

IN THE BLACKBURN FAMILY COURT

Neutral Citation Number: [2024] EWFC 82 (B)

Case No. PR23P00721

Courtroom No. 2

64 Victoria Street  
Blackburn  
BB1 6DJ

Thursday, 21<sup>st</sup> March 2024

Before:  
HIS HONOUR JUDGE BOOTH

B E T W E E N:

M

and

F

MR GULLIVER appeared on behalf of the Applicant mother  
MS LAU appeared on behalf of the Respondent father  
MS WILKINSON appeared on behalf of the Children's Guardian

APPROVED JUDGMENT

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*This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.*

HHJ BOOTH:

1. This is my judgment in private law proceedings between the parents of A, a little girl born on 10 May 2019. The mother has been represented by Mr Gulliver of counsel, the father represented by Ms Lau of counsel and A, through her Children's Guardian, Ms Holt, has been represented by Ms Wilkinson of counsel. I am grateful to all of them for the way in which this case has been sensibly conducted and for their extremely helpful written closing submissions to me. I invited them to prepare an agreed chronology and that document has proved very helpful.

**What is this case about?**

2. A's mother asserts that A is the victim of sustained sexual abuse and physical abuse by her father, which has taken place during the time when her father has had contact to A. A's father denies that there has been any such abuse and asserts that A has been coached into saying things against him and describing things that have never happened.
3. Ms Wilkinson, on behalf of A, put the matter this way:

“The nature of the counter-allegations made by the parents mean that on either parents' case, A has suffered sexual and emotional harm. If father has abused A in the way alleged, there has been significant sexual, emotional, and physical harm. If he has not, given the repeated sexually explicit matters A has referred to, A must have been coached into thinking/saying these things happened to her. The only person who could have done this is Mother. Given A's age, the coaching will have been deliberate and sustained and A has suffered significant emotional and sexual harm as a result. A has also had unnecessary medical examinations by the GP and unnecessary professional involvement from the Local Authority and [Therapeutic Services]”.

4. I have a substantial body of written material, including statements from A's parents and the witnesses I heard from. I have a substantial body of police evidence and A's medical records and other relevant documents. I heard oral evidence from A's mother, her father, the family support worker allocated to A, the health visitor, and from A's maternal aunt.

**The law**

5. Let me set out the law. The law in relation to findings of fact in relation to sexual abuse has been comprehensively analysed by MacDonald J in *Re P (Sexual Abuse: Findings of Fact*

*Hearings*) [2019] EWFC 27 and as subsequently approved by the Court of Appeal. Some of the points I need to consider can be dealt with shortly.

- (a) The burden of proving the allegations they make lies with the party making the allegation.
  - (b) The standard of proof is the simple balance of probabilities. What is more likely than not to have happened.
  - (c) The Court must consider the inherent probabilities of an event occurring or not.
  - (d) Findings of fact must be based on evidence and inferences that can properly be drawn from the evidence, but not on speculation.
  - (e) The Court must look at the broad canvas of the evidence and put each part of the evidence in the context of all of the rest of the evidence.
  - (f) The evidence of those who were there when the events in question occurred is of the utmost importance and the Court should form a clear view of their credibility and reliability.
  - (g) There is no burden on those who were there to come up with an explanation and the absence of an explanation does not necessarily mean that the real explanation must be sinister.
  - (h) When lies are told during an investigation and to the Court, the Court must give itself a *R v Lucas* [1981] QB 720 direction, remembering that lies are told for all sorts of reasons and the fact that a witness has lied about one thing does not mean they have necessarily lied about everything. This aspect of the law was comprehensively considered by McFarlane LJ in *Re H-C (Children)* [2016] EWCA Civ 136 onwards.
6. I have reminded myself of passages at the beginning of his judgment where McDonald J set out some of the difficulties that frequently confront the Court:

“5. Where sexual abuse has occurred, it is not commonly witnessed by an independent third party. Beyond issues of social stigma, perpetrating adults are often reluctant to make admissions in the context of family proceedings in circumstances where they face, or may face, criminal prosecution. The alleged victims of sexual abuse are often vulnerable children with other difficulties that can affect the credibility of their allegations, which allegations often emerge a considerable time after the alleged abuse has taken place, and therefore long after any physical evidence that may have existed has disappeared. The allegations may emerge in a piecemeal fashion, with children often not reporting events in a linear history, reporting them in a partial way and revisiting topics more than once. Such children may, whether by reason of their

age, or the impact of the alleged sexual abuse or other difficulties, be idiosyncratic, inconsistent, or unreliable historians. The age, psychological state and/or views of the child may mean ... that the court does not hear their accounts challenged forensically in cross examination and, accordingly, is deprived of one of the key forensic tools for testing the truth of a disputed account before the law. The child may suffer from psychological sequelae that may or may not be the product of sexual abuse but which, in any event, makes the assessment of their reliability even more difficult. It is not unknown for children to lie about having experienced sexual abuse or to fabricate allegations of the same.

6. More generally, human memory is not a single, simple system. What is remembered of an experience by a child or young person will not be a complete picture akin to a photograph or CCTV recording and will vary depending on the age at which the experience took place. What an adult may consider to be a key element of a remembered experience, and therefore key to assessing the reliability of the memory, may not be significant from a child's perspective. The physiological processes involved in the encoding, storage and retrieval of memories are susceptible to internal and external influences. Within this context, children's accounts can be affected by their level of functioning, their emotional state and their levels of suggestibility. It is also possible for a child to 'remember' an event that has not in fact occurred, or which has not occurred precisely in the way remembered. The child's recollection of past experiences can be influenced by the process of questioning the child ...

7. This means that, within the context of other already considerable forensic challenges, and of *particular* significance in this case for reasons that will become apparent, the ill-considered reaction of well-meaning adults to children making allegations of sexual abuse, or a failure by professionals to apply rigorously long-established guidance and good practice in dealing with such allegations, can have a deleterious, and sometimes fatal impact on the reliability of the allegations when they come to be considered by the court. In cases of alleged sexual abuse, there is a significant forensic tension between the need to provide understanding, support and care for children who may have been sexually abused, where the presence of a supportive non-abusing adult who listens without judgment and takes seriously what the child is saying is essential to that child's current and future wellbeing, and the requirements of the legal process for establishing the truth or otherwise of those allegations in a court of law. That difficult forensic tension falls to be addressed in this jurisdiction by the careful, rigorous, and diligent application of comprehensive statutory guidance and good practice principles born out of long experience. The gravity of the consequences of a failure to apply with rigor these clear and long-established principles when dealing with allegations of sexual abuse was set out with pellucid clarity by

Wall J (as he then was) in *B v B (Child Abuse: Contact)* [1994] 2 F.L.R. 713, in which he observed that:

‘... by muddying the waters, it frequently renders impossible the task of the court in deciding whether or not there has been abuse. Thus, it may not be possible to make a finding against an alleged perpetrator who is in truth guilty’.

8. Finally, the possibility of much easier access to pornographic material on social media and the Internet means that concepts such as age-appropriate sexual knowledge, and conclusions as to the source of detailed knowledge of specific sexual acts must be treated with far greater care than in the past. Medical evidence in cases of alleged child sexual abuse is rarely definitive and very often non-specific, ambiguous, equivocal or, on occasion, controversial. Within this context, experienced medical professionals and experts in the field may reasonably reach different conclusions on a given physical presentation. Research and practice as between jurisdictions may differ in this regard.

9. The consequences of the court reaching the wrong conclusion in respect of an allegation of child sexual abuse include a child being returned to a position of danger or, conversely, a child being deprived of a family that is, in fact, perfectly safe. In the circumstances, when determining whether sexual abuse has taken place and, if so, who is responsible for perpetrating that abuse, it is vital that the court remain acutely conscious of the forensic difficulties outlined above. As Holman J observed in *Leeds City Council v YX & ZX (Assessment of Sexual Abuse)* [2008] EWHC 802 (Fam) the task of the court in cases of this nature is not so much akin to putting together a single jigsaw puzzle in which all the pieces are present, but rather:

‘If the jigsaw metaphor is helpful at all, then, in my view, it is important to think of a pile of jigsaw pieces in which pieces from more than one jigsaw have been muddled up. There may be pieces which, on examination, do not fit the jigsaw under construction at all, but which require to be discarded or placed on one side’.

Mr Gulliver provided me with a summary of relevant legal principles which I have taken into account in my overall assessment of the case.

7. In this case central to my assessment of the evidence is my assessment of the witnesses, particularly the parents. I place little reliance on how a witness performs in giving evidence in Court. MacDonald J in *Re P* sets out the judicial experience of the reliability of oral evidence, the ability of witnesses to convince themselves of the truth of things that cannot have happened, and for memory to be manipulated often unconsciously. The process of giving statements and preparing for Court can affect what is “remembered”.

## **The Mother's Case**

8. The mother's case can be summarised this way: she says she has, for a long time, been suspicious that A has been sexually abused by her father. The parents had a difficult relationship. They separated and reconciled, with the mother finally leaving the home with A in March 2020. They made cross-applications made to the court but reconciled in October 2020 when both sought to withdraw or have dismissed their various proceedings.
9. In May 2022, Mother again left the family home, taking A with her. Mother reported to the police that A had, by her actions and words, (bearing in mind she was only just three years of age), indicated that her father had stroked and touched her in such a way that she felt scared. Mother said that that was A indicating sexual abuse.
10. The matter came before the Court in June 2020, when Father issued an application for a child arrangements order. Cafcass became involved. Cafcass reported in a section 7 report that Mother was considering withdrawing the allegations she had made against the father, saying that "she had got it wrong" about what A had said about her father. She later changed that position, continuing to raise concerns about risk of sexual harm.
11. In December 2022, the Court declined to order a finding of fact hearing and contact was instated for Father, initially supported by Mother with Mother present, then proceeding unsupervised.
12. By May 2023, the Court had before it a final section 7 report from Cafcass, recommending that contact should proceed to overnight contact. The first overnight contact took place on 20 May 2023 and the second on 27 May 2023.
13. On 29 May, Mother says that A told her that she did not want to see her father again. On 30 May, the parties spoke on the telephone. There is a dispute as to precisely what was said.
14. On 31 May an unsuccessful handover took place and again there is a dispute as to precisely what happened.
15. The mother says it was shortly after that, on 2 June, that A started to make the first of her allegations of sexual abuse by her father. Mother says that A told her that whilst they were in the car, that daddy had touched her on top of her vagina. A did that by a mixture of words and gestures. According to Mother, A went on to say that her father had been licking her in her tiny hole. Mother says that later A gave more details of the licking, concluding with describing her father making her stand on the bed and licking her in her private parts. Mother decided at that point that contact should be suspended.

16. Mother reported an allegation of sexual abuse to the police on 5 June and that same day had an appointment with her general practitioner, raising concerns that the father had abused A during overnight visits. That evening, Mother says A made more allegations against her father.
17. On 6 June, A was spoken to by a police constable. A did not repeat any of the allegations that she had apparently made to her mother, and was described as very shy, hiding behind her mum.
18. On 7 June, Mother gave a statement to the police and later that day spoke to somebody from the Local Authority. Again, that same day, Mother spoke to her general practitioner saying she was concerned about the lack of “evidence” and wanted to bring A into the doctor so that A could open up the discussion about Dad and what he had done, so that she may say something that could be documented. The GP refused.
19. The following day, the Local Authority allocated a family support worker to work with A and on that day, 8 June, Mother began a process of making short video recordings of A describing things that she said had happened to her that certainly could have amounted to physical and sexual abuse.
20. An initial visit was undertaken by the family support worker on 14 June, but A was asleep. That same day, Mother issued an application to suspend the child arrangements order that provided for contact with A’s father.
21. On 17 June, Mother took A to a restaurant. She went with her sister and her sister’s two children, aged 17 and 13. It is said by Mother and her sister that, spontaneously, A began to talk about things her daddy had done to her, including poking her in the eye and punching her.
22. A court hearing took place on 20 June 2023, at which contact was suspended. There then began a series of visits by the family support worker. I will deal with her evidence in more detail in due course.
23. On 23 June, A was with her mother at Mother’s sister’s house when amongst other things A is said to have said, spontaneously, to her aunt, “Daddy put his finger inside me” pointing to her private parts.
24. On 26 June, an event took place that the mother asserts is highly significant. The police conducted a PIPPA interview with A. What is a PIPPA interview? Police Constable Halliday, who carried out this exercise, describes it as follows:

“I have been trained to conduct ABE [Achieving Best Evidence] video-recorded interviews for witnesses considered to be vulnerable and/or intimidated. For witnesses considered to be vulnerable, I have also received training to conduct a Pre-Interview Planning and Preparation Assessment (PIPPA), which is intended to assist in building rapport with the witness, whilst also gaining an understanding of any communication barriers or considerations and introducing the interview process and expectations (ground rules). Within the PIPPA process, I use neutral conversational topics and tasks, unrelated to the offence under investigation, to explore the witnesses understanding of vocabulary and concepts as well as provide an opportunity to visit the suite in which the interview will take place, to set the witness at ease and familiarise them with the setting”.

25. I have a transcript and a recording of the interview. It took place shortly before two o'clock in the afternoon and lasted for 36 minutes. Police Constable Halliday went significantly beyond the remit she has described in her statement that I have just quoted. She went on to discuss body parts with A, asking her “where weewee comes from” and “what’s that called?” When the topic was raised, A is recorded as saying that “daddy put the hands where the weewee came out”. She goes on to say that she told her daddy to stop it, she then goes on to describe a scene in the bathroom involving her and her father with A locking the door, going on to describe going for food and fighting - at the very least a mixture of potential fact, but certainly containing a lot of fantasy.
26. After that interview, Mother says that A started doing drawings and talking about her father. She says she talked about her father with no pants or knickers on and described him pushing her head to his front bum with A saying she was scared and hated it. Mother says that A told her that her father had said not to tell mummy what daddy does, and again repeated that her father made her stand on the bed while he licked her privates.
27. During the next couple of days, the mother made a series of video recordings showing A saying various things, said by Mother to represent the abuse she had suffered at the hands of her father.
28. It was not until 1 September 2023 that the Achieving Best Evidence interview was conducted. The purpose of the Achieving Best Evidence interview is to provide the Court with the earliest possible opportunity to hear directly from the child, with the child being given an opportunity to give their account of what may have happened to them with no leading questions and where they are able to give a free narrative account. Where MacDonald J was talking about the “careful, rigorous and diligent application of

comprehensive statutory guidance and good practice principles, borne out of long experience”, this is the process he was referencing.

29. Given the assessment of the police of A’s vulnerability, she was provided with the services of an appropriately trained intermediary for this interview. It is of note, that A said nothing about any abuse by her father, despite being asked questions that clearly raised the subjects that had come up during the PIPPA.
30. On 12 September, A was taken to her GP by her mother. Mother was said to be concerned on A’s behalf about abdominal pain and vulval symptoms. A was examined by the GP, and her external genitalia was examined. No abnormality was detected. No urine sample was suggested by the GP and no further testing directed. A was noted to be a pleasant, happy little girl.
31. It is Mother’s case that when I draw all that evidence together, the only conclusion I could possibly come to is that A has been the victim of physical and sexual abuse, perpetrated by her father. In her evidence, Mother went further and said that she is now convinced that her first concerns back in 2022 of abuse were correct and that her father has been abusing A every time he has had the opportunity whenever A has visited him for contact.
32. I heard from the health visitor. Her evidence took the matter nowhere.
33. I heard from the family support worker. Unfortunately, the near contemporaneous records that she had made of her interactions with Mother and A had not been viewed by her ahead of her either making her statement within these proceedings, or before she gave her evidence and were only produced by the Local Authority at the end of day three of the hearing after she had given her evidence. She was able to describe things that A had said to her, which supported what Mother said of some of the things that A had earlier said to her. However, what was clear from her evidence was that A made allegations against her father only when her mother was present. On one such occasion, going to her mother and whispering before speaking of things she said had been done by her father.

### **The Aunt’s Evidence**

The Aunt’s evidence was very unsatisfactory. She described a spontaneous comment, said to have been made by A, when A was sitting between her and A’s mother, and opposite her two teenage children. Despite A apparently saying that she had been poked in the eye by her father, there were no follow-up questions to A’s mother as to what A’s mother had done

about this, was proposing to do about this, and it was suggested that her own teenage children were entirely oblivious to anything A was saying.

34. Similarly, the spontaneous comments made by A when she was at her aunt's home had no follow-up, no questions nor any suggestion from the aunt that this was something she should pursue with social services or the police if Mother was doing nothing.
35. What I saw was a witness giving evidence on behalf of her sister and giving me evidence that was highly unlikely to be truthful.

### **The Father's Case**

36. The Father asserts that there has not been and has never been, any abuse of his daughter and that the time that they have spent together has been happy and precious for him.
37. He can only conclude that A has been coached in some way by her mother to say things about him that are not true.
38. He described the relationship with A's mother. There are plainly times, on his account, where they can communicate in a civil and productive fashion. There are other occasions when communication is not civil, and he was able to produce an example of abusive text messages from Mother, where she addressed him in the most reprehensible and offensive language. He had screenshots from 3 May 2023 which fit that description. The significance of that date being the day after the final section 7 report came in, recommending that contact progress to overnight contact. The many messages, he said, that were in a similar vein, had been deleted by the mother.
39. Despite everything that has happened, he maintains that A is well cared for by her mother and he merely wishes to re-establish contact with his daughter.

### **How do I assess what Mother said was the evidence of A?**

40. When I look at the evidence of any child witness, whether that be in the recorded ABE interview, the PIPPA, or other statement, or recordings, I must keep in mind all the following:
  - (i) Children and especially young children are suggestible.
  - (ii) Memory is prone to error and easily influenced by the environment in which recall is invited.

- (iii) Memories can be confabulated from imagined experiences. It is possible to induce false memories and children can speak sincerely and emotionally about events that did not in fact occur.
- (iv) Allegations made by children may emerge in a piecemeal fashion with children often not reporting events in a linear history, reporting them in a partial way and revisiting topics.
- (v) The wider circumstances of the child's life may influence, explain, or colour what the child is saying.
- (vi) Factors affecting when a child says something will include their capacity to understand their world and their role in it, requiring caution about interpreting children's references to behaviour or parts of the body through the prism of adult learning or reading.
- (vii) Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, threats, negative stereotyping and encouragement, reward, or praise.
- (viii) Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of the interviewer.
- (ix) Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.
- (x) Children may embellish or overlay a general theme with apparently convincing detail which can appear highly credible and be very difficult to detect, even for those who are experienced in dealing with children.
- (xi) Delay between an event recounted and the allegation made with respect to that event may influence the accuracy of the account given.
- (xii) Within this context, the way, and the stage at which a child is interviewed will have a profound effect on the accuracy of the child's testimony.

### **What is the Guardian's Position?**

Ms Holt was present in Court throughout the evidence. In consultation with her legal team, she has taken the view that she should provide the Court with the benefit of her assessment of the evidence she has heard.

41. She has concluded that A has not been the victim of sexual abuse or physical abuse perpetrated by her father. Through Ms Wilkinson she makes these points:

- a. At first glance there appears to be ample evidence to support the findings that the mother seeks, including the PIPPA in which A makes allegations against her father, the short video recordings made by the mother of A making allegations of physical and sexual abuse against her father, and A repeating allegations of physical and sexual abuse to the Health Visitor, the family support worker, and her aunt.
- b. However, the Guardian's analysis is that that evidence is either of little forensic value or clearly flawed. I have dealt with the PIPPA interview already. In relation to the videos, the Guardian makes the point that they have no context, they are short, there is no understanding of what happens before them or after. Some of them stop with A in mid-sentence, A is clearly prompted in others and led, numerous times. A knows she is being recorded by her mother, and these are clearly not spontaneous interactions. Despite the explicit allegations in the videos, A does not seem upset, the mother does not appear emotional, both of which are sharply at odds with what is being discussed in the videos.
- c. The Health Visitor's evidence was of little value. She and Mother had discussed the allegations in A's presence. In addition, the Health Visitor said she had no training or understanding of how to take accounts from children in these sorts of circumstances.
- d. The family support worker said that she was not there to gather evidence, but to support A and her mother. She too was not trained in Achieving Best Evidence principles and techniques, and it was clear that A had been prepared for her interviews. Mother was present throughout, and I have described the incident of A whispering to her mother with her mother referring to A to drawings of what her daddy did to her.

### **Analysis**

42. Everything must be put into its context. There is a long history in this case of parental separation and reconciliation and, when separated, allegations made by the mother against the father.
43. At times the father has made allegations against the mother but accepted in the witness box that he had behaved inappropriately to the mother by arguing with her.
44. Her messages to him speak for themselves.

45. As recently as December 2022, the mother was considering a reconciliation with the father, although was vacillating.
46. Between December 2022 and May 2023, the father was seeing A, and all the reports were that contact was going well.
47. It was only when overnight contact was ordered by the Court on 11 May 2023, at a final hearing, that things appeared to change. That order was made by consent, but it was with a very reluctant consent from Mother. She did not think it right for A to immediately start spending overnight time with her father. She said that she was advised that it would “test it out”. After two overnight visits, A is then said not to want to go with Father and there was a failed handover. That was followed by Mother saying that A started to make allegations of sexual and physical abuse.
48. As she gave her evidence, Mother developed that theme, suggesting that the abuse had been taking place throughout. However, it was only when the overnight contact was stopped that A was able to describe what had been happening to her.
49. I agree with the Guardian’s analysis, that it is more likely, set against that history and the evidence I have heard, that the mother manipulated A to make allegations to coincide with the testing out of overnight contact, something she did not want to happen.
50. Mother says that there is no explanation and no case put forward by the father as to how it is that she has coached or manipulated A to say things that Mother has used in evidence. Where, in the same way that a child is seldom seen being sexually abused, a child is being manipulated to make what are false allegations, it is hardly likely to be seen enduring that process by anybody else. What is known, is that the moment Mother stopped A’s contact to her father, she effectively stopped A’s contact with the outside world. A stopped going to nursery. She spent all her time with her mother, and it is noteworthy that all the allegations that Mother relies on took place with her mother present.
51. The allegations relied on, took place within a relatively short period of time. There has been no repeat. A said nothing at nursery. She has said nothing since starting at school. That may be because she has tried to put things behind her and/or she regards school and nursery as safe places. Alternatively, it may well be that she knows that there is no need for her to say anything more.
52. Insofar as I look at the evidence given by the parents, Father gave his evidence in a careful, measured, and controlled way, only becoming upset when taken to the allegations made against him by the mother in her messages.

53. Mother's evidence in court became more florid as it progressed. She made new and extremely serious allegations against the father suggesting additional things said by A for the first time in the witness box, things that had not appeared in her witness statement to the police, her witness statements in the proceedings, or anywhere else. Mother's evidence of the abuse lacked any emotional empathy for A. What she showed was anger towards the father.

### **Conclusion and Consequences**

54. I am satisfied on the evidence before me that A has not been abused by her father.

55. I am satisfied on the evidence before me that A has been manipulated or influenced by her mother to say things about her father that her mother knew were not true and were designed to prevent the father from having a relationship with A and to hurt him.

56. Three things immediately arise:

- a. One is how A is to be helped in the circumstances I have described.
- b. Secondly, I have concerns about Mother's psychological state. Although Father has no concerns about A's care with her mother, I am afraid I do.
- c. Thirdly, Mother is a teacher. This judgment should be brought to the attention of those with responsibility for those in the teaching profession. What they do with it, or make of it, is a matter for them, but it would be wrong of me not to ensure it is brought to their attention.

57. That is my judgment in the fact-finding exercise. I will give further directions on welfare matters.

**End of Judgment.**

Transcript of a recording by Acolad UK Ltd  
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