

IN THE FAMILY COURT

Neutral Citation Number: [2023] EWFC 176 (B)

Before:

DISTRICT JUDGE WEBB

Between:

THE FATHER

Applicant

-and-

THE MOTHER

Respondent

JUDGMENT FOLLOWING FINDING OF FACT HEARING

The Father appeared in person

Ms Zoey White (instructed by Barcan + Kirby) appeared on behalf of the Mother

These are Private Law Children proceedings in which the application before the Court was initially made in respect of "A" a 4-year-old boy with whom The Father is seeking to spend time. A's twin 2-year-old sisters "B" and "C" were included during proceedings following DNA testing confirming their paternity, this having previously been challenged by The Father.

This judgment follows a finding of fact hearing which took place on 25 and 28 April, 8 and 9 June and 7 August 2023. Many allegations were made the most serious being of rape. This judgment was handed down in private at 2pm on 22nd August 2023. consists of 99 paragraphs and has been signed and dated by the judge. The judge gives leave for it to be reported in this anonymised form.

District Judge Webb:

The Background

1. This fact-finding hearing was listed for two days. It transpired that the evidence included 2 ABE interviews conducted with the mother and 2 police interviews conducted with the father, in addition the father wished the court to consider two pieces of video evidence. Neither party had provided transcripts of these interviews

and it was thus necessary to listen to 8 hours of evidence, all interpreted into father's first language. That took the entirety of the time initially allocated to this matter.

2. The next two days covered cross examination of the parties. During cross examination it became clear that Ms White wished to put to the father numerous documents which supported her contention of recent complaint, it was further clear that he had not read those documents and moreover he could not do so as they were in English. The case was subsequently adjourned to allow for those documents to be translated. Evidence and submissions concluded on 7 August; I then adjourned the case to review the documentation before providing a judgment.
3. There has been a marked disparity in the quality of representation. The mother has had consistent and skilled representation from Ms White, she has been supported at court by a trainee solicitor throughout the process. She has had the benefit of legal aid and her solicitors have been able to carry out the investigations they saw fit. The father who is from Eastern Europe has had no legal representation. He has conducted the proceedings in a foreign language in the court of a country of which he is not a national. The court has provided interpreters but between court hearings he has had no support.
4. This case predates the Domestic Abuse Act 2021 and thus questioning has been conducted by me based on the questions provided by the father. Participation directions have allowed the mother to give evidence from the Vulnerable Witness Suite. This has allowed her to provide the best evidence possible. I have endeavoured to fulfil my obligations pursuant to 31G(6) Matrimonial and Family Proceedings Act 1984 and Practice Direction 12J paragraph 28 and this had led to the uncomfortable position of asking questions on the father's behalf and challenging the mother's assertion she had been raped. That assistance does not of course extend to outside of the court arena and I have been troubled by the lack of any legal support for the father who faced allegations of the most serious nature.

The People Involved

5. The mother is a single woman, she has a 12-year daughter X from a previous relationship, a 10 year old daughter Y from a different relationship who has behavioural difficulties, she has a son A born in August 2019, and twin girls, B and

C, both. The father is the father of the three youngest children. The father is a national of an Eastern European country who has lived in this country for some years. He has a 12-year-old son, Z, for whom he is the principal carer.

The Allegations

6. The mother has set out her allegations of domestic abuse in a Schedule. These fall into categories as follows:

Allegations of sexual misconduct including rape in April 2019 and coercion to have sex and unwanted sexual touching throughout the relationship (allegations 1 to 3).

Allegations of forcibly entering her home post the breakdown of the relationship on two dates in September 2020 (allegations 4 and 5) and of attending her home when contact was agreed against the terms of that agreement (allegation 12)

Allegations of coercion and control in terms of the use of degrading language (allegation 6), control of who she saw (allegation 7), control of money (allegation 8), manhandling her (allegation 9), watching her and stalking her (allegation 10), harassing her by constant message and calls during periods of relationship breakdown (allegation 11). Allegations of emotional abuse.

7. The father denies all these allegations stating this was a loving relationship and that there is evidence of dishonesty on the mother's part which disproves these allegations. He relies heavily on the fact the police did not proceed with charges against him in relation to any of these matters as proof that the allegations are falsifications and lies.

The Evidence

8. I have considered the bundle, ABE interviews of the mother from April 2019 and September 2020, police interviews of the father from April 2019 and May 2021 and two covert recordings made of conversations between parties which he adduced as evidence. I have further heard submissions from both parties and Ms White has prepared a very helpful chronology. The fact that I do not refer to a piece of evidence of submission made does not mean I have not considered it.

The Mother

9. The mother indicated the relationship started in October 2018. She stated the father would call her degrading names and then 'love bomb' her. The relationship ended in

April 2019 after she states he raped her. She stated she was 4 months pregnant with A at the time and they had been arguing. She provided a description of the lead up to and the incident in which she says The father raped her. (For the purposes of this anonymised judgment the details are omitted).

10. That description includes an argument that began over the phone, with the father then coming to the mother's home and intercourse taking place between them that she states was not only not consensual but was brutal and left her bleeding. She suggested that the police decided to charge but the case fell through.
11. She also indicated in her statement that she would be pressurised into having sex knowing that she would be too scared to say no. This behaviour included him putting his hands on her body and down her trousers. She stated:
"The Applicant did not see me as a person, instead he saw me as a possession that he could do with as he liked" (Para 4)
12. After separation she indicated that the father would stalk and harass her creating fake Facebook profiles to try and speak to her. They lived close together and he would sit on his balcony to watch her go past. He would walk in paths near her home and approach her when she walked her children to school. He would call her names and film her. He would sit outside her house sometime with a friend in a car.
13. She stated that in September 2020 he attended her house demanding to see A. He was relentless in his demands for this and took the child. He then returned and took her phone from her deleting all the messages between them. He attended the house again the following day and tried to kiss her. When she reiterated the relationship was over he began crying and violently hit himself on his head. He threatened to kill himself.
14. She stated that during the relationship the father would control whom she spoke to and by the end of the relationship she had lost her circle of friends. He would accuse her of having affairs. When with family she would have to take photos of herself with them to satisfy him that that is where she really was.
15. She indicated that this pattern of harassment wore her down to the point that the relationship rekindled. This led to the conception of twins, B and C. She told the police that she no longer supported a prosecution. At around this time, The Father returned to his home country and she indicated that he continued to message her.

When he returned to the UK in March 2021, he tracked her down and again began to stalk her.

16. The twins were born in July 2021 and in August of that year the CPS confirmed they would not be pursuing a case against the father, that led to him recontacting her. She indicated that he was only interested in seeing his son A rather than his twin daughters and she tried to manage that situation. She had agreed for a third party to pick A up. In early April 2022, he personally attended her home, and she opened the door to find him filming her. She accepted she swore in front of him and slammed the door on him. That attendance at the house was the trigger point to her ending contact between him and A which gave rise to this application.
17. The mother provided a more detailed account of the incidents whilst under ABE interview. Given the seriousness of the allegation it is worth setting out her description of the alleged rape as given to the Police in April 2019.
18. Her initial account at that time included a detailed description of the argument between her and The father and the events that precipitated this. It details the threats to hurt her and rape her that she says the father made during that argument as well a detailed description of the rape itself and the actions and reactions of both the father and herself immediately afterwards.

Within the ABE Interview the mother was asked to give a more comprehensive account and was questioned about aspects of it. Her testimony included some more background as to the dynamics of the relationship and difficulties that arose in respect of their various children, as well as detail about the father's demeanour, what she was thinking and feeling during the incident and a very detailed description of the exact mechanisms of the rape itself, including that she did not scream. She stated she made a conscious decision not to fight as the father was not someone you said 'no' to and she was concerned for the safety of her unborn baby. She described the brutal nature of the rape and how she had discovered she was bleeding afterwards. The Mother explained that she and the father never discussed the incident and that whilst she was unable to label what had taken place between them, she knew it was not right and was not normal. She was unable to tell the Police the exact date the incident had taken place but explained that the father expected sex every day at least once, saying

that it was all he cared about and that he would get angry if they did not do it at least once.

The mother was asked by the interviewing officer “*Are afraid of him?*” and replied, “*Yes I’m really afraid ... he knows I’m afraid of him, one time he stood up really fast and I started shaking, he said ‘you are afraid of me aren’t you’ and he was smiling but I said no. But he started pinching me when I walked past, he’d pull my hair, he is strong, he’d show me how strong he was, he went to the gym a lot, he made me watch him once with his punch bag, he knocked it over in one and said ‘see what I can do’*

If I was to say no he would just pin me down and do it a lot worse than he did to me,

In the police log the interviewing officer commented on the interview tape stating:

“I have no reason not to believe the account provided by The Mother. She came across very credible in ABE and was able to recall the incidents clearly and consistently each time she spoke about the allegations. She was emotional, frightened and very nervous. There were no inconsistencies when recalling each incident when spoken to in more depth. She did not feel able to end her relationship with The Father whilst he still lived close by.” (comment in Log in bundle). Having viewed the video interview, I share the interviewing officer’s assessment. It is a compelling account given to a male officer and categorised by nervousness and hesitation but containing a central clear description of the incident which is given once in an initial account, once under questioning and a third time under more probing questioning.

19. A key part of the mother’s case is the reporting of this incident to third parties, all of which was disclosed via police statements and social service records. Analysing these carefully the sequence of reporting is as follows.

20. Interaction 1: The classroom assistant

A teaching assistant describes the mother describing an abusive relationship with the father (264). These conversations start in January 2019 but on an unnamed date there is a discussion summarised as follows:

“The Mother then on another day approached me when I was stood at the photocopier and she told me that she had been ‘Raped’. She apologised for telling me and seemed embarrassed and ashamed. I was shocked by what she had told me and she seemed mortified by what she had said. To be honest the rest of the conversation was a bit of a blur because I really did not know what to say to her.”

This incident is not dated and there is no further information as to any follow up.

21. Interaction 2: Drug & Alcohol Support Service

The mother had involvement with a local Drug and Alcohol Support Service and was receiving a script for Subutex. Her account for this was that she had become addicted to prescription pain killers. It appears that she mentioned her experiences to her drugs worker who put her in contact with a local Domestic Abuse Service. A worker from that service received a call from a worker from the Drug and Alcohol Support Service in late March 2019 (276).

22. Interaction 3: Domestic Abuse Support Service

In the latter part of March 2019 an Independent Domestic Violence Advocate (IDVA) working for the local Domestic Abuse Service spoke to the mother who stated that *“there has been a recent incident where The Father has forced her to have sex with him”* (276) An appointment was made for them to meet, and that meeting occurred during the first few days of April. At this meeting she stated

“She then went onto say that the father had pressurised her to have sex with him, that he had been very brutal with her, had caused her a lot of pain and she had been bleeding afterwards. The mother said she had told him ‘no’ and she didn’t want that, but he would not stop”.

Support was given but the mother’s willingness to support action reduced with the IDVA’s statement describing meeting the mother in later April in her local area and going on to say *“She told me that she was disheartened by the police and she felt they did not believe her in relation to what the father was doing. She told me that the father was loitering around the pharmacy where she collects her medication and that he seemed to be everywhere she went.”* (278)

23. Interaction 4: Headteacher (268)

The head teacher at the children's school reports that in late March 2019 the mother asked to see her.

“She then started to tell me about sexual things that the father would make her do when she did not want to. I asked her what she meant, and she told me ... She then said it had caused pain and she had also started bleeding... she went onto say that he would make it clear to her that he was going to hurt her so she knew the type of sex she would end up having. Even when she did not want to have sex with him she would because it was easier and although she would tell him that she felt unwell or was too tired he would still have sex with her.”

The head teacher said

“I pointed out to the mother what she had just told me was ‘Rape’. I think she knew deep down it was rape and against the law what he was doing” (270)

The head teacher made a referral to Social Services. A meeting was arranged for early April and as a result of that the mother called the police from the headteacher's office. She describes a further incident later in April when she stated the father had cornered her in the street.

24. Interaction 5: Meeting with Social Services at the School

A social worker attended the school in early April. This gives rise to a fairly detailed description of events explaining that she had met the mother for the first time on the day of the meeting at the school. She went on to say that:

“I had not met her prior to this, and our relationship is purely professional. During our meeting the mother disclosed to me that her partner became quite controlling very early on. He would tell her not to wear certain clothing, she gives him money and that she can only speak to women. On one occasion at school she spoke to a male teacher and the father became very angry and aggressive. The mother told me that she is very frightened of him. She described him as very controlling, and she knows that if she does not do it there will be consequences. She has given him a key and often he would let himself into the house and be waiting for her when she got home even though she had told him that she did not want to see him. The mother told me that she has not been physically beaten but he has grabbed her on a number of occasions on her arm. She then went on to tell me that the father would demand sex every day and if she

refused to have sex with him he would get very angry. The mother told me that even when she told the father that she was tired or felt unwell and did not want to have sex he would say to her that she must have sex with him because he had been nice to her for the past two weeks. The mother told me that she would have sex even though she did not want to because she knew what the consequences would be if she didn't. I told her that what she was describing to me was 'Rape'. The mother agreed that she had not consented, and she had been forced by the father.

She then told me about the worst incident that happened at the beginning of March 2019. The father and her had a silly argument about something that had escalated which then caused my own to say to her repeatedly "have you ever been raped" to which she said "no". He then kept shouting at her to go upstairs which she refused to do initially but eventually went. She said that she felt very frightened, and he then forced her to have sex with him and it was really painful and it caused her to bleed. She went on to say that she didn't scream, and she feels guilty about letting it happen. I asked the mother why she did not report the rape to the police, and she told me that she did not want anybody to know because he was her partner and she felt embarrassed. While I was in the meeting with the mother she also told me about the text messages that the father had been sending her. I cannot remember the exact content, but they were vile horrible comments."

25. The Social Worker also explains the aftermath leading to the matter not proceeding and detailed the mother telling her about a phone call she received in early April where the father had threatened to kill her "His words were " I'm going to kill you and if I can't have (Unborn A) then nobody will" this threat was heard by the mother's eldest daughter X. The mother told me she was petrified by this, and she believes he will do what he says."

The Social Worker explains that her colleague later spoke to the mother because she had been away on leave and was told by the mother that she " had received a call from the chemist saying that the father had been in there asking if they had seen her or knew where she was. The mother was shaken up by this."

She explains that later that April she had spoken to the mother "and she told me that there was an incident outside the school where the father had tried to kiss and cuddle

her in the street and kept asking why she didn't want to be with him I could tell from the mother's voice that she was extremely anxious and was upset and crying. In late April I called the mother to do a welfare check and to see how she was doing and she told me that she had gone to the chemist to collect her prescription and the father was stood opposite just staring at her. He did not say or do anything. She said she felt scared and physically sick.

A day or so later the Social Worker had again phoned the mother and states “ *she told me that earlier that day she had received text messages from her friends saying that the father was stood at the end of her road. The mother felt like he was trying to intimidate her. She also told me that she is petrified to go out in case he is there.*

At the end of April 2019 the Social Worker again spoke to her and noted “*she told me she was finding it difficult to cope with everything that was going on. That she was crying and in a state every day and her children were having to witness this so she has decided to drop the charges against the father. She went on to say that she felt that he would be less angry. She then went on to say that she'd messaged the father over the weekend to make him aware of her decision. She's also concerned about the stress that is being put on her unborn baby.*

I would describe the mother as a vulnerable woman who is very fragile, naive to a certain extent and blames herself for what has happened to her. She appears to be a nice individual who could easily be manipulated who is just looking for a stable family unit.”

26. Interaction 6: Police Officer One and Police Officer Two

The first face to face involvement with the police was conducted by PC One who visited the mother in early April 2019. This officer was accompanied by PC Two and she gave an initial account, PC Two asked her to clarify if they had sexual intercourse on this occasion and she replied by nodding. She then said “*He did not know I was bleeding. He went downstairs and had a fag. He knows what he has done, I think he enjoyed it.*”

27. Interaction 7: ABE interview with Police Officer Three April 2019

As indicated the mother underwent an ABE interview on this day.

28. Interaction 8 Independent Domestic Abuse Advisor May 2023

The mother was referred to a second IDVA and they spoke on 23rd May. The description given of the conversation is as follows:

“I had a conversation with the mother by phone, she advised me that she had contact from the father, she told me that she had taken a call from him and now regrets it. He had said to her that it was “IMPOSSIBLE FOR HIM TO HAVE DONE THE THINGS HE IS ACCUSED OF AS THEY WERE TOGETHER IN A RELATIONSHIP HE CAN DO AS HE PLEASED” He had told The Mother that he would forgive her, and they could go to the Police station together to tell the Police. I offered her a further visit that day, she was open to this however wanted to do this after the children had gone back to school.”

29. There are thus interactions with 9 different professions in the period from early March 2019 to the end of May 2019 where the mother describes an abusive relationship, a sexual assault and the aftermath. None of these interactions reveal a different version of events. These considerably add to the weight of her testimony.

30. A statement taken from the mother’s mother (at 344) confirms she was aware of the allegations during 2019.

31. The mother provided a further detailed ABE in September 2020. In summary that interview supported the version of events given in her witness statement in relation to the later events complained of. Whilst investigating these allegations the police took statements from an unnamed friend and the maternal grandmother. Both stated that they had seen a withdrawal from social interaction as a result of her relationship with the father and the friend talked about her experiencing a ‘*personality transplant*’.

The grandmother made the following comments;

“I then noticed the father appeared to become more controlling, the mother told me he was accusing her of having relationships with other people. The mother would tell me this when I would see her most weeks. The mother appeared to be becoming lower in her moods, and being scared of the father, she told me that the father was saying things she did not like in front of the children. He never said anything towards

them or would harm them, I had my own concerns of the effect this was having on the mother and her mental health. over time, the mother told me that the father was becoming more accusing over her and preventing her from doing things such as speaking to other men, or friends” (345)

The mother’s friend made the following comments

“she told me that on one occasion he was waiting for her in the long grass. She said that he crouched down and was hidden in the grass and jumped out as she walked past with the children. I saw her at the school this day and she arrived crying and was shaking in fear as he had done this. I then walked to school with her, and when I have walked to school with her on some occasions, I cannot recall how many times, I would see the father in various places along the route, however he never approached us when I was with her.

The mother was a lot less positive and happy within herself, it was as if she had a personality transplant. She was worried all the time, she was worried about seeing him, worried about the pregnancy, and had turned into a nervous wreck. I noticed the change in her and this appeared to relate to her relationship. (332)

32. In examination in chief and under cross examination she made several comments of note as follows:

“I delayed going to the police. First I didn’t know if that was what had happened. Then it troubled me. The children saw me upset. The children’s behaviour changed. The school saw it. I spoke to my IDVA, it was only when she said it that I realised what had happened. With school support I called the police together at the school, that is when I told them everything. I did not want to admit it to myself that a partner would do that. I tried to carry on, but it did affect me because deep down I knew it was wrong.”

“I knew something had happened, but I did not know it was classed as rape, but I knew something had happened. I did not know it could happen in a relationship, because it was my partner, I did not know it was classed as that as we were together.”

She also explained why they got back together:

“I always had a picture of a family in my head. (I believed) he would change, and I suppose I did believe him,

“I loved him at one point, and I did love his child. I was carrying twins. He would contact me continuously”

Her account was not significantly undermined by cross examination. However, a number of points of contrast and concern were raised which I will deal with as I survey The father’s evidence.

The Father’s evidence

33. The father prepared an undated statement (80). He prepared this in his first language, and it was translated into English. He described meeting the mother in October 2018. He stated she broke up from her then boyfriend to be with him telling him that boyfriend did not provide the kind of sex she wanted. He stated the relationship was initially fine, but he was used and sexually exploited having sex 3 to 6 times per day. This led to him having to be examined at hospital because he was so exhausted. When he returned from hospital she announced she was pregnant and believed it to be a boy. He decided to remain with her mainly so he could see the child.
34. He described her becoming aggressive and she confided to him she has been raped by her father when 9 years old and had begun to abuse alcohol and drugs becoming addicted to heroin which was why she was on Subutex. He blames her use of Subutex on causing problems for her children including various syndromes. He described telling her he wanted to break up as he did not want to have disabled child and she was continuing to use Subutex. He moved to a new home in mid-April 2019 and in early May 2019 he was arrested in relation to an allegation of rape.
35. He was very clear that he had not raped her commenting:

“By the time she filed the rape complaint I had had sex with her more than 300 times. She was the one who explained to me and educated me with regard to what she liked me to do to her before sex, she liked the way we had sex 300 times, but on the day of the alleged rape, she didn’t like it anymore. It doesn’t make sense to me, she’s the mother of my children. I swear on the Bible, I have never raped a woman in my life.”

36. He questioned why she would delay in reporting the rape. He was questioned by the police and provided them with text messages. His view was this was why the police said he was not guilty. He stated that in June she called him to say the police were not proceeding. She went to his home and stated that she had never told the police he had raped her. He recorded this conversation. They got back together but after two weeks she contacted him to say that social services would not let her be with him.
37. He worked with social services and shared messages with them. His view was that they had sent her on a 're-education' course. Eventually social services were content, and the relationship resumed. He was concerned about the fact she had slept with 50 men and her willingness to discuss that with him. He contrasted his view that he was a family orientated guy who preferred long term relationships.
38. He was clear that in the period when they were not in a relationship she would come to his house and in fact slept with him leading to the conception of the twins. He denies his behaviour was in anyway abusive or had any elements of stalking. He was very distressed to be arrested again in October 2020 and described being made to lie on the floor and handcuffed in front of his child Z. He is particularly aggrieved because he stated the police took two mobile phones which were of evidential value, but which have never been returned to him.
39. He stated that on the day of his arrest the mother had applied for a larger house from the council and believes that making these allegations helped her to move.
40. After these events he returned to his home country, but she messaged him saying she was having twins. He was very critical of her lifestyle and stated:
"I've seen her, and I swear to you, with my hand on a Bible that the defendant is only happy once a month when her child benefits are paid"
41. He was clear that it was her who requested he returned to the UK, and they gave the relationship another go. He stated he returned from his home country with good intentions to start again but she was jealous checking his Facebook profile and she was always socialising on social media with men.
42. It is clear he has a low opinion of the mother stating:
But the defendant formed (forced) me into having 3 children, without paying any attention to my opinion on the matter and now, she expects me to help her and be a

good father...The defendant's older daughters were made with two different fathers, when she had causal sex with them, just to get pregnant. Why isn't she asking them for help? I'm the only one she has expectations from. That's because it is easier with me. I am an immigrant, and nobody listens to me"

"I have not bothered her since February, and I am not interested in her person anymore because she has no character and she's lying all the time."

"I know how she operates and what a diabolical mind she has"

43. He attached to his statement photographs of him caring for A and the twins. He further attached texts from her including the following:

"I'm really sorry I've made you so upset, and I completely understand you not feeling safe but please do not give up on us because I really love you and want to be a (The Father's last name). If you want the next time I come to you we can try and arrange a wedding? Just me and you. Goodnight babe xxxx my amazing daddy xxxx" (97)

"There is so many police around and a helicopter! I don't blame you for feeling scared love, remember if you want me to say I lied about everything I will xxxx" (98)

"Done. I told him that I overreacted and I'm just sensitive and it was just normal couple arguments and not to interview you!" (109)

"I love you lots ... and want to be a family more than anything. (emoji heart) goodnight my love (emoji heart)." (116)

"Thank you again for always helping me (heart emoji) you're a good man xxxx" (undated 131)

"I seriously love you and I have enjoyed your company (heart emoji) I feel so much happier about me and you (kiss emoji) especially seeing the girls happy) (152)

"Of course babe I swear I love you so much and am going to do anything to keep you out of trouble!! Xxx" (167)

"I really love you (heart emoji) seriously thank you for forgiving me and giving me another chance (kiss emoji) I/m so happy and excited for our future together xxxxx" (201)

44. Some of these texts make clear the mother played a significant role in suggesting he came back to the UK

"Have you landed in England yet? Xxx" (144)

"I can't wait to see you tomorrow." (144)

45. The father was interviewed by the police in late April 2019, predominantly in relation to the allegation of rape. He gave a clear and unequivocal denial saying sex was always consensual and often at her instigation. He described the process of foreplay and answered all the questions the police had. He denied the wider allegations of control and abuse. He stated she had made similar allegations against others:

“Regarding her past relationships, the fathers of her two daughters, the same story applies to those relationships. She explained she had reported those fathers for the same circumstances. So I said to her, what happened after you called the Police? She said the Police weren’t able to help her due to lack of evidence. She had accused the two fathers of her daughters also. She also told her that her daughter’s grandfather tried to rape her, he pulled her trousers down. So there is another story about the friend of her sister-in-law that had tried to rape her. I didn’t believe it, but all the neighbours warned me about getting involved with her.”

46. He was interviewed again in mid-May 2021, again he was co-operative but more combative. He denied all allegations against him but did accept he had messaged the mother from his son Z’s phone and through a fake account on Facebook.

47. The father was subject to detailed cross examination over two days a number of themes emerged in his responses:

It was clear he had an almost proprietorial view of relationships. *“What man in the world likes the idea of his girlfriend spending time with other men. She showed me her messages, she was speaking to someone called Steve, she spoke to him for a year, and she said that was to stop him committing suicide. She was not worried about what that would do to me, she was worried about what that would do to him”.*

He was also suspicious of her; *“I had reason to doubt her because of her past relationships. Once we were eating together and she said she had sexual relationship with more than 50 men, how does that make me feel?”*

“She was talking to others on Facebook. I was buying food for the children. I saw the conversations between them, for example ‘give me your number on private’. How did that make me feel as a man? She was accusing me of being jealous, but she did the same to me. I did not think it was right for him to text her directly.”

This attitude was shared with her with him texting:

“please be a good girl and wait for (Father’s last name)” and *“you were born to be mine”*. When asked to explain these comments he said that being a ‘good girl’ meant not talking to other men.

48. It was also clear that the proximity of their homes meant he saw what she was doing even if he did not set out to do so. He described a situation where one of her older children’s fathers visited and stayed for many hours. He was clearly able to watch her door from his balcony.

49. He had a low opinion of her and brought up issues such as he bought her cocaine. This showed a real lack of self-awareness. He happily introduced texts demonstrating he bought a significant amount of cocaine and felt that by showing it was for her that left it a generous, rather than illegal, act.

50. In relation to the rape he was able to set out his key rebuttal evidence:

- a) She appeared to be uncertain as to the date. He stated *“when someone rapes you, you should know the date”*
- b) He was clear that he knew the signs of consent including non-verbal signs
- c) He was clear that they had sex on multiple occasions
- d) He adduced evidence that she had enjoyed sex on occasions including a text where she stated *“No one fucks me like you do. Your safe with me haha. I love you (Father’s last name) and I hope you get good rest and feel better. Goodnight my amazing daddy xxxx”* (text dated January 2021).
- e) He was clear he could not rape *“my lady who was 5 months pregnant”*.
- f) He talked about previous relationships which have been good and where he remains on good terms with his ex-partners.
- g) When challenged as to why there were so many people to whom she reported the incident he indicated they were not independent and in any event they were only

reporting what she said. The dinner lady was her friend, the head teacher was her friend, and this was evidenced by the head teacher bringing her chocolates. His view was a repeated lie did not make the lie true.

- h) He placed considerable weight on the police's decision not to prosecute. He felt this proved his innocence. He appeared to have little insight into concepts like the beyond reasonable doubt and the balance of probabilities.
- i) He was clear that he had a clean police record asking, "*why does she keep accusing me when my record is clean?*"
- j) He pointed out the difference in elements of the descriptions given regarding the exact mechanism of the rape.
- k) He put considerable weight on her telling him that she had not told the police he had harmed her. He was able to demonstrate by his recordings of her that she had been dishonest either to him or the police. In essence he asked how the court could believe her when she was proved to have lied to someone in this case, either him or the police.
- l) He commented on her demeanour at the police interview and stated she did not look scared.
- m) He asked why would anyone wait six weeks to report a rape.
- n) He stated she had a CCTV camera in her house and as such if there was evidence of him raping her there should be evidence on camera.
- o) He emphasised that he felt her behaviour after the incident disproved it. He said, "*If I had thrashed her she would not have come back to me again*".
- p) He pointed out that on the day the police dropped the charges she texted him asking him to come round for sex. He was unable to provide this text but stated

“Why would she call me the same day to have sex if I raped her? She called me and invited me.”

- q) He indicated that as they were having regular sex on her instigation how was it possible that he raped her. He stated, *“If you want sex everyday how can I rape you.”*
- r) He commented on how children’s services allowed the relationship to continue and indeed left him as the main carer for his son Z.
- s) He asked why children’s services required her to go on a course.
- t) He highlighted her requesting him to come back to the UK.

51. Throughout the cross examination he denied any element of coercion or force in their sexual relationship.

Submissions

52. Ms White summarised much of the documentary evidence in her submission. She indicated that an ABE was undertaken close to the time of the first allegation from March 2019. The description given was of a brutal rape. The Mother explained at court that initially she had not known this was rape because it occurred within an intimate relationship. She reported this first in the latter part of March 2019 to her drugs worker and following a referral to an IDVA she came to understand that this was a rape. She described struggling emotionally to come to terms with what had occurred and having an initial reluctance to report the incident. Ms White urged me to see that as a common theme within abusive relationships. An experienced IDVA reported her as being *‘a classic domestic abuse victim’* apologising and minimising the abuse.

53. Those she spoke to at the time described her as '*naïve*' and '*vulnerable*' and the same people described the father as '*aggressive and menacing*'. Ms White emphasised the number of persons to whom the mother described the incident.
54. Ms White contrasted his description of the incident and relationship suggesting that he has tried to demean the mother's character at all times, commenting on her addiction to drugs, blaming her for the additional needs of her children, commenting negatively on the alleged number of sexual partners, saying she had never said no to sex. She commented that he has made entirely new allegations such as the purchase of cocaine whilst not mentioning them in any earlier documents.
55. Ms White referred to police disclosure which suggested that there was no relevant CCTV with there simply being a camera showing the front door and a baby monitor type device downstairs.
56. Ms White refutes there has been undue delay stating if the rape occurred in early March, the relationship ended in mid-March and she made her first disclosure 3 days later, being ABE interviewed shortly after.
57. Ms White indicated that reconciliation was a feature of many relationships which have a coercive and controlling element. In support of this she highlighted the father's dislike of the mother speaking to other men. He has insisted on DNA tests to confirm parentage of all his children showing he is essentially distrustful of her.
58. Ms White emphasised the description of the mother having a '*personality transplant*' and the testimony of her friend and mother who described her becoming more remote and withdrawn.
59. This control was a key part of the mother eventually withdrawing her support for the first investigation and retracting her evidence in relation to the second investigation.

60. Ms White asked me to consider the covert recording undertaken by the father. These include the mother phoning her solicitor to withdraw her request for an injunction.
61. Ms White asked to me to note two separate professionals talk of '*vile*' messages on her phone. The Mother's testimony was that the father had deleted them.
62. Ms White accepted this was not a relationship with overt physical violence but there were references to the mother being '*grabbed*' which professionals saw as attempts to demonstrate physical control.
63. Ms White highlighted the terms used by professionals to describe the mother; '*naïve*', '*vulnerable*', '*blamed herself*', '*easily manipulated*'. The IDVA described her as a '*classic victim of domestic abuse*'.
64. Ms White indicated that even when a final split was secured he still refused to accept boundaries turning up at her home on two occasions in September 2020 and again in April 2022. She pointed out the degree of upset this caused her with her seeking support from the children's centre on the day with evidence being given by staff as to how upset she was.

The Father's submissions

65. Without the assistance of a lawyer, the father was in a weaker position as to summarising his case. However, he made a number of points. He stated he was not guilty, and he would never rape the mother of his children. His ex-partner has prepared a statement stating that during their seven years together he was never abusive to her, he asked me to see this as evidence of his real character. He remains on good terms with her even after their split. He is now in another happy relationship and stated that partner could also confirm his character and behaviour. He asked the

simple question that if he has normal healthy relationships with other women why should he have an abusive relationship with this woman?

66. He indicated that he instigated this application to court once the allegations were dropped and he asked why on earth he would bring the matter to court if he had done wrong.

67. He indicated he had no ill feelings towards The mother, but he wanted to see his son. He wanted to get on with his life, but he wanted to see his son A. He finished by saying that he was not a criminal and not a rapist, he does not have a criminal record either here or in his home country.

68. Again to assist him I have identified the key concerns he set out in his evidence and cross examination as in paragraph 51 above and I will address these in my analysis as if he had raised them in submissions.

The Law

69. In *Re R (Children)* [2018] EWCA Civ 198, the President of the Family Division, Sir Andrew McFarlane, said “*in family proceedings, the outcome of a fact-finding hearing will normally be a narrative account of what the court has determined (on the balance of probabilities) has happened in the lives of a number of people and, often, over a significant period of time. The primary purpose of the fact-finding process is to determine, as best as can be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for the child with the court’s eyes open to the risks as the factual determination may have established*”.

70. In the present case, I must decide whether the Father has behaved as alleged by the Mother as set out in the Schedule of Allegations. In doing so, I must assess the

evidence in the bundle, the direct oral evidence of the Mother and the Father and make or not make findings in accordance with the civil standard and burden of proof.

71. The burden of proving the facts rests with the person making the allegation. The standard to which the person making the allegation must satisfy the court is the simple balance of probabilities. This means no more than the court being satisfied, on the whole of the evidence presented to it, that the case for the asserting party has been shown to be more probable than not.
72. 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.
73. The legal concept of proof on the balance of probabilities must be applied with "common sense". Findings of fact must be based on evidence not on speculation: *'It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation'* Re A (A child) (Fact Finding Hearing: Speculation). [2011] EWCA Civ 12, per Lord Justice Munby.
74. 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)).
75. In determining whether the party making the allegation has discharged the burden upon them, the court looks at '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]).

76. 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.

77. It is not uncommon for witnesses in cases of this sort to tell lies in the course of the hearing. 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](#)). The court also has to 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.

78. The revised *Lucas* direction directs that the court 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. Furthermore, McFarlane LJ (as he then was) in the decision of the Court of Appeal in [Re H-C \[2016\] EWCA Civ 136](#) says at [100] “*that a judge should 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.*”

79. In this case demeanour, credibility, and the appropriate weight to put on inconsistencies are central to the assessment. Witness demeanour is not to be taken in

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

80. How do we deal with inconsistencies in testimony? Lady Justice King in Re A [2020] EWCA Civ 1230 explored this stating

“40. I do not seek in any way to undermine the importance of oral evidence in family cases, or the long-held view that judges at first instance have a significant advantage over the judges on appeal in having seen and heard the witnesses give evidence and be subjected to cross-examination (Piglowska v Piglowski [1999] WL 477307, [1999] 2 FLR 763 at 784). As Baker J said in Gloucestershire CC v RH and others at [42], it is essential that the judge forms a view as to the credibility of each of the witnesses, to which end oral evidence will be of great importance in enabling the court to discover what occurred, and in assessing the reliability of the witness.

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

81. In addition, in cases involving domestic abuse it is useful to look at comments made in three recent cases. On behaviour patterns shown in victims of abuse Judd J stated in Re M [2021] EWHC 3225 (Fam):

“82. The reason it was so important for the judge to give very careful consideration to the question of vulnerability in this case is because a vulnerable person may not act in the same way as someone more independent or confident if they are exploited or

abused in a relationship. Such an individual may be so anxious for the relationship to succeed that they accept treatment that others would not. They may be easy to exploit. They may not even realise what is happening to them, and will cling to the dream of a happy family and relationship..."

This behaviour pattern was commented on by Mr. Justice Cobb in Re B-B (Domestic Abuse: Fact-Finding) [2022] EWHC 108 (Fam) at para. 6 (vii) *"an abusive relationship is invariably a complex one in which the abused partner often becomes caught up in the whorl of abuse, losing objective sense of what was/is acceptable and unacceptable in a relationship."*

82. Jackson LJ in Re A (A Child: Finding of Fact) 2022 EWCA Civ 1652 stated at para 42

"Perpetration of domestic abuse is an expression of an aspect of a person's character within a relationship and the fact that a person is capable of being seriously abusive in one way inevitably increases the likelihood of them having been abusive in other ways."

Analysis

83. It is essential to strip away the irrelevant points and indeed harmful myths which surround allegations of rape and sexual misconduct.

- a) A reconciliation after an incident of rape does not demonstrate the rape has not occurred. The dependency created in an abusive relationship can give rise to self-blame, minimising, and an inability to free oneself from that relationship. The comments made by Mrs Justice Judd and Mr Justice Cobb as reported above provide clear judicial guidance on this point and represent a fuller understanding of the complexity of abusive intimate relationships.
- b) Rape can occur within relationships where there is frequent consensual sex. Consensual sex can occur after an incident of rape.

- c) A police decision not to prosecute is not of itself probative as to whether on the balance of probabilities an event occurred. The test applied as to whether to prosecute is based on the probability of securing a conviction under an entirely different standard of proof.
- d) A person's conduct with other intimate partners is not necessarily indicative of his conduct with a particular intimate partner. Relationships are complicated. A bully can have friends whom he does not bully and still bully a person perceived as weaker. Intimate relationships can be as varied and complex.
- e) It is unrealistic to expect those who have experienced traumatic events to be able to recall them with complete certainty and consistency over time.

84. It is also important to remove consideration of issues which are simply factually incorrect.

- a) The evidence makes it clear that The mother was asked to attend the Freedom Project a course designed for victims of domestic abuse, she was not forced to attend a parenting improvement course.
- b) The evidence was clear that there was not a fully functioning CCTV system in the house which has evidential value and so the absence of such evidence is not helpful either way.
- c) There is no evidence the mother was ever addicted to heroin; she was addicted to prescription painkillers.

85. With these preliminary matters removed from my consideration I then must wrestle with the real issues in the evidence. The father is correct that the mother either lied to him about not reporting the matter to the police or lied to the police. It is clear from the evidence that the mother was lying to him because we know she gave a very full account to the police, and she told him she had not done so. As such *Lucas* is relevant. Why is she lying? A simple answer in this case is she was with a very physically strong individual whom at that time she has decided to continue a relationship with. There is an element of self-preservation both as to physical health and relationship security which may explain her dishonesty.

86. In determining the truth or otherwise of the allegations I have attempted to set out the strengths and weaknesses of the competing cases and having done so taken a step back to consider the evidence as a whole.

87. What factors make her testimony more likely to be true?

- a) She repeats that testimony to at least 9 individuals. Some of these are equals, the classroom assistant for example. Disclosure to a work colleague is not a simple matter it requires courage and potentially opens up a sequence of events over which she has the risk of losing control. Others are persons of significant status and authority most clearly the head teacher. It is difficult to imagine why a woman would go and see her employer and explain the intricacies of the act if it were not true. An element of common sense as to the actual emotional difficulties in doing this is required.
- b) The contrary position is that the mother is constructing a network of lies which she shares with her mother, her friend, her employer, her drugs worker, two separate IDVAs and three different police officers. This would require a degree of ingenuity and stamina which it is difficult to see the mother would be capable of given her role in caring for three demanding children.
- c) Her description of her developing understanding of what had occurred from an initial feeling that something was wrong, to becoming distressed, to seeking support, to gaining a better understanding of the reality of the situation via a supportive professional to the making of a full report has an essential narrative credibility.
- d) The assessment of all these individuals is she is credible and behaving in a manner consistent with the circumstances as she describes them. These individuals include specialist IDVAs who are trained to understand and recognise the behavioural patterns of those subject to abuse.
- e) Those individuals involved in police statements carefully chose their descriptive words of the individuals they know. The headteacher chooses to describe The Father's behaviour as '*aggressive and menacing towards staff members*'. These are words of significant power chosen to portray the individual. Again, after a meeting with The Father the head teacher describes The Mother as '*visibly petrified*'. The people involved are entirely neutral. The idea that a head teacher would lie in a police statement because they were friends with a member of staff is fanciful.
- f) The professionals report evidence not now available to the court referring to text messages from The Father as 'vile' and 'abusive'. Again, they have no motivation to lie and The Father's assertion they are lying is again fanciful. As

such I have to accept that there was an unpleasant element to the relationship, which is not disclosed by the friendly, loving texts exchanged and exhibited.

- g) The evidence suggests that those involved in the process are the drivers behind further reporting. The IDVA suggests she speaks to the head teacher, the headteacher supports her to call the police. They clearly find her evidence compelling and support further action which has its own consequences.
- h) The description provided at ABE is compelling. Demeanour is difficult to rely upon but she in effect was asked to give her account three times within the interview and gave similar accounts. I found her interview compelling and significantly persuasive.
- i) I note that DC Three, who must have experience in these matters, also found the testimony compelling. The police case runs into evidential difficulties surrounding text messaging but there is no suggestion in the disclosure that the police did not accept her account.
- j) The description given to various people is largely consistent. There are minor differences regarding the description of the exact mechanism of the rape. But the strong common theme is a description of a frightening event. Those persons experienced in dealing with victims of domestic abuse also found her testimony and behaviour entirely consistent with her being a victim of abuse.
- k) There appears to be an entire absence of malice in her description. She completely accepts that she did not raise the issue with him after it had occurred. She does not describe any physical threat. Apart from saying she was scared of him she did not embellish her evidence by criticising his character. Indeed, she accepted she loved him and wanted a relationship with him.
- l) I struggle with the suggestions that she has been motivated to make up this allegation to prevent contact. She was willing to allow contact between A and the father until she found his behaviour of concern. She seems to have to be persuaded to make this allegation at all. I can see no connection between her making this allegation and any other motivations in her life. It is the supportive network of professional who persuade her to make this a police matter.
- m) The version of events given in her witness statement is largely consistent with the evidence given to the police.

- n) Her testimony at court was largely consistent with the evidence given to the police and under cross examination she continued to rely on her account. Cross examination did not undermine this account.
- o) The father displayed a contemptuous view of the mother when giving evidence, he portrayed her as a drug addict with a previous heroin problem, blamed her for her children's disabilities, considered her promiscuous and obsessed with sex. At no point was there any recognition that this was a woman who singlehandedly cares for 5 children including three of his own.
- p) The father was clearly possessive and a strong theme throughout his evidence was that the mother could not be trusted to be faithful and that entirely normal acts such as speaking to other men were always a precursor to a sexual relationship. These negative attitudes indicate he looked down on her.
- q) I am disconcerted by the father's focus on A, he has two other children, both girls and they seem to play little part in his application. His prioritisation of the male child supports him having a dismissive attitude towards girls.
- r) There are occasional flashes of aggression in his behaviour. When he records a conversation between them he states:
"You know what I am, and nobody can fuck me up, only if you want to fuck me up. If you really want, yes, but you know me, I , I saw and I have got eyes everywhere.
The Mother: I know fucking FBI" (428)
- s) One advantage of seeing the parties in this case is to note the extreme physical disparity between them. The father is a formidable figure. He must weight train or body build to a high level. He sat giving evidence in court with hugely muscular arms and chest. The mother by comparison is slight. She gave evidence via the video link system but appeared a far less powerful figure. Should the father wish to physically intimidate her, or indeed anyone else below a professional sportsperson he could do so. Why does this description matter? It matters because it is a family court judge's responsibility to understand the interaction between these individuals; their behaviours, their fears, and the potential risks they pose to each other particularly in the context of allegations of rape and coercion and control. To ignore the extreme disparity in physicality is to ignore one of the central elements of their interaction.

88. What makes her testimony less likely to be true?

- a) She clearly is untruthful at least when speaking to the father. A willingness to lie may indicate a wider willingness to be dishonest.
- b) The recording of her talking to the father about dropping the charges was a relaxed conversation. She does not appear intimidated.
- c) There clearly is a genuine fondness and on occasions love expressed. I must be careful not to fall into error by forgetting how abused people can act towards their abuser but undoubtedly the mother expressed her love for and willingness to marry the father repeatedly. This occurs in situations where she has considerable professional support and also most significantly when he is in his home country and his ability to control her has reduced if not disappeared.
- d) I perceived there to be a narrative running through her evidence which failed to recognise that at times this was a relationship of mutual attraction and benefit. She certainly initiated their relationship, frequently went to his home including covertly at times to avoid children's services and police controls and almost 'love bombed' him with affection at times.
- e) The police clearly had some concerns, and The Father is rightly aggrieved that he has not been able to put all the evidence he wishes before the court. The police are trained in these matters and his point that if they believed she was credible they could have proceeded to prosecute him is valid.
- f) She undoubtedly enjoyed elements of their sexual relationship including post the rape allegation and was happy to tell him so. She was also the initiator of sexual acts post the rape allegation.
- g) There are minor differences in the description of the act, and perhaps more significantly the description of the lead up to the act is different in her written evidence to that given at court and at interview. In her witness statement she describes him ushering her up the stairs and saying he loved her, at interview she talked about him saying '*have you ever been raped*' with a stony face.

89. What factors make his testimony more likely to be true?

- a) He has answered all questions put to him, firstly by the police and secondly in court.
- b) He has consistently denied any wrongdoing.
- c) He has expressed a knowledge of the issues of consent, verbal or otherwise.
- d) He was willing to go into considerable detail of the sexual act and did not dismiss or undermine the importance of the allegation. He was never flippant or

dismissive instead being willing to describe how sex was usually initiated and participated in.

- e) I do find the willingness of other intimate partners to support him to be helpful as to determine his usual sexual behaviour.
- f) He was at times willing to concede elements of her testimony and accepted that on the day of the alleged rape he did say to her that he would cause her a lot of pain. *“Yes it is true I did say I would cause her a lot of pain, true in the sense for me to call her pain I did not need to be aggressive or violent. The type of pain was me cheating on her.” “I was referring to jealousy”*
- g) He was polite at all times of course to a male authority figure but also in his interactions with female interpreters.
- h) He states he has been assessed by children’s services as being able to be the primary carer for a child.

90. What makes it less likely that he is telling the truth?

- a) The Father is intelligent enough to know that a finding of rape would have a seriously negative effect on him seeing his child. He has a motivation for not accepting the allegations and thus for not being truthful.

Conclusion

91. Human relationships are complex, and I have found this a troubling case. This was an unusual relationship based predominantly on an initial sexual attraction. The mother said. *“We used to have good times. We would go out with the children. We spent most evenings together. He stayed in my previous house one night. For the duration of the relationship we only ever spent one night together.”*

92. It is important that I consider the broad canvass of evidence. There is a danger that I look for the mother to make me feel sure of my conclusion. That would be to fall into an elementary trap. I must determine which account is more likely to have occurred.

93. In making this determination, the factors identified above which weigh most heavily on my mind are the sequence of complaint; close in time to the event itself, to a number of different persons of differing experience, background, and status. The fact

these experienced individuals supported her and believed her is significant. Many of them report elements of the behaviour of the mother and the father which demonstrate her to be unsophisticated and naïve and him to be potentially aggressive.

94. Again, I must recognise we either have a protracted, maliciously motivated lie or an essential element of truth. The account at interview is persuasive indeed compelling. To sustain a lie under questioning would require a mental element of preplanning and sequencing which I find to be beyond the mother's functioning. Many of the points made by the father are simply at odds with the modern understanding of the pattern of behaviour displayed by abused persons.
95. There are weaknesses in the mother's case. The minor differences in descriptions given in the event and the run up, the uncertainty as to date. In addition, as indicated I determine she failed to portray the elements of the relationship which worked for her at the time. However, the cumulative effect of those discrepancies and shortcomings in my assessment did not undermine the central testimony she gave. A survey of the points in favour of her testimony as set out in paragraph 87 show that there are 19 cogent points which support her testimony. I have reviewed them before reaching a conclusion and they are sufficient in my estimation to determine the truthfulness of her central testimony.
96. The Father's central positions that the police took no action and The Mother lied to him bring some weight to his case. But if I ask myself the question as to were there reasons and motivations for the lies which are explicable based on the dynamics of the relationship; I find that there were. I find that her lies had an element of self-preservation and placation which explain them and thus do not undermine her wider testimony.
97. I thus find the allegation of rape proved on the balance of probabilities. Inevitably the minutiae of the evidence in relation to this the most serious allegation has dominated this judgment. I have had regard to the less serious allegations and will deal with them broadly. I note and am assisted by Lord Justice Peter Jackson's comments in Re A above.
98. I also find that on occasions during and after the relationship the mother was very afraid of the father. This is entirely supported by the description of professionals. When she chose to follow his wishes and give into his demands, she did not need to

be afraid hence her relaxed and loving approaches at times. When she was willing to be subservient this was a relationship which functioned. When she was not willing to be subservient problems arose. This appears to me to be the classic coercive and controlling situation. Physical violence is entirely unnecessary. I thus accept the central assertion that the mother experienced coercion and control; I do not regard it as necessary to make factual determinations on each of the allegations made.

99. For long periods of time after separation the mother supported contact including overnight contact between A and his father. At this point in time, I need to move onto the professional risk assessment of whether that can ever be reinstated, and I need the assistance of CAFCASS to do so. I adjourn this matter for the preparation of a Section 7 report.

District Judge Webb

22 August 2023