



Neutral Citation Number: [2019] EWHC 167 (Fam)

Case No: 2018/0170

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/01/2019

Before :

MR JUSTICE WILLIAMS

Between :

**QC
- and -
UC
and
SC, HC, BC, and BC
(by their Guardian)**

Applicant

1st Respondent

**2nd – 5th
Respondents**

Appeal: Fact Finder

QC appeared in person.

Hearing dates: 31 January 2019

Approved Judgment

I direct that pursuant to FPR 27.9 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE WILLIAMS

This judgment was delivered in public. 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.

Mr Justice Williams :

1. This is my judgment on the application for permission to appeal made by QC (the appellant father) in respect of 12 findings of fact made against him in the Exeter Family Court.
2. On 1 October 2018 Recorder Maynard made an order recording 12 findings of fact that he made in respect of the appellant father during a fact-finding hearing on the appellant father's and the mother's cross applications for child arrangements and specific issue orders relating to their three children S (now aged seven) H (now aged six) B (now aged four) and B (now aged two).
3. Those findings of fact emerged from a hearing that took place between the 20 – 24 of August 2018, 6 and 20 September, and 1 October 2018. On 15 October 2018, the appellant father QC filed an appellant's notice. In that he said:

I would like to appeal all the judge's findings and decisions in regards to the whole case

4. The grounds of appeal are as follows:
 - a. I feel the judge didn't take into consideration how being on my own in the court representing myself against two other solicitors was a very nervous time for me and considering the allegations against me made it all the worse
 - b. I suffer from depression and anxiety which I take medication for. The judge said I was evasive towards questioning but I had nothing to be evasive about. I can only put this down to current medical problems.
 - c. In the paperwork of evidence it consistently states U had lied. U had also admitted to this & when we had our court proceedings she began to withdraw a number of allegations and also admitted to the judge she has also lied in the court proceedings. I don't feel this was taken into consideration whatsoever.
 - d. Two of the witnesses the applicant was relying on refuse to give evidence in court to backup their statement
 - e. the judge said he believes everything that U said even though the police have put in the report saying they believe she may be lying to strengthen her case in court. U also lied about being raped when she was 15. I feel he has gone against all evidence that supports my case.

- f. The children's Guardian's solicitor in her submissions consistently question the mother's credibility as she has lied so many times and these are the people who are there to do what's best for the children
5. On 26 October 2018 Mr Justice Cohen refused permission to appeal. His order records that:
 - The judgment is conspicuous for its detail and consideration of the issues. It is clear that the Recorder has given the case very detailed thought. In particular the judge has directed himself impeccably as to the law.
 - The judge had the great advantage of seeing the parents throughout the five days that the case took. He had read and re-read a large volume of evidence and seen ABE interview footage. He was in a unique position to assess the credibility of the witnesses.
6. As to the specific grounds of appeal Mr Justice Cohen said:
 - a. The judge took all practical steps to ensure that both the Guardian's counsel and the judge put the father's case to the mother and he gave proper allowance for the difficulties that the father faced by reason of his lack of representation.
 - b. The judge repeatedly analysed the deficiencies in the evidence of each party and considered what he could and could not believe.
 - c. The judge did not give weight to the evidence of those witnesses who did not appear at court.
 - d. The judge did not accept all the evidence of the mother. He qualitatively assessed her evidence and in some instances declined to make findings.
 - e. There is no basis for an appeal court to interfere with the findings of the court below.
7. On 6 November 2018 the appellant father contacted the court to say that papers had been sent to his old address. They were resent to his new address, and on 13 November he contacted the court asking for an oral hearing. Mr Justice Coen directed that the matter be listed for an oral hearing and it was listed before me on 12 December. On that occasion, the appellant father did not attend and a message was received saying that he was sick. I adjourned the matter to 24 January and directed the appellant to provide the court with a medical note confirming his illness. No such certificate has been submitted. On 24 January 2019, the appellant father attended court but due to an error on the court's behalf the case had not been listed. It was therefore further put over until 31 January.
8. Today QC has attended in person to make oral submissions in support of his renewed application for permission to appeal. He made an impassioned plea and urged me to allow him a second chance to challenge the case against him telling me that he was now better prepared and able to conduct his challenge in a more effective way. He was

courteous throughout albeit he was upset and he clearly feels he has not been properly heard or given a fair chance. His strength of feeling about the mother and other members of his family came through very clearly; he using similar terms to describe them to me to those he used before recorder Maynard.

9. The principle points he made were:

- a. The mother is a proven liar and the judge should not have relied on her evidence in the way he did. Although there were problems in the adult relationship, the father powerfully submitted that he was a perfect father and had never and would never harm his children.
- b. Prior to him retaining S, the mother had never made allegations against him and thus her motive in making the allegations was simply to get what she wanted in terms of the children
- c. The family had previously had involvement with social services and there were no concerns raised with them. In addition the father had had contact with police and doctors who had been satisfied the children were safe with him.
- d. The allegations S made were planted in her mind by the mother
- e. The family members who made statements refused to come to court to back them up that indicating that they were unreliable in the first place and in any event the background and character of those witnesses was so questionable that it was obvious the statements were maliciously made.
- f. He was suffering from anxiety which may have affected his demeanour in court but he was telling the truth.
- g. He could have obtained further evidence to support his case but had not known that he could
- h. Cafcass had supported his challenge to the truth of the mother's allegations.

10. In order to secure permission to appeal the appellant father must demonstrate that his appeal has a real (realistic as opposed to fanciful) prospect of success or that there is some other compelling reason why the appeal should be heard. An appeal itself will only be allowed if the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

11. In challenging findings of fact the House of Lords, the Privy Council and the Court of Appeal have regularly emphasised the high threshold that an appellant has to reach to disturb findings of fact on appeal. In particular I note that:

- Findings of fact are inherently an incomplete statement of the impression made by the primary evidence
- An appellate court will interfere only if it is satisfied that a judge's decision cannot reasonably be explained or justified, absent a demonstrable misunderstanding of evidence or a demonstrable failure to consider relevant evidence

- An appellate court should not interfere where a judge has seen and heard witnesses unless it unmistakably appears from the written evidence that the judge's conclusions cannot be explained or justified.
12. The grounds of appeal in essence allege firstly that the decision of the judge was wrong because he should not have accepted the mother's allegations because she was a proven liar and there was no other evidence to support her allegations. Secondly, that there was a procedural irregularity in that the appellant father was unable to properly present his case and evidence was add committed or considered by the judge which was not subsequently tested.
 13. The judgment of Recorder Maynard runs to some 81 pages and 329 paragraphs. Recorder Maynard had first dealt with the case at the pre-trial review on 8 August 2018. By the time it came to the trial he had a bundle which approached some 1500 pages of documents much of which comprise local authority, police and medical disclosure. It is evident from the judgment that he devoted considerable time and effort to ensuring the issues were fully explored. He watch the ABE interviews (it appears not as part of the time estimate) on several occasions and read and re-read the key documents and the parties written submissions. Of his own motion raised the issue of whether S should give evidence and ruled on it.
 14. The judge set out the legal framework from paragraphs 105-113. He deals appropriately with issues relating to:
 - (a) findings of fact,
 - (b) the importance of lies and the Lucas direction
 - (c) assessing allegations made by children
 15. The judge conducted an extremely thorough and detailed evaluation of the evidence in respect of each of the areas where findings of fact were sought. He paid very careful attention to the sexual abuse of S. Carefully analysed how the allegations came to be made, the evidence in support of them and in particular he carefully analysed the interview of S. He also looked at other material that was potentially corroborative. He identified matters which potentially undermined the veracity of S's allegations; in particular where it was confusing. He identified that the father's case was that S had in effect been sent into the interviews with a script of lies in order to discredit him. The judge was satisfied that S was cognitively not able to hold such a script and repeated. He found her demeanour and presentation were not consistent with this his very thorough analysis of this issue is illustrative of his approach to the allegations generally. It is a model of careful thorough and balanced evaluation taking account of the proper approach to such allegations.

16. Returning then to the grounds of appeal and my evaluation of them my conclusions are as follows:

I feel the judge didn't take into consideration how being on my own in the court representing myself against two other solicitors was a very nervous time for me and considering the allegations against me made it all the worse

I suffer from depression and anxiety which I take medication for. The judge said I was evasive towards questioning but I had nothing to be evasive about. I can only put this down to current medical problems.

17. The judge was clearly very much alive to the fact that the father was a litigant in person. In paragraph 67 and 68 he refers to the issue and how the judge had sought to ensure that the father had a fair hearing by allowing him the opportunity to put further documents for the court and to put questions on the father's behalf to witnesses. In paragraphs 26 and 27, the judge records that he encouraged the Children's Guardian to adopt an inquisitorial approach by cross-examining in order to test the allegations and that the Guardian adopted this approach. At paragraph 55, the judge records that the Guardian's counsel had conducted a detailed and thorough cross examination of the mother which also covered many of the questions the appellant father wish to ask. Further questions were put by the judge on behalf of the father. Notwithstanding the father's failure to avail himself of the opportunity to obtain complete copies of the trial bundle's in advance of the PTR, the judge ensured he was given them at that stage and the judge allowed him to produce a further 150 pages of material on day one of the trial. The father called evidence from three witnesses. It is clear that Recorder Maynard gave the father the opportunity to bring further evidence to court which he did on the first day of the hearing and I cannot see that there is any case to show that the father was unable to put relevant material before the court because of his lack of legal representation. In particular there is nothing which suggests there was anything which was of such significance that it could have materially altered the overall evidential picture before the judge. The transcript makes clear that the father was well able to speak up for his position when he gave evidence and there is no evidence that any anxiety materially hampered his ability to present his case.

In the paperwork of evidence it consistently states U had lied. U had also admitted to this and when we had our court proceedings she began to withdraw a number of allegations and also admitted to the judge she has also lied in the court proceedings. I don't feel this was taken into consideration whatsoever.

18. The Recorder identifies at paragraph 24 and 25 of the judgment the polarised position in relation to the allegations. He records that the father's case is that the mother has fabricated these allegations and that it is part of a continuing history of the mother fabricating complaints. He records that the father's case is that the children have been

manipulated, and that contrary to the mother's allegations, it was in fact she who was the aggressor. The judge notes that the evidence showed the mother had lied about various matters at various times [#84]. It appears from paragraph 90 that in April 2016 the father had implicitly accepted that he presented in aggressive way to others. In December 2016 the father pleaded guilty to an assault on a third party. The judge sets out his conclusions on the credibility of the witnesses at some considerable length between paragraphs 118 -155. He looks at various components of the evidence. A significant part of the documentary evidence was the social services and police records and so the judge was well able to take into account the contents of those and the extent to which they supported either the father's case or the mother's case. There is no suggestion that he overlooked significant material which would have altered the evidential balance.

19. The assertion that no previous allegations had been made by the mother to social services and that they only emerged when the father retained S does not prove that the allegations were untrue. There are many reasons why individuals do not make allegations and in this case the judge concluded that the explanation for some of the mother's lies or inconsistencies were that she had in fact been trying to protect the father.
20. In respect of the mother he had the opportunity over about a day to assess her credibility. He also saw her ABE interview. He identified various occasions which he considered showed that the mother was not overstating her case. He thought her demeanour was indicative of being connected with the events she was describing. He also observed her demeanour in relation to the father. He also identifies that she was challenged about inconsistencies in her account and in particular paragraph 130 identified lies that the mother had told including a false allegation of rape. At paragraph 131, the judge applies the Lucas test and was satisfied that the lies told in other matters did not undermine the balance of her evidence. He concluded that the mother was a reliable witness on nearly every issue on which she gave evidence. He did identify an inconsistency between her ABE interview and an account provided to police in July 2017 and as a result of that inconsistency he did not make the findings that the mother sought in relation to sexual abuse allegedly perpetrated by the father upon the mother.
21. The judge also had the opportunity to observe the father both in giving evidence and in giving submissions. He identified various matters which persuaded him that the father was not a credible witness. He concluded that he was a deeply unsatisfactory witness. Considering that he was evasive, combative and deeply critical of the mother. He gave examples of the father's tendency to make sweeping or exaggerated comments. The judge's analysis of the credibility of the father is very detailed and shows the care with which the judge approached his task but also clearly demonstrates the very considerable benefit that the judge derives from seeing the mother and father give oral evidence.

Two of the witnesses the applicant was relying on refuse to give evidence in court to backup their statement

22. The judge did not rely on the evidence of the witnesses who were not called. Although the judge may have read their evidence there is no suggestion in his judgment that it influenced his decision. The weighing of evidence or the putting aside of irrelevant or inadmissible material is part and parcel of the judicial function. There is nothing to suggest that this material influence the judge's overall decision. There was a vast mass of other material the judge did consider and weighed.

The judge said he believes everything that U said even though the police have put in the report saying they believe she may be lying to strengthen her case in court. U high and about to send it to you could you just give it the once a right tried to anonymised it and what not to you could just give it the once over and term then print out a copy thanks worker also lied about being raped when she was 15. I feel he has gone against all evidence that supports my case.

23. It is simply incorrect to assert that the judge believed everything the mother had said. It is quite clear that the judge carefully evaluated the mother's evidence given she admitted or it was established that she had lied about other matters in the past. In relation to the very serious allegations of sexual abuse the judge concluded that he was not satisfied on the basis of the mother's evidence that the father had sexually abused her. This was specifically because the mother had given an account to police which was at odds with that which she provided later in her ABE interview.

The children's Guardian's solicitor in her submissions consistently question the mother's credibility has she has lied so many times and these are the people who are there to do what's best for the children

24. The Guardian was carrying out the role that the judge had invited her to adopt and which she had agreed to do. This involved testing the evidence. It does not indicate that the Guardian viewed the mother as a witness who was not credible. In any event that is the judicial function not the guardians. I note that the Guardian has not sought to appeal the findings made. Had the Guardian considered that the judge was wrong in his evaluation, the Guardian would no doubt also have appealed or joined in this appeal.

Conclusion

25. The father's essential challenges to the way the judge evaluated in particular the mother's evidence and the findings he reached. A trial judge has the immense advantage of being able to immerse themselves in the oral evidence of the witnesses, the documentary evidence and also is exposed to the personalities and demeanour of

the main protagonists through the trial process. The judge's evaluation of witnesses and findings will only be interfered with on appeal if it can be clearly demonstrated that his assessment of the witnesses and his conclusions on the evidence were ones which no judge properly evaluating the evidence and directing themselves on the law could have reached. None of the criticisms made by the appellant father get close to demonstrating that the judge failed to take account of a plainly material area of evidence or that he gave plainly undue weight to an area of evidence. He plainly directed himself on the law properly and applied it in his approach to the evidence. In addition to all that he included in the judgment there is of course a host of other material that he could not refer to but which also would have been within the penumbra of his consideration.

26. I'm driven to agree with the conclusions of Mr Justice Cohen that there is no substance in any of the grounds of appeal drafted by the appellant. Nor am I able to identify anything else that might arguably indicate that the judge was in any way wrong in the conclusions that he reached or that the decision is unjustified reason of any procedural irregularity. This appeal must therefore be dismissed.
27. The appellant father must now reflect upon the findings that have been made. He told me that a psychologist has now been instructed to consider the way forward in respect of his relationship with the children. The sooner the father makes progress in accepting that his behaviour was, as found by the judge, the sooner progress will be made in remedying the harm that has been done by his behaviour. If the father loves his children as dearly as he told me he does, and if he truly wants the best for them, he must find the courage in himself to face the fact that he has behaved abusively towards his children and be able to make amends to them. The first step in that will be beginning to acknowledge and accept that he has behaved in ways which have harmed his children.