's written evidence is found in her statements and in the attachments, being the actual text messages and phone transcript (I have listened to the original). The mother's evidence has reached the necessary standard of proof to enable me to make the findings sought. I am satisfied that the mother has discharged the burden of proof in respect of this allegation. The father admitted contacting the mother's place of work and there is the clear evidence of the abusive and threatening telephone message referred to above. The father admits making the calls. Father did not accept that the telephone message to the mother's family was abusive. I disagree. I am in a position to make this finding and I do so. I wholly accept that the phone message and the call to the mother's place of work where the father divulged sensitive information to a third party is considered as harassing.

CONCLUSION AND NEXT STEPS

73. I am satisfied that the mother has been subjected to abusive and harassing behaviour by father as set out above and she has been caused distress as a result of this. The father's behaviour falls within the definition of controlling and coercive behaviour.

74. This is my judgment.

75. An order confirming the outcome and the directions for future consideration of the welfare issues will follow.

Her Honour Judge Hesford

1 August 2022